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CREATION OF INDIAN CLAIMS COMMISSION

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-NINTH CONGRESS

FIRST SESSION

ON

H. R. 1198 and H. R. 1341

BILLS TO CREATE AN INDIAN CLAIMS COMMISSION, TO PROVIDE FOR THE POWERS, DUTIES AND FUNCTIONS THEREOF, AND FOR OTHER PURPOSES

MARCH 2, 3, AND 28, JUNE 11 AND 14, 1945

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INDEX

Statement of—	Page
Lynn Adams	8
Paul B. Palmer	10
Dan M. Madrano	15
W. W. Short	15
Hon. Earl Welch	19
Ben Dwight	25
Chief Roly Canard	28
Paul M. Neibell	29
Floyd E. Maytubby	39
Hon. Thomas P. Gore	42
Eugene Fisher	50
Joseph C. McCaskill	57
Felix S. Cohen, Esq	69
Ernest L. Wilkinson, Esq	79
Felix S. Cohen, Esq	112
Felix S. Cohen, Esq. (continued)	140

HP019261

of the decision law, perhaps, in the Court of Claims, with a possibility of further review by certiorari.

Chairman JACKSON. You are suggesting an intermediate review?

(Discussion off the record.)

Mr. ROCKWELL. May I suggest, when you are going over this bill considering the language, that you consider the language on page 2, lines 16 to 20, where it provides:

> No claim shall be excluded from consideration on the ground (1) that it has become barred by law or any rule of law, or that it is barred by any statute of limitation or by laches; (2) that it has heretofore been presented to Congress: * * *

Chairman JACKSON. What bill is that?

Mr. ROCKWELL. It is the Robertson bill. In other words, it occurs to me that would take in any claim, not matter how remote. It might be 100 years old—it could be brought to this Commission. I wondered about that.

Mr. SCHWABE. The purpose of this bill is to get these cases out of the way. Most of them are old.

Chairman JACKSON. I think you will find they date back to 1850 to 1860, which was the height of that activity.

Mr. ROCKWELL. Might I say about the Ute Indians in my country, the country is now all settled and there is an argument on between the whites and the Indians as to whether the Indians did get enough for their lands.

Mr. SCHWABE. This does not affect the title to the land, but only relates to liquidated damages.

Chairman JACKSON. It would not affect the titles of any lands. It purely resolves itself to the question of liquidated damages.

Mr. ROCKWELL. It might save the United States a lot of money. The United States has taken over national forests which were built on new Indian land that they agreed to pay them for. That is to be settled now.

Chairman JACKSON. Those claims are still pending. They come up every year. If they have a legal right to liquidated damages, the purpose of this bill is to try to solve it once and for all. What we ordinarily do is get about 10 bills up in a year and only 1 passes so that the bills have been accumulating.

Mr. McCASKILL. Just at random, I pulled these hearings out of my file. They are all on jurisdictional bills before committees of Congress in recent years.

Chairman JACKSON. And I would like to point out, Mr. Rockwell, that the machinery would be set up under Congress; and, of course, it would be up to Congress to appropriate the money.

Mr. FERNANDEZ. That is why I think there should be no appeal to the courts.

Chairman JACKSON. I think you have merit in that suggestion.

If there is no further testimony at this time, we will stand adjourned, subject to the call of the Chair, and if the Department officials will get something worked out in a very informal way and send it in to the committee, why we will distribute it among the members for consideration at the next meeting; and it may be understood that what is furnished is purely information and not official from the Department, so that you will have an opportunity to reach a decision on what you want to propose.

The meeting stands adjourned, subject to the call of the Chair.

(Thereupon the meeting adjourned, subject to the call of the Chair.)

CREATION OF INDIAN CLAIMS COMMISSION

MONDAY, JUNE 11, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The Committee on Indian Affairs met in the committee room, 246 Old House Office Building, at 10:30 a. m., Hon. John R. Murdock (acting chairman) presiding.

Other members present were: Hon. Antonio M. Fernandez, Hon. William G. Stigler, Hon. William J. Gallagher, Hon. Berkeley L. Bunker, Hon. Karl E. Mundt, Hon. Wat Arnold, Hon. Charles R. Robertson, and Hon. George B. Schwabe.

Mr. MURDOCK. The committee will come to order. We will proceed with our hearings.

The session this morning has been called to resume hearings on two bills almost identical, H. R. 1198, introduced by Mr. Stigler, and H. R. 1341, introduced by Mr. Robertson.

We have Mr. Wilkinson this morning as a witness and also representatives from the Department of the Interior.

Mr. Wilkinson has another engagement this morning and perhaps we better call on him first.

For the record, Mr. Wilkinson, will you state your full name and official position?

STATEMENT OF ERNEST L. WILKINSON, ESQ., REPRESENTING VARIOUS INDIAN TRIBES

Mr. WILKINSON. Mr. Chairman and gentlemen of the committee, I appreciate this opportunity to come before this committee on this Indian Claims Commission bill. I probably better identify myself so that the committee will show my interest in the situation.

My name is Ernest L. Wilkinson. I come originally from the State of Utah, although at the present time I am practicing law in Washington, D. C.

I represent directly the following tribes: The Klamath Indians in Oregon; the Blackfeet Indians in Montana; the Northwest Shoshone Indians in Idaho; the Bannock Indians in Idaho; the Western Shoshone Indians in Nevada; the Paiute Indians in Nevada and California; the Ute Indians in Utah and Colorado; and I have recently been requested, although I have not yet signed any contract to represent the Alaska Indians of Alaska.

I have been associated with the firm of Dwight, Harris, Kogel & Caskey in representing the Menominee Indians of Wisconsin.

In preparation for this hearing this morning I have read considerable of the testimony given before this committee. I regret I was

HP019262

unable to be [illegible]ent when that testimony was given, but I thought I could help a[illegible]sist the committee more if I read the testimony and saw the suggestions that had already been made.

My understanding is, from the expressions in the testimony that has been given, that the committee itself is probably pretty much in favor of the Indian Claims Commission bill and I shall not, therefore, burden the committee with a long recital of the wrongs done to the American Indians.

I testified some 5 years ago—and it now turns out 5 years is a short period of time in Indian litigation—before a subcommittee of the Judiciary Committee of the Senate. It was on a bill which was proposed at that time by the Department of Justice to limit the jurisdiction of the Court of Claims on Indian cases; and at that time I made a detailed summary of all cases that have been presented by Indian tribes in the Court of Claims.

Senator Gore, in his testimony before this committee, I note, refers in passing only generally to some of the conclusions that this study revealed. I shall not take the time of the committee now to repeat that testimony. It covers some 60 pages in reports, which is available for this committee, and some of it is not germane to this particular bill you are now considering.

However, in order to economize the time of the committee and add anything that would be pertinent to the legislation now before you, I should like to ask permission, if I may, just to extract a part of that testimony and submit it for the record in this case, so as not to take all the time here?

Mr. MURDOCK. Without objection it will be inserted in the record at the conclusion of Mr. Wilkinson's testimony.

Mr. WILKINSON. May I just say in summary that while it has been represented to the Congress on many, many occasions by those defending Indian claims for the Government that cases pending before the Court of Claims would result in hundreds of millions of dollars being entered by way of judgment against the United States, the fact is that up to the present time the total amount of judgments awarded by the Court of Claims in all Indian claims does not exceed $35,000,000.

It is true that there have been enormous amounts claimed. That arises from our theory of law that you generally have to state in your petition everything that you hope, even if it is the most forlorn hope, and some attorneys have stated enormous sums in their petitions. I recall one petition filed in the Court of Claims on behalf of the Sioux Indians for gold in the Black Hills, in which together with interest and everything the claim amounted to practically $1,000,000,000. Well, that claim has been disallowed, and as I say the fact is there has not been more than $35,000,000 awarded to all the Indians in the United States for all the lands that have been taken from them. That represents less than 1 percent of the amount that has been claimed in those suits.

Now, may I again return directly to the bills before the committee. I understand there are two bills, H. R. 1198 and H. R. 1341. Most of the testimony so far that I have read relates to H. R. 1198, by Mr. Stigler, and so I shall pretty largely center my testimony on that bill too, because that has been done before. Incidentally, I should say that both bills are pretty much the same, and what I have to say about the bill is not by any means criticism. I know Mr. Stigler has no particular pride of authorship and my suggestions will be in[illegible]rd to amendments which I think will strengthen the bill.

I favor very much the purpose of the bill and, after having looked over it, after 10 years' experience fighting these claims in the Court of Claims, I have some suggestions to offer.

I should say that in the Indian Claims Commission bill, that is, in regard to certain of that type of bills before the Indian Affairs Committee in the past I have not been very enthusiastic about some of them. My main reason for lack of enthusiasm was that some of them did not provide that the award made by an Indian Claims Commission should have any finality, but rather that after the Indian Claims Commission made any determination it merely referred that determination to Congress for such action as Congress saw fit. Well, now, I was opposed to that because it merely meant extending the machinery we had years longer. There is not much purpose for an Indian Claims Commission if it is going to make a report and then we have to come back to Congress and fight it all through again.

I think if we have an Indian Claims Commission it should be vested with such power as this bill provides. "When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment and shall be paid in like manner as are judgments of the Court of Claims"—which means that the Appropriations Committees generally in their usual course appropriate money for it. In fact I do not know of any award that has been made in the Court of Claims for Indian tribes which has not been appropriated by the Congress and as a matter of course.

I am somewhat more enthusiastic, however, about this bill because of a recent decision made by the United States Supreme Court which indicates the thinking of certain of the Justices of the Supreme Court on this question. I am referring to the case which this committee had printed and distributed, and I will comment on it in just a very few minutes.

I happened to be the attorney for the Northwestern Band of Indians at Shoshone, Idaho. The facts are these that in 1863 during the Civil War, when this country was obtaining a lot of its gold to finance its war from the gold mines of Idaho the United States needed very badly the right to go over Shoshone country, the land occupied by these Indians in order to get that gold. The United States also needed the right-of-way for the immigrants to the Pacific coast, to traverse Shoshone country and so they entered into a treaty with the Northwestern Shoshones by which they obtained the right to traverse Shoshone country. The treaty provided for immigrant stations along there and it contained a great many more privileges. The United States subsequent to the treaty took all the privileges which the Indians granted them and also by piecemeal methods eventually took all of their land, some 15,000,000 acres, without 1 cent of compensation. The compensation provided in the treaty for right-of-way was very meager and did not contemplate the land itself. When I say not 1 cent of compensation I mean for the land which was taken from them.

In 1928 the Congress passed the Jurisdictional Act—I was not the attorney then—which provided that these Indians had a right to go

in the Court of Claims and sue on any claim growing under or arising out of that treaty.

Congress drafted that language as that time thinking that since the United States entered into that treaty for the right-of-way over the land that certainly was a recognition of the Indian title and therefore the subsequent taking of that land was in derogation of that treaty.

Well, when it got before the United States Supreme Court after a long fight the court divided five ways. Three of the Justices in the opinion rendered by Mr. Justice Reed held that that treaty was not a recognition of Indian title. Two Justices in a concurring opinion by Mr. Justice Jackson—and I say it after consideration—in my opinion the most reactionary Indian opinion ever delivered by the Supreme Court said Indian treaties were not contracts and they considered it far-fetched to consider them contracts, that it was a matter for the Congress to take up and hear rather than for the United States Supreme Court.

Now that concurring opinion of Mr. Justice Jackson makes me think it is necessary for an Indians Claims Commission to consider these claims, certainly if two members of the Supreme Court have the feeling that Indian treaties should not be given the dignity of a contract. He went on and said, in effect, "These Indians did not have a conception of a property right" and, therefore, "since they did not have the conception of a property right they did not understand that they were having any of their title recognized by this treaty." The fact of the matter is that statement of Mr. Justice Jackson was made without any evidence to support it. The fact of the matter is by studying the evidence one understood that they had a very definite concept of the title to their land; but nevertheless that was the concurring opinion of two Justices.

Mr. Justice Douglas wrote a very vigorous dissent: "He who comes to my abode and bargains for free transit or a right-of-way across the land on which I live and which I proclaim to be my own certainly recognizes that I have a claim to it. That and more was done here by the Shoshone Indians." Mr. Justice Douglas was joined in that opinion by Mr. Justice Frankfurter and Mr. Justice Murphy.

Mr. Justice Murphy wrote another dissenting opinion in which he was joined by Mr. Justice Douglas and Mr. Justice Frankfurter.

Mr. Justice Roberts was of the view that the judgment should be reversed.

So the Court was divided five ways and when it was counted up we had lost 5 to 4. The result is that these Indians that I have represented in that case failed to get 1 cent for their land after it was all taken from them, even though the United States, contrary to the fiction engaged in by the Supreme Court, recognized their right to the land and bargained with them for a right-of-way.

I received this letter from one of the Indians (reading):

> * * * The Northwest Shoshone Indians sure missing lots of young men fighting for white rich people. We sure sorry our boys died for nothing. We have no land, no home, and no country. I am still roaming around among white people but not like our early life—no hunting, no fishing—just like wild coyotes. Get something to eat at nighttime.

And under the statement of the United States Supreme Court they have no compensation for it. That is where they are left unless they can get some relief through an Indian Claims Commission.

I should say we filed a petition for a rehearing which was denied in 48 hours Last week I filed a new petition to have it remanded for a finding of fact in the Court of Claims. I do not know what the outcome will be. I give this out of my experience to show the difficulties that are inherent in Indian litigation at the present time.

Just one further comment. I would like to read from Mr. Justice Jackson's concurring opinion:

> It is hard to see how any judicial decision under such a jurisdictional act can much advance solution of the problem of the Shoshones. Any judgment that we may render gives to these Indians neither their lands nor money. The jurisdictional act provides that the proceeds above attorneys' fees shall "be deposited in the Treasury of the United States to the credit of the Indians" at 4 percent interest and "shall be subject to appropriation by Congress only for the health, education, and industrial advancement of said Indians." The only cash payment is attorneys' fees.

And then he goes on, and the innuendo is that apparently that bill was drafted for the attorneys. That is Mr. Justice Jackson. The fact is, that that jurisdictional act contains the same provisions that Congress up to the present time has insisted upon going in nearly every jurisdictional act, namely, that after a judgment is obtained, then Congress shall decide how the money shall be appropriated for those Indians; and for Mr. Justice Jackson to say that is not cash in hand for these Indians is to admit that he is not acquainted with the procedure of Congress in appropriating that money, because in no case where a judgment has been entered has Congress ever failed to immediately appropriate the money for the Indians. I think it shows an utterly unrealistic approach to the problem, and yet there is contained the innuendo also it was entirely for the benefit of the attorneys.

I have been prosecuting cases in the Court of Claims for 10 years for different tribes. I think I probably have been about as successful as any other attorney. In five out of nine cases in that court it was held that the Indians were entitled to recover, but these cases are so burdensome and take so long a time, that after 10 years' work we have yet to collect the first cent for compensation for any of these cases. Not one of them has gone through to the point where we get compensation. Actually during that time I have had to dissolve partnerships because my partners were not willing to put time and financial investment necessary; and in the Northwestern Shoshone case, which we lost, I have over $12,000 of my own money invested in it in prosecuting the case, besides 7 years of work. We won't, of course, even get reimbursement for the $12,000.

I want this committee to know prosecuting Indian cases is not the dream that it is generally made out to be; because, except for having a rather good practice in other things, it would have been impossible for me to go on in prosecuting Indian cases.

Some of my partners who were not willing to devote the time necessary to Indian cases, do a lot of practice before the Commissioner of Internal Revenue, in which they are allowed contingent fees two, three, and even four times what are allowed in Indian cases. They have been able to make three to four times the amount of money I have been able to make because I got tied up with these cases, and I got tied up with these cases because I practiced in the office of

former Chief Justice Hughes in New York. One tribe came to him; and, as a public duty, he agreed to represent them. When he went to the Supreme Court I took over, and I have had more business from Indian tribes than I can handle.

Mr. FERNANDEZ. May I say a word? You should not lose hope like the original Indians; you will ultimately get it through their heirs or it will go to your heirs.

Mr. WILKINSON. Well, that is a good hope in futurum.

Mr. MURDOCK. I am glad you brought out that point, because the impression has been in the minds of many Members of Congress, and even myself, that probably one of the chief motives was the lawyer's fees. I think many Congressmen feel that way about it.

Mr. MUNDT. We have a former South Dakotan in this city who has been before our committee at various times, Mr. Case, who is a hard-working attorney, and he tells me just about the same as Mr. Wilkinson—that progress is very slow, and the expenses are heavy.

Mr. WILKINSON. That is right; the expenses are enormous. I do not want to create the impression I have been handling all these Indian claims. I have had several lawyers handling them, but I have to pay them cash compensation each year.

Whether I will ever get it back is a question. We won one suit for the Menominee, in Wisconsin, for $1,780,000. We had an agreement with the State land commissioners that land would be purchased for the Indians who wanted land rather than money. The commissioners of public lands of Wisconsin signed a written agreement to sell the land, less attorneys' fees. The Wisconsin Legislature and Senate last week passed an act conveying the land by legislative grant. Now that is out of the way, we will probably get our first fee, but I want to state, in proving the value of our services, we found that we had worked on that case over 2,200 different days for a period of 11 years, 15 different attorneys, and we employed experts. The Honorable Homer Cummings testified to the value of our services; and, incidentally, Mr. Cummings was Attorney General when we got the jurisdictional act, and he opposed the signing of that act, but on the question of our services he testified they were worth 25 percent, even though 10 percent is the limit awarded to attorneys.

Mr. ARNOLD. Are you criticizing one branch of the Government where claims are handled for the Indians?

Mr. WILKINSON. If I were an attorney employed in the Department of Justice to defend them, I would defend them; that is their duty.

Mr. ARNOLD. Along that line—are the claims that you are defending handled any different, or worse than, any other claims which come up for adjudication in the Court of Claims? Are all other claims treated the same way as your claims, or are you getting worse treatment than attorneys who handle cases of all kinds who appear before the Court of Claims?

Mr. WILKINSON. Well, now, on that question, I would be the last to say we are getting worse treatment. I have not made a study of it, and I would not want to say we are getting worse treatment.

Mr. ARNOLD. This committee or some other committee should go into it and see if they cannot get all claims handled more expeditiously in a business way.

Mr. WILKINSON. I want to be fair with the Court of Claims. The The Court of Claims is ready to proceed just as fast as we are; we never had any delays from the Court of Claims, but we had delays from the General Accounting Office.

Mr. ARNOLD. If we listen to you, we are picking out one Court of Claims case and giving it preferred treatment and letting the rest of the Court of Claims cases get along as best they can. You are asking us to expedite your claim and set up this machinery, and yet over in the House we are being criticized for creating new bureaus, and we get up and holler about creating new bureaus and the bureaucrats; and here you are coming in and wanting us to expedite the claims you are interested in and asking us to set up another bureau and increasing the taxes of the country in order to get your claims through.

Mr. WILKINSON. May I speak to that for just a minute?

I want to say to the Congressman I share in general his views about the unwisdom of having additional bureaus in the Government. I am concerned about that myself.

Mr. ARNOLD. Then let me interrupt you again, Mr. Wilkinson. You will agree with me, I think, that this new President that we have from Missouri, although he is a different political faith than I am, does not seem to like the idea of taking business out of the Department of the Interior and setting up a board to handle it.

Mr. WILKINSON. I think that is a fair statement in regard to the President; but at the present time it seems the Department of the Interior has charge of Indian affairs, and it has under it the Bureau of Indian Affairs, which has no authority of any kind to hear these claims. It has no authority even to go into court and prosecute these claims on behalf of the Indians.

Mr. ARNOLD. Why did the Department let things go on and get in this shape?

Mr. WILKINSON. Because they have no authority to do otherwise.

Mr. ARNOLD. Would you say it was a case of mismanagement of Indian affairs? I do not have any Indians in my State of Missouri, but I am interested mostly from the taxpayers' standpoint.

Mr. WILKINSON. That is right; I think there has been all kinds of mismanagement of Indian affairs during the years.

Mr. MURDOCK. Of course, we all realize that no Indian tribe can sue the Government without the consent of the Government, and in order to obtain that consent Congress must give it.

Mr. COHEN. Back in 1868 Congress passed a special law excluding Indian claims from the Court of Claims, so that similar cases could be presented to the Court of Claims on a contractual basis—that is, they could be presented by a white man but they could not be presented by an Indian—and that is the reason why these claims which should have been taken care of 60 or more years ago have dragged on. That is why we require special treatment. I do not think the claims of Mr. Wilkinson or anyone else have been unduly long in being handled, but the problem has been peculiar because of congressional legislation.

Mr. ARNOLD. Could we get that condition corrected?

Mr. MURDOCK. That is the very purpose of this legislation.

Mr. ARNOLD. We are setting up a bureau. Why can't we have legislation to correct this situation?

Mr. ROBERTSON. Mr. Chairman, I could not speak for Mr. Stigler; but as for myself, who have introduced one of the bills, I would like

to say to the gentleman from Missouri that is exactly what we are trying to do with this bill; and I think Mr. Stigler will concur, that my reason which prompted me to introduce the bill was principally that we seemed to have such difficulty in getting a bill through Congress.

Mr. STIGLER. That is right.

Mr. ROBERTSON. The bill comes up on the House Consent Calendar, and it will drop out on one objection. There is never an opportunity to present the Indians' case or present both sides of the case. Somebody can offer an objection—say, "I object to that," and out of the window she goes. We are simply attempting to bring this matter to Congress in a way so that the Indians can get a fair deal and Congress will be much better informed of the proposition, whereas now they are not rightly informed, the way things come before the Congress.

I am as much against bureaus as you are, but I think it is something which must be done in the light of progress.

Mr. WILKINSON. May I say, in extension of that thought, as Mr. Cohen pointed out, in 1868 Congress passed legislation preventing Indians from going in the Court of Claims.

Mr. ARNOLD. Will this correct that situation?

Mr. WILKINSON. Yes; that situation can be corrected, but the result has been that during the intervening years up to the present time certain Indian tribes, fortunately or otherwise, have been able to get justice for their tribes. I represent some tribes which have been getting jurisdictional acts and going to the Court of Claims. Others with equally good claims have been unable to get in the Court of Claims.

Mr. STIGLER. And the only way they can get their cases considered is through this legislation.

Mr. ARNOLD. Are we setting a precedent so that we will have to set up commissions, and then have these claims put in categories, and then have the commissions handle them and get them up to the court?

Mr. WILKINSON. This bill, as you know, provides that these claims can be presented to the Indian Claims Commission, and the Commission can determine them and report promptly to Congress, and that report to Congress shall have the same effect as a judgment by the Court of Claims. The bill provides for an appeal to the United States Supreme Court on the determination. This bill contemplates terminating, getting rid of, and deciding this and other claims; so that, in fact, after a 10-year limit—it has a 5-year limitation within which all claims must be filed.

I want to say that for years I shared the gentleman's views that we should go to the Court of Claims, but now we have the opinion of Mr. Justice Jackson; and the only solution, it seems to me, is to have Congress do that work.

Mr. FERNANDEZ. Mr. Wilkinson, doesn't the difficulty arise from the very nature of the cases, the exceptional kind of cases that just do not fit into the regular organization of the courts and the laws under which they have to operate?

Mr. WILKINSON. That is one reason.

Mr. STIGLER. And you have this situation, which is entirely different from any other kind of a claim, because all Indians are wards of the Government.

Mr. WILKINSON. I recognize the desire of the gentleman [Mr. Arnold] not to set up a great horde of commissions. I have great respect for that viewpoint.

Mr. ARNOLD. We get a lot of criticism on that point, and I have heard a lot of Congressmen get up and cuss the bureaus and the bureaucrats and then go in a committee and set one up the next day.

That is what we are doing, setting up a bureau.

Mr. WILKINSON. I would be very much in favor of a limitation in this bill that claims must be filed within 5 years and the Commission must terminate in 10. I would not like to see a permanent commission here.

Mr. ARNOLD. Here is an item in the bill that I believe could be changed. It is entitled "Expenses of Commission," and it is section 6, which reads:

All necessary expenses of the Commission shall be paid on the presentation of itemized vouchers therefor approved by the Chief Commissioner.

I believe I would be in favor of setting a limitation of, say, $2,500, which Congressmen get, and that part should be limited to expenses alone for a year.

Mr. WILKINSON. Do you mean $2,500 for the entire expenses of the Commission for a year?

Mr. ARNOLD. No; each Commissioner. There should be some limit there, because Congressmen have never had any expense money. Of course, some money came through the other day which we hope will come out in the wash, so I think this Commission here—the members of the Commission—should have some limitation placed on their expenses.

Mr. WILKINSON. Do you hope it will be washed out?

Mr. ARNOLD. You understand what we mean. I voted for it. I will tell you that. I think Congressmen should be allowed some expenses, and likewise I think these Commissioners should be allowed some expenses, but I think there should be some limitation on it.

Mr. WILKINSON. Now, Mr. Chairman, may I go through, page by page, this bill? I will not take much time. I have given Mr. Stigler a copy of the bill with the amendments written in; and I would like merely to comment on my proposed amendments at the present time.

Section 2, which begins on page 1, which deals with the jurisdiction of the Commission, probably the most important section in the bill, part 2, in line 4, on page 2, reads:

claims whether sounding in contract or tort or otherwise, with respect to which the claimant would have been entitled to redress in a court of the United States if the United States were subject to suit—

and I would add—

as an ordinary person.

I think the United States should be held to the same degree of liability as an ordinary person.

I will not stop further on these suggestions. I have given them to Mr. Stigler, and you can consider them when you get to amending the bill. Then, subsection 3, on page 2, starting line 8, reads:

claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, or mutual mistake—

And I would add there, "unconscionable consideration, or any other grounds recognizable by a court of equity."

Let me give you an example of what I consider an "unconscionable consideration."

The Klamath Indians had a large part of their lands taken from them so that the Government could give it to a railroad company for constructing a railroad. Congress passed the bill awarding them something like $125,000 for that land. Congress set the amount itself and provided that that was full compensation for the land.

Later the Indians sued the United States for the value in the Court of Claims, and the case went to the Supreme Court. They found it was worth something like $5,000,000, but the Indians had been given $125,000 for it and they had executed a release and could not get any more for it. The Supreme Court said that the consideration was shocking and unconscionable, but they could not go behind the release. Congress in that case did do the right thing and passed a bill and told the Court to consider the actual value, notwithstanding the release. So the Indians got $5,015,000, whereas they had only gotten $125,000 the other way. So I would put in there the phrase "unconscionable consideration, or any other grounds recognizable by a court of equity."

Then in item 5, on page 2, you have, "claims of whatever nature which morally exist though not recoverable by law." I do not want to criticize that, but I want to say candidly in my experience with legislative matters it is unwise to use language that vague. I think the different kinds of suits can be spelled out without phraseology quite as vague as that, and I think most of them are spelled out in the prior provisions of this section, except that I would add one more, and the one I would add is this:

claims arising from the taking by the United States without consideration, whether as the result of a treaty cession, or otherwise, of lands occupied or possessed by claimant.

Let me give you two examples. In 1850, some 18 unratified treaties were had with the Indians of California by which the Indians ceded their lands. The Indians did cede their lands, but the treaties were not ratified; therefore, the Indians got nothing for the lands which they did cede to the United States. Congress did pass a jurisdictional act permitting them to go in the Court of Claims, and last year the Court of Claims, doing the best it could in remedying that situation, gave them an award of about $5,000,000.

I have a parallel case in regard to the Ute Indians. In 1863 they conveyed their land to the United States. They did not want to sign the treaty. The United States commissioners were out there 3 days. The commissioners representing the United States stood there for 2 days and pleaded with the Indian chiefs to sign, and the chiefs said, "No." On the third day the treaty commissioners of the United States got Brigham Young, whom the Indians knew and respected, to come before the Indians; and Brigham Young asked the Indians to sign, and he told them he was sure that the Government would treat them right; and as he talked, one by one the Indian chiefs reversed themselves and signed the treaty ceding all their lands. Well, that treaty was forwarded to Washington, and it was not ratified. They never got their land back and not one cent for it, and I have been unable to get a law from Congress permitting them to sue.

So I say, under this particular bill there should be something permitting Indians to sue, whether under an unratified treaty or otherwise.

Then the last paragraph of section 2, on the bottom of that page, you have two items. It reads:

No claim shall be excluded from consideration on the ground (1) that it has become barred by law or any rule of law, or that it is barred by an statute of limitations or by laches;

I have no comment on that. Then—

(2) that it has heretofore been presented to Congress:

and my suggestion would be this: Eliminate that part of the sentence, "that it had heretofore been presented to Congress," because it is meaningless. Obviously, no claim is outlawed just because it has been presented before Congress. I would add another sentence to that particular section, that—

in the determination of any case prosecuted hereunder, the United States shall be held to the same standards of care as an ordinary fiduciary.

Congress has put that provision in its jurisdictional drafts for tribes which I represent; that is, the Menominees and the Utes of Utah. Then the proviso should be changed to read:

Provided, however, That the Commission shall, when determining the compensation to be awarded on any proven claim, consider and deduct all previous payments made by the United States thereon.

Now, coming to section 3, the last two lines on page 2 and on page 3, set up the Commission and provide for three members. Note that it provides that one member shall be a member of the bar of the Supreme Court of the United States. Maybe I am a little too partial to lawyers, but after all, these are all legal questions; so I would have two members of the Commission be members of the bar of the Supreme Court of the United States. I notice that in the testimony of one witness before the committee that the suggestion was made that it should be bipartisan. So in line 8, after the words "band of Indians," I would put a colon for the period and insert the words:

Provided further, That each of the other members shall be appointed from different political parties.

I think that is a good thing. I think I would have one Democrat and one Republican and one Indian, which is already provided here.

Now, coming down to the bottom of page 3, where you have "(c)," it reads:

No Commissioner shall, during his term of office or thereafter, represent any Indian tribe, band, or group in any matter whatsoever, or have any interest in the outcome of any tribal claim.

That has been criticized before the committee here because after this Commission ceases to exist, it would preclude anyone who has been on the Commission from having anything to do with an Indian tribe. I think you can remedy it by saying:

No Commissioner shall during his term of office or thereafter, represent any Indian tribe, band, or group in any matter before the Commission, or take any part in the determination of any tribal claim in which he has an interest.

I would suggest amending the language in that manner, as the way it is, it would preclude him from forever having anything to do with an Indian tribe.

Mr. GALLAGHER. That is not the point. The point is putting a man in who had an interest, a personal interest, in the claim.

Mr. [illegible]KINSON. I have an amendment on page 4 in regard to the "staff [illegible] Commission." I suggest that it might be advisable to specifically provide that the Commission shall have the right to fix salaries and make other decisions of the Commission. So after the word "Commission" in line 10 I would add the following:

They shall fix salaries and make all other decisions with respect to the business and administration of the Commission.

Coming over to page 5, section 11, you provide that any suit pending in the Court of Claims may be transferred to the Commission as of right upon motion of either party at any time prior to the submission of the case to the court.

The Court of Claims has a peculiar procedure in trying these Indian cases. It tries them in two steps. First, you go before the court, you submit the case on the question of whether there is a right to recover. If the court finds there is, then you came back and resubmit on the question of the amount of damages. So I think you should say there—

upon motion of the petitioner at any time prior to the final submission of the case to the court, * * *.

After a tribe, after 4 or 5 years of litigation gets an interlocutory judgment in the Court of Claims, I hardly think it is fair to give the Government any right to shift it over to the Indian Claims Commission and retry the whole thing again. Where you have gone that far, I think in fairness you should leave it up to the petitioner as to whether he should transfer to the Indian Claims Commission; otherwise you are going to have two proceedings when one has already been sufficient.

Now at the end of that paragraph, at the top of page 6, it provides that if you do transfer, this statute shall prevail. I would add at the end, after the words "heretofore enacted" the words—

except that special provisions in a particular jurisdictional act either as to the cause of action or measure of damages may be availed of before the Commission by the claimant.

Now the Congress in some of these special jurisdictional acts, because of the special circumstances, has provided a special measure of damages; special cause of action or a special remedy. I think that should be saved so that you can have that before the Commission as well.

Now, down in section 13 it provides:

The Commission shall have the power to call upon any of the departments of the Government for any information it may deem necessary, and shall have the use of all records, hearings, and reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business.

It then provides:

But the head of any department may refuse and omit to comply with any call for information or papers when such compliance would be injurious to the public interest.

I cannot for the life of me see any reason for that. Most of these Indian cases are many years old, although I have one claim pending for the taking of 3,700,000 acres of Ute land as late as 1938. They are not all old cases. In that case the courts have held we have a right to recover and we are now trying to determine the amount. Why should any executive have a right to say it is injurious to the Government to reveal that information?

Mr. ROBERTSON. I imagine it was the War Departme[illegible]

Mr. WILKINSON. There was a time in our history, in the 1800's, when the War Department had jurisdiction over Indian affairs; but that would not be injurious to the public interest, to reveal the facts now.

Coming now to page 7, in line 9, I would suggest the inclusion of the words "without cost" after the word "furnish," so that it reads:

shall furnish without cost certified copies thereof.

Now on page 7, under the heading "Presentation by attorneys," I have no comment on the first sentence. I would substitute something for the second sentence and I would substitute this:

Valid existing attorneys' contracts for the prosecution of claims against the United States shall constitute sufficient authority for the presentation of claims before the Commission. Attorneys' contracts partially or wholly contingent on recovery, shall be limited to a fee of 15 per centum of the recovery plus disbursements.

Many of us already have contracts approved by the Secretary of the Interior under which we have been working for years, and I think we want to be able to continue right along under those contracts to represent the Indians. This may contemplate the securing of new contracts and I think that is unnecessary.

Mr. ARNOLD. What do you mean by "plus disbursements"? What do you mean by that?

Mr. WILKINSON. Under existing law most of these tribes have nothing and the attorneys have to pay out the money themselves, advance the cost, and if they do not win they do not get the cost paid back. As I said, in the Northwestern Shoshone case I am out $12,000. Now certainly if the attorney wins he should get back his out-of-pocket expenses.

Mr. ARNOLD. What do you mean by "get out-of-pocket expenses"? Pay Indian expenses?

Mr. WILKINSON. Moneys I have paid investigators, moneys I have paid reporters for the taking of testimony, and things of that kind.

Mr. ARNOLD. Is the Bureau of the Budget concerned in regard to the payments of money made by this Commission? Is there no chance for the Budget Bureau to investigate a fee paid or anything else? Does the Commission set itself up to pay its own bills without being supervised?

Mr. SCHWABE. The court approves the attorney fees. The Commission, I assume, would approve the fees and disbursements.

Mr. WILKINSON. We have to prepare a statement of all the disbursements we have made.

Mr. ARNOLD. Who passes on your disbursements and decides whether they are just or not?

Mr. WILKINSON. At the present time the Secretary of Interior. Now the reason I am suggesting 15 percent is that tribes can't get attorneys for a 10-percent contingent fee, to prosecute claims before the Commission and there are a lot of small claims that some of these tribes have. You cannot possibly get an attorney to take such claims on a 10-percent contingent-fee basis, and I am pleading that the Indians have a right to present their small claims and they cannot get anyone to represent them, except they can get 15 or 20 percent. Many attorneys on tax cases get that amount as a straight fee without contingency.

Mr. [illegible]OLD. Does an Indian hunt up an attorney and he takes the case on[illegible]y, half of what he gets out of it?

Mr. WILKINSON. No; under existing law it is confined to 10 percent. In the first place, the requirement that these cases must be taken on a contingent basis is pretty much contrary to the code of ethics of the legal profession, but Congress has prescribed it and the profession has been forced to go along with Congress on it, although we think there should be a little more liberality on it.

On page 9, section 18, under the heading "Final determination," it provides:

> The final determination of the Commission shall be in writing, shall be filed with its clerk, and shall include (1) its findings of the facts upon which its conclusions are based, (2) a statement (a) whether there is a legal ground for relief and, if so, the amount thereof granted; (b) if there be no legal ground for relief, whether there is any moral obligation upon the Government for relief of claimant, and, if so, the amount of appropriation required to meet such moral obligation; (c) the amount of any legal offsets or counterclaims, if any.

Well, gentlemen, I expressed in the early part of my statement some apprehension as to whether Congress would go along with a provision permitting this Commission merely to grant awards on moral claims. I think it is nebulous and I think it has got to be a little more specific. It must be a little more specific than that. My only question there is that if the committee should decide not to give the Commission authority to award relief in all moral claims, if you should decide to use the language I put in section 2, you could change it to read:

> The final determination of the Commission shall be in writing, shall be filed with its clerk, and shall include its findings upon which its conclusions are based; its conclusions of law as to the amount due the claimant; and * * *

and then you follow with—

> (c) the amount of any legal offsets or counterclaims, if any.

Now coming to page 10, section 20, it reads:

> When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report * * *

and I would insert—

> any other Act of Congress to the contrary notwithstanding—

and then go on—

> shall have the effect of a final judgment and shall be paid in like manner as are judgments of the Court of Claims.

I insert that in the bill for this reason. You have had testimony before the committee in regard to the act of 1935 which was put in a deficiency act, setting off against any Indian claims any money spent on behalf of that tribe, whether the Indians wanted the expenditures or not. I am very anxious it be made plain here that this act does not carry with it the provisions in the 1935 act; which, as I say, was smuggled in an appropriation act before anyone knew it was in there.

Mr. SCHWABE. Purely for offsets.

Mr. WILKINSON. Yes.

Now, finally, in section 22, "Appeals," you have a provision here, gentlemen:

> Within sixty days after said Commission shall have filed its findings of fact, conclusions of law, and determinations, either the Government or the claimant shall have the right to appeal to the Supreme Court of the United States on all questions of law. The findings of fact made by the Commission shall be final and binding upon the Supreme Court.

Now you have an absolute right of appeal.

Mr. STIGLER. Yes.

Mr. WILKINSON. That language has been construed as not granting a right of appeal but meaning a right of review by certiorari; so I have proposed an amendment making that clear, so if you want an absolute right of appeal you should say it. I am thinking that you could suggest this as an alternative. I feel that the Supreme Court of the United States would be quite critical if all these cases came up on appeal. I do think, however, that we should have a right of appeal somewhere, and with that thought in mind I offer this amendment, that section 22 be changed to read:

> Within sixty days after said Commission shall have filed its findings of fact, conclusions of law, and determinations, either the Government or the claimant shall have—

and this is the language I am suggesting—

> the absolute right to appeal to the United States Court of Claims or the United States Circuit Court of Appeals for the District of Columbia, with the right of review by writ of certiorari to the Supreme Court of the United States on all questions of law. The findings of fact made by the Commission, unless there is no substantial evidence to support them, shall be final and binding upon the United States Court of Appeals for the District of Columbia and the United States Supreme Court.

That concludes my presentation. I appreciate your patience and I have taken more time than I intended.

Mr. MURDOCK. We are glad to have your statement. I think you have given us valuable suggestions.

Mr. WILKINSON. Well, I have had a lot of experience but no compensation.

Mr. MURDOCK. Mr. McCaskill, what is your order of presentation?

Mr. McCASKILL. The presentation will be made by Mr. Felix Cohen, Assistant Solicitor of the Department.

(Subsequently, Mr. Wilkinson, pursuant to leave given by the committee, submitted the following extract from a statement given by him before a subcommittee of the Committee on the Judiciary of the United States Senate on February 14, 1940, in opposition to S. 3083, which was introduced at the request of the Department of Justice to amend the Judicial Code so as to limit the jurisdictoin of the Court of Claims in Indian cases. Hereinafter printed is that part of Mr. Wilkinson's testimony relating to the nature of Indian claims and their prosecution in the Court of Claims and does not include that part of his statement having to do with an analysis of S. 3083, the bill the under consideration, and which was never reported by the subcommittee of the Committee on the Judiciary.)

EXTRACT OF STATEMENT OF E. L. WILKINSON BEFORE SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY ON FEBRUARY 14, 1940, IN OPPOSITION TO S. 3083

NATURE OF INDIAN CLAIMS

Mr. WILKINSON. In order to intelligently discuss the proposed bill it is advisable to deal briefly with the nature and extent of Indian claims against the United States. I take it that it will not be denied, even by the Department of Justice, that our treatment of the native American is the most shameful chapter in our history.

In 1831 the celebrated French nobleman and lawyer, Alexis De Tocqueville, came to this country on an official mission to study our democracy. In 1835, 105 years ago, he published in four volumes his great work "Democracy in America."

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Chapter [illegible] I of volume I he devotes to a discussion of "the Present and Probable Future C[illegible]tion of the American Indian." Let me read a few short extracts from the conclusion she arrived at.

"None of the Indian tribes which formerly inhabited the territory of New England—the Narragansetts, the Mohicans, the Pecots—have any existence but in the recollection of man. The Lenapes, who received William Penn, 150 years ago, upon the banks of the Delaware, have disappeared; and I myself met with the last of the Iroquois, who were begging alms. The nations I have mentioned formerly covered the country to the seacoast; but a traveler at the present day must penetrate more than 100 leagues into the interior of the continent to find an Indian. Not only have these wild tribes receded but they are destroyed; and as they give away or perish, an immense and increasing people fills their place. There is no instance upon record of so prodigious a growth, or so rapid a destruction; the manner in which the latter change takes place is not difficult to describe.

"When the Indians were the sole inhabitants of the wilds from whence they have since been expelled, their wants were few. Their arms were of their own manufacture, their only drink was the water of the brook, and their clothes consisted of the skins of animals, whose flesh furnished them with food.

"The Europeans introduced amongst the savages of North American firearms, ardent spirits, and iron; they taught them to exchange for manufactured stuffs the rough garments which had previously satisfied their untutored simplicity. Having acquired new tastes, without the arts by which they could be gratified, the Indians were obliged to have recourse to the workmanship of the white; but in return for their productions the savage had nothing to offer except the rich furs which still abounded in his woods. Hence the chase became necessary, not merely to provide for his subsistence but in order to procure the only objects of barter which he could furnish to Europe. Whilst the wants of the natives were thus increasing, their resources continued to diminish. * * *

"A few European families, settled in different situations at a considerable distance from each other, soon drive away the wild animals which remain between their places of abode. The Indians, who had previously lived in a sort of abundance, then find it difficult to subsist, and still more difficult to procure the articles or barter which they stand in need of.

"To drive away their game is to deprive them of the means of existence, as effectively as if the fields of our agriculturists were stricken with barrenness; and they are reduced, like famished wolves, to prowl through the forsaken woods in quest of prey. Their instinctive love of their country attaches them to the soil which gave them birth, even after it has ceased to yield anything but misery and death. At length they are compelled to acquiesce and to depart; they follow the traces of the elk, the buffalo, and the beaver, and are guided by these animals in the choice of their future country. * * *

"It is impossible to conceive the extent of the sufferings which attend these forced emigrations. They are undertaken by a people already exhausted and reduced; and the countries to which the newcomers betake themselves are inhabited by other tribes which receive them with jealous hostility. Hunger is in the rear; war awaits them, and misery besets them on all sides. In the hope of escaping from such a host of enemies, they separate, and each individual endeavors to procure the means of supporting his existence in solitude and secrecy, living in the immensity of the desert like an outcast in civilized society. The social tie, which distress had long since weakened, is then dissolved; they have lost their country, and their people soon desert them; their very families are obliterated; the names they bore in common are forgotten, their language perishes, and all traces of their origin disappear. Their nation has ceased to exist, except in the recollection of the antiquaries of America and a few of the learned of Europe.

* * * * * * *

"The ejectment of the Indians very often takes place at the present day, in a regular, and, as it were, a legal manner. When the European population begins to approach the limit of the desert inhabited by a savage tribe, the Government of the United States usually dispatches envoys to them, who assemble the Indians in a large plain, and having first eaten and drunk with them, accost them in the following manner: 'What have you to do in the land of your fathers? Before long, you must dig up their bones in order to live. In what respect is the country you inhabit better than another? Are there no woods, marshes, or prairies except where you dwell? And can you live nowhere but under your own sun? Beyond those mountains which you see at the horizon, beyond the lake which bounds your territory on the west, there lie vast countries where beasts of chase are found in great abundance; sell your lands to us, and go to live happily in those solitudes.' After holding this language, they spread before the eyes of the

Indians firearms, woolen garments, kegs of brandy, glass necklac[illegible] [illegible]acelets of tinsel, earrings, and looking glasses. If, when they have beheld all these riches, they still hesitate, it is insinuated that they have not the means of refusing their required consent and that the Government itself will not long have the power of protecting them in their rights. What are they to do? Half convinced, and half compelled, they go to inhabit new deserts, where the importunate whites will not let them live 10 years in tranquility. In this manner do the Americans obtain, at a very low price, whole provinces, which the richest sovereigns of Europe could not purchase."

Senator WILEY. When was that written?

Mr. WILKINSON. Before 1835.

Senator CONNALLY. He has traveled among the Indians?

Mr. WILKINSON. Yes, sir.

Senator CONNALLY. Do you know what tribes?

Mr. WILKINSON. Pecots, Iroquois, Cherokees, Choctaws, and others.

In support of this thesis M. de Tocqueville points out that in 1790 the United States by treaty solemnly guaranteed "to the Creek Nation all their land within the limits of the United States"; that a treaty of 1791 with the Cherokee Nation expressly provided "The United States solemnly guarantee to the Cherokee Nation all their land not hereby ceded"; that it was not many years thereafter that the land guaranteed to both Nations was invaded and taken by the whites. De Tocqueville quotes from a subsequent letter written in 1829 to the Creek Nation signed by the President of the United States, in which he urged them to forsake the land this country had guaranteed to them, in which he said:

"Beyond the great River Mississippi, where a part of your Nation has gone, your father has provided a country large enough for all of you, and he advises you to remove to it. There your white brothers will not trouble you; they will have no claim to the land, and you can live upon it, you and all your children, as long as the grass grows, or the water runs, in peace and plenty. It will be yours forever."

Yet it was not many years thereafter that most of this land was taken from them. To show that in practically all their dealings with the Government the Indians were ill treated and robbed (and mind you this was written at the time) de Tocqueville points out that in 1808 the Government received 48,000,000 acres of land from the Osages in exchange for a promise to make an annual payment of $1,000. In 1819 the Quapaws yielded up 29,000,000 acres for $4,000. They reserved to themselves 1,000,000 acres for a hunting ground. A solemn oath was taken this would be respected. It was not long until it was invaded like the rest.

That the forms of law, rather than its just substance, governed the conduct of our country in dealing with the Indians, is evident from a report of the Committee on Indian Affairs of one of the Houses of Congress in 1830. That report said:

"To pay an Indian tribe what their ancient hunting grounds are worth to them, after the game is fled or destroyed, as a mode of appropriating wild lands claimed by Indians, has been found more convenient and certainly it is more agreeable to the forms of justice, as well as more merciful, than to assert possession of them by the sword. Thus the practice of buying Indian titles is but the substitute which humanity and expediency have imposed, in place of the sword, in arriving at the actual enjoyment of property claimed by the right of discovery, and sanctioned by the natural superiority allowed to the claims of civilized communities over those of savage tribes. Up to the present time so invariable has been the operation of certain causes, first in diminishing the value of forest lands to the Indians, and secondly in disposing them to sell readily, that the plan of buying their right of occupancy has never threatened to retard, in any perceptible degree, the prosperity of any of the States" (Legislative Documents, 21st Cong., No. 227, p. 6).

De Tocqueville quoted with approval the high-minded statement of Washington:

"We are more enlightened and more powerful than the Indian nations; we are therefore bound in honor to treat them with kindness and even with generosity."

But he concluded that—

"This virtuous and high-minded policy has not been followed. The rapacity of the settlers is usually backed by the tyranny of the Government. * * *

"Destitution had driven these unfortunate Indians to civilization, and oppression now drives them back to their former condition; many of them abandon the soil which they had begun to clear, and return to their savage course of life.

"The Union treats the Indians with less cupidity and rigor than the policy of the several States, but the two governments are alike destitute of good faith. The States extend what they are pleased to term the benefits of their laws to the

Indians, with a belief that the tribes will recede rather than submit; and the Central Government, which promises a permanent refuge to these unhappy beings is aware of its inability to secure it to them.

"Thus the tyranny of the States obliges the savages to retire, the Union, by its promises and resources, facilitates their treatment; and these measures tend to precisely the same end."

So much by way of background. As a Government we have entered into over 300 treaties with Indian tribes. Our method of negotiating most of these treaties has been of such a nature that, if they had been transactions between individuals, many would have been immediately set aside by courts of equity. But even worse is the fact that many of the treaties, solemnly arrived at, have been flagrantly violated by the United States. Time will not permit a review of the decisions of the courts in which the United States as a result, has been required to respond in damages. Nor do I think it necessary to dwell upon that subject before this committee, for I find that in a speech delivered by Senator William H. King in the Senate on February 8, 1933, he summarized the situation better than I can. Said he:

"It is remarkable that the National Government, which has been so responsive to the cries of the distress and to humanitarian appeals, should be so deaf and callous to the cries of the Indians and to the moral and legal responsibilities resting upon the National Government as their trustee and guardian.

From the days of the Pilgrim Fathers to the present time the Indians seem to have been regarded by many as objects of legitimate prey; they have been treated as trespassers and outlaws, and unwelcome and illegal occupants of territory which the white man desired. Treaties have been imposed upon them by chicanery and fraud and often as the result of military force; and many treaties that have been made have been shamelessly violated, and measures ostensibly designed for the protection of the Indians have been converted into weapons of destruction.

* * * Many investigations have been made by committees and by disinterested groups of persons who desired to learn the facts concerning the Indians. Their findings and conclusions warrant a verdict that the Indians have been robbed, plundered, and despoiled of the greater part of their inheritance and subjected to cruel and inhuman treatment."

Senator CONNALLY. Who said that?

Mr. WILKINSON. Senator King.

Senator CONNALLY. When?

Mr. WILKINSON. February 8, 1933.

Senator CONNALLY. All right. Proceed.

Mr. WILKINSON. The treaty violations by the United States are of many different types. I think, however, it is correct to say that the type of violation which seems the basis of most suits, is the failure of the United States to recognize the territorial integrity of an Indian tribe, notwithstanding the treaty provisions by which it agreed to do so. Other violations have consisted of the failure of the United States to pay annuities in money, to provide educational facilities for the Indians, to supply the Indians with personal property, such as horses and cattle, and to supply the Indians with agricultural and other equipment necessary for maintenance of a livelihood, as it had agreed to do in numerous treaties. This summary is not intended to be all-inclusive.

The Senator from Utah yesterday inquired as to whether it was not a fact that in many cases settlements had been arrived at, after which the tribe who had thus settled had split into segments, with the result that previous settlements were forgotten and suits were again instituted by one or more of the segments.

I think I have read nearly every Indian case decided by the Court of Claims and I know of no such case. Certainly if some such unmeritorious case were brought it could be immediately dismissed on demurrer by calling the attention of the court to the prior judgment. There have never been such cases and there is no danger that there will be such cases.

Senator CONNALLY. Have you read all of the Indian cases?

Mr. WILKINSON. I think I have.

Senator CONNALLY. Are you specializing in Indian business?

Mr. WILKINSON. I am not consciously specializing although I have considerable of that work. I began my practice with the firm Hughes, Schurman & Dwight, of which Chief Justice Hughes was the senior partner until he was appointed Chief Justice. That firm represented certain Indian tribes, and I worked on their cases. When I came to Washington to practice law on my own right, the firm of Hughes, Schurman & Dwight continued to associate me with them on their cases; since that time I have also been engaged by other Indian tribes to represent them directly.

Senator CONNALLY. All right, proceed.

Mr. WILKINSON. The Senator from Utah also suggested yesterday that many of the claims go back 100 years and were brought by dead tribes. I noted that Mr. Holtzoff acquiesced in the suggestion.

Senator CONNALLY. Do you refer to cases pending in the Court of Claims?

Mr. WILKINSON. Yes, sir.

Senator WILEY. A total of 76?

Mr. WILKINSON. Eighty-two, I believe.

Senator CONNALLY. I understood it was 76.

Mr. WILKINSON. I have a list of 82.

Mr. NAGEL. There are actually 75. One was recently dismissed at the request of the plaintiff.

Senator WILEY. I understood it was somewhere around 75.

Mr. WILKINSON. In the limited time since yesterday I have tried to determine whether the suggestion or inquiry of the Senator from Utah is true. I have been unable to discover any pending case that goes back 100 years. That is one of the false impressions rampant about Indian suits. So far as I can determine none of the suits now pending antedated the 1870's. Actually the earlier cases have already been determined. The cases now are of later vintage. Actually some of them are of very recent origin. The implication presented before this committee on yesterday that they all date from the distant past, is untrue.

Senator WILEY. I would like to ask whether you are speaking of pending litigation.

Mr. WILKINSON. I am speaking of pending litigation. The earlier cases have already been determined.

Take one claim of the Ute Indians whom I represent, for instance. In 1880 these Indians ceded their empire of 15,000,000 acres in Colorado to the United States under an agreement whereby the United States agreed to sell the land for the benefit and account of these Indians. As late as 1938, the United States had failed or had refused to sell some 4,000,000 acres of this land belonging to these Indians, and by an act passed by Congress in that year, the United States appropriated that land to its own use. Congress did, however, in that connection, do the right thing by immediately authorizing the Ute Indians to sue for the value of the land, and suit will be brought therefor very shortly. Since Congress in such case immediately authorized a suit, the United States will be required to pay but very little interest as a part of just compensation. There is a 5-year statute of limitations.

Senator CONNALLY. Did any attorney for any of these tribes appear before a committee and resist the passage of that act?

Mr. WILKINSON. The Indians were willing to let the Government take it, if they got a jurisdictional act. In fact they had already conveyed it to the Government for sale in 1880.

Senator CONNALLY. I thought so.

Mr. WILKINSON. I will say that the provision for the appropriation of these lands by the United States was not in the jurisdictional bill requested by the Indians. It was put in by Senator Adams, of Colorado, on the floor of the Senate.

Senator CONNALLY. The Indians were agreeable to the Government taking the land if they were permitted to bring suit.

Mr. WILKINSON. Yes, sir.

Senator CONNALLY. There is no charge of the Government mistreating them?

Mr. WILKINSON. No, sir; not in this situation.

Senator CONNALLY. You do not suggest that as an instance of treaty violation?

Mr. WILKINSON. No. That is a case where the Government did the right thing and gave them the right to sue.

Senator WILEY. It seems that the only question would be the difference in the value of the land at the time it was taken and its value at the present time. They may think there is some other difference. I do not think there is.

Senator CONNALLY. I suppose it was grazing land?

Mr. WILKINSON. Most of it. It was mountain land in Colorado.

Senator CONNALLY. What was the reason the Government could not sell it?

Mr. WILKINSON. I am going to investigate that, but I have not yet done so.

Mr. NAGLE. Was there not a provision fixing the value at $1.25 an acre?

Mr. WILKINSON. I think not. I believe the bill does provide that unless either side can prove otherwise, the land shall be deemed to have a value of $1.25 an acre. But that provision leaves it open for proof by either party.

As for the tribes being dead, that is not correct either. Some of the members who were alive at the time the wrongs were perpetrated are of course dead, but

the tribes still exist or they couldn't sue. And the cause of action still persists in the [redacted] just as it would in a corporation, the stockholders of which may change.

The [redacted]tor from Texas yesterday inquired as to how long the present suits have been pending. I understand that information will be given in detail to the committee by Mr. Kappler, but it is my understanding that with few exceptions they have all been filed within the last 10 years.

HISTORY OF TRIBAL CLAIMS ALREADY LITIGATED

Despite the long record of treaty violations by the United States with respect to Indian tribes, it is of first importance in the consideration of the pending bill to note that the amount of money that has been recovered against the United States in suits brought by Indian tribes has been relatively small, as compared with the claims that have been asserted by Indian tribes. I have prepared for the committee a tabulation of all Indian suits commenced against the United States in the Court of Claims, showing the cases dismissed by the Court of Claims in favor of the United States, and also showing the cases which have been won by the Indian tribes, together with the amounts of the respective jugdments. I have broken down this tabulation into two parts: (1) Cases in which Indian tribes have asserted and are asserting claims for definite amounts; (2) cases in which Indian tribes have asserted and are asserting claims for no definite amounts.

A study of the cases already determined by the Court of Claims in which Indian tribes asserted claims for definite amounts are of prime importance because they will enable the Congress to estimate the amount that Congress may be compelled to pay under pending claims.

I now present to the committee a tabulation of tribal suits dismissed by the Court of Claims in which the plaintiffs asserted claims, definite in amount, and ask that it be inserted in the record at this point as part of my statement. Said tabulation is as follows:

TABLE A.—*Tribal claims, definite in amount, dismissed by Court of Claims*

Docket No.	Plaintiff	Date dismissed	Amount claimed (including interest where claimed)
17210	Johnson Blackfeather et al	Feb. 17, 1902	$690, 681. 39
3043	Cherokee	May 21, 1917	2, 368, 703. 22
31003	Otoe and Missouria Tribes of Indians	Nov. 4, 1918	10, 425, 700. 00
33731	Sisseton et al., Sioux	Apr. 13, 1922	70, 000, 000. 00
33733	Medawakanton Sioux	June 12, 1922	2, 458, 000. 00
34449	Cherokee	June 23, 1924	4, 039, 999. 06
D-552	Stockbridge et al	Jan. 25, 1926	104, 672. 51
F-168	Creek	Mar. 7, 1927	195, 000, 000. 00
F-202	Stockbridge et al	do	179, 272. 17
B-38	Osage	May 28, 1928	2, 795, 270. 30
H-121	Okanogan et al	Apr. 16, 1928	13, 048, 039. 90
H-163	Chippewa	Mar. 11, 1929	55, 326, 666. 63
K-268	Moncrief (Choctaw et al.)	Feb. 10, 1930	155, 441, 390. 00
H-221	Delaware	May 5, 1930	43, 000. 00
H-279	Chippewa	Jan. 5, 1931	264, 000. 00
E-353	Delaware	Oct. 20, 1931	2, 224, 790. 02
H-222	do	do	2, 272, 270. 00
K-17	Cherokee	June 6, 1932	33, 000, 409. 00
E-493	Delaware	May 2, 1932	5, 815, 000. 00
L-261	Choctaw et al	June 6, 1932	4, 250, 000. 00
H-226	Delaware	July 5, 1932	2, 478, 518. 10
L-168	Creek	Mar. 13, 1933	137, 780, 605. 94
J-619	Choctaw et al	Oct. 9, 1933	417, 350. 00
H-76	Chippewa	Jan. 14, 1935	16, 025, 826. 05
H-37	Choctaw et al	do	2, 807, 558. 00
F-181	do	Mar. 4, 1935	1, 116, 706. 21
H-248	Crow	do	171, 792, 325. 74
M-186	Pottawatomie	Apr. 8, 1935	630, 198. 93
17356	Citizens Band of Pottawatomie Indians of Oklahoma	do	119, 790. 75
42077	Eastern Cherokee	Dec. 2, 1935	5, 169, 128. 05
42081	Eastern and Western Cherokee	do	13, 046, 847. 55
L-4	Ponca	Jan. 6, 1936	30, 000, 000. 00
L-33	Suattle	do	3, 200, 000. 00
L-174	Cherokee	Feb. 3, 1936	6, 113, 393. 36
42078	Western Cherokee	do	944, 264. 96
H-37A	Choctaw et al	Feb. 4, 1936	744, 504. 75
F-182	do	Apr. 6, 1936	525, 508. 81
J-231	do	do	468, 000. 00
C-531-1	Sioux	Nov. 9, 1936	12, 000, 000. 00
K-501	Lower Chehalis	Jan. 11, 1937	8, 250, 000. 00
42079	Eastern and Western Cherokees	do	9, 533, 568. 58
J-691	Hiaqually	do	8, 900, 000. 00

TABLE A.—*Tribal claims, definite in amount, dismissed by Court [redacted]aims*—Con.

Docket No.	Plaintiff	Date dismissed	Amount claimed (including interest where claimed)
K-41	Steilacoos	Jan. 11, 1937	$5, 700, 000. 00
43396	Delaware	Mar. 1, 1937	18, 097, 730. 00
43399	do	do	177, 076. 00
H-47	Cherokee	Apr. 5, 1937	1, 332, 249. 92
C-531-3	Sioux	May 3, 1937	14, 000, 000. 00
H-192	Chippewa	Jan. 12, 1938	24, 742, 914. 60
C-531-5	Sioux	Mar. 7, 1938	1, 000, 000. 00
K-376	Chickasaw	Apr. 4, 1938	788, 421. 70
E-344	Klamath et al	do	8, 047, 629. 99
K-345	Coos Bay	May 2, 1938	6, 177, 587. 50
H-155	Chippewa	Nov. 4, 1938	20, 134, 812. 60
42080	Eastern and Western Cherokees	Apr. 3, 1939	151, 574. 60
C-531-6	Sioux	May 29, 1939	140, 000. 00
E-542	Wichita et al	Nov. 6, 1939	38, 016, 145. 38
L-266	Cherokee	Dec. 4, 1939	143, 437. 50
E-350	Klamath	Jan. 8, 1940	995, 000. 00
L-257	Cherokee	do	32, 933, 234. 14
	Total		1, 193, 595, 969. 51

It will be noted that this list involves 59 suits by Indian tribes. The total amount claimed, including interest where interest was claimed (calculated to, I believe, June 30, 1938), was $1,193,595,969.51.

Senator CONNALLY. Did they go to trial or were they dismissed?

Mr. WILKINSON. They all went to trial.

Senator CONNALLY. Which resulted in judgments for the Government?

Mr. WILKINSON. Yes, sir.

Senator CONNALLY. How were they dismissed?

Mr. WILKINSON. By the court. The court entered judgment in favor of the Government.

Senator WILEY. On the merits?

Mr. WILKINSON. On the merits.

Senator WILEY. May I ask generally what was the basis of all these claims for land taken?

Mr. WILKINSON. The basis of the claims?

Senator WILEY. Generally speaking, what was the basic reason for dismissing the claims on their merits?

Mr. WILKINSON. If you will wait a minute, I am coming to that.

Senator WILEY. All right.

Mr. WILKINSON. I now present to the committee a tabulation of all tribal claims in which no definite amounts were set forth in the respective petitions, which were dismissed in favor of the Government:

TABLE B.—*Tribal claims, indefinite in amount, dismissed by Court of Claims*

Docket No.	Plaintiff	Date dismissed	Amount claimed
21300	Phineas Pam-to-pee	May 20, 1901	None stated.
20815	The Fond du Lac Band of Chippewa Indians	Dec. 6, 1915	Do.
31253	Yankton Sioux	Dec. 3, 1917	Do.
E-359	Assiniboine	Feb. 6, 1928	Do.
E-372	Creek	Oct. 20, 1931	Do.
F-371	Do	Dec. 7, 1931	Do.
K-335	Chickasaw	June 6, 1932	Do.
17654	Prairie Band of Pottawatome Indians of Kansas	Apr. 8, 1935	Do.
L-89	Seminole	Jan. 8, 1940	Do.
L-78	Creek	Dec. 4, 1939	Do.
L-123	Seminole	do	Do.
L-253	Choctaw and Chickasaw	Jan. 27, 1940	Do.

It will be noted that there are only 12 of these, making a total of 71 tribal suits completely dismissed by the Court of Claims. Tribal suits in which no definite amounts are requested are often bills for a general accounting.

I next present to the committee a tabulation of tribal suits in which the plaintiff tribes asserted claims definite in amount in which the recovery has been allowed. Said tabulation is as follows:

TABLE C.—*Tribal claims, definite in amount, in which recoveries allowed*

Docket No.	Claimant	Date of decision	Citation	Amount claimed	Net judgment	Principal	Interest	Gratuities and set-offs
12742	Choctaw Nation	Mar. 3, 1884	19 C. Cls. 243	$8,659,695.67	$2,858,795.62	$2,858,798.62	None	No record
		Jan. 25, 1886	21 C. Cls. 59					
		Nov. 15, 1886	119 U. S. 1					
		Dec. 15, 1886	22 C. Cls. 489					
17861	New York Indians	Nov. 18, 1895	30 C. Cls. 413	2,393,600.00	1,967,056.00	1,967,056.00	None	None
		Apr. 11, 1898	170 U. S. 1					
		Nov. 14, 1898	33 C. Cls. 521					
		Mar. 20, 1899	173 U. S. 464					
		May 15, 1905	40 C. Cls. 464					
17305	Navarre and other Potawatomies	Mar. 21, 1898	33 C. Cls. 235	48,325.00	29,329.10	29,329.10	None	None
27537	Ottawa and Chippewa of Michigan	Mar. 4, 1907	42 C. Cls. 240	[1] 125,000.00	131,188.94	62,496.40	$68,692.54	None
		Nov. 4, 1907	42 C. Cls. 518					
30360	White River Utes et al	May 23, 1910	45 C. Cls. 440	14,592,582.96	3,516,231.05	3,516,231.05	None	None
		Feb. 13, 1911	46 C. Cls. 225					
30447	Mille Lac Band of Chippewas	May 29, 1911	46 C. Cls. 424					
		May 6, 1912	47 C. Cls. 415					
		June 9, 1913	229 U. S. 498					
31002	Omaha Tribe of Indians	June 5, 1916	51 C. Cls. 400	[1] 3,000,000.00	711,828.47	509,510.43	202,318.04	None
		June 10, 1918	53 C. Cls. 549	992,000.00	117,735.31	117,735.31	None	None
		June 28, 1920	55 C. Cls. 538					
33728	Medawakanton Sioux et al	June 1, 1920	253 U. S. 275					
H-510	Creek	June 5, 1922	57 C. Cls. 357	2,426,791.47	386,597.89	386,597.89	None	None
E-427	Blackfeet et al	Dec. 4, 1933	78 C. Cls. 474	[1] 2,585,977.26	144,106.01	127,100.54	17,005.47	None
H-219	Shoshone	Apr. 8, 1935	81 C. Cls. 101	71,338,273.09	622,465.57	6,130,874.88	None	$5,508,409.31
		Dec. 2, 1935	82 C. Cls. 23	[1] 37,150,279.90	4,408,444.23	1,682,284.99	4,682,392.92	1,956,233.68
		Jan. 4, 1937	299 U. S. 476					
		June 1, 1937	85 C. Cls. 331					
J-31	Assiniboine	Apr. 25, 1938	299 U. S. 476					
F-275	Duwamish et al	Apr. 10, 1933	77 C. Cls. 347	79,387,500.00		3,238,970.00	None	4,227,474.00
L-51	Seminole	June 4, 1934	79 C. Cls. 530	73,365,416.00		71,496.45	None	2,488,624.53
		Dec. 2, 1935	82 C. Cls. 135	1,747,449.27	10,099.25	10,099.25	None	None
		Jan. 4, 1937	299 U. S. 417					
E-346	Klamath et al	May 3, 1937	85 C. Cls. 699					
		Nov. 5, 1934	296 U. S. 244	5,891,250.00	5,313,347.32	2,871,250.00	4,420,528.56	1,978,431.24
		Apr. 25, 1938	304 U. S. 119					
				303,704,145.62	20,217,227.76	23,579,830.91	9,390,937.53	16,159,172.76

[1] Plus interest.

Senator KING. Can you give the number of those and the amounts recovered?

Mr. WILKINSON. Yes, sir; it will be noted from this tabulation that there have been 15 of these suits where the claims were definite in amount in which the Court decided against the United States. In 2 of those, however, offsets against the Indians exceeded the amount of the gross recovery, so that there were net judgments against the United States in only 13 cases. It should also be noted that the total amount claimed against the United States in these 15 cases was $303,704,145.62.

If we add together the aggregate amount of $1,193,595,969.51 claimed in those 59 suits where a definite amount was claimed, and which were determined in favor of the United States, and the aggregate amount of $303,704,145.62 claimed in those 15 suits where a definite amount was claimed and which were determined in favor of Indians tribes, we find that the total amount claimed in the 74 suits already determined, in which definite amounts have been claimed aggregate $1,497,300,115.13, or approximately $1,500,000,000.

Senator WILEY. How much of that was interest?

Mr. WILKINSON. How much was interest?

Senator WILEY. Yes.

Mr. WILKINSON. I do not have that.

Senator CONNALLY. $9,390,000?

Mr. WILKINSON. Of the amount recovered $9,390,000 was interest. Gratuities were set off amounting to $16,000,000. The net judgment was $20,000,000, 1⅓ percent of the total amount claimed.

The comparisons which I have made are comparisons based on the total number of cases where the amounts claimed were definite in amount which have been dismissed by the court, with the total number of cases, where the amounts claimed were definite in amount, in which judgments have been rendered against the United States. I have made this comparison because it is one that has been used by the Department of Justice, and because a study of cases in which definite amounts are claimed, forms the only method of ascertaining the percent of amounts claimed that result in recoveries. The true comparison, therefore, is that recoveries to date have aggregated only 1⅓ percent of the amounts claimed.

In order, however, that the committee shall have before it the complete picture of tribal recoveries against the United States, I now present a tabulation of all other tribal judgments against the United States. These are cases in which the amounts claimed were not set forth in the respective petitions.

HP019273

Senator KING. How many of those cases were there?

Mr. WILKINSON. There are 13 of these cases; the net judgments vary in amount from $5,000 to $5,134,316.08. Together they aggregate $10,744,267.62. The net judgments in these cases total approximately 53 percent of the aggregate net judgments of $20,217,227.76 in the other cases.

Viewing all of these charts together it will be noted that the first judgment rendered in favor of an Indian tribe was in 1884 in favor of the Chickasaw Nation for $240,164.58. The last judgment was rendered in 1938 in favor of the Creek Nation for $296,011.42.

By adding together the amounts recovered in claims that are definite in amount and the amounts recovered in claims that were indefinite in amount, we find that during the 55 years that Indian cases have been in the process of litigation the total amount recovered aggregates $30,961,495.38. In other words, the United States, for all the Indian treaties which it has violated, and the other wrongs it has perpetrated, has been compelled to pay less than $563,000 per year on all suits brought by Indian tribes. This is only 0.00006 of 1 percent of our present annual budget of $9,199,253,641.

It is important, therefore, for this committee to bear in mind at the outset that in determining what should be the legislative policy with respect to Indian claims, it should consider not the amount claimed by Indian tribes, but the amount of probable recoveries. I note in this connection that the memorandum for the Attorney General, dated April 5, 1939, and sent to this committee by the Attorney General under forwarding letter dated April 7, 1939, states with respect to suits now pending in the Court of Claims that if the respective tribes are successful in their suits, they will, under recent decisions of the United States Supreme Court, obtain in judgments some $3,000,000,000 to $3,750,000,000.

Now, while that statement is literally true, it creates an absolutely unfounded impression, for the hypothesis of the Department of Justice is utterly unsound. And no one knows that better than the Department of Justice, which, as I have already indicated, has been able to defeat nearly 99 percent of the aggregate amount of tribal claims already determined in the Court of Claims. We are aware of the fact that it is a common device for those, both proposing and opposing certain legislation, to alarm Members of the Congress by grandiose and hyperbolic estimates as to the amount of money involved. This is not true only of individuals, but holds true also of departments of government, of which the Department of Justice is not the least offender. It has been true for a long time in Indian affairs.

The persistent cry of the Department of Justice, whenever an Indian tribe asks to have its day in court, notwithstanding the fact the Department of Justice should be the first agency of the Government to look after the interests of these Indians, who are the wards of the Government, is to suggest that millions of dollars are involved. I have never yet seen a letter from the Department of Justice to any of the appropriate committees of Congress respecting any Indian jurisdictional bill where the Department advised the Congress that while the claim may be large, the probabilities were very much against any recovery, and that based on experience to date, the judgments recovered have totaled slightly over 1 percent of the amounts that have been claimed by Indian tribes. On the other hand, I have seen many statements designed to alarm Members of Congress, who are too busy with other matters to investigate the real facts.

In order to make an estimate, based on past experience, as to how much it might be reasonably expected that the United States will be required to pay because of pending suits in the Court of Claims, I have secured from the Department of Justice a tabulation of all suits pending; this tabulation being divided into two parts: (1) Suits in which a definite amount is claimed and (2) suits in which an indefinite amount is claimed. I herewith submit that part of the tabulation which lists all suits pending in which a definite amount is claimed. This list was compiled as of January 31, 1940, and contains a calculation of interest to January 1, 1940.

(The list follows:)

TABLE D.—*Tribal claims, indefinite in amount, in which recoveries allowed*

Court of Claims docket No.	Name of claimant	Date of decision	Citation	Net judgment	Interest	Principal	Gratuities set-off
Dep. 2	Chickasaw Nation	Jan. 28, 1884	19 C. Cls. 133	$240,164.58	None	$240,164.58	None
16629	Citizen Indians of the West et al.	Apr. 4, 1887	22 C. Cls. 222				
16599	Western Cherokee	May 4, 1891	26 C. Cls. 323	7,500.00	None	7,500.00	None
		Nov. 30, 1891	27 C. Cls. 1				
16743	Pottowatomie Phineas Pam-to-pee, and 1,371 others	May 3, 1893	148 U. S. 427	800,386.31	$583,830.11	216,556.20	None
		June 6, 1893	28 C. Cls. 457				
		June 27, 1892	27 C. Cls. 403				
		Apr. 17, 1893	148 U. S. 691	104,626.00	None	104,626.00	None
16856	Blackfeather, Pr. Chf. of Shawnees	June 12, 1893	28 C. Cls. 559				
		Oct. 19, 1894	28 C. Cls. 447				
		Nov. 19, 1894	30 C. Cls. 482				
18932	Choctaw, Chickasaw, and Wichita affiliated	Mar. 12, 1900	155 U. S. 180	5,144.85	None	5,144.85	None
		Jan. 9, 1899	35 C. Cls. 633				
23115	Choctaw Nation et al.	Jan. 10, 1900	34 C. Cls. 17	99,514.56	None	99,514.56	None
		Apr. 27, 1903	179 U. S. 494				
		Feb. 23, 1904	38 C. Cls. 558				
22524	Sisseton & Wahpeton Band	May 9, 1910	193 U. S. 115	606,936.08	None	606,936.08	None
		Jan. 16, 1904	45 C. Cls. 618				
		May 13, 1907	39 C. Cls. 172				
23109	Cherokee	Feb. 24, 1908	42 C. Cls. 416	788,866.87	None	788,866.87	None
23214 (4)	Eastern Cherokee	Mar. 20, 1905	208 U. S. 501				
		Apr. 30, 1906	40 C. Cls. 235				
23212	Eastern emigrant		202 U. S. 101	5,134,316.08	4,000,067.85	1,134,248.23	None
			46 C. Cls. 104				
		Mar. 7, 1910	46 C. Cls. 229				
D-546	Yankton Sioux		225 U. S. 572				
24677	Iowa	Apr. 16, 1928	65 C. Cls. 427	237,000.00	137,000.00	100,000.00	None
B-449	Fort Berthold	May 6, 1929	68 C. Cls. 585	254,632.59	None	254,632.59	None
F-205	Creek Nation	Dec. 1, 1930	71 C. Cls. 308	2,169,168.58	None	4,923,093.47	$2,753,924.89
		Nov. 14, 1938	87 C. Cls. 280				
			302 U. S. 620	296,011.42	236,459.88	136,357.25	76,805.51
			295 U. S. 103				
			84 C. Cls. 12				
			77 C. Cls. 159				
Total				10,744,267.62	4,957,357.64	6,617,640.08	2,830,730.40

HP019274

TABLE E.—*Table of pending cases definite in amount, showing also the amount of interest involved (where interest is claimed), calculated as of Jan. 1, 1940*

[Where no interest is demanded the column where the rate of interest would otherwise be shown has been left blank. Where the petition demands a specific rate of interest that rate is indicated and has been used. Where interest is demanded but the specific rate demanded is not stated the rate of 5 percent has been used]

Number of case	Plaintiff tribe	Amount claimed	Rate of interest	Interest to Jan. 1, 1940
			Percent	
K-103	Arapaho and Cheyenne	$35,151,500.50	[1] 5	$60,207,660.05
J-8	Cherokee	8,916,170.20	[1] 5	1,887,438.20
L-46	do	669,793.05	5	435,365.58
L-267	do	319,584.89	5	541,877.20
L-268	do	407,655.06	[1] 5	796,246.11
K-334	Chickasaw	42,793.45	5	136,954.88
K-544	do	1,765,061.72	[1] 5	2,138,562.64
K-187	Choctaw	1,000,000.00		
K-260	do	4,330,470.56		
K-281	do	1,162,000.00		
H-37b	Choctaw and Chickasaw	2,883,620.00	5	4,037,068.00
J-620	do	[2] 3,839,739.00	5	6,527,641.30
M-135	Chippewa	511,290.00	5	985,866.00
L-236	Creek	270,283.71	6	675,709.50
L-234	do	150,000,000.00	5	277,500,000.00
B-415	Flandreau Sioux	475,596.00		
44294	Menominee	1,020,000.00	[1] 4	
44295	do	40,477.65	5	132,130.05
44296	do	32,700.50		
44303	do	300,000.00	4	396,000.00
44304	do	2,500,000.00		
44305	do	6,000,000.00		
K-107	Nez Perce	3,225,276.17	[1] 5	8,065.05
L-194	Nez Perce (Joseph's Band)	500,000.00		
M-387	Pillager Chippewa	864,000.00	5	3,974,400.00
L-23	Quinaielt	8,500,000.00		
L-51	Seminole	1,747,447.50	5	1,454,026.71
L-208	do	250,000.00	5	600,000.00
L-209	do	226,264.20	6	716,382.50
H-241	Saginaw et al. Chippewa	3,101,325.60		
M-107	Northwestern Shoshones	15,070,000.00		
M-112	Warm Springs	5,100,000.00		
M-421	Winnebago	1,719,000.00	5	6,519,582.33
	Total, 33 cases	261,942,241.04		369,670,916.10
C-531	Sioux	16,830,802.51	5	10,646,904.27
C-531-2	do	8,000,000.00		
C-531-4	do	8,000,000.00		
C-531-7	do	189,368,531.05	5	605,979,299.20
C-531-8	do	7,083,770.93	5	19,488,370.25
C-531-9	do	100,000.00	5	300,000.00
C-531-10	do	15,000,000.00	5	44,250,000.00
C-531-11	do	40,000,000.00	5	100,000,000.00
C-531-12	do	1,903,023.22	5	1,617,569.72
C-531-13	do	62,648.89	5	219,270.80
C-531-14	do	105,024.15	5	283,565.34
C-531-15	do	96,000.00	5	374,400.00
C-531-16	do	475,953.71	5	1,642,040.61
C-531-17	do	200,000.00	[1] 5	
C-531-18	do	1,650,000.00	[1] 5	
G-531-19	do	525,000.25	[1] 5	
C-531-20	do	25,000.00	[1] 5	
C-531-21	do	100,000.00	[1] 4	
C-531-22	do	685,254.75	[1] 5	
C-531-23	do	1,525,000.00	[1] 5	
C-531-24	do	1,750,000.00	[1] 5	
	Total, 21 cases	293,486,009.46		784,801,420.19
	Grand total in 54 cases	555,428,250.50		1,154,472,336.29

[1] In these cases interest has not been computed on all the amounts claimed, for the reason that it was not so demanded, or for the reason that although it was demanded it could not be computed because the petition did not allege sufficient facts.

[2] The Indians in this case claim a total of $12,511,039 but admit that the United States is entitled to credit, as offsets, in the amount of $8,671,250. The figure given, therefore, is the net amount claimed.

An examination of this list shows that outside of some 21 suits instituted by the Sioux Nation, there are at the present time pending in the Court of Claims only 33 suits, in which a definite amount is specified in the petition. These suits, excluding those for the Sioux Nation, ask for an aggregate amount of approximately $262,000,000 in principal and $370,000,000 in interest. Of this amount, there is one case in behalf of the Creek Indians which asked for a recovery of $150,000,000 in principal and $227,000,000 in interest. I am informed by counsel for the Indians in that case, who will appear before this committee, that the petition was filed before it was possible to obtain any valuation with respect to the land involved; that since the suit has been filed, the highest valuation that parties have been able to obtain with respect to the land for which compensation is sought is $22,000,000. This valuation therefore reduces that claim about 85 percent. Even as to the remaining 15 percent, it may be that that case, like most of the other cases, will be dismissed completely. If that happens, it will mean that the total claims against the United States outside of the Sioux cases aggregate only $111,942,241.04 in principal and $92,170,916.10 in interest, or a total of $204,113,157.14.

Senator WILEY. Did that last exhibit go into the record?

Senator CONNALLY. Yes.

Senator WILEY. That shows the 75 pending suits you were talking about?

Mr. WILKINSON. It shows the cases pending which are definite in amount—54 of them.

Now let us observe the Sioux cases. Originally, there were 25 cases filed in behalf of the Sioux Indians. Four of those cases have already been dismissed by the Court of Claims in favor of the Government. The remaining 21 cases ask for approximately $293,000,000 in principal and $785,000,000 in interest. One of these suits alone, including principal and interest, asks for approximately $1,078,000,000.

In view of the fact that four of the claims of the Sioux Nation have already been dismissed by the Court of Claims, it may be that they will all be dismissed.

Assuming, however, with respect to all 54 suits still pending in the Court of Claims, in which definite amounts are sought, those for the Sioux Nation and those for other tribes, that the Indians will be comparatively as successful as they have been to date, to wit, that they will recover 1.35 percent of the amounts claimed, it will mean that instead of recovering some three to four billion dollars, which are the figures that the Department of Justice flaunts before this committee, the Indians will recover a total of aproximately $23,083,657.92.

This estimate does not, of course, take into consideration the cases pending in which no definite amounts are claimed. There are 21 of these. I present to the committee a tabulation thereof.

TABLE F.—*Table of pending cases, indefinite in amount*

(Prepared by Department of Justice)

In the following cases the petitions do not specify any of the amounts claimed, but for statistical purposes the aggregate principal amount claimed has been estimated as being $84,010,204.20,[1] and the aggregate interest (calculated to Jan. 1, 1940) claimed has been estimated as being $95,812,852.08.[2]

Number of case:	*Plaintiff tribe*	Number of case—Con.	*Plaintiff tribe*
K-336	Chickasaw.	L-207	Seminole.
F-369	Creek.	L-233	Do.
F-373	Do.	D-776	Yankton Sioux.
L-133	Do.	44297	Menominee.
L-136	Do.	44298	Do.
L-137	Do.	44299	Do.
L-205	Do.	44300	Do.
K-344	Indians of California.	44301	Do.
L-87	Seminole.	44302	Do.
L-88	Do.	44306	Do.
L-132	Do.		

[1] The estimate of the principal amounts claimed in the cases where no amount is specified is arrived at by taking the average of the amounts claimed in those suits (table I) in which the amounts are specified. In ascertaining this average, however, the *Sioux case*, C-531-7, and the *Creek case*, L-234, have been eliminated from the calculations, because it is felt that the extremely high demands in these cases would reflect a higher average for normal cases than would be justified.

[2] In 11 of the 21 cases listed above interest has been claimed. The interest has been estimated in the same manner as was the principal.

The assumptions used for the calculations stated at the outset of the last exhibit have been made by the Department of Justice, and are, I believe, fair. The total is $84,010,204.20 in principal and $95,812,852.08 in interest aggregate $179,823,056.28. Now, if based on past experience, the Indians will recover 1.35 percent of this amount. They will recover $2,427,611.26.

If we then add together the $23,083,657.92, which based on past experience they will recover on asserted claims definite in amount, and the $2,427.611.26, which based on past experience they will recover on asserted claims indefinite in amount we arrive at the estimate of $25,511,269.18, which they will yet recover. Of course the amount may be more, or it may be less, but this is what the figure would be on the basis of cases already determined in which the claims asserted were definite in amount.

The point is, however, that the amount that realistically is at issue, is not the $3,000,000,000 or $4,000,000,000 which the Department of Justice flaunts before this committee but rather an estimated $25,000,000. Now I am not belittling the fact that $25,000,000 is of significance, but I am saying that we should not be frightened with the possibility of having to pay such an additional amount to the native Americans, from whom our entire country was obtained.

I come now to the question that has been asked as to the reason for the relatively small recoveries.

One of the first reasons for the great discrepancies between the amounts claimed and the amounts recovered lies in the fact that Indian suits are so large in scope, and require so many years of investigation and prosecution, that it is impossible even for the attorneys to actually know the amount involved until they practically conclude the suit.

Senator KING. As when you sue for permanent injuries, you claim a great deal more than you expect to recover?

Mr. WILKINSON. I think the analogy is correct. The Indians do not know the real facts except by tradition. All the help they can give is to tell what they have heard from their forefathers. It falls upon the lawyers to find witnesses.

Senator CONNALLY. Does the law regulate the fees of the lawyers in these cases?

Mr. WILKINSON. Most jurisdictional bills provide that the fees of attorneys shall be determined by the Court of Claims, but in no instance to exceeed 10 percent of the amount recovered.

Faced with that situation attorneys have been compelled in the performance of their duty to state the outside amount—sometimes they have been outside. Let me visualize for you the problem of a lawyer in representing these defenseless wards. The tribe wants him to sue for the lands taken from them. About all the help they can generally give him is to tell of the traditions of the tribe as to the lands once possessed. On investigation he finds that they did possess a vast domain of land, but he has great difficulty in ascertaining the amount or its value. As for the establishment of his own case the witnesses are often dead—all descriptions that he can find of the property are vague—if perchance a treaty is involved, the territory is ill-defined. Neither is he able to ascertain possible defenses of the Government except by research that sometimes takes longer than the time in which, under his jurisdictional act, he must file his suit. Possibly the Government by historical records, which will ultimately be found, will be able to disprove exclusive possession, or be able to prove abandonment or some other defense. But the attorney must, to protect himself, claim all that is possible in his petition.

In the second place, the subject matter of Indian suits is often of such a nature that courts refuse to award damages, even though they find a flagrant treaty violation. There have been, for instance, a number of suits in which the Indians have claimed damages for loss of their hunting and fishing rights. The courts have found in some of these cases, and it cannot be contradicted, that the Indians have been deprived of their buffalo and other hunting preserves, and that they have also lost their fishing rights. Because, however, the courts have been unable to determine the precise value of the buffalo or of the fish of which they have been deprived, they have refused relief altogether. Cases like these, in which the damages are so speculative as to prevent recovery, form a substantial part of Indian litigation. And yet it should be noted that the loss of fishing and hunting rights was a loss to the Indian tribes of more value than anything else they possessed. It was these rights upon which they depended for a living. If, therefore, Indian tribes do, in certain cases recover against the United States, it should be remembered that they will never be able to recover for the losses which were most valuable to them as Indian nations. They will never be repaid for those losses.

Senator CONNALLY. Is it not the general rule in other cases that the court will frequently find a claim is speculative?

Senator WILEY. That is true in a court of law, but this is a somewhat different situation. Where there is really no rule by which to measure damages, the court in many cases will assess some damages.

Mr. WILKINSON. I recall a case in the Court of Appeals of New York, where the court said that damages would be awarded notwithstanding their speculative nature, the famous case of *Wakeman* v. *Wheeler and Wilson Sewing Machine Co.*

Senator WILEY. The courts should apply that to these cases.

Mr. WILKINSON. I recall another case in a Southern State for the loss of wild game, where the court refused recovery on the same ground.

Senator CONNALLY. You do not want it to appear that the Government is invoking and enforcing the doctrine only against the Indians?

Mr. WILKINSON. I admit that that rule is applied in a great many cases.

Senator CONNALLY. I do not want it to appear here that we do not want to consider the rights of the Indians. I have a good deal of sympathy for the Indians.

Senator WILEY. You are talking to the point that the court did not consider the loss of game and fish to be a valuable right for which they could recover?

Mr. WILKINSON. That is one example.

Senator WILEY. There is no element of damages that could be applied by the court.

Mr. WILKINSON. That was what the court held.

Senator WILEY. I quite agree with the analogy of Senator King, but this is entirely different. We have a general rule that wild game and fish do not constitute property rights in all the States. The property right here was in the tribe.

Senator KING. I assume the court took cognizance of the value, by reason of the fact that the streams which contained fish were of no particular value in themselves, and took into account the advantages to be derived from the fishing, and considered that in determining the value of the property.

Mr. WILKINSON. I feel sure the cases will not bear out the statement. The value of the fish and game has not been included in determining the value of the property.

Senator KING. I can imagine land so stocked with fish and game that the court would take into account the superior advantage of owning such land and accord to the judgment a certain amount to be derived from that.

Mr. WILKINSON. That is possible in a suit for land, but I am talking about cases involving the loss of game and fish, and things of that nature.

Senator CONNALLY. Would not that go with the land?

Mr. WILKINSON. In some cases it would. I think the correct rule should be, that even though damages are speculative, if there was a definite breach of treaty, the court should award some damages—make the best measurement it could. But the courts have not applied that rule in these cases.

Another example of a case involving speculative damages is illustrated by a recent Sioux case dismissed by the Court of Claims. There, the United States, by solemn treaty, in exchange for which the United States acquired millions of acres of land, had agreed to supply a schoolhouse and proper teachers for every 30 children of school age. Although the court found that the treaty had been violated, it refused to award damages because it could not evaluate the worth of the education of which the Sioux Nation had been deprived. Parenthetically, it would seem proper here to remark that if the promised education had been supplied to them, they would have been much further advanced today in the arts and industries of civilization, and the United States would probably not have been required to contribute to their support anywhere near as much as has been the case.

Senator KING. I assume the court took cognizance of the value of the streams which contained fish, and took into account the advantages to be derived from the fishing rights, and considered that in determining the value of the property.

Mr. WILKINSON. I feel sure the cases will not bear out that statement. The value of the game and fish and fowl was not considered in valuing the land.

Senator KING. Land with a river stocked with fish running through it would certainly have greater value than dry land with no such stream, and the court would take into account these facts and accord to the judgment a certain amount derived from that.

Mr. WILKINSON. That is possible in certain kinds of suits, but I am talking about cases of actual loss of game and fish and things of that nature. I think the rule is that, even though damages are speculative, if there was a definite breach of a treaty the court should do its best to establish damages. But the court has not applied that rule.

Another [illegible] of suits in which recovery has been denied have been those predicated on i[illegible]morial possession. These are suits for land in which Indian claimants contend that their immemorial possession of the land from which the United States drove them entitles them to a recovery.

The Court of Claims of the United States has held that it cannot award damages on a claim of such nature; that in order for it to be able to award judgment, the claim of the Indians to immemorial possession must be predicated on some political action of the United States, such as the recognition by the United States in the form of a treaty or action of the executive branch, or otherwise that the Indians actually possessed the land from which they were dispossessed by the United States. It should be noted, therefore, that under this doctrine of the Court of Claims, there is no danger that the United States is going to have to pay the Indians for all of the land of this country. Actually, treaties and other binding obligations on which suits of Indian tribes must generally be predicated, apply only to a fractional part of the territory of this country.

The inherent nature, therefore, of most Indian claims, actually prevents a recovery in most cases. And even in those where a recovery is obtained, the amount of recovery is small compared to the amounts that are claimed by the Indians. Instead of thinking in terms of a possible recovery of three or four billions of dollars, experience tells us that we should think in terms of a possible aggregate recovery of from thirty to forty million dollars. It may be less.

With this background of tribal litigation before us, let me discuss for a moment the legal theory which requires Indian tribes to continually petition Congress for jurisdictional acts. Were it not for the doctrine that the Government cannot be sued without its consent, Indian tribes would not be required to ask Congress for jurisdictional acts under which they might institute suit. In fact, were it not for that doctrine, Congress would be unable to prevent suits against the Sovereign.

For a long time civilization has recognized that individuals ought not to be immune from suit. Ever since our country was created, every individual has been liable to a suit by any other individual for any wrong which he may have committed. Unfortunately, both with respect to the world at large, and with respect to our own Government, we have not made such progress. The result is, in the world at large, the Mussolini has been able to conquer Ethiopia, and yet Ethiopia has no redress. Hitler has confiscated property of the Jews, and they have no redress. Stalin and Hitler have seen fit to divide among their respective countries the territory of Poland; private property has been confiscated and yet neither the Poles nor those who owned the private property have any legal redress. In this country, also, we took the property of the native Americans, and only lately have we, by jurisdictional acts, been providing a remedy for partial redress. I say "partial redress" because, as I have already pointed out, there are many wrongs which we perpetrated upon our Indian brothers for which courts can give no redress; and even with respect to those for which money damages can be awarded, the redress awarded only partially compensates for the loss of this great country.

The historic parallel between what Hitler has done, and what we did to Indian tribes, has been seized upon as late as last year by none other than Adolf Hitler himself to justify his invasion of Czechoslovakia and of Poland.

In a speech in the House of Representatives on May 4 last, the Honorable Karl Stefan, of Nebraska, in referring to the opposition of the Department of Justice to an Indian jurisdictional act, had this to say:

"We may still condemn the confiscation of private property, but we should at the same time remember our own record of confiscation. We still may condemn the removal from their homeland of populations by nations abroad, yet we should at the same time recall our own actions in regard to people without our own borders. We should remember some of the things we have done. I seek no sympathy, nor do I raise my voice concerning those things which happened in the long, long ago. I am not condemning the present generation for the faults of an earlier generation, but I do call to the attention of this House and to all American citizens who are now engaged in protesting violence, murder, rape, confiscation, suppression, that they consider some of the things now concerning our own people. Not yesterday, not last year, not a hundred years ago, but now confronting one element of our population which by any measure of justice puts us in the same class with those in other lands of which we now currently complain."

Now, I come to the reasons for the proposed bill.

The immediate reason for the proposed legislation is that the attorneys presently representing the Department of Justice in the defense of Indian claims, want to

make use of the doctrine that the sovereign cannot be sued without its consent, to prevent the Indians from recovering the 1 percent of the claims which such attorneys have so far been unsuccessful in resisting. And it should be noted that the bill before this committee is admittedly drafted by those attorneys in the Department of Justice who are the very ones defending the United States in the actions now pending in the Court of Claims. It was introduced at their request and should be considered in such light.

The real genesis of the present bill, and I think there is no secret about it, lies in the fact that the Department of Justice some 2 years ago lost two cases in the Supreme Court brought by Indian tribes which have so disturbed them that they have conspired to draft legislation which would prevent a recurrence of the justice which prevailed in those two cases. Having failed to prevail in the courts in those two cases, they now seek to prevent further judgments of the same nature by preventive legislation by Congress. A reading of the memorandum for the Attorney General submitted to this committee by the Attorney General will itself disclose that the proposed legislation is prompted by the decisions of the Supreme Court in *Shoshone Tribe* v. *United States* (299 U. S. 476), and the *Klamath et al. Indians* v. *United States* (304 U. S. 119).

It will be well, therefore, to give a short summary of those two cases.

In the *Shoshone case*, it was found by the Court that the United States by treaty had originally set aside a reservation of over 40,000,000 acres of land for the Shoshone Indians. Subsequently, the United States negotiated a new treaty with the largest division of these Indians, by which they gave up their immense reservation for a new reservation in Wyoming consisting of approximately 3,000,000 acres "for their absolute and undisturbed use and occupancy."

Subsequently, without the consent of the Shoshone Indians, the United States, under military escort, moved onto this 3,000,000 acres of land an unfriendly tribe of Indians named the Arapahoes. The Arapahoes occupied approximately one-half of the reservation.

The Shoshones sued the United States for the value of one-half of their reservation on the theory that the United States, without their consent, had taken that land for another tribe of Indians.

Although the Arapahoes had been moved onto the reservation as early as 1878, the Shoshones were not authorized to sue until 1927. From these facts, the Supreme Court found that the United States in taking one-half of the reservation for an unfriendly tribe, had done so under the power of eminent domain, and that, therefore, the Indians were entitled to the value of the land taken as of the time taken, and also to just compensation for the long delay in payment of the damages suffered. The Department of Justice argued that the power of the Government to control and manage the property and affairs of Indians in good faith for their betterment and welfare permitted the United States to use one-half of the reservation for another Indian tribe. The Supreme Court, however, in an opinion written by Justice Cardozo, held that the power to manage the affairs of Indians "Does not extend so far as to enable the Government to give the tribal lands to others, or to appropriate them to its own purpose without rendering, or assuming an obligation to render, just compensation; * * * that would not be an act of guardianship, but an act of confiscation * * *. The right of the Indians to the occupancy of the lands pledged to them may be one of occupancy only, but should be as sacred as that of the United States to the fee * * *. Spoliation is not management."

We submit to the committee that there is nothing inequitable about the decision arrived at in this case, in fact, any other result would have been a gross miscarriage of justice.

Senator CONNALLY. How much did they get?

Mr. WILKINSON. Around $4,000,000.

Mr. CHAMBERS. $4,408,444.23.

Senator KING. The principal was four and a half million, and two and a half million interest.

Senator WILEY. That is very illuminating.

Former Senator OWEN. That so-called interest was merely a means of calculating just compensation.

Mr. NAGLE. The principal was $1,682,284.99. After deducting gratuities there was a net judgment of $4,408,444.23.

Senator WILEY. What was the rate of interest?

Mr. NAGLE. Five percent since 1878.

Senator WILEY. When was the land taken?

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Mr. NAGLE. 1878 to 1939 the interest was figured. They figured up to the time the [illegible]nt was drawn.

Senator WILEY. Did they figure the interest on the gratuities?

Mr. NAGLE. No.

Mr. WILKINSON. Now let me summarize the Klamath case. There, the Klamath Indians, who had held by immemorial possession more than 20,000,000 acres of land in Oregon and California, entered into a treaty with the United States, whereby they ceded all of their land to the United States save about 1,200,000 acres, which was reserved to them as a reservation.

Subsequently, the United States, without the consent of the Indians, conveyed 87,000 acres of the land reserved to the Klamath Indians to a third party.

Senator WILEY. Was that done by an act of Congress or by the Indian Bureau?

Mr. WILKINSON. As I recall, it was by an act of Congress.

Senator WILEY. The 87,000 acres was by an act of Congress. Did it provide a method of compensation?

Mr. NAGLE. They settled for $108,000.

Senator WILEY. Did the act provide the amount?

Mr. NAGLE. It did not provide the exact amount. I am just informed by Mr. Stormont that the act did provide for the $108,000.

Senator WILEY. Was that the result of a treaty?

Mr. NAGLE. It was the result of an agreement.

Senator KING. Between the tribe and the Government?

Mr. NAGLE. Yes.

Senator CONNALLY. Did they get the money?

Mr. NAGLE. Yes.

Senator WILEY. I do not exactly recall the statement made by counsel in the beginning, but I think that we should get all these facts. It is easy to say the Government has been unjust in every case. Perhaps there were equities we should consider, and these facts might throw some further light on the question.

Senator KING. To whom were the 87,000 acres sold?

Mr. NAGLE. To a timber company.

Mr. WILKINSON. I am coming to that presently.

In a suit by the tribe for the value of the 87,000 acres of which they had been deprived, the Court held that they were entitled to just compensation for the land taken, which included (1) the value of the land when taken, and (2) sufficient to compensate them for the long delay in receiving the money. The Court said that this last element of compensation could be measured by interst on the principal value of the timber.

Senator WILEY. Then the Court must have reached the conclusion that the damage which was the basis of the settlement, was due to fraud or duress.

Mr. WILKINSON. Do you mean the agreement?

Senator WILEY. Yes.

Mr. WILKINSON. I am coming right to that.

Senator WILEY. All right.

Mr. WILKINSON. It should be further noted that the case went to the United States Supreme Court twice.

The first time it went to the United States Supreme Court the case was decided against the Indians on the ground that they had executed a release of all claims against the United States in exchange for the paltry sum of $108,750. While the Court found that the amount paid to the plaintiff Indians was less than 4 percent of the value of the land; that "it was grossly inadequate," and intimated that the United States, as guardian had taken advantage of its wards and that although if the suit had been between private parties the Court would probably be permitted to upset the release, it held that it could not go behind a treaty without special authorization from Congress.

Congress then responded to the suggestion of the Supreme Court.

Senator WILEY. Is it a fact that the agents and the representatives of the Government were delinquent in their obligations?

Mr. WILKINSON. Yes; especially the Department of the Interior.

Senator WILEY. Yes. They sold them short. They sold them down the river for 4 percent of what they should have received.

Mr. WILKINSON. That is right.

Senator CONNALLY. What did the Government get for that land?

Mr. WILKINSON. I do not know.

Mr. NAGLE. Does the committee want to hear that matter developed on this point.

Senator KING. Yes.

Mr. NAGLE. Back in the 1860's, by treaty with the Klamath Band, a large area was set aside for a reservation. Just a little bit back, before the treaty was ratified, the United States granted to the State of Oregon, for th[illegible]pose of aiding in the building of a military road, a large number of acres of land, every other section for 10 miles deep, to be given them as an outright grant.

Senator WILEY. Before the Indians were in possession?

Mr. NAGLE. It was before the treaty was ratified, but after it had been signed. Then the State of Oregon entered into a contract with a construction company to build that road, the State to give the land to that company. The company built the road, and it ran through the reservation. The road company got all this land right through the middle of the Klamath Reservation.

Later on a dispute of some kind arose between the Government and the road company, as a result of which the United States brought an action to set aside the grant, on the ground that there had been fraud connected with it. That case went to the Supreme Court, where it was held first that fraud was not proved, and second, the land had passed on to bona fide purchasers, and the decision was against the United States. Later the United States sued as the guardian of the Klamath Indians.

Senator KING. Sued whom?

Mr. NAGLE. Sued the people who claimed title to the land, the successors to the road company. It sued to set aside the conveyances and to clear title to these lands for the Klamath Indians.

The court held that the prior case was res adjudicata. The United States traded the 87,000 acres to which Mr. Wilkinson refers for the 111,000 acres of land lost earlier. It ran right through the middle of the reservation. The timberland was on the outside. The Indians were dissatisfied with that trade.

Senator WILEY. Were the 87,000 acres fine standing timberland?

Mr. NAGLE. Yes, sir.

Senator WILEY. The value to the white man of the timber was considerable.

Mr. NAGLE. That was the whole value.

Senator WILEY. Someone made a good deal out of it, and the Indians were left to hold the bag.

Mr. NAGLE. Somebody made some money. The Indians came to Congress in 1904, and Congress appropriated $108,000 in settlement of the claim.

Senator WILEY. Which was found afterward by the Court to have been worth at least a million dollars, without interest?

Mr. NAGLE. Yes, sir; $2,800,000, and the Court gave judgment for that amount.

Mr. WILKINSON. First of all, there were 111,000 acres that the Indians were supposed to get and did not get. Afterward the United States traded off the 87,000 acres which the Indians got in exchange for the 111,000 acres which were then given to the Indians.

Mr. CHAMBERS. At the time the $108,000 was appropriated it was assumed to be the general law that the Indians did not own the timber and the minerals. The main value was actually in the timber, and the $2,000,000 represented the value. That was decided in the *Klamath case* by the Supreme Court in 1937. The United States owned the timber at that time. The Government did not get paid for the timber.

Senator CONNALLY. Was the $108,000 a gratuity?

Mr. CHAMBERS. No; a legal offset.

Senator KING. Mr. Wilkinson, proceed.

Mr. WILKINSON. Congress then passed legislation directing the Court of Claims "irrespective of any release or settlement, to reinstate and retry said case, and to hear and determine the claims of the plaintiffs on the merits." Being thus authorized to go behind the release, the Court of Claims found in favor of the plaintiff Indians for the principal amount of $2,871,250. To this it added interest in the amount of approximately $4,400,000 as an element of just compensation, deducted as an offset nearly $2,000,000 in gratuities, and arrived at a net judgment of $5,313,347.32.

Senator WILEY. In order to get the matter concretely before the committee, if this bill now before us had been the law, it is quite probable that the Indians would have recovered nothing in that case?

Mr. WILKINSON. They would have recovered about $900,000. That is, they would have been awarded a gross judgment for $2,900,000, the approximate value of the land, from which would have been deducted approximately $2,000,000 in gratuities, leaving a net judgment of about $900,000. Also, they would have obtained 6 years' interest.

Senator KING. Something over a million dollars. Proceed.

Mr. WILKINSON. Yes; the only argument I have heard presented in favor of such a result was that it would save the Government a lot of money.

As in the case of the Shoshone Indians, we say that any contrary decision by the United States would have been grossly unfair to the Indians involved.

The United States should have been satisfied with these Indians ceding some 19,000,000 acres of choice timberlands to the United States, without being petty and taking, without their consent, an additional 87,000 acres of the remaining 1,200,000 acres of land which they had reserved for themselves. And it strikes us as being particularly small, for this Government, in view of the generosity of the Klamath Tribe in ceding 19,000,000 acres to the United States, to complain about paying 30 years' interest.

The fact remains, however, that the Department of Justice felt so disappointed in losing these two cases that it almost immediately started drafting the legislation here under consideration. We say to the committee, and to the attorneys for the Government, that we think the Department of Justice has misconceived its mission. We submit that the Department of Justice has not failed if the ends of justice have been served. In the words of the present Attorney General of the United States, in an address delivered by him on January 20 of this year:

"The Government does not lose any case if, by its result, justice is done. Mere statistics of success form no criterion by which to judge Government counsel. Fundamental things in our American way of life, depend upon the will, integrity, courage, and striaght thinking of our Government lawyers. Rights, privileges, and immunities of our citizens have only that life which is given to them by those who sit in positions of authority."

We say, therefore, that Government counsel ought not to be chagrined over the fact that they at last lost two cases brought by Indian tribes, and further, that it would be better for them to accept the standard of conduct set down by the present Attorney General of the United States than it would be to attempt to devise a method whereby they can defeat the remaining 1 percent of Indian claims which have heretofore been successful.

Counsel for the Government insist, however, that unless this legislation is enacted, the United States may have to pay some large judgments—as though the amount of money involved determined whether a cause were right or wrong. I need not remind the members of this committee that justice in this country is for the poor as well as the rich; that it protects the wards of the Government, as well as the guardian of the wards, and that under our theory of jurisprudence no just cause may be cut short because the poor will thereby receive full justice. As stated by the Court of Claims in *Missouri, Kansas and Texas Railroad Company* v. *United States* (47 Ct. Cls. 59, 85):

"If the size of the claim could have anything to do with the result, the sooner this court retired from business, the better for the citizens."

I therefore plead with this committee that in the determination of whether or not the proposed legislation is desirable, consideration should be given, not to the amount of money involved, although that is only a small fraction of that claimed by the Department of Justice, but rather to whether the proposed legislation is right and just.

STATEMENT OF FELIX S. COHEN, ESQ. ASSOCIATE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. MURDOCK (acting chairman). We will be pleased to hear Mr. Cohen of the Department of the Interior now.

Mr. COHEN. I should state, Mr. Chairman, that we have a report recommending a number of minor amendments in the bill. In large part those amendments have been covered by Mr. Wilkinson's suggestions. I think a good many of the points that I have are points which have been covered, perhaps in slightly different language; but the points that he has made are in large part points with which the Department would agree.

Mr. MURDOCK. Has the departmental report been furnished the committee?

Mr. COHEN. It has not been filed but I hope it may be filed either late today or tomorrow. With the permission of the chairman I should like to file the report when it has been signed by the Secretary.

Mr. STIGLER. And may it be inserted in the record at this point?

Mr. MURDOCK. Without objection, it may be so recorded.

(The report is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, June 11, 1945.

Hon. HENRY M. JACKSON,
Chairman, Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. JACKSON: Reference is made to your request for reports on H. R. 1198 and H. R. 1341, bills "To create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes."

The bills are virtually identical with one exception. Section 3 of H. R. 1198 contains a provision that at least one member of the Commission shall be a duly enrolled member of some recognized tribe or band of Indians. No comparable provision appears in H. R. 1341.

I strongly favor the purposes of these bills, but believe that they need amendment in several particulars. A draft indicating the suggested revisions is enclosed. I recommend that these revisions be incorporated in the bills, and that one or the other of them be enacted.

This Department has repeatedly urged the creation of an Indian Claims Commission for the purpose of achieving a prompt, final, and just disposition of all outstanding Indian tribal claims against the Government. Both of these bills provide for such a body. The proposed Commission, to be composed of three Commissioners appointed by the President, with the advice and consent of the Senate, would be given broad powers to hear and determine all claims of every nature against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States, including Alaska. The bills provide that the Commission shall receive claims for a period of 5 years and that its work shall be completed within 10 years after its first meeting.

The reasons which make the creation of an Indian Claims Commission important may be discussed under three major headings: (1) the necessity for prompt and just disposition of Indian claims; (2) the inadequacy of the present method of disposing of such claims; and (3) the remedy offered by the procedures proposed in H. R. 1198 and H. R. 1341.

Investigators of Indian affairs and successive Commissioners have insisted that the Government's administration of Indian affairs is partially frustrated so long as the tribes have claims against the Government which they believe to be just and which the Government is not squarely facing. The Meriam study of the problem of Indian administration (1928) expressly finds that:

"The existence of these claims is a serious impediment to progress. The Indians look forward to getting vast sums from these claims; thus, the facts regarding their economic future are uncertain. They will hardly knuckle down to work while they still hope the Government will pay what they believe is due them" (p. 19).

"* * * The expectation of large awards making all members of the tribe wealthy, the disturbing influence of outside agitators seeking personal emoluments, and the conviction in the Indian mind that justice is being denied, renders extremely difficult any cooperation between the Government and its Indian wards" (p. 805).

At the hearings held in 1930 by the Subcommittee of the Senate Committee on Indian Affairs for the purpose of investigating the delays in the prosecution of Indian claims, the settlement of these claims was accepted by the Senators as a fundamental need. See Survey of Conditions of the Indians in the United States, Part 25, Hearings, Seventy-Second Congress, First Session, at pages 13409 et seq.

The present method of handling these claims promises no solution. It only aggravates the situation, since it postpones the settlements almost indefinitely. In the meantime, the substance of the claimants is wasted and the Government is put to heavy expense. The results frequently are disappointment, and unjustified defeat even of meritorious claims. The defects of the present system can best be demonstrated by an analysis of its several processes.

The first step, and perhaps the most disheartening of all the various labors in prosecuting such a claim, is the work of obtaining from the Congress the necessary jurisdictional act. At every session the Congress is confronted by several scores of jurisdictional bills, each presenting peculiar and complicated problems and factual situations. Many are reintroduced session after session, despite disregard

by the committees, defeat, and even veto by the President, and regardless of whether the claims are meritorious or not. Admittedly, political considerations are responsible for the enactment of some of these bills. The result is that before a jurisdictional act is obtained many years may be, and frequently are, consumed in agitation, propaganda, and even lobbying. Obviously the cost in time and money of this repetitious process is enormous.

Further waste attendant upon the system is the enactment of jurisdictional bills which can or do bring to the claimants little or no benefit. These grow out of the fact that the Congress is necessarily concerned with matters of more import to the Nation and is compelled to pass upon claims of this nature without having detailed, responsible, impartial advice. A great many claims based on alleged fraud, duress, or mistake of fact, have been dismissed by the Court of Claims for technical lack of jurisdiction. That court repeatedly has held that the stereotyped language frequently employed in these jurisdictional acts, "all claims arising under any treaty," did not permit consideration of claims attacking the validity of the treaty rather than relying on its terms, such as claims based on inadequate consideration for a treaty cession (*Otoe and Missouria Indians* v. *United States*, 52 C. Cls. 424), claims based on mistake and misrepresentation as to the acreage ceded by a treaty (*Sisseton and Wahpeton Indians* v. *United States*, 58 C. Cls. 302), claims for the value of land ceded without consideration and because of duress (*Creek Nation* v. *United States*, 63 C. Cls. 270), and claims for proceeds of the sale of land because of inability to understand the words of the treaty (*Osage Tribe of Indians* v. *United States*, 66 C. Cls. 64). See also *Klamath and Moadoc, etc., Indians* v. *United States*, 81 C. Cls. 79, where a substantial judgment was subsequently obtained after specific waiver by Congress of the release embodied in an agreement with the Indians (85 C. Cls. 451, affirmed 304 U. S. 119).

One deplorable result is the lack of finality attending dismissal of a case by the Court of Claims on technical legal grounds without consideration of the claim on its merits. The Congress constantly is being petitioned for new or amended jurisdictional acts for the benefit of claimants whose cases have thus been dismissed by the Court of Claims.

Nor are the unsatisfactory features of the present system limited to jurisdictional enactments subsequently found to be inadequate. The separate preparation of each case for trial involves an inordinate amount of work, including much duplication of research, which neither the attorneys nor the Government agencies are equipped to handle efficiently and with dispatch. The practice is for the Department of Justice, upon receipt of the tribe's petition after its filing in the Court of Claims, to send copies of the petition to the Department of the Interior and to the General Accounting Office with a request for all available information on the subject. Inevitably a great deal of time, even years, is consumed in preparing the required reports in this piecemeal manner. Particularly is this true in the General Accounting Office where much of the information necessary to a proper consideration of the claims is contained in a single, unduplicated series of records.

The Indian Claims Commission, proposed to be established by H. R. 1198 and H. R. 1341, is designed to end this largely futile waste of time and money by providing for a comprehensive examination and final determination of all those claims which merit settlement. It will result in an ultimate saving to the Government even though it may cost, during the few years of its existence, more in direct Federal outlay than the present method. Further, it will result in a substantial improvement in the Government's present unsatisfactory relations with the Indians in this respect.

In addition, the Commission would be given jurisdiction over so-called moral claims as well as over claims strictly legal in nature. This authority would overcome the defect in the present system under which many of the claims of the Indians are precluded from a hearing on their merits on technical legal grounds, even though the claims may be such as would challenge the conscience of a court of equity.

One outstanding feature of the proposed Indian Claims Commission, as it would be established by the pending bills, is the provision for final disposition of claims. I have pointed out in considerable detail the deplorable weaknesses in this respect of the present system of handling Indian claims. Under the pending bills the determinations of the Commission would be subject to judicial review as to matters of law. Once the reviewing process had been completed, the determinations would be reported to the Congress, would have the effect of a final judgment of the Court of Claims, and would be paid in like manner. Rejected

claims, or claims not presented within the 5-year period allowed for this purpose, would be forever barred.

The endless petitioning of the Congress for jurisdictional acts to authorize litigation in the Court of Claims: the frustration and disappointment over refusal by that court, on technical grounds of lack of jurisdiction, to hear cases based on fraud, duress, mistake of fact, or other equities involving the validity of treaties or agreements; and the inevitable return of the claimants to the Congress for a broader jurisdictional act to permit consideration of the merits of the claim—these weaknesses of the present system which are so costly in time and material resources to the Government as well as to the claimants, would be eliminated by the establishment of the proposed Commission, because it would have power to consider the merits of all existing Indian tribal claims and to render what would be, in effect, a final judgment, binding upon the parties.

I cannot urge too strongly upon the Congress the desirability of favorably considering the proposals embodied in H. R. 1198 and H. R. 1341, with the amendments indicated by the attached draft. In this draft the recommended amendments are designated through the use of the familiar strike-out and underline procedure, and are explained in justifications at the end of each section or subdivision. While the draft is based on H. R. 1198, the suggested amendments are equally applicable to H. R. 1341. The page and line references, however, may be slightly different.

In view of the desire you have expressed to have the views of the Department on these bills made available at the earliest possible date, and in view of the fact that hearings on these bills are now in progress, this report is being submitted to you in advance of its transmittal to the Bureau of the Budget for consideration by that agency. Accordingly, no commitment can be made as to whether the recommendations contained in this report are in accord with the program of the President.

Sincerely yours,

HAROLD L. ICKES, *Secretary of the Interior.*

DRAFT INDICATING AMENDMENTS TO H. R. 1198 PROPOSED BY THE DEPARTMENT OF THE INTERIOR

A BILL To create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes

[No proposed amendment to title.]

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That there is hereby created and established an independent
4 agency of the executive branch of the Government, to be
5 known as the Indian Claims Commission, hereinafter referred
6 to as the Commission.

[No proposed amendment.]

7 JURISDICTION

8 SEC. 2. The Commission shall hear and determine all
9 claims of every nature whatsoever against the United States
10 on behalf of any Indian tribe, band, or other identifiable
11 group of American Indians residing within the territorial

(Page 2)

1 limits of the United States or Alaska. Such claims shall
2 include, but shall not be confined to, (1) claims arising
3 under the Constitution, laws, treaties of the United States,
4 and Executive orders of the President; (2) claims whether
5 sounding in contract or tort or otherwise, with respect to
6 which the claimant would have been entitled to redress in
7 a court of the United States if the United States were subject
8 to suit; (3) *claims under all treaties heretofore negotiated*
between the claimant and the United States but not formally
ratified or executed by all of the parties thereto; (4) claims
which would result if the treaties, con-

INDIAN CLAIMS COMMISSION

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

H. R. 7837

A BILL TO CREATE AN INDIAN CLAIMS COMMISSION, TO PROVIDE FOR THE POWERS, DUTIES, AND FUNCTIONS THEREOF, AND FOR OTHER PURPOSES

MAY 22, 1935

UNITED STATES
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INDIAN CLAIMS COMMISSION

WEDNESDAY, MAY 22, 1935

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D. C.

The committee met at 10:30 a. m., Hon. Will Rogers (chairman) presiding.

The CHAIRMAN. The committee will please be in order.

By a vote of the committee at the meeting last Wednesday H. R. 7837 was set as special business for today. This is a bill to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes.

(The bill referred to is as follows):

[H. R. 7837, 74th Cong., 1st sess.]

A BILL To create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Commission be and hereby is created and established, to be known as the "Indian Claims Commission", which shall be composed of a Chief Commissioner and two Associate Commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. The Commissioners shall continue in office during the existence of the Commission or until resignation or removal by the President only for inefficiency, neglect of duty, or malfeasance in office. Vacancies in the Commission shall be filled by the President in the same manner as original appointments. No vacancy shall interrupt the functioning of the Commission, nor impair the right of the remaining Commissioners to exercise all of its powers and to perform all its duties. The Commissioners shall not engage in any other business, vocation, or employment during their term of office. Each of the Commissioners shall receive an annual salary of $10,000, payable in the same manner as the salaries of judges of the courts of the United States.

SEC. 2. It shall be the duty of the Commission to investigate all claims against the United States of any Indian tribe, band, or other communal group of Indians residing within the territorial limits of the United States or Alaska, to ascertain and determine all of the facts relating thereto and all questions of mixed law and fact as may be incidental to such determination, and, on the basis of the facts found by it, to ascertain and determine the merits of all such claims, and to make findings with reference thereto. Such claims shall include all those whether sounding in contract or tort or otherwise with respect to which the claimant would have been entitled to redress in any court of the United States if the United States were subject to suit; and all claims of whatsoever nature on account of any breach of duty committed by any officer or agent while purporting to act in the name or on behalf of the United States; and all further claims under all treaties heretofore negotiated between the claimant and the United States but not formally ratified or executed by all of the parties thereto; and those claims of whatsoever nature which would arise on a basis of fair and honorable dealings unaffected by rules of law and those which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress,

HP019282

or mutual or unilateral mistake whether of law or fact. Any such claim now pending in the Court of Claims, and any such claim previously referred by Congress to the Court of Claims and not yet filed in such court may be transferred, together with all the documents and certified copies of all the records relating thereto, by the complainant to the Commission at any time within the period provided for presentation of claims to the Commission, and all further proceedings with respect thereto shall be had under the provisions of this Act regardless of the terms of any Act giving jurisdiction of such claim to the Court of Claims. No claim shall be excluded because of the provisions of any other statute; nor because it has already been presented to the Congress; nor on the ground that it has become barred under any rule of law or equity, or by reason of any treaty or statute; nor on the ground of a prior adjudication with respect thereto in any judicial, administrative, or other proceeding between the same parties; *Provided, however*, That the Commission, when ascertaining the merits of any claim, shall take into consideration, and may inquire into, all previous adjudications or settlements of such claim and all payments made by the United States on its account. In any case wherein the Commission determines that a claim has merit under the provisions of this Act, the General Accounting Office and the Indian Office upon request of the Commission shall furnish such information as in the judgment of the Commission is required for the determination of set-offs.

SEC. 3. The Commission shall make a detailed report to the Congress of its findings of the facts of each claim, the conclusions reached as to the merits of such claim and the reasons therefor, together with an appropriate recommendation for action or nonaction by that body. If any claim shall be ascertained to be without merit in law or in fact, the Commission shall so report. If any claim shall be found to rest on some legal, equitable, or sound moral obligation, the recommendation shall be for a direct appropriation by the Congress in a specific amount, or for other adequate relief, or for the passage of an Act giving jurisdiction of such claim to the Court of Claims.

In all proceedings brought pursuant hereto in the Court of Claims all determination of fact by the Commission shall be accorded prima facie weight.

SEC. 4. The Commission shall be authorized to receive claims for a period of five years after the approval of this Act and no claim existing before such period not presented within such period may thereafter be submitted to any Federal court or administrative agency for consideration or action, nor will such claim be entertained by Congress.

Any claim within the provisions of this Act may be presented to the Commission by any member of members of an Indian tribe, band, or other communal group, as representative of all such members, regardless of the present status of such members as allottees, citizens, or unrestricted Indians; but wherever any tribal organization exists, recognized by the Secretary of the Interiod as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.

SEC. 5. Immediately after its formation, the Commission shall send a written explanation of the provisions of this Act to the recognized head of each Indian tribe and band, and to any other communal groups of Indians existing as a distinct entity, and shall request that a detailed statement of all claims be sent to the Commission, together with the names of aged or invalid Indians from whom immediate depositions should be taken and a summary of their proposed testimony.

SEC. 6. The recognized representatives of each such tribe, band, or other communal group of Indians may retain to represent its interests in the presentation of claims before the commission an attorney at law, whose employment and the terms thereof shall be subject to the provisions of sections 2103, 2104, 2105, and 2106 of the Revised Statutes, and whose practice before the Commission shall be governed by rules and regulations hereby authorized to be formulated by the Commission. The Attorney General or his assistants shall represent the interests of the United States in connection with all matters pertaining to this Act.

SEC. 7. The Commission shall make a complete and thorough search for all evidence affecting such claims, utilizing all documents and records in the possession of the Court of Claims and the several Government bureaus and offices. The Commission or any of its members or authorized agents may hold hearings, examine witnesses, and take depositions in any place in the United States and any of the commissioners may sign and issue subpenas for the appearance of witnesses and the production of documents from any place in the United States or Alaska, at any designated place of hearing. In case of disobedience to a subpena, the Commission may obtain an order from any court of the United States requiring obedience to that subpena; and any failure to obey such order shall be punished by such court as a contempt thereof. Witnesses subpenaed to testify before the Commission, witnesses whose depositions are taken pursuant to this Act, and the officers or persons taking the same, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

SEC. 8. The Commission shall give notice and an opportunity for a hearing to the interested parties before making any final determination upon any claim. A full written record shall be kept of all hearings and proceedings of the Commission and shall be open to inspection by the attorneys concerned. Whenever a final determination is reached by the Commission upon any claim, notice thereof shall be given to the tribe, band, or group concerned. Within twenty days thereafter written objections thereto may be filed with the Commission by any interested party. If such objections are not accepted by the Commission they shall be recorded as a part of the report on the claim presented to the Congress.

SEC. 9. The Commission may adopt all such rules for its own procedure, for the organization of its work, and for the effectuation of the purposes of this Act as it may deem appropriate. The Commission may employ and fix the terms of employment of such experts, field investigators, and professional and clerical assistants as may be necessary to fulfill duties which cannot be properly performed by persons already engaged in the Government service. At the Commission's request, the General Accounting Office, the Land Office, and the Bureau of Indian Affairs may transfer or temporarily assign to the Commission such of their employees as are specially qualified to assist the Commission in the performance of any of its duties under this Act.

SEC. 10. All necessary expenses of the Commission, including all reasonable traveling expenses incurred by the Commissioners, or under their orders, upon official business in any place outside the city of Washington, and including necessary expenses for suitable rooms and equipment for the principal office of the Commission in the city of Washington and for the performance of duty outside the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Chief Commissioner.

SEC. 11. Annual reports shall be submitted by the Commission to Congress showing the progress of its work. The Commission shall cease to exist on the fulfillment of its duties under this Act; or, in any event unless extended by Act of Congress, on the expiration of ten years after the formal organization of the Commission. When the Commission shall cease to exist, all its books, documents, letters, official records, and other papers shall be transferred to the Indian Office.

SEC. 12. There is authorized to be appropriated for the purpose of carrying out the provisions of this Act such sums as the Congress may from time to time determine.

SEC. 13. This Act may be cited as the "Indian Claims Commission Act."

The CHAIRMAN. The committee requested that the Departments interested in this legislation be invited to appear before this committee to advise us as to the necessity for this bill.

A report has been made by the Bureau of Indian Affairs of the Department of the Interior, but it is now being held up by the Bureau of the Budget and I would like to ask permission to insert that report in the record. We expect to receive same in a few days. If there is no objection, we will insert the report at this point.

(The report above referred to is as follows):

THE SECRETARY OF THE INTERIOR,
Washington, June 5, 1935.

Hon. WILL ROGERS,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for report on H. R. 6655, a bill to create an Indian Claims Commission to investigate

and determine the facts and the merits of all existing claims by Indian tribes against the United States, and to report its findings with appropriate recommendations to Congress. A series of conferences has been held since introduction of H. R. 6655, and as a result of these conferences text of the proposed legislation has been perfected and is now embodied in H. R. 7837 and S. 2731. Report is therefore being made on H. R. 7837.

The proposed commission, to be composed of three commissioners appointed by the President with the advice and consent of the Senate, is authorized to make a thorough search for all evidence on the facts involved in such claims, but may make determinations only after notice and hearing to all the interested parties. It is contemplated that the commission shall receive claims for a period of 5 years and that its work shall be completed within 10 years after its creation. It may report its recommendations to Congress as its determinations are made, and annual reports to Congress of the progress of its work are required.

The bill does not itself provide for the adjudication of any Indian claim. Its purpose is to expedite the handling of such claims, to provide Congress with competent, impartial advice on the disposition of the numerous requests by Indian tribes for the passage of jurisdictional acts or the allowance of appropirations, and to relieve the Court of Claims of the burden of highly complicated and necessarily prolonged fact determination.

Congress is now endlessly confronted with the challenge (*a*) to enact direct settlements with Indian tribes, and (*b*) to enact jurisdictional bills which more or less predetermine the ultimate settlement, in both cases without any adequate data upon which to reach a decision. Nor can this data be accumulated through legislative hearings in Washington. The immediate and, if necessary, sufficient justification of the pending bill lies in the above fact and in the way the bill would change that fact.

As a result of inadequate data the jurisdictional acts, among other peculiarities, often are inconsistent with one another, sometimes in the direction of leniency, and sometimes in the opposite direction, and in few or none of them are the authorizations and limitations based upon the particular and local history of the tribe and of its relations with the Government.

At present, after long preliminary negotiation and lobbying, eventuating in a jurisdictional act, a petition is filed in the Court of Claims, and the General Accounting Office goes through all records of expenditures, accumulating as certain or possible set-offs the detailed record of all the gratuitous expenditures for or in behalf of each tribe. The Indian Office, simultaneously or subsequently, prepares a lengthy history and discussion of the case. While the General Accounting Office is working on one case, many others are awaiting their turn, because much of the data is contained only in a single, unduplicated series of badly wornout records.

After many years spent in preparation the Government and the tribe go into combat before the Court of Claims under a jurisdictional act which usually is believed and admitted by all the parties to be inequitable, and which does not and should not have the character of an act for final settlement. Largely because of the unsatisfactory character of the acts, recovery in the Court of Claims by Indian tribes has become very infrequent, with resulting justifiable dissatisfaction by the tribes and their return to Congress for further redress.

The total operation is greatly influenced by elements of sheer accident, such as the possession by Indians of the wherewithal to hire attorneys for the initial lobbying of their case.

The above unsatisfactory state of affairs would be completely changed through the work of the commission under the pending bill. The commission would dispose of real and alleged claims, tribe by tribe. Its recommendations, whether for direct settlement or for jurisdictional acts, would be merely recommendations so far as Congress and the Budget were concerned, but its findings of fact would be a permanent accomplishment. The commission would be empowered and expected to take into account the particular historical circumstances of each tribe—its treaties and its land occupancy and its subsequent fate at the hands of the Government—and its present needs. In the ascertainment of set-offs, the commission would prepare for submission to Congress a total of possible set-offs such as in the commission's judgment may be fair in the light of the particular circumstances. In contrast to the present system, set-offs other than direct payments upon the claim need not be searched for except in the case of claims already determined to have merit, thus saving effort and expense. Furthermore, in ascertaining set-offs the commission would be in a position to prevent inequality of treatment by applying standards for the direction of research. Through photostating some of the records in the General Accounting Office, the commission would be able to dispose simultaneously of the set-off questions affecting numerous tribes. The commission would draw into its total picture the information in the possession of the Office of Indian Affairs—information which ordinarily, at present, is not put together until after a jurisdictional act, with all its fatalities, has become law.

Based upon the findings of fact and the recommendations of the commission, there undoubtedly will be many cases where Congress and the tribes can readily agree upon a direct final settlement, thus making unnecessary any litigation in the Court of Claims or the Supreme Court of the United States.

Where such direct settlement may prove to be not feasible because of unsettled legal questions, the claim may be submitted to the Court of Claims under an act framed on the basis of the research of the commission to present adequately all the issues requiring determination. As the findings of the commission are made prima facie evidence of the facts of the claim, further investigation of such facts is in most cases rendered unnecessary.

There will be no need of paying to private attorneys amounts which have aggregated millions, and which, before the final settlement is achieved under the now existing arrangement, would total tens of millions.

A somewhat increased cost to the Government (i. e. simply the expenses of the commission itself) will be balanced by a permanent reduction of costs in the Indian Office, the General Accounting Office, the Department of Justice, and the courts. And finally, it will be possible for the Indians, Congress, and the country to know with a clear conscience, that at least the facts have been ascertained and that the merits of the cases are set down in an adequate manner. It is believed that just, final settlement would follow as a matter of course.

I recommend enactment of H. R. 7837.

The Assistant Director of the Bureau of the Budget has advised that this bill "would not be in conflict with the financial program of the President, if section 3 were amended in accordance with the recommendation contained in the attached copy of the Attorney General's letter to me of May 24, 1935, and if section 9 were amended to provide that the employees of the Commission shall be subject to the provisions of the Classification Act of 1923, as amended."

To comply with the suggestion of the Assistant Director of the Budget, the words "subject to the provisions of the Classification Act of 1923, as amended", set off by commas, could be inserted on page 7, line 24, after the word "employ".

The amendment suggested by the Attorney General would be on page 4, line 25, to strike out the words "accorded prima facie weight" and to insert "admissible in evidence but may be reviewed by the court either on the basis of evidence taken before the Commission, or on additional evidence, or both."

Sincerely yours,

(Sgd.) HAROLD L. ICKES,
Secretary of the Interior.

The CHAIRMAN. Mr. Collier will make a statement concerning this bill.

STATEMENT OF HON. JOHN COLLIER, COMMISSIONER BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Commissioner COLLIER. Mr. Chairman, I would suggest the great importance of the subject matter of this bill. This bill is an attempt to meet a recognized problem and a situation admitted to be unsatisfactory which has been before Congress and the Departments for many years.

I shall be exceedingly brief and will rather state the nature of the problem rather than indicate the details of the bill.

Ever since the beginning of the history of our Government in Indian affairs the Government has been entering into treaties with Indian tribes and having these treaties, either by agreement or unilateral action, and in later years supplementing them with agreements. Again, it has been acting as the guardian of the Indians in

HP019284

the absence of treaties. It has been recognizing the Indian title to areas of land, extinguishing the Indian claim of title to other areas, and having recognized title repeatedly the Government has changed its mind and altered and diminished them. The Government for a great many years has been the custodian of the Indian tribal trust moneys and has been using them in all kinds of ways.

Now, out of this total of the past record, extending down to this day, there have grown up innumerable grievances and claims, in some instances resting upon grounds which are definitely legal or ethical and therfore can be settled in the Court of Claims, that is, if they can get passed a jurisdictional act and if the act is drafted with a knowledge of the necessary facts then the case may be settled in the Court of Claims equitably.

A considerable number of the claims and grievances do not grow out of legal facts but essentially out of the moral parts of the record. There are a great many valid Indian claims, valid humanely and morally, but such have no basis in law. Now, year after year there appear before the Departments and the committees of Congress Indians and tribes of Indians petitioning for a settlement of their claims, either petitioning for jurisdictional acts to allow them to go into the Court of Claims or petitioning for some direct settlement or some adjustment which Congress can make without referring the matter to the Court of Claims.

There are many hundreds of tribes; there are actually more than 300 treaties not to mention the supplemental agreements and the number of claims is legion. Ne doubt many of these claims are fantastic, imaginary, but it is evident that a large number of them are valid because as years have gone on Congress has passed numerous jurisdictional acts and many cases have gone to trial in the Court of Claims and Congress also has enacted a considerable number of direct settlements.

Now in the first year of the preceding administration, the Wilbur-Rhoads administration, this matter was under serious strife and at that time the then Secretary of the Interior and the then Commissioner of Indian Affairs addressed a memorial to Congress pointing out all that I said today and in it they estimated that by the present method of disposing of these claims that at the present rate we could not hope to close the subject in less than 100 years. We believe the estimate of 100 years is far too optimistic and that centuries will have to be substituted for one century by the present rate and by the present method.

Now the effect is unsatisfactory all around. In the first place, it means that a large number of Indian claims that are valid in morals in every human sense never get considered at all. Scores, thousands of Indians and even whole tribes wait around decade after decade for a settlement and naturally they build up hopes of a golden age and the reaction upon their state of mind resulting from it is entirely bad. They do not get the settlement and they feel aggrieved, and they have a right to feel aggrieved.

The relationship between the Government and the Indians is made bad by the continuance of the situation. In the nature of the case committees of Congress cannot have a feeling of contact, they have not the facts on which to legislate and they do not get those facts

at all adequately in the brief reports supplied by the proponents of the bills. The committees of Congress also cannot take the time to make the detailed examination needed to arrive at a sound and final conclusion.

Now the purport embodied in this bill is this, and I will just describe it in nonlegal and simple terms:

It is that Congress shall remand to a commission, or delegate to a commission, or vest in a commission the responsibility of fact-finding with respect to all of these claims of every kind and character. It will be limited only to tribal claims and not to individual claims. The latter are not dealt with in this bill.

It shall be the duty of this commission either to receive evidence or to go out and itself conduct an inquiry on the ground or in the records. As a fact-finding body the commission will reach conclusions, first, as to the existence of merit or lack of merit in a given claim, and having determined that there is merit in the claim it then proceeds to make a complete investigation which will include the assembly through the Comptroller's office and the Bureau of Indian Affairs the facts as to Government expenditures in behalf of that tribe, the data needed for the settlement of counterclaims or settlements.

Having completed its investigation the commission will report fully to Congress. It will report all of its findings to Congress and will accompany that report with a recommendation. The recommendation might be "no action" or the recommendation might be "a direct settlement" or some other adjustment of a gratuitous character, or it might be the enactment of a jurisdictional bill taking the whole matter into the Court of Claims.

Now, the bill provides that where a matter is referred into the Court of Claims after the commissioner has reported the fact-finding work of the commission shall be considered to have prima facie weight in the Court of Claims, thereby averting the need of retrying entirely these cases.

It is thought that by a method of this sort justice can be done and Congress can be enabled to do justice. You will note that the commission is not a court. It adjudicates nothing. It is only an agency of Congress ascertaining the facts, making recommendations but its findings of fact when the case goes to the Court of Claims have prima facie weight and will stand unless upset by competent evidence. That in a nutshell is the present bill.

Much work has been done by Mr. Poole, the Assistant Solicitor of the Department of the Interior and by Mr. Blair of the Department of Justice. They are both here and will be pleased to give you more technical information than I have tried to give you.

Mr. BLAIR. Of course, we realize that sometimes these claims are fantastic and potential and all that sort of thing. But what is the total of all these tribal claims that are now of record either by the introduction of bills or with petitions or other matters in your office?

Commissioner COLLIER. No man knows.

Mr. BLAIR. It runs into billions, doesn't it?

Commissioner COLLIER. The claims before the Court of Claims run to billions already, but if you take the claims that are pending and have not been sifted yet it is impossible to guess. I would not hazard a guess at $10,000,000 or $10,000,000,000.

Mr. B[illegible]CK. It is about as much as we gave to the European countries [illegible]t it?

Mr. BLAIR. It is probably more than that.

Commissioner COLLIER. It is impossible to guess. We are confident that there are many claims that are valid if not in law certainly in morals that are being pushed aside and procrastinated through lifetimes.

The CHAIRMAN. And it will be the business of this commission to ascertain which claims are legitimate claims and which are, as Mr. Blair has said, fantastic.

Commissioner COLLIER. The commission will work in the regular way; with sittings, or investigate in Washington. It will go on the ground and its procedure and its actions will all be of record and according to the rules that it would adopt.

Mr. GEHRMANN. Mr. Chairman, would not the statute of limitations be applied and include many of these?

Commissioner COLLIER. There is no statute of limitations there.

The CHAIRMAN. Have you any questions of the Commissioner?

Mr. BURDICK. I have no questions; he is not an expert.

Commissioner COLLIER. Thank you.

Mr. BLAIR. Oh, yes; why should not there be a statute of limitations?

Commissioner COLLIER. The statute of limitations does not run against the Government as a matter of law. It should not run against awards and the mere fact that something should have been done 40 or 50 years ago and was not done, and in the meantime the Indians were not able to get into the courts, should not bar them now.

Mr. BLAIR. I am in favor of giving the Indians full justice, but it will bankrupt the country to give it all.

Commissioner COLLIER. That will be for Congress to determine.

Mr. BLAIR. There should be some reasonable statute of limitations.

Commisioner COLLIER. Congress could adopt a rule of limitations instead of a statuate of limitations. Whatever this Commission does comes up to Congress with a full display of the facts with recommendation and Congress decides, except that now it decides without the facts and under pressure of a tribe that if they had enough money to get a lawyer to come here and work for it or under the pressure of a Department that likes a claim or to be skeptical about it.

The Indian Office is being continually required by the present system to present the claims on the basis of admittedly inadequate information. We are continually compelled to report adversely or favorably when we know we are not adequately informed.

Mr. GEHRMANN. There is one more question. Will these be final claims or are they only tribal claims?

Commissioner COLLIER. Individual claims are not involved here.

The CHAIRMAN. Does anyone else desire to ask any questions?

Mr. MURDOCK. I have a question, Mr. Chairman.

The CHAIRMAN. Mr. Murdock.

Mr. MURDOCK. Due to the fact that there is a question very vital to the Rocky Mountain group coming up, as chairman of that group I called a meeting this morning for 11 o'clock, and that meeting could not be postponed or I would have called it at another time, and so I would ask at this time that I be excused.

The CHAIRMAN. You may be excused.

Mr. HILL. I would like to ask this: Colonel Blair is here from the Department of Justice and Mr. Poole from the Interior Department. They have undoubtedly a prepared statement. I wonder if before we get the printed record whether we could get from Colonel Blair and Mr. Poole copies of their statements so that we might have the benefit of reading them over, as we will not be able to remain here any longer. If we can get such statements I know they will be very helpful to us.

Mr. POOLE. We will be glad to furnish you copies of the statement.

Mr. BLAIR. I will also furnish statements and will be happy to do so.

The CHAIRMAN. Mr. Poole, of the Department of the Interior, will be the next witness.

Mr. POOLE. Now, the statement that I have here is divided into two parts. The first part deals with the present situation, dealing with the Indian claims, and the second part with the provisions of the bill and how it is designed to meet those present defects.

Miss Westwood, from the Solicitor's office, is much better qualified to deal with that first part of the presentation, and I would like to defer that part of the statement to her and any questions that you have to ask on that, because I think she is in a position to give you some very valuable information.

The CHAIRMAN. Is she here?

Mr. POOLE. Yes.

The CHAIRMAN. Do you want to go ahead with your testimony or would you prefer to wait and let Miss Westwood make her presentation?

Mr. POOLE. I prefer to have Miss Westwood speak at this time.

The CHAIRMAN. Miss Westwood.

STATEMENT OF MISS CHARLOTTE WESTWOOD, OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR

Miss WESTWOOD. Mr. Chairman, this report deals rather in detail with each step that is now undertaken in getting the claims to the Court of Claims, beginning with the presentation of the claim to Congress, and it is quite material when you consider the number of bills that are ordinarily introduced in Congress and the action that is taken upon them. As I have said, there are a great number of bills that are presented annually to Congress. I think within the last 3 or 4 years there have been 96 such bills. At the present session of Congress there have been presented 20 of these bills for jurisdictional action, and there were also presented 9 bills for amending unsatisfactory jurisdictional action. Very few of these bills ever get to Congress; and as is pretty well known, one of the reasons for that is that political backing is necessary to put these bills through; and the ascertainment of merit, as Commissioner Collier says, that has very little to do with it, because of the inability to get back of the situation. Last year, I believe, there was only one of such bills passed.

Now, we have investigations, particularly the Ballinger report, which made studies to the effect that a great deal of the expenditures