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INDIAN LAW RESOURCE CENTER

REPORT TO THE HOPI KIKMONGWIS  
AND OTHER TRADITIONAL HOPI LEADERS  
ON DOCKET 196 AND THE CONTINUING  
THREAT TO HOPI LAND AND SOVEREIGNTY

March 1979

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## INTRODUCTION

In the spring of 1977, a delegation of traditional Hopi leaders came to Washington, D.C. and asked for our assistance in their fight against a claim which was coming to a conclusion in the Indian Claims Commission. Speaking on behalf of the Hopi Kikmongwis (the traditional Hopi spiritual leaders of the various Hopi villages) they asked for legal help in stopping the claim proceedings. They had heard about similar legal work we had undertaken on behalf of the Six Nations Iroquois Confederacy, Lakota (Sioux) and the traditional Seminoles, who likewise were attempting to stop payment of claim judgments in order to preserve the underlying Indian land rights.

At first blush it may seem strange that these Indian peoples wish to prevent the United States from giving them money in apparent redress for past wrongful taking of their lands. The logic of their resistance becomes apparent only when it is understood that under United States law the payment of these claims is in effect a sale of the right to the return of the lands. In legal parlance, the payment threatens to "extinguish" Indian title to these lands. A particularly insidious and racially discriminatory doctrine of United States law gives the government the authority to extinguish Indian title to lands without due process and without any compensation whatsoever. The Supreme Court of the United States has recently upheld this extinguishment doctrine in the case of Tee-Hit-Ton Indians v. United States.

After consulting with the Hopi representatives in 1977, we agreed to seek funding for research on behalf of the Hopi Kikmongwis concerning

the claim which is known as the "Docket 196 claim." We also agreed to investigate the work of the attorney who has prosecuted the Docket 196 claim in the name of the Hopi Tribe. Support from foundations and churches has permitted the Center to carry out this work.

Steven M. Tullberg, a Center attorney, has been primarily responsible for the coordination of the research and writing of the report. Brinton Dillingham, a Center investigator, was a principal researcher. They and other members of the Center's staff have spent many hours preparing this report. They have examined hundreds of files from the National Archives, the Bureau of Indian Affairs, and court repositories. They have studied a broad variety of primary and secondary source materials and interviewed a number of people familiar with the Hopi situation. Some materials were obtained through the Freedom of Information Act, and others were supplied by friendly sources. Through all of these efforts, much new information was brought to light. Needless to say, many fruitless avenues were explored. More remains to be investigated, and our research is continuing even as this report is released.

Our report to the Hopi Kikmongwis is unique in that it relies largely on materials obtained from U.S. government files. Throughout the report there are references to exhibits which are the source documents for quotations and factual statements. The exhibits are in effect documentary footnotes. These exhibits have been compiled into a bulky appendix which will be helpful to those who want to examine in depth the matters discussed in the report.

The report is a chronicle of abuse which the traditional Hopi leaders have suffered at the hands of United States governmental officials and others. It graphically demonstrates the consistent and dogged opposition to the Docket 196 claim which the Kikmongwis and other traditional Hopi leaders have mounted over the past thirty years, and it explains the danger of extinguishment which payment of the \$5 million claim award presents to the Hopi people. In sum, our report concludes that the Docket 196 case was initiated, pursued, and settled without any legitimate authority of the Hopi people.

In addition to the need to stop payment of the Docket 196 claim award, the report spotlights a number of other fundamentally important issues. One of these issues is the continuation of the rule of the Hopi Tribal Council, an organization representing the so-called "progressive" faction of the Hopis which was first created through a fraudulent election conducted by the Bureau of Indian Affairs. Faced with a traditional Hopi leadership which was unwilling to do the bidding of the U.S. government, the BIA deliberately subverted and undermined the authority of the Kikmongwis and other traditional leaders by establishing the Council and giving exclusive recognition to this alien governmental structure. The report makes clear that the United States government's desire to exploit Hopi mineral resources is the primary motive for the creation and maintenance of the Hopi Tribal Council, an organization which has, as requested, signed the leases authorizing the massive strip-mining of Black Mesa coal, an unthinkable outrage to traditional Hopi leaders. The same Council has agreed to the \$5 million settlement of the Docket 196 claim case.

A second issue highlighted in this report concerns the continuation of the strip-mining by Peabody Coal Company which has already created much destruction to Black Mesa, an area sacred to traditional Hopis and to many Navajos. The Hopi Tribal Council, its attorney and the BIA have agreed to sell these valuable coal reserves at a fraction of their true value to a far-off electrical generating station which supplies power to Los Angeles, Las Vegas and other parts of the southwest. Billions of gallons of precious Hopi water are simultaneously being "mined" from aquifers deep below the surface of Hopi country in order to flush the pulverized coal to Nevada in slurry pipelines. Only the mineral companies, the lawyers, the U.S. government, and a small Hopi elite dominated by the "progressive" faction have made any gain from this destruction and waste.

A third issue demanding special attention involves the work of John S. Boyden, the attorney who has handled the Docket 196 case from its inception and who has also been the BIA-approved general counsel for the Hopi Tribal Council. He worked with the BIA to create and sustain the Hopi Tribal Council over the past twenty-five years. This report documents that Mr. Boyden was in fact working for the very mineral companies strip-mining Black Mesa during the same period that they were doing business with his Hopi clients. The report documents an apparent conflict of interest so gross as to cry out for immediate investigation and action by all appropriate governmental and law enforcement agencies. If this apparent conflict of interest is conclusively established, there is even more reason why the traditional Hopis demand to stop the strip-mining must be heeded.

These issues are among the most important of the many issues discussed at length in the report. They are part of the pattern of BIA colonialist policies and practices which a federal judge in a similar case has labeled "bureaucratic imperialism." Hopi complaints to Washington about such BIA mistreatment have repeatedly fallen on deaf ears.

It is the hope of those who worked on this report that the detail and documentation which are synthesized and provided to the Kikmongwis for the first time in this report might help stimulate a fresh look at the problems facing the Hopi people. The Center will continue providing legal assistance to the Hopi Kikmongwis in an effort to help rectify the past and ongoing abuses. It is our hope that the Hopi people may in the near future find themselves in a new era in which the Hopi Nation regains its full measure of sovereignty within the international community, including its right to self-determination, the right to control its own territory and resources, and the full protection of the human rights to which the Hopi people are entitled.

Robert T. Coulter  
Executive Director  
Indian Law Resource Center



## 1. BRIEF HISTORICAL BACKGROUND

Although Docket 196 of the Indian Claims Commission was not officially begun until the filing of the petition in 1951, an understanding of the significance of this matter to Hopi people today requires some knowledge of earlier Hopi history.

The hold of the Hopi Kikmongwis (the traditional Hopi religious leaders) and the Hopi people on their land and way of life reaches far back into time. Perhaps no other inhabitants of this continent have sunk deeper roots into their homeland. There is firm archaeological evidence that the Hopis have been continuous inhabitants of their land for well over a thousand years, and that the Hopi villages of Oraibi and Shungopavi may be the oldest continuously inhabited villages in North America. Hopi rights to their homeland clearly antedate the rights of all others who lay claim to it.

The first serious threat by outsiders seeking to dominate and subjugate the Hopis was presented in the early sixteenth century by the Spanish. The arrival of Coronado in 1540 signaled the beginning of 140 years of Spanish colonial rule. The Spanish Franciscan missions which

were established in Hopi country in the early seventeenth century operated under the same brutal and repressive policies as those which characterized the Spanish Inquisition against the Moslems and Jews of Spain. The Spanish authorities sought to suppress Hopi religion and culture.

The Spanish lost their colonial hold on the Hopis when the Hopis joined in the Pueblo Revolt of 1680 and drove the Spanish regime back into Mexico. In the 1690s, the Spanish renewed their effort to establish dominion over the Hopis and other Pueblos through the efforts of conquistador Don Diego de Vargas. De Vargas, together with other conquistadors and priests, successfully reasserted the authority of the Catholic Church in much of the territory of New Mexico. De Vargas was primarily a military leader, but the military authority of Spain was tightly fused with the religious authority of the Catholic Church at this period of Spanish history. This union of military and religious authority is demonstrated in a written plea for additional troops which de Vargas made to his superiors in 1693: "You might as well try to convert Jews without the Inquisition as Indians without Soldiers." Raw military power would be needed and used to convert the Pueblo Indians into Catholic colonial subjects.

The Hopis were the most successful of the Pueblos in resisting the return of Spanish Catholic rule. They managed to maintain their traditional culture, religion and government through the following century during which the Spanish asserted dominion over much of the

surrounding territory of new Mexico. Catholic missions and schools were never again built in Hopi country. In 1700, when the Hopi village of Awatobi permitted the return of Catholicism, it was sacked by the other Hopi villages. The Hopis would not allow the "slave church" back into their country.\* Despite continuing pressures for conversion and occasional depredations by the Spanish military, the Hopi people held fast to their religion, culture, and sovereignty.

Hopi land rights during this early colonial era were never seriously threatened since Spain acknowledged Pueblo Indian land rights and recognized the title which the Hopis and other Pueblo Indians had in their lands. Neither did the transfer of European claims to the territory of New Mexico from Spain to Mexico in the early nineteenth century pose a threat to the title which the Hopis held to their land. The treaty between Spain and Mexico respected the property rights of all of the Pueblo Indians, including the Hopis.

Likewise, there was no immediate repercussion in Hopi country when the European colonial claims to the territory passed from Mexico to the United States pursuant to the Treaty of Guadalupe Hidalgo\*\* which ended the Mexican War in 1848. This treaty also guaranteed Hopi land rights. From the beginning of its asserted jurisdiction over the territory, the United States was legally bound by the engagements of the Treaty of Guadalupe Hidalgo to respect and protect the rights of the Hopi Indians to their land.

After the 1848 Treaty of Guadalupe Hidalgo, there was no immed-

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\*At about this same time in history, the Hopis invited the Tewa Indians, who were fleeing from Spanish oppression along the Rio Grande, to live on First Mesa in Hopi country.

\*\*9 Stat. 922 (1848).

iate attempt by the United States to interfere with the independence which the Hopi people had enjoyed since the Pueblo Revolt of 1680. Not until the 1860s and 1870s did the first agents of the Bureau of Indian Affairs (BIA) begin to work in earnest in Hopi country. It was only then that the Hopi people were subjected to efforts of the United States to undermine Hopi self-government. From that time to the present, the United States government has carried on a systematic campaign to uproot Hopi culture, religion and traditional authority, as had the Spanish before.

In one most significant respect the rule of the United States government would prove to be even more callous and ruthless than that of the Spanish and Mexicans, for the United States would be the first colonial power to threaten the rights of the Hopis to the land which had been theirs for over a thousand years. This threat first became clear in the 1840s and 1850s when the United States authorized a massive invasion by its citizens of Indian country west of the Mississippi River. After the discovery of Western gold and fertile soil, the United States government declared that it was God's will, Manifest Destiny, that virtually all lands and natural resources from the Atlantic to the Pacific be taken for its white citizens and incorporated into the United States.

The Hopis were not spared the pressures which these white settlers and prospectors created on all Indian lands. Mormon settlers and other whites moved onto land which for centuries had belonged to the Hopis.

Friction developed between these newcomers and the Hopis as some of the best of Hopi farmlands were appropriated by the whites. The BIA Agents became concerned that the white intrusion might cause trouble, that the Hopis might be "driven to the wall."

This direct white threat to Hopi lands was compounded by Navajo relations with the United States. While Hopi resistance to white intrusion was generally passive, their neighbors to the East, the Navajos, resisted the expansion of the United States with military force. To terminate this Navajo resistance, General James Carleton, Kit Carson and the U.S. Cavalry began in the 1860s a military campaign which resulted in the capture of about eight thousand Navajos who were marched to a concentration camp near Fort Sumner, New Mexico. Here the survivors of the "Long Walk" were confined for about four years. However, thousands of Navajos avoided capture and internment by dispersing to lands further west, toward Hopi country. Thus, as a direct result of the military campaign, there was a dramatic increase in the number of Navajos in and around Hopi country.

When the imprisoned Navajos were finally released in 1868, they were left by the United States in a state of dire poverty. They were given only two sheep per person with which to support themselves and reconstruct their nation's economic base. The only government-approved land holding for them was a small, infertile reservation established by Executive Order of 1868 in northeast Arizona. Almost incredibly, the Navajos survived this ordeal and rapidly grew in number.

The military campaign against the Navajos, their growing movement westward into Hopi country, their dire economic condition upon release from confinement, and their expanding population increased tensions between the Hopis and Navajos. These problems were aggravated by the fact that the Hopis were primarily farmers who cultivated the soil while the Navajos were primarily herdsmen whose sheep were prospering. There was some competition among them over limited grasslands and water supplies, as there was among non-Indian dirt-farmers and ranchers throughout the West.

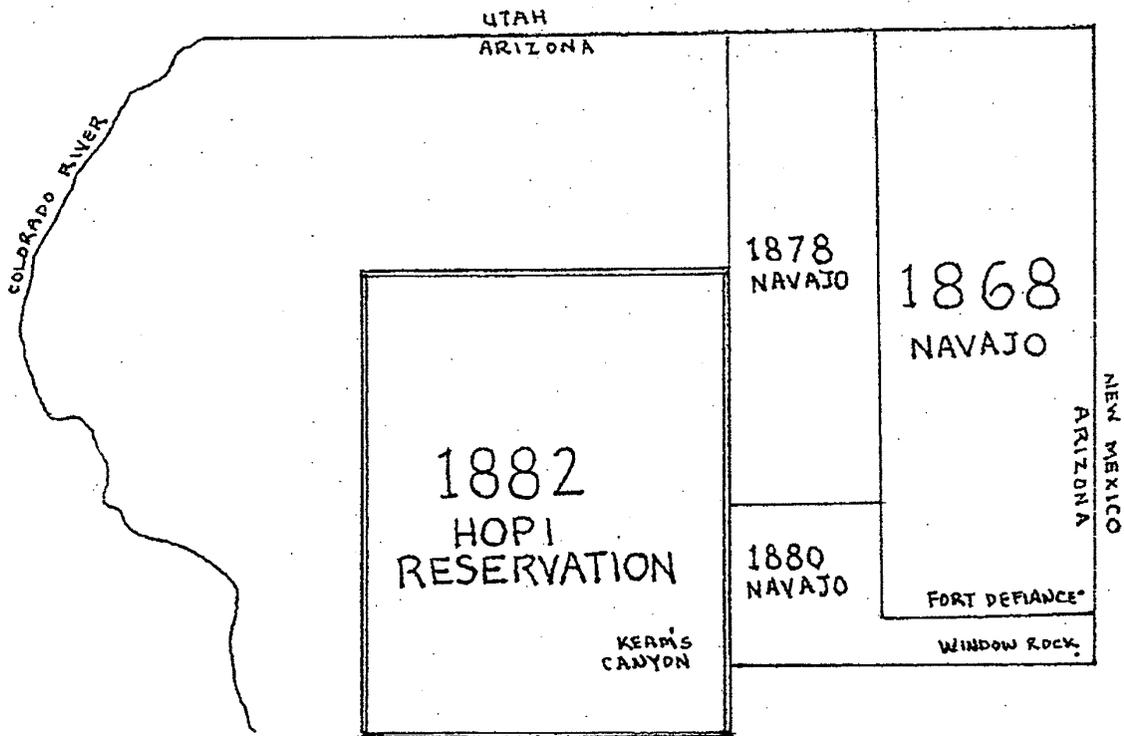
Despite these pressures and strains, relations between the Hopis and Navajos appear to have been generally friendly, characterized by both social intercourse and commercial trade. An 1884 report by the BIA Hopi Agent points out some of the elements of competition and cooperation which existed between these two Indian peoples at that time:

Quite frequently trifling quarrels arise between members of the two tribes; these are usually caused by careless herding of the young Navajos, who allow their herds to overrun these outlying Moki [Hopi] gardens. . . . The best of good feeling generally exists between these tribes; they constantly mingle together at festivals, dances, &c. . . . [The Hopi] barter his surplus melons and peaches with his old pastoral neighbors for their mutton.

Although traditional Hopi leaders occasionally called upon the BIA to assume some responsibility for the growing Navajo presence in Hopi country, they were most immediately concerned about the increasing white settlements on prime Hopi farmland and the increasing interference of the United States government in Hopi affairs.

2. THE EXECUTIVE ORDER HOPI RESERVATION OF 1882

In 1882, the President of the United States designated by Executive Order a reservation for the "use and occupancy of the Moqui [Hopi] and such other Indians as the Secretary of the Interior may see fit to settle thereon." This order withdrew from white settlement and sale a rectangular-shaped reservation, about 70 miles long and 55 miles wide, within the boundaries of the present state of Arizona. It has been



estimated that 1,800 Hopis and 300 Navajos lived within the boundaries of the Hopi Reservation when it was established in 1882. Its eastern boundary was the western boundary of the Navajo reservation as it had been extended by Executive Orders of 1878 and 1880 to accommodate Navajo expansion. The Executive Order creating the 1882 Hopi Reservation is the first of many laws which the United States would make over the next century to regulate and interfere with the affairs of the Hopi people and their land.

Although there are those who argue that the 1882 Hopi Reservation was created to resolve Hopi-Navajo disputes, this argument does not hold up when the historical facts are examined. Historical documents demonstrate that the 1882 Hopi Reservation was created at the urging of BIA officials who needed to have the area declared a formal reservation in order to give them legal authority over whites who were moving into the area and interfering with BIA programs.

In the 1870s, the BIA field office responsible for Hopi affairs became increasingly concerned by the fact that Mormon settlers were moving onto some of the best Hopi farm land to the south and west of the principal Hopi villages. This concern is expressed in a report by BIA Agent W. B. Truax in a letter he sent to the Commissioner of Indian Affairs on September 25, 1876:

The Mormons are also encroaching upon them [the Hopis] on the West and South West. About five hundred of them have settled not far from the lands claimed by the Moquis [Hopis] & they are a peaceable, inoffensive tribe of Indians, their rights will be invaded with impunity, unless protected by an Agent. They would soon drive these Indians to the Wall.

Another report on Mormon encroachment was written by BIA Agent William R. Mateer to the Commissioner of Indian Affairs on May 1, 1879. His report asked for information about legal authority to take action to control this white intrusion.

Tu-bee, formerly a chief of the Oraibi Village, <sup>\*</sup> is here and complains that the Mormons are intruding upon their farming lands at Moen Kappi and interfering with their planting. He states that his father planted there when he was a boy as well as many other Oraibies and that it is their ground. At Moen-av-ee eight miles above, in the same Cañon they had another place of planting where they lived during the summer. A few years ago Jacob Hamlin, one of the Mormon Apostles, came in there and asked permission to plant that season and water his stock, which was granted. In the spring when the Indians returned to plant, as usual, they found other Mormons in possession and when they attempted to go to work the Mormons said, oh, no! we have bought this place from Mr. Hamlin and you can't plant here. . . . I would respectfully inquire whether there is not some law by which the Indians can be protected in their rights to lands, which they have cultivated for a century or more?

The Commissioner of Indian Affairs wrote back to Agent Mateer on August 14, 1879. In his letter he outlined the government's view of the relevant United States law: Since the Hopis had no recognized legal rights to their land under United States law, their lands had the legal status of "public lands." The Indian Agent had no legal authority to control, arrest, or evict whites found on these "public lands" unless and until the lands were designated as Indian reservation lands pursuant to United States law:

As the Moqui [Hopi] Indians occupy the public lands without any authority of law, the provisions of the statutes enacted by Congress for the protection of Indians in their occupancy of lands within a reservation, cannot be invoked to protect the Moquis, and remove and punish white settlers.

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<sup>\*</sup> Traditional Hopi leaders disagree with the suggestion that "Tu-bee" was a former chief of Oraibi. The encroachment of Mormon settlers on Hopi lands is, however, established historical fact.

Thus, only thirty years after having agreed to protect Hopi lands in the Treaty of Guadalupe Hidalgo, the United States government took the position that it could not control its own citizens who were abusing Hopi land rights because those rights were not protected by law! It need not be emphasized that treaties have always been the supreme law of the land under the United States Constitution.

It is also clearly implicit that the United States asserted absolute political sovereignty over the entire area ceded by Mexico in the Treaty of Guadalupe Hidalgo. The United States asserted general governmental authority over the territory, though the Hopi people had not assented to that authority nor ceded any of their own governmental authority by treaty or otherwise. Thus, the asserted legal authority of the United States over the Hopi territory was a bare arrogation of power, unsupported by any legal agreement, treaty, or other authority.

There were other whites besides the Mormon settlers who were vexing the BIA Agents in Hopi country. A few whites were living among the Hopis and supporting Hopi opposition to government programs. One of these programs to which many Hopis were openly hostile was a program for the education of Hopi children in boarding schools which were to be found as far away as Albuquerque, over 175 miles from the nearest Hopi village.

In a letter written by BIA Agent J. H. Fleming on November 11, 1882, an urgent plea was made for authority to evict the whites who were sabotaging the BIA's programs. (Exhibit 1.) The whites he spe-

cifically named were Dr. J. Sullivan and E. S. Merritt. According to Agent Fleming's letter, the BIA Agent had threatened Dr. Sullivan with arrest unless he ceased all dealings with the Hopis. Dr. Sullivan apparently obtained legal counsel and informed Agent Fleming that the government had no power to arrest or remove him from the Hopi villages since the Hopis were not, according to United States law, on Indian reservation land. It soon became apparent to the Hopis that Dr. Sullivan and Mr. Merritt could thumb their noses at Agent Fleming with impunity. This loss of face was more than Agent Fleming could tolerate.

In Agent Fleming's letter to the Commissioner of Indian Affairs, he states that the Hopis "seem to regard [Dr. Sullivan] as a bigger man than the Agent, and my influence over them will be greatly weakened if not destroyed, unless this man can be effectually prevented from all intercourse with them." Fleming then recounts how Dr. Sullivan and Merritt had been undermining his compulsory boarding school program by allying themselves with hostile Hopis:

The Moquis [Hopis], now, say they do not want a school, and it is of no use to try to induce them to send their children to Albuquerque at present. They say the white men tell them the goods here were sent for them and not for the school, and, because I do not give them these goods, they believe they are being cheated out of them.

At the end of his letter Agent Fleming stated that unless he is given authority to evict these whites from Hopi country, he would have "no hopes of accomplishing anything." He threatened to summarily resign if not given the authority he demanded.

This letter brought an immediate response from Washington. The day it was received, a reply telegram was sent to Agent Fleming requesting a description of proposed boundaries for a Hopi reservation. One month later the proposed boundaries submitted by Fleming were accepted and became the boundaries of the Executive Order reservation approved by President Chester A. Arthur on December 16, 1882.

Five days later, on December 21, 1882, the Commissioner of Indian Affairs sent Fleming a telegram which reads as follows:

President issued order dated sixteenth, setting apart land for Moquis [Hopis] recommended by you. Take steps at once to remove intruders.

In a confirming letter sent the same day, the Commissioner included his directive about the newly gained power to evict unwanted whites from Hopi country:

The establishment of the reservation will enable you hereafter to act intelligently and authoritatively in dealing with intruders and mischief-makers, and as instructed in telegram before mentioned, you will take immediate steps to rid the reservation of all objectionable persons.

As soon as he had this supposed legal authority in hand, Agent Fleming asked the commanding officer of Fort Wingate to evict the unwanted whites from the Hopi villages.

The history of these events shows that there is little support for the notion that Hopi-Navajo problems were behind the creation of the 1882 Hopi Reservation. The BIA wanted the area to be formally declared an Indian reservation in order to give the BIA agent legal authority over unwanted white intruders and "mischief-makers." Since

the government already took the position that there was ample authority under United States law to handle disputes between Indian peoples before the reservation was established, the settlement of Hopi-Navajo problems was in no material way affected by the creation of the 1882 Hopi Reservation.

The BIA made no effort after the creation of this reservation to in any way reduce or restrict the number of Navajos on this reservation. In fact, Agent Fleming resigned and the Hopi Agency was closed up in a matter of weeks after the 1882 Reservation was created. The United States government continued its policy of favoring an increase of the Navajo population on the 1882 Hopi Reservation until, only fifty years later, the Navajos outnumbered the Hopis three to one.

Throughout the early decades of United States administration, the BIA adopted many hopeless stopgap measures for handling legitimate Hopi and Navajo needs. For example, in the 1870s BIA agents toyed with the idea of moving all Hopis from their mesa villages to a reservation along the Colorado River. In the 1880s and later in the early 1900s, there were several abortive attempts by the BIA to segregate Hopis from Navajos by creating a small, exclusive enclave for Hopis within the 1882 Hopi Reservation. The many other Hopi-Navajo measures which would be undertaken by the United States would all prove to be failures as a continuing (and some would say growing) controversy continues today between some factions of the Hopi and Navajo Nations.

The 1882 Hopi Reservation did offer the Hopis the benefit of

legal restriction of further white settlement in part of their country, but the net effect of the creation of that reservation was a significant loss to the Hopis. The United States Indian Claims Commission would later rule in Docket 196 that the creation of that reservation "effectively terminated and extinguished, without the payment of any compensation to the Hopi Tribe, its aboriginal title claims to all lands situated outside of said reservation." Under United States law the Hopis suffered in 1882 a dramatic loss of at least 2,000,000 acres of land and a severe blow to their sovereignty. The BIA, on the other hand, gained additional legal authority under United States law to promote and control its program without opposition from whites who might interfere. In sum, the 1882 Hopi Reservation was not primarily intended to reserve and protect Hopi rights, but to augment United States power over the Hopis and their land.

The United States took this action despite the fact that the Hopis were never at war with the United States, were never conquered by the United States, and never signed a treaty with the United States. The Hopis never agreed to the creation of the 1882 Hopi Reservation and never authorized the United States to take any action which would in any way impair Hopi land rights or the right of the Hopi people to govern their own affairs.

3. FROM 1882 TO 1934: THE UNITED STATES INTENSIFIES  
ITS EFFORTS TO UNDERMINE HOPI SOVEREIGNTY

After the creation of the 1882 Hopi Reservation, the United States government intensified its efforts to influence and control all aspects of Hopi life. Some of the most important of these efforts are those pertaining to compulsory schooling, allotment, and Hopi-Navajo disputes.

A. Compulsory Boarding Schools  
for Hopi Children

An important part of the United States government's program to subjugate Indians was its program of compulsory attendance at government-sponsored boarding schools for Indian children. This program was put into effect for Hopis as it was for many Indian children throughout the continent. The purpose of having the schooling of Indian children take place at boarding schools, far away from Indian homes, was to minimize parental influence and thereby facilitate the "Americanization" of the children. This motivation is made evident in an 1884 report from the BIA Hopi Agent to the Commissioner of Indian Affairs:

Keams Cañon is 12 miles east from the Moki [Hopi] village. The Children being removed to school at this place it would preserve them from the annoyance and interruption of daily visits from parents and relatives.

Although Keams Canyon was not as far from parents as the proposed Albuquerque school which Hopi parents had resisted with the assistance of Dr. J. Sullivan and Mr. Merritt in 1882 (See Part 1, above), it was far enough removed in that pre-automotive age to allow the government

teachers a fairly free hand.

The Keams Canyon boarding school was opened in 1887. It was a boarding school designed to strip Hopi children of their culture. They were forbidden to speak the Hopi language, to wear Hopi clothes, and to keep their traditional long hair styles. They were given English names to replace their Hopi names and were not allowed to practice Hopi customs. Taking up where the Spanish priests had left off, the school officials forced the Hopi children to undergo religious indoctrination conducted by Christian missionaries who had been approved by the United States government.

The tradition of resistance to such policies which had begun under Spanish rule continued under this threat from the United States. Passive resistance to school attendance was widespread and the BIA took severe measures. To overcome the resistance, United States Cavalry units were sent into Hopi villages. Children were literally torn from the arms of their parents by soldiers who were assigned to haul the captive children on wagons to the boarding school. Resisting parents were assaulted and, in some cases, given criminal punishment. In 1894, nineteen Hopi men were imprisoned for eight months for refusing to agree to the surrender of their children to this United States school system. From 1890 to 1911, United States troops were periodically called upon to enforce the compulsory schooling edict. Within the next two decades, more convenient and less oppressive day schools

were established for Hopi children and most resistance to schooling ended, although the boarding school policy remained a central part of the BIA's general policy well into the 1930s.

Using divide-and-conquer tactics, the U.S. government officials of the BIA labeled as "Hostiles" those Hopis who resisted the government's policies and practices. Those Hopis who were willing to cooperate were labeled "Friendlies." Government patronage, support, and favors went to the "Friendlies," but not to the "Hostiles" (who not infrequently were jailed). These tactics created serious rifts in Hopi society. Perhaps the most dramatic and well-known of these rifts is the confrontation between "Hostiles" and "Friendlies" which resulted in the split of the village of Oraibi in 1906. Countless other disputes erupted as the United States routinely required Hopis to choose between allegiance to United States programs and fidelity to traditional Hopi authority and values. In later years, the labels "Hostiles" and "Friendlies" would be replaced by the labels "Traditionals" and "Progressives."

#### B. The Allotment Act

Moving into an area of colonial rule which the Spanish and Mexicans had left untouched, the United States soon began to assert dominion and control over Hopi property rights. As already discussed in Part 1, above, the very act of creating the 1882 Hopi Reservation has been deemed by some U.S. governmental authorities to constitute under U.S. law a taking and extinguishment of all of Hopi aboriginal lands

lying outside the reservation boundaries.

In 1892 the United States government began to move against Hopi land holdings within the 1882 Hopi Reservation. In that year, officials of the BIA sent out their survey crews to implement the infamous Allotment Act of 1887, also known as the "Dawes Act," named after its sponsor, a congressman who favored "breaking up the tribal mass" of all Indians by forceably dividing up all communally-held Indian lands into small, individually held Indian homesteads. The theory was that these individual Indian land owners would become small farmers who would learn the value of competitive selfishness which would make them better Americans.

The allotment policy was a direct assault on the sovereignty and unity of all Indian governments. Its impact on many Indian tribes and nations was devastating. Because of the Allotment Act, over two-thirds of all Indian land was lost to whites. This loss was principally due to the fact that under the Act, all Indian lands not allotted to Indians in individual, 160-acre parcels was labelled "surplus" and sold to whites by the federal government.

When the United States finally abandoned the allotment policy in 1934, the Commissioner's report to Congress (which called the Allotment Act the "backbone of Indian law" from 1887 to 1934) included these specifics on the effect of allotment in the Indian community:

The total of Indian landholdings has been cut from 130,000,000 acres in 1887 to 48,000,000 acres in 1934. . . . Furthermore, that part of the allotted lands which has been lost is the most valuable

part of the residual lands, taking all Indian-owned lands into account, nearly one half, or nearly 20,000,000 acres, are desert or semidesert lands.

In Hopi country, the government attempted to survey and allot land to individual Hopi families from 1892 to 1911 when the effort was finally abandoned. During these two decades, the Hopi people almost uniformly refused to cooperate in the surveying and parcelling out of their land. The Kikmongwis all opposed allotment. Their resistance was too strong for the United States to overcome. When the allotment surveyors left, the Hopis pulled their survey stakes out of the ground. Forced allotment proved to be an unworkable policy in Hopi country because communal land tenure was tightly interwoven in the fabric of traditional clan structures and religious beliefs. That traditional fabric of Hopi culture remained too strong to be destroyed despite the best efforts of the BIA, and the Hopis were spared the disaster of allotment.

One commentator notes that other Indian peoples shared the benefits of the Hopis' successful resistance to allotment:

The Third Mesa Hopis' resistance appears to have saved not only the Hopi but also the other Pueblos, the Navaho, the Mescalero, White River and San Carlos Apache, and the Papago, from allotment and its disastrous consequences [Laura Thompson, Culture in Crisis (New York: 1950), p. 197].

### C. The Hopi-Navajo Issue

Again, there are those who argue that the United States interference in Hopi affairs was motivated by a good faith desire to resolve Hopi-Navajo differences. The historical record does not support these

tion was an island in the Navajo Nation. The lands which the United States designated for the Navajos incorporated all of the aboriginal Hopi land which was found outside the Hopi Reservation and which has been said to have been taken at the time the reservation was created in 1882.

Hopi aboriginal land which lies outside both the 1882 Hopi Reservation and the Navajo Reservation was given over to white settlement by the United States government, again without the consent of the Hopis and without any compensation.

As the white population of the southwestern United States expanded, there was a growing demand to stop the "return" of lands to Indians, including the Navajos. This demand led the United States Congress in 1918 to enact a law forbidding the creation of any additional Executive Order reservations in New Mexico or Arizona. Henceforth, only Congress could designate Indian reservation land in this area.\* Since any new Indian reservation would require the approval of Congress, it became less and less politically acceptable for the United States government to meet Navajo needs for more land. Rather than continue the past practice of adding more lands to the Navajo reservation, the United States found it more expedient to relieve some of the pressure of the expanding Navajo population by encouraging Navajos to move

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\*25 U.S.C. 211. In 1927 Congress prohibited the creation of Executive Order Indian reservations anywhere within the geographical boundaries of the United States. 25 U.S.C. 398(d).

onto the 1882 Hopi Reservation.

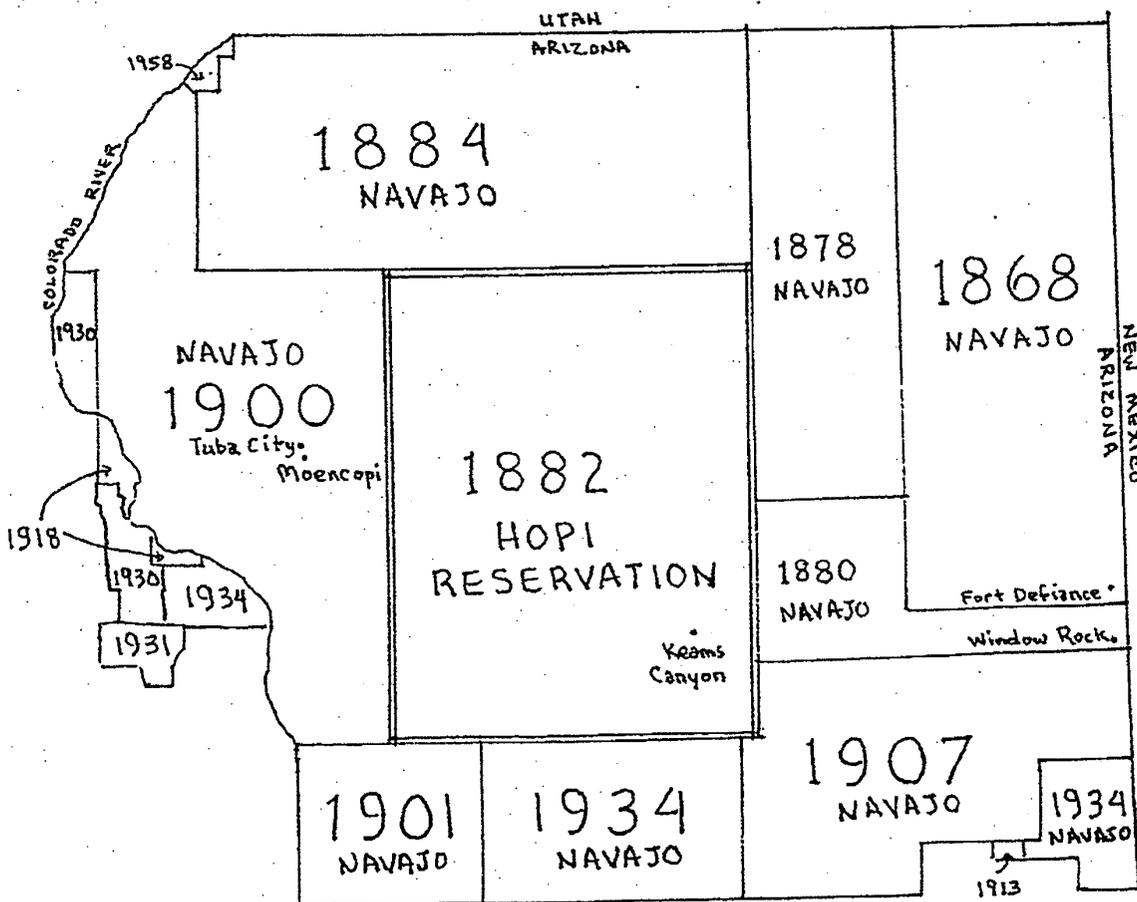
Despite the fact that the 1882 Executive Order explicitly gave the Secretary of the Interior the legal authority and complete discretion under United States law to approve or disapprove the settlement of "other Indians" on the Hopi Reservation, it was not until 1936 that further Navajo settlement in the 1882 Hopi Reservation was in any way officially curtailed. By that time the number of Navajos in the area far exceeded the number of Hopis. It is estimated that by 1930 some 3,319 Navajos resided in the 1882 Hopi Reservation, a total eleven times greater than the number of Navajos who lived there in 1882.

Traditional Hopi leaders were convinced that the United States would not resolve Hopi-Navajo problems, and they were fearful that United States intervention in this problem would further undermine Hopi sovereignty. Accordingly, they gave little cooperation to BIA programs which were ostensibly designed to alleviate Hopi-Navajo disputes. Rather, Hopi leaders argued that they would themselves eventually be able to reach a just settlement with the Navajos on the basis of agreements which had been made between Hopi and Navajo leaders after the release of the Navajos from Fort Sumner in 1868. It would not, however, be possible to come to a just settlement if the United States continued to exacerbate the problem by encouraging further Navajo settlement on Hopi land.

A more thorough history of Hopi resistance to United States efforts at domination during the fifty-year period after 1882 would include discussion of more than Hopi resistance to compulsory boarding schools, allotments, and intervention in Hopi-Navajo affairs. Since the BIA program pervaded almost every aspect of Hopi life, including prohibitions on Hopi religious beliefs and practices, there were repeated instances where Hopi leaders were imprisoned for refusing to follow the dictates of the various U.S. Indian officers. Their offenses included everything from general insubordination to refusal to submit to induction into the United States military service.

The lesson which these early confrontations with the United States taught to traditional Hopi leaders was clear: The United States was prepared, willing, and even eager to treat the Hopi people as colonial subjects and to completely ignore Hopi governmental and property rights. These Hopi leaders determined to maintain their culture and sovereignty by mounting sustained resistance whenever new efforts were made to interfere with Hopi affairs. This determination set the stage for Hopi resistance to the new United States Indian program of the 1930s, a program which would have direct relevance to Docket 196 of the Indian Claims Commission.

arguments. Policies of the United States have exacerbated Hopi-Navajo problems rather than resolving them. The United States met the need for more land for the growing Navajo nation by extending Navajo reservation lands in a series of Executive Orders which increased Navajo pressures on Hopi land. Presidential orders of 1878, 1880, 1884, 1900, 1901, and 1907 expanded the Navajo nation until it almost completely surrounded the 1882 Hopi Reservation. By 1934 the 1882 Hopi Reserva-



#### 4. THE CREATION OF THE HOPI TRIBAL COUNCIL

##### A. The Sovereign Hopi Villages of the Early 1930s

The severe economic depression which began in the United States in 1929 and continued on into the 1930s had no similar disastrous impact in Hopi country, for the Hopis had not become dependent upon the economic system of the United States. They remained largely self-sufficient communities, an agricultural and pastoral society under the leadership of village governments, each village continuing to exist as an independent sovereignty. Being a profoundly religious people, each Hopi village government was headed by its principal spiritual leader, the Kikmongwi. The Kikmongwis and other religious leaders chosen by the various clans governed the religious and secular life of the village as their ancestors had for centuries before. Under the Hopi system, property rights were determined village by village, according to clan membership as determined by a system of matrilineal descent. As discussed above, property rights continued to be communal rights, the system of Hopi land holding not having been broken down by the United States government under the Allotment Act.

The United States government was fully aware of the continuing strength of traditional Hopi government at that time. Reports produced by the U.S. government concluded that the traditional Hopi system of government remained vital in the 1930s:

Roughly speaking, the governmental system is that of the Pueblos prior to the coming of the Spaniards, slightly broken down by American governmental interference. [Oliver LaFarge, Notes for Hopi Administrators, unpublished report, 1937, on file at the U.S. Department of the Interior Library, p. 6].

and

The Indian Service to date has never faced the simple fact that the Hopis are completely dominated by their religion, which enters into all phases of their life. Since, at least, the time of Leo Crane, the attempt has been to ignore the religion and the chiefs, with melancholy results, and the chiefs and the religion still govern 80% of the people. [Oliver LaFarge, Running Narrative of the Organization of the Hopi Tribe of Indians, 1936, unpublished journal in the LaFarge Collection, University of Texas at Austin].

An anthropologist employed by the BIA to prepare a study for Commissioner Collier confirmed these reports. In a 1954 letter to Collier he made an additional observation about the competency of traditional Hopi government: (Exhibit 2):

In my judgment the Hopi are entirely competent to deal with these problems provided they are given adequate protection on the reservation.

There are numerous reports of anthropologists and ethnologists who have studied and marvelled at the complexity and beauty of the traditional Hopi culture and religion. Even many agents of the BIA, despite all of the rather unsuccessful efforts to undermine the Hopi culture and government, came to admit that the Hopis had developed over the centuries a remarkable society which was independent, self-reliant, stable, productive, and peaceable.

As the decade of the 1930s began, the continued strength of the traditional Hopi culture and government was most remarkable. The Hopis

had, against all odds, overcome fifty years of United States intervention and aggression and over 250 years of prior Spanish and Mexican rule. In the mid-1930s they were to face yet another test of endurance as the United States presented a new, far-reaching and sophisticated challenge to Hopi sovereignty. That challenge came with the administration of President Franklin D. Roosevelt, which began in 1933 and which offered a New Deal for the Indians of America.

B. The Indian Reorganization Act  
(Wheeler-Howard Act) of 1934

With Roosevelt's administration came the enactment of the Indian Reorganization Act (also known as the Wheeler-Howard Act) and the appointment of John Collier as Commissioner of Indian Affairs. A new era in United States Indian policy was hailed. The Indian Reorganization Act (IRA) was the hallmark of that policy. It was said to promise a complete reversal of the prior half-century of U.S. Indian policy which had been so disastrous in Indian country. Instead of dismembering Indian governments and allotting Indian lands, the IRA approved Indian self-government and encouraged the organization of Indian governments where none existed.

Since Indian self-government under the IRA was to be implemented with the supervision and approval of the BIA and the Secretary of the Interior, the IRA was not, in fact, offering an end to BIA interference and a return to true Indian sovereignty. The ultimate goal of the IRA, as it turned out, was to maintain United States governmental control

over Indian communities in ways which would be viewed as less brazen, authoritarian, and disruptive. John Collier described the IRA's objectives in these terms:

This affirmation of cultural diversity and cultural autonomy [under the IRA] did not imply a doctrine or practice of laissez-faire either within the Indian group or in government or the surrounding Commonwealth. It implied rather, the attractive and permissive way in place of the authoritarian way of swaying the human process. It implied leadership--within and without the Indian group--of the democratic and integrative type, not the regimenting, commanding and "bossing" type. [John Collier, Indian Affairs and the Indian Reorganization Act: The Twenty Year Record, ed. William H. Kelly, Tucson, 1954, p. 8; emphasis added].

In short, the new policy offered a less abrasive means of achieving assimilation.

This new policy under the IRA offered hope to some of the most beleaguered Indian peoples, especially those who had suffered the greatest loss of land and sovereignty under previous government programs and policies. In addition, many so-called "progressive" or "Americanized" Indians saw the IRA as an avenue toward the mainstream of a prosperous American life. The IRA promised massive economic aid (most of which was never delivered) which was held out before all Indians as a carrot to encourage their approval of the IRA concept.

The promise of economic aid and new respect for Indian self-government was not as encouraging to many other Indian communities. The more traditional and stable Indian communities feared that the IRA would result in further erosion of their treaty rights and their inherent sovereign rights under the guise of self-determination. They

objected strongly that American-styled, majority rule, constitutional electoral governments, were a necessary part of the IRA package. If Indian self-government was the true objective of the IRA, what was wrong with simply maintaining and strengthening the traditional Indian governments, the traditional leaders asked. Many preferred to continue their struggle for survival under the prior system of U.S.-Indian relations rather than submit to new governmental structures and procedures which would be created and approved by the United States government and which would, under the model IRA constitutions, be under the ultimate control of the BIA and the Secretary of the Interior.

Traditional Hopi leaders were among the many Indians who had learned to view any new U.S. government Indian policy with great skepticism. They were in no hurry to embrace the IRA and its promises.

With a missionary zeal, Commissioner John Collier and his Indian administration sought to convince every Indian tribe and nation of the benefits of organization under the IRA and an approved IRA constitutional form of government. Campaigns were conducted to obtain a pro-IRA vote in every Indian reservation. (Exhibit 3.) These campaigns were necessary because Congress had provided that an election would first be held before the IRA would go into effect in any Indian community.

The crucial election on the proposed Hopi Constitution and the establishment of the Hopi Tribal Council was held on October 24, 1936. The official tally was 651 in favor of the Constitution and Hopi Tribal

Council, with 104 opposed. On the strength of these election returns, the United States government decided in December 1936 to recognize the Hopi Tribal Council which was to be organized under the constitution as the official and exclusive governing body of the Hopis. In all future dealings the United States would recognize the newly-created Hopi Tribal Council as the only official representative of all the Hopi people.

The legality and fairness of that 1936 election has been a matter of great controversy in Hopi country ever since that time. Because the Hopi Tribal Council has been responsible for pursuing the Docket 196 claim, any question about the legitimacy of that governing body deserves serious attention.

C. The Early Campaign  
for Hopi Approval

The campaign for Hopi acceptance of an IRA government began in earnest in early 1934. It is interesting to note that the BIA field office at first assumed that each Hopi village would be individually organized in keeping with its historic individual sovereignty. A letter from the Hopi Agency Superintendent to the Commissioner in February 1934 includes this comment:

After the village communities have had more time for consideration of the proposed program, I feel sure they will be very willing and eager to submit for your consideration their constitutions.  
[Exhibit 4.]

The Commissioner received immediate feedback from traditional leaders who wanted their opinions on Hopi self-government known. In

March 1934 the Kikmongwi of Shungopovy wrote that there was no need for a new form of government:

In reply to your letter of January 20, 1934, regarding the matter as in forming or organizing a Self-Government, which we already have that has been handed down from generation to generation up [to] this time. [Exhibit 5.]

He concluded by asking the Commissioner "to return our Domain back to us Hopis" and he spelled out an aboriginal land claim.

At the same time, outside organizations concerned about Indian affairs also expressed concerns about the proposed IRA governments. The New Mexico Association on Indian Affairs made these comments to the Commissioner in May of 1934:

Legally recognized self-governing municipalities are a late step in the evolution of most peoples, resulting from their tradition, education, experience, and racial characteristics. This [IRA] bill makes the legal form the first step. Thereafter the fact and substance of self-government are to be pressed into that form regardless of what the future development may be and regardless also of the extreme differences in tradition and racial qualities among the various Indian tribes. To us this seems to start from the wrong end. [Exhibit 6.]

Despite these forewarnings, the campaign of John Collier continued.

In April 1936 Collier made a personal visit to Oraibi as he stepped up his efforts to sell the IRA plan to the Hopis. The minutes of that meeting show that Collier offered the IRA organization as a solution to virtually all Hopi problems. First he talked about the money promised to IRA organized Indian governments:

The tribes who do organize and get their charter are the ones who get the money, not the ones who fail to organize. [Exhibit 7, p.2.]

He urged immediate acceptance of the IRA plan because of possibly shifting political tides in Washington:

[Y]ou don't know what the next President and the next Commissioner might do; therefore, it is the best thing to organize now when you can organize, rather than to wait, because then you might find that you cannot organize. [Exhibit 7, p. 2.]

He told the assembled Hopis that Hopi-Navajo land disputes could not be settled unless the Hopis agreed to organize under the IRA:

I do not mean to say; and I am not saying, that the Hopis and Navajos are rivals at all, but I am saying that there are some things which need to be settled by the two tribes and they cannot be settled until both tribes are organized. In the meantime the Hopis are going to get the bad end of the deal if they stay unorganized. [Exhibit 7, p. 3.]

At this meeting Collier for the first time laid out his idea of organizing the Hopi villages into a federation under a single tribal council. He told them that he would send a sensitive and experienced man to help establish a suitable Hopi constitution. (Exhibit 7, p. 10.)

D. Oliver LaFarge: The White Man's Burden to Organize the Hopi Tribal Council

(1) Collier's Choice

The man Commissioner John Collier chose to campaign for Hopi approval of the IRA constitution was Oliver LaFarge. Oliver LaFarge was an ideal choice from Collier's point of view. LaFarge had much prestige in the world of Indian affairs. He had worked and studied among the Navajos and his novel Laughing Boy had won a Pulitzer Prize and brought fresh public attention to Indian problems. LaFarge was

also known among the Pueblos where he had travelled and studied over the years. His image as friend of the Indians and as a familiar figure in the Southwest helped ease his entry into the Indian community. In September 1933 he had visited in the Hopi village of Oraibi to sound out the village leaders on the possibility of establishing a Hopi Tribal Council.

LaFarge was employed by the BIA to campaign for passage of an IRA constitution and the creation of a Hopi Tribal Council. He worked in Hopi country from June 1 to September 11, 1936. During this period of time, LaFarge kept a journal, or diary, in which he explains, almost on a day-to-day basis, his actions, motivations, and impressions. This unpublished journal, which he entitled Running Narrative of the Organization of the Hopi Tribe of Indians, 1936,\* is an invaluable insight into the creation of the Hopi Tribal Council. Another unpublished LaFarge report written shortly after the IRA election, Notes for Hopi Administrators,\*\* sheds additional light on this important historical development. Quotations from these two documents provide both tone and substance to a discussion of the creation of an IRA government in Hopi country.

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\*Running Narrative of the Organization of the Hopi Tribe of Indians, 1936, is in the LaFarge Collection at the University of Texas at Austin. It will be cited hereafter as Running Narrative.

\*\*Notes for Hopi Administrators is on file at the library of the Department of the Interior, Washington, D.C. It will be cited hereafter as Notes.

(2) LaFarge Comments  
on the Hopis

LaFarge's Running Narrative begins with these words written on his first day in Hopi country: "Attempting to organize these Hopis is at once extremely interesting, complex, and discouraging." From the beginning, LaFarge saw himself as an advocate for the IRA and a campaigner, committed to a role he would seek from time to time to hide behind a mask of academic neutrality, but a role which he undertook freely and even religiously.

By the second page of his journal, LaFarge already begins to reveal his general uneasiness with the Hopis. The Hopis were not clean enough to satisfy LaFarge:

The contrast between the dirt at Mishongnavi, and the cleanness of the meal I'd eaten [at a Tewa's house on First Mesa] was startling. Even though the latter was also off the floor. When I got home I washed and gargled with Zonite.\*

LaFarge elsewhere makes disparaging remarks about Hopi cleanliness, in one instance commenting about visiting a house which had "the medium (Hopi standard) dirt of the house,"\*\* and in another instance he describes Mishonghovi in these terms: "All the Hopi villages are filthy, but this is the worst of the lot."† It is soon made clear that LaFarge had a deep-seated prejudice against the Hopi people, an irra-

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\*LaFarge, Running Narrative, p. 2.

\*\*LaFarge, Running Narrative, p. 40.

†LaFarge, Notes, p. 11.

tional bias which infected and tainted all of his work in Hopi country.

LaFarge's papers frequently reveal his preference for the Navajo and Tewa people over the Hopis. In commenting on the Tewas he made these disparaging comments about the Hopis:

Much intermarried with the Hopis, they still keep the Tewa language and much of the Tewa character. They are cleaner, less pronounced in smell, and more forthright.\*

His comparison between Tewas and Hopis also extends to other values and reveals LaFarge's bias against the pacifism of the Hopis:

The name Hopi means peaceful. They abhor war and physical violence. Wherefor they quarrel constantly and the talking never ceases. In this respect the Tewas, who will punch a man's head for him, are a great relief.\*\*

The Tewas believe in settling a row by giving the offender a poke in the jaw. They are not afraid of fighting. Although they possess the long Pueblo memory, they become impatient with too long dwelling in the past and take much more readily than do the Hopis to realistic action for settling present problems.†

Among the Hopis the cult of peace reaches an extreme, and all personal violence is looked upon with horror. With this comes an attitude of smug superiority towards all who fight including the white man whose weapons stand between the Hopis and the dreaded Navajo.††

In general, LaFarge found that the Hopis had too many "unpleasant characteristics." He was more satisfied with the characteristics of the

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\*LaFarge, Running Narrative, Preface, p. 1.

\*\*LaFarge, Running Narrative, p. 3.

†LaFarge, Notes, p. 4.

††LaFarge, Notes, p. 3.

"progressive" Hopis of First Mesa, whom he felt had been changed from traditional Hopi values by the influence of the Tewas and Navajos:

Due to the influence of the Tewas, and considerable inter-mixture with the Navajos, this village shows the least of the unpleasant Hopi characteristics . . . it is the most accustomed to contact with the government, and in general the easiest to deal with.\*

LaFarge's catalogue of unpleasant Hopi characteristics includes "materialism, self-seeking, smugness and quarrelsomeness."\*\* "These Indians are good business men, penny squeezing, avaricious, fearful of the future, suspicious. Their good manners and friendly approach are from the lips out. They are intensely suspicious, and great harbourers of the memory of wrongs received."†

The Hopis fight with words and sheer endurance, and consider nothing ever settled unless it is settled in their favour. Right, justice, reason and plain fact do not affect them unless violently brought home, and even then they will still grieve over it and hope for a rearrangement, a generation or more later.††

At one point, LaFarge wrote in his diary, "how mean spirited I think the Hopis are."\*\*\* Even when begrudgingly praising their tenacity and independence, LaFarge frequently chose unflattering words to describe the Hopis:

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\*LaFarge, Notes, p. 10.

\*\*LaFarge, Notes, p. 14.

†LaFarge, Running Narrative, Preface, p. 3.

††LaFarge, Running Narrative, p. 43.

\*\*\*LaFarge, Running Narrative, p. 44.

The Hopis are a cantankerous and tight-minded group of Indians who have been right where they are for a thousand-odd years, and in this part of the country for two to four thousand years, and who intend to stay put.\*

It is sadly ironic that the man who would become the founding father of the Hopi Tribal Council had such a low general opinion of the Hopi people. That this man held himself out as a friend of the Hopis is astonishing. That it was he who brought the IRA constitution seems very understandable.

### (3) A Dishonest Campaign

Even if one were to concede that a man in LaFarge's position was entitled to his private prejudices and personal opinions, that concession does not condone the callous misuse of power which characterized LaFarge's campaign among the Hopis.

During his campaign to gain Hopi approval of a constitution and centralized tribal council, LaFarge usually tried to portray himself as a disinterested academic rather than as the politician and advocate he in fact was. He describes the opening remarks he made at a meeting he conducted at Hotevilla, a strongly traditional village, in these terms:

I had nothing to gain or lose, if the Hopis organized or not. It was entirely up to them. I had nothing to get from them. They were free to make up their minds as they would. I was laying no traps. This said quietly, calmly, in very emphatic and strong language.\*\*

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\*LaFarge, Running Narrative, Preface, p. 1.

\*\*LaFarge, Running Narrative, p. 19.

In fact, LaFarge, Collier, and the BIA had much to gain or lose in prestige at the very least. Hopi acceptance of the IRA was considered by many to be a critical test of the new policy. This feigned neutral stance of LaFarge is described elsewhere in his notes, as he reports on his view of Hopi power under the IRA:

I wanted to maintain my role, of one seeking instruction, who could not lay down how things must be, but would learn from the Hopis. The Hopis must do it. This was not something the white man would do to or for them, but a power he offered, an authority, he laid it down here, they must pick it up, if it suited them.\*

This promise of new political power and authority through IRA organization was only one of the promises LaFarge made. He also echoed the words of Collier in his arguments that only through organization under the IRA could they hope to secure the return of their lands:

I told them that of course, they could not get back all that land. But they should have more than now, and the right to push the Navajos out of what was given to them. And their eagle hunting territories beyond, should be protected.\*\*

When abuse of religious ceremonies and dances was discussed at these meetings in the Hopi villages, LaFarge held out the IRA organization as a solution to this problem too:

In this organization lay the means which the government itself provided for protecting the Hopi way.†

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\*LaFarge, Running Narrative, p. 13.

\*\*LaFarge, Running Narrative, p. 15; see also Exhibit 3a.

†LaFarge, Running Narrative, p. 17.

Commissioner John Collier personally underlined the promise about protection of Hopi religion in a letter he sent to traditional Hopi religious leaders James Chuhoiiva and Dan Kotchongva of the village of Hotevilla in June 1936:

[T]he best way to protect the old Hopi religion is to organize in the right manner under the Indian Reorganization Act. [Exhibit 8.]

LaFarge and Collier were clearly playing a politician's game, offering the IRA organization as a cure to all Hopi problems. All problems from land to religion could be easily resolved with a "yes" vote for the constitution and Hopi Tribal Council.

In the course of village-by-village campaign, LaFarge soon concluded that there were distinct factions within the Hopi community for which he would have to specially tailor his campaign. In his reports he named three distinct groups: (1) Progressives, (2) Smarties, and (3) Conservatives or Traditionals. His description shows his definite bias in favor of the Progressives:

Whether one likes or dislikes the Hopis he must admit that they are in some ways one of the most promising tribes in the United States. More than any other tribe known to me they are attempting to make conscious and intelligent selection from the good things of both white and Hopi culture. Roughly speaking, they tend to absorb and master our material techniques and improvements while retaining with full force their own aesthetic, religious, social and spiritual values. This type of man, dominant in the tribe, can be truly termed a progressive.\*

LaFarge cites the village of Bakabi as an example of this form of pro-

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\*LaFarge, Notes, p. 9.

gressivism:

Consciously progressive and with a selfmade chief who believes in cooperation with the Government, they have formed an extremely pleasant little group. In contrast to the filth of other villages, this one is proud of its cleanliness, and will compare in appearance to the Rio Grande Pueblos.\*

LaFarge wrote that Bakabi and First Mesa were "the two most truly progressive of the real Hopis."\*\* He notes that the BIA Hopi Superintendents had "virtually no real contact with their Indians except at First Mesa."†

The label of "Smarties" LaFarge applied to "self-styled progressives" whom he described in these terms:

These individuals, sometimes Christian and sometimes not, are social misfits and generally unstable and unreliable. Most of this group speaks fluent English and knows how to yes the government officials along. Unreasonable recognition of these individuals as leaders and spokesmen for their village has been a real factor in building distrust of the government and suspicion of any scheme of representation.††

LaFarge concluded that the village of Kyakotsmovi (New Oraibi) was most typical of the Smartie group:

Here at Kiakuchomovi is all the meanness, stinginess, smartness, retentive memory of evil received, and distrust of the Hopi, and

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\*LaFarge, Notes, p. 17.

\*\*LaFarge, Running Narrative, p. 21.

†LaFarge, Running Narrative, p. 1.

††LaFarge, Notes, p. 10.

very little of the redeeming features. A Hopi taken out of the Hopi Road is a shell of a man.\*

These people, whose way of life has been materially improved by white contact, and who through their friendly approach to officials probably get more than their fair share of the jobs, retain the same violent sense of grievance against the government as the more conservative villages. Having partially lost the basic Hopi values, they retain the characteristic materialism, self-seeking, smugness and quarrelsomeness, which with their somewhat confused progressivism makes them the least attractive group to deal with.\*\*

He describes them as a "semi-progressive, flavourless and unattractive group."†

Since individuals of this "self-styled-progressive-Smartie" group would come to power with the creation of the Hopi Tribal Council, it is worth noting that one of these individuals, Byron Adams, a Hopi Christian missionary and postmaster from First Mesa, was the object of a long warning written to BIA administrators, for LaFarge considered him a "deeply dishonest, self-seeking, slick and able man,"†† a "low character and one of the villains of the piece."\*\*\* The creation of the Hopi Tribal Council opened the road to power for Byron Adams, a man whose missionary tracts reveal his contempt for the traditional "heathen" Hopi (Exhibit 9) and who would, in 1943, as chairman

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\*LaFarge, Running Narrative, p. 8.

\*\*LaFarge, Notes, p. 14.

†LaFarge, Running Narrative, p. 2.

††LaFarge, Notes, p. 35.

\*\*\*LaFarge, Running Narrative, p. 4.

of the Hopi Tribal Council, perform the last official act before the Council's collapse.

LaFarge expressed conflicting views about the Conservatives or Traditionals. In his initial contacts with them he was enthusiastic:

The Hotevilla leaders were strictly business, sincere, reasonable. These and Chimopavi [Shungopovi], the conservatives, are the best to deal with I've met so far. In the end, they will accept or reject for sound reasons of the commonweal. I wish they were all like these hostiles!\*

He described the strongly traditional village of Hotevilla in very positive terms:

By all accounts, and the look of their village, they are intelligent and industrious Indians, enterprising, and law-abiding. They are in reality quite progressive, quick to take advantage of everything that is pushed at them by the white man, peaceful and law abiding.\*\*

He made similar favorable comments about Shungopovi:

It is dominated by a reasonable conservatism. I found its leaders good men to deal with. There seems to be an element here of greater vigor, despite a very earnest adherence to the pacifist doctrine.†

LaFarge was respectful at first of the profound religious belief of these people:

Entirely governed by their religion, which has many admirable aspects, they are magnificently stubborn in their determination to live according to the Hopi path, and will face death and destruction,

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\*LaFarge, Running Narrative, p. 13.

\*\*LaFarge, Running Narrative, p. 58.

†LaFarge, Notes, p. 12.

imprisonment, anything, to stand by their ideals and their gods. Through this they achieve real sincerity and strength. Once set, they make good friends. Their dance forms and their other work show them to be artists and craftsmen. They are very hard workers.\*

As LaFarge's campaign for approval of an IRA constitution ran into opposition from these traditional Hopis, his opinions began to change. As the opposition of Dan Kotchongva, religious leader from Hotevilla, became evident, LaFarge was piqued:

I have a certain sympathy with Kotchongva, but I think it would be a good thing if his prestige at Hotevilla could be lessened . . . the attitude of self-pity and false resistance is vicious. It's a racket. See where they stand on this constitution. They vote neither for nor against it. They wash their hands.\*\*

Here I met the perfection of the Hopi negative. In plain fact, Dan Kotchongva can find nothing to object to in this Constitution, but to take a public position, perhaps to guess wrong, to lift the mind out of a deeply engraved rut and actually think about a new thing, that approaches impossibility.†

Hubbell is right, these people think they're doing you a favour if they let you do something for them. They know well how important this is, but that won't make them take trouble. Save that they've got to try, they've got to learn to swim or go under in the end, I really think I'd recommend that the whole matter be dropped for a generation. They are too gutless.††

They regard it as their sacred trust to maintain a rigid attitude of hostility to the Government, which does not conflict with grabbing

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\*LaFarge, Running Narrative, p. 3.

\*\*LaFarge, Running Narrative, p. 58.

†LaFarge, Running Narrative, p. 45.

††LaFarge, Running Narrative, p. 52.

every benefit and free handout which comes their way, and yelling for more.\*

These intemperate and patronizing comments reveal the frustration LaFarge experienced when the traditional Hopis decided not to cast their lot with the IRA and the Hopi Tribal Council.

LaFarge finally declared that the conservatives or traditionals were a dying breed who would be completely supplanted within twenty years:

I have spoken of the time when the conservative faction will cease to exist. The younger members mainly adhere to it only out of respect for their elders, and I believe that within twenty years it will have dissolved.\*\*

As an outsider who was convinced that he knew what was best for the Hopis, LaFarge adopted an attitude very similar to others who had worked for the BIA in Hopi country, including a school teacher whom LaFarge severely criticized for expressing opinions remarkably similar to his own:

Had a talk this morning with Mrs. Cooke, the unchanged veteran teacher we knew in 1930. A sincere and kindly woman, hard working, has got herself to the edge of breakdown by her efforts. It is disappointing to her, how the Indians cling to their own ways, how few even of the educated ones, will take jobs away from home. They are so attached to their way of life and their ceremonies. . . . Of course, they're just little children, they can't see anything but their own ideas. Particularly the old men, they just can't free their minds from their old ideas. Just as you think

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\*LaFarge, Notes, p. 18.

\*\*LaFarge, Notes, p. 22.

you're coming along fine, they bring something up that stops everything. Like children. . . . Such people through all these years have operated on the Hopi. It's grotesque.\*

Both this school teacher and Oliver LaFarge lost sight of the history of Hopi passive resistance to outside domination. In their anger and confusion, these outsiders could only see childish and thoughtless rejection of all they considered good and true. While experiencing his rejection and frustration, LaFarge completely rewrites in his diary the sordid history of United States domination of the Hopis:

They are doing fine. No one is bothering them. They have no troubles fit to mention. The Hopis have been better treated than any other tribe in the United States, without exception, so far as my knowledge goes.\*\*

LaFarge would later retract that statement, but by the end of his campaign in Hopi country, he was at an emotional pitch, a self-styled prophet who was fulfilling "the white man's burden." A finale he wrote to his Running Narrative on September 11, 1936, discloses his feelings and his motives at that time:

The main theme I have in mind is the white man's burden. I have thought of it often in the past fifteen years, in different ways. It is a snare and a delusion, it is also a reality and something not to be ducked. I sat on my porch in the moonlight one warm night shortly before the Flute Ceremony, with a forbidden and quite strong drink of rye whiskey and water beside me. I had the evening clear, I was tired, I aimed for nine o'clock bed. I smoked my pipe and sipped and looked at the moon. I heard some girls laugh together, the high, rather silly laughter of adolescents in a group, I

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\*LaFarge, Running Narrative, p. 12.

\*\*LaFarge, Running Narrative, p. 45; emphasis in original.

heard a woman speak and laugh, I heard a man go by on horseback, singing, I heard voices; I saw the lights up on top of the mesa, and faintly caught the shred of a song from up there. I heard cars moving. All these sounds and the lights tired me. With each observation I felt the weight again. They can play and laugh, but I am planning their futures. I carry them. There is no rest for me while I am aware of their presences.

I thought then, and faced the facts about this Constitution. The Hopis are going to organize, first, because John Collier and a number of other people decided to put through a new Indian law, the Reorganization Act (Wheeler-Howard Act). The Indians didn't think this up. We did. Collier, Kohn, Cutting, Thomas, Wheeler, Harper, myself . . . so many others. They accepted it when they had their referendum last year, because Hutton put it across, just as the Jicarillas did because Graves and Wirt and I decided they should, and the Navajos rejected it because the missionaries and the Indian Rights Association worked against it. We came among these people, they didn't ask us, and as a result, they are our wards. It's not any inherent lack of capacity, it's the cold fact of cultural adjustment.

Charlotte Westwood [an attorney from the Solicitor's office], spoke to me about the fact that I said all the right things "this is your decision, it is up to you" and so forth, but that my manner was paternal and authoritarian. Sure it was. Why duck the facts? We bring to these Indians a question which their experience cannot comprehend, a question which includes a world-view and a grasp of that utterly alien, mind-wracking concept, Anglo-Saxon rule by majority vote, with everything that follows in the train of that.

The Hopis will accept a constitution which includes self-government and the best transition into our democratic system I could devise, because Edwin Marks [Hotevilla school principal] and Lorenzo Hubbell [trader at Oraibi] and Alexander G. Hutton [BIA Agency Superintendent] and I decided they should. Primarily the decision was mine; the others upheld my hands . . . That is the white man's burden; to undo despite the lack of comprehension of his wards, the harm that he himself has done.\*

Having orchestrated an admittedly authoritarian and paternalistic campaign, LaFarge was confident that the combination of "Progressive" and

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\*LaFarge, Running Narrative, pp. 59-60.

"Smartie" votes would carry the IRA referendum. As he prepared to leave Hopi country for Washington, he made a prediction of victory:

Well, this Constitution will be accepted. The vote will be about 800 to 200, out of 1,800 possible voters. Those who voted for the Wheeler-Howard Act will vote for it, plus the formerly adverse vote at First Mesa, which is one of the few places where they will turn out to vote "no," when they're against something. Dissident elements at Moshongovi, Shungopovi, Moenkopi, and Oraibi and the bulk of Hotevilla will refrain from voting. Sipaulavi, Kyakochumovi, Bakabi and upper Moenkopi will go for it almost solid, and the women, it seems, will vote in those places. I think Shungopavi will turn in a fair vote, perhaps half of the men and a few women.\*

On August 28, 1936, he sent Commissioner John Collier a memorandum on the proposed IRA constitution in which LaFarge made the blatantly untrue statement that "Progressives and Conservatives alike are agreed upon the document thus formed." (Exhibit 10) LaFarge knew full well that the traditional Hopis (whom he had finally labeled the "dissident elements") were not persuaded by his campaign and were in complete opposition to the constitution and its Hopi Tribal Council.

In a quieter moment after the election had been held, LaFarge wrote a preface to his Running Narrative journal in which he reflected on what had transpired. His conclusion to this preface is most sobering. It is a self-indictment in which he includes himself among the list of notorious enemies of the Hopis:

The Hopis have been operated on by everyone, official and unofficial, from Coronado through Kit Carson and General Scott to Oliver LaFarge. In almost every case they have suffered for it. They still stand almost where they did, but they are slightly cracking. Why they should ever trust any white man is a mystery to me.\*\*

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\*LaFarge, Running Narrative, p. 58.

\*\*LaFarge, Running Narrative, Preface, p. 5.

The October 1936 referendum on the IRA constitution and Hopi Tribal Council which soon followed gave even more reason for traditional Hopis to distrust white methods. It would prove to be the capstone of the manipulative and fundamentally dishonest campaign which LaFarge had waged.

E. An Undemocratic  
Referendum: A  
Numbers Game

Since only 651 Hopis voted in favor of the Hopi Constitution which established the Hopi Tribal Council, the referendum could hardly be considered a mandate from the Hopis whose total population at the time is estimated at 4,500. One student of the Hopis has summed up the election in these words:

Despite the preponderant sentiment against the constitution, . . . acceptance by less than 15 per cent of the Hopis was enough to warrant adoption of the constitution and by-laws and the establishment of a tribal council.\*

Since the total vote included more than a third of those Hopis who were considered eligible voters, the BIA was satisfied with the election, and the Constitution was approved by the Secretary of the Interior in December 1936. (Exhibit 11.) A closer look at the electoral process, however, demonstrates that the referendum was a mockery of democracy.

There is little doubt among serious students of the Hopis that

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\*Frank Waters, Book of the Hopi, New York: Ballantine, 1969, p. 386.

the recorded votes regarding the Constitution and Hopi Tribal Council in no way reflected the preponderant opposition which existed in Hopi society at that time, for the opposition was not recorded on ballots but by abstention. The mass of traditional Hopis opposing the IRA proposals took the traditional Hopi position of refusing to participate in the electoral process altogether. Oliver LaFarge, the government agent chiefly responsible for supervising the election campaign and referendum, was fully aware of the fact that Hopis in opposition would demonstrate their opinion in this traditional fashion. In his diary, LaFarge wrote:

[I]t is alien to [the Hopis] to settle matters out of hand by majority vote. Such a vote leaves a dissatisfied minority, which makes them very uneasy. Their natural way of doing is to discuss among themselves at great length and group by group until public opinion as a whole has settled overwhelmingly in one direction. It is during this process, too, that the Kik-mongwis [sic] can exert his influence without entering into disputes. In actual practice this system is democratic, but it works differently from ours.

Opposition is expressed by abstention. Those who are against something stay away from meetings at which it is to be discussed and generally refuse to vote on it.\*

When he predicted the voter turnout he noted in his diary that the "dissident" traditionals would "refrain from voting." (See page 46 above.)

Likewise, LaFarge knew that the low attendance at the meetings held in village-by-village campaigning was a continuing expression

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\*LaFarge, Notes, p. 8.

of Hopi dissatisfaction with his proposals:

It is very significant that even after the subject of the constitution had been discussed throughout the villages for two months, general meetings were very badly attended. In no case did ten percent of the voting population of a village attend one.\*

When the votes were finally counted and LaFarge's prediction of widespread abstention was realized, he admitted to himself, in his diary, that wholesale abstention such as that witnessed in Hotevilla should have been interpreted as an overwhelming vote of rejection:

[T]here were only 15 people in the village willing to go to the polls at all out of a potential voting population of 250, Kotchongva [a religious leader] having announced that he would have nothing to do with so un-Hopi a thing as a referendum.

Here also we see perfectly illustrated the Hopi method of opposition. The Hotevilla leaders did not work against the constitution, but merely announced that they would not touch it. On the day of the referendum they went to their fields to work. They said that everybody else was free to do as he desired. The result, abstention of almost the whole village from voting, should be interpreted as a heavy opposition vote.

Hotevilla's character and ideas are not peculiar, but are an emphatic form of the general Hopi pattern.\*\*

LaFarge knew that the consolidated village of First Mesa, the closest to the BIA Agency, "is one of the few places where they will turn out to vote 'no,' when they're against something."† As it turned out, even that "progressive" community turned out a total of 83 "no" votes. Only 21 "no" votes were officially recorded in all

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\*LaFarge, Notes, p. 8.

\*\*LaFarge, Notes, p. 19; emphasis added.

†LaFarge, Running Narrative, p. 58.

of the other Hopi villages combined, despite the fact that all parties involved in the election knew of the widespread opposition which existed in at least five of those villages. Thus, the successful boycott of the referendum by the village of Hotevilla was officially reported as a landslide victory of 12 votes in favor with only one vote in opposition. The 237 voters who boycotted the election in Hotevilla were simply ignored.

The official reported election results are as follows:

Village	Total For Adoption	Total Against Adoption	Total Eligible Voters
Shungopavy	97	8	172
Chepaulovi	44	2	86
Kyakotsmovi (New Oraibi)	116	9	178
Oraibi	8	0	73
Mishongnovi	57	1	58
Bacabi	55	0	92
Hotevilla	12	1	250
Tuba City	83	0	207
Polacca	178	83	422

(Copies of the individual village election certifications are attached as Exhibit 12.)

Since LaFarge himself acknowledged that abstention was a traditional Hopi way of expressing disapproval, it is no wonder he had

trouble convincing traditional Hopis that it was fair for the Bureau to ignore them:

No amount of explaining could convince conservative Hopis that it was right that their failure to vote against the Reorganization Act had not been counted as so many negative votes.\*

To LaFarge and the BIA, the referendum had white American legitimacy, and that was all that mattered.

At least two other matters clouded the electoral process. First, the BIA Agency Superintendent took the extraordinary public position at the time of the election that abstention was a "yes" vote as far as he was concerned. This statement further confused and confounded an already troubled electorate. Oliver LaFarge dismisses that incident by saying it was "unfortunate":

Then the idea that the vote on the Wheeler-Howard Act was a fraud --the repercussion of Hutton's unfortunate statement that not voting was equivalent to voting yes.\*\*

The second especially troubling matter had to do with the form of the referendum ballot. The voting process had become tied up in religious symbolism. Many traditional Hopis were distressed by the fact that an "x" mark was to be used to indicate a preference on the ballot. To them, that mark was simply a cross drawn on an angle. The cross was a forbidden symbol. Because of their history of cruel Catholic Spanish Rule, many Hopis viewed the cross with the same repugnance as many Americans view the swastika. These Hopis would have

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\*LaFarge, Notes, p. 9.

\*\*LaFarge, Running Narrative, p. 24.

nothing to do with an election utilizing such a symbol. In his notes about a pre-election meeting held in the village of Mishongovi, Oliver LaFarge admitted he was aware of the problem:

The circle for No had been all right, but a cross for Yes, that seemed Christian to them.\*

An important religious leader of the village of Shungopovi had explained the source of the problem to him:

[T]he yes vote was indicated by an x, which is merely a cross drawn at an angle, and the cross is the sign the Spaniards brought with them when they came to the Hopi villages.\*\*

Nevertheless, when change in the form of the ballot was discussed with officials in Washington, LaFarge insisted on maintaining the ballot form which utilized an "x" to indicate one preference because, he wrote, "the vote might be adversely affected if a change is made." (Exhibit 13.)

It cannot be ascertained at this late date what effect that decision may have had on the total recorded vote.

In sum, it must be concluded that the 1936 election which supposedly approved the constitution which created the Hopi Tribal Council might at best be characterized as wholesale manipulation and deception. At worst it might fairly be characterized as a fraud. It was a chauvinistic, arrogant, and to some degree racist, assault on traditional Hopi sovereignty. The admittedly paternal and authoritarian

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\*LaFarge, Running Narrative, p. 10.

\*\*LaFarge, Notes, p. 13.

manner of Oliver LaFarge pervaded the entire electoral process leading to a final result which was anything but democratic. An anthropologist who studied this election came to a similar conclusion:

Collier reported to the secretary of the interior in 1936 that the Hopis had accepted the IRA by a vote of 519 to 299, the total votes cast representing 45 percent of the eligible voters, which more than satisfied the act's requirement that at least 30 percent of the eligible voters on any one reservation participate in the referendum (Collier 1936). According to Wilcomb Washburn (The Indian in America, page 255), Collier came up with a figure of 50 percent for the percentage of the eligible voters coming to the polls a year later, in 1936, to vote on the constitution, in his annual report of 1937.

Yet, according to the statistics contained in the ratified and Interior-approved constitution itself, only 755 people voted in the constitutional referendum. This is 63 fewer people than voted in the 1935 referendum on the Indian Reorganization Act. How can 818 voters constitute 45 percent of the eligible voters in 1935 and, a year later, 755 voters constitute 50 percent of the eligible voters? And how did Collier arrive at the notion that 50 percent of the eligible voters flocked to the polls? Interior statistics show no figures - not even an estimate - of the number of eligible Hopi voters in 1936. How can one talk about percentages of eligible voters when reliable raw data about that population are not available? Haas (1947) gives two different total population figures for the Hopi in an official Department of Interior report. For 1935, the figure is 2,538; for 1936, it is 3,444. The only way to reconcile the two figures is to assume that 3,444 must be the total population, and 2,538 perhaps the adult population. Five-hundred-nineteen people voting "yes" for the IRA is barely 21 percent of 2,538. Twelve percent of those 2,538 voted "no." That makes 33 percent voting in that election, not 45 percent. And 755 people voting in the 1936 constitutional referendum does not constitute 50 percent of the eligible voters flocking to the polls. It represents 29 percent. Clearly, Collier made up his own statistics, and perpetrated a good deal of deception in order to make it seem as if the Hopi were seeing things his way, when they were not....

The low "yes" vote does not tell the whole story. A number of Hopis assert today that voters were told they were voting for retention of their land, not for reorganization; that registration papers were falsified; and that votes were fabricated. [Richard Clemmer, Continuities of Hopi Culture Change (Acoma Books, 1978) p. 60-61.]

5. 1936-1943: THE DECLINE AND FALL  
OF THE HOPI TRIBAL COUNCIL

The Hopi Constitution \* was ostensibly designed to maintain the traditional leadership of the Kikmongwis, the chief religious leaders of each village. At least this was the argument LaFarge had used to manipulate and cajole Hopis to vote for the Constitution. In drafting the Constitution, Oliver LaFarge was fully aware that no constitution would be acceptable to the Hopis if the Kikmongwis' traditional authority was not recognized and maintained:

It will be remembered that the office of the Kikmongwi is written into the structure of the constitution, and furthermore it was clearly shown to me that the Hopis would never have accepted any form of organization which failed to do so.\*\*

Were it not for all of the damaging information which has come to light about LaFarge's conscious efforts to undercut the power and authority of traditional Hopi leaders, a reading of the Constitution could easily convince one that LaFarge simply sought to assist the Hopis in developing a formalized federation of their villages which would preserve the traditional governments.

But the traditional leaders had not been satisfied and had opposed the Constitution. This opposition continued and grew in

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\*Exhibit 11.

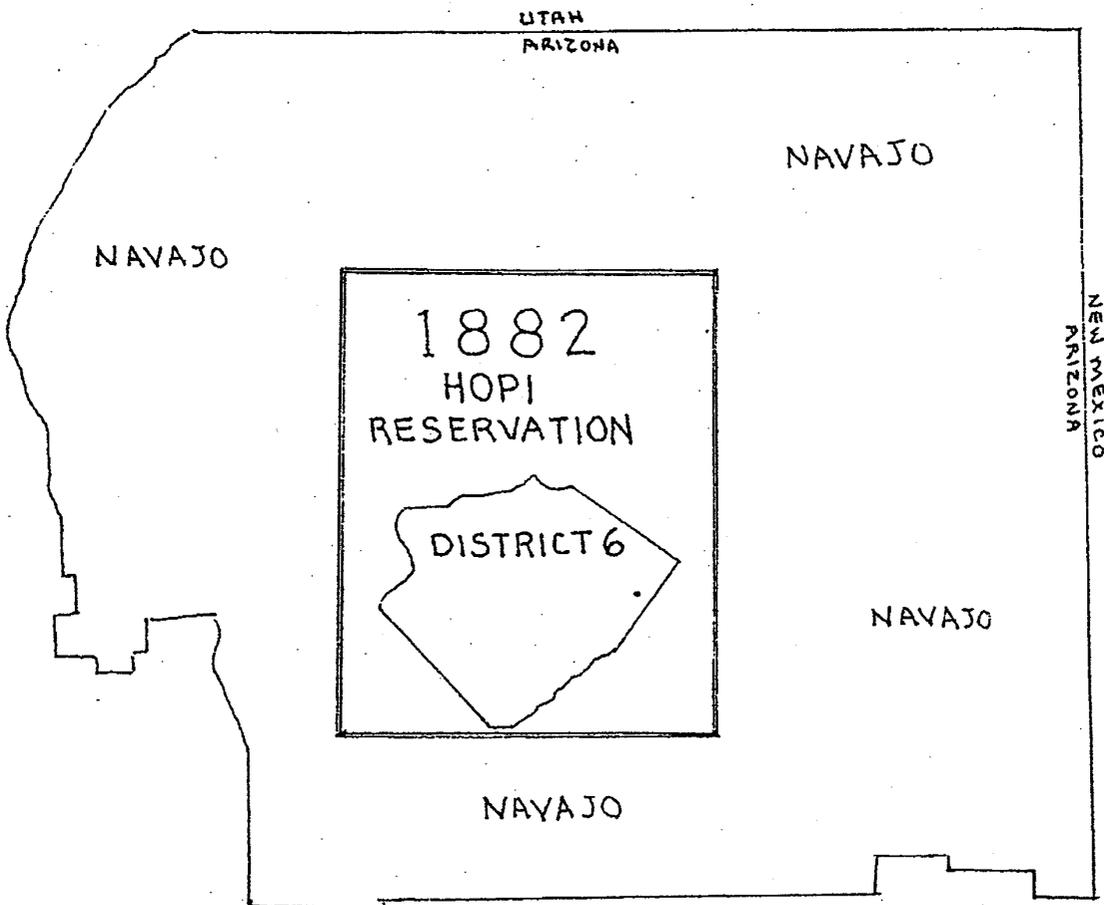
\*\*LaFarge, Notes, p.2.

strength as it became clear that the progressives and so-called "Smarties" had come to new power through the Hopi Tribal Council. In responding to a protest which had been registered by the Kikmongwi of Oraibi about the undue progressive influence, Oliver LaFarge wrote a letter to a U.S. Senator in January 1937 which discounted the protest and which characterized the traditionals as an insignificant minority under the leadership of a man whom LaFarge dismissed out of hand as "not quite sane." (Exhibit 14.) (Again LaFarge was quick to slander Hopi leaders.) Other protests were made to Congress about fraud and deception in the 1936 Hopi election, but no remedial action was taken. (Exhibit 15.)

The failure of these protests was not fatal to the traditional Hopis, for a series of events beginning in 1936 precipitated a crisis within the Hopi community and Hopi Tribal Council which made Congressional intervention unnecessary at that time. That crisis began with the creation of an exclusive Hopi grazing district and ended a few years later with the total dissolution of the Hopi Tribal Council.

In 1936, the BIA issued a series of rulings which established Grazing District Number 6 as the sole and exclusive Hopi grazing area within the 1882 Hopi Reservation. The designation of District 6 was carried out under the authority of the Navajo BIA Agency, without any Hopi input into the decision-making process. It was part of a new BIA plan to handle the entire area of the Hopi and Navajo reservations

as "one super land management district." The area included within District 6 included the principal Hopi villages and surrounding lands, but this amounted to only about one-third of the territory encompassed by the 1882 Hopi Reservation. Although there were repeated BIA assurances that this new boundary "shall not be construed in any way as fixing an official boundary" between the Hopi and Navajo peoples, the Hopis felt they were being fenced into an even smaller corner of their



rightful land. (Exhibit 16.) There was great skepticism among all factions within the Hopi community, and many protested to Washington.

Commissioner John Collier made a personal visit to Hopi country in July 1938, in an effort to assuage the fears about further loss of Hopi land rights. As a transcript of that meeting makes clear, Collier was not able to appease even the "progressive" Hopis who were present. (Exhibit 17.)

While various members of the progressive Hopi faction took the view that the Hopi Tribal Council had the constitutional authority to act on Hopi-Navajo land disputes such as this, and to negotiate the problems created by the District 6 ruling, traditional Hopi leaders maintained that the subject of use and control of Hopi land remained principally a village matter, each village having its own historic land rights. In this respect, the traditional leaders' views were similar to the views of the Pueblos of the Rio Grande.

Some BIA officials and advisors agreed with the traditional Hopi viewpoint. They argued that even Hopis who had voted in favor of the Hopi Constitution in 1936 had been made to understand that village boundaries extending to the outer limits of traditional Hopi lands would remain under traditional village authority. (Exhibit 18.) In their opinion, Oliver LaFarge had been ignorant about this aspect of traditional Hopi land law.

These voices in support of the traditional Hopi position were silenced by higher-ranking BIA officials who insisted that "change

to more tribal solidarity and cooperation should be worked for" even if it meant manipulating the laws and ignoring the opinions of the Hopis themselves. (Exhibit 19.)

The dissatisfaction of the traditional Hopis over these developments was expressed in a number of ways, including a complete boycott of the Hopi Tribal Council by several villages. As it became more and more apparent that the BIA was still making unilateral decisions (which ignored even the progressive Hopi Tribal Council), the boycott continued to grow. By early 1939, the Washington office of the BIA was drafting and considering proposed amendments to the Hopi Constitution to overcome the problem the Hopi Tribal Council was having in making a quorum at its meetings. One such proposed amendment found in BIA files reads as follows:

No business shall be done unless at least a majority of the members from the villages, which have been participating in the Tribal Council for the electoral year, are present [Exhibit 19.]

Again it is clear that the BIA was prepared to foist on the Hopis a form of "democracy" and "majority rule" in which only the voices of "participating," that is, cooperative, Hopis need be heard. According to Washington, the opposition traditionalists could lawfully be ignored even if they constituted a majority, just as Oliver LaFarge had ignored them in 1936.

At the same time, the dispute over being confined to District 6 heated up as the United States government began building fences on the boundaries. The BIA continued to take the public position that

these fences were not establishing any new Hopi reservation boundaries. (Exhibits 20, 21)

Dissatisfaction with the Hopi Tribal Council continued to grow. Even progressive villages such as the consolidated village of First Mesa sent only part of its allotted representation to the Council. When the 1940 Council was convened in late 1939, there were not enough certified councilmen present to constitute a bare quorum. (Exhibit 22.)

In early 1940, Oliver LaFarge wrote Commissioner John Collier a lengthy letter which supported Hopi Tribal Council authority over land issues such as the District 6 boundary question. (Exhibit 23.) LaFarge was attempting through this letter to bolster the authority and prestige of the Hopi Constitution and the limping Council which he had created.

Simultaneously, the BIA reversed its position and took steps to have District 6 declared an exclusive Hopi Reservation. It appears that those in power within the BIA were too impatient to wait for the Hopi Tribal Council to consolidate its authority and do the bidding of the BIA on this issue. By 1941 all official denials were forgotten and the BIA submitted to the Secretary of the Interior an order for his signature which would have officially turned District 6 into an exclusive Hopi Reservation, with the remainder of the 1882 Hopi Reservation designated as part of the Navajo Reservation, for the exclusive use of Navajos.\*

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\*A decade earlier an effort had been made to obtain federal legislation authorizing the Secretary of the Interior to create such a boundary, but Congress had refused to pass such legislation because of protests from Hopis and Navajos.

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This plan was thwarted by a legal opinion rendered by the Solicitor of the Department of the Interior on February 12, 1941. The Solicitor ruled that the proposed division of the 1882 Hopi Reservation into exclusive Hopi and Navajo reservations would constitute an illegal creation of a new Indian reservation without the required Congressional approval. To get around his ruling (and the law), the Solicitor proposed that almost the same results could be arranged through manipulation of BIA grazing regulations. Hopi livestock permits could be issued for District 6 only, and Navajo livestock permits would be denied within District 6. Hopis or Navajos found residing on the wrong side of the District 6 boundaries could be strongly encouraged or forceably compelled to relocate on the other side. This segregation of Hopis from Navajos would be accomplished in the names of "grazing segregation" and "farming segregation."\*

The Solicitor knew that the Hopi Tribal Council could not withstand the backlash it would receive from the Hopi people if it formally agreed to such a plan, so he proposed a clever alternative which had the Council handing out these grazing permits without ever officially approving them. The Council could thereby be deemed to have given its

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\*Although the Solicitor's opinion paved the way for official segregation of the Hopis into a small portion of the 1882 Hopi Reservation, it did have the beneficial effect of preserving Hopi legal rights (as yet only on paper and unspecified) to the lands and natural resources throughout the 1882 Hopi Reservation.

approval through its participation:

A formal agreement or the signing of a document by the Hopi Tribal Council is not necessary if they are reluctant to take such positive action. If the tribal council will assist in the execution of the regulations through the issuance of permits within the Hopi Unit [District 6] and in such other ways as may be appropriate, their acquiescence will be sufficiently demonstrated. [Exhibit 24.]

The BIA had determined to resolve Hopi-Navajo disputes in the manner it thought best, and only the appearance of agreement by the Hopi Tribal Council would be required to give legitimacy to the government's efforts. The Hopi Tribal Council was designated as a tool to carry out a plan to which neither Hopis nor Navajos had agreed. It is important to recall that federal power to control the use of Hopi land has always been a naked arrogation of power without any legal foundation or authority and absolutely without the consent of the Hopis.

Even the Hopi Tribal Council had trouble swallowing these developments, and in late 1941 an exchange of questions and answers took place between the Council and Commissioner John Collier on various legal issues concerning Hopi land rights. (Exhibit 25.) Collier tried to assure the Council that their cooperation in the grazing program and in changes of the boundaries of District 6 would in no way affect their rights.

The Hopi Tribal Council which addressed these developments in early 1942 was on its last leg. There was barely a pretense of legitimate representative government left in that body. The Christian-

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progressive minority had moved into control of the Council, and its behavior had been scandalous to the traditionals and to the overwhelming majority who saw the Council as a rubber stamp for the BIA. Otto Lomavitu, one of the leading progressives of Kyakatsmovi (New Oraibi)--one of the progressives about whom Oliver LaFarge had made special note--had become chairman of the Council. A seminary-educated Christian, he was jailed for statutory rape in 1938 and left the Hopi scene. \*

In March 1942, Byron Adams, the Christian missionary (and most notorious "Smartie" named by Oliver LaFarge), was chairman of the Council. A resolution made when Adams was chairman in March 1942, by the Council, protested the District 6 developments, but it indicated that only seven Council members were present to sign it, less than a legal quorum. The next month, Commissioner Collier ordered that new District 6 boundaries be studied and proposed. Willard R. Centerwall, associate regional forester from Phoenix, carried out this study and made a report in July 1942 which recommended that approximately 100,000 acres be added to the 500,000 acres of the original District 6. This report carried the approval of the BIA superintendent of the Hopi Agency and, most importantly, the signature of approval of Byron P. Adams, Chairman of the Hopi Tribal Council.

Since there was no lawful authority for Byron Adams to give authorization on behalf of the Hopi government, it appears almost certain that the BIA used him, his signature, and his title to place a veneer

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\*For an account of this incident see The Hopi Indians of Old Oraibi by Mischa Titiev (University of Michigan Press, 1972).

of legitimacy on the government's otherwise lawless program.

When the new boundaries were approved by Washington in April 1943, District 6 had become an exclusive Hopi Reservation. The Hopis had been officially confined by the BIA--with the seeming approval of the Hopi Tribal Council--to this small corner of their historic landholdings. Once again, the Hopis had been lied to and manipulated by the federal government, resulting in further loss of Hopi lands.

In 1970, the Indian Claims Commission would review these events and rule that the creation of District 6 as an exclusive Hopi Reservation was an act by the United States which "extinguished" Hopi aboriginal rights to the remainder of the 1882 Hopi Reservation, some 1,900,000 acres of land. The so-called extinguishment of these Hopi land rights within the 1882 Hopi Reservation and the 1882 extinguishment of 2,191,304 acres of Hopi land outside the 1882 Hopi Reservation were to later constitute the basis of the \$5 million settlement proposed for Docket 196.

Having been complicit in the establishment of the exclusive Hopi Reservation of District 6, the Hopi Tribal Council lost the last remnant of support which it had claimed among the Hopi people. One historian sums up the decline of the Hopi Tribal Council in these words:

Uneducated because of years of neglect, totally unfamiliar with white procedures, and often greedy for whatever small recompense they could manage, the members were generally regarded as rubber-stamp stooges blindly obeying the dictates of the government's local Indian agent and the tribal lawyer appointed to handle their affairs.\*

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\*Waters, Book of the Hopi, p. 387.

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The resistance which the traditional Hopis had mounted during the election and the following years now bore fruit as the Hopi people's near-unanimous boycott of Hopi Tribal Council matters brought to an end that illegally imposed governmental structure. Having made this puppet Council dance to its tune until the Council had lost all semblance of legitimacy, the United States government also withdrew its recognition of the Hopi Tribal Council at this time. Commissioner John Collier visited Hopi country in 1944 in hopes of reviving the Council but his efforts were unsuccessful. From 1943 to 1955, the only Hopi government which existed in Hopi country was the traditional village government.

Oliver LaFarge, the founding father of the Hopi Tribal Council, reflected on these developments in a 1950 postscript to his diary:

For all my doubts and what should have been adequate perceptions, I failed entirely to foresee what actually happened, and which when it happened, seemed obvious and to be expected.

The pattern of tribal council, decisive action, minority self-subordination, etc., simply did not suit them. Dan Kotchongva was brilliant in using the Council as a sounding board, and in making the maximum of irritation through it. Otto Lomavitu and his ilk talked too much. The Council stopped meeting, no new representatives were chosen, the Constitution went into abeyance.

Above all, no village, I think, was prepared to surrender any part of its sovereignty, or to lay aside any of its quarrels with other villages.\*

John Collier, in his memoirs, also looked back at the failure and death of the Hopi Tribal Council:

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\*LaFarge, Running Narrative, postscript.

The work by LaFarge had and retains a particular interest. It took into account all of the institutional structures of the eleven Hopi villages or city-states. The Hopis adopted this constitution and it has never worked. The constitution conformed to the institutional structures of the Hopis, but it assumed (an unavoidable assumption, as of the date it was drawn up) that the Hopis would utilize the constitution with what may be termed an Occidental rationality. The constitution did not take into account, and even with the deeper knowledge of later time, could not take into account, and provided [sic] channels of expression for, the conscious and unconscious motivations and accompanying resistances of the several diverse Hopi societies.\*

Collier thus claimed ignorance as the excuse for imposing the constitution and Hopi Tribal Council on the Hopi people, but he faced up to the fact that the Council had "never worked" because it was, in essence, a non-Hopi scheme of government.\*\*

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\*John Collier, From Every Zenith, Denver: 1963.

\*\*Collier became Professor of Sociology in New York City after he left his job as Commissioner of Indian Affairs in 1945. His professional admiration for Hopi society is contrasted with his inability or unwillingness to face the fact that his administration of the BIA had inflicted great damage on that society. Comments he made in the forward to his wife's book about the Hopis show how Collier removed himself from the "events" which were then threatening traditional Hopi society:

But here, right within the United States whose "sense of society" is so underdeveloped, are these societies complete, very complex, highly integrated, and thoroughly conscious concerning themselves, which are the pueblo city-states. When deeply examined, they enrich enormously the "sense of society." Toward them, our cosmopolitan mind can gaze without fear and without scorn; for they are small, are devoid of aggression toward us, and are inhabited by a human beauty both strange and sweet. And they stand knowingly at the brink of a precipice, across which events are pushing them toward death [Laura Thompson, Culture in Crisis, New York: 1950, p. xii].

Collier, LaFarge and the others who participated in the modern-day, "enlightened" era of BIA management of the Hopis steadfastly refused to acknowledge publicly what they knew privately, the active role they played in generating a crisis which threatened to destroy traditional Hopi society.

One of Collier's chief assistants during the crucial early years of his IRA program was an anthropologist named Scudder Mekeel. From 1935 through 1937, Mekeel directed the Applied Anthropology unit of the BIA, served as Collier's personal representative, and supervised IRA campaigners such as Oliver LaFarge.

In a 1944 article entitled "An Appraisal of the Indian Reorganization Act,"\* Mekeel looked back on the first ten years of Collier's administration. In that article Mekeel makes some surprising admissions about the colonialist nature of the IRA program, even comparing that program to the "indirect rule" which the British were then utilizing to control and maintain their far-flung colonial empire:

The Indian Reorganization Act . . . closely resembles the British policy of "indirect rule" in that the native political and social organization is strengthened by utilizing it for administrative purposes.

After acknowledging the close structural similarity between the United States' IRA program and British colonial domination of subject peoples in Africa and Asia, Mekeel immediately argues that the policy behind the IRA was completely different from British colonial policy because the IRA had "humane" objectives, whereas the British sought to exploit their colonies.\*\* As will be demonstrated below, that supposed differ-

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\*American Anthropologist 46(2, Pt. 1):209, 1944.

\*\*It should be recalled that the IRA policy was formulated before colonialism became anathema under international law, before the creation of the United Nations, before the liberation of most Third World colonies, and before the civil rights movement in the United States. It was widely assumed in the 1930s and 1940s that white governments were legally entitled to interfere with and dominate the affairs of non-white peoples.

ence between United States domination and European colonialism fades into obscurity as United States interest in Hopi mineral resources grows in the following decades.

After candidly conceding that the IRA governments were established to serve as administrative conduits for United States policy, Mekeel discusses the disruption caused by the IRA in many communities. He especially singles out the dangers posed by the IRA to strong traditional Indian communities such as the Pueblos who, he noted, "without the Indian Reorganization Act, have real self-government."

Those tribes who can profit most by the Indian Reorganization Act and grasp its benefits are those most nearly assimilated. The same is true for individuals within a tribe. Those individuals who are well along toward assimilation (therefore, many mixed-bloods) are the ones best able to understand the Act and its provisions as well as to carry on under a constitution or to make use of its loan provisions.

.....  
Those groups of Indians who are still little affected by white culture, particularly non-English speaking full-bloods, have been mainly at a loss to understand the Indian Reorganization Act and the intentions behind it. . . . Mixed-blooded, and other better assimilated, tribesmen are better fitted to manipulate the political patterns involved in organization and to profit economically as well.

.....  
There are several dangers in writing up [IRA] constitutions for groups that are still predominantly full-blood and that maintain their culture largely on traditional patterns. This is particularly true of the "functional" Pueblos. Such constitutions may hasten the breakdown of the political structure or may give the existing structure so much rigidity that it might survive to the disadvantage of the people it is supposed to serve.

It seems that Mekeel had the Hopis on his mind when he wrote these warnings. However, the knowledge that imposition of IRA consti-

tutions on Indian peoples such as the Hopis might foster the "break-down" of traditional self-government did not dissuade the United States from trying to re-impose the IRA on the Hopis in the years to come.

## 6. 1943-1950: FENCING IN THE HOPIS

The U.S. government's decision to segregate Hopis from Navajos was soon implemented. The existence or nonexistence of the Hopi Tribal Council was of little significance since the BIA's program had never been dependent on the cooperation or consent of the Hopi people or their government.

Near the end of his tenure as Commissioner of Indian Affairs, John Collier made his last official visit to Hopi country on September 12, 1944. He stated at a public meeting his conclusion that the only just solution for Hopi-Navajo land problems was to find additional lands--non-Indian lands--for the Navajos. But he noted that "white cattlemen and politicians will fight against it." He acknowledged that these whites (who were residing on aboriginal Indian lands) were resolved to keep the lands they occupied and even eager to take away Indian reservation lands. He urged the Hopis to keep fighting for their rights:

The way the Government can work in the future in pushing the Navahos back and pushing out your boundaries, is to get more land for the Navahos somewhere else, and make it so appealing to them that they will be willing to give up their rights on the Executive order for that land. Now, to ask the Government to do this is not an easy thing to bring about, especially in this part. Extension is hard to make because the white cattlemen and politicians will fight against it. On the contrary, they want to take it away. Now I say, I understand your bitterness and anger. Keep it up! But add a determination to find a way out. This whole case has to rest upon the honor and decency of Congress. If the thing I'm suggesting could be brought about, and land could be bought for the Navahos, the Government would compensate them on the improvements they made. We cannot move the Navaho

until we find more land for them some where else. It may be that you people do not want to go any farther than to protest and say that you are being suffocated. Keep it up! Let your friends do the talking. Work on public opinion; tell the public, and work with them. The Hopi is being wronged. He is worth something, and if we will all work together, something might be accomplished. I'm telling you how to do things and get them done. You have a moral inheritance. [Exhibit 26.]

As complaints about the District 6 boundaries kept coming to his attention, Commissioner Collier responded by admitting a sordid history of U.S. domination of the Hopis, but refusing to accept responsibility for their plight in 1944:

The policies and practices of the Government in the early years of this century and before did have the effect of dividing the Hopi Indians. At Oraibi emotions ran so high that if any other people in the world had been involved bloodshed would have resulted. Because the Hopis believe implicitly and profoundly in living in peace, they were able to avoid armed conflict but at a terrible cost to their institutions. As a matter of fact, they have not yet recovered from the moral shock which occurred at the time. You probably know the story of how contending factions lined up in the middle of the plaza and pushed against each other until one side was literally pushed out of the plaza.

It is true also that the Government compelled children to leave home, and kept them in boarding schools for years on end. This is a further effort to break down the culture and the resistance of the people.

In all of the above part played by the Government does not make a pleasant record. In later years it has been necessary to act firmly when we knew that the life of the tribe was at stake. If in an earlier day our policies had been tinctured with greater humanity, our relations now might be more friendly.[Exhibit 27.]

Collier took solace in the notion that although he concededly had meddled in Hopi affairs, he had only "acted firmly" while all who preceded him had been guilty of outrageous, authoritarian suppression of the Hopi way.

In February 1945, fences were completed by the BIA along the revised boundary lines of District 6. The newly appointed Commissioner of Indian Affairs, William A. Brophy, continued to answer angry Hopi petitions against the fencing with assurances that Hopi land rights would not be affected. (Exhibit 28.) As the Hopi and Navajo BIA Agencies began to work closer together to implement the government's soil and water conservation program, stock reduction programs were begun in earnest and many Hopi and Navajo herdsmen suffered as their source of livelihood was suddenly taken from them. The BIA insisted on a 40% reduction of livestock, a drastic action which meant severe hardship to many, especially the Hopis of Third Mesa. A protest letter sent from First Mesa leaders shows that there was a broad consensus of opposition to the BIA's program. (Exhibit 29.)

In March 1948, another BIA plan to resettle Hopis was prepared, and in 1949 a handful of Hopis were convinced to remove themselves from their ancient mesa villages to an Indian reservation along the Colorado River which had served as an internment camp for Japanese-Americans during World War II.\* The BIA offered each Hopi family 40 acres of irrigated land if settlement were agreed upon and all rights as Hopis were given up. This resettlement program was as ill conceived as those which the BIA had considered in the past. It was doomed to failure because Hopis were not about to leave their homeland in any

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\*The internment camp had been known as the Poston Relocation Center. It was primarily under the administration of John Collier and the Indian Service. Collier had sought to make it a model center in the training for management of subservient peoples.

significant numbers. The program had been presented as a glowing solution to many Hopi problems in Washington in 1945, when Byron Adams, who said he was "speaking for the tribe," made an appearance before the House of Representatives Committee on Indian Affairs. A number of Congressmen saw this as a step in the direction of allotment, assimilation, and termination, the direction they favored for Indian policy, and a direction in which official Indian policy would again turn in the 1950s.

During these developments, the number of Navajos living inside the 1882 Hopi Reservation continued to increase. By 1950, there were about 6,000 Navajos within the area, twice the Hopi population which was by then effectively confined to District 6. The Hopis were left with only 600,000 acres of land, having lost control of a total of at least 4,000,000 acres of land since the Treaty of Guadalupe Hidalgo in 1848. After a century of United States domination, the Hopis held on to only 15 percent of the aboriginal land which the United States would later concede had been theirs in 1848, and to less than 10 percent of the land which the Hopis claimed as their rightful heritage.

#### 7. THE DISCOVERY OF HOPI MINERAL WEALTH

Despite all of the reversals and hardships they had suffered, traditional Hopis could take comfort in the mid-1940s that they had managed, through tenacious and passive resistance, to maintain control over the core of Hopi life and culture. The IRA, Hopi Constitu-

tion, and the Hopi Tribal Council had died. The authority of the traditional village governments under the leadership of the Kikmongwis had been restored. None of their historic, sovereign rights had been surrendered or abandoned.

But even this qualified victory was immediately threatened by new developments. For at the very moment that the Council went into abeyance and the BIA stock reduction program continued in force, Standard Oil Company and other giant oil companies were beginning to pressure the BIA for permission to exploit mineral resources on Hopi land. Mineral exploration had already begun, and preliminary reports concluded that the Hopis were sitting on vast mineral wealth.

As early as February 1944, the Hopi BIA Agency Superintendent wrote the Commissioner of Indian Affairs about the need to work out leasing procedures with these companies. (Exhibit 30.) What, he asked, would be the leasing procedure in the absence of a Council? Who had authority to lease the land which was found inside the 1882 Hopi Reservation but outside the exclusive Hopi reservation of District 6? These questions had to be answered before leasing could take place because the federal law in effect at that time provided that these Indian lands could only be leased for mining purposes "by authority of the tribal council or other authorized spokesmen for such Indians."<sup>\*</sup>

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<sup>\*</sup>25 U.S.C. 296. The approval of the Secretary of the Interior was also required under this law. The traditional "authorized spokesmen" for the Hopis were not helpful to the BIA for they vehemently opposed the BIA's plans for mineral exploitation.

On June 11, 1946, a formal opinion entitled Ownership of Mineral Estate in Area of the Executive Order of December 16, 1882, was rendered by Felix S. Cohen, Acting Solicitor of the Department of the Interior. This opinion held that Hopis and Navajos owned the mineral estate to the 1882 Hopi Reservation, that the Navajos had acquired mineral rights because they had been settled in that area with the approval of the Secretary of the Interior. Before leasing could occur, approval would have to be obtained from the tribal councils or authorized spokesmen for both the Hopis and the Navajos.

Needless to say, this opinion complicated matters for the BIA officials who were interested in having mineral leases signed quickly. In July 1947, the BIA Hopi Agency Superintendent wrote the Commissioner a letter explaining that opposition to restoration of a Hopi Tribal Council remained very strong among the Hopi people. (Exhibit 31.) He recommended that the Commissioner draft federal legislation which would allow the Secretary of the Interior to sell Hopi mineral rights without any formal consent of the Hopis. In the alternative, he recommended that the Hopis be reorganized into three separate communities, one for each of the three mesas on which most of their villages were located.

In November 1947, Assistant Commissioner D'Arcy McNickle recommended to the Hopi Agency Superintendent that he consider reorganizing the Hopis "on a strictly political and secular pattern leaving the Kikmongwi out of it entirely." (Exhibit 32.) This, he thought,

would facilitate leasing. He suggested that the BIA Superintendent could undercut the Hopi Constitution and, on his own initiative, call for a constitutional amendment which would, hopefully, result in the complete secularization of Hopi government.

A few months later Assistant Commissioner McNickle received a memorandum from the Chief of the Minerals Section of the Land Office of the Department of the Interior advising that "it does not appear that leases acceptable to oil companies may be made under existing law unless the Hopi Indians will organize a tribal council as provided in the Hopi constitution." (Exhibit 33.) It appears that the oil companies were insisting on the legal security which the Hopi Tribal Council's signature would give them under United States law. The same memorandum suggested consideration of a proposed bill whereby Congress would authorize the Secretary of the Interior to make leases of any Hopi lands as long as a simple majority of Hopi villages consented.

The oil companies kept "demanding quicker action" from the BIA, and plans to satisfy their demands were considered throughout 1948. (Exhibit 34.) In May of that year, Assistant Commissioner McNickle suggested that since it would be "difficult to operate" under any plan requiring Hopi or Navajo consent to mineral leasing, he would favor legislation authorizing leasing without any consent of the Indians. (Exhibit 35.) In June 1948, Acting Commissioner William Zimmerman, Jr., wrote the BIA Hopi Superintendent a letter in which he strongly recommended

that efforts be made to reconstitute the defunct Hopi Tribal Council, even if solely for the purpose of making mineral leases. The alternative, he wrote, was legislation authorizing the Secretary of the Interior to make these leases on his own authority. (Exhibit 36.) The oil companies were kept apprised of these developments and were urged to file their leasing applications with the BIA Hopi Agency (Exhibit 37.)

The ever mounting pressure from oil companies demanding mineral leases added a new dimension to the problems facing traditional Hopis. The BIA was clearly not willing to resume formal recognition of the traditional village governments under the Kikmongwis, even though these were the only functioning Hopi governments at the time. Instead, the BIA was beginning a new campaign to breathe life into the Hopi Tribal Council. The BIA had decided that it could carry out the BIA program of Hopi-Navajo segregation and stock reduction without going through the formality of obtaining the approval of the Hopi Tribal Council, yet that formality was being insisted upon by the oil companies who feared their leases would not hold up to court challenge unless they were executed by the official IRA constitutional government, the Hopi Tribal Council.

The BIA had determined to do whatever was necessary to make the leases acceptable to the oil companies. Clearly, the rationalization went, the leases were in the "national interest" (of the United States). There is almost no discussion in the BIA files about the possibility

that the Hopis might legitimately oppose mineral leasing of their land. One way or the other, the BIA would do what it and the mineral companies considered to be in the best interest of the Hopis (and the United States).

#### 8. TRADITIONAL HOPI LEADERS SEND A PETITION OF PROTEST TO PRESIDENT TRUMAN

In late 1948, all of these developments were discussed at a meeting called by the traditional religious leaders of the Hopi villages of Hotevilla, Shungopoviy and Mishongovi. At that meeting, a decision was made to take a public stand on all the issues. The prophecies and policies of traditional Hopi leaders would be expressed through appointed interpreters. Much information about traditional Hopi religion was made public for the first time.

From this meeting came the decision to send a petition of protest to United States President Harry S. Truman. A five-page letter to the President dated March 28, 1949, summarized traditional Hopi beliefs, traditional Hopi land rights, and the traditional Hopi position on a number of other issues. (Exhibit 38.) It is a remarkable document in American Indian history, a proud and reasoned affirmation of Indian sovereignty.

Included among the issues presented to President Truman is a statement of opposition to mineral leasing:

We are being told by the Superintendent at Keams Canyon Agency about leasing our land to some oil companies to drill for oil. We are told to make decision on whether to lease out our land

and control all that goes with it or we may refuse to do so. But, we were told, if we refused then these Oil Companies might send their smart lawyers to Washington, D.C. for the purpose of inducing some Senators and Congressmen to change certain laws that will take away our rights and authority to our land forever and placing that authority in another department where they will be leasing out our land at will. . . .

Neither will we lease any part of our land for oil development at this time. This land is not for leasing or for sale. This is our sacred soil. Our true brother have not yet arrived. Any prospecting, drilling and leasing on our land that is being done now is without our knowledge and consent. We will not be held responsible for it.

The line was being clearly drawn as the traditional Hopi leaders formally presented their challenge to the mineral leases which the United States and the oil companies were so eager to obtain. These traditional Hopi leaders had learned about the threat to give the Secretary of the Interior all leasing authority if the Hopis did not cooperate, and they were not going to submit to such a threat. They chose instead to continue their resistance and to rest their case on their sovereign rights:

We are still a sovereign nation. Our flag still flies throughout our land (the flag of our ancient ruins). We have never abandoned our sovereignty to any foreign power or nation. We've been self-governing people long before any white man came to our shores. What Great Spirit made and planned no power on earth can change it.

#### 9. EARLY TRADITIONAL HOPI PROTEST AGAINST THE INDIAN CLAIMS COMMISSION

Included in the 1949 protest letter to President Truman was a statement of opposition to the filing of any Hopi claim in the Indian Claims Commission. Thus, opposition to the Hopi claim which became

known as Docket 196 was registered even before the claim was filed in the Indian Claims Commission.

The Indian Claims Commission had been established by Act of Congress in 1946. The Act authorized Indians to file claims against the United States for past wrongs. All such claims had to be filed within five years of the passage of the Act.

Those Congressmen who supported the Indian Claims Commission Act did so for a variety of reasons. Some simply wanted to help redress past wrongs which the United States had done to the Indians. Others indicated a desire to reward returning Indian veterans who had served commendably in World War II. Some Congressmen saw the Indian Claims Commission Act as a further spur to assimilation of Indians into white American society and the United States economic system. And cutting across the spectrum of support for the Act was a desire to put an end to all Indian land claims, to remove the Indian clouds hanging over white land titles in many parts of the United States.

The importance of this latter factor is demonstrated in the language of the Act itself. One provision of the Act expressly forbids any future legal claim to be made for any of the matters touched upon by the Indian Claims Commission once that claim is paid:

The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.[25 U.S.C. §70u]

The BIA actively encouraged all Indians to file claims in the

Indian Claims Commission. For some Indians, especially those who were no longer physically or spiritually rooted to their historic lands, the compensation offered by the Commission was seen as a measure of redress for past wrongs to their people. Others, especially those Indians still living on Indian land and still holding fast to traditional Indian values, saw the Indian Claims Commission Act as merely another attempt of the United States government to make legal--in exchange for a few dollars--the theft of Indian lands which should rightfully be returned to the Indian peoples.

Traditional Hopi leaders were among the many Indians who were not willing to give up their historic land rights in exchange for money. Their petition to President Truman made known their opposition to the filing of any Hopi claim:

Today we are being asked to file our land claims in the Land Claims Commission in Washington, D.C. We, as hereditary Chiefs of the Hopi Tribe can not and will not file any claims according to the provisions set up by land Claims Commission because we have never been consulted in regards to setting up of these provisions. Besides we have already laid claim to this whole western hemisphere long before Columbus' great, great grandmother was born. We will not ask you, a white man, who came to us recently for a piece of land that is already ours. We think that white people should be thinking about asking for a permit to build their homes upon our land.

By letter dated May 16, 1949, the Commissioner of Indian Affairs answered the petition on behalf of President Truman. (Exhibit 39.) A most noteworthy part of the Commissioner's letter is his statement encouraging the Hopis to file a claim. The Commissioner irresponsibly stated in his letter that if the Hopis filed a claim they might thereby

obtain a court order restoring lands to them. This statement was made despite the fact that the United States government had already argued successfully that the Indian Claims Commission could award only money damages, that it could not lawfully order the return of Indian land. On December 30, 1948, almost five months before the Commissioner's letter, the Indian Claims Commission had ruled in the case of Osage Nation of Indians v. United States that it could grant only money damages:

The Indian Claims Commission Act does not specifically state the character of relief the Commission may grant, but this lack of specificity is not vital, for its provisions plainly limit the relief to that which is compensable in money. [I Ind. Cl. Comm 54, 65 (1948)]

In his attempt to win traditional Hopi support for the filing of a Hopi claim, the Commissioner of Indian Affairs had either spoken from complete legal ignorance or had brazenly lied to them about the legal significance of such a claim. The course of the BIA's conduct over the next 28 years would suggest that the Commissioner's letter was in fact a deliberate misstatement of the law, for the BIA would continue to mislead the Hopis on the legal effect of the claim.

Such deception was not easily accomplished, however, for the traditional leaders continued to protest in letters to Washington. One such protest letter of December 28, 1949, sums up their opposition in these words:

We will not sell our heritage, our homeland and our birthrights for a few pieces of silver. [Exhibit 40 ]

The traditional Hopi leaders were convinced that there was also deception in the proposed Hopi-Navajo Rehabilitation bill which was pending in Congress at that time. The government was offering 90 million dollars for Hopi and Navajo "rehabilitation" programs. The traditional Hopi leaders wanted nothing to do with this money. They saw that an ulterior motive was the granting of state jurisdiction over the Hopis and Navajos. Fortunately, President Truman vetoed the bill which contained a provision giving the States of Arizona, New Mexico, and Utah such jurisdiction over Indians within their borders.

United States aid programs such as this, which were under the exclusive control of the BIA, were seen by the traditional Hopi leaders as of no benefit to the Hopi people:

We have been told that there is \$90,000,000 being appropriated by the Indian Bureau for the Hopi and Navajo Indians. We have heard of other large appropriations before but where all that money goes we have never been able to find out. We are still poor, even poorer because of the reduction of our land, stock, farms, and it seems as though the Indian Bureau or whoever is planning new life for us now ready to reduce us the Hopi people under this new plan. Why we do not need all that money and we do not ask for it. We are self-supporting people. We are not starving. People starve only when they neglect their farms or when they become too lazy to work. Maybe the Indian Bureau is starving. Maybe a Navajo is starving. They are asking for it. Too, there are the aged, the blind and the crippled needed our help. So we will not accept any new theories that the Indian Bureau is planning for our lives under this new appropriation. Neither will we abandon our homes.

The official plans for the use of the rehabilitation monies also help clarify the interest the United States had in promoting the appropriation. Large sums were designated for the preparation of a groundwork for the development of Hopi mineral resources. A total of

\$500,000 was set aside for "surveys and studies of timber, coal, mineral, and other physical and human resources." Almost half of the total grant, \$40,000,000 was earmarked for the development of roads.

And \$9,250,000 was to be spent for the development of off-reservation employment and off-reservation resettlement, most of which was to be used for the relocation of Hopis to the Colorado Indian Reservation. Widespread Hopi opposition to this program had already long been noted. This clearly was not an Indian rehabilitation program designed by Indians.

10. PROTESTS TO CONGRESS  
AND THE COMMISSIONER OF INDIAN AFFAIRS

In the background to these developments, the pressure from oil companies grew even more intense. By 1950, the BIA Superintendent was sending written reports to at least twenty oil companies in which he outlined the progress he was making in his efforts to reorganize a Hopi Tribal Council to execute mineral leases. (Exhibit 40A.)

As the BIA stepped up its efforts to revitalize the Hopi Tribal Council, Dan Katchongva and other traditional Hopi leaders sent new letters of protest to the Congress and the Commissioner. (Exhibit 41.) These protests included these affirmations of the right of self-government:

We do not want to be rehabilitated by the Indian Bureau.  
.....

The Hopi Tribal Council is being reactivated today but to us religious leaders it is not legal; it does not have the sanction of the traditional head-men. And it is composed of mostly young and educated men who know little or nothing about the Hopi traditions. Most of the men supporting it are Indian Service employees, men who have abandoned the traditional path and are after only money, position and self-glory. They do not represent the Hopi people.  
.....

How would you like also to have someone make laws and plan your life for you from afar? Pass laws without your knowledge, consent and approval? . . . We are still a sovereign nation, independent, and possessed of all the powers of self-government of any sovereignty. King of Spain recognized this long ago. Government of Mexico respected it, and it is still recognized by the United States Supreme Court. Now why, in the face of all these facts, are we required today to file our land claims with the Land Claims Commission in Washington? Why are we required to ask a white man for a land that is already ours? This whole western hemisphere is the homeland of all the Indian people. In this fact all Indian people should know.

Now, by what authority does the government of the United States pass such laws without our knowledge, consent nor approval and try to force us to relinquish our ancient rights to our land? Is it only for money? We do not want money for our land.

In partial answer to Dan Katchongva's protests, the Acting Commissioner of Indian Affairs wrote a letter on April 21, 1950, which outlined the approach the BIA was planning to take with respect to the defunct Hopi Constitution and Hopi Tribal Council. (Exhibit 42.) The BIA planned to continue to recognize the Constitution and Council as the only legal Hopi government, despite the fact that the BIA was fully aware that the Council had long before collapsed due to a lack of any significant support among the Hopi people:

The Hopi Constitution did not go out of existence although the Tribal Council ceased to function after 1943. A constitution is created by the people. The people have the power to destroy it, not the Tribal Council. The people, if they desire to do so, may destroy the constitution by the same process they used to bring it into existence, namely, by voting to do away with it and adopting a new one. Since the Hopi people did not vote to terminate the existence of their Constitution it remains in force.

Since it was the oil companies and the BIA, and not "the people," who were clamoring for the restoration of a Hopi Tribal Council, and since

the Hopi people had clearly voted against the Council by refusing to send representatives or to give support to the Council over the prior seven years, the Acting Commissioner's pious reference to democratic processes is laughable. And since the IRA Hopi Constitution provided that it could be amended or abolished only if the Hopi Tribal Council called for such an election, the Hopi people--even if they had wanted to formally cast ballots on the issue--had no voting procedure available to them. All of which was further complicated by United States law which gave the Secretary of the Interior the authority to disapprove any change in IRA constitutions. (25 U.S.C. §476)

In a letter dated October 20, 1950, the Commissioner of Indian Affairs directed the BIA Hopi Agency Superintendent and BIA Area Director to give all the time they possibly could to the creation of an acceptable Hopi Tribal Council. (Exhibit 43.)

#### 11. A SECOND PETITION TO PRESIDENT TRUMAN

On October 8, 1950, a second petition of protest was sent by traditional Hopi leaders to President Truman. Dan Katchongva of Hotevilla and Andrew Hermequaftewa of Shungopovy signed the petition as advisors to other religious leaders. (Exhibit 44.) The return address is listed as Hopi Indian Sovereign Nation, Oraibi, Arizona. It begins with this angry statement:

Today, our ancient Hopi religion, culture and traditional way of life are seriously threatened by your Nation's war efforts, Navajo-

Hopi bill, Indian Land Claims Commission and by the Wheeler-Howard bill, the so-called Indian self-government bill. These death-dealing policies have been imposed upon us by trickery, fraud, coercion and bribery on the part of the Indian Bureau under the Government of the United States, and all these years the Hopi Sovereign Nation has never been consulted. Instead we have been subjected to countless number of humiliations and inhuman treatments by the Indian Bureau and the Government of the United States.

After specifying a number of complaints, the letter closes with a request for action and a threat to take Hopi complaints to the United Nations if necessary:

If the government of the United States does not now begin to correct many of these wrongs and injustices done to the Red Man, the Hopi Sovereign Nation shall be forced to go before the United Nations with these truths and facts.

At the same time, white observers of the Hopi scene were giving government officials their own criticisms of the sordid treatment which the Hopis were receiving from the BIA. (Exhibit 45.) Both Hopi and white protests fell on deaf ears.

#### 12. BIA PRESSURE TO FILE A HOPI CLAIM IN THE THE INDIAN CLAIMS COMMISSION

By late 1950 the BIA had managed to put together a new Hopi Tribal Council. However, the composition of this new Council was not sufficiently in keeping with the legal requirements of the IRA Hopi Constitution to give it the legitimacy which was required to obtain official United States recognition. Although the signing of mineral leases was still a pressing reason for re-creation of an official Coun-

cil, and although the five-year time period during which an official Council could file a claim before the Indian Claims Commission was running out, there was no such governing body to handle these two important items on the BIA's agenda.

As the deadline for filing of a claim approached, the BIA stepped up its campaign in the Hopi villages to obtain support for such a filing. This campaign continued the deception which had been begun by the Commissioner in his letter to Dan Katchongva of May 16, 1949. (See page 76-7.) U.S. government officials continued to mislead the Hopis about the possibility of obtaining the restoration of Hopi land through the Indian Claims Commission.

Oliver LaFarge was monitoring these developments and became concerned. He wrote a letter to the Superintendent of the BIA's Hopi Agency which was critical of the ongoing deception:

Now that I have had time to think over the various conversations I had during my brief stay among the Hopis, and to go over my notes, I find it clear that a great many Hopis are under the impression that the Indian Claims Commission might award them land. I find this also strongly implied in certain passages of the minutes of the Tribal Council, which I reread at leisure at Window Rock.

I notice that there is a great deal of reference to this Commission as the "Lands Claim Commission." The prevalence of the term is, of course, a deception in itself.

As you know, even if the Hopis had a valid claim, the Claims Commission can only award cash damages in compensation on the part of the United States Government. Acceptance of such an award by the Hopis would have something the effect of giving a quit-claim to present occupants of the land, which of course would be a violation of their tradition and might require them to abandon their ceremonies.

.....

I feel it is extremely dangerous to allow the idea of the "Land Claims Commission" to continue as a reason for maintaining the Tribal Council. In the end, this idea will result in a violent disillusionment which will completely discredit all those who have been active in reviving the Council, and may well make it impossible for an effective tribal council to be organized again for at least a generation.

I know that you have furnished the villages with copies of the act establishing the Claims Commission and other technical material on the subject. In most villages there is no one capable of fully understanding these documents. A much more forceful presentation of the true facts is needed. [Exhibit 46.]

This call for candor and honesty, among the most decent of LaFarge's Hopi-related writings, was not heeded.

15. JOHN S. BOYDEN CHOSEN AS OFFICIAL CLAIMS ATTORNEY  
AND DOCKET 196 FILED IN THE INDIAN CLAIMS COMMISSION

The Indian Claims Commission Act provides that attorneys will be paid up to ten percent of the final claim award. (About \$60,000,000 in attorneys fees have been generated by the Indian Claims Commission since the Act went into effect.) It goes without saying that these were viewed as potentially very lucrative cases by attorneys who had any interest in Indian law in 1950.

The Act also provides that attorneys may not handle these claims unless their contracts with the Indian claimants are formally approved by the Secretary of the Interior. This restriction on the right of Indian peoples to freely choose counsel of their choice is similar to the restriction requiring the Secretary to approve all general attorney contracts with Indian governments.\*

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\* See 25 U.S.C. §82 and the following sections.

The BIA approved John S. Boyden to represent the Hopis. Boyden had been a U.S. Attorney who represented the United States government in all Indian cases handled by the government office in Utah where he worked from 1933 to 1946. During those years he developed a close working relationship with reservation superintendents and other BIA personnel in the Southwest. In 1942 he had been temporarily assigned by the Commissioner of Indian Affairs to work with a special agent of the Federal Bureau of Investigation on the Navajo Reservation, helping draw up new law and order provisions. He had later been considered for a high legal position within the BIA, but had decided instead to work in private practice in Salt Lake City, Utah.

Boyden became Hopi claims attorney in 1951, as the five-year deadline for filing cases before the Indian Claims Commission drew near. Before speaking with the Hopi villages about making a contract, Boyden had discussed the matter with BIA personnel in the field. He also had taken two trips to the Washington BIA office, arranged a proposed contract with the Solicitor's Office of the Department of the Interior and with the Commissioner of Indian Affairs, and conducted preliminary research to see if there was a viable Hopi claim for wrongful taking of Hopi land by the United States.

Having completed these matters and having obtained the approval of the government, Boyden arranged with the Superintendent of the BIA's Hopi Agency to meet with the Hopis. Since there was no recognized Hopi Tribal Council, Boyden and the BIA decided that Hopi approval of a claims

attorney contract would be obtained in meetings held at each village. A transcript was made of some village meetings. These transcripts reveal that the Hopi people were once again being misled.

A transcript of the meeting which took place at Shipaulovi illustrates what took place. (Exhibit 47.) The meeting was scheduled by the BIA Superintendent for late in the morning on a Wednesday, May 9, 1951, at the day school. Only thirteen residents of Shipaulovi were present. Although those present were predominantly from the "progressive" camp, there were concerns expressed about preserving historic Hopi land rights and restoring land to Hopi control.

Attorney John Boyden responded to these concerns by suggesting that the Hopis might be able to recover some land by making the claim:

We can only sue the United States for what you owned in 1848 under the Treaty of Guadalupe-Hidalgo when this became a part of the United States, so I am trying to find out where you were at that time, what your boundaries were and the country you occupied exclusively. That is what we will claim for you. Then we must find out what has actually been taken legally from you. If there has been no taking perhaps we can get that portion of land back. [Exhibit 47g.]

.....  
I would recover my share of attorney's fees only when you get something that you do not have now. If I recover a big sum I would only take what they allowed me--not more than ten per cent --I do not get anything until I get something for you. If I get a lot of land they would determine my fee according to the work done and the value of the land. If you have additional land besides--there is a chance that you might be able to recover some--if that happened and I got additional land, and under it there was oil, you would have funds to do that. But the claims against the government are essentially for recovery of money for having taken something away from you. [Exhibit 47j.]

As discussed above (see page 77), the U.S. Court of Claims had already ruled, two and one-half years previously, that there could be no recovery of land by making a claim with the Indian Claims Commission. The BIA certainly knew of that ruling, Oliver LaFarge (who was not a lawyer) knew of that ruling, and John S. Boyden must have known of that ruling. Boyden was even associated at that very time with the same Washington, D.C. law firm which had handled the case in which the ruling had been made.

At the end of the Shipaulavi meeting, the BIA Superintendent called for a resolution in support of the attorney contract for Boyden and a resolution was made and voted on. By a total vote of 9 in favor and none opposed, the resolution was passed and the 116 residents of Shipaulavi (according to a BIA 1950 census) were deemed by the BIA to have agreed to the attorney contract and the filing of the claim which came to be known as Docket 196.

In similar fashion, the attorney claims contract was approved that same month by the consolidated village of First Mesa, by Kyakatsmovi (New Oraibi), and by Upper Moenkopi. The following month the Hopi Tribal Council, a still unrecognized, non-legal entity, passed a resolution in support of the same contract, and in July 1951, the village of Bakabi also approved it. All of the five villages were known as strongholds of the "progressives" since at least the early 1930s. The five more traditional villages of Hotevilla, Oraibi, Shungopavi, Mishongnovi and Lower Moenkopi would have nothing to do with any attorney claims contract.

Even if one conceded that these village meetings resulted in valid elections which were binding on the other village members, it would be difficult to jump from that absurd concession to a conclusion that Boyden had legitimately become claims attorney for all of the Hopi people. Yet that is precisely what the BIA did. In a letter dated July 16, 1951, the Superintendent of the BIA's Hopi Agency recommended approval of the contract since the total population of the five villages with approving resolutions was 1,615, while the total population of the non-approving villages was only 1,413.\*

(Exhibit 48.) From this data he made this facile conclusion:

Since the people from the villages who favor the resolution represent the majority of the Hopi people, I recommend that the contract as it is now drawn up and signed be approved by you and the Commissioner.

In this play on numbers, a few poorly attended village meetings were characterized as a full-scale referendum of resident Hopis. Despite the fact that this "election" had even less resemblance to democracy than the 1936 election run by Oliver LaFarge, despite the fact that traditional Hopi government was again ignored or avoided, and despite the fact that a false hope of possible return of land was being offered, Boyden's contract was approved in Washington on July 27, 1951.

Six days later, on August 3, 1951, Boyden filed a claims petition in the Indian Claims Commission which was entitled: The Hopi Tribe, an Indian Reorganization Act Corporation, Suing on Its Own Behalf and as a Representative of the Hopi Indians and the Villages of

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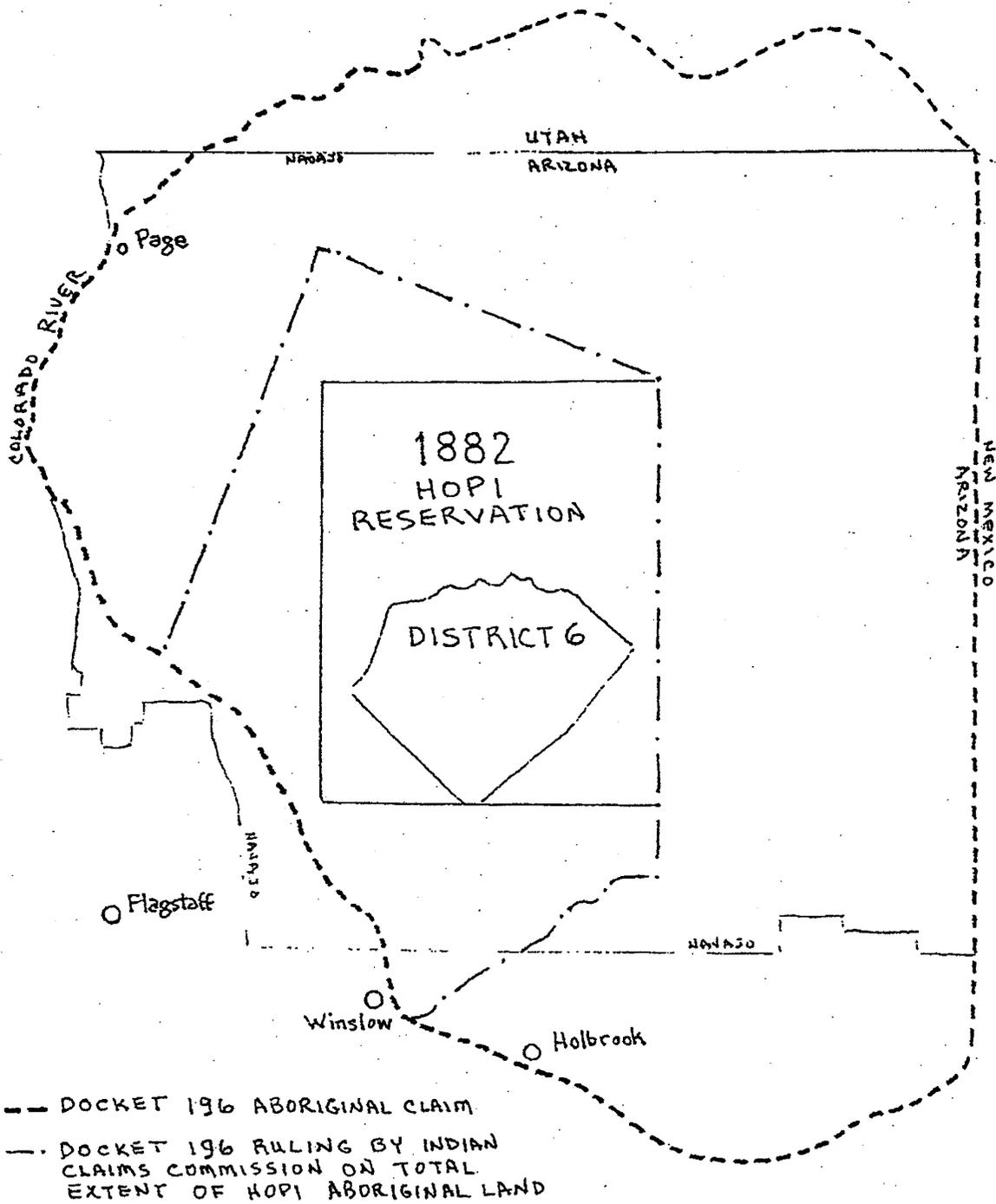
\*These census figures are highly suspect since they bear no relationship to other BIA census data. In fact, the BIA later claimed to have no official census data for 1951. (Exhibit 48A.)

First Mesa (Consolidated Villages of Walpi, Shitchumovi and Tewa),  
Mishongnovi, Sipaulavi, Shungopavi, Oraibi, Kyakotsmovi, Bakabi, Hote-  
villa and Moenkopi v. The United States of America. (Exhibit 49.) Upon filing, i  
was designated "Docket 196." Boyden had through this petition pro-  
claimed himself the claims attorney for all Hopis, including the five  
villages which would have nothing to do with approving his contract.  
He also was holding himself out as attorney for all of the Hopis who  
would have had nothing to do with the claim if the truth had been  
known about the fact that only money damages and the loss of historic  
land claims would result.

In the petition Boyden argued that the United States had obtained  
sovereignty over all Hopi land, that the United States was "guardian  
and trustee of the properties and affairs" of all Hopi people. These  
arguments are absolutely contrary to the legal positions expressly  
taken by the legitimate traditional leaders of the Hopis. He described  
an aboriginal Hopi land claim which roughly included the area shown in  
the map on page 90.

The petition then alleged that most of Hopi land had been taken  
and used by the United States without just compensation to the Hopi  
people, and that the United States had in other ways been guilty of  
unfair and dishonorable dealings with the Hopis.

For all of this wrong which had been suffered by the Hopis at  
the hands of the United States, Boyden's petition asked for only one  
specific form of relief: money damages. Nowhere in the Docket 196  
petition is there even a request for the return of land.



Less than a week after the Docket 196 petition was filed, Dan Katchongva, traditional leader from Hotevilla, sent a letter to the Indian Claims Commission in which he set forth the opposition of tra-

ditional Hopis to that claim. Katchongva asked that no action be taken on the claims petition. His six-page letter included these remarks:

Again without our knowledge, consent nor approval you have passed this Claims Act.

.....  
By this act the Government of the United States has admitted legally that it did robbed, stole, taken away and took possession illegally the land that rightfully belongs to the Indian. It simply means that the culprit has been caught and after admitting the wrongs decided to settle the matter in his own way, according to his own rules and at his own court. It means he is willing to compensate with the stolen goods. Without our consent you brought upon us while we are at peace with all people, forced education, Navajo-Hopi bill, Highways thru our land, stock-reduction, Tribal Council or Self-government, drafting of our youths into your armed forces and now the Claims Act. Many of our people suffered untold sufferings, injustices, prisons, hunger and miserable deaths. Who has done these to us? It is not Germany, not Japan, not China, no not even Communist Russia but the Government of the United States in our own home, in a "free" country.

.....  
Other Indian tribes or other Hopi villages may file in a claim but we who know these truths will not sell our homes, our land, our religion and our way of life for money.

.....  
Recently the so-called Hopi Tribal Council, a government-sponsored organization, hired a lawyer from Salt Lake City, Utah by signing a Contract. This was done without the consent, knowledge of the traditional headman. Majority of the people did not know anything about this. [Exhibit 49A.]

The Indian Claims Commission virtually ignored this protest, despite the fact that Katchongva's letter seriously challenged the legality of the petition and attorney contract in Docket 196.

14. THE SHUNGOPOVI CLAIM FOR RETURN  
OF LAND--DOCKET 210

At the last minute before the filing deadline, the village of Shungopovi filed a petition in the Indian Claims Commission. This petition was designated "Docket 210." On August 6, 1951, the petition was received and filed in Washington.

Shungopovi was one of the Hopi villages which had maintained strong traditional values and leadership. Its leaders had joined in the meetings of 1948 and the petitions to President Truman. It had refused to approve the attorneys contract and filing of a claim by John S. Boyden.

The Docket 210 petition sets forth traditional beliefs and outlines Shungopovi's traditional land claim. It concludes with the signatures of nine traditional Shungopovi leaders.\* Although some traditional Hopi leaders from other villages did not support the filing of the Docket 210 petition, all traditional Hopi leaders were in agreement with the core of this Shungopovi claim:

Our petition to you is for full restoration of the land to us and the freedom to govern its use. We cannot, by our tradition, accept coins or money for this land, but must persist in our prayers and words for repossession of the land itself, to preserve the Hopi life. [Exhibit 50.]

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\*It appears from correspondence in BIA files that John Connelly, a teacher at the Shungopovi Day School, assisted in the preparation and filing of the Docket 210 petition.

The Docket 210 petition presented a direct challenge to the Commissioner of Indian Affairs, the attorney John Boyden, and all others who had assured the Hopis that they might obtain the return of land by making a claim in the Indian Claims Commission. For the Shungopovi leaders wanted no money damages, only the return of land.

Without legal counsel to assist them, the Shungopovi leaders would press their claim on their own for the next six years until, finally, the United States government would admit that the Indian Claims Commission had no legal authority to restore Indian lands. The credibility of the United States government would be tested by Shungopovi through its claims petition, and once again that credibility would be found wanting. The final dismissal of the Docket 210 petition is discussed in Part 18, page 114.

#### 15. 1950-1953: LIMITED RECOGNITION OF A PARTLY RECONSTITUTED HOPI TRIBAL COUNCIL

In Washington the BIA decided to push ahead with its plans to revitalize the Hopi Tribal Council. (They had shelved the plan to pursue special legislation which would authorize the Secretary of the Interior to lease Hopi mineral resources without Hopi consent.) But the rump Council put together by BIA Superintendent Crawford in 1950 ran into stiff opposition from traditional Hopis and from friends of the traditional Hopis. In a 1952 internal memorandum, Assistant Commissioner D'Arcy McNickle explained how the BIA intended to overcome this

resistance and "accomplish our objective of eventual acceptance of the Hopi Tribal Council":

When at a general meeting of members of the Hopi Tribe in February 1950 a decision was made to reconstitute the Hopi Tribal Council, we in this office felt that the question of recognizing the reconstituted Council should be held in abeyance until we had all the facts. I visited the Hopi Reservation at that time and met with the Council and with the traditional leaders at Shungopavi. I also reviewed with the Superintendent the procedural actions that had been taken by him and by the tribal members to reestablish the Council. I was convinced at the time, and still am, that the tribe had acted properly to meet all technical requirements for reestablishing the Council. In spite of this, I still recommended against formal action and urged the Superintendent and the Area Director to continue a campaign of building up confidence in the Tribal Council and, if at all possible, winning the support of the traditional leaders at Shungopavi, Hotevilla, and Lower Moenkopi. It may be that we can never expect to win the active support of these leaders, but I think it is possible to achieve a situation of passive acceptance. We have proceeded on that basis since.

Opposition to the Council soon spread beyond the Hopi Reservation, and we began to receive protests from Dr. Byron Cummings, a long-standing friend of the Hopis, from the New Mexico Association on Indian Affairs, the Verde Valley School, and others of like standing in the Southwest. Recognition of the Council, if it had taken place, would have spread criticism and possibly have done real damage to our relations with the tribe and with the public generally. The removal of Superintendent Crawford helped to relieve the pressure and reassure the Hopi Tribe that we were proceeding with their interests in mind.

I am still convinced that it is possible to accomplish our objective of eventual acceptance of the Hopi Tribal Council. To bring this about, however, we must continue to work concertedly, with each step planned beforehand. The Superintendent, Dow Carnal, must make use of every opportunity in village meetings and in conferences with individual leaders to point to the advantages of tribal organization. At all costs, he ought to avoid urging the step as a convenience to the Government or to the oil companies which would like to lease Hopi land. These considerations will not persuade the Hopi Indians. (Emphasis added.)

.....  
Wherever possible, I would act in the name of the Hopi Tribal Council or in full cooperation with the Council in order that the

Hopis may come to feel confidence in the strength and good purposes of the Council. [Exhibit 51.]

Although the BIA wanted to downplay the significance of the Council as a convenience to the government or to the oil companies, the traditional Hopi opposition was not easily fooled. The strength of that opposition was great, and the internal BIA memoranda discussing the strength of the traditionals were more candid than the many official BIA pronouncements about the progressives being a clear majority. One such internal memorandum discussed the schism between progressives and traditionals in the Hopi community and estimated that in early 1952 these factions were nearly even in strength:

The schism in the matter of authoritative representation for the Hopi Tribe is very definite, apparently, and the factions so nearly even in strength that any immediate resolution is obviated and the Department has deemed it politic to withhold official recognition of the reconstituted Tribal Council. [Exhibit 52.]

Another BIA official, Robert L. Bennett, concluded that the traditionals were at that time strong enough to create a complete impasse:

It is apparent that an impasse has been reached in the affairs of the Hopi Tribe as to dealings between the various villages, between the Hopis and other tribes, between the Hopis and the Government, and to a large extent between the Hopis and their Claims attorney. [Exhibit 53.]

Bennett recommended that the stalemate be broken by informing the Hopis of the provisions of the Indian Reorganization Act by which they could conduct a referendum to revoke the Hopi Constitution. He felt that even if the IRA Constitution were revoked, it would be possible to work toward Hopi acceptance of a new IRA constitution which might be

more acceptable to the traditionals. In the campaign for such a new IRA government, Bennett wrote, "The progressive element . . . could conduct a campaign of infiltration calculated to overcome resistance among some of the conservative elements to organization under the Indian Reorganization Act." Through these comments it becomes evident that even those within the BIA who acknowledged the great strength of the traditional Hopis were committed to a long campaign to subject them to the will of the "progressives," the U.S. government, and the oil companies. Covert manipulation would be used if necessary.

In September 1951, claims attorney John S. Boyden began to work for an early restoration of an officially recognized Hopi Tribal Council. The unofficial (and unconstitutional) Hopi Tribal Council which the Agency BIA Superintendent had put together the year before, and which had supported Boyden for claims attorney, agreed that Boyden should become their general counsel. During the nine months before his contract as general counsel would be approved by the Secretary of the Interior, Boyden had spent hundreds of hours engineering the reconstitution of the Council and the rise to power of his supporters, those "progressive" Hopis who backed the Council. The steps he took were remarkably similar to the steps he had taken to prepare the way for his claims attorney contract. Boyden met with the Secretary of the Interior, the Commissioner of Indian Affairs, the Assistant Commissioner, Solicitors Office attorneys, and all regional and local BIA supervisory personnel responsible for Hopi affairs.. Some of these meetings took

place in Washington. In conjunction with these meetings, Boyden began a steady stream of correspondence with all of these officials on behalf of Hopi Tribal Council recognition. All of these activities are documented in reports of Boyden's activities which he submitted to the BIA at the time. (Exhibit 54.)

Mr. Boyden's reports also disclose that he was actively involved in "Oil and Mineral Matters," including a study of Hopi mineral rights, conferences and communications with BIA officials, and communications with the U.S. Geological Survey.

Boyden coordinated his efforts with the "progressive" Hopis who were interested in re-creating a Hopi Tribal Council. In late 1951, a lengthy petition was sent to the Secretary of the Interior from the leaders of First Mesa, the Hopi area nearest the BIA and the stronghold of "progressives" for decades. (Exhibit 55.) This petition catalogued Hopi problems and suggested that a new Hopi Tribal Council was the solution.

Simultaneously, Boyden worked behind the scenes. The nature of his efforts and his motivations are most clearly revealed in his "confidential remarks" which were incorporated into an internal BIA memorandum of a meeting which Boyden had with BIA officials in March 1952. The memorandum begins by noting that the Hopis had no money to pay Boyden for his services, but that Boyden had his eye to the future:

[Boyden] pointed out that remuneration for his services will depend largely on working out solutions to many of the Hopi problems to such a point that oil leases will provide funds. (Exhibit 56.)

According to this document, Boyden thereby acknowledged, already in 1952, that he had a direct and personal financial interest in the leasing of Hopi mineral wealth. The need to reconstitute a Hopi Tribal Council to facilitate such leasing is then discussed in the same memorandum:

Mr. Boyden has approached Secretary Chapman on this question of the Hopi mineral rights on the 1882 Executive Order Reservation. The Secretary agreed to review the 1946 solicitor's opinion which gave the Navajos, residing in the area, a right to share in the mineral rights. The problem is aggravated because the Hopis apparently will refuse to accept any mineral rights jointly with the Navajos on the 1882 Reservation. Thus, no drilling contracts can now be signed. Since there is no recognized tribal governing body, all negotiations are further complicated in that approval must be obtained by contacting groups individually. Further than this problem, but one not considered impossible of solution is the Hopi's traditional reluctance to disturb the land. However, it is believed that they will probably accept drilling when it is realized that nearby drilling operations may drain away their own oil.

Boyden described himself as one who had the "ability to hold the group together," the group which was backing the Hopi Tribal Council. He said his ability to do this work was being threatened by the fact that his general attorney contract had not yet been approved and had hurt his "personal standing" among the Hopis.

But, Boyden warned in his confidential remarks, the timing was not yet right to make the move of formally recognizing the Hopi Tribal Council. Rather, he told the BIA, his attorney contract should be quickly approved so that he could "develop a representative tribal council with whom the BIA and outside interest may deal":

When [Boyden] has obtained the trust of a solid majority, he believes that he can then develop a representative tribal council

with whom BIA and outside interests may deal. For this reason he believes that any move on the part of the BIA toward recognizing the present Tribal Council might only result in delaying the time when this Council may be strong enough to be safely recognized.

This memorandum of a confidential meeting with BIA officials confirms that John S. Boyden was, in effect, acting as an agent and representative of the BIA and of only one faction of the Hopis, the progressive faction who shared his interest in mineral leasing. The traditionals were never viewed as his clients. In fact, a spokesman for the traditionals, Thomas Banyacya (then also known as Tom Jenkins) was labeled "a trouble maker and anti-government man of the new Oraibi group" in the same confidential memorandum. This demonstrates again that Boyden never had an attorney-client relationship with the traditional Hopis. They were the opposition whose power and authority Boyden worked to subvert. The traditional Hopis would never authorize or approve the legal work which Boyden said he was doing on behalf of the "Hopi Tribe."

Boyden's general attorney contract was approved in Washington on May 29, 1952, two months after this confidential meeting. This approval authorized him to act as general counsel for all of the Hopis even though the only Hopi approval of this contract had come from the unofficial, unrecognized and undemocratic Hopi Tribal Council.

The reports which Boyden submitted to the BIA over the next year document the efforts he made to prepare the way for official recognition of the Hopi Tribal Council. (Exhibit 54 c-k.) Throughout 1952 he continued to meet and correspond with BIA officials about this issue. He also spent a good deal of time responding to every challenge which

was made to the Hopi Tribal Council. Traditional Hopi leaders continued to make protests on their own, and a growing interest in their case was expressed by many in the non-Indian community who came to understand the power play which the BIA and Boyden were making in Hopi country. An example of one such outside challenge to the proposed recognition of the Hopi Tribal Council is correspondence of Platt Cline, the editor of a Flagstaff, Arizona, newspaper. Cline's correspondence with the Commissioner of Indian Affairs challenged the Hopi Tribal Council and John S. Boyden as unrepresentative of the Hopi people. (Exhibit 57.) One particular allegation which Cline made focused on the illegitimacy of the village meetings at which the attorney claims contract was approved, and on the general lack of Hopi support for the attorney contract:

The "majorities" present at these meetings, held to approve the contracts, constituted only a minority of the people in each village. So if only a majority of those who attended the meetings signed, and this "majority" actually was a very small minority of the Hopi people who live in those villages, how can the contracts be considered as having actually been approved by a real majority of the Hopi people even in those villages, let alone in all villages?

I am sure that your superintendent on the ground, Mr. Dow Carnal, will tell you that "council" people and "traditional" people in Hopi land are pretty evenly divided. My opinion is that he is somewhat optimistic on the side of the council. My honest, considered belief, resulting from a long, intimate concern with the Hopis, is that less than a third of all the Hopi people in any way approve of the Hopi tribal council, as now constituted, or any of its acts including the signing of these land claims contracts.

Platt Cline and other friends of the Hopis would continue over the

next few years to publicly criticize the machinations of Boyden, the BIA, and the Hopi Tribal Council, but these protests would also fall on deaf ears in Washington.

One protest from an outside supporter of the traditional Hopis was answered by Acting Commissioner of Indian Affairs, W. Barton Greenwood, in these words:

The Bureau of Indian Affairs is not unsympathetic to the views expressed by these "traditionalist" leaders of the Hopi people who have a strong and deeply rooted desire to cling to their ancestral ways of life. However, there is a question as to how far we can go in satisfying their desires within the framework of national law and policy. [Exhibit 58.]

In short, the traditional Hopis did not fit in with U.S. government policy.

By early 1953, Boyden had decided that the time was right to formally consolidate the power of the Hopi Tribal Council. He corresponded with the Secretary of the Interior about the necessity of making a decision on recognition of the Council. The Hopi Agency of the BIA backed his move, and on July 17, 1953, Acting Commissioner W. Barton Greenwood gave temporary, limited recognition to the Hopi Tribal Council:

We will recognize the Hopi Council as the governing body of the tribe as a whole until such time as that body is modified or changed through the wishes of a majority of the Hopi people from the different villages. We understand that representatives of the several villages who have not as yet affiliated themselves with the so-called council group will propose to the Secretary definite recommendations for a different type of tribal government for the Hopi people which could strengthen the position of each village of the entire Hopi Reservation.

Until these recommendations have been received and considered, the Bureau staff and the Hopi Tribal Council should give recognition to the fact that the "Traditionals" have not as yet affiliated with the Council group and their views should be considered nevertheless in decisions reached by the Council until a possible reorganization is effected. [Exhibit 59.]

With these words of approval from the BIA in Washington, the Hopi Tribal Council was given new life and power. Although formal, complete recognition as the exclusive government would not come for another two and a half years, the Council group had made a major advance. The suggestion that the views of the traditional Hopis would be taken into account until they could be formally integrated into the council was a sop for the traditionals and their supporters.

#### 16. ANOTHER TRADITIONAL HOPI PROTEST AGAINST DOCKET 196 AND ATTORNEY JOHN S. BOYDEN

The traditional Hopi leaders were never placated. They continued to make public protests about the filing of Docket 196 and the attorney contract with John S. Boyden. On April 28, 1952, traditional leaders of Hotevilla, Shungopovi and Mishongnovi sent a letter to the Commissioner of Indian Affairs and the Indian Claims Commission\* in which they repeated their objections to the filing of the Docket 196 petition in the name of their people:

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\*This is another in a long list of written notices of illegality of Docket 196 which were sent to the Indian Claims Commission by traditional Hopi leaders.

The truth of the matter is that the traditionally established vil-  
lages of Mushongnovi, Shungopavy, Oraibi, Hotevilla and Lower  
Moencopi did not and will not accept [John S. Boyden] to be an  
attorney for the Hopi Tribe. None of the above villages signed  
his Contracts therefore he could not represent the whole Hopi  
Tribe.

.....  
As regards the so-called Hopi Tribal Council they do not have our  
approval nor recognition. . . . If you have recognized this Council  
you have recognized the dictatorship for the Hopi, peaceful people.

Because of this land matter is of highest importance to us, invol-  
ving all people in this whole land of the Indian Race, we demand a  
full explanation of the so-called Hopi Tribal Council and that  
attorney John S. Boyden be required to stop working on the claim  
now. [Exhibit 60.]

A response to this protest was sent by the Commissioner of Indian Affairs  
to these Hopi leaders in June 1952. The Commissioner's letter reads as  
follows:

This refers to your letter of April 28, concerning the claims attor-  
ney contract between John S. Boyden and the Hopi Tribe.

The contract was executed by representatives of the Hopi Tribe as  
organized under the Indian Reorganization Act, and it was also  
executed by representatives of seven villages.

It is not necessary to decide whether the representatives of the  
organized Hopi Tribe were authorized to sign the contract in the  
name of the tribe, because even if the organized status of the  
tribe were ignored any member of the tribe would be authorized  
under the Indian Claims Commission Act to hire an attorney to pro-  
secute the claims of the tribe. [Exhibit 61.]

In this letter the Commissioner concluded that the individual Hopis who  
met with John S. Boyden in the small village meetings of 1951 were  
legally capable of making an attorney contract and filing a claim on  
behalf of all of the Hopi people, irrespective of whether they were  
representatives of the Hopis or whether they were speaking for a majority

of the Hopis. In short, the Commissioner wrote that as far as the BIA was concerned, any individual or group of Hopis could legally have hired Boyden to prosecute a Hopi claim in the Indian Claims Commission!

This letter from the Commissioner shows the callous disregard which the United States government had for Hopi self-government. The village meetings and manipulations of census figures to create an appearance of majority approval of Boyden's contract were, according to the Commissioner's reasoning, completely unnecessary window dressing. The view of the majority of Hopis was seen as legally insignificant. The BIA had decided that a Hopi claim should be filed and, in the BIA's opinion, any handful of Hopi individuals had the legal authority to file for all the Hopi people. The fact that all Hopis would be made to share in the payment of attorneys expenses and that all Hopis would share in the consequences of the final claims judgment was of no concern.

It goes without saying that such a legal conclusion is at variance with every other area of United States law, and that such a result is totally unacceptable if Indian sovereignty and international law are respected.

17. 1953-1955: OFFICIAL RECOGNITION  
OF THE HOPI TRIBAL COUNCIL

Arizona newspaper editor Platt Cline sent an immediate protest to the Commissioner about the decision to give limited recognition to

the Hopi Tribal Council, and he sent a copy of his protest to Oliver LaFarge who had become president of the Association on American Indian Affairs, Inc. In August 1953, LaFarge wrote the Commissioner, Glenn L. Emmons, a letter in which he seconded Cline's suggestion that the Commissioner suspend recognition of the Hopi Tribal Council until the entire matter could be investigated. (Exhibit 62.) LaFarge wrote that the decision to give recognition was "a very doubtful decision, and one that may cause a great deal of trouble to the Indian Bureau." He supported most of Platt Cline's position. It appears that LaFarge became more sensitive to the Hopi situation in these later years.

The Commissioner wrote LaFarge a response in which he cleverly argued that it was an "impossible task" for the BIA to meet and consult with each Hopi village, that "in the absence of a recognized central body, the Government would be forced into making decisions for the Hopi people which the Hopi people should make for themselves or should assist in making through participating in preliminary discussions." (Exhibit 63.) Severely straining historical facts and simple logic, the Commissioner was arguing that the only way to ensure Hopi-self-government was through a form of government imposed against their will by the United States. He declined to withdraw recognition of the Hopi Tribal Council, but he did promise further study of the issue.

In July 1954, Commissioner Emmons clarified and, in effect, modified the status of the Hopi Tribal Council. He said it had been recognized "for consultation on matters of over-all welfare of the Hopi

Tribe until such time as that body is modified or changed through the wishes of a majority of the Hopi people from the different villages." (Exhibit 64.) It appears that the Commissioner was not yet convinced that formal legislative power should be given to the Council, so only a consultative role was approved.

Attorney John S. Boyden was undaunted. He never lost sight of the related objectives of official Council recognition and mineral leasing. He had already begun, in 1952, a challenge to the 1946 Solicitor's opinion which had held the Navajos on the 1882 Hopi Reservation entitled to a share of the mineral wealth. He took steps to have the Secretary of the Interior formally reconsider that decision with an eye to exclusive Hopi mineral rights. (Exhibit 65.) These efforts would continue into 1957.

Boyden also assumed responsibility, as general counsel for the Hopi Tribal Council, for much of the dealings with the many mineral companies which remained ever eager to exploit Hopi mineral wealth. Boyden's reports detail correspondence and communication with a variety of mineral companies and their governmental counterparts. (Exhibit 54.) A letter written by Boyden to a party seeking leases of Hopi land on September 7, 1954, shows that interest in uranium had been added to the already described interest in oil:

I might say that there are many people who have evidenced interest in the property for uranium purposes. However, if and when title is cleared to the satisfaction of the Tribe, I am sure any prospecting permits probably will be upon a bid basis. [Exhibit 66.]

According to the Boyden/BIA/Hopi Tribal Council game plan, Hopi title would be "cleared" for mineral leasing (1) after the Hopi Tribal Council was officially recognized and thereby given leasing power, and (2) after the mineral rights of the Hopis were clarified in those areas outside of District 6 (the exclusive Hopi reservation) where most of the mineral wealth was thought to be located.\*

With these factors and all the other factors about range management and Hopi-Navajo disputes in mind, the BIA began another internal analysis of a potential division of the 1882 Hopi Reservation into separate Hopi and Navajo lands. Responding to all of these developments, the Commissioner sent a memorandum on April 9, 1954, to the office of the Secretary of the Interior which outlined the BIA's view of Hopi-U.S. relations and which included these comments among many others:

The Hopi Tribal Council, which was never fully recognized by the Hopis as a representative body, was rendered completely useless by the political conflict which ensued [after stock reduction was undertaken in District 6]. The Council was reconstituted in 1950, and it has recently been recognized by the Department as the official representative of the Hopi Tribe. (Emphasis added.)  
.....

The possible discovery and development of mineral resources, a resource as yet of undetermined value, indicates the desirability of retaining subsurface rights in joint ownership until such time as their value and location is determined. Any division of land

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\*The BIA was in a complete quandary as to the rights of Navajos within the 1882 Hopi Reservation, for the BIA had not recognized any separate governing body for them, and the central Navajo government considered these Navajos as its citizens, under its jurisdiction.

including subsurface rights prior to development might later prove unfair.

.....  
The Hopis, although organized under the Indian Reorganization Act, do not have now, and have not had in the past, a tribal body which has sufficient support to make decisions regarding the boundaries of any reservation for the exclusive use of the Hopis. (Emphasis added.)  
.....

The disputed Hopi and Navajo interests in the mineral estate of the 1882 reservation and the lack of authoritative representation for the Hopi Tribe and the Navajos with coextensive rights have interfered with the development of the reservation mineral resources. [Exhibit 67.]

The Commissioner concluded this memorandum by suggesting legislation as the solution to all Hopi boundary issues. He suggested legislation authorizing "fair division of the 1882 reservation between the Hopis and Navajos with coextensive rights."

In early 1955 a new effort was made by BIA field officers who backed the Hopi Tribal Council. Because the Commissioner had recognized only "consulting" authority of the Council and not legislative authority, he had rebuffed attempts by the Council to enact legislation. In response, the BIA Area Director, F. M. Haverland, wrote the Commissioner a letter on February 24, 1955, in which he argued that the Hopi Tribal Council was indeed the duly elected IRA government, that the original IRA election had been democratic and fair, that the 9 appointed representatives to the Hopi Tribal Council (out of a total of 17 possible representatives) constituted a quorum, and that the council was representative of a majority of Hopis.\* He argued that the traditionals

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\*The "majority" was discovered by use of a manipulation of census data to show that the five villages which sent representatives to the Council were more populous than the five traditional villages which refused to have anything to do with the Council. This is the same technique which the BIA had used in demonstrating that Boyden's claims attorney contract was supported by a "majority" of Hopis. Again, highly questionable census data was used. (See Exhibit 48A.)

should not be allowed to stand in the way of "the progress that is being made toward reorganization":

It is our impression that the traditional groups are not inclined either to participate in the present government of the tribe or to suggest organizational and constitutional changes therein. This condition means that the Bureau will probably be faced for some time in the future with the necessity of having to work through those tribal representatives who are selected in accordance with the tribal constitution. It is our feeling that it is only through this group that a revision of the tribe's organizational setup can be accomplished. We also believe that to require the Superintendent to change his position at this time will materially delay, if not destroy, the progress that is being made toward reorganization. [Exhibit 68.]

Attorney Boyden was, at the same time, submitting a legal brief to the Solicitor of the Department of the Interior in which he set out the Hopi Tribal Council's position on Hopi title to mineral interests in the 1882 Hopi Reservation.

Simultaneously, the traditional leaders were mounting a new campaign of passive resistance to BIA authority. In the spring of 1955, groups of traditional Hopis turned in their temporary BIA grazing permits and refused to re-accept them at a BIA meeting. In May 1955, BIA Area Director Haverland wrote the Commissioner another letter which outlined these problems and included discussion of the lack of mineral leasing authority.

Recent correspondence between this office and Washington has raised the question of recognizing the present Hopi Council. If the present council is an advisory body only, a serious question arises as to how the concurrence of the Hopi Tribe upon any lease or permit affecting mineral rights might be executed. [Exhibit 69.]

At the same time, traditional leaders from Hotevilla collected funds within their village and sent a delegation by automobile to Washington. Included in a BIA memorandum of the meeting which this delegation had at the BIA in Washington are these comments:

They questioned the authority for organizing under the IRA. We were told that a majority of the people did not know what they were voting on and it was not explained to them. The younger educated group understood and were running the show.

Summary: This group is known as the traditional group and is principally from the Hotevilla village. They are opposed to Bureau control and to the younger group of the reservation who are in control of the Council. They want free use of the range without specified limits on livestock. [Exhibit 70.]

Newspaper editor Platt Cline also travelled to Washington to support the traditional Hopis in their opposition to recognition of the Hopi Tribal Council. He met with Arizona Senator Barry Goldwater who then met with Commissioner Emmons on May 17, 1955. After his meeting, Senator Goldwater wrote the Commissioner a letter which strongly advised him not to recognize the Hopi Tribal Council until there had been further study:

I want to stress upon you the importance of withholding any final decision on Tribal Council government of the Hopis until we have had a full discussion of this with people who know the subject and are interested in achieving a solution. I have contacted Mr. Platt Cline of Flagstaff to invite him back here to visit with you on this, and I am sure you will find him a well-posted and brilliant man in the field. [Exhibit 71.]

Platt Cline met with the Commissioner on May 20, 1955. The Commissioner reported the meeting to Senator Goldwater in a letter in which he promised that "a special team" headed by one of his Assistant Commissioners would "dig into this Hopi situation." Senator Goldwater's

response urged again that the position of the traditional leaders be respected:

This matter is not going to be ironed out by theorists, but must be met by practical-minded people who will recognize that the traditional leaders of the Hopis have a strong hold on the minds of all the people and that any government that is worked out among those Indians will have to take into consideration the religious impact of their ancient way of life. [Exhibit 72.]

The political pressures which had been mounted on behalf of the traditional Hopi position successfully stalled the forces pushing for immediate, official recognition of the Hopi Tribal Council. Instead, the stage was set for what became known as the Hopi Hearings of 1955.

From July 15 to July 30, 1955, a BIA committee appointed by Commissioner Emmons held a series of public hearings in nine of the Hopi villages. The transcript of those hearings is over 400 pages in length. The testimony presented included a detailed explanation of traditional Hopi grievances against the United States government. Much of the testimony of the traditional Hopi leaders focused on the Hopi Tribal Council. The testimony of Dan Katchongva from Hotevilla on this point is summed up in these words:

Finally you came and made this Indian Reorganization Act from which this Tribal Council was organized. Again here you aimed to get control of us somehow under this new plan.

The full range and sharp divergence of Hopi opinions is recorded in those hearings. The progressive faction had been well prepared to make its case in support of the Hopi Tribal Council, and their views were well received by the Committee, all of whom were regular BIA

employees.

A few weeks later, Thomas M. Reid, Assistant Commissioner and the Chairman of the Committee, presented a report of the Hopi Hearings and a list of recommendations to the Commissioner. Included was the recommendation that the Hopi Tribal Council be granted official recognition:

It is the opinion of the committee that the Indian Office must recognize any tribal council which is legally elected. The constitution specifies a council of 17 members from the various villages and further stipulates that "no business shall be done unless at least a majority of the members are present." In our opinion, if 9 of the possible 17 members of the council are chosen or elected, there is a legal council and business can be legally transacted provided all 9 members are present. If you accept our views on this matter, we recommend that the Superintendent and the villages be so informed. [Exhibit 73.]

Since the BIA had long favored the recognition of the Hopi Tribal Council, it should be no surprise that a committee made up exclusively of BIA employees should have reached this conclusion.

Three months after receiving this recommendation, the Commissioner approved it. But in that three-month period, the struggle over recognition continued.

BIA Area Director Haverland kept up the pressure for recognition by deciding that no further permits for mineral prospecting would be issued pending action on the recognition issue. The BIA had previously decided it could issue such permits in the absence of a Hopi Tribal Council because they did not carry the legal obligation of formal leases. In September 1955, Humble Oil and Refining Company, General Petroleum Corporation, and Sun Oil Company were all prospecting on

Hopi land under the authority of these permits, and their work was suddenly threatened. Haverland wrote that these permits would not be extended and that further permits would not be issued "in the absence of the approval of the Hopi Tribal Council." (Exhibit 74.)

The traditional Hopi camp also kept up its pressure. After a delegation of traditional Hopi representatives from seven of the Hopi villages met with Senator Goldwater in October, the Senator wrote the Commissioner a letter calling for a general Hopi referendum on the Hopi Constitution and the Council (Exhibit 75):

. . . I feel the only way to determine what is to be done about their Government is to allow them to hold another election to see whether or not they want to keep the Constitution and with it a provision for Tribal Council. I therefore respectfully urge you to set up the mechanism whereby this referendum can be held.

In response to this letter, Joe Jennings, BIA Program Officer and one of the three committee members at the 1955 Hopi Hearings, sent the Commissioner a memorandum (Exhibit 76) which strongly urged that no such referendum be held:

It is the opinion of the committee that it would be unwise for the Secretary at this time to call an election on the question of amending or replacing the present Hopi Constitution and By-laws. In effect, such an action would be a reversal of Office letter of June 17, 1953, recognizing the Tribal Council, would largely nullify the work of your committee, would make the job of the Agency Superintendent exceedingly difficult, and would only intensify the differences between the traditionalists and the progressives.

When put to the test, the BIA once again fell away from its pious commitment to democracy and majority rule.

A final written protest was lodged by traditional Hopi leaders on November 10, 1955. (Exhibit 77.) In their letter, they disclaimed any

interest in another BIA-run referendum or election, and they repeated their assertion of the right of self-government:

The Hopi Constitution and Bylaws were forced upon us. The present tribal Council has been operating illegally and without our recognition. We also are opposed to any prospecting on our Hopi land without our consent or knowledge.

By letter of December 1, 1955, the Commissioner granted official recognition to the Hopi Tribal Council as the exclusive governing body of the Hopi people. (Exhibit 78.) In the same letter, he admitted that the Council's membership was only a bare quorum of 9 members out of 17, the other 8 members not having been chosen for Council membership because of the continuing traditional protests: \*

Since the full membership of the council as now constituted is a bare quorum as prescribed by the constitution as a prerequisite for conducting tribal business, it will be necessary that all nine members be present at any meeting where business is conducted in order that any action taken be the official action of the tribal governing body.

In the name of democracy and majority rule, the U.S. government gave its blessing to a "representative," majority rule body which was so lacking in general support among its constituency that it could only take official, legal action if every one of its members was present. According to the Commissioner, the absence or illness of only one of the councilmen was sufficient to bring the Hopi government to a standstill. As will be seen in later developments, John Boyden and the Hopi Tribal Council would not be stopped by any such technicality as a legal quorum.

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\* The Hopi Kikmongwis refused to certify members for the Council as required by the IRA Hopi Constitution. Once again traditional Hopi dissatisfaction was manifested by means of a boycott.

18. DISMISSAL OF DOCKET 210, THE SHUNGOPOVY  
CLAIM FOR RETURN OF LAND

With its official recognition established, the Hopi Tribal Council moved into a position of complete control of the Docket 196 claim in the Indian Claims Commission. It was no longer necessary for attorney Boyden to demonstrate that the claim had the support of individual Hopi villages. For all legal purposes, the Hopi people and the Hopi Tribal Council had been declared by the BIA to be one and the same.

However, there was one potential stumbling block to the Docket 196 case which troubled Boyden: The Docket 210 claim of the village of Shungopovy which asked for the return of land. Boyden's displeasure with Docket 210 is shown in a BIA memorandum (Exhibit 56) of confidential remarks he made in a BIA meeting in March 1952:

Other than the claim which he is handling, [Boyden] referred to a claim put before the Indian Claims Commission by the Shungopavi group which lacks legality because it requests return of lands rather than monetary reimbursement. Such matters are beyond the powers of the Indian Claims Commission. In view of this, he felt that BIA field officers should have tried to dissuade the group filing this claim.

These remarks also show that both Boyden and the BIA were fully aware at that time (only a few months after the filing of the claims) that the Indian Claims Commission had no legal authority to award the return of land. Here is additional evidence of the bad faith of those, including Boyden, who had asked for approval of the claims attorney contract on the suggestion that Hopi land might be recovered. (See, Part 12, above.) The question of whether the Docket 210 claim would be allowed to continue

was brought to a head in November 1956, when the U.S. government filed a motion to have it dismissed. (Exhibit 80.) The reasons for dismissal included the following:

The petition fails to state a claim upon which relief may be granted. The petition seeks to recover the land itself whereas the Commission is only empowered to award relief which is compensable in money.

In support of its motion, the U.S. government cited the 1948 case of Osage Nation of Indians v. United States (see pp. 76-77, above) in which the Indian Claims Commission had made its decision that it could only grant money damages. After five years of deceiving the citizens of Shungopovi, the United States finally laid its trump card on the table.

It appeared that Docket 210 would quietly be dismissed and slip into history when action was taken by Louis J. O'Marr, an Associate Commissioner of the Indian Claims Commission, which set matters astir. At about the same time the government had moved to dismiss Docket 210, O'Marr had gone to Santa Fe, New Mexico, and had met with traditional leaders from Shungopovi. (Exhibit 81.) After that meeting he wrote to Shungopovi spokesman Wadsworth Nuvangoitewa, urging Shungopovi to employ an attorney:

After you have engaged counsel to represent your village before the Indian Claims Commission, he will take whatever action may be necessary to enable you to present your claim against the United States. I suggest, therefore, that you and the members of the village employ an attorney as quickly as possible. . . . [Exhibit 82.]

On January 7, 1957, Mr. Nuvangoitewa wrote the Indian Claims Commission and explained that an attorney was being sought but had not yet been obtained. (Exhibit 83.) The Indian Claims Commission wrote back and

continued to stress the importance of promptly obtaining counsel.

(Exhibit 84.) The suggestion that Shungopovi would obtain its own attorney sent a shock wave through the BIA, for the decision had long been made to have the Docket 210 case dismissed at an appropriate moment. BIA Area Director Haverland and the BIA Hopi Agency Superintendent H. E. O'Harra, immediately took steps to stop Shungopovi's efforts. A letter from O'Harra to Haverland on December 31, 1956 (Exhibit 85), includes these remarks critical of Indian Claims Commissioner O'Marr's advice to the Shungopovi leaders:

Mr. Boyden represents all the Hopi peoples and not any one village or group. In view of the foregoing I do not feel inclined to recommend employment of legal counsel on the part of Shungopovi Village as suggested by Mr. O'Marr.

On January 14, 1957, an Associate Field Solicitor of the Department of the Interior, Phoenix, Arizona, wrote a memorandum to the BIA Area Director advising that Shungopovi did not have the authority to hire an attorney to present its case in Docket 210:

Certain facts are apparent:

1. The Hopi Tribe, thru its Tribal Council, has employed Mr. Boyden as its Claims Attorney.
2. That contract has been approved by the Bureau.
3. The Village is not authorized to act for the Tribe in hiring an attorney to present the Hopi Land Claims.
4. Less apparent is the fact that a suggestion from the Bureau that the Village employ counsel would tend to indicate to some that the Bureau felt the Village had the authority to so act for the Tribe.

I feel the following should be done:

1. That both the Bureau and Mr. Boyden explain to the Village that he (Boyden) represents all the Tribe in presenting their

land claim before the Indian Claims Commission.

2. That the Indian Claims Commission cannot restore land to a tribe but can award money damages only.
3. State that Boyden would welcome all the help, information, and assistance that the Village might be able to give him to more fully and successfully present the Land Claim of the Hopi Tribe. [Exhibit 86.]

...  
All of the key BIA field personnel had thus opposed assisting the Shungopovi leaders in their efforts to obtain counsel. They backed John S. Boyden as the sole Hopi attorney, and they backed the Hopi Tribal Council's Docket 196 over Docket 210.

The Shungopovi leaders continued to hear from the Indian Claims Commission which again advised them to get an attorney to help them meet the fast-approaching legal deadlines in their case. (Exhibit 87.) Unable to obtain the services of an attorney, and finally convinced of the futility of presenting their claim for return of land in the Indian Claims Commission, the Shungopovi leaders asked that Docket 210 be dismissed in a letter of May 4, 1957:

Associate Commissioner Louis J. O'Marr  
Indian Claims Commission.

Dear Sir:

We, in Docket No. 210, request herein to withdraw our land claim from its consideration by the Indian Claims Commission for the present time due to the following reasons:

1. We have tried our best to find an attorney to represent us in docket No. 210, in the time allotted to us for that purpose however we find the time limit too short.
2. Our intention in presenting this claim is for us to receive the land and not payment for damages inflicted to the Hopi Indians by the United States which resulted when our land was taken away.
3. We have been correctly informed that this Indian Claims Com-

mission has no authority to restore the land claimed in Docket No. 210 back to us therefore we will withdraw our claim from your Commission and if possible, resubmit it again to an Indian Claims Commission which will have the authority to restore land back to the Indians if such be created by the Congress of the United States of America.

However, we request that you keep our claim in Docket No. 210 in your records as your record and as our record. Thank you for your consideration and the help that you have given us thus far. We remain

Sincerely,

/s/  
Mr. Wadsworth Nuvangoitewa  
Shungopovi Village  
Second Mesa, Arizona [Exhibit 88.]

The conclusion of the Docket 210 case was completely consistent with the longstanding traditional Hopi position which categorically opposed the payment of any money which might jeopardize historic Hopi land rights. Shungopovi remained true to its principles and refused to join up with attorney Boyden and the Docket 196 case.

A few months earlier, Andrew Hermequaftewa had spoken of the religious significance of these principles in these words:

This land is our home, given to us by the Great Spirit. It is not for sale and we are not going to sell it.

It seems that many of our young people are falling for the new plans that come to us from Washington, plans which say that we should take our mineral resources out of the Mother earth and thereby accumulate money with which to buy more land. This to me is a very foolish thing to do because this is already our land. We cannot buy it again with the very thing that comes out of it. To buy and sell land is not right in the sight of our Great Spirit.

19. 1956-1961: PREPARING THE WAY  
FOR MINERAL LEASING

It was no secret to anyone that the progressive faction which controlled the Hopi Tribal Council had views about land and religion which were very different from traditional Hopi principles. The Hopi Tribal Council was willing to barter over land rights as white Americans did. It was willing and eager to get into mineral leasing ventures, and would eventually approve massive strip mining of Hopi land. To accomplish these ends, the Council was prepared to take into United States Courts its case for the partitioning and division of the 1882 Hopi Reservation.

The traditional Hopis knew they were in for serious problems when the Commissioner granted official recognition to the Hopi Tribal Council in late 1955. Their protests and warnings went not only to Washington but also the Hopi Tribal Council itself. In a letter from the "Hopi Indian Nation" to the Council's chairman in early 1956 (Exhibit 89 ), 28 traditional Hopis of Hotevilla announced that they would not recognize or approve any acts taken by the Council:

We have never approved nor ever will recognize the present so-called Hopi Tribal Council to be the representative of the Hopi people. We will never cooperate with you or the Council members even though it has been recognized by the present Commissioner of Indian Affairs, Glenn L. Emmons. We will hold all actions of the so-called Hopi Tribal Council illegal, null and void in view of the fact that the real traditional Hopi leaders have never given their consent or approval to the Council to be the representative of the Hopi Tribe.

Dan Katchongva's was the first signature on this letter. The letter was sent on the twentieth anniversary of the resistance Katchongva had helped lead against Oliver LaFarge and the original Hopi Tribal Council. (See, pp. 38-54, above.) He knew the twelve-year respite from official Council activity, which began when the Council collapsed and disbanded in 1943, was over. Thanks to BIA manipulation, the Council was again in command with the full blessing of the United States government.

The Hopi Tribal Council, under the tutelage of its attorney, John S. Boyden, made immediate plans to secure title for mineral leasing to as much of the 1882 Hopi Reservation as possible. A formal challenge to Navajo mineral rights in that area was made in a petition to the Secretary of the Interior for reconsideration of the 1946 Solicitor's opinion recognizing Navajo rights. In March 1957, the Navajo's attorney, Norman M. Littell, filed his opposition to the Hopi petition.

By late 1956, it became clear that the Hopi Tribal Council would have to go to Congress for help, so Boyden (working closely with the BIA) helped prepare legislation authorizing a test of Hopi and Navajo land rights in the United States Court. Boyden was being paid only \$6,000 per year for his Hopi work at that time, but he admitted that he saw bigger money coming down the road once mineral leasing began.

The traditional Hopis petitioned and protested against the legislation but to no avail. (Exhibit 90.) By letter of November 20, 1957, Commissioner Emmons wrote the Tribal Council that he was "happy

to reaffirm" their recognition as the exclusive Hopi government. In the same letter he noted that Council membership was still only a bare quorum as required by the Hopi Constitution. [Exhibit 91.]

By July 1958, legislation had been enacted approving the filing of a lawsuit between the Hopi Tribal Council and the Navajo government to test their respective rights in the 1882 Hopi Reservation.\* The lawsuit of Dewey Healing, Chairman of the Hopi Tribal Council, versus Paul Jones, Chairman of the Navajo Tribal Council (Healing v. Jones) was authorized by Congress only eighteen months after the Hopi Tribal Council was officially recognized. The Hopi Tribal Council was on its way to mineral leasing, following in the footsteps of the Navajos who had already undertaken significant mineral leases in the undisputed parts of the Navajo reservation.\*\*

John Boyden and the Hopi Tribal Council were not content to sit back and wait for the Healing v. Jones case to be decided before getting into the mineral business. On June 30, 1959, the Hopi Tribal Council passed an ordinance establishing procedures and fees for the issuance of permits to prospect for oil and gas upon the Hopi reser-

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\*Public Law 85-547, 85th Cong., 1st Session, 72 Stat. 402, July 22, 1958.

\*\*Also in 1958, Congress pumped \$20,000,000 more into the kitty for Hopi-Navajo rehabilitation, and designated the money for roads. The House of Representatives noted that there was "tremendous increase in road use in the reservation area" due to "oil and gas development, uranium mining, and other economic development," all of which was "breaking down" the roads. (House Report No. 2455.) Money seemed to be no object when mineral exploitation was at issue.

vation. This ordinance was supported by BIA Area Director F. M. Haverland, whose letter to the Commissioner of Indian Affairs sought to open a new line of power for the Hopi Tribal Council. Haverland's letter took note of the fact that the Hopi Constitution contained these words specifying its powers:

The Tribal Council is given authority. . . To prevent the sale, disposition, lease or encumbrance of tribal lands, or other tribal property.

Despite the fact that the constitution's language authorized the Council only to prevent leasing, Haverland argued that the same language could be read to allow leasing (Exhibit 92):

Conversely, we [at the BIA] presume to allow the leasing, disposition, sale or encumbrance of tribal lands, if it does not desire to prevent the same.

A clear limitation on the Hopi Tribal Council's authority was thus twisted in favor of unfettered authority for the Council.

A few weeks later, Dan Katchongva wrote a letter of protest on behalf of the traditional leaders of Mishongnovi, Shungopovy, Oraibi, Hotevilla, and "the majority of the Hopi people." (Exhibit 93.) He stated that the ordinance was designed to "open Hopiland for prospecting for oil and gas" and that it had been enacted "without the knowledge, consent nor approval of the Hopi Traditional Leaders and the majority of the people in these villages." \*

Ironically, the Hopi Constitution itself supported the position of the traditional Hopi leaders. When the Hopi Constitution was

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\* In November, 1958, traditional Hopi leaders met at Hotevilla and joined traditional Utes in demanding a federal grand jury investigation of John S. Boyden.

drafted by Oliver LaFarge in the mid-1930s, the question of whether the Hopi Tribal Council would have authority to enter into mineral leases was not especially significant. It was not until the early 1940s that the potential mineral wealth of Hopi land was discovered. In his effort to obtain approval of the Hopi Tribal Council, LaFarge had written into the Constitution clear limitations on the power of the Hopi Tribal Council. Had LaFarge attempted to authorize leasing of Hopi land by the Hopi Tribal Council, the boycott of the 1936 election would surely have grown, making it even more difficult to obtain a showing of support for the Hopi Constitution.

When the Solicitor's Office of the Department of the Interior was asked in 1959 to review the leasing powers of the Hopi Tribal Council, nothing was found in the Hopi Constitution to justify the Council's position. In a decision of November 16, 1959, the Solicitor's Office ruled that the Hopi Tribal Council did not have the legal authority to grant mineral leases under the Hopi Constitution (Exhibit 94):

The Hopi Indians have expressly limited their Tribal Council to powers expressly mentioned in the constitution. None of the powers so listed can be construed to cover the granting of prospecting permits for oil and gas.

Until the members of the Hopi Tribe have exercised the right to adopt an appropriate constitutional amendment, the Tribal Council is without power in the premises.

Temporarily set back by this ruling, the Hopi Tribal Council was not willing to follow the recommendation that it seek an appropriate amendment to the Hopi Constitution. The Council did not want to

conduct the campaign and referendum which was necessary before such an amendment could be made.

Rather than proceed to amend the Hopi Constitution, John S. Boyden, the Hopi Tribal Council, and the BIA field personnel conceived of a plan to undercut the constitutional restriction on mineral leases. They proposed that the Secretary of the Interior give leasing authority to the Hopi Tribal Council under a clause of the Hopi Constitution which reads as follows:

The Hopi Tribal Council may exercise such further powers as may in the future be delegated to it by the members of the Tribe or by the Secretary of the Interior or any other duly authorized official or agency of the State or Federal Government. [Hopi Constitution, Article VI, Section 3].

On the strength of this clause, the Secretary of the Interior "delegated and granted the power" to make mineral leases to the Hopi Tribal Council on May 24, 1961. (Exhibit 95.) The government thus effected a unilateral amendment of the Hopi Constitution without suffering through another (and uncertain) referendum in Hopi country, as required under the Hopi Constitution. To the traditional Hopis, this grant of new and sweeping powers to the Council, in absolute violation of the Hopi Constitution itself, was further confirmation of their view that the Hopi Tribal Council was merely a tool and accomplice of the United States government. In the end, the United States would tolerate no legal objection to the power of the Council or the leasing of Hopi lands, and would perform flagrant legal manipulations to carry out its plans.

## 20. THE FIRST COAL MINING LEASE

In the late 1950s and early 1960s, there was little direct traditional Hopi protest focused on the Indian Claims Commission's handling of Docket 196. Attorney John S. Boyden was responsible for the litigation of Docket 196, and almost all of the proceedings were legal matters under his control which took place in Washington, D.C.

The focus of traditional Hopi discontent during this period of time was on the growing power of the Hopi Tribal Council, the beginning of mineral leasing, the Healing v. Jones case, and the continued presence of John S. Boyden in Hopi affairs. However, many of the issues presented by these matters have a direct bearing on the Docket 196 case.

One expression of traditional Hopi discontent is a letter written in September 1960 to the Chief Judge of the United States Court handling the Healing v. Jones case. (Exhibit 96 .) Dan Katchongva and Andrew Heremequaftewa wrote on behalf of the Hopi Sovereign Nation, the traditional villages of Mishongnovi, Shungopovy, Oraibi, Hotevilla, Lower Moencopi, and traditional people in the other Hopi villages. Again the Hopi Tribal Council's legitimacy was challenged. Again the authority of John S. Boyden to represent all Hopis was denied. The Court was informed that the traditional Hopi leaders did not authorize or approve of the Healing v. Jones case and that they would not consider any decision in that case to be binding on them:

Any decision that has been made and will be made in the Federal Courts of the United States will be considered not binding on the Traditional Chiefs and Religious priests and their people. All actions in Prescott, Arizona Federal Court will be considered NULL and VOID by the Hopi Chiefs and the Majority of the people. They will not pay Attorney John S. Boyden for the services rendered for the Hopi Tribe as he was not hired by them.

Similar protests were made directly to the Hopi Tribal Council including a letter of February 14, 1961, from David Monongye and Thomas Banyacya, who challenged the very composition of the Council under its own constitution and by-laws:

You and the Agency Officials know full well that the Council does not have representatives from Mushongovi, Shungopavy, Oraibi, Hotevilla and Lower Moencopi. Village of Bacabi has recently voted by majority against participation in the Council. This fact is being ignored by a few, mostly Government employees, Hopi men in that village. Village of Shipaulavy has one representative in the Council but the majority of the people in that village have never voted on this matter. So you see, your whole organization has been operating illegally ever since it started. [Exhibit 97.]

The traditional leaders opposed both the composition of the Council and its actions. When the Hopi Tribal Council had passed an ordinance in late 1959 seeking to raise revenues for Council work and attorneys' fees by taxing Hopi merchants, Dan Katchongva and other traditional leaders registered a protest to the Council in the name of the Hopi Independent Nation. (Exhibit 98.) They refused to pay these taxes, and they stated that they would not recognize the legal authority of the Council to levy any taxes.

An especially strong protest was made by the traditional Hopi leaders when they learned of an impending coal lease with the Fisher

Contracting Company. On November 16, 1961, a letter signed by eight traditional Hopi leaders (Exhibit 99 ) was sent to the BIA Superintendent. It included this specific objection to coal leasing:

This is to formally advise you and the members of so-called Hopi Tribal Council, Secretary of the Interior Udall, Attorney John S. Boyden, Area Director Frederick M. Haverland and Fisher Contracting Company of Phoenix, Arizona, that it is the unanimous verdict of the Hopi Traditional Chiefs and the Hopi people, during a meeting held Saturday, November 11, 1961, in Shungopavy Village, that you take immediate action to cancel and revoke any agreement or arrangement for the Fisher Contracting Company to carry on exploration or prospecting work for minerals, or other purposes on Hopiland.

The traditional leaders had received accurate information, for there had been serious leasing negotiations between the Council, Boyden, the BIA, and Fisher Contracting Company throughout much of 1961. These negotiations resulted in a small coal prospecting agreement between the Council and Fisher which involved lands located within District 6, undisputed Hopi area.

The Fisher Contracting Company lease was a prelude to the multi-million dollar coal strip-mining leases with Peabody Coal Company.\* The big leases would not be completed until after Healing v. Jones resolved the dispute about leasing power of the Hopis and Navajos in 1963. However, the correspondence surrounding the negotiations with Fisher Contracting Company discloses that Peabody Coal Company had expressed interest in leasing Hopi land as early as August 1961.

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\*The Fisher agreement was terminated in September 1962. The Hopi Tribal Council reportedly made about \$10,000 under that agreement.

(Exhibit 100.) In March 1962, the Hopi Tribal Council was informed by attorney Boyden that Peabody Coal Company had offered to enter into an agreement to prospect or lease in the northern part of the 1882 Hopi Reservation. (Exhibit 101.)

It was clear to all involved that by 1961 the Hopi Tribal Council had embarked on a major mineral leasing venture. From that time to the present, the traditional Hopi leaders would continue to fight the leasing and massive strip-mining of Hopi land which they would call the desecration of Mother Earth.

#### 21. THE HEALING V. JONES DECISION

In September 1962, a three-judge federal district court decided the Healing v. Jones case. The following year it was affirmed by the Supreme Court.\* The court ruled that District 6, the range management area set aside for the exclusive use of the Hopis, was indeed the sole reservation to which the Hopis had an exclusive legal interest. In so ruling, the court's official imprimatur was added to the fencing in of the Hopis which had occurred in the face of vociferous traditional Hopi objection at the time and which had occurred in the face of numerous official pronouncements that no small exclusive Hopi reservation would result. (See Part 5, above.)

The Healing Court also ruled that all of the 1882 Hopi Reservation lying outside District 6 was an area in which the Hopis and Navajos had an undivided and equal interest. This area was to be known as

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\*Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963).

the "Joint Use Area." The sixty-three page opinion of the court will not be summarized in this report, but one quotation will be included to demonstrate the legal premise from which the court began in its discussion of Hopi land rights:

The right of use and occupancy gained by the Hopi Indian Tribe on December 16, 1882, was not then a vested right. As stated in our earlier opinion, an unconfirmed executive order creating an Indian reservation conveys no right of use or occupancy to the beneficiaries beyond the pleasure of Congress or the President. Such use and occupancy may be terminated by the unilateral action of the United States without legal liability for compensation. The Hopis were therefore no more than tenants at the will of the Government at that time. No vesting of rights occurred until enactment of the Act of July 22, 1958. [210 F. Supp. 138.]

Translated into non-legalese, the court based its decision on the notion that originally the Hopis had no more rights to their land than a tenant without a lease. In the court's view, the Hopis had no real right to their homelands until Congress passed the statute in 1958 which expressly gave them property rights to whatever land the Healing court would determine to be theirs. According to this view of Indian land rights, the Hopis, from the time of the Treaty of Guadalupe Hidalgo in 1848 until 1958, had only slightly more legal right to the land they occupied than squatters, trespassers and passers-by. Since the court concluded that the Hopis had no significant property rights during that century of United States rule, it necessarily followed that any action which the United States took which interfered with the Hopis' use and occupancy of the land was completely excusable under United States law. Without any protection under the United States Constitution, and without any

recognition of sovereign rights or treaty guarantee, the Hopis were found by the Healing court to be without any legal right to their ancient homeland. The only legal Hopi rights to land which the Healing court would recognize are the rights acknowledged by Congress in the legislation of 1958.

The traditional Hopis sought to dissociate themselves from all of these shocking developments. In a letter of November 21, 1962, Melvin Tewa, Chief of the traditional Hopi village of Lower Moencopi, wrote Senator Carl Hayden a letter on behalf of himself and other traditional Hopi people:

I am writing on behalf of all the Hopi chiefs and people to earnestly inform you that we would not be able to regard as legal any ruling contained in the recent Healing v Jones judgment concerning the land dispute between the Hopi and Navaho on the primary ground that the Plaintiff of the case, Dewey Healing, is merely a representative of the Hopi Tribal Council, which, historically as well as legally, is not a justifiable organization of the Hopi and which does not include any of the traditionally recognized chiefs.

.....  
Further we must point out that the tenure of John S. Boyden for the suit was a matter solely disposed of by the Council and not to any recognition of the Hopi chiefs. . . . [Exhibit 102.]

The Commissioner of Indian Affairs wrote to Senator Hayden in response to this protest. He argued that everything was proper because the Hopi Tribal Council was functioning with a quorum and because a majority of Hopi villages were represented on the Council. He further argued that the Healing v. Jones case was about a controversy between the Navajo and Hopi Tribes over rights and interests in the 1882 Hopi

Reservation. There is, of course, no hint in his letter of the United States government's interest in maintaining the Hopi Tribal Council and in facilitating the leasing of Hopi mineral resources. The BIA has always been quick to write off any problems in Hopi country as merely Hopi-Navajo disputes. This approach has, over the years, diverted much attention from the BIA's intermeddling and bungling.

Senator Barry Goldwater, a public official far more knowledgeable about Hopi affairs, was treated more gingerly when he made a pointed inquiry about the Hopi situation. He had corresponded with Caleb H. Johnson, a man who has served as interpreter and spokesman for the traditional Hopis. In an April 1963 letter to Senator Goldwater, an Associate Commissioner of Indian Affairs first explained how leasing authority had been delegated to the Hopi Tribal Council. He then admitted:

The Bureau, as well as the Tribe, is cognizant of the shortcomings of the Tribal Constitution and the need for amendment. [Exhibit 105c]

He said that amendments designed to incorporate the traditional Hopi community into the Hopi government had been considered for about five years, but that the time was not yet ripe to act:

The Hopis apparently felt discussion of constitutional questions might cause dissension among the Hopis which would be exploited by the Navajos to the detriment of the Hopis in the territorial dispute.

This was a confusing way of saying that the traditional Hopi leadership did not want the Healing v. Jones case to continue, that they did not want to fight the Navajos in such court action, and that they did

not want the land divided, partitioned, or strip-mined. The Hopi Tribal Council and the BIA did want all of these actions to continue. They knew that any amendment process might give the traditionalists an upper hand which would again halt the BIA's program as it had done in 1943.

The letter concluded with the self-righteous pronouncement of respect for Hopi self-government, a principle which had never been honored in Hopi country and which had been violated countless times by the BIA:

Any indication that the Bureau would impose a need for action on the Hopis would tend to defeat the purpose and would leave the Bureau vulnerable to the charge of interfering in tribal matters.

Time after time, the BIA had trampled Hopi self-government and interfered in Hopi affairs to foster and maintain U.S. government programs. All of that interference, much of which is catalogued above, was to the detriment of the traditional Hopi leaders.

Congressman James A. Haley, Chairman of the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, wrote of concerns similar to those expressed by Senator Goldwater. In a letter to the Commissioner (Exhibit 104) he pointedly asked:

Now that a judgment has been handed down in Healing v. Jones, what steps have been taken to create a committee to draft a constitution? I am aware of the factions within the Tribe, but unless steps are taken to establish a working relationship among them, I doubt if the differences will settle themselves.

Although the BIA had since 1957 been promising Congress that it would support amendments to the Hopi Constitution which would incorporate

the traditional Hopi leaders into the Hopi government, although the recognition given to the Hopi Tribal Council in 1955 spoke of the need for amendment, although the delegation of mineral leasing authority to the Hopi Tribal Council included a statement of need for amendment, and although attorney John S. Boyden had himself informed the Commissioner in 1961 that "after a rather careful study, we are confident that the entire constitution should be reviewed and redrafted," (Exhibit 105), the BIA, Boyden and the Council continued in 1963 to take the position that amendment would begin only after all of the legal problems between the Hopi Tribal Council and Navajo Tribal Council were resolved. (Exhibit 106.) That moment has yet to arrive.

In July 1963, the "authority" of the Hopi Tribal Council to lease lands was again confirmed and further clarified by the BIA. (Exhibit 107.) While the Hopi Tribal Council voted a raise to John S. Boyden which would make his salary \$9,000 per year, traditional Hopi leaders wrote the BIA and the Council another protest on behalf of the Hopi Independent Nation calling for "a full investigation of all activities of the so-called Hopi Tribal Council, Bureau of Indian Affairs, and attorney John S. Boyden. (Exhibit 108.) There was newspaper coverage of some of the traditional protest. (Exhibit 109.) And efforts were made by some to help find an attorney to challenge Boyden and the Council. (Exhibit 110.)

With the BIA fending off all attacks, the Hopi Tribal Council and John S. Boyden moved ahead with their program and prepared legis-

lation to formally partition all of the 1882 Hopi Reservation. The introduction of such legislation brought a new wave of protest from traditional Hopi leaders. (Exhibit 111.)

22. THE FIRST COURT CHALLENGE TO MINERAL LEASES:

STARLIE LOMAYOKEWA V. KERR-McGEE

OIL INDUSTRY, INC.

In 1964 the Hopi Tribal Council entered into its first large mineral leases. The lessees included Kerr-McGee Oil Industry, Inc., Pennzoil Company, Tenneco Oil Company, Aztec Oil & Gas Company, El Paso Natural Gas Products Company, Kewanee Oil Company, Gulf Oil Corporation, Shamrock Oil & Gas Company, Texaco, Inc., Amerada Petroleum Corporation, and others.

Late that same year, a lawsuit was filed on behalf of named representatives of the Hopi villages of Mishongnovi, Shipaulavi, Oraibi, Shungopavi, and Hotevilla by a Phoenix attorney named Robert J. Welliever.\* All the lessee mineral companies were named as defendants, and the Hopi Tribal Council was also sued as a defendant. The complaint in that case alleged that the Hopi Tribal Council was without jurisdiction, power, right or authority to enter into those leases, that the lands in question belonged to the sovereign Hopi villages. The suit was captioned Starlie Lomayokewa et al. v. Kerr-McGee Oil Industry, Inc., et al.

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\*Some traditional leaders had opposed bringing any action in United States Courts.

(U.S. District Court, Arizona, No. Civil 955 Pct.)\*

By order of December 29, 1964, U.S. Judge Walter M. Bastain dismissed the case against the Hopi Tribal Council, ruling that the Hopi Tribal Council was a sovereign government, immune from suit and an indispensable party which could not be joined. The first court challenge to the Hopi Tribal Council was speedily rebuffed.

A curious and as yet unexplained development in this lawsuit is the fact that Attorney John S. Boyden represented both the Hopi Tribal Council and one of the lessees, Aztec Oil and Gas Company. (Exhibit 112.) This is the first but not the last indication that attorney Boyden had a very close working relationship with some of the mineral companies interested in exploiting Hopi mineral wealth.

23. \$1 MILLION ATTORNEY FEE APPROVED  
FOR ATTORNEY BOYDEN

The 1964 mineral leases brought sudden wealth to the Hopi Tribal Council. The Council reportedly received some three million dollars for the leases, and more millions were foreseen in the immediate future. The Council was flush with money and power.

On December 3, 1964, John S. Boyden and two of his associates,

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\*In the course of the proceedings, Secretary of the Interior Stewart Udall delegated even more leasing power to the Hopi Tribal Council. He authorized the Council to lease the Hopi mineral interests in the Joint Use Area. Even more leasing authority would be delegated in 1966. (Exhibit 113.)

Allen H. Tibbals and Bryant H. Croft, brought before a meeting of the Hopi Tribal Council their request for attorneys fees. The meeting convened at 1:15 in the afternoon. Soon Boyden and his associates began their presentation in support of attorneys fees for the work done in the Healing v. Jones case, for the defense of the Kerr-McGee case (which was at that very time coming to a close), and for other incidental legal work. A "day-long discussion" followed in which Boyden painstakingly detailed the work which he and his law firm had performed. The Council then excused Boyden and his associates from the meeting. According to the official minutes of that meeting, the following discussion then took place:

The Hopi Indians present thought that 15 years was a long time to wait for payment, especially with the possibility of receiving no fee at all. It is very hard to put a price tag on all the insults and discouragements that resulted from the Traditionalist and NON-Indian opposition to all of Mr. Boyden's work. Numerous suggestions were made as to the fee. The start was around \$100,000 which was suggested as a retainer fee that would be normally paid to a firm undertaking this kind of a job. This was rejected as the Hopi said this did not cover the interest, the hazards of the monetary benefit the Hopi had received. A suggestion was then made that they should give Mr. Boyden a million dollars. Quite a number of Hopi Indians agreed to this and someone said that Mr. Boyden would have to give his partners and others a percentage of this. Another Hopi said that they should give Mr. Boyden a fee of \$535,000.00 and then award him a sum for himself. More discussion was held in Hopi and then the proposal was made that they give Mr. Boyden a fee of \$780,000.00, with an additional \$220,000.00 just for himself as an expression of their gratitude and thankfulness that he was able to get most of their land back and to repay him in part for all the bad things others had said about him. They all seemed to agree on this. One old man said that money means a lot to the bahanas, but land is what the Hopi people want and that we still have our land after they have spent all this money we are giving them.

After a short recess the council was reconvened and a motion was made that the Tribal Council agree to pay Mr. Boyden a total fee of

one million dollars for services in the litigation involved, \$220,000.00 of which is to be considered compensation to Mr. Boyden for himself as an expression of the Hopi Tribe's gratitude and thankfulness for his diligence in following through and not quitting as others would have done. The motion was seconded. The vote on the motion was 9 in favor and none opposed. There being no tie vote, the Chairman refrained from voting.

Mr. Boyden was then called back in and was told of the council's action. Then each Hopi present arose and came around and personally thanked Mr. Boyden, Mr. Tibbals, and Mr. Croft.

The Council was then recessed while Mr. Boyden prepared to leave. [Exhibit 114.]

The million-dollar fee approved for Boyden at this meeting of the Council was only the first million that he would make from his work for the Hopi Tribal Council. The high fee was, according to the Council, justified in part by "the insults and discouragements that resulted from the Traditionalist and NON-Indian opposition to all of Mr. Boyden's work." Boyden himself had made the same argument in support of high fees. In his presentation to the Council he urged them to consider this factor:

The opposition encountered; including that of the United States, the Navajo Tribe, the Hopi Traditionalists, and private interests.

Again the gross inconsistency of Boyden's position is exposed, for he often argued that all Hopis were his clients. Yet here he argued that the opposition of the traditional Hopis to his work justified higher attorney fees from the Hopi Tribal Council. It is nonsensical to argue that an attorney is entitled to greater attorney's fees because his "clients" did not want his assistance and therefore refused to cooperate with him. Boyden, the Council, the BIA, the mineral companies, and the Hopis themselves all understood that Boyden in fact represented only

the progressive Hopi faction which was represented by the Hopi Tribal Council.

24. THE TRADITIONAL LEADERS SEND A PROTEST PETITION  
TO PRESIDENT LYNDON B. JOHNSON

Having failed to stop the Hopi Tribal Council, the Healing v. Jones lawsuit and the first major mineral leases of Hopi land, the Hopi traditional leaders sent another protest petition to another United States President. The full text of that petition to President Lyndon B. Johnson reads as follows:

HOPI INDEPENDENT NATION  
HOTEVILLA VILLAGE  
HOTEVILLA, ARIZONA  
JANUARY 12, 1965

Mr. Lyndon B. Johnson  
President of the United States  
The White House  
Washington, D.C.

Mr. President Johnson:

On behalf of our Hopi traditional and religious leaders of the Hopi Nation, I, Dan Katchongva, Sun Clan and religious leader, spokesman for Hotevilla, urgently write you to bring to an end the forceful and illegal seizure of our ancient homeland, destruction of our religion, and Hopi way of life as an independent nation. Our homeland, way of life and religion are bound together as one and to uproot this oldest and most peaceful way of life, religion and self-government would mean destruction of all life of all people on this land.

Mr. President, our peaceful way of life and land are seriously threatened by your government, the government of the United States, under the arbitrary rule of the Bureau of Indian Affairs officials, the so-called Hopi Tribal Council which does not represent the traditionally established villages and attorney John S. Boyden, a Mor-

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mon church member who was never hired by us and therefore does not represent us.

By reducing the Council members to merely puppets Keams Canyon Agency officials and John S. Boyden pressured them into rubber-stamping their pet plans and policies against the will of the traditional leaders and the majority of the people, they have finally leased our sacred homelands for oil, gas and other mineral development against the strong protests of the village leaders and people. They have denied the Hopi people to express their views or objections, often times they are intimidated, threatened and by calling those who oppose them trouble makers and by totally ignoring the people they claimed to represent they have brought about suit against the Navajos and the government of the United States against our will. After spending most of our tribal fund, attorney Boyden forced our young men to sell our property and leasing our homeland has made himself rich by grabbing most of our tribal money. He has stolen the money from us. He has made some of the members of the Council and Hopi government employees rich, but the majority of our people have never gotten benefit from the tribal fund. We demand you investigate this matter. We are not asking for our share of the illegally gotten money, the lease money, but we are asking you to stop this crime and illegal seizure of our ancient homeland.

Under their rule we have no rights to protest even though we occupy and built our villages on this land long before any white man or the Navajo came upon us. This is wrong and is as serious as if Russia or China or any other foreign country forced their way in and start to destroy your way of life, religion and land.

Now, we have heard you to say you desire peace, freedom and self-determination for all people. That is our desire and aim also and we have been peaceful with your government yet are not being protected by your officials at this date.

As first people to settle on this land we ask you: Are your government while speaking of freedom for all people in this world going to shut his eyes to this shameful destruction of our sacred land, religion and way of life? Or will you act immediately to stop all leasing of our land, illegal confiscation of our property and thereby fulfill your duty and obligation as guardian and protector of our property?

We have our sacred stone tablets in our possession which we firmly believed was given us by the Great Spirit, Massau'u. It contained the basic principles upon which our way of life, religion and land rest. It also contained the ancient teachings of the laws of the Great Spirit which governs our land and life. It foretold things that has happened in the past and will happen in the near future and what we must do at this period of life.

Therefore we must not allow our mineral resources to be disturbed in any manner at this time for it may fall into the hands of wrong or evil men and be used to make more powerful destructive weapons. This must be held for the future use of all good people when it shall be used in a peaceful way after the purification day where evil and wrong doing shall be destroyed or punished. This is the law of the Great Spirit.

Knowing these ancient knowledge and warnings for this day we are much concerned with your government's actions in trying to make life secure for your people by using armed forces in foreign lands. Our traditional and religious elders all have warned against going into other lands to create trouble. It would mean, they say, sowing the seeds of self-destruction. Therefore, the Hopi must remain to his religion and his instructions and not participate in a white man's wars. Our concern is to do the will of the Great Spirit and only by humble prayers we take care of our homeland and all people who are here with us. We are awaiting our true white brother to come to purify this land and life. When he comes with great power and might we must not show our bows or arrows to him but stand before him unafraid and speak with him in our own language and thereby showing our strong faith in the Great Spirit. For this reason we must bring this vital message direct to you as the highest leader of your people. We are willing to speak on these matters with you or with anyone who desire real peace, human understanding and true brotherhood.

We have for a long time tried to bring this message to your government officials, the so-called Hopi Tribal Council, and the two former presidents of the United States and even knocked on the doors of the United Nations but no one has heard our voice. We shall make attempt to tell the whole world for we seek real justice, real peace and freedom for all good people on this land and would not want to see our homeland be destroyed by gourd of ashes or H-bombs. We ask the whole world to do away with wars and sit down together to live peace as intended by the Great Spirit. We ask justice and correction of all wrong doings on Hopiland and in the lands of our Indian brothers. This is our sacred duty to our people. We asked you to stop leasing of our homeland now and investigate, correct and punish, if necessary, those found guilty of this dishonorable destruction of our way of life. Our life is at stake!

/s/

DAN KATCHONGVA, HOTEVILLA

DK/t.b.

[Exhibit 115.]

25. CONTINUING CHALLENGES TO DOCKET 196  
AND THE HOPI TRIBAL COUNCIL

At the same time a new challenge to the Hopi Tribal Council was sent to the Secretary of the Interior. The traditional Hopi leaders took the position that the payment of attorneys fees to John S. Boyden was illegal, and they asserted that several Tribal Council members were not legally entitled to be on the Council under its own constitution and by-laws. (Exhibit 115A.)

Traditional Hopi protests were also again addressed to the Indian Claims Commission. In a letter of February 1, 1965 (Exhibit 116) the opposition to Docket 196 was again clearly stated:

We, the undersigned, traditional and religious leaders of the Hopi People, do hereby, announce to you and to the world that all traditionally established Hopi villages of Lower Moencopi, Hotevilla, Old Oraibi, Shungopavy and Mushongnovi have never hired attorney, John S. Boyden, to represent them on a suit against the government of the United States and have never authorized the so-called Hopi Tribal Council to sell, lease or anyway dispose of our ancient homeland for we hold all this land in common and on the religious bases . . . .

One of the most significant traditional protests to the Hopi Tribal Council was the continuing boycott of the Council. Minutes of a Hopi Tribal Council meeting of March 10, 1965, show that the Council was still--ten years after official Council recognition--comprised of only a bare quorum of certified members. Needless to say, it had been difficult over the years to conduct business with such a membership. But the Council had worked with Boyden to devise a procedure for overcoming the problems presented by absent members. That procedure was

discussed at the March 10, 1965 meeting after questions of its legality had been raised:

Chairman Thomas was given the authority to ask Mr. Boyden's opinion of the legality of appointing alternates for representatives who are unable to attend a council meeting....Mr. Boyden indicated that there was nothing in the constitution that says that alternate representatives to the Council is not legal and nothing that prohibits it. This has been done for years and the only thing it says is that the manner in which he will be chosen is according to what the village says. [Exhibit 117.]

The only way in which the Council had been able to function was by having those members present at a Council meeting appoint someone to fill the seat of a missing, certified representative. That appointee was then deemed to be an elected and certified representative to the Council who could be counted as part of the quorum necessary to conduct the remainder of that meeting's business. It is hard to conceive of a more devious and perverse corruption of the concept of representative government. Yet Boyden and the BIA apparently gave this procedure their blessing.

In December of that same year, another written protest was made about the representation of Boyden and the continuation of Docket 196. This protest was made directly to Boyden and the Hopi Tribal Council. (Exhibit 117A.) At the same time, a new operating budget for the period of December 1965-November 30, 1966, was made by the Council. Flush with their mineral leasing revenues, the officers of the Council were designated full-time, paid tribal employees, and funds were budgeted to pay Boyden \$54,000 for general counsel work performed from 1957 through August 1965. With an annual attorney's fee scheduled at \$9,000, Boyden was the highest paid employee of the Council at that time.

26. THE UNEXPLAINED LINK BETWEEN JOHN S. BOYDEN  
AND PEABODY COAL COMPANY

The first coal mining agreement which the Hopi Tribal Council made was with Fisher Contracting Company in 1961. It was terminated in October 1962. But even before the termination of that agreement, Peabody Coal Company had, as early as 1961, expressed interest in mining Hopi and Navajo coal. (See p. 127, above.) By March 1962, Boyden had informed the Hopi Tribal Council about Peabody's interest in entering into coal mining leases with the Hopis.

In August 1963, after the Healing v. Jones decision had been made, the Hopi Tribal Council authorized Boyden to negotiate a lease with Peabody of 58,270 acres of land found in the northeastern part of the 1882 Hopi Reservation, an area known as Black Mesa.

In 1964, the Hopi Tribal Council entered into an exclusive drilling and exploration permit with Peabody. Finally, on May 16, 1966, the Hopi Tribal Council held a meeting to approve a major Peabody coal lease. The official minutes of that meeting report: "A representative from the Sentry Royalty Company (a subsidiary of Peabody Coal Company) was present at the meeting." A proposed coal lease was presented to the Council by that Peabody representative and attorney Boyden recommended Council approval. The Council gave its approval and on about June 6, 1966, the lease was formally signed.

The Secretary of the Interior added his approval and the lease went into effect.

Throughout the 1960s the Hopi Tribal Council continued to do business with Peabody Coal Company. For example, in November 1966, the Hopi Tribal Council discussed a possible railroad link between the Santa Fe Railroad and Peabody Coal Company. In March 1967 the Council granted permission to Peabody's subsidiary to construct a slurry pipeline for its coal.\* In September 1967, the Council acted on the assignment of its Peabody lease interest to Kennecott Copper, a new parent company, which took control of Peabody after a merger in March of 1968. In February and March 1969, the Council discussed Peabody's mining efforts in the Joint Use Area and approved the transfer of certain leased land rights between Black Mesa Pipeline Co. and Peabody Coal Company. In November 1969, a new lease was made between Peabody and the Hopi Tribal Council for the mining of 10,240 acres of land. This lease was approved by the Secretary of the Interior on April 9, 1970.

Throughout the 1960s, during all of these and other dealings with Peabody, the Hopi Tribal Council was represented by attorney John S. Boyden, who had been authorized by the Secretary of the Interior to take legal action as general counsel on behalf of the Hopis.

Further research into Boyden's activities during the 1960s suggests that he may have been representing both the Hopi Tribal Council

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\*The coal mined on Black Mesa by Peabody is pulverized and mixed with an equal amount of water for transport in a 275-mile pipeline to the Mohave electric generating plant. About 3,400 acre-feet of ground water has been pumped each year from aquifers below the arid Hopi surface. This "mining" of water has also been vociferously opposed by the traditional Hopis.

and Peabody Coal Company at the same time. If true, this may constitute a conflict of interest.

Documentary evidence of Boyden's work for Peabody is found in the 1966 and 1967 editions of Martindale-Hubbell's<sup>\*</sup> attorney directory. This national directory is the leading reference work on attorneys and their clients. Each year attorneys supply lists of their representative clients to that directory and these are published the following year as part of a profile of the legal work the attorneys perform. In the 1966 edition of Martindale-Hubbell, John S. Boyden's law firm of Boyden, Tibbals, Staten & Croft listed among its representative clients both the Hopi Indian Tribe and Peabody Coal Company. The same listings were included in the 1967 edition for the same law firm. These listings strongly indicate that Boyden was representing Peabody Coal Company while he was negotiating the 1966 lease for the Hopi Tribal Council. (Exhibit 118.)

This information and the information about Boyden's representation of Aztec Oil and Gas in the first court challenge to mineral leases (see p. 135), raises questions about Boyden's representation of his Hopi clients. It would be extremely unusual for an attorney for a coal owner to simultaneously represent a buyer who has an ongoing lease to mine the same coal, without running afoul of the canons of ethics on conflicts of interest.\*\*

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\* Martindale-Hubbell Law Directory (Martindale-Hubbell, Inc., Summit, NJ.)

\*\* The Code of Professional Responsibility provides: A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment. A lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

In an effort to have some light shed on this situation, letters were written by the authors of this report to Mr. Boyden, Aztec Oil and Gas, and Peabody Coal Company in early October, 1978. The correspondence which followed has confirmed that Boyden worked for corporate mineral interests, but it has failed to clarify the extent of Boyden's work for them.

Aztec Oil and Gas, through their parent company Southland Royalty, admits that Boyden did represent Aztec in the 1964 lawsuit in which the Hopi Tribal Council and Aztec were co-defendants, but says, "Mr. Boyden never billed Aztec for any legal fees and he was not paid any sum" for the legal work he did. (Exhibit 118d.) Boyden billed his Hopi clients for one million dollars at the very same time he gave free legal assistance to this wealthy mineral company.

Peabody Coal Company, through Marvin O. Young, its Vice-President and General Counsel, takes the position that it does not "believe" that Boyden was employed by Peabody during the years that Boyden listed himself as counsel for Peabody in the Martindale-Hubbell directory. (Exhibit 118e). However, Mr. Young states that Mr. Boyden was employed by Kennecott Copper Corporation and others to help with the merger of Kennecott and Peabody. Negotiations for that merger began in 1966, and it was concluded in March, 1968. Such work for Kennecott would raise new questions about ethics, for the 1966 Hopi-Peabody coal lease included a clause prohibiting Peabody from assigning its interest to Kennecott without approval of the Hopi Tribal Council. In September, 1967 Boyden recommended to the Hopi Tribal Council that it approve the transfer of Peabody's interest to Kennecott without any change in the lease's terms. This approval occurred during the same time that the merger arrangements were being concluded, a merger which may not have been

concluded if the Hopis had not approved the assignment of the 1966 lease or had insisted on additional compensation or other changes in the lease as a condition to their approval. The Hopi Tribal Council received only a token payment of \$10.00 for agreeing to the assignment. (Exhibit 118A.) The Navajos had received \$100,000.00 for agreeing to the assignment of the Navajo interest in the Peabody lease, and the B.I.A. appears to have recommended that the Hopis insist on a similar payment. [Exhibit 118A(5).] But Boyden advised against "attempting to extract money from the coal companies under these circumstances." [Exhibit 118A(6).] Meanwhile, without the knowledge of the Hopis, Boyden was being paid a total of at least \$10,689.58 for the work he did for the same mineral companies and for the banks which needed Hopi approval of the assignment and were prepared to give the Hopis some \$100,000.00 to get it. Again Boyden appears to have been on both sides, representing at the same time both the Hopi Tribal Council and a mineral company doing business with the Council.

An attorney from the counsel's office of Kennecott Copper Corporation has contradicted Peabody Coal Company. (Exhibit 118f) He denies that Kennecott ever employed Boyden, but admits that Boyden did legal work for the Peabody-Kennecott merger of 1968. This Kennecott attorney says that the only legal work which Boyden performed was the research and drafting of an opinion regarding the legality of conveying Peabody's Utah assets to Kennecott in the merger. He takes the position that this work was done only for the banks (principally Morgan Guarantee Trust) which lent money to finance part of the merger, and not for Peabody or Kennecott.

A copy of the seven page legal opinion which Boyden prepared for the merger fails to square with either of these positions and shows instead that Boyden worked for Peabody and for Kennecott and for the banks which helped finance the merger. This document, dated March 29, 1968 and

signed by John S. Boyden for his law firm, is addressed to all of the parties and financial interests involved in the 1968 merger, including Kennecott and Peabody. It begins:

"Dear Sirs: We have acted as your special counsel..."

Thus, in his own words Boyden again states that he was employed by the corporate mineral interests who were at the same time doing business with his Hopi Tribal Council clients. (Exhibit 118 B.)

When asked in correspondence about his employment for corporate mineral interests, Boyden has denied any conflict of interest but has chosen to speak only in generalities:

"You may be sure that I have represented the Hopi Tribe for a good many years and have never represented any other client whose interests in the subject matter were adverse to the Hopi Tribe at the time of such representation. Nor have I ever represented the Hopi Tribe and a client with previous adverse interests without the knowledge and consent of both clients." [Exhibit 118 B (9)]

When asked for specifics, Boyden has refused to answer questions about his prior employment for Aztec, Peabody and other corporate mineral interests. He has also declined to specify how any of his representation of a "client with previous adverse interests" was made known to his Hopi clients and agreed upon by them.\*

A complete clarification of Boyden's relationship to corporate mineral interests would require the analysis of information which is yet unavailable. However, the questions raised by the presently available information are substantial and serious.

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\* Research indicates that Boyden did inform the Hopi Tribal Council in 1964 of his offer to represent any of the mineral companies who were sued in the first court challenge to the mineral leases. It is not known whether the Council was informed or aware of Boyden's other work on behalf of mineral companies.

The extent of BIA awareness of these matters is unknown. Since the Secretary of the Interior approved each extension of Boyden's attorney contract with the Hopis, and since the Department of the Interior and the BIA were intimately involved in all phases of the Hopi mineral leasing business, the United States government shares full responsibility for any attorney conflicts of interest and for all strip-mining which has occurred and which continues today in Hopi country. As discussed elsewhere in this report, traditional Hopis have been consistent and open in their opposition to Peabody's strip-mining of their sacred land.\*

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\* It is noteworthy that many Hopi "progressives" and others have been extremely critical of the terms of the coal leases entered into by the Hopis and other Indian peoples. People who have not necessarily disapproved of the strip-mining of Hopi land have considered the terms of the mining leases to be overly favorable to Peabody Coal Company. It has been reported that over a 35-year period the Hopis will make \$14 million in royalties while Peabody makes \$750 million and while the state of Arizona receives more than \$175 million in corporate taxes alone. In June, 1978, the Office of Audit and Investigation of the Department of the Interior concluded that the royalty rates should be renegotiated to "a more realistic and equitable level." [Exhibit 118B(10).]

27. 1970: THE FIRST DECISION IN DOCKET 196  
ON THE "EXTINGUISHMENT" OF HOPI LAND RIGHTS

On September 23, 1968, traditional leaders of Shungopovy sent President Lyndon B. Johnson another invitation to meet with them to discuss their problems. The President referred the matter to his Secretary of the Interior as all other presidents have done with requests for such meetings. (Exhibit 118 C.)

Two major problems which traditional Hopis wanted to discuss continued to fester and grow during the 1960s. One problem was the continuing Docket 196 case in the Indian Claims Commission which was quietly moving toward its conclusion. The other was the increase in mineral leasing, including the strip-mining of Black Mesa coal, which had been authorized by the Hopi Tribal Council and the BIA. In the early 1970s, there were significant legal developments pertaining to both of these problems.

The first of these developments came in Docket 196. On June 29, 1970, the Indian Claims Commission rendered its first major decision in the Docket 196 case. Its "Opinion on Title" ruled that the Presidential Order establishing the 1882 Hopi Reservation had the legal effect of extinguishing Hopi Indian title to all lands lying outside the boundaries of that reservation, some 2,191,304 acres according to the Commission. The Commission further ruled that the United States government had extinguished Hopi aboriginal title to all lands within the 1882 Hopi Reservation except for the District 6 "Exclusive Hopi

reservation" area. The second extinguishment was said to have occurred in 1937, at the time the grazing districts were being created and the Navajos were being officially "settled" on the 1882 Hopi Reservation. Hopi land rights which, according to the Commission's ruling, were thus extinguished in 1937 totalled 1,868,364 acres.

On behalf of the Hopi Tribal Council, John S. Boyden would appeal this ruling and argue unsuccessfully that Hopi title to additional thousands of acres of land had been extinguished by the United States. The theory of Boyden's case was that the United States had exercised its authority to take Hopi land, and having thus legally terminated the Hopi rights to the land, the United States must now pay compensation. Here again one sees both the Hopi Tribal Council claimants and the United States government arguing that Hopi title to land had been extinguished by the United States. They differed only as to the number of acres lost.

A result of this theory is that the more land Boyden and the Council concede to have been legally taken, the greater the claim award and the greater Boyden's fee.

The traditional Hopis remained firm in their opposition to any monetary payment for loss of historic land rights. Their position was, and remains, that Hopi aboriginal land title had not lawfully been extinguished or surrendered, and that all Hopi land rights--whether or not presently recognized or acknowledged by the United States government or its courts--should be carefully preserved.

Continuing their unflinching opposition to Docket 196, letters of protest over the new developments in the case were sent by traditional leaders to the Indian Claims Commission. A letter of July 15, 1970, from Dan Katchongva of Hotevilla (Exhibit 119) included this paragraph:

We the Hopi Indian Nation did not at any time file the claim for compensation for our land in the land claim department. Much we regret that our honorable name has been shamelessly used.

A letter of the same date signed by traditional leaders Starlie Lomayaktewa of Minshongnovi, Claude Kewanyama of Shungopavi, and Mina Lansa of Old Oraibi included these specific objects among others:

Dear Commissioners:

We have read in the Navajo Times, Hopi Action News, and other news papers, of your decision to recognize the Hopi Indian Tribe's Claim to the aboriginal use and ownership of approximately 4.4 million acres in Northeastern Arizona.

We, the Traditional religious leaders and Chiefs of the Hopi Indian Nation want you to be informed of our united view which is as follows:

1. The Hopi tribal council which submitted this so-called Hopi tribal land claim to your Commission does not and never has, represented us, the Hopi traditional chiefs and our people and our villages. The Hopi tribal council has no authority as far as the Hopi original aboriginal land is concerned. We, the Hopi traditional chiefs, have this authority and we have never and will not recognize the so-called Hopi tribal council to be the government of the Hopi people.

2. We, the Hopi traditional chiefs, will not accept any land settlement wherein the United States government will pay us for our land. This is against our traditions and religious beliefs. Therefore, this decision by your Commission is unacceptable to us and our people and our villages.

3. The so-called Hopi Indian Tribal claim as submitted by the so-called Hopi tribal council through its attorney, Mr. John Boyden, is therefore illegal. It is, further, only a small portion of our true original aboriginal land area.

We, the Hopi traditional chiefs are now working on what we consider to be our true, original aboriginal land area prior to the

establishment of these United States. At the proper time, we will submit this to the Congress of the United States. Therefore, we respectfully ask that all consideration on the so-called Hopi tribal land claim stop and no further consideration be given to it. [Exhibit 119A.]

Another written objection to the continuation of Docket 196 was sent to the Indian Claims Commission by Dan Katchongva on January 8, 1971. (Exhibit 120.) As with all previous traditional Hopi objections to Docket 196, the Indian Claims Commission appears to have filed these letters without taking any other action. Ignoring the protests and claims of illegality, the Commission simply prepared to move on to the next stage of the proceedings during which it would make a determination of the value of the Hopi lands at the time they were taken. This determination of value would form the basis of the final award of \$5 million.

28. THE SECOND COURT CHALLENGE TO MINERAL LEASES:  
STARLIE LOMAYAKTEWA ET AL. V. ROGERS MORTON  
AND PEABODY COAL COMPANY

On August 4, 1970, another letter was sent to the United States President. By this time, Richard M. Nixon was in the White House. The same traditional Hopi leaders who had sent the 1970 protests about the developments in Docket 196 protested to President Nixon about the environmental destruction caused by the white society around them:

The white man, through his insensitivity to the way of Nature, has desecrated the face of Mother Earth. The white man's advanced technological capacity has occurred as a result of his lack of regard for the spiritual path and for the way of all living things.

The white man's desire for material possessions and power has blinded him to the pain he has caused Mother Earth by his quest for what he calls natural resources. All over the country, the waters have been tainted, the soil broken and defiled, the air polluted. Living creatures die from poisons left because of industry. And the path of the Great Spirit has become difficult to see by almost all men, even by many Indians who have chosen instead to follow the path of the white man.

.....

Today the sacred lands where the Hopi live are being desecrated by men who seek coal and water from our soil that they may create more power for the white man's cities. This must not be allowed to continue for if it does, Mother Nature will react in such a way that almost all men will suffer the end of life as they now know it.

As "rightful spokesmen for the Hopi Independent Nation," they called for a meeting with the President. (Exhibit 121.)

The response from the White House was from Nixon's lawyer, Leonard Garment, who wrote a patronizing letter full of platitudes about the pros and cons of strip-mining and the possibility of democratic change through participation in Hopi elections (Exhibit 122 ):

The President has asked me to thank you for your letter of August 4, and Mr. [Bradley] Patterson has told me of his conversations with you and Miss Evening Thunder about the coal enterprise in the Hopi area.

I share your concern about the physical ugliness resulting from strip-mining. Yet the concern about this aspect of the mining venture surely must have been weighed by the Tribal Council along with the other pros and cons involved in granting the lease.

In our democratic society--and the Hopi tribe has elections--the place for the resolution of issues between majorities and minorities is first of all the ballot box. It would not be proper, or even consistent with our common hope for Indian self-determination, for either the Bureau of Indian Affairs or the White House to intervene in this an essentially internal, tribal matter. A balancing of relative goods and evils is involved, but the only forum for that balancing as I see it is the Hopi Tribe itself and its elected institutions.

The new Commissioner of Indian Affairs, Calvin N. Brice, also sent a letter in response. (Exhibit 123.) His was even more patronizing:

Thank you for your August 4 letter. The President has requested that we respond to your expressions of concern with the present trend of abuse to our environment.

The President has repeatedly stressed a need for the protection of our environment including all factors such as air, land, water, and people. Many programs have been initiated toward the goal of people living in harmony with their surroundings. It is very gratifying to see the unified response which the American people are giving the President in support of these control and corrective programs.

There is a great need to make people aware of the dangers from air and water pollution, waste disposal, and uncontrolled exploitation of the natural resources. The greater task, however, is to generate action from the people who can and should be active in obtaining harmonious controls and conditions within which man can continue to live fruitfully in his environment.

The Hopi Traditional Village Leaders are to be congratulated for their awareness of the environmental pollution problems. We are certain your contribution and active participation with ongoing programs will be welcomed.

It is clear that the traditional Hopi leaders were no longer being taken seriously, that they were being addressed like school children.

The traditional Hopis were not, however, discouraged. They continued to make their position known by registering a protest directly with the Hopi Tribal Council and attorney John S. Boyden in a letter of August 6, 1970, challenging the strip-mining leases. (Exhibit 124.)

The Hopi Tribal Council and attorney Boyden also ignored the protests. They continued their efforts to expand coal leasing by pressing forward their legal battle with the Navajo Tribal Council.

On January 12, 1971, traditional Hopi leaders sent another petition of protest to President Nixon, this time focusing their attention on new legislation which was being considered to authorize a formal partitioning of all of the 1882 Hopi Reservation between Hopis and Navajos. (Exhibit 125.)

Looking for a remedy, the traditional Hopi leaders contacted the Native American Rights Fund (NARF) and asked for legal assistance. The NARF attorneys agreed to handle a lawsuit to challenge the Black Mesa leases and the Hopi Tribal Council's misuse of authority. On May 14, 1971, a lawsuit known as Starlie Lomayaktewa et al. v. Rogers Morton and Peabody Coal Company was filed in the U.S. District Court for the District of Columbia. This was the second time the traditional Hopi leaders had gone to court to challenge the leasing of Hopi land to mineral interests. (See part 22 above.)

The plaintiffs in the case were some sixty traditional Hopis, including Kikmongwis and other religious leaders from the respective Hopi villages. Included in this carefully prepared lawsuit was a Statement of Hopi Religious Leaders which was attached as Exhibit A:

#### STATEMENT OF HOPI RELIGIOUS LEADERS

Hopi land is held in trust in a spiritual way for the Great Spirit, Massau'u. Sacred Hopi ruins are planted all over the Four Corners area, including Black Mesa. This land is like the sacred inner chamber of a church--our Jerusalem.

The area we call "Tukunavi" (which includes Black Mesa) is part of the heart of our Mother Earth. Within this heart, the Hopi has left his seal by leaving religious items and clan markings and plantings and ancient burial grounds as his landmarks and shrines and as his directions to others that the land is his. The ruins

are the Hopi's landmark. Only the Hopi will know what is here for him to identify--others will not know.

This land was granted to the Hopi by a power greater than man can explain. Title is invested in the whole makeup of Hopi life. Everything is dependent on it. The land is sacred and if the land is abused, the sacredness of Hopi life will disappear and all other life as well.

The Great Spirit has told the Hopi Leaders that the great wealth and resources beneath the lands at Black Mesa must not be disturbed or taken out until after purification when mankind will know how to live in harmony among themselves and within nature. The Hopi were given special guidance in caring for our sacred lands so as not to disrupt the fragile harmony that holds things together.

Hopi clans have traveled all over the Black Mesa area leaving our sacred shrines, ruins, burial grounds and prayer feathers behind. Today, our sacred ceremonies, during which we pray for such things as rain, good crops, and a long and good life, depend on spiritual contact with these forces left behind on Black Mesa. Our prayers, songs, ceremonies, and rituals draw their strength and vitality from the spiritual forces left by our ancestors. Each year, after our ceremonies in the Kiva of each village, Hopi messengers carry our sacred prayer feathers and cornmeal and plant them at these spiritual places and shrines. This is our contact with the spirit, people who are our ancestors who lived and traveled in these areas. The purpose is to bring rain so that our crops will grow. If these places are disturbed or destroyed, our prayers and ceremonies will lose their force and a great calamity will befall not only the Hopi, but all of mankind.

Hopis are the caretakers for all the world, for all mankind. Hopi lands extend all over the continents, from sea to sea. But the lands at the sacred center are the key to life. By caring for these lands in the Hopi way, in accordance with instructions from the Great Spirit, we keep the rest of the world in balance.

To us, it is unthinkable to give up control over our sacred lands to non-Hopis. We have no way to express exchange of sacred lands for money. It is alien to our ways. The Hopis never gave authority and never will give authority to anyone to dispose of our lands and heritage and religion for any price. We received these lands from the Great Spirit and we must hold them for him, as a steward, a caretaker, until he returns.

Eagle shrines are located throughout the Black Mesa area. The prayer feathers that are so essential to our religious life and all our ceremonies must be Eagle feathers. Without them, we can-

not place and carry our sacred messages to the spiritual world, we cannot hold the land for the Great Spirit. If the eagles are forced to flee the heart of our Mother Earth because of man's activity, it will no longer be possible for us to live in our spiritual and religious way. The life of all people as well as animal and plant life depend on the Hopi spiritual prayers and song. The world will end in doom.

Water under the ground has much to do with rain clouds. Everything depends upon the proper balance being maintained. The water under the ground acts like a magnet attracting rain from the clouds; and the rain in the clouds also acts as a magnet raising the water table under the ground to the roots of our crops and plants. Drawing huge amounts of water from beneath Black Mesa in connection with the strip-mining will destroy the harmony, throw everything we have strived to maintain out of kilter. Should this happen, our lands will shake like the Hopi rattle; land will sink, land will dry up. Rains will be barred by unseen forces because we Hopis have failed to protect the land given us, as we were instructed. Plants will not grow; our corn will not yield and animals will die. When the corn will not grow, we will die; not only Hopis, but all will disintegrate to nothing.

We, the Hopi religious leaders, have watched as the white man has destroyed his lands, his water and his air. The white man has made it harder and harder for us to maintain our traditional ways and religious life. Now--for the first time--we have decided to intervene actively in the white man's courts to prevent the final devastation. We should not have had to go this far. Our words have not been heeded. This might be the last chance. We can no longer watch as our sacred lands are wrested from our control, as our spiritual center disintegrates. We cannot allow our control over our spiritual homelands to be taken from us. The hour is already very late.

Signed:

Starlie Lomayaktewa,  
Kikmongwi of Mishongnovi

Ned Nayatewa,  
Kikmongwi of First Mesa

Jack Pongayesvia,  
David Monongye,  
Religious Leaders of Hotevilla

Mina Lansa, Kikmongwi of  
Oraibi, Kyakotsmovi and  
Lower Moenkopi

Claude Kewanyama,  
Kikmongwi of Shungopavi  
and Sipaulovi

Thomas Banyacya, Sr.,  
Official Interpreter,  
Village of Kyakotsmovi

Carlotta Shattuck,  
Recorder,  
Village of Walpi

In their complaint, the NARF attorneys first argued that the Secretary of the Interior did not have the legal authority to delegate leasing powers to the Hopi Tribal Council as he had done in 1961, 1964, and 1966. (See, pp. 124, 135.) Second, it was argued that the Hopi Tribal Council was illegally constituted when it approved the Peabody leases in 1966 because only six of its members (four less than a legal quorum) were properly certified in accordance with the Hopi Constitution. The other five individuals who voted as members of the Council at that time had never been certified by the Kikmongwi of their respective villages as required by the Constitution. Third, it was argued that the Secretary of the Interior had systematically discriminated against the traditional Hopis and had violated their most fundamental religious rights. Fourth, it was argued that the Peabody leases were arbitrary, capricious, and violative of fiduciary obligations since one agency of the Department of the Interior, the Bureau of Reclamation, was purchasing the largest part of the electric power generated by the coal which was being strip-mined on Hopi land. The Secretary of the Interior had therefore been the buyer of the coal at the same time that he was, as the seller, obligated to approve the leases and assure the Hopis the best possible price for their resources!

The United States Courts refused to address any of these important issues. Instead, after the case was transferred from Washington, D.C., to an Arizona federal court, a decision was made dismissing the

case on a procedural ground. In its decision the court reasoned that the Hopi Tribal Council was an indispensable party to the lawsuit because it had signed the Peabody lease. But since the court also found that the Hopi Tribal Council had sovereign immunity and would not voluntarily become part of the case, the action could not be heard by the court.

The United States had avoided a court challenge to the legality of the Hopi Tribal Council and its dealings with the BIA and Peabody Coal Company, by giving the Council full recognition as the legitimate, sovereign Indian government, and thereby immunizing its dealings from court review.

The U.S. Court of Appeals approved the dismissal of the case in 1975 and the Supreme Court declined to hear it in 1976.\* The United States courts had thus ruled that there was no judicial forum in which the Hopi traditional leaders could have their day in court to challenge the strip-mining leases. In weighing the interests of all concerned, the courts had expressly decided that it was more important to keep the Peabody lease in operation than to test the allegations of illegality made by the traditional Hopi leaders. The Court of Appeals wrote:

Here, it seems to us, that the adverse effects of a cancellation

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\*Lomayaktewa v. Hathaway, 520 F.2d 1324, 1327 (9th Cir., 1975). The case was affirmed by the Court of Appeals under the case name just given. The Supreme Court declined to review under the case name of Susenkewa v. Kleppe, 425 U.S. 903 (1976).

of the lease on the Hopi Tribe far outweigh the adverse effects visited upon the 62 dissident traditional Hopis by reason of the failure to provide another forum for them.

In using the label of "dissident," the court completely discounted the fact that the 62 named plaintiffs included several Kikmongwis and many other religious leaders who spoke not only for themselves but for all of their people.

#### 29. PUBLIC LAW 93-531 AND THE PARTITIONING OF THE 1882 HOPI RESERVATION

During the first half of the 1970s, the Indian Claims Commission continued its consideration of the Docket 196 case. Proceedings were held to determine the value of the "extinguished" lands, and various appeals were processed.

Meanwhile the Hopi Tribal Council and attorney John S. Boyden pressed ahead with their plan to formally partition the 1882 Hopi Reservation into exclusive Hopi and exclusive Navajo areas. By December 1974, they obtained approval of elaborate legislation, commonly known as Public Law 93-531, which authorized the partitioning of these lands. The legislative scheme provided for a short period of time during which mediation would be attempted followed by a formal adjudication by a United States court. Under this legislation, the surface of the Joint Use Area would be divided but the mineral interests would continue to be jointly owned by the Navajos and the Hopis.\*

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\*Needless to say, whoever controlled surface rights effectively controlled all prospecting permits, strip-mining leases and ancillary development of roads, pipelines, etc.

The same legislation authorized "either tribe, acting through the chairman of its tribal council for and on behalf of the tribe" to sue the other over their respective rights within the Navajo Reservation as established by Congress in 1934. When Congress confirmed the boundaries of the "1934 Navajo Reservation," all of the patchwork of Executive Order Navajo reservations were included within its boundaries, but an unspecified possible Hopi interest had also been approved at that time. (Specifically, the 1882 Hopi Reservation had been drawn in such a way that its western boundary failed to include long-established Hopi communities, and possible Hopi rights in this area were preserved.)

Also provided for was a Navajo and Hopi Relocation Commission to effect the relocation of any Navajos or Hopis found on the wrong side of the final partition line. Congress authorized \$31,500,000 to accomplish relocation.

The legislation also authorized the tribal council chairmen of the Hopi and Navajo Councils to bring any other lawsuits against each other to "insure the quiet and peaceful enjoyment of the reservation lands of the tribes." But the same legislation made sure that the United States government would not be held responsible: "Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States." In short, Congress said let the Hopi and Navajo Tribal Councils fight each other in our courts, but don't pin any of the legal blame on the United States government.

At the time this legislation was being approved by Congress, the Hopi-Navajo situation received much attention in the news media. One notable newspaper article appeared in the Washington Post. "Whose Home on the Range?" by Mark Panitch, Washington Post, July 21, 1974, reviewed some of the developments leading up to P.L.93-531, and included the following analysis of some of the Hopi-Navajo issues:

While the Navajo leaders seem to decide their own policy in the Navajo capital of Window Rock, the locus of Hopi policy seems to be in Salt Lake City, almost 500 miles from the Hopi Mesas. Both the Hopi's energetic and effective lawyer, John Boyden, and their public relations counsel, Evans and Associates, are headquartered in Salt Lake City. And much of the Hopi success can be attributed to their Mormon allies.

The Church of Jesus Christ of Latter Day Saints has had a close association since the 1890s with the "progressive" faction of Hopis. Mormons were the first missionaries to be allowed to preach on the Hopi Mesas after the Spanish friars were driven off. Many "progressive" Mormon Hopis have sat on the tribal council in the past 40 years. "The Mormon religion is the predominate Hopi (Christian) religion," says John Dwan, director of public relations for Evans and Associates.

Through their Mormon allies, the Hopis also have developed allies in the worlds of industry and government.

.....  
While Boyden was lobbying in Congress and arguing in the courts, Evans and Associates virtually stage-managed a range war on the borders of the Hopi reservation.

During 1970-1972, few papers in the Southwest escaped having a Sunday feature on the "range war" about to break out between the two tribes. Photos of burned corrals and shot up stock tanks and wells were printed although such incidents were not widespread.

.....  
By calling Evans and Associates, a TV crew often could arrange a roundup of trespassing Navajo stock. Occasionally when a roundup was in progress, Southwestern newsmen would be telephoned by Evans and notified of the event.

A print reporter could arrange a tour of the disputed area in a BIA pickup truck driven by the ranger [a white former rodeo cowboy hired by the Hopi Tribal Council to patrol their fenceline].

Interviews with then Hopi Chairman Clarence Hamilton could also be arranged through Salt Lake City. But they were granted only when BIA officials could be present and the officials usually answered the questions. At the height of the "range war" tribal officials apparently lost whatever control they had to Salt Lake City and BIA.

.....  
The issue generally was, and still is, that the BIA has "frozen" construction, including well drilling, in the joint use area as a way to force Navajos to comply with the stock reduction order. Instead, many Navajos simply drive their stock to water inside the Hopi exclusive-use areas.

The "stage-managed range war" was linked directly to the drive for control of mineral resources. Further questions about possible conflicts of interest with respect to mineral development were raised in the same article's discussion of the Evans and Associates public relations firm:

At the same time Evans and Associates were representing the Hopi Tribe in 1970-'73, they also represented a trade association of 23 utility companies engaged in building power plants and strip mines in the Four Corners area. The group was called WEST Associates and their mailing address was the same as Evans and Associates.

"The Indians have resources to sell and our other clients have money to buy these resources," an Evans-for-Hamilton spokesman told a reporter. "There is no conflict of interest there." Besides, he said, the BIA had to approve the contract between the Hopis and Evans.

The arrangement was convenient, however. The relationship between the Hopi council and the power companies strip mining their land became almost symbiotic. On the one hand, Hamilton speeches written by Evans would be distributed through the public relations machinery of 23 major Western utilities. On the other hand, these utilities would tell their customers, often through local media contacts, that the Hopis were "good Indians" who wouldn't shut off the juice that ran their air conditioners.

The link of the partitioning to the control of development of coal

resources was obvious:

Navajo Tribal Chairman MacDonald noted that the tribe which controls the surface controls access to the minerals. That tribe can grant such things as leases, exploration rights and rights of way for roads.

And the economic importance of the partitioned surface rights to "progressive" Hopi cattlemen was also commented upon in the same article:

Bureau of Indian Affairs officials at the Hopi Agency at Keams Canyon, Arizona, say that land recovered in the dispute will be used by "progressive" Hopi to raise beef cattle for market. The establishment of a beef industry among the traditionally agricultural Hopi is a BIA goal that goes back almost 100 years.

The same newspaper article concluded with a discussion of the split between "progressive" and "traditional" Hopis over all of these developments:

The Hopi Tribal Council, which is pressing a traditional Hopi quest for land rights, is largely composed of Hopis who have been influenced by whites. The Bureau of Indian Affairs officials and the missionaries who are close to many council members represent the forces that have sought for about 80 years through schools and economic pressure to deculturate the Hopi.

Many Hopi traditionals are now ridiculed by the council members. Some Hopi traditionals today are more comfortable with their traditional enemies, the Navajo, who maintain their ceremonial cycle and native language, than they are with their Anglicized Hopi relatives. Many of the traditionals have in fact sided with the Navajo in the land dispute.

Although the eventual relocation plan would most drastically affect the Navajos, some 3,500 of whom were slated for relocation, as opposed to only 40 Hopis, the traditional Hopi leaders would continue their opposition to the partitioning and relocation program and would form instead a Hopi-Navajo Unity Committee.

In the 1970s there was an enormous amount of litigation (and attorneys fees) in the wake of Healing v. Jones and this new legislation, as the attorneys for the respective tribal councils fought it out in the federal courts.\*

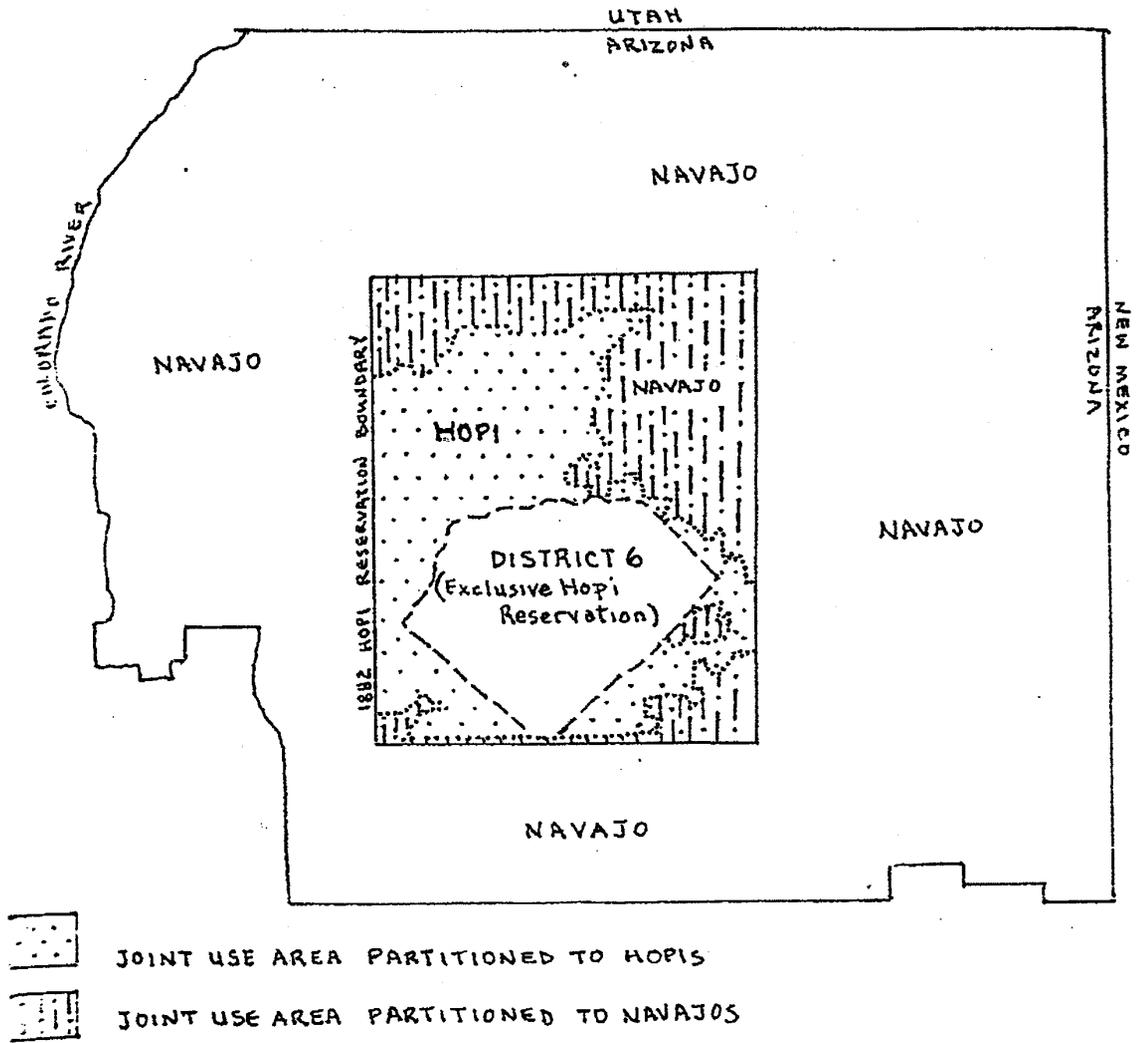
By early 1978, the partitioning process had been declared constitutional and a partitioning plan first recommended by the federal mediator William E. Simkin had been approved (see map below, page 163).

The position of the traditional leaders on this partitioning of Indian land had been expressed many times, even as early as 1972 when the lobbying efforts of Boyden and the Council became known. A 1972 letter from traditional leaders to Congressman Sam Steiger included the following paragraph explaining their opposition:

On April 5, 1972, we want to meet with the Navajo Traditional and religious Headmen to work out a common stand against this bill which will again cut up our homeland and to create more division. We want the Navajo Elders to sit down with us to look seriously into our Way of Life, Religion and Land in the light of our traditional and religious knowledge. We want no interference from outside people until we come up with a solution among ourselves as the First People on this land. We do not want any more cutting up of our Sacred Homeland by anyone. Those who claimed to represent the Hopi People now in Washington, D.C. do not represent

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\*For example, there were five decisions by the 9th Circuit Court of Appeals pertaining to the efforts to segregate the Navajos from the Hopis. Hamilton v. Nakai, 453 F.2d 152 (9th Cir., 1972); United States v. Kabinto, 456 F.2d 1087 (9th Cir., 1972); Hamilton v. MacDonald, 503 F.2d 1138 (9th Cir., 1974); Sekaquaptewa v. MacDonald, 544 F.2d 396 (9th Cir., 1976); Sekaquaptewa v. MacDonald, F.2d (9th Cir., May 15, 1978). Many other matters were heard at the District Court level.



either we Kikmongwis or the majority of the Hopi People. (Exhibit 125A.)

This letter was signed by Mina Lansa, Kikmongwi from Oraibi; Starlie Lomayaktewa, Kikmongwi from Mushongnovi; Claude Kewanyama, Kikmongwi from Shungopavy; Ned Nayatewa, Kikmongwi from the Consolidated Villages of First Mesa; David Monongye, Traditional religious leader from Hote-

villa; and Thomas Banyacya, Interpreter for traditional Hopi leaders.

In choosing to ignore and undermine the authority of traditional Hopi Leaders such as these, the United States government had consciously cut out of the decision-making process those Indian leaders who were most dedicated to a non-divisive solution to Hopi-Navajo problems.

### 30. THE \$5 MILLION SETTLEMENT IN DOCKET 196

During the early 1970s, the traditional Hopi leaders continued to protest the strip-mining of Black Mesa and all of the other problems flowing from the ever-broader assertion of power by the Hopi Tribal Council. (Exhibit 126.) In the name of the Hopi Independent Nation they sought to bring both national and international attention to the abuse they and their country were suffering at the hands of the BIA, the Council, and Peabody Coal. Concerned non-Indians joined in many of these protests, some focusing on the environmental issues, others challenging the legality of the Hopi Tribal Council as well. (Exhibit 127.)

In response, a weekly Hopi newspaper, Qua' Toqui, carried out a fairly consistent campaign to disparage the traditional Hopis. Published by a staunch Mormon who is the brother of the Hopi Tribal Council chairman, the newspaper has served as a mouthpiece for "progressives" and for the Council. For example, an editorial headlined "Time is running out on Hopi Traditionalists" appeared in a November 1973 edition of the newspaper. (Exhibit 128.) It writes an epitaph for tradi-

tional Hopi leaders, and it is reminiscent of Oliver LaFarge's flippant prediction of 1935 when he wrote, "I believe that within twenty years the conservative faction will have dissolved." (See p. 43, above.)

In the mid-1970s, forty years after LaFarge's prediction, the traditional Hopi leaders had overcome by refusing to disappear. They continued to command widespread respect, and they mounted counter-attacks on the legitimacy of the Council. (Exhibit 129.) The strength of the traditional leaders would be demonstrated at the time attorney John S. Boyden would propose a settlement of Docket 196 in 1976.

The final days of the Docket 196 case began at a secret meeting of August 4, 1976, attended by the Hopi Tribal Council, the Superintendent of the BIA Hopi Agency, and attorney John S. Boyden. No minutes of that meeting have been made public. The following discussion of what transpired was reported by the BIA Superintendent to the Secretary of the Interior in a memorandum prepared some three months later (Exhibit 130):

[Mr. Boyden] had discussed [a proposed settlement of Docket 196] in detail with the Hopi Tribal Council at an August 4, 1976 meeting wherein authorization was given to settle the case at a figure not less than \$5,000,000.00. Detailed minutes of that meeting were not taken as the authority was considered as a matter of confidential attorney and client relationships not to be disclosed until after negotiations had been completed. I attended the said August 4, 1976 meeting at the invitation of the Chairman of the Hopi Tribe.

Once again it is seen that attorney Boyden considered only the Hopi Tribal Council as his clients. The rest of the Hopi people were

excluded from this highly important "confidential attorney and client matter."

Despite the fact that settlement efforts in the Docket 196 case were well under way at the beginning of August 1976, no public notice of that fact was made until October 14, two and one-half months later.

Beginning on October 14, 1976, a well-orchestrated plan was begun to rush the settlement through a rubber-stamp approval process which would give the appearance of widespread approval by the Hopi people. The proposed settlement was first made public at a "regularly called" Hopi Tribal Council meeting held on October 14 and 15, during which Boyden advised the Council to accept a \$5,000,000 offer made by the United States in the Docket 196 case. According to a BIA report of that meeting, the Council voted unanimously to accept the settlement offer.

The BIA Superintendent then issued a call for a general Hopi meeting to be held on October 30, 1976, "to consider and vote upon a proposal to settle" the Docket 196 claims. Notices were immediately posted announcing the meeting.

In response to these sudden developments, 35 traditional Hopi leaders met at Kyakotsmovi on Sunday, October 24, 1976. They called the meeting in order to give the Hopi Tribal Council chairman and the BIA Superintendent an opportunity to explain why the Hopi people were being asked to vote on the proposed settlement. Both of these officials refused to attend. The day after their meeting, the traditional leaders

sent a letter to both the Council chairman and the BIA Superintendent, which demanded that no vote be held on October 30. First, the letter criticized the refusal of the two men to attend the meeting called by traditional leaders. Second, it challenged the BIA Superintendent's claimed impartiality:

We found that BIA Supt. Secakuku in his letter of Oct. 23, 1976, stated, "I do not wish to prematurely make my personal views known so as not to unduly influence anyone."

As an official of the Bureau of Indian Affairs (BIA) you have no business meddling with our Hopi Affairs.

We have learned that you are not telling the truth in your letter for we now know that you have already held a meeting with the government Hopi employees and some people from First Mesa. You have already "unduly influenced" some of the people you talked to in Keams Canyon. [Exhibit 130A.]

Added to this "undue influence" of the BIA Superintendent was his involvement in the secret Council meeting of August 4, 1976, and his cooperation in planning and calling an early meeting as requested by Boyden and the Council. The BIA had been clearly partial, willing to work and meet only with the Council group.

The same letter included specific traditional Hopi objections to the planned October 30 meeting, including a protest over the fact that it was being held on the day of an important religious ceremony in the strongly traditional village of Shungopavy:

Following our serious consideration of the proposed settlement and other related issues, we have been asked by our religious headmen and people that:

1.) As Hopi Kikmongwis, we strongly oppose this proposed settlement of John S. Boyden and that we will never sell our sacred homeland.

2.) Both Hopi Supt. Alph Secakuku and Chairman of the Tribal Council Abbott Sekaquiptewa be informed by letter that there will be no voting by any Hopi on Oct. 30, 1976 on this proposed settlement, as was scheduled.

3.) We have just been informed about this proposed settlement of John S. Boyden's a week ago and since none of the Councilmen have up to the present time, fulfilled their duties by fully explaining this vital issue, it is too late for any Hopi, especially traditional elders, to fully understand this lawyer's written language within two weeks.

Therefore, there must be no voting on this proposed settlement at this time or in the future.

4.) On Oct. 30, 1976, there will be a Women's Religious Society performing in Shungopavy Pueblo and our religious Hopi leaders all have asked that this Lollcon Ceremony be respected by all Hopi people, by members of the Council and the BIA.

5.) Since the majority of the people in traditionally established Pueblos have never accepted the Hopi Tribal Council Constitution and By-Laws, never signed a contract or contracts of John S. Boyden's and have never sent anyone to the Tribal Council, we will never accept the \$5,000,000 by voting, as we do not vote.

6.) It is your responsibility as servants to the Hopi people to do what the Hopi people want and not what you want.

On October 28, 1978, the newspaper Qua' Toqti carried a headline story about this letter and the opposition of the traditional Hopi leaders to the October 30 meeting. The meeting was not, however, cancelled. Instead the BIA Superintendent continued to broadly advertise the meeting, placing written notices as far away as Phoenix, Arizona, and running announcements on the local radio and television networks.

Despite all of these publicity efforts, an official total of only about 400 people attended the October 30 meeting, out of a total population of about 8,000 Hopis, and only 250 stayed to vote at the end of the meeting.

At the meeting attorney John S. Boyden distributed a variety of written materials in support of the settlement proposal. An extremely noteworthy inclusion in these materials addresses the possible damag-

ing effect which Docket 196 might have on Hopi land rights if allowed to continue in the courts. At the time of the October 30 meeting, the Docket 196 case was pending in the United States Supreme Court, and Boyden was afraid that a Supreme Court ruling would be a "considerable danger" to the Hopis because it might give more support to the Indian Claims Commission's findings on the extent of Hopi aboriginal lands and the extinguishment of Hopi title to those lands. Such a ruling could, Boyden reasoned, be used against the Hopi Tribal Council in their suit against the Navajos.

In short, Boyden admitted that the actions already taken by the Indian Claims Commission in Docket 196 were damaging to Hopi aboriginal land rights. He hoped to minimize the damage by settling the case before the Supreme Court placed its final imprimatur on the decisions already made by the Indian Claims Commission and the Court of Claims in Docket 196.

In admitting that Docket 196 presented a legal threat to Hopi land rights, Boyden was acknowledging what traditional Hopi leaders had feared all along. Traditional Hopi leaders had not believed Boyden's earlier arguments that Docket 196 posed no threat to Hopi land rights, and they were certainly not going to agree with his new argument that it would be necessary for the Hopis to take the settlement money in order to preserve whatever legal rights remained before the Supreme Court did further damage in the Docket 196 case.

One Qua' Toqti account shows how the Hopis were presented with this confusing and perplexing legal advice by this strongly "progressive" newspaper:

The Tribal attorney Boyden stressed the fact that although the Hopis are being offered money for the land, that does not mean the Hopis are selling the land because the Hopis by going to court to recover some of the 1934 Reservation land, they stand to recover some of the land for which they would have already been paid.

He urged the Hopis to consider the offer of cash settlement\* carefully and consider what might be the consequences if they preferred to go to court and lost the case. [Qua' Toqti, October 14, 1976]

An editorial from Qua' Toqti which appeared two days before the October 30 meeting also urged approval of the settlement on the ground that it would help preserve Hopi land rights. It took issue with the traditional Hopi leaders who continued to categorically oppose any payment of money in Docket 196, but it acknowledged that there was a consensus among the Hopi people against exchanging land rights for money:

Many of the people, particularly the "so-called traditionalists" are saying that they will never consent to selling our Mother (our land) for any amount of money. But then, that is the general feeling among all the people.

However, the big problem is that, unless we accept the negotiated cash settlement, we may greatly lessen our chances to recover any of the aboriginal land. [Exhibit 131]

With traditional Hopis boycotting the meeting of October 30, with some 2,500 Hopis reportedly attending the religious ceremonies at Shungopavy, and with those Hopis in attendance at the meeting being told that they must immediately accept the money settlement if they wished to preserve Hopi land rights, it is understandable that the final vote favored approval of the settlement. Yet, by the end of the

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\*In recommending approval of the \$5 million settlement, Boyden estimated that the Indian Claims Commission would award about sixty cents (\$.60) per acre for the 2,191,304 acres of land extinguished in 1882, and about one dollar (\$1.00) per acre for the 1,868,364 acres extinguished in 1937 when District 6 was established.

meeting many of the 400 in attendance had left, leaving only 250 present to vote. The final official tally was 229 in favor and 21 opposed to the settlement.

This vote of approval was a foregone conclusion but hardly a show of strength. Rather, it was another demonstration that in Hopi country, voting and democracy have had little in common.

On the strength of these results, a hearing on the settlement was scheduled for November 11, 1976, at the Indian Claims Commission's offices in Washington, D.C. Those who were present at that meeting in support of the settlement were attorney John S. Boyden, BIA Superintendent Alph H. Secakuku, BIA employee Nathan Begay, Hopi Tribal Council chairman Albert Sekaquaptewa, and several other delegates from the Hopi Tribal Council, including Samuel Shingoitewa, Roger Honahni, Dewey Healing, George Nasanotie, and Logan Koopee. It goes without saying that travel funds were not supplied to those traditional leaders who might have wished to be present to express their opposition to the settlement.

Opposition was, however, clearly expressed in a telegram of November 9, 1976, which was sent from Mina Lansa, Kikmongwi of Old Oraibi, Claude Kewanyema, Kikmongwi of Shungopavi, Ned Nayatewa, Kikmongwi of First Mesa Villages, and Guy Kolchaftewa, religious leader of Mishongnovi. Their telegram to the Indian Claims Commission, the Secretary of the Interior and the U.S. Department of Justice, reads as follows:

On behalf of all the Hopi traditional Kikmongwis, religious society Mongwis and all the Hopi people who follow the old traditional Hopi way, we solemnly express our disapproval of the proposed settlement between the Hopi Tribe and the United States of America, in Docket No. 196.

We do not accept the authority of the Hopi Tribal Council to represent the Hopi people. We have never signed or authorized the contract of Mr. John S. Boyden, nor have we ever authorized him or the Hopi Tribal Council to enter into any land settlement. We have not authorized five or more Hopi individuals who will appear before you on this proposed settlement. We solemnly declare now that whatever they agree to, will not be binding on all of us and the Hopi people whom we represent.

Our respective villages have exercised their own sovereignty since the beginning of our time. We have never given up our sovereignty by treaty, nor have we lost it by war or otherwise. We have always exercised the right of sovereign civil government over our village and clan lands through our religious organizations.

The publicity given for only one week and the hearing held regarding the proposed settlement was clearly inadequate to inform all the Hopi people or to allow them to express their opinions. In addition, all of the religious leaders and many of the Hopi people were deeply involved in a religious ceremony which conflicted with the date of the hearing and prevented their appearance. Claude Kewanyama, Kikmongwi of Shungopovi so stated to the chairman of the Tribal Council but this was ignored. We therefore submit that the vote of some 250 Hopis out of a tribe of 8,000 members, taken at the hearing is not truly representative of the opinions of the majority of the Hopi people.

Our religious traditions and prophecies prohibit the Hopi people from giving up any claim to our ancestral lands for mere monetary consideration and letters and petitions from hundreds of Hopi people who oppose the proposed settlement and in support of this message will follow shortly. [Exhibit 131A.]

At the November 11, 1976, hearing before the Indian Claims Commission, this telegram was discussed by those present.\* This telegram was

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\*A letter of protest from an American Indian Movement observer of the October 30 meeting was also discussed at that time.

totally disparaged as evidenced by these comments made by one of the Commissioners at the hearing:

I would not want the record to show that that is anything--that this sort of evidentiary material is anything the Commission should give any consideration to.

This is the time for hearing the question of whether or not the settlement should be approved. And I think that clearly, the Chairman, Mr. Sekaquaptewa, has ably represented the Tribe for years, as have you, Mr. Boyden, and I have no doubts at all that the matter was done in a perfectly proper way.

I think this sort of thing causes the Commission and the whole process of the settlement of Indian claims a great deal of difficulty.

I think the Government has acted in a very mature way in settling this case and, of course, we are grateful to all of the matters that pertain to it, but this really came in from left field--and it's nothing but a red herring.

If Mina Lansa is intelligent enough to debate these matters on television, before the members of the Tribe, she certainly knows the place to oppose this hearing. This is simply propaganda. [Docket 196 Hearing transcript, November 11, 1976, pp. 41-42; emphasis added]

None of the Hopi Tribal Council representatives present made any statement to challenge this biased and disrespectful slur on traditional Hopi leaders. Rather, through their silence and their own references to the traditional Hopi leaders as "the dissident group," these Council representatives helped create the atmosphere in which a protest statement of Hopi Kikmongwis was dismissed out of hand as "a red herring" which was "simply propaganda."

As promised in the telegram, a petition signed by over 1,000 Hopis did follow. On December 13, 1976, the Indian Claims Commission

received a petition opposing the settlement of Docket 196 which was signed by 1,047 Hopis, almost five times the number who had voted in support of the settlement at the October 30 meeting. (Exhibit 132.)

The traditional Hopi leaders who submitted this petition to the Indian Claims Commission, the Secretary of the Interior and the Department of Justice, expressed the same views as those set forth in the telegram of November 9. In addition, they once again explained that the low vote of 250 in favor of the settlement had in fact been evidence of widespread Hopi opposition to the settlement:

It is also our Hopi custom that when we object and reject a proposal, we stay away from it to express our profound disapproval in a more personal way. To the Hopi People, this behavior and trait indicates not a matter of indifference or "we don't care attitude," but in a deeper sense, our tribal vote against a proposed settlement. This was another reason why so few Hopi People attended the hearing on October 30, 1976. In order to prove that this disapproval was indeed the case, we have asked our people to sign petitions so that our disapproval of the proposed settlement could be expressed in a more acceptable manner to the United States of America. We realize that it is difficult for you, members of a foreign people, to understand our Hopi custom but it is also true that we have a difficult time understanding your customs.

The traditional Hopi leaders once again challenged the legitimacy of the Hopi Tribal Council, and ended their letter and petition with these words:

Finally, we solemnly and cordially invite you to come to our homeland, to sit down with us and consider this whole matter with us. This invitation is again in accordance with our Hopi Traditions. We were told that when the time came for land to be considered, you will come to us and so in accordance with that tradition, we cordially invite you to come.

The petitions were filed in Washington and ignored. When the Indian Claims Commission's approval of the settlement was submitted to Congress on December 30, 1976, there was no mention of the traditional Hopis' position.

31. ANOTHER TRADITIONAL HOPI PETITION  
TO THE UNITED STATES PRESIDENT

A few weeks after the settlement was approved by the Indian Claims Commission in Docket 196, another petition of protest was sent to another United States President. Jimmy Carter had just been sworn in to office when a letter of January 31, 1977 was sent to him from the Hopi Independent Nation by Thomas Banyacya, Interpreter for the traditional leaders. (Exhibit 133.) Included in his letter are the following requests:

We urgently and respectfully request your new administration to review the entire scope of relations with the Hopi.

The Hopi never fought against the United States Government, were never conquered, and never signed a treaty or surrendered autonomy. The peaceful Hopi Independent Nation does not consider itself lawfully subject to the United States Government. We respect the laws of the Supreme Creator.

Mr. President, our Black Mesa is being strip-mined, the original Hopiland devastated by Federal imposition, and our people--strong spiritually but weak economically--are at the desperate point of a last stand. Court decisions are being made without reference to the concurrence of the majority of those governed by the court. The most urgent and immediate concern is a pending decision for February by the Tucson Federal Court to disrupt the entire Hopi land and life, uprooting us, and promoting violent resistance as a last recourse. Also the Land Claims Commission is forcing a settlement under the guise of the Tribal Council which will

destroy the spiritual land base of the Hopi people. The spiritual leaders would no more think of selling their mother earth than the United States would give up its national historical shrines.

Only you, Mr. President, can begin an investigation to ascertain for yourself the facts of our plight.

No investigation was undertaken by the President. One month later, United States District Judge James A. Walsh ordered the partitioning of the Joint Use Area of the 1882 Hopi Reservation under Public Law 93-153. (See p. 163.)

Friction and boundary disputes increased as the Hopi Tribal Council police impounded Navajo cattle and took other steps to secure the lands they were fighting over.

And at the same time, on February 28, 1977, President Carter submitted to Congress a request for appropriation of the \$5,000,000 settlement in Docket 196. The Docket 196 appropriation request was listed in his submission as "Compensation for land."

Once again, traditional Hopi leaders had petitioned a United States President, and once again their petition had fallen on remarkably deaf ears.

#### 32. ATTORNEY'S FEES FOR JOHN S. BOYDEN

On April 22, 1977, attorney John S. Boyden submitted his application for attorney's fees to the Indian Claims Commission. His lengthy Petition for Attorney's Fees asked for the maximum allowable: 10% of the \$5,000,000 settlement award in Docket 196.\*

In his petition, Boyden lists a number of factors in support of his request for the maximum fees. Among these factors is the resistance he encountered from the traditional Hopi community:

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\*The Washington, D.C. law firm of Wilkinson, Cragun & Barker had been of counsel in Docket 196. They joined Boyden and his firm of Boyden, Kennedy, Romney & Howard of Salt Lake City, Utah, in the Petition.

Additional complications were presented to the attorneys by the conflicting Navajo claims and by the factional division of a major segment of the Hopi population and the refusal of the majority of the tribal members associated with the so-called "traditional" faction to cooperate in any way with the preparation and presentation of this claim.

.....  
Counsel was also confronted with a complete lack of cooperation from a major, traditional faction of the Hopi Tribe.

This argument is identical to the argument made in support of his first million-dollar fee which the Hopi Tribal Council approved in December 1964, after the first mineral leases were obtained. (See p. 137.) It demonstrates that Boyden still saw himself as counsel for only one group of the Hopis, the Hopi Tribal Council "progressive" faction. And it shows again that he had full knowledge of the fact that the traditional Hopis did not accept him as their counsel or approve of his work in the Docket 196 case. Moreover, Boyden's own words confirm that the traditional Hopis continued to be a "major segment" or "major faction" of the Hopi people, an admission that they were not a small, dissident group as they had often been characterized.

On July 27, 1977, the Indian Claims Commission approved a 10% attorney's fee award of \$500,000 for John S. Boyden and the attorneys associated with him in the case. In October 1977 Boyden received this money. He also received an additional payment of \$20,000 which had been authorized as "attorney's expenses" for the expert witness fees of anthropologist Dr. Fred Eggan who assisted Boyden in Docket 196. This left a total of \$4,480,000 to be paid to the Hopis.

The work which John S. Boyden had done over the years for the Hopi Tribal Council has proved to be extremely remunerative. Apart from the million-dollar fee approved by the Council in 1964, and the \$54,000 award of back attorney's fees budgeted by the Council in 1965 (see p. 142), and the \$500,000 received in 1977, Boyden had also successfully lobbied for statutory attorney's fees in Public Law 94-531. He has received from the U.S. government a reported \$350,000 for his work in the litigation he has brought against the Navajos on behalf of the Hopi Tribal Council. Added to these considerable sums are the regular attorney's fees and expenses Boyden has received each year as general counsel to the Hopi Tribal Council and any special fees which may have been authorized for his work on mineral leases, the enforcement of the Healing v. Jones decision, and other matters of concern to the Council. In the fall of 1978 the Hopi Tribal Council passed a resolution authorizing attorney's fees of \$140.00 per hour for Boyden's legal work against the Navajos.

A Freedom of Information Act demand for a specification of all attorney's fees paid to the Council's attorney has been denied by the BIA on the ground that it is a confidential matter which the BIA must keep secret as a part of its "trust responsibility" to the Hopis. This secrecy is completely inconsistent with the Hopi Constitution which provides that "all payments from the tribal council fund shall be a matter of public record at all times." [Article VI, Section 1(f).] Since the Secretary of the Interior expressly approved the Hopi Constitution and made it law in 1936, and since he has also approved all of the attorney contracts made between the Hopi Tribal Council and John S.

Boyden, and since he has also reviewed and approved all attorney's fees paid to Boyden under these attorney contracts, it is strange and even suspicious that the Department of the Interior suddenly takes the position that this information is secret or confidential. The Indian Law Resource Center has filed suit against the Secretary of the Interior to compel disclosure of the attorneys fees information.

35. THE PAYMENT OF THE DOCKET 196 AWARD  
THREATENS HOPI LAND RIGHTS

As interest in the traditional Hopis has grown in the non-Indian community, more and more protests and requests for information have been sent to the Indian Claims Commission, to Congress and to the President. The most recent actions in Docket 196 and the partitioning case have been followed by thousands of protest letters, telegrams, and petitions to Washington, D.C.

The catch phrases in the official answers to these letters, petitions, and requests for information show that the United States intends to continue obfuscating the issues by telling only half-truths about the effect of payment of the Docket 196 award. Some of the standard responses issued by the BIA and the Indian Claims Commission are the following:

The settlement of Docket 196 does not involve the sale, disposition, lease or encumbrance of any tribal lands or other property. The settlement can have no effect on the Hopi Tribe's existing interest in land or the uses to which its land is put.

...

In the settlement of Docket 196, the Hopi Tribe did not forego claims for land--no claim for the return of land was involved in the case.

...

The settlement of the case does not involve the sale or other disposition of any land or other Hopi property.

It is true that no "sale" of Hopi land is taking place in the strict legal sense of that word. There is no deed changing hands; no document will be filed in a courthouse showing a transfer of title

from the Hopis to the United States, if payment of the Docket 196 award is made.

It is also understandable that the United States government takes the position that the settlement will have no effect on the Hopis' "existing" interest in their aboriginal land, because the United States asserts there is no Hopi interest in aboriginal land which still exists today. Although there has been no legal test of Hopi aboriginal land rights under domestic and international law\*, the United States government rests its position on the assumption that all Hopi aboriginal land rights have already been legally extinguished by the United States government. If discussion of the possible adverse consequences flowing from Docket 196 begins with that premise, it is "truthful" to conclude that payment of the Docket 196 award does no damage to Hopi land rights, for there are no rights to damage.

However, if one begins a discussion of the effect of Docket 196 on Hopi land rights with an open mind which recognizes that there has been no definitive test of Hopi aboriginal land rights, that Hopi land claims may still be valid legal claims under United States law and international law, the possible effect of payment of the Docket 196 award is readily seen as disastrous. The threat comes from the Indian Claims Commission Act (25 U.S.C. 70u), which specifically bars any further Hopi claims once payment of the award is made:

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\*In Docket 196 both sides argued that Hopi aboriginal land rights have been legally extinguished.

The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy. (25 U.S.C. 70u.)

Under this statute, the payment of the Docket 196 award discharges all legal obligations which the United States has toward any matters touched upon during the Docket 196 proceedings. Since those proceedings determine that virtually all Hopi aboriginal land rights have been extinguished, that determination threatens to stand as a final and permanent conclusion of law which Hopis may not again be allowed to test in any other legal proceeding in United States Court.

Moreover, some United States courts have ruled that the Indian Claims Commission's findings of extinguishment are binding in other court proceedings where rights to that "extinguished" land are being contested by Indians seeking return of that land. This danger was disclosed by attorney Boyden in the October 30, 1976, meeting at which he expressed his fears about the Supreme Court adding its approval to the extinguishment findings already made in Docket 196 by the Indian Claims Commission and the Court of Claims.\*

Thus, as a matter of law, it is only a half-truth to say that no "sale" of Hopi land rights are involved in Docket 196. The payment of the Docket 196 settlement award would extinguish or substantially impair any Hopi legal claims to the return of their aboriginal lands. The net

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\*In fact, the Navajos have sought to use the extinguishment findings against the Hopi Tribal Council in their litigation over land rights in the 1934 Navajo Reservation.

legal effect would be an exchange of money for land as the traditional Hopi leaders have always feared.

Although the United States government and the BIA have never squarely faced this issue and formally admitted these possible severe adverse consequences, the Solicitor's Office of the Department of the Interior has expressed its "tentative" conclusion in a hearing before a U.S. Senate committee at which payment of a Seminole award by the Indian Claims Commission was at issue:

We feel tentatively that it would be inconsistent with the whole purpose of the Indian Claims Commission Act to grant awards of money for aboriginal rights and then keep those rights intact after that award was completed and the moneys were distributed.\*

This is as candid and truthful as the United States has been in its official pronouncements on the effect of payments of claims awards such as Docket 196 on Indian land rights.

If payment of the Docket 196 award is made over their objection, the traditional Hopi people and the Hopi Kikmongwis will have many strong legal arguments to make in any future proceedings at which the Docket 196 case is used against them. There is a clear documentary history of traditional Hopi objection to the Docket 196 claim and to the actions of the attorney who asserted the claim on behalf of the Hopi Tribal Council. The illegality of the Hopi Tribal Council which prosecuted the claim has been established. It can be shown that the Docket 196 case was begun with misleading assurances that it might lead to recovery of land, and it can further be demonstrated that the Hopi

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\*Distribution of Seminole Judgment Funds, Hearing before the United States Senate Select Committee on Indian Affairs, 95th Congress, 2nd Session, March 2, 1978, p. 58.

people have been deliberately misled about its possible adverse consequences to their land rights. The very settlement approval vote was demonstrably a sham. Finally, the historical record shows that all attempts on the part of traditional Hopi leaders to intervene in the Docket 196 proceedings and to stop the continuance of those proceedings were dismissed or disregarded out of hand. There has been a total denial of due process under United States law, and a subversion of Hopi rights and sovereignty under international law.

While all of these arguments of illegality could be made if payment of the Docket 196 award is made, it would not be necessary for the traditional Hopis to make these arguments if payment can be stopped. For that reason, the traditional Hopis and their supporter have continued and intensified their opposition to payment.

#### 34. ANOTHER PETITION SENT TO PRESIDENT CARTER

The traditional Hopi leaders have recognized the legal damage which payment of the Docket 196 award could inflict on aboriginal Hopi land rights. They have also recognized the practical adverse consequences which would flow from acceptance of money, for they recognize that the general public would view the payment as the final settling of an old debt. .

However, the principal objection which the traditional Hopi leaders have always made to the payment of such a claim award has

been based on their sovereignty and the interrelated religious obligation to avoid any actions which may be construed as a sale, division, or surrender of any of their historic and sacred lands. These principles are the central theme which has run through all Hopi resistance to United States interference with Hopi land rights. It was the core of the fight against allotment in the early 1900s, against the establishment of the Hopi Tribal Council in the 1930s and 1950s, against mineral leases and strip-mining in the 1960s, against the division and partitioning of Hopi land in the litigation between the Hopi Tribal Council and the Navajo Tribal Council in the 1960s and 1970s, and against Docket 196 from its inception in 1951 to the present.

One of the most eloquent and concise statements of these traditional Hopi principles is found in a petition sent to President Jimmy Carter in October 1977.

Mr. President:

We address you as a representative of all citizens of the United States in a final attempt to establish right relations between our religious, traditional, sovereign nation and yours. We are the spokesmen and clan guardians for the Kikmongwi and other leaders of the highest religious societies of the village of Shungopavi, in the Hopi Nation. Our Hopi Kikmongwis have appealed to the Presidency and government agencies many times in the past, but their earnest pleas, statements, invitations and warnings have not received any reciprocally thoughtful response.

As our prophecies have foretold, we now find we have reached very perilous times. Our way of living in harmony with the earth and all other life forms and our way of holding our land in common and in trust for all people and all future generations is in immediate danger of extinction. As a result of the Indian Reorganization Act of 1934, a "Hopi Constitution" was drawn up by B.I.A. anthropologists and aides and imposed upon the Hopi people through

a fraudulent election which has never been investigated. It is important for you to understand that we already have our own form of government and decision-making, and that your "democratic" way of majority rule is alien to us. Also foreign to us is your "separation of church and state". Our Hopi way is to recognize the Great Spirit as our supreme leader in all facets of life. We do not divide God and man, religion and politics. All aspects of our relationship to land and life are intertwined.

As a result of the "Hopi Constitution," a "Hopi Tribal Council" was created. During its first year of operation, representatives were sent from two of the traditional villages to determine if this council would be operating as promised, by consulting with the Kikmongwis before making any decisions affecting the Hopi people. When it was discovered that they were to function basically as a branch of the United States Government, in effect a puppet government, with the Secretary of Interior as their ultimate authority, those villages withdrew their representatives. The "Hopi Tribal Council" has never been a legally constituted body according to their own constitution since 1937. However, it is through that body that we are now brought to these critical times. Their attorney and main advisor, since 1951, has been Mr. John S. Boyden, whose contract has never been authorized by the Kikmongwis. In all actions, legal and political, that the council has undertaken in the name of the Hopi Tribe they have not had the authorization of the true and rightful Hopi Leaders. It is now clear to us that the Tribal Council, in concert with Boyden, have conspired to divide, fence, and sell this land, our birthright, and to profit thereby. To us, it is unthinkable to give up control over our sacred lands. We have no way to express exchange of sacred lands for money. The Hopis never gave authority to anyone to dispose of our lands and heritage and religion for any price, and never will. The Hopi were given special guidance in caring for our sacred lands so as not to disrupt the fragile harmony that holds things together. We received these lands from the Great spirit and we must hold them for Him, as a steward, a caretaker, until He returns.

Now we have been made fully aware that their ultimate intention is to strip the Kikmongwis and traditional, religious leaders of all power and authority over our land and life. It is felt by most of the Hopi elders and people that something must be done now to stop the dictatorial manner in which the "Tribal Council" has been operating. The views, opinions, and wishes of the traditionally established village people have been totally ignored and this is a violation of freedom of speech and religion, our basic human rights.

We are writing to you now in respect to, and support of, our Kikmongwis and Traditional, Religious Leaders and their many patient

and peaceful appeals. We feel another communication from them should not be necessary. Further, we write you because you have often expressed your commitment to human rights and protection of the environment and we find our rights, indeed our very existence as a people, on the land, in jeopardy. We would like to remind you of a promise made by your predecessor Harry Truman, in 1946, when he said, ". . . It would be a miracle if . . . we had not made some mistakes and occasionally failed to live up to the precise terms of our treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made." We know there have been many treaties made between the United States and Native Peoples, a treaty with the Navajo Nation and a treaty of Guadalupe Hidalgo made between the United States and Mexico in 1848. We want to know if you are still honoring these treaties. Because it is within the authority of your office to correct any unjust laws and acts we urgently request that you meet with the Traditional Hopi Leaders, and in addition, call for a Congressional investigation into all U.S. Government dealings with the Hopi People.

We feel that for a full understanding of our plight, the nature of our religious society, and the basis upon which our Kikmongwis' authority rests, and as a fulfillment to our prophecy, you must come to our villages in person to meet with our leaders and our people. As our Kikmongwis are concerned about all Hopi people and you are concerned for all your people, it is important that you meet together now to prevent the dangers we foresee for this land and life if things are not worked out. We ask that you deal honorably with us and see that justice is done. The hour is very late.

We, the spokesmen and clan guardians for the true traditional Religious leader, Kikmongwi Kewanyama, stand bound together, state and affirm the above and apply our signatures below:  
[Exhibit 134.]

This petition was signed by four traditional Hopi leaders, Harold Koruh, Otis Polelonema, Herbert Talaheftewa, and Earl Pela.

No action was taken by President Carter.

## CONCLUSION

It has been one hundred thirty years since the Treaty of Guadalupe Hidalgo, and almost one hundred years since President Chester A. Arthur established the 1882 Hopi Reservation. During that time the traditional Hopi leaders have time and again registered their complaints and protests with the United States government. During the past thirty years each United States President has received petitions from these Hopi leaders.

Routinely these petitions have been channeled for response and action to the Bureau of Indian Affairs of the Department of the Interior, the very source of most of the policies and practices which have been the subject of these Hopi grievances. It is the BIA which deliberately undermined Hopi sovereignty and failed to guarantee Hopi territorial integrity and human rights, and it is the BIA which imposed a fraudulent election in order to create the Hopi Tribal Council in 1936. The BIA has consistently worked with attorney John S. Boyden to advise, shore up and maintain the Council and the "progressive" faction of the Hopi people.

As a part of the Department of the Interior, the BIA has always been committed to the strip-mining of Hopi coal in the "national interest." With the blessing of the federal courts, the BIA and the Department of the Interior have repeatedly subverted and deprecated all legitimate Hopi opposition to the blatant exploitation of their sacred lands and resources. Moreover, it appears that the BIA has been wilfully blind to conflicts of interest and perhaps even fraud in the Hopi mineral development business.

To accomplish its goals, the BIA has over the years adopted policies which have aggravated Hopi-Navajo competition and friction. These policies have been beneficial only to lawyers and mineral development interests. They have created perpetual turmoil and hardship for thousands of Hopis and Navajos.

To create the appearance of fair dealing and restitution for past wrongs -- and to remove the clouds on land titles caused by Indian land claims -- the BIA fostered and nurtured the Docket 196 claim in the Indian Claims Commission. This claim, handled by attorney Boyden, has resulted in a judgment of \$5 million as compensation for the wrongful taking of some four million acres of valuable Hopi lands. The BIA is unconcerned by the fact that payment of this judgment threatens to extinguish Hopi title and claims for return of Hopi lands, and the BIA has actively sought to obscure this fact.

If the most recent Hopi requests for remedial action by the United States President are once again simply referred to the sole attention of the Department of the Interior and its Bureau of Indian Affairs, the refusal of the United States government to deal in good faith with the Hopi people will be amply and conclusively demonstrated. On the other hand, the Hopi situation presents an opportunity for new directions in Indian Affairs. If the present Administration chooses to change course and discard the colonialist policies and practices which have so frequently characterized the U.S. Indian program in Hopi country, there is every opportunity for the establishment of a new and mutually beneficial United States-Hopi relationship.