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Thomas W. Cowger

**THE NATIONAL CONGRESS
OF AMERICAN INDIANS**

The Founding Years

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4. ATTORNEY CONTRACTS AND THE PRELUDE TO TERMINATION

If the Indian people henceforth are forced into Court defended only by attorneys selected by, and therefore subservient to, the Indian Bureau then we Indians will have lost our battle before we even start. RUTH BRONSON, 1950

On a cold January morning in 1952 nearly two hundred individuals crowded into a small chamber to participate in hearings at the Interior Department. "During the war we were regarded as men," Manuel Holcomb, Santa Clara Pueblo governor, testified, "but the war is over now, and the Commissioner thinks we are savages again." At issue, Commissioner Myer wanted stricter regulations to govern contracts between tribes and their lawyers. In the middle of the hearings, Popovi Da, former governor of the San Ildefonso Pueblos, yelled out a loud "war whoop." Da, a former worker on the Manhattan project, then tensely described Indian participation in construction of the bomb. His point: If federal officials had confidence in Indians to work on the war's greatest secret, then the BIA should now trust them to choose their own attorneys. The Indian-attorney contracts dispute threatened Indian civil rights and self-determination and hastened the drive for termination of federal guardianship over Indian tribes.¹

Like other ethnic minorities, Native Americans have long battled legal discrimination. Indians, however, have a unique historical and judicial status. Following the historical decisions of Chief Justice John Marshall in the 1920s and 1930s, lawmakers treated Indian nations both as wards of the federal government and distinct political communities with inherent tribal sovereignty. Marshall's famous trilogy—*Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832)—ruled that tribes were largely auton-

omous groups subject to federal jurisdiction but not state control. Following the decisions, proponents of Indian rights claimed that tribes retained all the powers not relinquished to the federal government by treaties, agreements, statutes, or the Constitution. In other words, these "reserved rights" (or residual powers) provided the basis for tribal governance on reservations.

Tribal authority, however, often rested on case law. Several precedent-setting cases adopted the view that Congress exercised plenary powers over Indian affairs and concluded that tribes possessed only limited authority. In *United States v. Kagama* (1886), *McBratney v. United States* (1882), and *Lone Wolf v. Hitchcock* (1903) the Supreme Court disregarded tribal authority in favor of congressional power. In effect, *Lone Wolf* suggested that Congress never acted in bad faith toward Indian tribes. Congress thus could unilaterally restrict or abolish tribal governments, dispose of Indian lands, and abrogate treaties and agreements. But without congressional action, or unless Congress delegated jurisdiction to the states, tribes in the twentieth century reserved the inherent right to govern themselves. In the many instances where Congress failed to provide specific guidance, the courts continue to this day to interpret questions of sovereignty.²

Throughout most of the history of federal-Indian relations, lawmakers have modified tribes' legal status to correspond with changing policy goals. Current law entitles Indians to both the full benefits of citizenship accorded all American citizens and the rights and limitations accorded tribal members. Without legal protection to safeguard those liberties, the non-Indian society often threatens Indian rights and sovereignty. As do all American citizens, Indians rely upon lawyers to assert their legal rights. For Indians, lawyers must also translate the theory of tribal sovereignty into practice. Reforms of the Indian Reorganization Act (IRA), however, not only established the tribes as legal entities, but empowered tribal councils with the right to freedom of counsel. Obtaining lawyers knowledgeable and interested in defending Indian rights, however, has been difficult.³

In the late 1940s, capitalizing on the IRA legal reforms, lawyer James E. Curry represented both the NCAI and numerous individual

tribes. He brought to the NCAI not only valuable legal experience, but an ardent commitment to Indian rights. His dedication to Indian causes quickly drew recognition from the NCAI. "His skin may be that of a white man," NCAI chaplain Aaron Hancock said in 1948, "but we know that his heart is Indian."⁴

Curry first began his law practice in the Midwest, distanced from large Indian populations. After receiving his law degree from Loyola University in 1930, Curry practiced in Chicago. His employment in the BIA, Interior Department, and other government agencies after 1936, however, alerted Curry to the Indians' situation. In 1950 he left government service and opened a private practice where he could represent both Indian and Puerto Rican clients. Under arrangements devised by D'Arcy McNickle at the annual convention in Browning, Montana, the NCAI hired Curry in 1946 to be its attorney. Seeing the benefits of contacts with so many tribes, the attorney agreed to work without compensation until the legal committee of the NCAI could pay him. With financial aid from the Robert Marshall Civil Liberties Trust, the NCAI paid Curry his back fees in 1951 and placed him on the payroll.⁵

In early 1947 Curry employed Frances Lopinsky Horn to help him in his work with the NCAI and individual tribes. After graduating from the University of West Virginia School of Law, Horn had worked briefly with the National Labor Relations Board and other government agencies before joining Curry. The young lawyer soon became a valued associate in Curry's Washington office. As a capable and eager attorney, she helped prepare legal briefs and legislative summaries and even assumed the managerial duties of Ruth Bronson while the NCAI executive director was away in Alaska.⁶

While Curry worked closely with Horn, his competitive nature often led him to be suspicious of the motives of other Indian lawyers, particularly his chief rival, Felix Cohen. Having served as colleagues in the Department of Interior, Curry invited the well-known Cohen to join him in 1948 as a legal counsel for the NCAI. Second thoughts about Cohen's role in the organization and concerns that he might usurp his power led Curry to withdraw his offer. Moreover, Cohen

had no interest in a joint appointment as NCAI general counsel. Instead, Cohen took his legal expertise to the American Association for Indian Affairs (AAIA). Partially for that reason, Curry never fully trusted the motivations of the AAIA. Later in 1948, the NCAI attorney was disgruntled when Cohen was one of several prominent Indian lawyers seeking appointment as commissioner of Indian Affairs. Fearing that this would curtail his own influence, Curry suggested in confidential memos that the NCAI adopt resolutions in their convention to prevent his competitor's nomination. By the summer of 1948 Curry and Cohen had severed professional ties.

By 1949 Curry became particularly worried that Cohen was trying to wrestle control of the NCAI in order to place the interests of the Indian organization second to the AAIA. His insecurities and jealousies led him to recommend that the NCAI not invite Cohen to the annual conventions. Executive Director John Rainer worried that the competition between the two lawyers would divide Indians into two camps. Rainer had just cause for his concern. In late 1949 Curry pressured the NCAI to adopt a resolution that called for an investigation into Cohen's legal activities with the tribes. Curry maintained that Cohen, as former acting solicitor of the Interior Department, illegally used his prior connections to secure new claims work. Officials at the Justice Department, however, failed to find evidence that Cohen was guilty of any wrongdoing. The matter simply served to further divide the two attorneys and place them on the defensive. As each attorney carved out his own sphere of influence within the Indian community, controversy surrounding changes in federal-Indian attorney contracts forced the two rivals to become cautious allies.⁷

Federal concerns over potentially lucrative Indian legal practices at the Indians' expense arose following the Indian Claims Commission Act of 1946. When Congress paved the way for the adjudication of Indian land claims (and as the tribes' need for counsel increased), aggressive lawyers rushed to obtain contracts. Federal officials worried that opportunistic, unscrupulous attorneys would take advantage of the situation. Few attorneys in the postwar period worked any harder than did Curry in amassing Indian contracts. Not only did he

represent the NCAI, but his contracts with individual tribes stretched from the southwestern United States to Alaska.

Friends and colleagues recall that although Curry could be headstrong, even abrasive, he was "dogged in his efforts" to represent the best interests of Indian people. While his intense personality often drew applause from friends and Indian clients, it also alienated him from the BIA and powerful non-Indian interests.⁸ When Curry unwisely decided to challenge both the BIA and powerful western interests in Nevada, he found himself in an unwinnable battle. Moreover, the affair raised serious concerns about the limits of federal guardianship.

The issue between Curry, the BIA, and the state of Nevada came to a head in the early 1950s over Pyramid Lake Paiute land claims. These claims stemmed from the creation of the Paiute reservation, named the Pyramid Lake Reservation, in 1859. Tribal members had never signed a treaty surrendering control over considerable amounts of land outside the reservation boundaries. Federal officials, however, sold most of that land to homesteaders in 1924 without having acquired legal title to it. When the homesteaders did not make payments on the land, the federal government failed to evict them. During the New Deal, the Paiutes sued the government for compensation for the confiscated lands. Like most other Indian land claims in the early twentieth century, the case soon bogged down in the federal courts. Passage of the Indian Claims Commission Act of 1946 brought new hope to the Paiutes for a just settlement to the land-claims case. When the Paiutes searched for a law firm to represent their interests in Washington, NCAI leaders introduced the tribe to Curry. Although Curry, the NCAI, and the Paiutes picked the specific legal battle, the BIA and western politicians selected the battleground.⁹

In agreeing to represent the interests of the Paiutes, Curry immediately faced the antagonism of Nevada senator Pat McCarran, who had been challenging the Paiutes' land claims for years. Known among his colleagues as a fierce and crusty politician, McCarran wielded substantial influence in Nevada and throughout the West.

He invested considerable time and energy in the 1930s and 1940s in supporting legislation to block Indian interests in Nevada and in protecting white homesteaders on the Pyramid Lake Reservation. Perhaps more importantly, McCarran was also a close ally of the new Indian commissioner, Dillon S. Myer.

Myer's appointment had brought not only a new BIA attitude, but a shifting political alignment. The new commissioner joined forces with conservative interests and effected a reversal of Collier's programs. In particular, the new administration held strong ties with western congressional leadership. Besides McCarran, Myer already knew Sen. Clinton P. Anderson of New Mexico, former secretary of agriculture and influential member of the Interior Department and Insular Affairs Committee. Myer's associate commissioner, H. Rex Lee, shared strong Mormon ties with Arthur Watkins, also of Utah.

As a close friend of McCarran and other western interests, Myer decided to intervene in the tribal hiring of private attorneys. NCAI attorney Curry became his prime target. In late 1943 the U.S. Supreme Court ordered the eviction of several white squatters from Indian lands at Pyramid Lake. Before the court carried out the action, McCarran and Myer moved to block the settlers' expulsion. Following the court's decree, McCarran introduced several bills in Congress that would force the Paiutes to sell reservation lands to the settlers at a fraction of their worth. In effect, the bills would have provided title to 2,140 acres of valuable Indian irrigation land to five white ranchers.

As members of the NCAI, the Paiutes urged the Indian organization to help them defeat McCarran and the illegal homesteaders. Working through Curry, the NCAI opposed McCarran's measures and demanded compliance of the 1943 Supreme Court decision to evict the homesteaders. Hoping that direct action would carry the day, Curry and E. Reeseman Fryer, superintendent of the Carson City Agency, early in 1949 recommended that the tribe take physical possession of the disputed land. The Indians followed their advice and fenced off the Indian property. For the moment, the NCAI and the Paiutes headed off McCarran's plan.

When McCarran failed to skirt the court's ruling through delays, he and the settlers tried another course. The settlers shut off the water supply to the disputed lands by controlling irrigation facilities outside reservation boundaries. McCarran, working through Myer's office, further blocked Fryer's efforts to develop the lands for Indian use as stipulated in the court decree. When those tactics failed to stop Indian efforts and it appeared that the homesteaders' removal was certain, McCarran had Superintendent Fryer transferred from the Carson City Agency.¹⁰

Since his arrival as superintendent at the Carson City Agency in the late 1940s, Fryer had championed the Paiutes' claims. He received praise for his efforts as superintendent from both the Paiutes and the NCAI. While holding the line on Indian rights, however, Fryer represented an obstacle to McCarran and the white interests at Pyramid Lake. The powerful Nevada senator sought to have the superintendent removed and took his case to his close friend Dillon Myer. Without consulting Oscar Chapman, his superior, Commissioner Myer ordered Fryer's transfer.

Seeing the obvious political implication of Fryer's removal from the Carson City Agency, the NCAI immediately protested Myer's decision. Mounting evidence convinced the NCAI that McCarran strongly influenced the superintendent's removal from Pyramid Lake. Upon hearing about the superintendent's transfer, NCAI leaders Rainer and Bronson went to see Commissioner Myer to protest his decision. Myer denied that McCarran had played any role in the decision and implied that Fryer had initiated the transfer. Questioning the truthfulness of Myer's statement, Rainer then telegraphed Fryer to ask if he had requested the transfer. Fryer denied that he initiated the transfer and called it a "repudiation" of his obligation to defend Indian rights.

Following Fryer's reply, Bronson paid another visit to the commissioner, who told her that he had transferred Fryer according to the wishes of former Commissioner John R. Nichols. NCAI representatives then tried to see Chapman, but he was in Puerto Rico. When the NCAI failed to get satisfactory answers from Myer, Rainer made

an appointment to see Dale E. Doty, assistant secretary of the interior. He hoped to ask for a delay in the transfer until Myer more fully justified his decision. The following day the executive director also sent President Harry S. Truman a telegram, urging him to intervene on behalf of the Indians.¹¹

The persistence of the NCAI paid off. On October 10, 1950, President Truman granted Bronson an interview. Following the appointment, the president overruled Myer and blocked the transfer. Throughout the controversy Myer's version of the events conflicted with that of the NCAI. Although the AALA joined the NCAI in expressing concern about the circumstances surrounding the transfer, AALA President Oliver La Farge tended to believe Myer. In a confidential memo to AALA members La Farge claimed that "the N.C.A.I. officers in Washington are an extremely excitable group of Indians, inclined to simplify everything into dramatic black and white." Yet, contradictions in Myer's account supported the NCAI's interpretation of events. With support from the General Federation of Women's Clubs, the IRA, the AIAA, former Indian Commissioner John Collier, former Interior Secretary Harold L. Ickes, and the national media, the NCAI officers and Curry had succeeded in getting Fryer reinstated.¹²

Following his reinstatement, Fryer resigned as superintendent of Pyramid Lake. "Like any superintendent worth his salt," Fryer wrote Rainer, "I would remain in the Indian Service only if I knew I could do creditable work. This requires the support of the Commissioner."¹³ In Fryer's view the commissioner ignored his responsibilities to the Indian people. The superintendent left the BIA to accept a position as director of the Division of Health, Education, and Welfare Projects in the State Department. Before he left, he worried that Indians would view his resignation as a retreat and an embarrassment to the NCAI. He offered to delay his departure. He knew that he had become a symbolic pawn in the struggle over the "purposes for which NCAI made the fight." The organization regretted his departure but wished him well in his new duties. In a final gesture, Fryer thanked the NCAI for their support and "magnificent work."¹⁴

Fryer, Curry, the NCAI, and other Indian reform groups may have won the first round, but the larger struggle lay ahead. McCarran was not finished trying to defraud the Indians of their land at Pyramid Lake. In 1950 the crafty politician tried yet another strategy. He tried to drive Curry out of the practice of Indian law. In his efforts to nullify Curry's influence, the Nevada senator's friendship with Myer paid handsome returns. Clearly, both McCarran and Myer strongly disliked Curry. The young attorney frequently represented a prickly thorn in the commissioner's side. He consistently kept the BIA on the defensive with new demands from the NCAI and the Indian tribes. When the Indian lawyer failed to get satisfactory responses to his inquiries and charges, he did not hesitate to take his complaints to higher-level administrators. Myer, as much as McCarran, wanted to be free of the meddling of Curry and fellow mavericks. In order to retain greater control over internal affairs and prepare a program to end federal wardship, Myer decided to restrict the limits of lawyers' authority with the tribes in as clear a fashion as possible.

Soon after his appointment, Commissioner Myer revised the guidelines by which the BIA regulated attorneys' contracts with the tribes. He found the policy written during the IRA unacceptable because it established different rules for federally recognized and non-federally recognized tribes. In particular, attorney contracts were subject to compliance with the provisions of IRA constitutions and charters. More specifically, Myer disliked these regulations because they afforded tribes the right to select and pay independent attorneys without BIA supervision. Only the selection of attorneys and setting of fees were subject to the secretary of interior's approval. Essentially, Myer felt the IRA attorney guidelines provided recognized tribes too much legal tribal authority and Indian self-rule.

Under Myer's new provisions the BIA had unlimited authority to govern the contracts of Indian lawyers. To justify his action, Myer invoked a 1872 statute that required the commissioner's approval of attorney contracts. He also maintained that as trustee he had a legal and moral obligation to watch over and protect the interests of his charges.¹⁵

The specific details of Myer's new regulations in November 1950 contained several controversial points. The regulations no longer permitted fixed retainer fees in claims contracts. Payment for attorney services were contingent upon successful recovery, and the courts or the Indian Claims Commission set compensation. Solicitation or brokering of contracts by any attorney would cause the cancellation of all further contracts by that attorney. More importantly, the BIA disallowed contracts for periods longer than three years, and the commissioner could cancel a contract with a tribe's consent without giving notification or cause. The guidelines also discouraged the hiring of attorneys from Washington DC in favor of local attorneys. Such actions made attorneys more accountable to the commissioner than to the tribes. In essence, Myer denied Indians their constitutional right to an independent attorney protected by the Fifth Amendment. Hoping to catch Curry in his trap, Myer had now set the bait.¹⁶

Myer's policy statement drew immediate protest from a variety of sources. As expected, Curry filed a formal appeal objecting to the change in policy. Insisting that he barely eked out a subsistence as an Indian lawyer, Curry maintained that the only misdeed he was guilty of committing was not being a "yes-man for the Indian Bureau."¹⁷ Clearly, he had a legitimate grievance against the Bureau's new contract regulations. In the six months before his November 1950 guidelines, Myer had rejected seven of Curry's pending contracts or amendments to contracts. The commissioner complained that the lawyer already held fifty-six contracts with thirty-seven Indian tribes or groups. Thus on the surface Myer claimed Curry had become a contract broker, and as commissioner he was unlikely to approve any more of the attorney's agreements. Myer's real agenda, however, was to quell Curry's ardent defense of Indian self-rule, slow his prosecution of Indian claims, and prevent Curry and the NCAI from embarrassing his administration further.¹⁸

Assistant Secretary Dale E. Doty, Myer's immediate superior, and others questioned the commissioner's authority to issue the guidelines without prior approval of the secretary of interior. Doty also

worried that the new regulations interfered with the Indians' right to self-determination.¹⁹ Led by such well-known Indian attorneys as Charles L. Black, Theodore H. Haas, and Felix Cohen, fifteen law firms also distributed a lengthy memorandum protesting the illegality and immorality of the new regulations. The American Bar Association joined the others in condemning Myer's regulations.²⁰ In a lengthy rebuttal Myer defended his new regulations as fulfilling his trust responsibilities to the Indians.²¹

The new guidelines appalled the NCAI and other Indian rights groups. Recognizing the obvious threat to Indian sovereignty, Executive Director John Rainer accused Myer of forcing upon Indians "drum head justice" similar to that used in military tribunals. Fearing the threat to Indians' civil rights, Rainer further objected to Myer's tacit assumption that Indians were incapable of making wise and rational decisions about matters that affected them.²² Rainer and other NCAI members correctly perceived potential pitfalls in the new proposal. Organizations such as the NCAI relied heavily on their attorneys and representatives in Washington to monitor the BIA and Congress.

The hiring of tribal attorneys on a case-by-case basis left the Indian communities vulnerable to the passage of detrimental legislation without their knowledge. Attorneys employed under the new regulations also owed their loyalty to the BIA, and not Indians, the NCAI charged. "If the Indian people henceforward are forced into Court defended only by attorneys selected by, and therefore subservient to, the Indian Bureau," Ruth Bronson argued, "then we Indians will have lost our battle before we even start." Bronson also saw the possibility of "political spoliation of Indian property, on a scale greater than hitherto known."²³

Critics such as the NCAI and other Indian reform groups opposed the new regulations because they reduced tribal autonomy in selecting lawyers.²⁴ In its struggle against Myer NCAI solicited and received support from many organizations interested in minority civil rights. The NCAI, with the Indian Committee of the American Civil Liberties Union (ACLU), the Institute of Ethnic Affairs, the AIAA, the Na-

tional Council of Negro Women, the Japanese-American Citizens League, the National Jewish Welfare Board, the Congregational Christian Churches, the National Association for the Advancement of Colored People, the American Jewish Congress, and B'nai B'rith, requested a meeting with Chapman concerning the contract controversy. The secretary denied their petition.²⁵

Seeking more visibility, Curry and the NCAI in late 1950 appealed to Harold L. Ickes and John Collier for assistance. Criticizing the continuing paternalistic relationship of the federal government toward Indians, Bronson wrote Ickes that the Indians' "muscles of resistance are not yet fully developed. . . . They need to be fed with the vitamins of a few successful experiences in self-determination," she continued, "before they will be strong enough to carry on a tough fight, or even to hold the line for long." As Bronson articulately noted, and Ickes agreed, Indian civil rights and self-determination included the Indians' unrestricted choice of legal counsel.²⁶

Ickes and Collier responded to the call for help by offering to "hog-tie Myer" as quickly as possible. In addition to his letters to Chapman, Ickes kept up a constant assault against Myer and McCarran in his *New Republic* column. In May 1951, the former secretary of interior denounced the Indian commissioner as "Hitler and Mussolini rolled into one" for refusing Indians the freedom to select their own attorneys. The issue provided the former secretary with "arrows he could shoot at the Truman administration on the Indian administration."²⁷ Ickes even went so far in his defense of Curry that he agreed to serve as the Indian lawyer's pro bono legal counselor.²⁸ In January 1951 Collier also berated the BIA for sabotaging Indian progress toward democratic self-government.²⁹

The harsh protests raised by Indians and allies forced Chapman to examine the growing controversy. In December 1950 he appointed a three-member committee to advise him on the delicate matter and to review the many complaints. Chaired by Associate Solicitor W. H. Flanery, the rest of the committee included Arthur E. Demaray, director of the National Park Service, and Joel D. Wolfsohn, Chapman's assistant. Wolfsohn's appointment represented a bad omen to Myer.

The assistant secretary, although friendly, "was cutting my throat regularly," Myer maintained. His doubts about the appeal board's possible recommendations led him to ask Flanery to review the committee's findings and prepare a response before the recommendations were passed on to Chapman.³⁰

Myer's misgivings were well founded. In February 1951 the board recommended reinstating four of Curry's canceled contracts. The committee did not find evidence that the Indian attorney had failed in his responsibilities to the tribes. Reprimanding Myer, the committee advised the secretary to seek legal counsel over attorney contracts from the solicitor on the authority of the Interior Department. Following the board's recommendations, Chapman approved the four Curry contracts and requested legal advice from the Solicitor's Office.³¹

Curry won yet another skirmish, but the widening war threatened to engulf him. The two adversaries, Curry and Myer, would soon meet in a final showdown in a conflict involving the Pyramid Lake Paiutes. In November 1950 Curry, working with former Nevada Sen. E. P. Carville, extended his contract with the Paiutes for a ten-year period. The extension far exceeded the three-year limit mandated by the BIA at the time. Myer delayed approving the contract. While the commissioner sat on his decision, the Pyramid Lake Paiutes urged the NCAI not to let the contract expire lest the tribe fall into the "hands of McCarran factors."

The NCAI reacted by sending telegrams to President Truman and Secretary Chapman that requested they intervene on the tribe's behalf.³² In response McCarran and his forces circulated false information that charged the NCAI with ties to communist organizations. Taking advantage of Red Scare fears, George Malone of Nevada attacked the NCAI from the floor of the Senate. Albert Grorud, a disbarred Montana attorney and clerk on the Senate Indian subcommittee, assailed the NCAI in memos sent to tribal groups. The tactics of McCarran and his allies put the NCAI on the defensive at a critical time.³³

In March 1951, as the time grew closer for Curry's original contract to expire, Myer suggested that he would approve a modified contract.

Myer demanded a reduction in the term of the contract from ten years to two. He also required a cancellation of the contract by the tribe, with the commissioner's consent, with sixty days notice and provisions for the employment of local counsel. Finally the commissioner required an agreement that Curry submit semiannual reports to the tribe and to the commissioner documenting services performed.

Curry rejected the modifications and appealed to Chapman to override the commissioner. Myer proposed to extend the original contract indefinitely, until Chapman resolved the appeal. The Paiutes agreed, but Curry rejected the offer, hoping to force Chapman to take a stand. As a result, and despite pressing legal problems, the Paiutes went without an approved attorney contract after April 1951. Realizing the importance of his decision, Chapman again asked the Solicitor's Office for a legal opinion. In July 1951 Solicitor Mastin White upheld Myer's decision. Citing several reasons for his ruling, White maintained that department heads should rarely overrule subordinates. Chapman agreed and denied Curry's appeal. Myer had outmaneuvered Curry.³⁴

After White's memorandum, Secretary Chapman instructed Commissioner Myer to reexamine and revise his policy regulations on tribal attorneys. The amended regulations, which appeared in August 1951 in the *Federal Register*, differed little from the earlier guidelines. Upon the recommendation of a special committee of the American Bar Association (ABA), the organization severely criticized the new guidelines and urged their withdrawal. Former Secretary Ickes once again attacked the commissioner in a *New Republic* column.³⁵ Perhaps the heaviest assaults against Myer and White came in a series of letters from Ickes to Chapman in the fall of 1951. Referring to the commissioner as "a little tin Hitler," Ickes called for Myer's removal. Mincing few words, the former secretary also questioned White's integrity. Hoping for a last-minute change of heart, Ickes challenged Chapman to reconsider his decision in the Curry case. "It occurs to me that your Solicitor and your Indian Commissioner have become so desperate in their desire to destroy Mr. James E. Curry,"

Ickes wrote Chapman, "that they are willing, if necessary, to destroy you, and with you, themselves." In February 1952, before Chapman could respond, however, Ickes died.³⁶

Throughout most of the next year, newspaper coverage provided ample fuel for the tribal sovereignty battle over the attorney issue. In an article first published in the *Washington Post* and syndicated elsewhere, Drew Pearson, whose father was a former prominent employee of the Department of Interior, defended Myer's actions. He accused Curry of "feathering his nest" at the expense of his clients. Defenders of Curry and critics of the policy of the BIA, presumably sponsored by the NCAI and other Indian reform organizations, attacked Myer and Chapman in dozens of newspaper editorial columns from coast to coast.³⁷

Deeming the revised regulations unacceptable and unconstitutional, the NCAI considered enlisting the NAACP in the Indian struggle for civil rights. By the late 1940s, African Americans, like Native Americans, realized that they would have to take the lead in the fight against discrimination. In the early years of the struggle the NAACP, much like the NCAI, carried its own banner into the battle. Instead of attacking Jim Crow head-on, the NAACP had chiseled away at the legal logic of segregation. In *Sweatt v. Painter* and *McLaurin v. Board of Regents* in 1950, the NAACP lawyers won impressive decisions in overturning segregation in higher education.

Aware of these successes, Ruth Bronson in late 1950 proposed the idea of soliciting the aid of legal staff of the NAACP to prepare a test case for Indians to challenge the proposed new tribal attorney regulations. Not only would the NAACP offer the NCAI strong legal expertise, it would also bring high visibility to the controversy. Although the NCAI apparently decided against formally asking the NAACP for legal help, the NAACP did lend moral support.³⁸ The NCAI also often sought and received advice from Roger Baldwin, founder and chairperson of the ACLU.

In the midst of criticism from all sides, Myer agreed to deliver the keynote address at the eighth annual convention of the NCAI in St. Paul, Minnesota, on July 25, 1951. His participation in the conference

was minimal; symbolically, he bore an olive branch which he hoped could soothe the resentment of disgruntled tribal leaders. In his address, Myer called on the Indian community and the BIA to work together in a spirit of cooperation. He denied the accusations that he was engaging in a cunning, tyrannical endeavor to expand his own power over Indian affairs. In fact, he argued that the opposite was true. He promised to lead "the Indian people out of the shadows of federal paternalism into the sunlight of fully responsible citizens." He also maintained that he was looking out for the best interests of all Indians.³⁹ The NCAI members, however, disagreed with the commissioner's assessment of the controversy. Resolutions passed at St. Paul denounced Myer's new guidelines and urged the secretary of interior to approve all pending contracts.⁴⁰

In a last-ditch effort to turn the tide of battle in his favor, Curry persuaded a Paiute delegation to visit Washington DC to lobby for a contract extension. Led by Avery Winnemucca, Paiute tribal chairman, the three-member tribal delegation that included Albert Aleck and Warren Toby arrived in the nation's capital in October 1951 to demand a hearing with Secretary Chapman. The envoy met with Myer, Chapman, several members of Congress, and newspaper reporters in an attempt to marshal support for their cause. When their efforts failed to gain an extension of Curry's contract, two of the delegates returned to Nevada. Only Winnemucca remained behind to continue his lobbying efforts.

The Paiute delegation's lack of success signaled the moment of decline of Curry's career as an Indian attorney. Many reform organizations, including the ACLU, the American Jewish Congress, the General Federation of Women's Clubs, the NAACP, the AAIA, the IRA, the Council of Californian Indians, and the New Mexico Association of Indian Affairs, joined the NCAI in demanding hearings on the proposed regulations.⁴¹ In response to the public outcry against the attorney contract regulations, Secretary Chapman decided to hold public hearings for two days in January 1952.

With the secretary presiding over hearings, all the significant Indian reform groups attended the discussions, including the NCAI and

Curry. Executive Director Ruth Bronson decided against having Curry represent the interests of the NCAI at the hearings because of his personal involvement in the case. Instead, the NCAI sent Vice President Frank George as the organization's spokesperson. George correctly noted that the new attorney regulations contradicted the BIA promise of increased Indian sovereignty that Myer had made at the 1950 NCAI convention in Bellingham, Washington. In his defense, Curry testified that BIA officials had crossed ethical lines in preventing him from helping Indians control their own destiny.⁴²

Confronted with strong opposition, Chapman abandoned the proposed regulations and appointed a special four-member committee, chaired by Assistant Secretary Dale E. Doty, to make future recommendations.⁴³ Vacillating in his stance, Secretary Chapman had retreated from his earlier neutral position. The NCAI applauded Chapman's ruling and hoped it would set a precedent for greater Indian self-determination in the future.⁴⁴

Because of Chapman's decision, Curry enjoyed a short period of success, which only made Myer more determined to resolve the question. He asked Democratic senator Clinton P. Anderson of New Mexico, an old friend, to hold congressional hearings on the attorney question. Anderson, an influential member of the Interior Department and Insular Affairs Committee, used his leverage to help establish a five-member subcommittee to investigate the activities of Indian attorneys. The character of the subcommittee foretold its conclusions. Anderson, often a prickly thorn in the side of Indians, served as chairperson. Critics of Anderson suggested that Curry incurred the wrath of the New Mexico senator when he helped Indians secure the right to vote in New Mexico and Arizona in 1950. After they secured the ballot in the early 1950s, most Indians voted Republican; Anderson and his colleagues were Democrats.⁴⁵

Other members of the committee included Sen. Arthur Watkins of Utah, who later became the catalyst behind the movement for termination. Watkins with Anderson had sponsored the Tongass Timber Bill. Montana Republican Zales N. Ecton, Russell B. Long of Louisiana, and Herbert H. Lehman of New York completed the panel.

Anderson and Watkins were the ringleaders, while the other three committee members were along for the ride. Senator Anderson requested that Chapman delay any action on attorney contracts until after the congressional hearings. Objecting to any further holdups on contracts, Frank George, who had been appointed executive director of the NCAI as of 1952, demanded that the Department of Interior immediately resolve the Curry matter.⁴⁶

Beginning January 21, 1952, the Anderson subcommittee met twenty-four times that year. The first investigation examined the activities of Curry. Speaking at the first session of the hearings, Commissioner Myer set the tone by charging the lawyer with misconduct and violations of the "Canons of Professional Ethics." He specifically accused the attorney of solicitation of contracts, claims brokerage, nonperformance of contracts, interference in tribal hiring of other attorneys, and misrepresentation to his clients and the BIA.⁴⁷ Instead of a legislative inquiry, the proper forum to investigate Myer's and Anderson's allegations should have been a disbarment hearing.

Ironically some of the most damaging testimony in the hearings against Curry came from former vice-president of the NCAI and former Oglala Sioux tribal council chairman Chief William Fire Thunder. He claimed that the NCAI retained Curry to provide free counsel for the NCAI tribal members who could not afford to hire regular counsel. Instead of furnishing the tribes with free counsel, according to Fire Thunder, Curry used his position with the NCAI to solicit tribal contracts for his personal monetary gain. The former NCAI officer testified that many tribes, including the Alaska natives, remained hostile to the NCAI after Curry duped them into private contracts with high retainers instead of providing them with free legal counsel. Curry's tactics, according to the former Oglala tribal chairman, had forced Thunder to leave the NCAI in 1950.⁴⁸

Additional negative testimony regarding Curry's relationship to the NCAI came from several others. Roy Mobley, a former legal associate of the Indian attorney, testified that Curry used Ruth Bronson as a front to obtain private contracts for himself. As executive director of the NCAI, Bronson, according to Mobley, had visited tribes in

her official NCAI capacity and then recommended that tribes hire Curry as their tribal legal counsel. During her visits Bronson admittedly brought with her unsigned contracts. She helped the tribes fill them out with Curry listed as their tribal attorney. Mobley further charged that Curry loaned Bronson his office for NCAI operations when she was executive director, and placed her on his payroll. Bronson claimed, however, that she had recommended Curry to the tribes because he was an excellent attorney with high standards. Ben Dwight, founding member of the NCAI, considered testifying to help salvage the reputation of the NCAI but decided against being swept into the muddy water.⁴⁹

As the hearings progressed, Curry's influence with the NCAI plummeted. By March 1952 Dwight and the NCAI president, Napoleon B. Johnson, began to consider Curry a liability and to contemplate severing his relationship with the organization. As the year progressed, Dwight became increasingly convinced that Curry was controlling the NCAI for his own benefit. To prevent future non-Indian attorneys from attempting to control the NCAI, Dwight recommended that the organization fire him and hire an Indian attorney. Ruth Bronson and former executive director Louis Bruce, however, preferred to delay any decisions on the lawyer's contract until the Senate subcommittee hearings were completed.⁵⁰

As Dwight and Johnson contemplated terminating Curry's contract with the NCAI, Edward L. Rogers, another founding member of the NCAI and an attorney in Minnesota, protested the Washington lawyer's possible dismissal. Johnson and Dwight did not have the authority to end Curry's contract, Rogers argued; only the full executive committee did. Moreover, Rogers maintained, the lawyer had provided valuable legal assistance to the NCAI. "There is no doubt that Curry's enemies are our principal enemies," the Minnesota lawyer explained. "If we desert him, we are deserting our own cause." Like Bronson and Bruce, Rogers preferred to postpone any action on Curry until the next annual convention in Denver, Colorado, in the fall of 1952. Respecting the opinion of their fellow members, Johnson and Bronson agreed to defer the matter until the convention.⁵¹

When Curry received word that the NCAI was considering dropping him as its lawyer, he immediately defended himself from his attackers. He maintained that his past success as an attorney in protecting Indian interests had made him a target of powerful, non-Indian western groups. Curry also speculated that the reason that Dwight and Johnson, Oklahoma government employees, wanted him fired was that as the attorney for the NCAI he had alienated the "Oklahoma political crowd."⁵²

During the period of the Anderson subcommittee hearings, Sen. Pat McCarran continued the attacks against Curry in Congress. During a Senate debate over an appropriation bill concerning the BIA, McCarran charged Curry with using Winnemucca, chairman of the Pyramid Lake tribal council, as a front to raise money for his legal defense. During Winnemucca's earlier visit to Washington, maintained McCarran, the lawyer allegedly had sent letters signed by Winnemucca asking for donations to aid the Paiutes in their fight to extend Curry's contract. While the letters reported Winnemucca as treasurer of the special fund, the post office listed Curry's box for receipt of the donations. An investigation on the Paiute reservation, according to the Nevada senator, had proved that the tribe had no such knowledge of the fund or how the money had been spent.

McCarran's brief but damaging statement raised further questions about Curry's integrity and legal judgment and left the Washington attorney with few supporters. Curry denied McCarran's statements and maintained that the Paiutes had no choice but to start a defense fund, because Myer had tied up their tribal funds. Not only had Curry paid tribal expenses out of his own pocket, but those who would profit from putting him out of business exaggerated the charges against him.⁵³

While the hearings briefly recessed in the fall of 1952, matters grew worse for Curry. On September 24, 1952, the Department of Interior officially nullified his contract with the Paiutes. Following up on the action, Secretary Chapman announced that a special committee of the Department of Interior, as called for following the two-day hearings in January, would investigate misconduct charges. Comprised of

three lawyers from the Solicitor's Office, the committee examined the allegations and recommended appropriate action. Believing that the committee was another government ruse to discredit him, Curry called Chapman's action little more than a "kangaroo court."⁵⁴

By the fall of 1952, as his situation grew more ominous and as he waited for the hearings to conclude, Curry had nearly exhausted both his patience and his financial resources. With many of his contracts either canceled or delayed by the BIA pending the outcome of the hearings, the lawyer began soliciting funds from nonprofit organizations to help sustain him.⁵⁵ Desperate to salvage his reputation and his practice, he played his last cards. Through the courtesy of radio station WFJL in Chicago, in late 1952 Curry delivered a series of Sunday night discussions on the administration of Indian affairs. Not only did he chastise the government for past treatment of Indians, he saved his harshest criticism for Chapman and Myer. Instead of using their positions to protect Indians' interests, the lawyer charged that the secretary and commissioner were wielding their power to victimize their wards. Curry warned that McCarran and his "stooges in the BIA" seriously threatened Indian rights and properties. The last hope for the Indians' cause, he warned, was for the president to fire Chapman and Myer.⁵⁶

Desperate to prevent his removal as NCAI lawyer, in late 1952 Curry asked D'Arcy McNickle to use his influence with the NCAI members to retain his services. But as the movement within the NCAI to dismiss him gained momentum, Curry agreed to end the contract as of February 1, 1953. In return, his detractors within the NCAI agreed to not release him before the hearings were completed. With the end of his career as an Indian attorney looming large, in October 1952 Curry announced that although he would not cancel existing contracts unless his clients so wanted, he would no longer accept new Indian clients.⁵⁷

When the Anderson subcommittee filed its final report in January 1953, the controversy sped toward a conclusion. The subcommittee reprimanded Curry for deceiving his clients for personal gains, inappropriately soliciting contracts, improperly fulfilling his legal obliga-

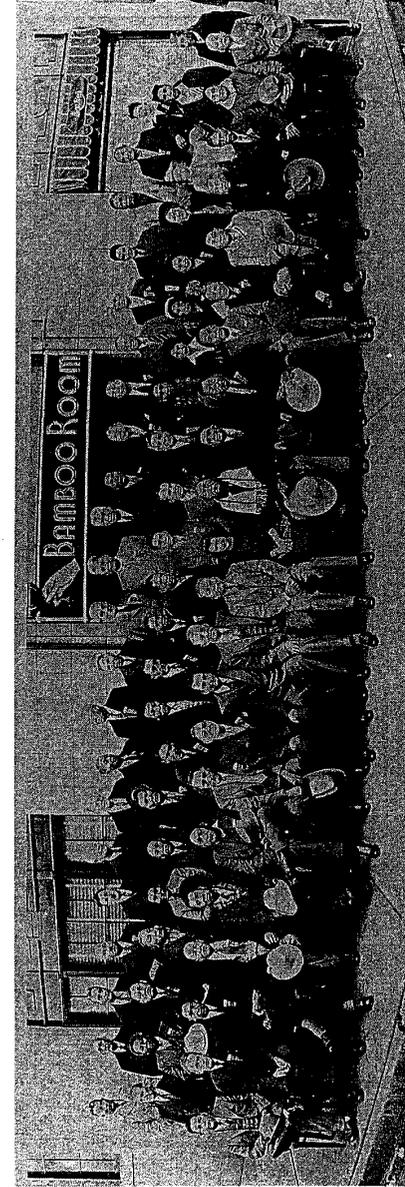
tions, and disregarding ABA standards. In its statement on Indian self-determination, the report highly criticized the activities of the NCAI and tarnished its image. The majority report, signed by Anderson, Watkins, and Long, praised Myer's actions and recommended that the attorney general of the United States review Curry's conduct. Senator Lehman, while not disagreeing with the majority's findings, criticized his associates for being more concerned with legal ethics than with the welfare of the Indian clients. In the end, Myer's vision of limited Indian self-determination had won out over that of Curry and the NCAI.⁵⁸

The subcommittee findings finished Curry as an Indian attorney and ended his legal relationship with the NCAI. While his motives represented a combination of public service and private gain, Curry had been unfairly railroaded by Myer and his allies. Though Curry had often represented the NCAI in its early legal battles, such as the voting and social security issues for Indians in New Mexico and Arizona, native land rights in Alaska, and the Paiutes' case, his weakened reputation now made him more of a liability than an asset. Several years after the organization severed contractual ties with Curry, Helen Peterson, NCAI executive director, bestowed a gift of three hundred dollars on Curry for his past services to the organization. Although Curry believed that the NCAI still owed him more in back pay, he graciously accepted the money and called the account even.⁵⁹ Within a short time the law firm of Wilkinson, Cragun, and Barker replaced Curry as legal counsel to the NCAI.

The Indian attorney question lost its energy following the findings of the Anderson subcommittee. At the heart of the controversy had been a power struggle between an authoritative and dictatorial Indian commissioner and an equally assertive attorney. The commissioner felt threatened by the actions of private attorneys whom he believed were undermining the authority of the BIA. Ultimately, Myer believed that the tribes should rely on the counsel of the BIA instead of private lawyers.⁶⁰ The attorney guidelines, however, not only reversed earlier Indian gains during the Collier administration, but seriously threatened the constitutional rights of all Indians. After

gaining the rights of citizenship in 1924, the law entitled Indians to the duties, responsibilities, and privileges that came with their new citizenship status. Paramount to the American legal tradition is the right to legal counsel. By assuming a paternalistic posture through new attorney regulations, Myer violated this fundamental right.

Moreover, the Curry controversy in the early 1950s preceded even more serious actions by Myer that threatened both tribal rights and more general civil rights. Unlike the African-American civil rights movement of the late 1940s and early 1950s, which focused on assimilation and equal rights for blacks, Indian activism in the same period had dealt with protection of special rights and advancement of Indian self-rule. Not necessarily wanting wholesale or full assimilation into mainstream white society like other minorities, the NCAI in the postwar period aggressively fought to preserve not only civil rights, but also those associated with treaties, tribal sovereignty, the distinctive relationship with the BIA, and a separate ethnic identity. While the attorney controversy threatened Indian self-determination and a return to unilateral federal action, it was only a prelude to the much more serious crisis after the mid-1950s. Serving as a necessary step to end tribal self-rule, Myer's actions paved the way for his larger movement, termination of tribes.



1 Participants in the 1944 Constitutional Convention. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98.10202.



2 Willy's Jeep, donated to NCAI and ARROW in 1951 by an unknown benefactor. Used by NCAI and ARROW leaders to travel throughout Indian Country. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10199.



3 Early NCAI leaders. Left to right: Helen Peterson, D'Arcy McNickle, Joseph Garry, Louis Bruce, Ruth Bronson. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10200.



4 Helen Peterson meeting with legal consultants during the termination crisis. Left to right: attorneys Frances Horn, Arthur Lazarus, unknown assistant, Helen Peterson. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10195.



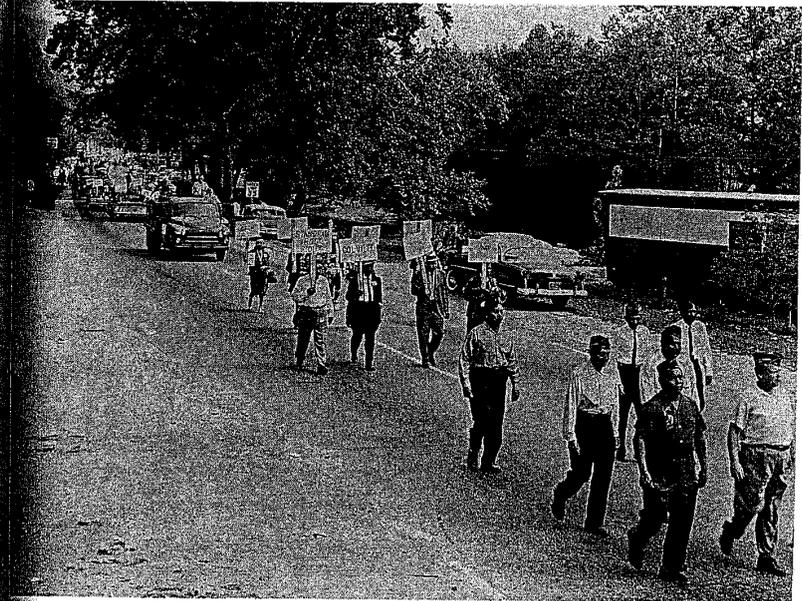
5 Joshua Wetsit posing with Helen Peterson for a publicity photo. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10201.



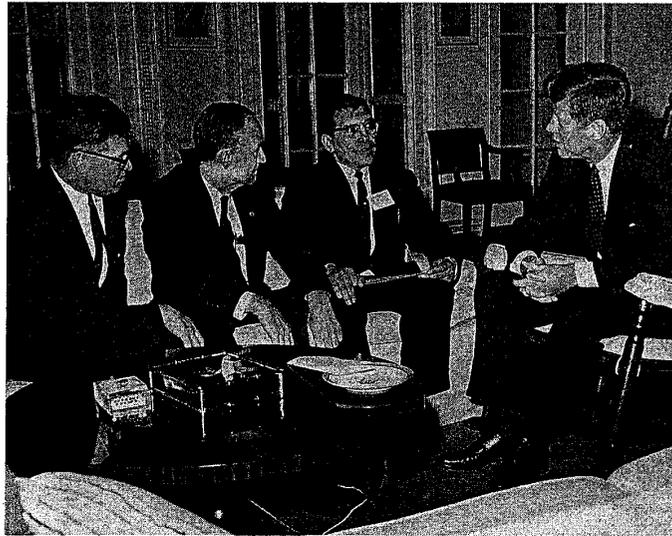
6 Presentation of the American Heritage Foundation Outstanding Public Service award to the NCAI in 1957. Left to right: John Rainer, Walter Wetzell, Joseph Garry (representative of AHF), Clarence Wesley. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10197.



7 Elizabeth Herring and D'Arcy McNickle speaking to future Indian leaders at an AID workshop in the late 1950s. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10198.



8 Parade of NCAI delegates at the 1962 annual convention in Cherokee NC. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10196.



9 Discussion of tribal problems. Left to right: Senator Lee Metcalf, Senate Majority Leader Mike Mansfield, Walter Wetzel, President John F. Kennedy. Courtesy of the National Anthropological Archives, Smithsonian Institution, Photo No. 98 10194.

5. TERMINATION OR SELF-DETERMINATION

Today we—America's half million Indians—stand at a fork in the trail. The time has come for all of us to choose the way we will travel. In one direction is the downhill trail we have followed since our lands were invaded more than a century ago. This way, marked by the laws of an often-blind government, leads to ignorance, poverty, disease, and wasted resources. The new trail—the way of self-help—leads toward a better life, toward adequate education, decent income, good health, and wise use of our precious natural wealth. CLARENCE WESLEY, former president of the NCAI

Late in February 1954, Helen Peterson, executive director of NCAI, and her mother collated packets in their basement for an emergency conference on termination of Indian tribes in the United States. Working through the night, the pair produced the materials on a hand-cranked mimeograph machine. Called on short notice, the NCAI emergency conference drew the largest Native American protest in history up until this time and was rivaled only by the Red Power movements a decade later. In the late 1940s through the mid-1950s, the compulsory government termination trend of the period touched a nerve in the Indian community because of its obvious threat to legal and cultural rights. While the termination threat caused internal divisions within the organization, the NCAI withstood the strain. Rejecting the forced nature of the policy and asserting the right of Indian communities to control their own destinies, the NCAI launched an unprecedented drive in the postwar years to defeat or modify the coercive termination program. Peterson's 1954 emergency conference marked a turning point in slowing or stopping the movement.¹

Despite continual federal efforts since the 1880s to force assimilation of Indians into American society, approximately two hundred

and fifty reservations remained in the United States at the end of World War II. During the 1950s the United States government embarked on an ill-fated effort to terminate the federal trust status of Indian reservations. Between 1945 and the mid-1960s the government termination policy affected 1,365,801 acres of Indian land and an estimated 13,263 Indians.² In its broadest sense, termination signified a final drive to assimilate the Indians once and for all into the dominant society. In its narrowest sense, termination represented a legal means to abrogate the federal government's trust obligations to the tribes. In particular, it meant the federal government would end its administrative responsibilities for specific tribes as soon as each tribe's circumstances allowed; then it would transfer these responsibilities to state and local governments and distribute tribal assets either to tribes or individual tribe members.

Most scholars who have studied the termination period have reached a consensus on the origins of the movement. Nearly all of them trace the roots of termination to the Truman administration.³ While the termination movement crested with the 83d Congress, it had started in 1947 when the Senate Civil Service Committee directed the acting commissioner of Indian Affairs, William Zimmerman, to identify and classify tribes based on their readiness for termination. Unfortunately, Zimmerman had prepared the lists without the knowledge and consent of the Indians involved. The acting commissioner later realized his mistake and tried to rectify the error, calling his misinterpreted plan a policy of "extermination" and not "staged termination."⁴ Regardless of the error, it was too late, for the "Zimmerman plan" became the cornerstone for the termination policies of the Truman and Eisenhower administrations.

Although implementation of the termination policy is widely associated with the 1940s and 1950s, the idea for a withdrawal of federal services was nothing new.⁵ Conservative reform groups and federal policymakers had long advocated the forced assimilation of Native Americans into the mainstream of American society. Historian Kenneth R. Philp links postwar policy shifts to failures of the Indian New Deal. In particular, the reform opponents of John Collier and his

philosophy during the 1930s and the immediate postwar years fed the movement for termination.⁶

Postwar changes in liberalism also affected Indian policy. Although John Collier's administration had promoted cultural pluralism, postwar liberalism favored the assimilation of minorities and, with Indians, a reduced federal role and decreased government spending. In a period of rapid economic growth, proponents of termination wanted to remove restrictions on Indian lands and make them fully taxable and alienable. In 1945 O. K. Armstrong voiced many of these sentiments in his widely read *Reader's Digest* article, "Set the American Indian Free!" Practically all the calls to dismantle the tribal edifice, abolish the BIA, and force the Indians into assimilation came from westerners such as senators Burton K. Wheeler of Montana, Elmer Thomas of Oklahoma, and Harlan J. Bushfield of South Dakota.⁷

This new liberal outlook placed a premium on national unity and conformity. The decade after the Second World War demanded that all Americans possess the same societal values. For the dominant population, individualism, competition, capitalism, and private property served as the cornerstones of the American ideal. Many Indians in the postwar period, however, held strikingly different values and mores. According to many tribal traditions and cultures, Native Americans structured their lifestyle around spiritualism, communalism, and community participation. In the Cold War struggle against the Soviet Union, the communal lifestyle fostered by reservations smacked of communism and socialism and ran contrary to the American model of individualism. Anthropologist Nancy Lurie has argued that it was not until the termination movement that many Indians became fully conscious of "the diametrical opposition between Indian and white objectives."⁸ Thus termination produced an ideological showdown. Ultimately the campaign of the NCAI to defeat coercive termination centered the education of mainstream society in the needs and rights of Native Americans and America's ethical and legal commitment to protect those rights.

Most well-aculturated leaders of the NCAI initially did not op-

pose the goals of termination—assimilation and equal opportunities—but they wanted to ensure that tribes were prepared for any new changes.⁹ Napoleon B. Johnson, president of the NCAI and Oklahoma supreme court justice, for example, favored termination and a full integration of Indians into the mainstream society. “We look forward to the day when the Indian will have passed out of our national life as the painted, romantic, feather-crowned hero of fiction,” Johnson stated in a 1948 conference address, “and will have added the current of his free, original American blood to the heart of this great nation.” Johnson and others pursued assimilation through voluntary termination as a means to an end of Indian separateness and economic and cultural dislocation. Other NCAI leaders such as Helen Peterson, executive director, accepted noncompulsory termination but wanted improved education, health care, job training, and full consultation with tribes before termination occurred.¹⁰ In essence, Johnson and Peterson sought integration before termination. Experience had also taught, however, that the stated goals of a policy were often different from the consequences of a proposal.

Whether to accept or reject termination legislation was not a cut-and-dried decision. Termination was a multifaceted, complex issue that contained both beneficial and harmful elements. As a result, a diverse range of opinions from the tribes reached the organization as to acceptable termination terms. Indian leaders and the tribes welcomed some termination provisions under discussion. Most members of the NCAI agreed that bureaucrats should lessen and remove some federal regulations regarding Indians and believed in the gradual elimination of the Bureau. For example, most tribal leaders wanted an end to the Indian liquor law, which they felt discriminated against them. In reality, an end to some federal control was necessary before tribes could achieve some measure of self-determination. These NCAI members disliked federal paternalism, which they felt hindered Indians’ progress. They felt that the BIA had curtailed land sales, economic opportunities, and Indian self-determination. Speaking to the NCAI delegates in Denver, Colorado, Will Rogers Jr.

encouraged federal withdrawal to give Indians greater control over their own affairs.¹¹

Meeting in Santa Fe, New Mexico, in 1947, representatives passed a resolution that recommended the gradual liquidation of the BIA. It called for the dissolution to proceed in carefully planned phases and for the release of many BIA programs to the states or other federal agencies. For example, almost all of them supported the transfer of Indian Health Services from the BIA to the Public Health Service. Most members also wanted assurances that the federal government would continue to provide and administer special services such as education, housing, and welfare programs. Reservation leaders such as Frank George, however, opposed the dissolution of the BIA. George and other reservation leaders worried that the transfer of federal Indian interests to the states would jeopardize Indian interests. If politicians severed federal ties with tribes, untold stress and substantial economic setbacks would occur.¹²

The question of state jurisdiction over criminal and civil Indian affairs produced much discussion. Some tribes welcomed state criminal jurisdiction on their reservations. While several tribes welcomed state control over civil matters, others worried that it would leave them vulnerable to states that lacked experience in Indian affairs or were unwilling to assume Indian services. Yet several tribes worried that the extension of state criminal jurisdiction over reservations would threaten Indian sovereignty and violate treaty agreements. To offset these concerns, some tribal leaders wanted assurances of Indian consultation before states assumed authority over them.¹³

Congressional initiatives aimed at termination also brought other concerns. Most of the tribal members were anxious over the criteria and regulations for defining tribal rolls. In case of liquidation of tribal assets, the tribes wanted to regulate tribal rolls and set blood quantum requirements. Many delegates also opposed the wording of early congressional termination initiatives because of their negative and uncomplimentary tone. Language such as “emancipation” in the bills carried connotations of slavery and created a false impression

that Indians were not already full citizens. Others feared that termination was a step backward because it threatened to negate the advances of the Indian Reorganization Act (IRA). The new measure might abolish tribal organizations, constitutions, and corporations formed under the IRA. Most importantly, termination legislation threatened to allow Congress the opportunity to exercise its plenary powers over Indian affairs whereby Congress could unilaterally legislate on property and alter or nullify treaties and agreements without Indian consent.¹⁴

Some Indians worried that on the one hand the federal government was reducing federal responsibility, while on the other hand it was expanding federal control. Opponents of termination worried that the expanded federal assistance required to prepare tribes for termination would increase rather than decrease paternalism. Delegates in 1949 passed a resolution resisting a plan to create area offices between the commissioner's post and that of the local superintendent. Opposition to the new level of administration came largely from the tribes in the Northwest. The NCAI garnered support to defeat the proposed area offices from Congressman Compton White of Idaho. However, White's bill to prohibit the offices failed to reach the House floor for a vote. In 1949 Commissioner Dillon Myer had created eleven area offices, seemingly to decentralize administration, but they had also shielded him from tribal consultation.¹⁵

Land and property remained at the heart of most concerns over termination measures. Some Native Americans saw the potential advantages of the new legislation. Certainly urban Indians saw the likely benefits from the dissolution and disbursement of tribal assets. Small numbers of Native Americans desired a removal, or at least a modification, of trust restrictions over tribal properties and resources. Tribal leaders such as Wade Crawford of the Klamath supported termination as a means to gain control over the tribes' timber resources.

Most members, however, feared a loss of federal custody over Indian land and property. If terminated, their land and properties would be subject to state and local taxation and regulation and no

longer under the protection of the BIA. Experience had shown that most Indians who came into possession of title to their lands eventually lost the land. Some worried that the forcing of fee-simple patents on Indians would lead to wholesale loss of lands through tax sales. Most of the members of the NCAI felt that the "emancipation bills" regarding property represented ill-disguised attempts to gain title to Indian real estate and/or tax Indian land.¹⁶

Obviously it was impossible to create a workable policy that incorporated all Indians' views. What remained for the NCAI was to help design or maintain a policy that best suited the needs of the individual tribes. Exactly how to accomplish this objective was a different matter. Congress often carried out termination legislation that was contrary to tribal views. Differences persisted between tribally supported legislation and congressionally directed termination action. In practice, the 83d Congress passed a blanket measure, prepared in haste and taking little account of individual tribal needs or recommendations. By acting unilaterally, Congress denied Indians rights. Once aware of the sweeping nature of the legislation and the disastrous consequences that confronted them, the tribes prepared to fight back.

Many states with significant Indian populations welcomed the assumption of BIA services. Representatives from "Indian states" convened in Salt Lake City in May 1950 to organize the Governors' Interstate Indian Council (GIIC). The GIIC established committees to assess Indian needs. Committee members generally suggested favorable Indian support for state assumption. They forwarded their recommendations to Congress and to the appropriate governors. Makeup of the committees proved noteworthy. Edward Rogers, Napoleon B. Johnson, Frank George, and Martin Cross, a Gros Ventre from Fort Berthold, all of whom had been founders and leaders of the NCAI, served on GIIC committees. While these leaders seemingly favored a withdrawal of federal services, all would be out of power when the termination movement reached its high tide.¹⁷

The relocation policy of the period also served as a complimentary program to termination. In the wake of large-scale Indian migrations during World War II, the BIA decided to launch a program

to relocate Native Americans to urban areas. Relocation and termination shared a common logic: both fostered assimilation and reduction of government services.¹⁸

Several termination-minded individuals played key roles in promoting withdrawal in the early phases of the movement. President Truman's commissioner of Indian affairs, Dillon Myer, was the first to push vigorously for termination. Myer, as previously mentioned, purged the BIA of Collier loyalists and replaced them with former WRA colleagues. He then set Indian policy on a new course. Albert Grorud, a special assistant to the Senate Indian Affairs Subcommittee, also performed a significant, but less visible, role in the termination crusade.¹⁹

In 1952, after intense competition for the position, Pres. Dwight Eisenhower appointed Glenn Emmons, a terminationist from New Mexico, as his commissioner of Indian affairs. Indian support had centered on Henry J. W. Belvin, principal chief of the Oklahoma Choctaws, but by early summer of 1952 the race had narrowed to Alvin J. Simpson and Emmons. Simpson, who chaired the GIC, later withdrew. The "Emmons plan" seemed to view termination as a long-range goal, and it left passage of termination bills to key individuals in Congress. Republican congressional majorities in 1952 also brought more conservatives into positions of power in Indian affairs.

Sen. Arthur V. Watkins of Utah, however, became the chief congressional architect of the new federal policy. A devout conservative and Latter-Day Saint, Watkins relished the opportunity to participate in the overhaul of Indian policy. Watkins grew up near a Ute reservation, attended Brigham Young University, and graduated from Columbia University Law School. In 1947 he entered Congress and later chaired the Senate's censure investigation of Joseph McCarthy. O. Hatfield Chilson, an Eisenhower official, noted in an interview that Watkins "was the only one I know of who insisted on being on the Indian Affairs Committee."²⁰

Chilson also noted an important connection between Watkins' inordinate interest in Indian affairs and his Latter-Day Saint background. Watkins, observed Chilson, "thought he was paying off a

debt which the Mormons owed the Indians." Latter-Day Saints believe that Lamanites (Indians) and Nephites (non-Indians) both share a royal heritage. Although a chosen people, Lamanites have suffered injustice and persecution, according to Latter-Day Saints, because of their unrighteous past. The Lamanites, however, will one day "blossom like a rose," when they accept full assimilation into the mainstream society and convert to the true faith.²¹ Watkins defended termination in a 1957 article in which he used assimilationist arguments that dated to the 1880s. Indians would advance, he argued, only through assimilation and an end to special federal programs. To Watkins, termination provided a means of equal opportunity and freedom for all Native Americans.²²

The drive for termination received widespread support from other powerful Utah figures besides Watkins. In 1950 Representative Reva Bosone introduced one of the first resolutions calling for legislation to end federal supervision of Indians. Associate Indian Commissioner H. Rex Lee, a friend of Watkins from childhood, also frequently promoted termination bills. Utah governor J. Bracken Lee endorsed termination as a positive "step in the right direction."²³ Ernest Wilkinson, attorney and former president of Brigham Young University, represented the Paiute communities in Utah and the mixed-blood Utes in their negotiations to end their trust status.

Utah also became the battleground where adversaries fought the first termination campaigns. In 1954, Congress considered general legislation to terminate all the small reservations in Utah, home state of Watkins. The Utah senator was particularly interested in terminating the Southern Utes as a showcase to launch his new legislation. Robert Bennett, an Oneida, a long-time BIA employee who rose to the rank of Indian commissioner during the Johnson years, and a founding member of the NCAI, particularly helped the Utah tribes as they underwent termination. Bennett had started his bureau career with the Ute tribe in Utah, and he hoped that by sacrificing to Watkins and his allies the small Paiute bands and mixed-blood Utes in Utah, who had limited resources, he could protect the Northern Utes, who had more abundant resources.

Bennett reached the decision to offer these small Indian communities as political pawns to the termination tide in an impromptu meeting in a bean field in Utah with two other members of the NCAI. Meeting with Bennett were Reginald Curry, a BYU graduate and Ute tribal leader, and Francis McKinley, also a Ute tribal leader. Bennett, Curry, and McKinley knew that following termination the Latter-Day Saints Church would provide services to the Paiute bands and the mixed-blood Utes.²⁴

Once the coercive nature of the new policy became clear, the NCAI united in a concerted effort to oppose forced withdrawal; instead, it promoted alternatives to the shift in policy. Demonstrating near consensus, the NCAI delegates at the 1948 convention in Denver recommended that any withdrawal of federal services to Indians proceed locally on a case-by-case basis rather than as a national policy. The 1948 convention also met the termination threat with proposals to strengthen tribal control over Indian affairs. Having successfully survived earlier criticisms that planners created the organization as a tool of the Collier administration and the BIA, delegates in the same year voted to rescind the 1945 resolution prohibiting Bureau employees from holding office in the NCAI.²⁵ As the uncertainties and dangers of withdrawal in the late postwar years became more apparent, the NCAI needed to draw from the talents and political expertise of all its members.

As adoption of a termination policy gained momentum, in 1950 President Johnson requested that Oscar L. Chapman, secretary of the interior, assign a permanent federal liaison to work with the NCAI in shaping the new policy. Chapman turned down the request. Through a joint effort with the Association on American Indians Affairs (AAIA), the NCAI two years later arranged for tribal representatives from all across the country to come to the nation's capital to confront Chapman and Myer over the new policies.²⁶ The meeting had little effect on the new policy course.

Instead of cutting federal services, D'Arcy McNickle, charter member and chairman of the Indian Tribal Relations Committee of the NCAI, outlined a ten-point plan in 1951 to attack Indian poverty.

McNickle roughly based his proposal on Truman's Point Four program. In his State of the Union Address two years earlier Truman had introduced an agenda of U.S. foreign aid aimed at improving the quality of life for undeveloped nations. Like the Marshall Plan, Truman's Point Four program combined humanitarian, anticommunist, and economic objectives. McNickle's self-help proposal called for a domestic Point Four program with greater federal appropriations for Indian reservations. President Napoleon B. Johnson called McNickle's plan the Indian equivalent of the successful "Marshall Plan" that provided aid in the economic reconstruction of Western Europe following World War II.²⁷

The termination threat changed the political structure of the NCAI in several important ways. Concern over termination prompted the organization to orient itself more along tribal lines, with less emphasis to be placed on small groups, organizations, and individuals within the tribes. In the struggling infant years of the NCAI, the organization had extended voting membership to urban groups, bands, and chapter affiliates within tribes. By the mid-1950s some urban Indians were attempting to undermine tribal governments. Delegates in 1955 changed the original constitution to limit group membership to federally recognized tribes. New measures accorded tribes more voting power than individuals. Amendments allowed tribes to elect more than one voting delegate, with the number to be based upon the size of the tribe. Delegates also modified participation in the executive council to include all member tribes with their representatives selected by the tribal councils. As with the original constitution, other Indians were still encouraged to join as individuals.²⁸

Serious factional disputes within the NCAI concerning forced termination also led to an important change in leadership. Dan Madrano, Frank George, and Sioux attorney Ramon Roubideaux led a small faction that supported voluntary or involuntary termination. Opposition to forced withdrawal by most of the NCAI membership and a lack of the NCAI funds to pay his salary led George to resign before his term was finished. George, who served as a tireless volunteer in the earliest years of the NCAI, however, later claimed that he had

resigned under duress. The NCAI leaders at first worried that George's departure would damage the organization's reputation and alienate the Indians of the Northwest at a critical time. Some NCAI officers even worried that Madrano, George, and Roubideaux might try to disrupt the 1953 convention. Neither concern was warranted. To protect the integrity of the organization from possible internal divisions, President W. W. Short considered expelling the former officers.²⁹ In order to diffuse the situation and officially to end their working relationship with the executive director, the executive council scraped together enough money to pay George part of his back salary. Satisfied with the offer, George departed the scene.³⁰

Previously mentioned Helen Louise (White) Peterson, a Northern Cheyenne but enrolled Oglala Sioux, with the given Indian name of "Wa-Cinn-Ya-Win-Pi-Mi" (meaning "a woman to trust and depend on"), replaced George as executive director in 1953. Elizabeth Roe Cloud, activist and wife of noted Winnebago educator Henry Roe Cloud, accompanied Peterson to Washington to help her in the transition. Together they traveled to reservations throughout Indian country in Roe Cloud's late-model Chevy to make contacts and establish Indian needs. Peterson also received tremendous support from Ruth Bronson. She called on her almost daily, and Bronson was willing to share her time and talents with the new director.

Coached at an early age by her grandmother to value Indian land and to be a role model for the Indian community, Peterson proved to be the right leader in a time of crisis. Active in the NCAI since 1948, Peterson was also an adviser to the United States delegation to the earlier noted second American Indian Conference in Cuzco, Peru, in 1949. Her experience in assisting city planners with minority programs in Denver, Colorado, and Rapid City, South Dakota, in the immediate postwar period had paid important dividends for the NCAI. Peterson was to use her diverse background to assert Indian rights, equality, ethnic identity, and to slow the assimilationist movement.³¹

By 1954 the perils of forced termination became apparent to Native Americans on the reservations, and the new policy marked a power shift in Indian leadership within the NCAI. The shift was away

from the Great Plains and the Southwest, particularly Oklahoma tribes, toward the tribes of the Northwest. Tribal delegations often worried about the influence of off-reservation Indians looking to benefit from per capita payouts. Reservation Indians were concerned about losing land, water, hunting, and fishing rights. At Phoenix in 1953, W. W. Short replaced Napoleon B. Johnson, who led the NCAI from its inception. While Short served as a president of the NCAI for only one year, he filled an important role during a time of transition. A successful Oklahoma businessman, Short provided the NCAI with financial assistance but more importantly reached out to the reservation community at a critical time.³²

More significant changes in NCAI leadership came in 1954 with the election of Joseph Garry, a forty-four-year-old, full-blood Coeur d'Alene from Idaho. Garry's heavy recruitment of the Northwest tribes provided the NCAI with support from a strong tribal base during critical years. The great-great-grandson of the noted chief Spokane Garry, the new president of the NCAI was a veteran of both World War II and the Korean War. Before his election to the presidency of the NCAI, he served four years on the organization's executive council. Having earlier served as president of the Affiliated Tribes of the Northwest, Garry was elected to the Idaho state legislature in 1956 and 1958. Handsome, amiable, and articulate, Indian voters named him "Outstanding Indian in North America" in 1957 and 1959. He brought to NCAI a strong dedication to preserving the special relationship between the federal government and the tribes, Indian ethnicity and sovereignty, Indian civil rights, and the reservation community. Perhaps most importantly, he was committed to protecting Indians' land base, resources, and self-determination. In the end, Peterson's and Garry's noncompulsory view of termination won out over the ideas expressed by Roubideaux and Madrano.³³

House Concurrent Resolution 108 (H.C.R. 108) committed the federal government to coercive termination. H.C.R. 108, approved on August 1, 1953, announced that Indians "should be subject to the same laws and entitled to the same privileges, rights, and responsibilities" as all American citizens. The resolution further recommended the im-

mediate removal of federal guardianship and supervision over selected tribes. To this end, Congress proposed the immediate termination of federal services and supervision for the individual tribes of California, Florida, and Texas. Tribes targeted for termination included the Flatheads of Montana, Klamaths of Oregon, Menominees of Wisconsin, Potawatomis of Kansas and Nebraska, and the Chippewas of North Dakota. The resolution directed the secretary of interior to recommend specific legislation to end federal responsibility by January 1, 1954. The new legislation represented an extremely dangerous situation to the tribes that did not want it. For the tribes targeted for termination, according to NCAI leadership, "it would end federal services without insuring they would be provided by the states; cut off tribal funds; liquidate tribal property; abolish federal protection of Indian land and potentially lead to loss of Indian trust property."³⁴

On August 15, 1953, Public Law 280 (P.L. 280), a companion act, extended state laws over selected Indian reservations. The act permitted California, Minnesota, Nebraska, Oregon, and Wisconsin to exercise both criminal and civil jurisdiction over reservations. It also contained provisions to allow other states unilaterally to assume jurisdiction over Indian reservations.³⁵

On the heels of H.C.R. 108 and P.L. 280, the December 1953 NCAI annual convention at Phoenix took on particular significance. Convention planners appropriately titled the three-day meeting the "Crisis in Indian Affairs." "We [Indians] are at the crossroads of destiny," Clarence Wesley, chairman of the San Carlos Reservation, proclaimed. "The path we choose today," he continued, "is the road of tomorrow from which there is no turning." The stand of the NCAI against the coercive termination policy generated widespread support from the tribal representatives. In a distinctive symbolic gesture Allie Reynolds, a member of the Creek tribe and well-known pitcher for the New York Yankees, showed his support for the NCAI during this critical time. Planners had scheduled for Reynolds to address the Phoenix delegates. At the last minute, however, other commitments prevented him from attending. Instead, he sent two hundred autographed baseballs to help promote good attendance at the meetings.³⁶

During the conference the NCAI stood firm in its opposition to forced termination. In a speech read to the delegates, Commissioner Emmons, who was unable to attend the conference, asked them to put aside past differences between the BIA and the NCAI and unite in creating new policy. Cooperation to Emmons meant unconditional, passive acceptance of the new shift in policy. Opposed to forced and coercive termination, the NCAI urged complete consultation and Indian consent about future policy changes. In essence, the NCAI appealed to a fundamental democratic principle, securing the consent of the governed. As the sweeping nature of the termination threat became imminent, the NCAI braced for the long legal and legislative battle ahead. Fearing Congress might legislate Indians out of existence, D'Arcy McNickle warned that the "battle for civil rights may not yet be won, but the battle for the right to be culturally different has not even started."³⁷

Congressional deliberations on the termination bills for individual tribes began on February 15, 1954, when the Senate and House Subcommittees on Indian Affairs opened joint hearings. Pressured by a ridiculous deadline of January 1, 1954, Watkins pushed for draft termination bills even before Congress, state officials, and Indian tribes had had enough time to evaluate properly the benefits and consequences of the measures. Even some westerners like John B. Hart, executive director of the North Dakota Indian Affairs Commission, had reservations about the speed in which the policy was being administered. Hart preferred to delay termination until the federal government worked out the logistics with state, county, and local agencies and, more importantly, supplied funds to such agencies. The twelve bills under discussion included Indian tribes of Florida, Texas, New York, and California, as well as the Klamath, Menominee, Flathead, Makah, Sac and Fox, Kickapoo, Potawatomi of Kansas, and Turtle Mountain Chippewa. Although Watkins usually presided over the hastily organized hearings, E. Y. Berry, chairman of the House Subcommittee, stood in. Like Watkins, Representative Berry of South Dakota was a conservative Republican. As a proassimilationist, Berry had denounced the Indian New Deal as retrogressive.³⁸ Other ter-

minationists, such as Representatives Wesley D'Ewart of Montana, William Harrison of Wyoming, and A. L. Miller of Nebraska, occasionally attended some hearings but did not take an active role.

Dominating the proceedings, Watkins usually bullied the witnesses by eliciting only the assimilationist responses he was interested in hearing; he even interrupted testimony to assert his own beliefs. Watkins denounced the validity of past treaties and the federal trust responsibilities, and he condemned the failures of the reservation system. As the hearing advanced, Watkins and Berry were not following the previously mentioned "Zimmerman model" for phased termination. The basis for their selection process remains unclear even today. Following the hearings, Congress approved six termination acts during the 1954 session. These included the Menominees, the Klamaths, the numerous bands and tribes of western Oregon, the Alabama-Coushattas of Texas, and the Mixed-blood Utes and southern Paiutes of Utah.³⁹

In response to the termination acts, the NCAI immediately went on the offensive to prevent other tribes from being terminated without their consent. The NCAI directed their assault with care, trying to wield influence without bringing the roof down on BIA programs. On February 25–28, 1954, in the midst of the joint hearings, the NCAI called an emergency conference at the Raleigh Hotel in Washington DC. The organization obviously selected the dates and location of the conference to coincide with a break in the termination hearings. The intermission ensured that many Native Americans would be available to attend the conference.⁴⁰ Representing more than one-third of the nation's Indian population, delegates from forty-three tribes and twenty-one states and the territory of Alaska were present at the emergency conference. Employees of the federal government, congressional representatives, and lawyers also attended the conference as nonvoting delegates.

Planning the conference with less than three weeks' notice, the NCAI received the generous support of nineteen church or reform organizations. These included the ACLU, the American Friends Service Committee, the American Legion, the American Missionary So-

ciety, the AAIA, the Boy Scouts of America, the Daughters of the American Revolution, the Friends Committee on National Legislation, the General Federation of Women's Clubs, the Indian Rights Association, the Institute of Ethnic Affairs, the Japanese-American Citizens' League, the League for Catholic Indian Missions, the Montana Farmers Union, the National Association of Intergroup Relations, the National Council of Churches, the New York Yearly Meeting of Friends, the North Dakota Indian Affairs Commission, and the United Church Women. Commissioner Emmons not only attended the conference but approved the use of tribal funds for delegates to attend. Using their influence in Indian circles, McNickle and Bronson raised the necessary donations for the conference. A generous grant from an anonymous donor also helped the NCAI meet its expenses which totaled nearly fourteen hundred dollars. Noted attorney Theodore Haas also donated his time and legal talents to the conference.⁴¹

The primary objectives of the conference were to unify Indian support against termination and to provide a forum for public relations. The NCAI admirably accomplished both goals. The NCAI used information from the conference for political persuasion. To achieve its objectives the NCAI hired Annabelle Price, a professional public relations specialist, to organize the media campaign. Price, with Jim Hayes, a member of the American Friends Service Committee, ensured that more than four thousand newspapers and numerous local, regional, and national radio and television stations in the United States and Alaska covered the event. Coverage even included the British Broadcasting Corporation. By most accounts and standards the conference was an enormous public relations victory. Joined by many U.S. reform organizations in its opposition to termination, the NCAI also received moral support from groups in Europe.⁴²

The emergency conference educated the public and elected officials concerning Indians' opposition to the changes in federal policy. Perhaps more importantly, however, it functioned to unify the NCAI. When the conference started, some NCAI members still had questions about termination. Proponents of termination had attempted to

rush the new policy through Congress before most Native Americans understood its implications. The delegates at the conference listened to legal specialists and tribal and federal officials discuss the ramifications of the pending termination bills. By the time the deliberations concluded, the membership was "100%" opposed to the new measures.⁴³

Insisting that forced termination laws violated treaty privileges, the conference delegates adopted a "Declaration of Indian Rights," which called for a continuation of federal guardianship and for the rights and benefits of citizenship. Reservations, the representatives proclaimed, "do not imprison us. They are ancestral homelands, retained by us for our personal use and enjoyment. We feel we must assert our right to maintain ownership in our own way, and to terminate it only by our consent." The NCAI agreed to help tribes, such as the Menominees who consented to the new policy, prepare for immediate termination.⁴⁴

Immediately following the conclusion of the conference, one hundred Indian delegates who remained in Washington overwhelmed Senator Watkins by attempting to attend the Senate Subcommittee termination hearings involving the Salish and Kooteni tribes of the Flathead Reservation in Montana. The senator halted the hearings in the insular affairs committee room and moved them to the more spacious Senate caucus room. The 1954 termination bills were only one of the legislative problems the officers of the NCAI and the Indian people faced. Heirship and competency bills also demanded immediate attention. During 1954 the NCAI also strongly supported the transfer of health services from the BIA to the Public Health Service, because the organization believed the shift would improve health care.⁴⁵

Early in 1954 the NCAI scored several important victories in the battle against forced termination. When Representative Wesley D'Ewart of Montana introduced a "competency" bill in 1953-54, which was intended to lessen Indian land-title restrictions and to force assimilation, the NCAI blocked the measure. The bill called for the automatic fee patenting of allotments when tribal members reached adulthood. Besides providing private interests easier access

to buy Indian lands, the proposal represented a form of termination by decree. As the bill neared passage in early 1954, heavy lobbying by the NCAI forced its withdrawal. "Hard work and \$425 worth of telephone calls to tribal chairmen to get them to send wires to their Congressmen," Peterson recalled excitedly, "did the trick and it happened right before our eyes!"⁴⁶

The NCAI also modified the first termination bill. In early 1954 Watkins began the hearings with six small bands of Paiutes and Shoshones in his home state of Utah. Since the bands had been too poor to send delegates to the NCAI emergency conference, the NCAI sent a representative to meet with them to learn their wishes regarding termination. While four of the bands showed little resistance to termination, two of the bands, the Skull Valley and Washakie, strongly opposed it. Following the meeting with the Indian communities, the NCAI asked Watkins' subcommittee to delete the two bands from the Utah bill. Before favorably reporting the proposal to the full Congress, the subcommittee dropped the two bands from the bill. Not only did Congress exclude the two bands from the final measure, but it also canceled past debts the two bands owed the federal government. The legislation passed just as the NCAI had requested.⁴⁷

After the two successes, the NCAI proposed in November 1954 at the annual convention in Omaha, Nebraska, a "Point Nine" program as an alternative to the forced termination legislation. The NCAI introduced the plan to Congress as the Point IX Program, modeled after the technical assistance program of the same name for underdeveloped countries. The plan, similar to the one proposed by McNickle in 1951, aimed at restoring lands to tribal ownership, protecting and developing reservation resources, providing occupational training, and establishing a revolving credit fund to help Indian communities and businesses become more self-sufficient. Leaders intended the long-term program to provide the Native Americans with a gradual transition into mainstream society and ultimately to make federal responsibility unnecessary. Indeed, the suggestion of the NCAI represented a well-articulated counterproposal to federal Indian policy. Officials at the Department of Interior, however, opposed the

proposal because it implied that the government had previously failed to provide such services, and it limited technical and economic assistance to Indians to the amount accorded foreign governments.⁴⁸

Persistent efforts of the NCAI, however, continued to bear important fruit. The unified stand of the NCAI in 1954, with assistance from other reform groups, had generated adequate political pressure to slow, or sometimes even stop, the termination movement until more important shifts had occurred in Congress. The NCAI halted termination of the Turtle Mountain Chippewa, Florida Seminole, Flathead, and Colville Tribes. Even Helen Peterson expressed surprise at the success of the NCAI movement to slow and alter federal policy. Several members of the Senate and House Subcommittees on Indian Affairs changed their positions on the termination bills following the NCAI emergency conference.⁴⁹ The NCAI campaign had also served to alert many state officials to the expensive costs associated with turning federal services to Indians over to the individual states.

In 1955 the Democrats gained control of Congress, and in 1957 they increased their majority. Liberal Democrats from the West took control of the Interior and Insular Affairs Committees. Representative Lee Metcalf, Senators James Murray and Mike Mansfield of Montana, and Joseph O'Mahoney of Wyoming lent valuable assistance to the NCAI and Indian groups opposed to termination.⁵⁰

The anxiety of termination and the legal battle against it increased participation of Indians voting in general elections. The NCAI was largely responsible for the increased political awareness and in 1956 sponsored a program entitled "Register, Inform Yourself and Vote," which interpreted issues, provided candidate information, and explained the mechanics of voting to its members. Politicians from western states recognized the effectiveness of the elevated Indian political activity on legislation in their states. Regional legislators quickly learned that the best way to secure Indian votes was to oppose federal action that did not have Indian consent. In 1957 the respected American Heritage Foundation acknowledged the NCAI for efforts on behalf of voting awareness by presenting the organization an award for "outstanding public service."⁵¹

Changes in the Eisenhower administration also slowed termination. Secretary of Interior Douglas McKay resigned in 1956 to run for the Senate. Eisenhower named former Nebraska senator and White House staff member Fred S. Seaton to the position. Seaton, a moderate conservative Republican, departed from the strong commitment to termination legislation. Seaton's position reflected the influence of the NCAI. With respect to withdrawal legislation, Secretary Seaton announced that termination would proceed cautiously and only with the consent of the tribe involved. The NCAI officers hailed the new position and offered their cooperation with the new shift policy. Forced termination of the previous generation was now dead. In the late 1960s the policy of the federal government shifted from termination to self-determination and direct assistance to the reservations.⁵²

The experiences of the Klamaths provide insight into the termination process and the consequences of forced assimilation. The Klamath Reservation remained federally recognized until 1954 when Congress passed P.L. 587, otherwise known as the Klamath Termination Act. P.L. 587 eventually ended the federal government's administrative responsibilities to the tribe and transferred the responsibilities to state and local agencies. The act also provided for relinquishment of federal trust over Klamath land and the distribution of tribal income and assets on a per-capita basis.⁵³

Several advocates had suggested a liquidation of Klamath assets. Rich timber holdings had long made the tribe a target for termination. The Klamath termination movement, however, gained momentum after 1945 largely because of the leadership of tribal politician Wade Crawford. Crawford, son of a tribal judge, and his wife, Ida, had been active in Klamath politics for several decades. In 1933 John Collier appointed him as reservation superintendent but fired him four years later because of incompetence and poor relations between the Klamaths and the BIA. Crawford, on the other hand, charged that Collier had communist sympathies, tolerated fraud on the reservation, and tried to force the tribe to adopt the IRA. By 1945 Crawford and a small minority of off-reservation Klamaths promoted termina-

tion as a means to gain access to a per-capita distribution of tribal assets. Crawford's insistence that the Klamaths were ready for termination insured immediate action. Crawford and his followers were vehemently opposed by veteran tribal leaders Boyd J. Jackson, Dibbon Cook, Jesse L. Kirk Sr., and Seldon E. Kirk. In 1947 these antitermination forces requested that representatives of the NCAI attend hearings in Oregon to liquidate the reservation. Financial shortages prevented the NCAI from attending the discussions.⁵⁴

Congressional supporters of the Klamath Termination Act hoped the law would appease both tribal factions. The law allowed tribal members the option either to withdraw from the tribe and receive a pro rata share of tribal assets or to remain with the tribe and have their claims to the unsold portion of the reservation placed under private trust. Further, the law provided a four-year transition period lasting until August 13, 1958. Because the Klamaths were not a member tribe, the NCAI was hesitant to pass resolutions for the Klamaths. At the request of the antitermination faction, however, the NCAI in 1956 opposed P.L. 587 and recommended its repeal. Although not voting members of the NCAI, the Klamaths usually sent representatives to every meeting of the organization. In June 1957, at the suggestion of Helen Peterson, NBC-TV aired a special on the termination of the Klamaths.⁵⁵

Carrying out P.L. 587 proved difficult. Efforts by various conservation and lumber interests produced two amendments to the original termination law. The greater revision came in 1958 as Congress agreed to several key changes. New provisions authorized the sale of timber tracts to private buyers through competitive bids equal to or above the market value. Politicos required purchasers to follow sustained yield and cutting practices and other conservation measures. The federal government, through Forest Service officials, would purchase unsold tracts to create a national forest (Winema National Forest). The federal government would purchase the Klamath Marsh and manage it as a wildlife refuge. As a result of the amendments, bureaucrats postponed final termination until April 1, 1961.⁵⁶

Elections in 1958 effectively ended the Klamath Reservation. In

that year, 1,659 Klamaths (77 percent) voted to withdraw from the tribe and receive a per capita payment of \$43,000. To pay these individuals their share of the estate, the government sold 717,000 acres of the 862,000-acre reservation. The 474 holdouts (23 percent) continued their tribal status, hoping to survive economically on the remaining 145,000 acres. In 1974, however, these last holdouts voted to sell the remainder of the reservation for per capita shares of \$173,000 for each member. Klamath termination proved costly to both the tribe and the federal government. One economist estimates that the federal government spent nearly \$72.5 million to terminate a tribe that prior to termination had cost the BIA no more than \$200,000 annually.⁵⁷

The relocation of Indians from reservations to urban situations produced mixed results. Conservatives contended that industrial jobs loosed Indians from BIA control, provided them access to better education and other social services, and offered a means for ending Indian poverty. Many participants briefly took urban jobs and then returned to the reservation. Critics of the program charged that relocation failed to improve Indians' living standards and exposed them to slum housing, alcoholism, and other social problems.⁵⁸ Inadequate relocation services and training often produced poor results. Relocation was, in short, another controversial attempt to support termination and to force Indian assimilation. While relocation did yield successful adjustment and increased prosperity for some participants, the long-range effects of the program have remained unclear. The long-term cultural effects of relocation are unclear as well.

Throughout the termination period the NCAI depended on the support of church and civic groups, various reform organizations, and the media. The NCAI in 1958 nominated Robert McCormick, a television reporter with NBC, for a Peabody Award for his hour-long report in the *Kaleidoscope Series*: "The American Stranger." The NBC production took a close-up look at conditions on the Menominee, Blackfeet, and Flathead Reservations. Strongly critical of federal policy and the BIA, the show proved a valuable tool to create public interest and awareness about the Indians' situation.⁵⁹

The Association of American Indian Affairs (AAIA) and the NCAI, sometimes cautious allies, learned to work together during the termination period to advance Indian interests. During the early 1950s, Alexander Lesser, executive director of the AAIA from 1947 to 1955, vehemently opposed any cooperation with the NCAI. Oliver La Farge, president of the AAIA, however, demanded teamwork, not rivalry, between the two groups. Lesser's resignation in 1955 and his replacement by La Verne Madigan paved the way for better relations between the AAIA and the NCAI. Committed to the need for a national Indian organization to serve as a single voice for the Indian community, Madigan fostered cooperation with the NCAI. Having cooperated during the emergency conference in 1954, the AAIA and the NCAI in May 1957 arranged a one-day conference for NCAI members and other reform organizations to discuss legal concerns and federal policy. In 1959 Roger N. Baldwin, founder of the ACLU, trustee of the Robert Marshall Civil Liberties Trust (RMCLT), and an NCAI benefactor, suggested a merger between the AAIA and the NCAI. He intended the union to keep the two organizations from working at cross-purposes and to increase the financial stability of both groups. Under the proposal, the RMCLT would provide financial support for five years until the alliance became self-supporting. After careful consideration of the proposal, the NCAI executive council turned down the recommendation.⁶⁰

Several developments during the period, in addition to the termination struggle, proved that the NCAI was sincere in its resolve to improve the Indians' status. In March 1958 the NCAI sent a delegation to Puerto Rico to study "Operation Bootstrap." Puerto Rico had begun the program in 1948 to industrialize and diversify the island's economy through financial incentives such as tax encouragements. In a relatively short time the Puerto Rican government-sponsored program raised the island's standard of living and made it self-sufficient without any costs to U.S. taxpayers. NCAI hoped that a similar program would also produce the same results for Indians. Peterson and Garry led the twenty-four-member delegation to Puerto Rico. After meeting with Puerto Rican governor Louis Muñoz Marin and

other island leaders, the group toured health centers, educational and vocational facilities, residential areas, industrial plants, and community improvement projects. The AAIA, the NCAI Fund, the Phelps-Stokes Fund, the Office of the Commonwealth of Puerto Rico, and some tribal councils contributed financial and staff support for the trip. Impressed by the success of Puerto Rico, the NCAI hoped Congress would approve an "Operation Moccasin" program.⁶¹ With the backing of Puerto Rican leaders, Representative E. Y. Berry proposed legislation in 1959 to industrialize reservations patterned on Puerto Rico's "Operation Bootstrap." Legislators held hearings in the mid-1960s, but the measure died.⁶²

With support and cooperation from the NCAI, in 1950 D'Arcy McNickle also created an adjunct organization called the American Indian Development (AID) to plan Indian community revitalization. Through summer workshops, McNickle hoped to encourage tribal leaders to make their communities economically more self-sufficient. Participants shared common experiences, ideas, and ethnic solidarity. McNickle's health education project at Crownpoint, New Mexico, in 1953-55 was a spinoff of the successes of AID. Paralleling the development of AID was a series of summer workshops for Indian youth in 1955 conducted by the Anthropology Department at the University of Chicago. In 1959 AID took over control of the workshops. Always a supporter of educational activities for Indian youth, the NCAI welcomed and promoted the growth of the workshops. The success of the workshops held by AID shaped the evolution of the Indian youth movements of the 1960s. By providing a forum to discuss Indian affairs, these summer workshops led individuals such as Clyde Warrior, Ponca orator and leader of the National Indian Youth Council (NIYC), to become activists.⁶³

In the late 1960s and early 1970s, participants in these youth conferences and other Indian activists highly criticized the termination policy. Termination, not implemented with the care its earlier promoters envisioned and applied with haste and confusion, failed to deliver its promises. Termination did not end the vast outlays of federal funds. Nationally, the policy failed to simplify the administration

of Indian affairs or reduce federal responsibilities in relation to the Indians. Instead, the policy left many Indians burdened with inadequate local services and perplexed by new state regulations. In almost all cases, termination produced land losses, poverty, unemployment, and bitter resentment. In the end, policymakers only terminated about 3 percent of the Indian population and withdrew federal trust status from the same percentage of Indian lands. Though the coercive termination of Watkins and his allies was relatively short-lived, the fear of termination plagued all Indians. "Termination," as historian Donald Fixico aptly wrote, threatened to be "an all-inclusive destroyer of Indian life-styles."⁶⁴

In the mid-1950s, flexing its newfound political muscles, the NCAI had made an important stand in the nation's capital. Native Americans had for the first time in their history politically expressed themselves effectively on a national level in a unified voice that echoed throughout the chambers of Congress and elsewhere. Despite competition with the McCarthy hearings in 1954, Indian leaders had successfully made their wishes known. From this time forward, Indian people demanded a larger role in the formulation of Indian policy. In the process Native Americans learned two valuable lessons that would serve them well in the decades to come: the power of the vote and of the media. During the termination era, the NCAI used the classic political weapon of the citizenry in a democracy: the ballot. The vote on local and state levels became an important resource for pursuing Indian goals. The NCAI also showed itself adept at using the media to communicate broad appeals for support. In the turbulent 1960s and 1970s and beyond, Indians took advantage of these resources to force their concerns into the larger public arena. In particular, by recalling past abuses they were using tactics aimed at arousing sympathy.

Perhaps the Indian protests in the mid- to late 1950s were not as dramatic as the black confrontations over civil rights during the late 1950s and early 1960s. While some African Americans may have preferred complete assimilation, most Native Americans did not. Passage of the coercive termination bills threatened to complete the In-

dian assimilation that had started hundreds of years earlier. At stake was not only an end to statutory obligations held by the federal government, but special federal protection negotiated in past treaty agreements and the right to a separate ethnic identity. In the end, the persistent desire to preserve culture and identity proved to be the most powerful weapon of the NCAI.