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EXTENSION OF THE INDIAN CLAIMS COMMISSION

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HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 2408

A BILL TO EXTEND THE LIFE OF THE INDIAN CLAIMS
COMMISSION, AND FOR OTHER PURPOSES

OCTOBER 21, 1971

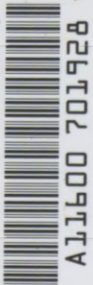


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EXTENSION OF THE INDIAN CLAIMS COMMISSION

THURSDAY, OCTOBER 21, 1971

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

The subcommittee met, pursuant to notice, in room 3110, at 10 a.m., Senator George McGovern (chairman of the subcommittee), presiding.

Present: Senators McGovern (presiding), Burdick, Allott, Stevens, and Bellmon.

Also present: Thomas Nelson, assistant minority counsel, and Forrest Gerard, professional staff member.

Senator McGOVERN. The committee will be in order.

This is an open, public hearing this morning before the Subcommittee on Indian Affairs to take testimony from public and private witnesses on S. 2408, a bill to extend the life of the Indian Claims Commission.

When the Indian Claims Commission was established by Congress over 25 years ago, it was the intent that this Commission would serve as a court of last resort for Indian tribes to file various land claims against the Federal Government. The sponsors of the legislation envisioned this work being completed over a 10-year period in order to place the funds into the hands of the Indian tribes whose cases were successfully adjudicated through the Commission.

A total of 610 claims were filed with the Indian Claims Commission. Of this amount, a total of 340 have been disposed of either through awards to the claimant tribal groups by orders of dismissal. This leaves a total of 270 pending Indian claims to be determined by the Commission.

The subcommittee is hopeful that the testimony from the administration today will shed light on clear-cut plans and procedures that will assure the completion of this workload in the time requested for the next 5-year extension.

I direct that the text of the bill and reports appear at this point of the record.

[S. 2408, 92d Cong., first sess.]

A BILL To extend the life of the Indian Claims Commission, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 23 of the Act entitled "An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes", approved August 13, 1946 (60 Stat. 1049, 1055), as amended (75 Stat. 92; 25 U.S.C. 70v), is hereby amended by striking said section and inserting in lieu thereof the following:

(1)

"DISSOLUTION OF THE COMMISSION AND DISPOSITION OF PENDING CLAIMS

"SEC. 23. The existence of the Commission shall terminate at the end of fifteen years from and after April 10, 1962, 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 and files of the Commission in all cases in which a final determination has been entered shall be delivered to the Archivist of the United States. The records and files in all other pending cases, if any, including those on appeal shall be transferred to the United States Court of Claims, and jurisdiction is hereby conferred upon the United States Court of Claims to adjudicate all such cases under the provisions of section 2 of the Indian Claims Commission Act; *Provided*, That section 2 of said Act shall not apply to any case filed originally in the Court of Claims under section 1505 of title 28, United States Code."

SEC. 2. Section 27(a) of such Act of August 13, 1946, as amended (25 U.S.C. 70w), is amended by striking said section and inserting in lieu thereof the following:

"TRIAL CALENDAR

"SEC. 27. (a) The Commission from time to time shall prepare a trial calendar which shall set a date for the trial of the next phase of each claim as soon as practical after a decision of the Commission or the United States Court of Claims or the Supreme Court of the United States makes such setting possible, but such date shall not be later than one year from the date of such decision except on a clear showing by a party that irreparable harm would result unless longer preparation were allowed."

SEC. 3. Section 27(b) of such Act of August 13, 1946, as amended (25 U.S.C. 70w), is amended by striking said section and inserting in lieu thereof the following:

"SEC. 27. (b) If a claimant fails to proceed with the trial of its claim on the date set for that purpose, the Commission may enter an order dismissing the claim with prejudice or it may reset such trial at the end of the calendar."

INDIAN CLAIMS COMMISSION,
Washington, D.C., July 13, 1971.

HON. SPIRO T. AGNEW,
President of the United States Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a proposed bill "To extend the life of the Indian Claims Commission, and for other purposes."

We recommend that the proposed bill be introduced and referred to the appropriate committee for consideration and that it be enacted.

It would amend the Indian Claims Commission Act to accomplish the following purposes:

1. Change the date for dissolution of the Commission from April 10, 1972, to April 10, 1977.
2. Provide for transfer to the United States Court of Claims of any cases still pending on April 10, 1977, and empower the Court of Claims to complete adjudication of such cases.
3. Provide that a trial date shall be set for the next phase of each claim which shall be no later than one year from the final decision on the preceding phase; and provide that if a claimant fails to proceed with a trial on the date set, the Commission may enter an order dismissing the claim with prejudice or it may reset such trial at the end of the calendar.

The Commission as now constituted, whose five members took office between December 1967 and May 1969, is firmly committed to completion of its work by April 10, 1977, and current progress is at a rate consistent with accomplishment of this goal.

Provision must be made for disposition of any residue of work that might remain at the time the Commission is dissolved. The bill provides for transfer of this work to the Court of Claims and the Commission believes that this is the best possible solution to this contingency. The Commission also believes, however, that its work will either be completed, or that very little work will remain to be transferred. The Court of Claims, therefore, will not be unduly burdened under any circumstances.

The present statutory provision that all cases should be set for trial not later than December 31, 1970, is obsolete; therefore, substitution of a requirement that trial of the next phase of a case be scheduled as soon as possible and not more than one year after the date when a final decision was reached on the preceding phase

is proposed. The proposed new provision also substitutes a penalty in the form of a possible dismissal of the case or a possible delayed trial and loss of a right of appeal to the United States Court of Claims in lieu of the language in the present bill which makes dismissal of the case mandatory under certain conditions. This procedure furthers the basic goal of proceeding as rapidly as possible without defeating the basic purpose of giving every Indian Tribe its day in court.

The Office of Management and Budget advises that enactment of this proposal would be consistent with the program of the President.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

Our first witness is the Chairman of the Indian Claims Commission, the Honorable Jerome K. Kuykendall.

**STATEMENT OF HON. JEROME K. KUYKENDALL, CHAIRMAN
OF THE INDIAN CLAIMS COMMISSION**

Mr. KUYKENDALL. Thank you, Mr. Chairman.

If I may, I would like to introduce my colleagues and two of our staff members.

Senator McGOVERN. That will be fine.

Mr. KUYKENDALL. Commissioner Vance and Commissioner Yarborough, who will sit to your extreme left, and Commissioner Pierce and Commissioner Blue.

We have two staff members, Mr. Harry Webb and Mr. Dave Bigelow.

Mr. Chairman and members of the subcommittee, on behalf of my colleagues and myself, I would like to express our appreciation for this opportunity to testify on S. 2408, a bill to extend the life of the Indian Claims Commission.

We have already reported to you that after the present members of this Commission took office, various changes in rules and procedures were developed and implemented to expedite the work, and that the Commission attempted to devise a crash program that would complete all of its work by April 10, 1972, but that it soon became evident that it would not be possible to build the very large skilled staff needed to complete the work by that date, and that the parties to the proceedings could not keep pace with such a schedule. Therefore, when we appeared before this committee on April 10, 1970, we expressed the view that we could substantially complete our work by April 10, 1977. This schedule, which has been accepted by the Office of Management and Budget, was based on an analysis of the remaining work and the funding and staffing which would be necessary to complete the work within that period of time.

It is a pleasure to report that the Commission was successful in recruiting in its full complement of 17 lawyers by the end of fiscal year 1970; that we did receive a million dollar appropriation for fiscal year 1971, together with the authority to hire four more attorneys; and that we were successful in filling these positions. Our budget for fiscal year 1972 is \$1,025,000; and we plan to continue to operate with a full complement of 21 staff attorneys.

Our productivity during the past 18 months has been gratifying. As you know, the typical claim involves land and is tried in three phases: title, value, and offsets. At the time of our last appearance here we estimated that on June 30, 1970, 429 case phases would remain. Actual performance exceeded our expectation in fiscal year

1970, when we completed 41 case phases rather than the 33 we had predicted. Thus 421 case phases remained at June 30, 1970.

During fiscal year 1971 we met a quarterly goal of 16 case phase decisions with a high degree of consistency, ending the year with a total of 63. While this was being accomplished we performed other work, including the issuance of many substantive decisions, which by themselves did not dispose of any case phases. As a result, the number of case phase decisions remaining was reduced from 421 to 358; and we are confident that the Commission can continue to conclude at least 64 case phases each year. Our revised timetable for completion of all remaining case phases indicates disposal of 64 case phases in each of the fiscal years, 1972 through 1976, and disposal of the last 38 case phases in fiscal year 1977.

Appendix A to the statement I am reading discloses in considerable detail the current status of all claims that have been filed with the Commission. As the figures show, the Commission has disposed of 340 of the 610 docketed claims. Since a substantial amount of work has been done on most of the remaining 270 cases, we estimate that about two-thirds of our work has now been completed. This conclusion is corroborated by the fact that decisions representing 671 case phases had been entered by September 30, 1971, leaving an estimated 340 phases to be completed.

Every matter that has been finally submitted to the Commission is currently under active consideration; and since the backlog of pending cases has been virtually eliminated, the Commission will be able to give prompt attention to each new matter which is submitted.

I am confident that if conditions beyond our control do not prevent our doing so, we will complete our work in the manner and within the time above outlined. There are, however, two situations which I feel should be called to your attention.

One of the matters of concern is the obviously inadequate number of lawyers in the Indian Claims Section of the Land and Natural Resources Division of the Department of Justice. These lawyers defend the United States against the claims of the Indian tribes. The large number of requests for postponements, based on lack of time to do the necessary legal work, which are filed with the Commission by the lawyers in this division, demonstrate the dire need of additional personnel therein. I understand that strenuous efforts to correct this situation are being made and hope they will be successful. No one should infer that I am critical of anyone in the Department of Justice. I sympathize with these overworked lawyers and am simply pointing out to this committee a condition which, if not corrected, might prevent this Commission from maintaining the schedule it has set for itself.

In the past, many requests for additional time have also been submitted by attorneys for the plaintiff tribes and no doubt some similar requests will be made in the future. Nevertheless, I do not view this situation with the same apprehension as I do the condition which exists in the Indian Claims Section of Justice. If one plaintiff tribe is not ready to proceed, another one probably will be, and a reasonably good overall flow of work should thus result. But if the defendant's entire staff of lawyers is overwhelmed with work, overall progress will inevitably be slow.

The Commission has thoroughly considered the possibility of imposing or obtaining authority to impose sanctions on parties who fail to meet the deadlines set by the Commission's rules or orders. In private litigation, a court can dismiss a plaintiff's cause of action because of the plaintiff's failure to prosecute it and can grant a default judgment against a defendant who fails to defend himself in a timely manner. But dismissal of an Indian tribe's cause of action for failure to prosecute would send the tribe back to Congress with a plea for new legislative authorization to sue the Government on the claim which had been dismissed. On the other hand, a default judgment against the sovereign United States undoubtedly would be unconstitutional and worthless.

Because of the clearly stated congressional intention to have all claims filed with the Commission finally adjudicated on their merits and because of the unique status of the Government as a privileged sovereign defendant and representative of all its citizens and taxpayers, we have not attempted to do anything that would impair any party's standing as a litigant.

The other situation which concerns us pertains to the accounting claims which are pending before us. In 1966, this Commission held that a claim for an accounting from the Government which had been timely filed, entitled the plaintiff not only to an accounting to August 13, 1946, the effective date of the act, and the cutoff date for accrual of claims which could be filed with the Commission, but also entitled the plaintiff to an accounting for continuing Government wrongdoings which predated and postdated the 1946 statutory time bar.

The Government appealed this decision to the Court of Claims, which in 1969 affirmed the Commission on this point. The Government thereafter obtained a review of the case by the Supreme Court and in April of this year the Supreme Court rendered its decision in which it decided that the plaintiff's cause of action was barred by *res judicata* and should be dismissed, and consequently did not pass upon the accounting question.

The Indian Tribal Claims Branch of the General Services Administration, in the preparation of its accounting reports, has included transactions occurring during the 5-year period after the effective date of the act, ending in 1951, although the Government felt that it was legally obligated to account only to 1946. As the matter now stands, the staff of the Indian Tribal Claims Branch of GSA is so depleted that supplemental reports bringing the original accountings up to date could not be rendered promptly, or at all, without a substantial enlargement of the staff, and insofar as I know, the Government still contends that it does not have to account beyond 1946.

In conclusion, I respectfully submit that the Commission is maintaining a schedule which will enable it substantially to complete its work by April 10, 1977, but point out two potential delaying situations which are beyond our control.

We recommend that the Congress enact S. 2408.

My fellow Commissioners may desire to supplement what I have said and all of us are available for questioning.

I thank you for your attention to me and for your consideration of this proposed legislation.

Senator McGOVERN. Thank you, Mr. Chairman.

I noticed you say you now have a full complement of 21 staff attorneys. At what level of personnel had you been operating at earlier times?

Mr. KUYKENDALL. The grades of these attorneys range from 12 to 15.

Senator McGOVERN. What was the previous staff size?

Mr. KUYKENDALL. Before we started on this program, there were eight or nine attorneys.

Senator McGOVERN. I see.

Do I gather from the thrust of your testimony that the basic bottleneck now is not the lack of personnel on the Indian Claims Commission, but in two other areas of the Government. The Land and Natural Resources Division of the Department of Justice, that is the first bottleneck you see?

Mr. KUYKENDALL. Yes.

Senator McGOVERN. They just can't get their counterclaims before the Commission?

Mr. KUYKENDALL. Their pleadings and briefs and proposed findings of fact, all of which represent very hard and lengthy work.

Senator McGOVERN. Would that involve a major increase in their staffing, or would an increase along the lines of the ones you have gone through in the last year or so break that bottleneck?

Mr. KUYKENDALL. I think an increase of the proportion of that which we have obtained would solve the problem. That would about double their staff. There are representatives of Justice here this morning. Perhaps they should be asked that question.

Senator McGOVERN. To what extent has the administration proposed solutions to that problem? That is the one, first of all, with reference to the shortage of lawyers in the Department of Justice?

Mr. KUYKENDALL. I really don't know. I have heard that there is some effort being made to get more lawyers. I would suggest that you ask Mr. Kashiwa about that.

Senator McGOVERN. You mentioned the second problem, centering in the accounting claims. Perhaps the other members of the committee who have been here longer than I have are familiar with this. Can you tell me just what is meant by accounting claims?

Mr. KUYKENDALL. Yes. I will give you a typical example. Assume that the Government made a treaty with the Indians whereby it agreed to hold certain land in trust for the Indian tribe. Certain income was produced by these assets, which the Government has, as trustee, for the Indians. The tribes in most cases did not have actual knowledge of the status of these accounts and therefore sued for an accounting. In many of those cases, they made quite large recoveries. It turned out that the Government did not handle the assets properly.

Senator McGOVERN. And it is at that point you see the second bottleneck, where GSA does not have enough personnel to process these accounting claims?

Mr. KUYKENDALL. True. They have two people doing this work. At one time they had about 90.

Senator McGOVERN. Do you have any idea how many it will take to stay on schedule so that you can meet this timetable you have set?

Mr. KUYKENDALL. It would be difficult to say. I would say it would take more people there than it would in the Department of Justice. I would guess 30 or 40.

Senator McGOVERN. Just so we will be clear on this, Mr. Chairman, what you are saying as I understand your testimony, is that the Indian Claims Commission now has enough personnel to move on a schedule that will process these remaining claims by 1977, but in order for you to stay on that schedule, both the Department of Justice and GSA are going to have to increase their personnel.

Mr. KUYKENDALL. True. I say we can substantially complete it. That is our firm belief and our experience to date demonstrates that there is a basis for that belief.

Now, the law, S. 2408, provides for the contingency of something being left over. I think it is inevitable that there will be some tag ends and one or more cases which have been appealed might be remanded toward the end of the Commission's life. We don't anticipate that what the Court of Claims will receive will be unduly burdensome. We believe it will be small enough to permit the court to take it in stride.

Senator McGOVERN. How many of these accounting claims are still pending?

Mr. WEBB. Sir, many of these petitions contain a single count asking for an accounting. We have a present count of what we call hard-core accounting cases, 44. We have other petitions that I mentioned that have accounting claims in them or a general prayer for accounting, that would be about 58.

Senator McGOVERN. Senator Allott?

Senator ALLOTT. I did not get in, Mr. Kuykendall, at the beginning. I have not had a chance to read all of your statement. Did you describe the procedures which were instituted by the Commission after the last extension?

Mr. KUYKENDALL. Yes, and we did that about a year ago when we were before this committee.

Senator ALLOTT. I mean—

Mr. KUYKENDALL. You are asking me to tell you briefly what we have done, are you not? Is that your questions?

Senator ALLOTT. That is right.

Mr. KUYKENDALL. We revised our rules in several substantial ways. We make use of pretrial conferences now, which to my knowledge the Commission previously almost never did. Another great timesaver has been our practice of requiring expert witnesses, and we have many experts, particularly on value of real estate, to submit their testimony in writing 30 days in advance of the hearing. Then when the trial starts, that witness appears, but he does not spend 2 or 3 weeks testifying orally on everything in his report. A cross-examination begins immediately and the written report is his case in chief. This procedure shortens our hearings greatly.

In the past it apparently was customary that all of the commissioners who were available would sit at trials. Now we have one commissioner presiding at a trial, saving the time of the other commissioners for other things.

That is a brief summary of some of the things we have done.

Senator ALLOTT. What, other than the requirements you have set out for the Department of Justice and GSA, what additional procedures do you believe are necessary to insure your duties will be complete by 1977?

Mr. KUYKENDALL. I don't believe any other procedures or changes are required. I won't say that I wouldn't consider and maybe discover

some additional changes that would be beneficial. If we had known of any other changes or improvements in procedures we could make, we would have done so before we came here today.

Senator ALLOTT. Are there any present cases which are not now set for further action?

Mr. WEBB. Sir, every case that is capable of being set is set. There may be a case or two which for one reason or another is being held, perhaps a motion pending, or a similar reason. However, there would be very, very few of those.

Senator ALLOTT. As I recall the testimony here, there are 270 cases not disposed of.

Mr. WEBB. Yes, sir.

Senator ALLOTT. How many of those cases are actually at issue?

Mr. WEBB. I would say everyone of them is at issue, sir. I know of maybe two or three cases which have not had work performed on them. They are at one stage or the other of issue. They are either in the motion stage or awaiting briefings or something of that sort.

Senator ALLOTT. In other words, if you get the action out of GSA and the Justice Department, you will be able to dispose of these cases as fast as they could be tried, is that right?

Mr. WEBB. I think that is a true statement, sir. I can't think of any contingencies at the moment that would keep us from doing that. We are on schedule and I would hope we would continue.

Senator ALLOTT. Does the Commission have any cases involving the Winter's doctrine with respect to water rights, that you know of?

Mr. WEBB. Yes, sir, we do. I believe that the *Gila River* cases probably involve that doctrine. Presently, there are motions pending in those cases, conferences have been held and there generally is progress right now.

Senator ALLOTT. Those cases would not be at issue?

Mr. WEBB. They are at issue to the extent that the pleadings have been formed or are in process of being formed, and I suppose technically, no, they would not be.

Senator ALLOTT. Do you know that the legislation, S. 2035, which the administration submitted this year to create the Indian Trust Council Authority, no longer contains the absolute prohibition against it appearing in Indian Claims Commission cases, as was in last year's bill, and to permit these attorneys to appear in any of the pending cases?

Mr. KUYKENDALL. No, I did not. I thought they were not allowed to intervene.

Senator ALLOTT. It is section 10, Mr. Chairman. It says in section 10 on page 6:

Provided, however, That the authority may assist any Indian tribe requesting such assistance in its claim pending before the Indian Claims Commission.

Mr. KUYKENDALL. Yes.

Senator ALLOTT. How do you envision that might—

Mr. KUYKENDALL. I do not construe that language to mean the authority can intervene. I, for one, would strongly disfavor the authority being allowed to intervene in any of our cases. The more parties you have, the more delay we will have. The Indian tribes are represented in almost every instance by competent and experienced counsel. If there is some other help they can get outside of the courtroom from this authority, I would certainly be glad for them to get it.

Senator ALLOTT. Suppose you have a case at issue which is about ready to go to trial and half a dozen members of one tribe or another involved in that particular case go to this authority and say they want assistance, and the Commission in—is the Commission in a very bad way to insist a trial, when they come and say, we haven't had time to prepare a case and to prepare a case of this sort could require a delay of several months?

Mr. KUYKENDALL. It would probably develop that that same tribe said that thing a half a dozen times previously. And its claim has been pending at least since 1951. After that long period of time, I think most of them really are pretty close to being ready for trial. I would offer the suggestion as it now occurs to me that perhaps this section 10 can be amended so that the tribe can still receive assistance from the authority, but any such assistance would not be a ground for delay of any trial before the Commission.

Senator ALLOTT. Do you suppose the line of my questioning was the reason this authority was not given in last year's bill, not included in last year's bill?

Mr. KUYKENDALL. I really don't know. I would just be speculating.

Senator ALLOTT. Sir?

Mr. KUYKENDALL. I say I don't know, I could only speculate.

Senator ALLOTT. While we are on this particular subject of the Trust Council Authority, I call your attention to its provision, article 9, which says that the United States waives its sovereign immunity in connection with litigation initiated by the authority under this section. Any such suit against the United States, its officers and employees, should be tried in a court without a jury.

Under this, I presume that actions could be initiated directly against the Commission, its officers and its employees. Does this give you any concern?

Mr. KUYKENDALL. I don't believe any such actions could be initiated against the Commission, because any claims against the Commission had to be filed by 1951.

Senator ALLOTT. That is claims in behalf of the tribe?

Mr. KUYKENDALL. Yes.

Senator ALLOTT. As I read this section 9, I think it widens this.

Senator Stevens is here with me. I think he is generally in agreement with the thoughts I have. I am going to ask one other question, and then I am going to turn this over to him.

Leaving this question just for a minute, on the question of OMB, you say that OMB approves your schedule, the completion of remaining work beyond the limits of the law.

Does OMB know there would be any extension of this?

Mr. KUYKENDALL. Of the 5-year extension?

Senator ALLOTT. Yes.

Mr. KUYKENDALL. Yes. OMB on behalf of the White House canvassed the thing thoroughly, got all kinds of information from us. We appeared before them, worked out the bill, which is now 2408. The transmittal to the Congress stated that it was consistent with the President's program. This is an administration measure.

Senator ALLOTT. Have they in any way slowed down progress of your work?

Mr. KUYKENDALL. The administration?

Senator ALLOTT. OMB?

Mr. KUYKENDALL. No, they have not. Of course, we might have worked faster had we gotten a larger staff. We agreed with them on the size staff that was suitable, a staff that we could train and keep and would work pretty well according to the size of the job to be done, and in relation to a reasonable time to do the work. We told OMB we would need 80—some well-trained lawyers if we were to complete the work by 1972. We started from there and worked out what we now have, and we think it is about right.

Senator ALLOTT. Thank you, Mr. Kuykendall.

Senator STEVENS. I just want to follow up what Senator Allott had commented about concerning the provisions in section 9 of the S. 2035. I would hope somehow or other that bill would be reviewed again downtown. Have you had any interpretation of this with regard to the provision where it states U.S. wage and—it says, “Any such suits against the United States, its officers, and employees should be tried in a court without a jury.” I think that goes back to trying your Commission for every decision in terms of whether or not there has been an error.

Mr. KUYKENDALL. I agree with your being concerned, and I think before the bill is passed, Congress might define more clearly the types of actions on which the Government consents.

Senator STEVENS. In your statement, you draw attention to the fact that there is an inadequate number of lawyers in the Indian Claims section of the Department of Justice, and I see that the Assistant Attorney General is here. Could I ask this: Have you made any requests to OMB or directly to the Department of Justice to help speed along your activities?

Mr. KUYKENDALL. Not in writing. I think it has been pointed out to them by our staff, Senator Stevens, and I have heard that OMB was aware of the problem, and I think Mr. Kashiwa is going to tell you he has been working on it.

Senator STEVENS. Thank you very much. I am sorry I was late; there was another meeting.

Mr. KUYKENDALL. I will add this, I am sure that Justice will have the same problem we faced because of being unable to offer a position with a long tenure. Another difficulty in securing lawyers is caused by the fact that the average lawyer who is considering getting into this work would probably feel he was not equipping himself for business in the future by becoming an expert in this field. The probability is there will not be very much work of this type in the future, after the Indian Claims Commission has completed its work.

Senator STEVENS. Well, I can understand that. What do you pay your young attorneys?

Mr. KUYKENDALL. The lowest we have are GS-12's. That pays about \$15,000 per year, the lowest scale we pay, and we have rates ranging up to and including 15, depending on experience and so forth, and our chief counsel is a 16.

Senator STEVENS. Have you gotten a waiver of qualification for the GS-12 for those people right out of law school?

Mr. KUYKENDALL. Yes, I might say we have had good success with some of our young lawyers who are relatively inexperienced in trial matters, but they have taken hold of this type of work very well. Some of them like it very much, but others find it to be dull after a while.

Mr. YARBOROUGH. If I might, Senator, let me follow up your thought on the Indian Trust Council Authority. I can foresee one instance where it might be of advantage to a tribe to receive advice from such a trust council authority, and that is the case where such tribe is not presently represented by a claims attorney. Under the present procedure, that case cannot be moved forward by a claims attorney.

I think certainly the tribe should have some sort of legal advice on whether they should accept that view of the facts or not. So, in that limited instance, I think there might be some occasion for its use. Where there is an active claims attorney, I would say there would be no occasion for it to arise.

Senator STEVENS. I can see that, if they don't have an attorney, but it seems to me that bill is going to leave a proliferation of representation for these people. It seems to me that the attorneys in the Department of Interior are assisting the Indian and native people, and also thoroughly rhetorically, I assume; but if they have a claim or attorney representing when they get there, and just ask another group—and the interesting thing is, section 9 indicates they will be acting in the name of the United States as trustee for the Indians. The scope of section 9 covers actions which are beyond any trustee relationship. Some of them that have never entered any trustee relationship in terms of claims to the rights to use lands, the right to use water, timber, minerals, and the right to hunt and fish. There are many claims being raised now that are certainly not related to people in award status.

I don't quite understand the concept of authority having the right to act in the name of the United States for claims to rights that are not subject to a trust relationship. It is to me a very complex bill, and I think ought to be reexamined completely. Thank you, Senator.

Mr. KUYKENDALL. Senator, I anticipate that we will be requested by OMB to comment on this bill. Our comments, I am sure, will be limited to statements as to how the bill affects our work, if it does. We would comment on how it would affect us and whether or not we think parties could intervene in our actions or whether new claims could be brought before us, but we would not comment on the many aspects of the bill which are wholly unrelated to the Indian Claims Commission.

Senator STEVENS. Thank you very much.

Senator BURDICK. I suppose that I would be classified as a villain by the Indian Claims Commission, as I have had serious doubts about how much could be done for a good many years, as you know. As a matter of fact, 5 years ago, to change the scene back a ways in history, we were told that if we increased the Commission from three to five and increased the staff, we would have the job done in 5 years. Can you tell me some reason why it is not done?

Mr. KUYKENDALL. I will point out first that not one of us was here 5 years ago. And there are two members who would not be here now had not the Congress enlarged the Commission. I point out also that we told this committee a year ago, after we had been in office and studied our problems and revised our procedures and done all we could think of to improve our progress, that we had a program. We have a program, and we have maintained our schedule under that program.

I don't feel that we could be held personally responsible for anything that prior members of this Commission, or prior employees, have told you, or told this committee.

Senator BURDICK. That is true; that is true. But this has been a continuing body, and we have to regard it as Indian Claims testimony, and I am sure the Commissioners at that time said the same thing you are saying now.

Mr. KUYKENDALL. Well, we are doing what we have said we would do. We are telling you today we think we can continue to do it, if matters beyond our control don't interfere, and we have told you what those matters are.

We don't walk on water and I don't know what more we can do or say.

Senator BURDICK. I felt strongly about this 5 years ago and I voted against this extension. I am not going to vote against it this year, because this is a pretty good bill. We have finally transferred the cases to the Court of Claims and got through. I don't know, I have been a practicing lawyer. It is awful easy for one of the lawyers for the parties to plead often, "My witnesses are not here, I am not ready," and he can get postponements.

Do you think the Commission should be tougher in that regard?

Mr. KUYKENDALL. Yes; I think we should. Prior to now, the Commission has had its own backlog with many cases awaiting decision. A postponement then did not delay our work. We now have reached a point where that situation has changed and extensions of time could delay the Commission by depriving it of completed cases to decide when it has time to consider them.

So, there will be no undue generosity in the future in granting extensions.

Senator BURDICK. This is just opinion I am asking you now. In 5 years, what do you think you can do with the balance of the claims or cases?

Mr. KUYKENDALL. We think we can adjudicate substantially all of them, provided that those two contingencies beyond our control are altered. We recognize that the— the bill transfers what is left to the Court of Claims.

Senator BURDICK. That is a good feature of the bill. That is why I am going to vote for it.

Mr. KUYKENDALL. We anticipate that the Court of Claims will get some work from this. We don't think they will get too much. Whatever might be left will be as small as we can make it, and we don't believe it will be an undue burden.

Senator BURDICK. Is there any possibility of completing the work before 5 years?

Mr. KUYKENDALL. No; I would not want to say we could. The Justice Department is here this morning, and they know all about this work having been in it. They don't think we can do it. We say we believe we can do it in 5 years if these conditions beyond our control are corrected.

Senator BURDICK. I think you can tighten up the procedures and prevent a lot of delay on the part of the lawyers.

Mr. KUYKENDALL. We have, and we will, Senator Burdick, for the reason I have told you. If we allow that to be the pattern in the future, we won't complete our work in 5 years.

Senator BURDICK. You won't get done in 100 years.

Mr. KUYKENDALL. We probably could stretch it out that long.

Senator BURDICK. When this bill was passed, Congress was assured all of the claims would be disposed of in 5 years.

Mr. KUYKENDALL. Well, we were not here. We don't know who told you that. I don't know how Congress hit upon that 10-year period. It was just a guess, and the work never could have been completed in 10 years.

Senator BURDICK. Five years?

Mr. KUYKENDALL. Well, 10 years. The Commission could start working as soon as the first claim was filed.

Senator BURDICK. Now it is stretched to 24.

Mr. KUYKENDALL. Yes; which is more or less a realistic figure.

Senator BURDICK. Well, I am certainly pleased that you have procedures which will move things along a bit. Again, I say I am pleased that the Commission will finally come to an end in 5 years. I am not sure about that, because I have seen this thing coming to life so often, maybe it won't die; I don't know.

Mr. KUYKENDALL. I certainly am in a position where I am not going to come here 5 years from now and ask that it be extended again.

Senator BURDICK. Do you have any idea how many Indians have died in those 25 years, and will never see any money?

Mr. KUYKENDALL. We realize that, and it is wrong. If a tribe that received an award 20 years ago had put its money in a savings bank at 5 percent, it would have doubled the money. Most of these tribes' unliquidated claims don't draw interest.

Senator BURDICK. I know some of the new members, I know they are diligent, and I know they do their business. You can't blame me for being a little impatient.

Mr. KUYKENDALL. I don't blame you at all, but we appreciate your recognition of the fact that so far we are not culpable. I might point out that what will enable us to complete our work in time, is a staff that is large enough and competent to do the great amount of work that must be done.

Senator BURDICK. A new element has crept into these hearings that I haven't heard before. Apparently these accounting cases, where did they come from?

Mr. KUYKENDALL. They have been there all of the time.

Senator BURDICK. I never heard about them. How did they arise?

Mr. KUYKENDALL. They arose in the same manner that any claim before the Commission has arisen, and that is by a claim being filed for the accounting. Frequently it was the request and demand for accounting on a certain transaction or series of transactions would be combined in a claim for other matters, too. But they are there. You might have read my prepared statement which pointed out the problem.

Senator BURDICK. I really haven't. If you can in a capsule form tell me how you intend to complete them?

Mr. KUYKENDALL. I will explain this to you. In 1966, the Commission held that an accounting claim involving wrongdoing on the part of the Government that commenced before 1946, before the passage of the act, and continued after that date, was all one transaction, and when the Government rendered an account for its malfeasance it should bring it up to date.

In my view, the Court of Claims already had held that, but the Government did not accept this and appealed the case to the Court of Claims. The Court of Claims affirmed it. Then the Government appealed to the U.S. Supreme Court and a few months ago, last spring, that Court decided the case but on other grounds. It held that the principle of *res judicata* applied and the Indians had no claim at all.

So, as I understand it, the Government contends they do not have a duty to account beyond 1946, although as a matter of grace, when they were preparing their accounts, they did bring them up to 1951. They brought them up to the end of the period when claims could be filed.

I think they still contend they only have to account to 1946. That is where we stand. I guess the Government still resists—in the meantime, the personnel in the Division of GSA, Tribal Claims Branch, are depleted. There are two men left there and obviously these accounts cannot be brought up to date unless that staff is enlarged greatly and this should be done immediately.

Senator BURDICK. Do you think this is the responsibility of the GSA then?

Mr. KUYKENDALL. Yes; I do. And I think it is the responsibility of the administration.

Senator BURDICK. Is someone from GSA here today?

VOICE. Yes.

Senator BURDICK. I have nothing further on the subject.

Mr. Bellmon?

Senator BELLMON. Mr. Chairman, I was not here at the beginning, but I have been disturbed by what appears to be a slow completion of a job that should have been completed a long time ago. We have a case in Oklahoma filed more than 25 years ago and still pending. I am curious if in the bill or in the testimony there is any requirement for progress reports.

Mr. KUYKENDALL. I don't know that it has been required, but we have made and will continue to make reports.

Senator BELLMON. You had some claims before you and are you getting rid of these at a rate of 20 percent a year?

Mr. KUYKENDALL. Yes.

Senator BELLMON. Would you be able to tell the committee what you will need in order to be sure that you will be able to finish them up in 5 years?

Mr. KUYKENDALL. We have done that this morning, Senator. It is in my written statement.

Senator BELLMON. I am saying, are you going to be able to come to us in a year from now and say we have done 20 percent of the work, and 2 years later and say we are through with 40 percent, and 3 years and say we have been through with 60 percent, or if somewhere along the way you can't finish the job, you will tell us you will need so much staff.

What I am afraid of is 5 years from now, someone else will be in your chair and say you were wrong.

Mr. KUYKENDALL. In effect, we told you this morning we will get the job done in 5 years. Just like you say, 20 percent each year. A year ago we outlined our program for you and we have maintained that program, so we have some background. We have gotten our staff, we are organized. We say we believe we can do it and we are honest when we say that.

We point out two things beyond our control that might delay us, and there are two things now that we are seeking that will help us bring it up to date.

Senator BELLMON. Would you accept an amendment that requires an annual report showing your progress and which eliminates the need for a staff so you can keep on schedule?

Mr. KUYKENDALL. Absolutely. We will give it to you without such an amendment.

Mr. YARBOROUGH. I might add that there is language requiring more reports from the Commission, in the conference report to the last extension bill, and we try to keep in close touch with the staff of the relevant committees so they know our progress and problems.

Senator BELLMON. There is a second phase, the projection of your own schedule and what it is going to take to keep on that schedule.

That is all, Mr. Chairman.

Senator BURDICK (presiding). Knowing the nature of the law business, sometimes you can't evenly divide the work because you may settle some cases and may settle twice as many cases in one period as you will in another. I think a fair indication is that you are making at least 20 percent progress.

I think some lawsuits, you may have a batch settled in 1 or 2 weeks and others will go longer, is that correct?

Mr. KUYKENDALL. Yes.

Senator BURDICK. There is no question that after these 20 years that there is a good number of precedents built up in the law and in the Court of Claims, a pretty good set of guidelines by this time, isn't there?

Mr. KUYKENDALL. I would say so. You know how it is, as a lawyer, you always get a case where you can't find a precedent. Of course, the Court of Claims had built up quite a body of precedents prior to the passage of the Indian Claims Commission Act.

Mr. BLUE. That is another problem in these accounting cases. They didn't start coming to fruition until just a few years ago, and we are confronted with a good number of legal questions now that will have to be decided upstairs, before both sides will accept our determination. And that is another thing, we might have to consider certifying some questions up to the Court of Claims to resolve them in the interest of saving time.

Senator BURDICK. Thank you.

Does this complete this panel?

Thank you for your contribution.

(Appendix A referred to by Mr. Kuykendall follows:)

APPENDIX A

INDIAN CLAIMS COMMISSION

Status of Indian claims cases on Oct. 12, 1971

	<i>Number of dockets</i>
Claims filed:	
Received through Aug. 13, 1951.....	370
Causes severed from original claims and redocketed as separate claims.....	240
Total docketed.....	<u>610</u>

APPENDIX A—Continued

Status of Indian claims cases on Oct. 12, 1971—Continued

	<i>Number of dockets</i>
Claims disposed of:	
By awards certified to the Treasury Department totaling \$394,571,- 407.67-----	177
By orders of dismissal-----	163
Total disposed of-----	340
Pending claims cases-----	270
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Status of pending cases:	
Cases with final awards totaling \$19,140,287.04 on which appeal time is running (in dockets 30 and 48, 30-A and 48-A, 137, 322, and 261)-----	7
Case with final awards totaling \$1,598,754.16 on which time is run- ning within which to request reconsideration or review of a decision by the Court of Claims affirming the Commission (in docket 135)-----	1
Cases with final awards totaling \$2,552,553.02 on remand from the Court of Claims (in dockets 217, 15-K, and 29-J; and 27-A and 241)-----	5
Case with final award of \$6,609,926.14 pending on plaintiff's applica- tion for writ of certiorari from a decision by the Court of Claims (in docket 175-B)-----	1
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Cases on appeal in the Court of Claims from--	
Final awards totaling \$17,876,536.13 (in dockets 73 and 151, 110, 132, 158, 231, 234, and 323)-----	8
Interlocutory decisions on title or liability issues (in dockets 218, 236-A, 236-B, and 273)-----	4
Order dismissing a land claim (in docket 209)-----	1
Subtotal-----	13
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Dismissals of cases not as yet reportable as final (in dockets 49, 230, and 350-B)-----	3
Subtotal of foregoing pending cases-----	30
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Pending on title or liability:	
Submitted for decision by the Commission-----	40
Set for trial-----	7
In briefing stage-----	42
Subtotal-----	89
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Miscellaneous cases:	
Docket 13-A: Plaintiffs are Saginaw Chippewas. The Commission determined in another suit in docket 18-C that the land claim involved belongs to the Mississippi and Lake Superior Chippewas-----	1
Docket 22-C: Being briefed on title and liability issues and pending on defendant's motion to consolidate dockets 22-C, 257 and 226-----	1
Docket 22-H: Petition asserts trespass and accounting claims. Defendant has moved for more definite statement of trespass claims and plaintiff has moved for a supple- mental accounting. Settlement negotiations are said to be in process-----	1
Docket 80-A: After trial and briefing of liability issues this case is pending on certain plaintiffs' motions to postpone decision, reopen record and permit filing of amended petition or petition in intervention-----	1
Docket 123: Although the Court of Claims affirmed an order dismissing this docket, the court regards this case as being "still alive—barely breathing." A cause asserted by the claimants before the court is now under litigation in docket No. 173-A in which they have been permitted to inter- vene-----	1

APPENDIX A—Continued

Status of Indian claims cases on Oct. 12, 1971—Continued

Status of pending cases—Continued

Pending on title or liability—Continued

Miscellaneous cases—Continued

	<i>Number of dockets</i>
Docket 221-A: Plaintiffs' advice that they do not intend to pursue certain claims and determinations made in consolidated proceedings involving this docket and other dockets indicate the possibility of no viable cause remaining in docket 221-A-----	1
Docket 226: Set for trial of new title issues resulting from an amendment of the complaint after the value decision, and pending on defendant's motion to consolidate with dockets 257 and 22-C, and a motion to intervene in docket 226 by the Alabama-Coushatta Indians, et al-----	1
Docket 236-C: Pending on plaintiff's motion for preliminary adjudication-----	1
Docket 236-D: Removed from trial calendar pending decision in similar case in docket 236-C-----	1
Docket 236-G: Pending on plaintiff's motion that the determination of this claim abide the determination of a similar claim in docket 236-E, or, in the alternative for summary judgment-----	1
Docket 257: Plaintiffs' motion for summary judgment of recognized title granted and case ordered to proceed to, inter alia, a determination of the interests of the several claimants involved in the subject matter of the case. Also pending on defendant's motion to consolidate with dockets 226 and 22-C-----	1
Docket 277: Proceedings stayed pending decision on identical issues in a companion case in docket 247-----	1
Docket 320: Tried and briefed on title, but pending on plaintiff's motion to reopen the record for submission of additional evidence-----	1
Dockets 354, 355 and 356: Parties agree that plaintiffs had Indian title to certain lands. Submitted on question of date of extinguishment of Indian title, and the additional question in docket 355 of whether plaintiff had Indian title to a tract of 8,600 acres in the San Felipe Indian Reservation--	3
Docket 357-A: Being briefed with respect to the Commission's order of Feb. 10, 1971, to show cause why the Commission's findings, opinion and interlocutory order and award of Sept. 8, 1965 on the Town of Taos claim should not be vacated--	1
Docket 363: Involved are 2 aboriginal land claims, a reservation land claim, and an accounting claim. The reservation claim is submitted on valuation issues. One aboriginal land claim is submitted on the question of the plaintiffs' Indian title, and the other is being briefed on that question. On the accounting claim plaintiffs are requesting, inter alia, an accounting beyond Aug. 13, 1946-----	1
Subtotal miscellaneous-----	18
Alaska cases: The 12 pending Alaska cases (in dockets 187, 200, 278, 278-A, 278-B, 284, 285, 286, 287, 352, 369, and 370) are being held in abeyance pending the outcome of legislation before the Congress for the settlement of claims of Alaska natives--	12
Subtotal pending on title or liability-----	119
Pending on valuation:	
Submitted for decision by the Commission-----	10
Set for trial-----	24
In briefing stage-----	17
Subtotal-----	51

See footnotes at end of table, p. 19.

APPENDIX A—Continued

Status of Indian claims cases on Oct. 12, 1971—Continued

Status of pending cases—Continued

Pending on valuation—Continued

Miscellaneous cases:

	<i>Number of dockets</i>
Docket 73-A: Value trial to be set after disposition of plaintiff's motion to modify the Commission's title decision and for a rehearing.....	1
Docket 74: Being briefed on valuation. Also pending on plaintiffs' motions for leave to amend its petition and for modification of the Commission's determinations as to boundaries and parties to the claim.....	1
Dockets 113, 221, and 246: Value trial to be set after disposition of motions by certain plaintiffs for rehearing and reconsideration of certain boundary and land-owning-entity determinations in interlocutory decisions of the Commission involving these and other consolidated cases in dockets 191, 350-B and 350-C.....	3
Dockets 196 and 229: Value trial to be set after disposition of new issues heard after the title decision as to the date or dates of taking. The parties are briefing these issues.....	2
Docket 203: This case was to have been heard on value in April, but plaintiff allowed its attorney's contract to expire and submitted a resolution calling for the plaintiff tribe to withdraw from the suit.....	1
Dockets 212 and 213: Involves reservation tracts lying within larger aboriginally claimed areas in other consolidated dockets. Value trial has been postponed pending value decision in the consolidated dockets.....	2
Docket 228: Value trial to be set after questions as to date of taking and areas not taken within the perimeter of the lands held by Indian title are disposed of.....	1
Docket 332-C: Pending on intervenor's motion to rehear certain issues as to boundaries and parties.....	1
Docket 350-C: Value trial to be set after disposition of motions mentioned above under dockets 113, 221, and 246.....	1
Docket 357: To be set for trial of value at same time as dockets 354, 355 and 356 which are not as yet ready for setting.....	1
Docket 357-B: Taos Blue Lake area claim, appears to be destined for dismissal in view of the provisions in Public Law 91-550, approved Dec. 15, 1970.....	1
Docket 358: Removed from trial calendar as it appears the case is to be settled.....	1
Subtotal miscellaneous.....	16
Subtotal pending on valuation.....	67

Pending on accounting:

Submitted for decision by the Commission.....	3
Set for trial.....	7
In briefing stage.....	2
Subtotal.....	12

Miscellaneous cases:

Dockets 19, 188, 189-A, 189-B and 189-C: Pending on defendant's motion for setting definite time to file additional accounting exceptions and plaintiffs' motion for oral argument to determine legal issues.....	5
Dockets 22-G and 326-A: In each case awaiting supplement to defendants' accounting and defendant's brief on question of liability for interest.....	2
Docket 22-K: Awaiting defendant's responses to plaintiff's interrogatories.....	1
Docket 28: Trial to be set after Commission's decision on political structure of the Potawatomi Indians.....	1

APPENDIX A—Continued

Status of Indian claims cases on Oct. 12, 1971—Continued

Status of pending cases—Continued

Pending on accounting—Continued

Miscellaneous cases—Continued

	Number of dockets
Docket 69: Pending on plaintiff's motion for partial summary judgment and supplemental accounting.....	1
Docket 80-B: Proceedings postponed at plaintiff's request pending outcome of suit in a Federal court. Plaintiff has filed no accounting exceptions.....	1
Docket 100-B: Removed from trial calendar on representation that settlement negotiations are in process.....	1
Docket 102: Pending on plaintiff's motion to compel production of, inter alia, accounting data beyond July 1, 1951....	1
Dockets 115, 116, 117, 118, and 119: Awaiting defendant's responses to plaintiffs' amended exceptions to the defendant's accounting reports.....	5
Dockets 178-A, 179-A, 326-C, and 350-G: In each case awaiting defendant's accounting for period from and after July, 1, 1951.....	4
Dockets 221-C and 326-B: Plaintiff's exceptions to defendant's accounting are awaited in each case.....	2
Docket 342-G: Awaiting defendant's accounting report. Claims for taking of land for railroads and villages are also involved in the case.....	1
Docket 364: Under study by the Commission's Investigation Division as the plaintiffs are without legal counsel..	1
Subtotal miscellaneous.....	26
Subtotal pending on accounting.....	² 38

Pending on offsets:

Submitted for decision by the Commission.....	3
Set for trial.....	4
In briefing stage.....	4
Subtotal.....	11

Miscellaneous cases:

Dockets 15-M, 29-K and 146: Trial on offsets to be set after Commission's decision on political structure of the Potawatomi Indians.....	3
Docket 134: Pending on defendant's motion for rehearing and amendment of Commission's findings as to consideration paid to plaintiff.....	1
Docket 294: Pending on plaintiff's motion for final judgment in its favor.....	1
Subtotal miscellaneous.....	5
Subtotal pending on offsets.....	16

Total number of pending Indian Claims cases..... ^{3 4} 270

¹ Also on appeal is the Commission's decision and order of Feb. 18, 1971 awarding and apportioning attorneys' fees for services rendered in completed Miami Indian cases in dockets 255 and 124-C, and dockets 256, 124-D, 124-E, and 124-F.

² The count of 38 dockets pending on accounting is not inclusive of accounting claims asserted in many other dockets by a count, cause of action or particular paragraph or paragraphs of the petition, or of 2 accounting cases included herein as set for trial of offsets.

³ The 270 pending claims are not inclusive of attorneys' applications for allowance of attorneys' fees or expenses. Of such applications there are pending 6 for fees (including 3 involved in the decision mentioned in footnote 1 that is on appeal in the Court of Claims), and 8 for expenses.

⁴ The 270 pending dockets include 38 in which Potawatomi claims are asserted that are involved in a separate proceeding for the limited purpose of making a de novo determination of the political structure of the Potawatomi Indians at the times when the United States negotiated various treaties with them giving rise to the Potawatomi claims. Such de novo determination is required by instructions in the decision of the Court of Claims in the case of *The Hammakille Indian Community, et al., Appellants v. The United States, Prairie Band of The Potawatomi Tribe of Indians, and Citizen Band of Potawatomi Indians of Oklahoma, Appellees* (Appeal No. 5-65, decided June 9, 1967, 180 Ct. Cl. 477).

Senator BURDICK. The next witness is the Honorable Shiro Kashiwa, Assistant Attorney General.

I am pleased to see you again, Mr. Kashiwa.

STATEMENT OF SHIRO KASHIWA, ATTORNEY GENERAL FOR LAND AND NATURAL RESOURCES, DEPARTMENT OF JUSTICE

Mr. KASHIWA. May I introduce Mr. Ralph Barney to my right and Mr. Edward Lazowska.

The Department of Justice favors the extension of the life of the Indian Claims Commission to April 10, 1977, in order that the claims of those Indian tribes which have not yet been determined may receive adequate and appropriate consideration.

In all candor, however, I should point out that there is considerable doubt that the Commission will complete its business by that date.

A brief summary of the work of the Commission to June 30, 1971, is as follows:

Total claims filed.....	606
Final awards.....	180
Final dismissals.....	164
Total.....	344
Pending cases.....	262
Partial determinations.....	78
Appeals to the Court of Claims.....	12

Probably the greatest obstacle to the completion of the work of the Commission between now and 1977 relates to "accounting" cases. These are cases in which the various tribes demand that the Government account for the receipt and expenditure of tribal funds. This is a perfectly proper request since the Government kept all of the records and every fiduciary is required to make a proper accounting of his stewardship.

However, the Commission has permitted the various tribes to expand such claims. In the *Southern Ute* case, the Commission held that notwithstanding the statutory provisions that "No claim accruing after the date of the approval of this Act shall be considered by the Commission" (sec. 2), the Government must bring all accounting claims "up to date." This has posed difficult problems.

As the General Services Administration—which has the records pertaining to the fiscal operations between the Government and the Indian tribes—gradually completed its work, it quite naturally permitted its operation to dwindle, until at the present time it has only two examiners. Obviously, these two employees could not bring the more than 40 accounting cases "up to date." An inevitable delay thus will ensue. Additional time may also be required to adjudicate accounting claims that have been expanded to include land claims as well as claims based on inadequate Government administration, management, and reporting.

The Commission had made other rulings which also have had the effect of reopening still other cases, beyond those involving accounting claims. But from this very brief recitation, it should be apparent to the committee that the probability of the Commission's completing its work before April 10, 1977, is doubtful.

In conclusion, let me say that the Department of Justice has tried to dispose of cases by compromise settlements whenever this has been reasonably possible. The record shows that out of the 180 final judgments of the Commission aggregating \$390,941,341.79, the Department has made full settlements in 97 cases aggregating \$192,924,431.33.

In addition, we have made numerous settlements relating to the consideration paid and the offsets for which the Government is entitled to credit, thus expediting the entry of final judgments in favor of the tribes.

The Department will continue to make settlements whenever it appears that such settlements are fair to the tribes and the Government.

Senator BURDICK. Thank you very much.

I notice, based on dollar value, at least, about half of the cases you have settled.

Mr. KASHIWA. Yes.

Senator BURDICK. This, of course, hastens the procedure a bit when you make these settlements.

Mr. KASHIWA. Yes.

Senator BURDICK. You avoid appeals and et cetera.

Mr. KASHIWA. Yes.

Senator BURDICK. I admire your frankness that you have stated in this testimony of yours and you have your doubts as to whether or not everything can be finished by the end of the 5-year term.

Mr. KASHIWA. We do have that doubt.

Senator BURDICK. Do you have any objection to whatever remains at that time being shifted to the Court of Claims?

Mr. KASHIWA. That I will leave up to the committee.

Senator BURDICK. Do you think it can be handled as smoothly and expeditiously if the Court of Claims takes over at that point?

Mr. KASHIWA. I don't know how it will fit into the Court of Claims system. The present Commission has a very large staff, concentrating its work on only this. The Court of Claims has many other areas of responsibility. How it will work out, I don't know.

Senator BURDICK. I am told that the Court of Claims is one of the courts that doesn't have a big backlog like some of our district courts, is that correct?

Mr. KASHIWA. That is true.

Senator BURDICK. Not only that, but they have had the benefit of 20 years of experience, they have the precedents before them, and have had these cases continuing before them for a period of time, and Indian claims cases are no stranger to them.

Mr. KASHIWA. And the Indian claims cases go back a long period of time. We are talking about a contract entered into 20 years ago.

Senator BURDICK. There are certain precedents that have been established in these 20 years.

Mr. KASHIWA. Yes.

Senator BURDICK. I am curious about one thing. I don't recall hearing about these accounting cases before. When did this come up?

Mr. KASHIWA. Mr. Barney can explain this.

Mr. BARNEY. They became active about 3 to 5 years ago, sir. They were there all of the time.

Senator BURDICK. It was not reported to the committee, that I can recall.

Mr. BARNEY. Nobody was interested in them. They didn't become active until about 5 years ago and then all of a sudden, all of the lawyers involved with Indian claims became very, very much interested in the accounting cases.

Senator BURDICK. Wouldn't those claims have to be filed at the filing period?

Mr. BARNEY. They were filed, sir. They just—well——

Senator BURDICK. No one took any aggressive action on them until recently; right?

Mr. BARNEY. That is correct.

Senator BURDICK. Was the Commission or Department ever concerned that they weren't being disposed of for those many years?

Mr. BARNEY. Nobody seemed to be.

Senator BURDICK. They were just forgotten?

Mr. BARNEY. Pushed back to the end.

Senator BURDICK. I suppose that these cases do not require as much judicial attention as they do accounting attention, and the accounting office has been taking care of it in the past?

Mr. BARNEY. Yes.

Senator BURDICK. Do they involve legal questions?

Mr. BARNEY. Yes.

Senator BURDICK. And this is just adding up figures?

Mr. BARNEY. First, you have to add up the figures, and then the question is whether or not various expenditures that had been charged against the Indians were proper expenditures, and that is where the legal problems come in.

Senator BURDICK. First of all, you have to get the figures totaled?

Mr. BARNEY. Yes.

Senator BURDICK. And then the questionable items will be passed on by the Commission. How many are there, 40 or so?

Mr. BARNEY. About 43. I heard Mr. Webb say 44. We figure 44, but that is a matter of calculation.

Senator BURDICK. You think that is fundamentally and primarily the work of the GSA?

Mr. BARNEY. They have to compile the figures, because they're the only ones that have access to them.

Senator BURDICK. Do you feel confident that can be completed in 5 years?

Mr. BARNEY. No, sir.

Senator BURDICK. You think the accounting cases are sort of a separate category from the other claims?

Mr. BARNEY. I am not sure I understand the import of that question.

Senator BURDICK. I mean I am concerned now about the end of the 5-year period. The normal claim can be processed by the court of claims. What about these accounting cases, do we have to keep this Commission open to take care of the accounting cases?

Mr. BARNEY. No, sir, because in years past, prior to the establishment of the Commission, the Court of Claims handled accounting cases along with the rest of them.

Senator BURDICK. I see. There is no problem there?

Mr. BARNEY. No, sir.

Senator BURDICK. Mr. Kashiwa, if you question the ability of the Commission to complete its work in 5 years, can you make any recommendations for a speeding-up process?

Mr. KASHIWA. We just endorse this bill, and as to how it could be done is more up to the committee here.

Senator BURDICK. Your contribution will be to engage as many settlements as possible, that will be your contribution?

Mr. KASHIWA. Yes, but there are limitations to that.

Senator BURDICK. I understand that, Mr. Kashiwa. I understand that, but you will continue this practice of exploring all of the areas of settlement as you have in the past?

Mr. KASHIWA. Yes.

Senator BURDICK. Senator Allott?

Senator ALLOTT. Yes, Mr. Chairman.

We have requested of the Commission a list of the status of cases pending before the Indian Claims Commission. I have it in my hand here. It shows 38 cases, if I counted them correctly, strictly accounting cases. It shows four cases which are combination damage and accounting cases, which will bring it up to 42. So, I guess our figures are pretty close together on what you are talking about here.

Mr. Chairman, I think that this is a very necessary part of this record, and therefore I would ask unanimous consent that—I just have a Xeroxed copy here—that the copy of the original be placed in the record in full, as part of this testimony.

Senator BURDICK. Without objection, so ordered.

(The document referred to follows:)

INDIAN CLAIMS COMMISSION

STATUS OF CASES ON SEPTEMBER 27, 1971

<u>CLAIMS FILED</u>	<u>Number of Dockets</u>
Received through August 13, 1951.....	370
Causes severed from original claims and redocketed as separate claims.....	<u>240</u>
Total docketed.....	610

CLAIMS DISPOSED OF

By awards certified to the Treasury Department totaling \$394,571,407.67.....	177
By orders of dismissal.....	163
Total disposed of.....	340

PENDING CLAIMS CASES

Land cases with final awards totaling \$19,134,532.08 on
which appeal time is running:

Dockets 30 and 48, Fort Sill and Chiricahua Apache Tribes, et al. \$521,796.00.....	2
Dockets 30-A and 48-A, Fort Sill and Chiricahua Apache Tribes, et al. \$15,967,300.00.....	2
Docket 137, Pueblos of Zia, Jemez and Santa Ana \$766,936.08.....	1
Docket 322, Ponca Tribe of Oklahoma \$1,878,500.00.....	<u>1</u>
Subtotal.....	6

Land case with final awards totaling \$1,598,754.16 on which
time is running within which to request reconsideration or
review of a decision by the Court of Claims affirming the
Commission:

Docket 135, Iowa Tribes \$633,193.77, and Sac and Fox Tribes \$965,560.39.....	1
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Land cases with final awards totaling \$2,552,553.02 on
remand from the Court of Claims:

Docket 217, Citizen Band of Potawatomi, et al.;	
Docket 15-K, Prairie Band of Potawatomi, et al.; and	
Docket 29-J, Hannahville Indian Community, et al. consolidated cases \$2,094,573.02.....	3
Docket 27-A, Delaware Tribe; and Docket 241, Delaware Absentee Tribe consolidated cases \$457,980.00.....	<u>2</u>
Subtotal.....	5

PENDING CLAIMS CASES - ContinuedNumber of Dockets

Land case with final award of \$6,609,926.14 pending on plaintiff's application for writ of certiorari from a decision by the Court of Claims:

Docket 175-B, Nez Perce Tribe..... 1

Cases on appeal in the Court of Claims from:

Final awards in land cases totaling \$17,876,536.13:

Docket 73, Seminole Indians of Florida; and Docket 151, Seminole Nation of Oklahoma consolidated cases \$12,262,780.63.....	2
Docket 110, Lummi Tribe \$57,000.00.....	1
Docket 132, Suquamish Tribe \$42,170.49.....	1
Docket 158, Sac and Fox Tribes \$3,530,578.21.....	1
Docket 231, Sac and Fox Tribes \$943,799.79.....	1
Docket 234, Chinook Tribe and Bands \$48,692.05.....	1
Docket 323,* Ponca Tribe \$991,514.96.....	1

Interlocutory decisions on title or liability issues:

Docket 218, Cowlitz Tribe, land case.....	1
Dockets 236-A and 236-B, Gila River Indian Community, land lease cases.....	2
Docket 273, Creek Nation, land case.....	1

Order dismissing land claim:

Docket 209, Sac and Fox Tribes.....	<u>1</u>
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Subtotal..... 13

Dismissals of cases not as yet reportable as final:

Docket 49, Fort Sill Apache Tribe, et al., damage case, appeal time running.....	1
Docket 230, Cayuga Nation, land and accounting case, appeal time running.....	1
Docket 350-B, Three Affiliated Tribes of Fort Berthold Reservation, land case, involved in motions for rehearing that have stayed the running of appeal time.....	<u>1</u>

Subtotal..... 3

Other cases, listed on the following pages, that are before the Commission in various stages of litigation..... 241

Total number of pending Indian claims cases..... 270

OTHER PENDING INDIAN CLAIMS CASES

Explanation of symbols: The letter "x" indicates the phase in which the case is pending. The letter "c" indicates that the case is consolidated with one or more other cases. An asterisk "*" indicates a request for an accounting by a court, cause of action or particular paragraph or paragraphs of the petition.

LAND CASES

<u>Docket Number</u>	<u>Claimant Tribe, Band or Group</u>	<u>Phase in which pending</u>		
		<u>Title</u>	<u>Value</u>	<u>Offsets</u>
13-A	Chippewa, Saginaw	x		
13-E	Chippewa, Saginaw	x c		
13-F	Chippewa, Saginaw	x c		
13-G	Chippewa, Saginaw	x c		
13-K	Chippewa, Saginaw	x c		
15-C	Potawatomi, Prairie	x c		
15-D	Potawatomi, Prairie	x c		
15-E	Potawatomi, Prairie	x c		
15-I	Potawatomi, Prairie	x c		
15-L	Potawatomi, Prairie	x c		
15-M	Potawatomi, Prairie			x c
15-N	Potawatomi, Prairie	x c		
15-O	Potawatomi, Prairie	x c		
15-P	Potawatomi, Prairie	x c		
15-Q	Potawatomi, Prairie	x c		
15-R	Potawatomi, Prairie	x c		
18-C	Chippewa, Minnesota		x	
18-D	Chippewa, Bois Forte		x	
18-E	Chippewa-Ottawa			x c
18-F	Chippewa, Bay Mills		x	
18-H	Chippewa, Red Lake	x c		
18-J	Chippewa, Red Lake	x c		
18-K	Chippewa, Red Lake	x c		
18-L	Chippewa, Red Lake	x c		
18-M	Chippewa, Red Lake	x c		
18-P	Chippewa, Red Lake	x c		
18-R	Chippewa, Bay Mills		x	
18-S	Chippewa, Minnesota		x	
18-T	Chippewa, Minnesota			x
18-U	Chippewa, Minnesota			x
22-C	Apache, Lipan, et al.	x		
22-D	Apache, San Carlos, et al.		x	
22-J	Apache, Northern Tonto, et al.		x	
27	Delaware	x c		
27-B	Delaware	x c		
27-E	Delaware	x c		
29-A	Potawatomi, Hannahville Indian Community	x c		
29-B	Potawatomi, Hannahville Indian Community	x c		
29-C	Potawatomi, Hannahville Indian Community	x c		
29-D	Potawatomi, Hannahville Indian Community	x c		
29-E	Potawatomi, Hannahville Indian Community	x c		
29-G	Potawatomi, Hannahville Indian Community	x c		

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LAND CASES - Continued

Docket Number	Claimant Tribe, Band or Group	Phase in which pending		
		Title	Value	Offsets
29-I	Potawatomi, Hannahville Indian Community	x c		
29-K	Potawatomi, Hannahville Indian Community			x c
29-L	Potawatomi, Hannahville Indian Community	x c		
29-M	Potawatomi, Hannahville Indian Community	x c		
29-N	Potawatomi, Hannahville Indian Community	x c		
29-O	Potawatomi, Hannahville Indian Community	x c		
29-P	Potawatomi, Hannahville Indian Community	x c		
40-F	Ottawa	x c		
40-I	Ottawa	x c		
47-B	Yakima		x	
57	Chippewa, Saginaw		x	
58	Chippewa-Ottawa			x c
59	Chippewa, Saginaw	x c		
60-A	Makah		x	
64	Shawnee	x c		
64-A	Shawnee	x c		
71	Potawatomi, Citizen	x c		
73-A	Seminole, Florida		x	
74	Sioux Nation		x	
74-B	Sioux Nation		x	
80-A	Mission Indians of California	x		
83	Sac and Fox		x	
89	Six Nations	x c		
113	Chippewa, Turtle Mountain		x c	
120	Wyandotte	x c		
124-B	Miami, Indiana	x c		
124-H	Miami, Indiana	x c		
128	Potawatomi, Citizen	x c		
130	Miami, Indiana	x c		
133-A	Ottawa	x c		
133-B	Ottawa	x c		
133-C	Ottawa	x c		
134	S'Klallan (Clallam)			x
139	Wyandotte	x c		
140	Wyandotte	x c		
141	Wyandotte	x c		
144	Chippewa, Pillager		x	
146	Potawatomi, Citizen			x c
169	Creek Nation		x	
173-A	Cherokee, Oklahoma			x
186	Confederated Tribes of Colville Reservation		x	
189	Chippewa, Red Lake		x	
191	Chippewa, Little Shell	x c		
196	Hopi	*	x	
197	Nisqually		x	
198	Confederated Tribes of Warm Springs Reservation, Oregon		x	
202	Delaware, Absentee	x c		
203	Puyallup		x	
206	Squaxin		x	
208	Steilacoom		x	
212	Wyandotte	*	x	

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LAND CASES - Continued

Docket Number	Claimant Tribe, Band or Group	Phase in which pending		
		Title	Value	Offsets
213	Wyandotte.....		x	
216	Potawatomi, Citizen.....	x c		
221	Chippewa-Cree, et al.....		x c	
221-A	Chippewa-Cree, et al.....	x		
221-B	Chippewa-Cree, et al.....	x c		
226	Caddo, et al.....	* x		
228	Pima-Maricopa.....		x	
229	Navajo.....		x	
233	Swinomish.....	x		
246	Chippewa, Pembina, et al.....		x c	
252	Miami, Oklahoma.....	x c		
254	Miami, Oklahoma.....	x c		
257	Kiowa, Comanche and Apache, et al.....	x		
259-A	Kiowa, Comanche and Apache.....	* x		
261	Samish.....			x
263	Kikiallus.....			x
272	Creek Nation.....	x		
275	Creek Nation.....		x	
280	Creek Nation East of the Mississippi....	x		
282-A	Cherokee, Eastern.....		x	
282-B	Cherokee, Eastern.....		x	
282-C	Cherokee, Eastern.....		x	
282-D	Cherokee, Eastern.....		x	
282-E	Cherokee, Eastern.....		x	
282-F	Cherokee, Eastern.....		x	
282-G	Cherokee, Eastern.....		x	
282-H	Cherokee, Eastern.....		x	
282-I	Cherokee, Eastern.....		x	
282-J	Cherokee, Eastern.....		x	
282-K	Cherokee, Eastern.....		x	
282-L	Cherokee, Eastern.....		x	
283	Mohave, et al.....			x c
294	Skagit.....			x
295	Mohave, et al.....			x c
295-A	Mohave, Arizona, California, and Nevada		x	
300-A	Stockbridge-Munsee.....		x	
301	Oneida Nation of New York, et al.....	x		
302	Ottawa.....	x c		
304	Ottawa.....			x
305	Ottawa.....	* x		
306	Potawatomi, Citizen.....	x c		
308	Potawatomi, Citizen.....	x c		
309	Potawatomi, Citizen.....	x c		
310	Potawatomi, Citizen.....	x c		
311	Potawatomi, Citizen.....	x c		
313	Peoria-Kaskaskia.....	x c		
314-A	Peoria-Wea.....	x c		
314-B	Peoria-Wea.....	x c		
315	Kickapoo.....	x c		
320	Quechan.....	x		
321	Tuscarora.....	* x		

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LAND CASES - Continued

Docket Number	Claimant Tribe, Band or Group	Phase in which pending		
		Title	Value	Offsets
326-J	Shoshone, Goshute.....		x	
326-K	Shoshone, Te-Moak.....		x	
332-C	Sioux, Yankton.....		x	
335	Shawnee.....	x c		
338	Delaware, Absentee, et al.....	x c		
341-A	Seneca-Cayuga.....	* x c		
341-B	Seneca-Cayuga.....	* x c		
341-C	Seneca-Cayuga.....	x c		
341-D	Seneca-Cayuga.....	x c		
342-A	Seneca Nation.....		x c	
342-B	Seneca Nation.....		x c	
342-C	Seneca Nation.....		x c	
342-E	Seneca Nation.....		x c	
342-F	Seneca Nation.....		x c	
343	Seneca-Cayuga.....	x		
345	Papago.....		x	
350-C	Three Affiliated Tribes of Fort Berthold Reservation.....		x	
350-D	Three Affiliated Tribes of Fort Berthold Reservation.....		x	
350-F	Three Affiliated Tribes of Fort Berthold Reservation.....		x	
354	Pueblo of San Ildefonso.....	* x		
355	Pueblo of Santo Domingo.....	* x		
356	Pueblo of Santa Clara.....	* x		
357	Pueblo of Taos.....	*	x	
357-A	Pueblo of Taos.....	x		
357-B	Pueblo of Taos (Blue Lake area claim).....		x	
358	Pueblo of Nambe.....	*	x	
368	Seneca, Tonawanda.....		x c	
368-A	Seneca, Tonawanda.....		x c	

LAND AND DAMAGE CASES

		Title and/or		
		Liability	Value	Offsets
181-C	Confederated Tribes of Colville Reservation, et al.....	x		
236-I	Gila River Pima-Maricopa Indian Community, Etc.....	x		
247	Seminole Nation (Oklahoma).....	* x		
277	Creek Nation.....	* x		

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LAND AND ACCOUNTING CASES

Docket Number	Claimant Tribe, Band or Group	Phase in which pending		
		Accounting	Value	Offsets
189-B	Chippewa, Red Lake, et al.....	x	c	
342-G	Seneca Nation.....	x		
363	Lower Sioux Indian Community in Minnesota, et al.....	x		

DAMAGE AND ACCOUNTING CASES

		Liability and/or		
		Accounting	Value	Offsets
22-H	Apache, San Carlos, et al.....	x		
87-A	Northern Paiute Nation, et al.....	x		
182	Apache, Fort Sill, Chiricahua and Warm Springs.....	x		
235	American Indians Residing on The Maricopa- Ak Chin Indian Reservation, et al.....	x		

DAMAGE CASES

		Liability	Value	Offsets
123	Cherokee Freedmen.....	x		
204	Seminole Nation.....		x	
236-C	Gila River Pima-Maricopa Indian Community, Etc.....	x		
236-D	Gila River Pima-Maricopa Indian Community, Etc.....	x		
236-E	Gila River Pima-Maricopa Indian Community, Etc.....	x		
236-F	Gila River Pima-Maricopa Indian Community, Etc.....	x		
236-G	Gila River Pima-Maricopa Indian Community, Etc.....	x		
342-I	Seneca Nation.....	x		

ACCOUNTING CASES

Docket Number	Claimant Tribe, Band or Group	Phase in which pending	
		Accounting	Offsets
19	Chippewa, Minnesota, et al.....	x	c
22-G	Apache, Mescalero, et al.....	x	
22-K	Apache, Jicarilla.....	x	
28	Potawatomi, Hannahville Indian Community, et al.....	x	
69	Navajo.....	x	
80-B	Mission Indians of California.....	x	
84	Six Nations, et al.....		x c
95	Sac and Fox Tribes.....	x	
100-B	Klamath, Modoc and Yahooskin.....	x	
102	Papago.....	x	
115	Sioux of Crow Creek Reservation, S. D....	x	
116	Sioux of Lower Brule Reservation, S. D....	x	
117	Sioux of Pine Ridge Reservation, S. D....	x	
118	Sioux of Rosebud Reservation, S. D.....	x	
119	Sioux of Standing Rock Reservation, S. D..	x	
178-A	Confederated Tribes of Colville Reservation.....	x	
179-A	Nez Perce.....	x	
184	Fort Peck Indians.....	x	
188	Chippewa, Minnesota, et al.....	x	c
189-A	Chippewa, Red Lake, et al.....	x	c
189-C	Chippewa, Red Lake, et al.....	x	c
221-C	Chippewa-Cree, et al.....	x	
236-N	Gila River Pima-Maricopa Indian Community, Etc.....	x	
249	Choctaw Nation.....	x	
250-A	Fort Belknap Indians.....	x	c
279-C	Blackfeet and Gros Ventre.....	x	c
283-B	Mohave, et al.....	x	
291	Salt River Pima-Maricopa Indian Community.	x	
299	Navajo.....	x	
300	Stockbridge-Munsee.....	x	
300-B	Stockbridge-Munsee.....		x c
326-A	T-Moak Bands of Western Shoshone of Nevada	x	
326-B	Goshute.....	x	
326-C	Shoshone-Bannock.....	x	
332-B	Sioux, Yankton.....	x	
350-G	Three Affiliated Tribes of Fort Berthold Reservation.....	x	
353	Navajo.....	x	
364	Ottawa-Chippewa.....	x	

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ALASKA CASES

The 12 pending Alaska cases are listed below. They are being held in abeyance in their initial phases of litigation pending the outcome of legislation before the Congress for the settlement of claims of Alaska natives.

<u>Docket Numbers</u>	<u>Claimants' Names and Types of Claims.</u>
187	Natives of Chitina, Alaska. Land claim.
200	Natives of Tatitlek Village, Alaska. Land claim.
278	Tlingit and Haida Indians of Alaska. Claims for the taking of certain Alaska lands; for trespass on Tlingit and Haida lands; and for certain uses and expropriation of tidelands.
278-A	Tlingit and Haida Indians of Alaska. Claims for expropriation of certain Alaskan fisheries, including fishing grounds and waters.
278-B	Tlingit and Haida Indians of Alaska. Claims for compensation or damages for an 1882 naval shelling of the Village of Angoon and other property.
284	Native Village of Gambell, Alaska. Land and accounting claims.
285	Native Village of Unalakleet, Alaska. Land and accounting claims.
286	Native Village of Shungnak. Land and accounting claims.
287	The Nisgah Tribe. Land and accounting claims.
352	The Aleut Community of St. Paul Island. Land and accounting claims.
369	The Aleut Tribe, et al. Land and accounting claims.
370	Natives of Palmer, Alaska. Land claim.

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RECAPITULATION

	<u>Number of Dockets</u>
Various cases with final awards, orders of dismissal, etc. separately accounted for on the first 2 pages hereof.....	29
Other pending cases:	
Land cases.....	172
Land and damage cases.....	4
Land and accounting cases.....	3
Damage and accounting cases.....	4
Damage cases.....	8
Accounting cases.....	38 ^{1/}
Alaska cases.....	<u>12</u>
Subtotal.....	<u>241</u>
Total number of pending Indian claims cases.....	270

^{1/} Does not include cases under other categories in which the plaintiffs' petitions include requests for accountings-- see cases marked with asterisks, and the classification of Alaska claims on page 9.

Senator ALLOTT. When did they first make the decision to expand the claims? You mentioned the Southern Ute case in permitting the claims to be filed if they occurred after 1946, if that is the initial case in that respect. When was that decision made, do you recall?

Mr. BARNEY. 1966, sir.

Senator ALLOTT. What was the basic logic behind that expansion? Can you tell me that? What was the rationale?

Mr. BARNEY. Since the Government was the keeper of all of the records, since the Government was fiduciary for the tribe, it had to account, and as a lawyer I would agree to that. The objection of the Government, and our objection to the Commission and court of claims, was based on the provision in the act that says, and I read it to you: "No claim accruing after the date of the approval of this act shall be considered by the Commission."

Senator ALLOTT. That was in 1946?

Mr. BARNEY. Yes.

Senator ALLOTT. I agree with you. I don't think anybody can argue about the responsibility of the Government to account for taxes or fiduciaries. Nevertheless, that expansion was made despite the limitation of the authorizing statute. I can't agree with them at all. I think for those portions after 1946, the Indians could have gone into the court of claims and those should have been done there. The effect of it is to expand the work in 1966 by some 43 cases of the Commission that couldn't begin to handle the load that it already had before it, isn't that correct?

Mr. BARNEY. The requirements are not only that we bring the accounts up to date, but that the many so-called accounting cases have been expanded into what we feel should have been filed originally. In other words, they are land cases, rather than strictly accounting cases.

Senator ALLOTT. So, if a loose interpretation is applied to that, they will have the responsibility of filing land cases—

Mr. BARNEY. That has been the interpretation of the Department of Justice, yes.

Senator ALLOTT. Did you appeal the decision in 1966?

Mr. BARNEY. Yes, sir, to the Court of Claims. They affirmed the Commission. We appealed to the Supreme Court. They accepted jurisdiction, we briefed the question, but in the Court the decision went off on the fact that a previous settlement had been made in the *Southern Ute* case, which made the case *res judicata*, therefore, the Court did not decide the question.

Senator ALLOTT. So, for all practical purposes, you have no final decision?

Mr. BARNEY. No, sir.

Senator ALLOTT. That is all I have, Mr. Chairman.

Senator BIRDICK. Senator Bellmon?

Senator BELLMON. Mr. Chairman, I have one question.

Mr. Kashiwa, I was a little surprised to hear you virtually contradict the testimony of our previous witness when you say the Commission cannot complete its work in 5 years. What causes you to come to this conclusion?

Mr. KASHIWA. I have discussed this with Mr. Barney and my conclusions are from my discussions with him. Mr. Barney?

Mr. BARNEY. Largely, Senator Bellmon, because of the expansion of the accounting cases. Another reason is that the Commission not infrequently permits the reopening of cases which we thought were dead.

Senator BELLMON. You mean the Commission is perpetuating itself in business?

Mr. BARNEY. I can only tell you what the facts are. For example, in 1955, the Commission dismissed with prejudice the two claims by the Catloe Tribe. In 1968, 15 years later, they set that decision aside, reopened the case and now we start all over again.

Senator BELLMON. Is it your thought that you are only prolonging the agony and might as well put them out of business now?

Mr. BARNEY. No, sir; that would not be fair to the Indians. The Department is not in any way suggesting that we put the Commission out of business. I will explain why we think it will not complete its business in 1977.

Senator BELLMON. How long do you think it will take?

Mr. BARNEY. Ten years.

Senator BELLMON. What do you think it will take to let them finish in 5 years?

Mr. BARNEY. I don't know that I am in a position to answer that question, Senator Bellmon. All I can say is from my own experience—

Senator BELLMON. Is there anything this committee can do to be sure it gets finished in 5 years?

Mr. BARNEY. Nothing, sir, in my opinion. I think, speaking personally, it is a matter of interpretation of the act. If the act is going to be interpreted loosely, then in my judgment the Commission cannot finish its job in 5 years. As the Senator pointed out, we have made as many settlements numerically and financially as the Commission has ever determined. I don't know what more the Department of Justice can do.

Senator BELLMON. Do you know of anything this committee can do?

Mr. BARNEY. No, sir.

Senator BELLMON. Is there anything we can do to determine whether or not the act is interpreted strictly or loosely?

Mr. BARNEY. No, sir; that is strictly a judicial question.

Senator BELLMON. Thank you.

Senator BURDICK. According to the American special tables of life expectancy, if an Indian was 35 years old when this act was placed in the law books, he would be dead in another 10 years. That will be 30 years. This isn't very good treatment of the American Indian, is it?

I have done my best to try to expedite everything and I will still keep the burr in the saddle as long as I am here.

Thank you very much.

The next witness will be Herbert Angel, Acting Archivist, U.S. Archives.

**STATEMENT OF HERBERT E. ANGEL, ACTING ARCHIVIST OF THE
U.S. NATIONAL ARCHIVES AND RECORDS SERVICE, GENERAL
SERVICES ADMINISTRATION**

Mr. ANGEL. Mr. Chairman, I am Herbert Angel, Deputy Archivist of the United States, and I have with me Mr. William J. Rita of the Office of Finance, Office of Administration, General Services Administration.

On behalf of the Administrator of General Services, Robert L. Kunzig, who asked me to represent him at this hearing, I wish to thank you for the opportunity of appearing before this committee.

The General Services Administration has no position on S. 2408 to offer. However, there are matters now pending with regard to the work of the executive agencies in completing claims before the Indian Claims Commission which we believe appropriate to bring to the attention of the committee at this time.

Mr. Chairman, in August the chairman wrote to Mr. Kunzig expressing concern with regard to the plans of the General Services Administration related to pending tribal claims. We provided an interim response in September and we would like now to make a fuller presentation.

On February 28, 1965, the Indian Tribal Claims Branch was transferred from the General Accounting Office to the National Archives and Records Service, General Services Administration. At that time a workload of 96 petitions existed. Since that date 19 new petitions were added to the workload, making a total of 115 petitions. All of these have been disposed of as of September 30, 1971.

In accepting the Indian Tribal Claims Branch workload from GAO, we received a program which had been ongoing for some 40 years and was scheduled to end in about 6 years. The program included the production of accounting reports in accordance with a set routine established over the years. With the program we brought on board from GAO 37 employees who were totally familiar with that routine.

In an endeavor to reduce the cost of this operation, as the workload decreased over the last few years, we have permitted attrition to reduce the ranks of the Indian Tribal Claims Branch. Thus, the 37 employees transferred from the General Accounting Office in 1965 have been reduced to two positions as of today.

In 1966, decisions were rendered by the Indians Claims Commission which apparently are to bring about major changes in the responsibility of the Government in reporting for tribal accounting claims.

The Department of Justice has informed us that significant new requirements have been established by Commission rulings in several cases. The Department of Justice expects similar rulings in other pending cases. We understand there are 42 accounting cases pending before the Commission.

These new rulings, first, require the Government to file a supplemental accounting from 1951 to the date of trial. Most of the records used up to this time in preparation of the cases are housed in Washington and extend over the period from 1795 through June 1951. Records subsequent to 1951 are for the most part in our Federal Records Centers in the Mid and Far West, and in field offices of the Bureau of Indian Affairs.

Second, the Commission has ruled that the accounting reports issued by the Indian Tribal Claims Branch covering the pre-1951 period are inadequate, and the Government has been ordered to greatly expand its reporting.

The principal new requirements as summarized by the Department of Justice are presented here for the record. They represent demands far beyond anything previously required of the Government:

One, the United States is ordered to expand the accounting reports from 1951 to date of trial as stated above.

Two, the United States is ordered to bring in any records showing whether the Indians were required to perform services in exchange for supplies furnished pursuant to treaty or statutory obligations of the United States as indicated in section 3, Act of March 3, 1875, 18 Stat. 449.

Three, accounting records must be produced sufficient to show whether funds deposited in interest-bearing accounts were covered into the U.S. Treasury 30 days after receipt by the Government agent.

Four, accounting records must be produced sufficient to show whether funds withdrawn from interest-bearing accounts were disbursed by the Government agent within a reasonable time.

Five, the reports presently show the status of various tribal accounts on an annual basis. The Government has now been ordered to supply information concerning the exact dates on which funds involved were acquired and the exact dates on which distributed and the balances in the noninterest-bearing accounts when disbursements were made from the interest-bearing accounts.

Six, the Government must show, insofar as records are available, whether goods purchased for the tribe by the Government were actually delivered and the number of Indians present for and actually receiving distributions of food, clothing, and supplies.

Seven, the Government must, insofar as records are available, show with respect to goods purchased with tribal funds any credits for undelivered, spoiled, or rejected goods.

Eight, the reports must show the dates and nature of all transactions which produced receipts deposited in the tribal accounts. The reports now show only receipts by general categories on an annual basis.

Nine, the reports must show whether the amounts deposited in tribal accounts are gross receipts or are net receipts after deduction of administrative or other charges.

Ten, the reports must show the "meaning and content of the terms and categories used in the report."

Item 5, for example, calls for the Government to supply information covering the exact dates on which funds were acquired and the exact dates on which they were disbursed. Now, an accounting report may generally be considered to be a summarization and classification of a series of financial transactions. As we understand this demand, it is not a request for a report, but rather a request for a complete transcript of every financial transaction occurring within a fund for the period in question, periods that could cover decades.

Item 6 requires, insofar as records are available, a showing of the number of Indians present for and actually receiving distributions of food, clothing, and supplies for which purchases by the Government are reported. Here again we are asked to go far beyond anything previously done by the Government. The phrase, "insofar as records are available" may suggest that no great amount of work need be done.

However, if the Commission intends to attach significance to the records which do exist, it may well attach significance to the absence of such records. A clear question exists as to how exhaustive should be the search. We in GSA would not know how to answer that question. The new demands raise many such questions.

Having met its accounting requirements as they have been understood for some 40 years, and having consequently allowed its capac-

ity in this specialized area to evaporate, the Government now finds itself ordered to meet greater demands than it has ever faced in this area. We are dealing with here not only a great volume of work, but with work requiring knowledge of a very specialized sort—Indian agent recordkeeping, treaty provisions, and other factors peculiar to the Government—Indian tribal relationships covering a period in excess of 100 years.

The Department of Justice informs us that further demands are anticipated. These would include accountings for all trust lands held, acquired, or sold by the United States, water rights, leases, grants of rights-of-way for public utilities, pipelines, railroads, et cetera, sale of timber on Indian lands held in trust, sale or disposal of improvements on Indian trust lands, leases for oil, gas, and other mineral exploitation, and grazing leases.

According to the Department, rulings on these new demands have not been made, but on the basis of experience in other cases the Department expects that the tribes will probably get substantially all of their demands for more information.

In addition to the new accounting data ordered by the Commission, the Department of Justice is seeking from within the government accounting expertise to assist the Government in the defense of these claims.

Justice has told us that many claims have not, as yet, been quantified. But they have cited to us one case—*Klamath and Modoc Tribes v. United States*—where the claim is in excess of \$28 million.

It is our view that the General Services Administration has no roots in Indian affairs sufficient to warrant attachment of responsibility for these broad new demands on the Government. However, we are a servicing agency and there is an apparent unfilled need for this very specialized service. We stand ready to employ the resources to fill that need.

Having said this, I must point out that we are not in a position to determine or justify the level of resources which should be brought to bear in response to the orders of the Commission. We just don't know. If the proper agency—the Department of Interior or the Department of Justice—were to obtain appropriations for this purpose, we will provide the services on a reimbursable basis.

This concludes my prepared statement, Mr. Chairman. However, if you or members of this committee have any questions you may wish to ask, I would be pleased to answer them at this time or furnish the desired information for the record.

Senator BURDICK. Thank you very much.

Your testimony indicates that each one of these cases is a very major accounting procedure and that the work done in getting the facts is not going to be easy.

Mr. ANGEL. That is correct, Mr. Chairman. I have here some samples of some of the reports on present accounting cases. If you would like to look at them, you will notice how detailed they are.

Senator BURDICK. You say your staffing in this area is down to two employees?

Mr. ANGEL. Yes, sir, because we have finished all of the reports we were given to do through the year 1951, and these have been turned over.

Senator BURDICK. I don't understand. There is supposed to be some 42 accounting cases unresolved.

Mr. ANGEL. We have made reports on all of those.

Senator BURDICK. All of them?

Mr. ANGEL. Yes, sir.

Senator BURDICK. Where is the delay, where does the buck stop now? What is wrong? If you have done all your accounting work on this area and turned them over to the Claims Commission—

Mr. ANGEL. Yes, sir.

Senator BURDICK. On all 42?

Mr. ANGEL. Yes.

Senator BURDICK. And you have taken care of these—

Mr. ANGEL. This is through 1951, Mr. Chairman.

Senator BURDICK. Well, we have from 1951 to date. The staff tells me this is based upon what you expected and not the new developments which occurred in the last 2 or 3 years. Which will shove this burden back on you again.

Mr. ANGEL. That is correct.

Senator BURDICK. You also say in your testimony that you stand ready to employ the resources to fill that need. Will you increase your staff to take care of this?

Mr. ANGEL. The propositions will have to be obtained, Mr. Chairman, and we assume that this type of function is not really one that we should be performing, only accounting functions, and expertise and so on. We are willing to do it, if the funds can be provided and we assume the propositions for these could be requested by the Department of Justice or the Interior Department.

Senator BURDICK. Has anybody made any request for these funds, that you know of?

Mr. ANGEL. Not to my knowledge, no, sir.

Senator BURDICK. Then we sit there with two employees.

Mr. ANGEL. That is correct, sir.

Senator BURDICK. To do a large job?

Mr. ANGEL. We still don't know precisely what we would be expected to do, Mr. Chairman.

Senator BURDICK. Somebody has to get some staff going here, I would say, if you are going to get rid of these 42 cases.

Mr. ANGEL. Yes.

Senator BURDICK. And you are willing to do it if you have the funds?

Mr. ANGEL. Yes, sir.

Senator BURDICK. Would there be any advantage or disadvantage if you would contract this out to a private firm or don't you think they have the expertise or facilities to do it?

Mr. ANGEL. I have a doubt whether they would have sufficient knowledge of the records and their whereabouts, the way of using them, to do it efficiently as it could be done within the Government.

Senator BURDICK. I see. After all, you have all of the sources of material at your fingertips.

Mr. ANGEL. Not at our fingertips, Mr. Chairman, widely scattered.

Senator BURDICK. Either near the fingertips or in the basement someplace.

Mr. ANGEL. Or in many basements across the country, yes, sir.

Senator BURDICK. It looks like we will have to do something about this. This is part of the program and if we are going to complete it in 5 years, we will have to get staffing going.

Thank you very much.

Senator BELLMON. Mr. Chairman, I have just one question.

You give the impression that GSA would like to wash their hands of this whole business. Who do you think should take this job?

Mr. ANGEL. Indian claims business is not one of the normal functions of the General Services Administration.

Senator BELLMON. Who else do you think would be able to handle this?

Mr. ANGEL. As I say, we are perfectly willing to do it, if the finances can be made available.

Senator BELLMON. Do you feel you are as good an agency as any other to do this job?

Mr. ANGEL. We feel we are a pretty good agency and could do it, but we have the problem of financing.

Senator BELLMON. This is not an area you chose to get into and if you don't want to do it, I thought perhaps you had some ideas of another agency you might recommend.

Mr. ANGEL. No, sir.

Senator BURDICK. It appears to me there is not any other agency that can do it that has the information available to you that you have right now.

Mr. ANGEL. The information, of course, is either near the custody of the Administrator of General Services, or one of our record centers or elsewhere, or could be obtained through our records that would be in the Bureau of Indian Affairs.

Senator BURDICK. If you don't stay on the job, it is going to take some other agency 5 years to find out where your records are.

Mr. ANGEL. It might.

Senator BURDICK. Thank you very much.

I would like to call Mr. Kuykendall for one question.

We try to run a fair hearing, and I wonder if you have anything to say with regard to the testimony of the Department of Justice, who seems to think this is not going to end in 5 years.

Mr. KUYKENDALL. They were strangely silent about their own delays in this matter. I suggest you ask them why their lawyers ask for so many delays. All their lawyers together in all their cases have made numerous requests for delays. From April of last year to October 21 of this year, more than a year, the Department of Justice asked for 6,451 days of delay in filing various papers.

Senator BURDICK. This is my point, you don't have to give it to them.

Mr. KUYKENDALL. No, when we did do that we did not delay our own work because we had a backlog and other things to be done. What I don't know is if the Department of Justice will have the manpower to avoid this delay, or whether it will still be trying to get delays and not working any faster than they have been. I pointed out also, and I am not criticizing them, that they are like Archives, they will have to get more manpower. I think they will have to double their staff.

Senator BURDICK. You are aware of your position, you don't have to grant a government attorney any more than you do a private attorney.

Mr. KUYKENDALL. What happens, then, Senator Burdick, if the Government gets in default? I don't think any default judgment against the Government is of any value.

Senator BURDICK. I don't mind if I get a judgment so long as I can collect it.

Mr. KUYKENDALL. I don't think that it would be collectable. We wanted the Government to assert its defenses and at the same time we want the plaintiffs to be able to assert their claims. We want a fair decision. We are without a remedy to compel the Government not to delay or ask for delays.

Senator BURDICK. Then you stand on your testimony that you think you can get this job substantially done in 5 years?

Mr. KUYKENDALL. Yes, I do. If the Government gets in and does its part in the next 5 years, and if we get these accounting reports brought up to date.

I would like to make one more statement while I am here.

Senator BURDICK. Surely.

Mr. KUYKENDALL. I think the Department of Justice gives the impression that we are just opening up new vistas that have never been seen before. The Caddo case was mentioned. That case was dismissed long ago, when the Commission was of the opinion that no cause of action existed. Recently, a decision of the Court of Claims surprised us and seemed to indicate that these Caddos had a claim after all. It was not a situation in which we had lost jurisdiction and an award had been made. It was lying dormant and it was dismissed. We felt it is unfair to the Caddos if they had a cause of action to deprive them of the right to prosecute that cause of actions, while other Indian tribes with the same cause of action could do so.

It is not a case of our trying to lengthen or create more work. We realize we have all of the work we can handle and perhaps more. It is simply a case of trying to do justice. In this matter of the accounting claims. The Justice Department seems to indicate that we created a new principle. The fact is the Court of Claims had its own precedents for affirming us, and the logic of it is that a continuing accounting claim over a period of time is one claim, and cannot be broken up into a series of claims. We are not looking for nor trying to create more business. We are trying to do the business that is there to be done. I might say we held a conference on this problem on October 5, and sought solutions from all lawyers and interested parties concerning what we could do about this matter. There were several lawyers there who represent plaintiff tribes who told of circumstances which, if they are true, and I am sure they are, would lead one to believe that the Government had not always fully accounted. I don't think its accounts were supplied with deceitfulness in mind, but there may have been records in other parts of the country which the persons preparing the accounts did not know about.

You know the principle, when a fiduciary is called upon to account, he must account. We want to see that the Indian tribes get a full accounting. We think that it is only a matter of what the law is and a matter of simple justice to the Indian tribes.

Senator BURDICK. I thought you would like to make a statement. I don't know whether the Department of Justice wants to make surrebuttal or not, but thank you for the additions.

Mr. KUYKENDALL. Many of these accounting claims are continuing claims. If the claim is on the same subject matter and the transactions were occurring before 1946 and the same thing continued thereafter involving the same tribes, same types of transactions, or the same corpus, it is one claim, a continuing claim.

Senator BURDICK. Thank you.

Our next witness is John O. Crow, Acting Commissioner of the Bureau of Indian Affairs.

It is nice to see you again, Mr. Crow.

STATEMENT OF JOHN O. CROW, ACTING COMMISSIONER, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. CROW. Mr. Chairman, I have a brief statement.

The Department of the Interior recommends the enactment of S. 2408.

The Indian Claims Commission was created by the act of August 13, 1946, to hear and determine any and all tribal claims against the United States. The act of April 10, 1967, extended the Commission until April 10, 1972. About 54 percent of the 610 dockets filed with the Commission have been completed, leaving about 46 percent pending in various stages of prosecution.

It is not possible for the Commission to finish its work by April 10, 1972. However, the Commission as it is presently constituted may be able to complete most of the remaining work if its life is extended for 5 additional years—until April 10, 1977.

S. 2408 provides for extending the life of the commission until April 10, 1977 for transfer of records and files in unfinished cases upon dissolution of the Commission to the Court of Claims with authority to complete them, and for transfer of records and files of completed cases to the Archivist of the United States. The Department desires that the cases pending at the time of dissolution of the commission be completed with fair and just decisions based on the merit of the claims on the same standards as for those already completed.

Section 2 of S. 2408 provides for the setting of trial dates on a realistic basis.

Section 3 of S. 2408 provides that if a claimant fails to proceed to trial on the date set by the Commission the case may either be dismissed or trial reset at the end of the calendar. We assume that no claim will be dismissed under this provision until a determination has been made that the rights and interests of the claimants have been protected or that the claim does not merit a recovery of the plaintiffs.

This concludes my statement.

Senator BURDICK. Thank you.

I am sure you have been in the hearing room this morning where the Commission has testified and the Department of Justice testified, were you here then?

Mr. CROW. Yes, sir.

Senator BURDICK. Is there anything your department can do to expedite the completion of these cases?

Mr. CROW. I don't know of anything, Mr. Chairman.

Senator BURDICK. Since a large share of the data required in accounting claims is of a specialized nature, particularly in the Indian field, do you feel that the Bureau could assume part of that workload?

Mr. CROW. Mr. Chairman, I suppose we could, but I doubt if we should be the agency to do it. At least in the last few years we have made the accounting of funds as we reviewed the regulation laws. I think any effort we would make to render an accounting could not differentiate greatly from what we have done in that recent period of

time. I think it is important that an independent agency pass judgment on whether our actions have been proper.

Senator BURDICK. Of course, you make all your records available to GAO at any and all times?

Mr. CROW. That is right.

Senator BURDICK. Thank you very much.

Our next witness is Mr. Franklin Ducheneaux.

STATEMENT OF FRANKLIN DUCHENEAUX, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. DUCHENEAUX. Mr. Chairman, my name is Franklin Ducheneaux. I am legislative consultant to the National Congress of American Indians and appear as a witness on S. 2408 on behalf of Mr. Leo Vocu, executive director of NCAI.

If you will permit, I will submit the statement for the record and make a few comments.

Senator BURDICK. Fine. The entire statement will be submitted for the record.

Mr. DUCHENEAUX. I don't think the Congress can terminate the Commission without providing an alternative which will do as much justice to the tribes whose claims are remaining in at least reasonable amounts of time that the Commission would have. It can't do justice to have the tribes and throw the others out in the cold. Either the Commission must be extended or some other reasonable alternative should be provided.

I am not going to comment on the substance of the bill. I think some of the attorneys representing the tribes will do that, and the Government agencies have.

The only thing I wanted to say with respect to the accounting claims. The Government does have an obligation to make an accounting, and a complete accounting. I think perhaps the Interior Department through the Bureau of Indian Affairs should be involved in it, maybe with additional appropriations, but they don't have to pass judgment on the claims. All they have to do is present the records in their possession.

I think perhaps working with Archives and Justice, the Interior Department can do a better job on this.

Senator BURDICK. I concur wholeheartedly with your statement.

You said you want justice for the American Indian. That is precisely what I want.

Do you realize that in 1951 an Indian who was in the 35- to 40-year age bracket, and that is young, will be dead in 30 years? How do you consider that justice?

Mr. DUCHENEAUX. I don't consider that justice, and I watch my relatives die and they won't be able to share in the Black Hills claim. I watched a number of them die that won't see—and a number of other living Indians won't see their claims settled. You can't terminate the Commission because of that. Either make it work better so we do get justice or find a way to do it.

Senator BURDICK. We have an alternative. We have the Court of Claims. Many of the cases go there anyway, you know.

Mr. DUCHENEAUX. Most of them do not.

Senator BURDICK. I know that, Mr. Ducheneaux, but you have an alternative.

Mr. DUCHENEAUX. I don't think turning it over to the Court of Claims will bring a faster settlement of the claims. But if it did, I would be in favor of it. I don't care how they are settled, so long as they are settled justly and rapidly.

Senator BURDICK. Again, being a private lawyer at one time, we find that pushing these cases for trial is very conducive to settlement. You push these on and you find you can settle them. If the case lies on the shelves for years, you don't get any settlement. You just can't get action. I am trying to get some action.

Mr. DUCHENEAUX. Yes, sir. I hope, as the chairman indicated in his testimony, now they can push the litigants to trial and settlement.

Senator BURDICK. Mr. Kuykendall indicates this can be done in 5 years, and I have been opposed to this Commission, as you know, because I didn't want claims settled, and now we have reached, shall we say, a meeting of the minds in the committee that we have extended—I think we have had a meeting of the minds, to give it another extension, and at the end of the 5 years put it in the Court of Claims. This is some inducement to get done, and I think you get justice this way.

What do you think?

Mr. DUCHENEAUX. I hope that the 10-year or 5-year period they have asked for will complete the substantial number of the cases. All I can say here is that the Indian people, those who have had their claims settled and those who have had—support the extension of this Commission. Hopefully, in 2 years it can be done, or 5 years, or 4, whatever it takes.

Senator BURDICK. Two years isn't justice to thousands of Indians in this country.

Mr. DUCHENEAUX. Justice would have been, Mr. Chairman, if they were settled a long time ago. The claims did arise, and they were not compensated for the damages they suffered and we come now years later, 1946 to do equity to the tribe, had to set up a special commission to do it with—conferred jurisdiction on them, which didn't exist in other tribunals.

It is not just 10 years late, it is about 50 or 60 years late.

Senator BURDICK. Did you ever hear the phrase "justice delayed is justice denied?"

Mr. DUCHENEAUX. That is what I am talking about. It is 70 years or 80 years too late. Today, if it could all be settled with justice tomorrow, we would want that. If it takes a year, we want that. If it takes 10 years, we want that.

Senator BURDICK. Maybe the great-great-grandchildren will enjoy some of that, I don't know.

Mr. DUCHENEAUX. I hope I do.

Senator BURDICK. Thank you very much.

(The prepared statement of Mr. Ducheneaux follows:)

STATEMENT OF FRANKLIN DUCHENEAUX, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Chairman, my name is Franklin Ducheneaux. I am Legislative Consultant to the National Congress of American Indians and appear as a witness on S. 2408 on behalf of Mr. Leo Vocu, Executive Director of NCAI.

I am here today to urge, on behalf of our many member tribes and of Indian nation-wide, support for an extension of the life of the Indian Claims Commission for an additional five-year period as proposed in S. 2408.

While not all of these tribes have claims pending before the Indian Claims Commission, all are united in the belief that Indian tribes with claims still pending are entitled to their day in court on their claims, a right accorded to those tribes whose claims have already been concluded.

We recognize that when the life of the Commission was last extended in 1967, it was the hope of many in the Congress that no further extension would be required. Indian tribes whose claims are still pending are naturally disappointed that their claims have not yet been concluded and in many instances will not be concluded by the current deadline.

But all would agree that Indian tribal claimants should not be made to suffer because other claims have been concluded before theirs. Some of the delay, of course, results from the failure of the Executive Branch to promptly fill and keep filled the new openings on the Commission which were created by the Congress to expedite the work of the commission.

The present Commission has taken important steps to speed its work by strengthening its staff and streamlining its procedures. Even so, perhaps further efforts are needed in that direction to make sure that most if not all pending claims are concluded during the additional five-year extension.

There is one other area that needs comment at this time. Many of the cases remaining to be concluded by the Indian Claims Commission are accounting cases. These are cases in which the government is being asked to render accountings to Indian tribes for its stewardship of their money and property over the years. Stated otherwise, the trustee is being asked to advise the beneficiary of the trust as to the manner in which it has administered the beneficiary's property.

These cases have been delayed because of the failure by the United States to discharge its obligation to furnish full and complete accounting reports to the tribes. Under the decisions of the Court of Claims and the Indian Claims Commission, the government has the obligation to provide an up-to-date report to each of the petitioners in accounting cases and yet the government has furnished reports only through 1951. Under several decisions of the Indian Claims Commission, it is also clear that the reports that the government has filed up to now are deficient in that they fail to provide sufficient information as to the details of the government's activities as trustee.

The primary responsibility for preparing and up-dating the government's reports in these cases has rested with the Indian Claims branch of the General Services Administration—an office that was originally part of the General Accounting Office. Despite the fact that no later than 1966 it was known that additional work would have to be done to supplement the accounting reports previously prepared, the personnel of this office has been reduced to only 2 persons in an office that at one time had approximately 90 employees. In addition, those who work in the office have been under severe restrictions in the manner in which they have been allowed to prepare their reports. For example, they have not been permitted to request necessary information from the Bureau of Indian Affairs and other agencies and have been restricted to examination of records solely within the custody of the General Services Administration.

If the work of the Indian Claims Commission in accounting cases is to be completed, it is imperative that the United States move quickly to assemble a sufficient staff for the preparation of the accounting reports required for accounting claims. There are many ways in which this can be done—either through augmentation of the staff of the General Services Administration or through a cooperative effort with the Bureau of Indian Affairs and other agencies.

What is significant though is that it must be done if accounting cases are to be concluded. We request that this Committee use its influence to encourage the Executive Branch to take whatever steps are necessary to prepare the reports. This will greatly aid in expediting the work of the Indian Claims Commission.

I thank you for the opportunity to appear this morning and again on behalf of the National Congress of American Indians, respectfully urge this Committee to take favorable action on S. 2408.

This completes my statement, Mr. Chairman.

Senator BURDICK. I understand we have a witness that has some short testimony, Robert C. Bell.

STATEMENT OF ROBERT C. BELL, ESQ., INDIAN CLAIMS ATTORNEY

Mr. BELL. Thank you, Senator.

My name is Robert C. Bell, Jr, I am a practicing lawyer on 1 East 44th Street, New York City. I have been an Indian claims attorney for over 33 years. I have over a dozen cases for the Potawatomi, Miami, and Chippewa Indians. I have expended much time on these matters. In the past 8 years alone I have incurred out-of-pocket disbursements in excess of \$70,000 which I, of necessity, paid from my personal funds.

I participated in a small way in the drafting of the Indian Claims Commission Act and am well acquainted with the public policy which called it into being. I am an Indian claims attorney by inheritance. My uncle was head of the Lands Division and Acting Attorney General under President Wilson, and in charge of Indian claims. Prior to 1920, my father, as a special assistant to the Attorney General obtained over \$1½ million for Minnesota Indians, mostly from lumber companies. Subsequently, some of the Indians brought him some of their claims in the 1920's and 1930's which he prosecuted until he was appointed to the Federal bench in 1933. I have some of these cases today.

Indian claims are important, historically and today. Until the Federal income tax was enacted in 1913, the public or Indian lands were the greatest source of Federal revenue, excepting only customs duties. At that time there was no Federal debt notwithstanding a number of expensive wars. Lands were purchased from Indians at unconscionably low prices and quickly sold by Federal land offices at politically inspired low prices to people who were attracted to it from all over the world. Thus, the United States was built. The results achieved were important to the white man. The consequences were also important to the Indians. I trust that the problems which were generated will be considered important here.

It is English common law that the sovereign cannot be sued without its consent. Many Indians knew their legal and equitable rights and wrongs, but they were not able to obtain legal redress. Some of them were able to get jurisdictional acts through Congress to enable them to get into the Court of Claims, and some of them won their cases.

When the United States decided to join the United Nations in 1946, it decided to look to its own treaty position vis-a-vis the Indian tribes. An omnibus jurisdictional act with distinguished sponsorship had received much bipartisan attention from Congress and the executive departments since 1928. The Indian Claims Commission was established to do justice and equity in Indian claims cases, and coincidentally to save much of the time of Congress and others who were required to give attention to many jurisdictional acts and bills and Indian claims.

It takes great courage for an agency of the government to give large judgments against the Government. Government lawyers do not like to lose large lawsuits, even if it is in a just cause. What was supposed to be an expeditious inquiry or investigation and settlement of just claims, has turned into a very slow moving adversary proceeding. The United States has profited very greatly from this delay, which is now more than 20 years.

Indian claims do not carry interest, as the law is now interpreted. Likewise, there is no allowance for the change in the value of money. Claimants generally receive the value of their lands at the time they were ceded, usually 100 or more years ago, less any amounts which they have previously received. Since the Indian Claims Commission Act was passed in 1946, the United States has been able to keep interest-free in the Treasury money which Indians should have had. Also, it is now able to pay the Indians in much cheaper dollars. This incentive to delay the settlement of Indian claims should be removed. Indian claims should at least draw simple interest. Fair and just compensation requires it.

The overlong delay in fairly settling Indian claims has turned many Indians, especially young Indians, into militants. I recently tried to settle an Indian claim involving about 6,000 claimants for approximately \$500,000. After expenses, this would be only about \$60 to \$70 for each claimant. The claimants did not want to be paid in 1847 dollars without interest. Many of them preferred the claim.

In northern Minnesota the Federal Government owns 75 percent to 90 percent of the land in some of the counties. The Indians want to be able to use this land under color of title. It is not unlikely that the United States, like the subcontinent of India, will some day have many impoverished and landless people on Federal lands. In India, entire cities of landless people spring up in a few weeks in unpoliced vacant areas. I predict that our Federal Government will suffer greatly in prestige, civil strife and money if Indian claims are not expeditiously and fairly settled. This can be done if full use is made of the investigative and equitable procedures carefully and fully provided in the original Indian Claims Commission Act of 1946. If present adversary proceedings are followed to their conclusion, I question if this is possible.

The following inscription graces the hallway of the U.S. Court of Claims in letters almost a foot high. I quote:

It is as much the duty of government to render prompt justice against itself, in favor of its citizens, as it is to administer the same, between private individuals.
(Abraham Lincoln).

My clients and I trust that this committee and Congress will take all necessary steps to provide for the resolution of our pending Indian claims cases as soon as possible.

Thank you.

Senator BURDICK. Thank you.

(The documents referred to follow:)

STATEMENT BY THE PRESIDENT

I am glad to sign my name to a measure (H.R. 4497) which removes a lingering discrimination against our First Americans and gives them the same opportunities that our laws extend to all other American citizens to vindicate their property rights and contracts in the courts against violations by the Federal Government itself.

This bill makes perfectly clear what many men and women, here and abroad, have failed to recognize, that in our transactions with the Indian tribes we have at least since the Northwest Ordinance of 1787 set for ourselves the standard of fair and honorable dealings, pledging respect for all Indian property rights. Instead of confiscating Indian lands, we have purchased from the tribes that once owned this continent more than 90 per cent of our public domain, paying them approximately 800 million dollars in the process. It would be a miracle if in the course of these dealings—the largest real estate transaction in history—we had

not made some mistakes and occasionally failed to live up to the precise terms of our treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made.

I hope that this bill will mark the beginning of a new era for our Indian citizens. They have valiantly served on every battle front. They have proved by their loyalty the wisdom of a national policy built upon fair dealing. With the final settlement of all outstanding claims which this measure ensures, Indians can take their place without special handicap or special advantage in the economic life of our nation and share fully in its progress.

THE SECRETARY OF THE INTERIOR,
Washington, D.C., August 2, 1946.

HON. JAMES E. WEBB,
Director, Bureau of the Budget.

MY DEAR MR. WEBB: Reference is made to the letter of Assistant Director Bailey requesting the views of this Department respecting the enrolled bill H.R. 4497, "To create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes."

I cannot over-stress the necessity for the enactment of H.R. 4497 nor recommend too strongly that a report favoring its approval be forwarded to the President.

Passage of H.R. 4497 by the Congress represents the culmination of more than 12 years of bipartisan effort to fulfill a pledge which both of the Nation's major political parties have repeatedly made to the American Indian—a pledge that the Indian should be accorded the right already possessed by other Americans to the adjudication and settlement of the claims which he asserts against the United States.

The existence of unsettled Indian claims has long been a road block set squarely in the path of Indian progress. The efforts of the Government to make of the Indians a self-supporting and fully assimilated segment of our civilization can never hope for complete success so long as a considerable number of Indian tribes follow the very human and natural inclination to sit back and wait for the day of payment of the claims which will bring them riches. Adjudication of those claims by the Commission which the bill would establish would once and for all cause the Indians to realize that their further progress will depend upon their own efforts, for the claims which the Indians assert are in nearly all cases grossly exaggerated in size and in many cases wholly without merit.

It has been estimated that the sum total of Indian claims asserted against the United States may be in excess of two billions of dollars. The records show, however, that, of the Indian claims which have thus far been allowed, the judgements recovered have averaged less than two percent of the face value of the claims. There is no good reason to believe that this ratio of recovery would increase were H. R. 4497 to become law. On the contrary, I think it probable that most of the more meritorious and substantial Indian claims have already been litigated. At one time or another, the great majority of Indian claims have been made the subject of special jurisdictional bills in the Congress, and it is a fair assumption that those of them which contained the greatest equity and merit have become law and passed to judgment.

Even those Indian claims which do ripen into money awards will not represent any long-term cost to the Government if the current Governmental policy of handling Indian funds is continued. Appropriations for the welfare of Indians have long been made, first from the Indians' own funds, to the extent that they have funds on deposit in the Treasury, and then from general Treasury funds. It is apparent, then, that future general fund appropriations for Indians will tend to be reduced in proportion to the amounts which the Indian may recover from the Government by virtue of the operation of this measure. I further predict that the effect of this measure will be to make many Indian tribes, not now so, permanently self-sustaining so that they will be in no need of further Government grants. Disposing of pending claims, I believe, will also help to reduce Indian appropriations by stripping many tribal rolls of mixed blood hangers-on whose interest in future awards keeps them from renouncing tribal relations.

The actual cost of administration for the Commission should not, in my opinion, exceed \$200,000 per annum.

The most painstaking efforts have been made to meet every substantive and technical objection that has been raised to the detailed provisions of the bill and to carry out the informal suggestions made from time to time by Mr. Dodd of your office with respect to the financial aspects of the bill. In accordance with the suggestion of your office we have worked closely with the Attorney General and his staff on all questions of draftsmanship. When the measure was in conference, representatives of the Department of Justice and of this Department collaborated closely with the conferees and I understand that the results which they achieved were completely satisfactory to all concerned. Therefore, I do not anticipate that there will be any question raised, from any quarter, as to the advisability of its approval. Should there nevertheless be, I would appreciate being promptly advised in order that I may have an opportunity to confer with you personally about the matter.

The approval of H.R. 4497 will be an event of such significance in the history of this Nation's relations with its oldest minority race that I believe it should be the occasion for special ceremonies. I have made a request to that end of the President and he has indicated to me his approval of such an arrangement.

Sincerely yours,

[Signed] J. A. KRUG,
Secretary of the Interior.

THE SECRETARY OF THE INTERIOR,
Washington, D.C., August 1, 1946.

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: I should like to call your attention to some salient facts about the Indian Claims Commission bill (H.R. 4497) which will shortly be presented for your approval.

1. *Substance.*—The bill emancipates our Indian citizens from an outworn and discriminatory statute which, since 1863, has barred them from general access to the Court of Claims. For the future they will be permitted to sue on the same basis as their fellow citizens of other races to vindicate contract and property rights. In order to clear up the accumulation of past claims, the bill sets up an adjudicatory commission, consisting of three Presidential appointees, whose decisions will be subject to review by the Court of Claims. The bill outlaws all existing claims not submitted within 5 years and allows another 5 years for completion of the Commission's job.

2. *Statute.*—The bill is generally viewed in the western States as perhaps the most important of the measures sponsored by this Department during the present Congress. It is certainly the most important Indian legislation enacted in more than a decade. It is a fulfillment of specific platform pledges of both parties and carries out recommendations made by the Indian Affairs Committees of both Houses, the Department of the Interior, the Department of Justice and all non-Government agencies that have studied the problem during the past 15 years or more. The terms of the bill were worked out after months of hearings and with the cooperation of all departments and agencies concerned. In the Indian Affairs Committees of the House and Senate, in the Rules Committee of the House and on the floor of both Houses of Congress the votes in favor of its consideration and passage were all unanimous.

3. *Expense.* This measure, apart from the modest expenses of a 3-man commission, estimated as not more than \$200,000 per year, cannot affect the national budget before 1952-3. Since it will be practically impossible to pass finally upon any claim until the final date for filing, in 1951, decisions and appropriations made thereafter can hardly become effective until the fiscal year 1952-3. I am satisfied that this measure will not entail any major increase in our Indian appropriations for 1952 and subsequent years. We are now appropriating approximately \$30,000,000 a year for Indian administration. The House Committee on Indian Affairs, after exhaustive studies, has estimated that by settling pending controversies with Indian tribes, we can decrease our annual appropriations by approximately 50 per cent and that in a few years this saving would more than equal any actual payments made under this measure on Indian claims found to be valid. During the past 50 years the Court of Claims has given judgments in favor of Indian tribes totaling about \$47,000,000. It is doubtful whether all these judgments have cost the Federal Government anything at all, for the congressional appropriations in execution of these judgments have been largely directed to land and livestock

purchases, building programs and other purposes that made the particular tribes concerned relatively independent of further Federal gratuities. Paying our just debts will probably put many Indian tribes on a self-supporting basis and eliminate the need for further gratuitous Federal appropriations. We will be performing an equal service to the Indians by finally disposing of claims which are wholly invalid (more than 98 per cent in amount of Indian claims hitherto adjudicated have been disallowed as invalid), because unsettled claims have been a brake on sensible Indian administration and a lingering deterrent against economic initiative and self-reliance in many tribes.

4. *Streamlining procedure.* The bill does away with the need for special Indian jurisdictional acts, which now consume a large share of the time and attention of the Congress and the executive departments and involve a non-productive administrative expenditure of millions of dollars.

5. *International repercussions.* The bill before you will be widely viewed as a touchstone of the sincerity of our national professions of fair and honorable dealings towards little nations. In abolishing a racial discrimination affecting resort to the courts, we will strengthen our moral position in the eyes of many other minority peoples.

6. *Budget clearance.* The Budget Bureau in addition to making informal suggestions, from time to time, on the terms of this legislation, which we have faithfully carried out, has asked us to clear the terms of this bill with the Department of Justice. This we have done. The Attorney General has assured me of his agreement with the basic principles of the legislation and his representative assured the House and Senate conferees of his satisfaction with the terms of the bill as finally agreed upon.

I assume that this eliminates any question of a veto—which would be tragic for the congressional relations of the Department that has sponsored this bill from start to finish. I have therefore undertaken, with the approval of Commander Clifford, to arrange an appropriate signing ceremony. I hope that this can be held on Monday, if not earlier, before our good friends in Congress who have done so much work on this bill leave town. I attach a statement which you may care to use in such a ceremony.

Sincerely yours,

[Signed] J. A. KRUG,
Secretary of the Interior.

Senator BURDICK. That concludes the hearing today.

(Whereupon, at 12:15 p.m., the hearing was adjourned, to reconvene at the call of the Chair.)



