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# WILLIAM McKINLEY HOLT AND THE INDIAN CLAIMS COMMISSION

FRANCIS MOUL

When the bill to create the Indian Claims Commission (ICC) was signed by President Harry Truman on 13 August 1946, he said it would provide “a final settlement of all outstanding claims” by the Indians against the United States. The process would foster the policy of assimilation, he said: “Indians can take their place without special handicaps or special advantages in the economic life of our nation and share fully in its progress.”<sup>1</sup> These hopes were not realized, however, as tribes

faced three decades of difficult litigation, narrow opinions that reduced monetary claims, and many years when termination of tribes was the official policy of both presidents and Congress, against the wishes of the Indians.

One of the first three members of the Commission, sworn in on 10 April 1947 and serving longest of all eleven commissioners, was Nebraska lawyer William McKinley Holt, who served more than twenty-one years, until 30 June 1968, when President Lyndon Johnson failed to reappoint him. He saw the beginnings of the Commission’s work, which spanned thirty-one years and 852 cases; helped establish important basic policies and procedures; and served through a period of reform that adjusted those policies.

In an examination of how William Holt worked within the Commission, this article explores congressional wishes for establishing the ICC, how those wishes were followed, and what role Holt played. His role is established in several decisions he handed down, and particularly in the Pawnee Indian case (Docket 10), which was overturned by the U.S. Court of Claims and became one of the early, defining cases of the ICC.

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## THE INDIAN CLAIMS COMMISSION

Harvey D. Rosenthal, official ICC historian, wrote that "The subject of Indian claims is as old as the Nation. The tangle of legal issues that surrounds those claims is as complex as any facet of American jurisprudence."<sup>2</sup> Russel L. Barsh notes that from the American Revolution to 1900, Indians lost more than two billion acres of land to the United States, with half purchased for less than seventy-five cents per acre. Another 800 million acres were simply confiscated. In 1870, when American farmland was selling for an average of more than fifteen dollars per acre, Indian lands were resold for as little as twelve and one-half cents per acre. Adding up all the native lands and giving them a value of three hundred dollars an acre, in 1970, yields a value over \$560,000,000,000.<sup>3</sup>

In pushing for the ICC, Truman's secretary of the interior, Harold Ickes, called for the "broadest possible jurisdiction to hear all manners of claims, guarantee finality, establish an investigation division and allow review of the Court of Claims and the Supreme Court."<sup>4</sup> All those criteria were accepted by Congress. A key and unusual aspect of the Indian Claims Commission Act was its moral nature. Jurisdiction was broadened to include claims based on "unconscionable consideration," or treaty payments so low as to be beyond the conscience, and upon "fair and honorable dealings" not otherwise recognized by law.<sup>5</sup>

The ICC had remarkable powers to hear claims from any Native tribe, except Hawaiians, and grounds for the claims were nearly unlimited. All government departments were open for research and commissioners had the power of subpoena. Judgments were final unless appealed and once claims were decided, money was automatically included in Treasury Department appropriations and held for the tribes. In a disturbing ambiguity of the Act, tribes "may" choose to have attorneys but the U.S. "shall" be represented by the Attorney General who could "compromise" any claims presented. Further, Indian lawyers

were approved by the government and their fees limited to ten percent or less of successful claims, upon ICC approval.<sup>6</sup>

The ambiguity contributed to the distinguishing feature of the ICC: it acted as a court. It was not a fact-finding commission searching out the truth and providing relief but rather had all the rituals of jurisprudence, waited for briefs from attorneys, and examined enormous quantities of detailed testimony from anthropologists and historians, provided by opposing sides. An investigation staff was provided but was used very lightly by the ICC and seldom to develop case facts on their own. Rosenthal notes, "Since 1881 the Court of Claims had handled all Indian tribal cases, and it was to this body of precedent that the new commission looked. Its procedures and theories were largely adopted by the commission, in effect making it a court."<sup>7</sup>

The lack of investigations was a complaint Indian tribes, the Court of Claims, and even some commissioners leveled against the ICC. When John T. Vance was briefly chairman of the Commission, late in its work, he tried to institute reforms. He noted that no staff was assigned to the investigative branch, just a single "director" of the division, who did no more than "send out inquiries by mail to various tribes."<sup>8</sup> For a time, the division chief was Charles McLaughlin of Omaha, a former congressman.<sup>9</sup> Even under Vance, the division was not used because of a hiring freeze in government, opposition by other commissioners, and lack of funds. The Court of Claims, which itself did extensive work in research on appeal cases, cited the lack of ICC staff investigation as a major reason for overturning the ICC in the Pawnee case.

Another failing of the commission was its delay in decision-making. The Act established the ICC for ten years and tribes had five years to initiate claims. Congress extended the life of the commission five times, to 1978, as it became clear that the complexity of the cases delayed them for years. Vance noted the "bewildering series of hearings" that were often heard on each case.<sup>10</sup> Initially, these included

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FIG. 1. *Primghar High School Baseball Team, 1912. Left to right: Albert Halbach, Bill Holt, Harold Metcalf, Frank Halbach, Chester McClary, Forrest Potter, Dave Smith, Carl Fritzsche, Claude Potter, Ned Rooney, Wallace Smith, Dr. H. L. Avery - Coach, Sherman Hintz - Bat Boy. From the 1912 Primghar High School yearbook, courtesy of Gladys McDowell.*

United States admitted its injustice toward the Indians and a willingness to make amends. The claim money "meant a sizable injection of money into Indian tribal economies," and the Indians heightened their legal consciousness.<sup>16</sup>

In this mixture of new opportunities and old policies, William Holt played an integral part. He worked on more cases than any other commissioner but he was probably the only commissioner never to write either a dissenting opinion nor a separate concurring opinion. He always concurred with the majority opinion.

#### WILLIAM MCKINLEY HOLT

William Holt remains a mystery person, even today. There are notes on his biography in news accounts and an investigation by the Federal Bureau of Investigation prior to his appointment. But he never married and no

trace has been found of his personal papers from twenty-one years of work with the Commission. Although his case notebooks reside in the library archives of the University of Tulsa, along with the John Vance papers, there are no personal letters, notes or notations there, save for one cryptic marginal word, "Utah."<sup>17</sup> His few remaining commission colleagues who knew him personally are unanimous in their praise of him as a decent person.

According to the FBI report, Holt was born on 12 September 1896, at Primghar, Iowa. He never married and resided with his widowed mother until her death and then with his sister, who was a Lincoln, Nebraska, teacher. He attended school in Primghar, then attended Nebraska Wesleyan University at Lincoln for two years, receiving "fair grades." He transferred to the University of Nebraska and received an A.B. degree in 1920 and a law degree in 1921. "His grades were considered to be

below average in law school." During World War II he was a major of intelligence in the Army Air Force and afterward practiced law with the Lincoln firm of Wishart and Baird. He was also general counsel of the Security Mutual Life Insurance Company, with a \$3600 annual retainer fee. Theodore A. Sick, company president, recommended Holt highly "as to ability and character," judging him as possessing good legal ability but "probably a poor trial attorney." Holt was recommended, by colleagues, "without reservation" as to character, morals, and loyalty, but was described by a fraternity brother as "easy going" and not pushing to develop a large law practice. A judge described Holt as a "good steady lawyer" but not a brilliant attorney. Holt was a member of Sigma Phi Epsilon, a social fraternity, and was a thirty-second degree Mason and member of the Shrine Sesostri Temple. All persons the FBI interviewed commended Holt for his loyalty and "stated he is conservative in his ideas." He had no known criminal record and had an excellent credit rating.<sup>18</sup>

In response to a query published in the Primghar, Iowa, weekly newspaper, the *O'Brien County Bell*, two persons sent me information on Holt's early years. A woman who never knew him wrote, "I had a neighbor lady who was in high school when he was. She graduated in 1915 [Holt in 1914]. She always said the family was very poor and gave me the impression that it was a[n] underprivileged family. Will Holt, as she called him, never studied, was . . . sometimes in trouble, was blamed for everything that happened. After school [he] moved to Nebraska [and] made a great name for himself. [I] think she mentioned him to show how someone coming from nothing [and] probably hopeless in the townspeople's eyes made such a mark for himself." Another correspondent speculated that Holt's father was Elias T. Holt, who was a dentist and therefore probably much better off than the first letter would indicate.<sup>19</sup> In fact, his parents were Elias E. and Mary L. Holt. Holt's high school grades averaged in the low 80s on a 100 point scale.<sup>20</sup>



FIG. 2. William M. Holt, c. 1934. Courtesy of Nebraska State Historical Society.

Holt was a strong Republican and was sponsored in his appointment to the ICC by U.S. Senator Hugh Butler, a Nebraska Republican. According to a news account, Holt "once sought the Republican nomination for state representative, 34th district, but was unsuccessful. He never held any elective political office."<sup>21</sup>

Senator Butler recommended initial staff members to Holt for the commission and helped Holt and his sister settle into Washington, D.C., life. In a letter Butler noted:

the gentleman I spoke to you about for an apartment at Fairfax Village is Mr. William M. Holt of 1734 New York Avenue, care of Indian Claims Commission. As you know, he was recently confirmed by the Senate as a member of this Commission.

Mr. Holt and [h]is sister have temporary quarters until June 30th. Therefore I would greatly appreciate it if you would contact Mr. Blake, Manager of Fairfax Village, in behalf of Mr. Holt at your earliest convenience and let me know the result of your contact. Mr. Holt will be satisfied with a one bedroom apartment.<sup>22</sup>

In his work for the commission, Holt apparently gave full measure. His secretary, Anne Burch, wrote that "Mr. Holt was a very industrious man, arrived at the office at nine in the morning and left at five in the afternoon. He rarely took a break during the day, had regular conferences with the attorneys working with him on a case and in between took care of routine correspondence." She added that "Mr. Holt was a wonderful man. He was kind, had an easy going disposition, took his work seriously and had many friends in the legal community. It was a pleasure to have been associated with him."<sup>23</sup>

In a phone conversation, she was even more forthcoming. "He was one of the kindest men I ever worked for, a gentleman, and interested in my family. He was very fond of my husband. He was a wonderful man to work for—there was never another man I worked for that was as nice."<sup>24</sup>

In a phone interview, John Vance spoke of working with Holt for about a year on the Commission. He said, "Will was a highly regarded pol. He told me a senator from Texas, Tom Connally, was close to [Chief Commissioner Edgar E.] Witt and Connally was telling Witt and others not to hurry up [on deciding cases]. There was lots of money involved. This was informal pressure from senators who worked in favor of the bill [ICC Act]," to hold spending down. Later, when Holt was serving with two other commissioners, Harold T. Scott and Arthur V. Watkins, "Watkins and Scott didn't talk to each other. Bill was the only one to keep the place going [and acted] as a mediator between them." Vance described Holt as an "ancient,

conservative Nebraskan, straight Republican, a guy who was very responsible . . . and a very traditional lawyer."<sup>25</sup>

John Schiltz said in an interview that among the first three commission members (Edgar Witt, Louis O'Marr, and Holt), "O'Marr had more to do with [establishing basic] procedures than Witt or Holt. He [O'Marr] was the only one who really practiced law. My feeling is that O'Marr did more to shape the law."<sup>26</sup> O'Marr was a Wyoming lawyer and Holt was known as an insurance lawyer. Witt was a former lieutenant governor of Texas but he had also chaired two Mexican claims commissions before joining the ICC.

There was a small controversy in the Johnson Administration, concerning appointments to the ICC. The number of commissioners had been expanded to five to speed up the work, and none of the existing commissioners was reappointed. Holt, at age seventy with more than fifteen years of government service, was expected to leave office in September 1967, but under a new statute could stay until 30 June 1968, if he desired. In a memorandum to President Johnson, John W. Macy, Jr., personnel director, wrote that the act of Congress,

permits Holt to stay on longer . . . Commissioner Arthur Watkins and Commissioner Holt have usually found themselves on the opposing side of issues. Commissioner Watkins has told me that "I will not leave the Commission if Holt is reappointed." That statement could now be interpreted to mean that Watkins will not leave if Holt elects to stay on until June 30, 1968.<sup>27</sup>

In fact, Watkins did leave the Commission on 30 September 1967 and Holt stayed until the next June.

After leaving the ICC, Holt and his sister moved to Sun City, Arizona, where he died on 5 January 1971. His sister, Vera Virginia Mehner, a widow and former teacher with no children, passed away in 1978. She left a

\$310,000 endowment with the University of Nebraska Foundation to be used for law school scholarships in the name of William Holt. Interestingly, there was apparently no obituary of William Holt published. The *Sun Cities Independent* newspaper didn't print obituaries at the time of his death, and the Sun City Historical Society could find no record of one. There were no obituaries found in the *Lincoln Journal* or the *New York Times*. After extensive searching, it appears there are no other leads to explore the life of Holt.

#### HOLT'S WORK ON THE COMMISSION

A small record of Holt's work remains in a public hearing before a U.S. Senate Subcommittee of the Committee of Appropriations, 1958, where he appeared in the absence of Chief Commissioner Witt. Rosenthal writes that "Commissioner William M. Holt told a concerned appropriations committee that there was nothing it could do to speed up the Commission's work. He gently lectured the committee members on the complex legal process of the claims and the lengthy appeal procedure and concluded the work 'to be moving along rapidly' as possible."<sup>28</sup>

In his testimony, Holt also talked of the potential large numbers of Indian claims and their extent:

Senator Dworshak. The representative of the Justice Department pointed out the possibility that the Indians owned the entire United States and some of us pointed out that they would not be so indiscreet as to make any claim for it and assume the national debt and all the responsibilities inherent.

Mr. Holt. Well, there are claims, Senator, that cover a large portion except the Original Thirteen Colonies.

Senator Dworshak. There is a possibility.

Mr. Holt. Well, the claims are already filed and they cover a large portion of the United States.<sup>29</sup>

It is clear from all evidence that William Holt, as a conservative lawyer, did not bring creative, fresh ideas to the roles and procedures of the commission. His training and career had been as a traditional lawyer, and that was what he brought to the ICC table. In this he was similar to his first two colleagues, and there is no evidence that any but lawyers were appointed among the eleven total commissioners. Although they had broad powers and an unprecedented Act, in which for the first time the United States laid itself open to almost unlimited claims against it by American Indians, the commissioners chose to construe their role narrowly and with caution. In fact, beginning its first full year of operation with an appropriation of \$150,000 (Holt was paid \$10,000 annually at first), the ICC failed to use up those funds and returned \$64,000 to the Treasury. It was authorized twenty-three employees but employed only twelve the first year. Not "until 1951 did the Commission expend the full amount of its appropriation."<sup>30</sup>

This caution of the entire ICC is amply displayed in the first decisions. By 1951, twenty-five cases had been decided with nine dismissals, fourteen withdrawals, and only two decisions for claims awards, totaling \$3.5 million.<sup>31</sup> Holt's written opinion in claims cases supported this caution.

Holt wrote the opinion in one of the Commission's first decisions, *Fort Sill Apaches v. United States of America* (1949). There were two causes of action. The first was based on the alleged false arrest and imprisonment of 450 members of two bands of Apaches by the U.S. Army in 1886. They were confined, along with descendants, until 1913, when the 275 survivors were released at Fort Sill, Oklahoma. The Apaches sought \$7,500,000 to compensate for harm, suffering, and humiliation, along with the premature deaths of many Indians during their first three years in prison.



Holt denied the claim, saying the ICC had no jurisdiction over individual claims, and "We consider arrest and imprisonment a violation of personal rights of individual Indians." Although conceding that the Indians were members of the same bands, were all arrested together, at the same time, and suffered together, Holt said the allegations dealt with individual Indians. He thus agreed with the government that the commission lacked jurisdiction because there was no indispensable party to prosecute the claim and individual and personal claims were not within the scope of the ICC Act.<sup>32</sup> This decision ignores the moral clause of the act, which gave the commission nearly unlimited powers of jurisdiction and narrowly limited those who could bring claims to the ICC.

In *The Snake or Paiute Indians of the Former Malheur Reservation, in Oregon, v. United States of America* (1950), Holt wrote on the important Clause 5 of Section 2 of the ICC Act, the moral obligation clause for claims "based upon fair and honorable dealings that are not recognized by any existing rule or law of equity." The petitioners were Snake or Paiute Indians who sought an award for the "alleged failure of the defendant to properly care and provide for them." First, Holt found the Indians had no right to certain lands within the reservation because the U.S. Senate had not ratified the relevant treaty, and he dismissed a \$3.5 million claim. There was clear precedent for this decision.

As to the second cause,

It is contended that the [unratified] treaty was entered into at the close of a war in which the Indians signing the treaty had been subjugated and driven from lands claimed by them, and the promises made by the defendant [U.S.] to induce them to keep the peace and they would in turn be furnished a reservation, permanent homes, food, clothing and assistance towards civilization. These promises they claim were not kept by the defendant . . .

Holt dismissed this claim by reasoning that

there is shown to have been persistent efforts on the part of the Government to locate these Indians on reservations where they would receive care and support from the Government, and if the Government's efforts were not entirely successful, it was *due principally to the conduct of the Indians themselves in not observing the provisions of the unratified treaty*.<sup>33</sup>

That appears to be circular reasoning, treats the two parties unequally, and ignores nearly forty years of hostility between the Indians and white settlers in Oregon. The decision clearly set a narrow standard for use of the "moral obligation" claim of tribes in subsequent cases. The Court of Claims later overturned the Commission.

Chief Commissioner Witt wrote concurring opinions in two early cases handed down by Holt, in which Witt supported using the moral clause for judging the claim, even though he agreed with the majority decision to dismiss the claims. In *Western (Old Settler) Cherokee Indians v. United States of America* (1948), Holt cited Court of Claims precedent for dismissing the case. Witt accepted that but wrote that the case required application of the moral clause of the ICC Act and that plaintiffs "have been wronged by the Government." Similar reasoning was used in a companion case, the *Eastern (Emigrant) Cherokee Indians v. United States of America* (1948).<sup>34</sup>

Once again, the moral clause of the Act is at dispute here. The ICC Act, unprecedented by Congress, opened up claims against the government on nearly any unjust action by government forces against Indians. Yet, the Commission continuously construed the clause very narrowly. Significantly Witt did not feel strongly enough about his belief to make a full-fledged dissent in the case, but gave a more gentle concurring opinion.

Witt continued his views in a dissent against the majority opinion of Holt and O'Marr

(O'Marr wrote the opinion) in another important early case, the *Osage Nations of Indians v. United States of America* (1948). The Osages' claim for the lands they had occupied in Kansas was dismissed on the basis of value. The majority opinion noted that the amount paid the Indians, \$300,000 for 865,930.31 acres, "was not grossly inadequate," because "the slow sales during the first nine years following the opening of the area for entry indicates no great demand for the land. The first years of that period, 1868, and 1869, during which it would be reasonable to expect the greatest demand, the sales were exceeding light . . ." Witt again disagreed, saying that the petitioner had cause for action. He wrote that Clause 5 requires "fair and honorable dealing," and the U.S. "owes a very high degree of fiduciary duty to Indian tribes."<sup>35</sup> The Court of Claims agreed and overturned the commission.

Those narrow decisions, a preponderance of dismissals, and low claims awards changed gradually over the years as the commission established a base of cases and precedents. Pressure eased up from Congress and the executive branch, in public policy, as the idea of termination of tribes and reservations evolved and disappeared. There was new pressure from Congress, however, to speed up the decision-making process, as seen from commentary at hearings on annual appropriations and new laws to extend the commission.

An example of how this new mood may have affected William Holt is seen in his 1965 decision (three years before he left the ICC) on the important *Northern Paiute Nation v. United States of America* (1965) case, concerning fair market value of lands. A key part of the decision involved mineral rights to Spanish grant lands that had been taken over by the Mexican government and were gained for the United States by the Treaty of Guadalupe Hidalgo in 1848.

The Justice Department denied the right of a mineral claim, especially since the Indians did not discover or mine the minerals, and

because the lands were formerly owned by Mexico and Spain. Holt stated flatly, "We do not agree with the defendant [the U.S. government]." He cited a previous case giving rights to Indian occupancy of land under the treaty, no matter what their rights might have been under Spanish law. Although that case didn't involve mineral rights, "the rationale appears clear and it would apply in this case," Holt wrote. Since the Indians held clear title to the lands, that title included the "fair market value" to the minerals as well.<sup>36</sup> This decision is significant because it broadens the commission's jurisdiction, rather than narrowing it, as many of Holt's previous decisions had done. Instead of relying on a clear precedent, Holt uses a more vague "rationale" to make his case. Clearly, this is closer to the way a fact-finding, non-judicial claims commission would act on cases before it, not how a court would act. This more expansive decision came much later in the life of the ICC, after a period of reform, changes in federal Indian policy, and new personnel on the Commission itself. Holt's own thinking reflected those liberalizing changes.

#### THE PAWNEE CLAIMS CASE

One earlier case, the *Pawnee Indian Tribe of Oklahoma v. United States of America* (1950), illustrates a narrow decision that was overturned by the Court of Claims, with a scolding to the ICC on their use of the Investigations Division. This was not a small case. The Pawnees sought awards in eight claims, originally covering more than 40 million acres of land in Kansas and Nebraska, for which they sought more than \$30 million compensation. Although their permanent village settlements were along the Platte and Republican Rivers in Nebraska, the Pawnees had two annual hunts that extended to the Arkansas River in Kansas in summer and north to the Niobrara River in Nebraska in winter. The tribe claimed the lands in those areas by immemorial possession and occupation, plus recognition by

the United States through land cessions in three treaties, of 1833, 1848, and 1857. Three claims included these broad expanses of land. A fourth claim was for an outlet strip in north central Kansas that the United States had given to the relocated eastern Delaware Tribe by treaty. Three other claims were for two small parcels of land on the Oklahoma reservation given to a railroad and a church, and for a tiny amount of interest owed the Pawnees.<sup>37</sup>

In his decision, Holt disallowed six of the eight claims, providing relief only for the two small reservation land claims, totaling a few hundred dollars. For the large claims, he wrote that the testimony presented neither determined the boundary lines between contending Indian tribes nor showed the amount of land in use by any one tribe. Further, the Pawnees did not conclusively prove original Indian title through "exclusive use and occupancy." Clearly, the case hinged on early recognition of Pawnee use of hunting grounds by treaty. Holt disputed whether treaty cessions by the Pawnees were in fact a "recognition" by the United States, acknowledging Pawnee title to that land. He cited a Court of Claims case to support his view that simply agreeing to give up land in a treaty did not, in "every case," mean that the government recognized that tribe's "exclusive possessory use" and title to the land ceded.

Later Holt noted there is "no record of the 1857 treaty negotiation." That notation, used to disallow one claim, was to become important in the overturning of his decision. Four claims, covering the bulk of the lands claimed by the Pawnees, were disallowed because evidence did not conclusively prove possession. The fifth claim, for 4800 acres that resulted from a surveying error on the Pawnee Oklahoma reservation lands cession under the 1857 treaty, was thrown out for lack of evidence as to boundaries, timing of the error, and market value of the land. The eighth claim was also disallowed.<sup>38</sup>

When the Pawnees appealed to the Court of Claims, law clerk Margaret Pierce was as-

signed to the case and wrote the court's decision. Interestingly, she was later appointed to the ICC and took Holt's seat for the last decade of work. In a phone interview, she remembered the case very clearly and said that the ICC staff spent only an hour of research on the case, whereas, as the court's investigator, she devoted six months to digging out the facts.<sup>39</sup>

The Court of Claims reversal, delivered by Judge George E. Howell, was based on the ICC's lack of research and their viewing of only partial evidence. Howell wrote that the commission had restricted itself to evidence exhibited by the opposing sides and when that evidence was excerpted from official government documents, they had failed to view the document as a whole. He noted that Congress had given the ICC "unusual and broad" powers of investigation to look for evidence on their own. Through Margaret Pierce, the Court of Claims did that research for the ICC, as well as for the Pawnee attorneys, who had also provided insufficient evidence.

The opinion assessed the debates of Congress, including testimony on the Act itself, and noted it intended "to give the Commission the broadest possible powers and to give it every facility to insure the most complete treatment possible of the claims." Further, "Congress contemplated the final settlement of these Indian claims on the basis of *all* the available facts, most of which are to be found in official government records or are matters of national history." As a result, the Pawnee case was "peculiarly in need" of the investigation section of the Act.

Noting that the court was convinced that the evidence before the ICC "was entirely inadequate to form the basis for just, equitable, and final disposition" of the claims, the opinion went into exquisite detail on that record, introducing many letters and treaty negotiations that supported the Pawnee claim of occupancy.

Concerning the 1857 treaty with the Pawnees, of which the Commission could find no record, the Court of Claims located an impor-

tant letter, omitted from evidence, that proved the Pawnees' case. Later, the opinion noted, "by the use of its investigatory powers, the Commission could easily have ascertained the basic facts" of the claims involved.<sup>40</sup> The court overturned all the major portions of the commission's holding.

In the end, after many years of hearings, the Pawnee tribe was awarded more than \$7,316,000. The Court of Claims was unable to get its way, however, as the investigatory powers of the Commission were never used. Further, the ICC was rigid, nugatory in dealing out claims, relied on outside counsel for leadership in cases, and failed to reach out to the tribes themselves. It saw itself as a court, acted like a court, and established all the rituals and precedents of a court.

## CONCLUSION

It didn't have to be that way. There are excellent examples in American history of adjudicating outstanding claims by resolution, where opposing parties present their sides of a dispute at a hearing and the panel of commissioners delivers a decision based on investigations by their own staff. In fact, Chief Commissioner Witt had sat on two such commissions. Such a procedure would have saved enormous expense and time for the Indian tribes as well as the government. An appeal system could still have been used for final determination.

The way the Commission did act, however, resulted in more than three decades of work that left many claims up in the air. Indian tribes are today still appealing to Congress, the courts, and even the United Nations with a special emphasis on claims to gain back lands (not money) that were lost to them.<sup>41</sup> Even as the Commission was working, it was little noticed and had slight impact on events important to Indians. In the 1970s such actions as the rise of the American Indian Movement, the takeover of the Bureau of Indian Affairs building in Washington, D.C., the seizure of Alcatraz Island in California, and the tragic

happenings at Wounded Knee, South Dakota, all occurred with little or no reference to the work of the commission. It didn't seem to matter.

And when all the awards were totaled up, from all the claims processed by the ICC, it is about half the cost of a year's appropriation to the Bureau of Indian Affairs, with its annual budget of \$1.6 billion. Today, in comparison, two small Nebraska Indian tribes, the Winnebagoes and Omahas, are heading towards \$1 million in proceeds per month—each—from their new gambling casinos. That makes the monetary rewards for many tribes from three decades of litigation through the ICC seem like small pickings.

For William McKinley Holt, work on the ICC was honest labor. All interviews with persons who worked with him indicated he was conscientious, a pleasant person, and a nice man. But it was as a traditional lawyer that he served, working mostly within the political stew of Washington with little outreach to the Indians themselves. From his earliest decisions, he clearly saw his work in narrow judicial terms. This showed up in the great detail given to small claims, in parsimonious awards, and the many outright rejections of claims on narrow grounds, especially in the important early, formative years of the Commission, when tribes and their lawyers were seeing how the action played out. Those early decisions set the tone for the entire life of the Commission. The reforms finally initiated were only to speed up the process, not to find justice.

## NOTES

1. Harvey D. Rosenthal, *Their Day in Court: A History of the Indian Claims Commission* (New York: Garland Publishing, 1990), p.48

2. *Ibid.*, p. ix.

3. Russel L. Barsh, "Indian Land Claims Policy in the United States," *North Dakota Law Review* 58 (Spring 1982): 7-8. Barsh estimates "325,000,000 acres, chiefly in the Great Basin area, were confiscated unilaterally by Act of Congress or Executive Order, without compensation. An estimated 350,000,000 acres in the contiguous forty-eight

States, and most of the State of Alaska's 375,000,000 acres, were claimed by the United States without agreement or the pretense of a unilateral action extinguishing native title."

4. Rosenthal, *Their Day in Court* (note 1 above), p. 84.

5. The Indian Claims Commission Act, 60 Stat. 1049 (1946), Sec. 2.

6. *Ibid.*, Sect. 2, 14, 22, 15.

7. Rosenthal, "Indian Claims and the American Conscience: A Brief History of the Indian Claims Commission," in *Irredeemable America: The Indians' Estate and Land Claims*, ed. Imre Sutton (Albuquerque: University of New Mexico Press, 1985), p. 47. Indians were barred from suit by the Constitution (Article III, Section 2), and Congress barred them from the Court of Claims (founded in 1855) in 1863. However, in 1879, in the case *Standing Bear v. Crook* in Omaha, a federal court established Indians as persons under the Fourteenth Amendment. In 1881, a presidential commission recommended the right of Indian appeal to court and a special jurisdictional act that year allowed the Choctaws to appear before the Court of Claims. Repeating this procedure was unwieldy, however, as more claims were brought by tribes, and the result finally was creation of the Indian Claims Commission.

8. John T. Vance, "The Congressional Mandate and the Indian Claims Commission," *North Dakota Law Review* 45 (Spring 1969): 333.

9. *Omaha World-Herald*, 26 September 1948.

10. Vance, "Congressional Mandate" (note 8 above), p. 334.

11. Rosenthal, "Indian Claims" (note 7 above), p. 56.

12. Vance, "Congressional Mandate" (note 8 above), p. 335.

13. Nancy O. Lurie, "The Indian Claims Commission," *Annals of the American Academy of Political and Social Sciences* 436 (March 1978): 102.

14. Phone interview with John M. Schiltz, Washington, D.C., 22 March 1993.

15. Wilcomb E. Washburn, *Red Man's Land/White Man's Law: A Study of the Past and Present Status of the American Indian* (New York: Charles Scribner's Sons, 1971), pp. 104-05.

16. Thomas LeDuc, "The Work of the Indian Claims Commission Under the Act of 1946," *Pacific Historical Review* 26 (February 1957): 6, 16; Francis P. Prucha, *The Great Father: The United States Government and the American Indian* (Lincoln: University of Nebraska Press, 1986), p. 342. Although total claim settlements per tribe were sizeable, in most cases 80 percent of the money was issued per capita to tribal members, and individual payments were often quite small. In reviewing

Yankton Sioux tribal claims before the ICC and earlier, Herbert T. Hoover notes a 1920 per capita payment of \$151.99 for one settlement and another, in 1973, for \$249. However, a third action resulted in \$930.86 per capita payment, in 1975. Normally, the remaining 20 percent of claims was used by the tribe for reservation development activities. See Hoover, "Yankton Sioux Tribal Claims Against the United States, 1917-1975," *Western History Quarterly* 7 (April 1976): 131, 136.

17. James Ronda, personal investigation of William Holt papers, University of Tulsa Special Collections, McFarlan Library, Tulsa, Oklahoma, relayed by John Wunder to author, April 1993.

18. Memo, J. Edgar Hoover, Director of Federal Bureau of Investigations to George J. Schoeneman, Special Executive Assistant to the President, 3 January 1947, "Major William McKinley Holt," Harry S. Truman Library.

19. Gladys McDowell to Francis Moul, 3 March 1993, Primghar, Iowa; Margaret A. Ringhofer to Francis Moul, 16 March 1993, Denver, Colorado.

20. Willie Holt, record of final grades, class of 1914, Primghar High School, Primghar, Iowa.

21. *Lincoln Journal*, 8 March 1947.

22. Sen. Hugh Butler to Sen. Clyde R. Hoey, 26 May 1947, Butler Manuscript 2331, Box 211, Nebraska State Historical Society Archives.

23. Anne Burch to Francis Moul, 8 March 1993, Silver Spring, Maryland.

24. Phone interview with Anne Burch, Silver Spring, Maryland, 27 February 1993.

25. Phone interview with John T. Vance, Washington, D.C., 22 March 1993.

26. Schiltz, interview (note 14 above).

27. Memo, John W. Macy, Jr. to the President, n.d. (c. August 1967), "William M. Holt—Member of the Indian Claims Commission," Lyndon B. Johnson Library.

28. Rosenthal, *Their Day in Court* (note 1 above), p. 177.

29. U.S. Congress, Senate, Subcommittee of the Committee on Appropriations, *Hearings on H.R. 10746 making Appropriations for Interior and Related Agencies for 1959*, 85th Cong., 2nd sess., 1958, p. 20.

30. Rosenthal, *Their Day in Court* (note 1 above), p. 114.

31. *Ibid.*, p. 115.

32. *Fort Sill Apaches v. U.S.A.*, ICC, Docket 30, 6 May 1949.

33. *Snake or Paiute Indians v. U.S.A.*, ICC, Docket 17, 29 December 1950, emphasis added.

34. *Western (Old Settler) Cherokee Indians v. U.S.A.*, ICC, Docket 3, 15 November 1948; *Eastern (Emigrant) Cherokee Indians v. U.S.A.*, ICC, Docket 5, 15 November 1948.

35. *Osage Nation v. U.S.A.*, ICC, Docket 9, 30 December 1948.

36. *Northern Paiute Nation v. U.S.A.*, ICC, Docket 87, 4 November 1965.

37. *Pawnee Indian Tribe of Oklahoma v. U.S.A.*, ICC, Docket 10, 14 July 1950.

38. *Ibid.*

39. Phone interview with Margaret Pierce, Washington, D.C., 27 February 1993.

40. *Pawnee Indian Tribe of Oklahoma v. U.S.A.*, 124. Court of Claims, 3 February 1953, 324.

41. An example is the "granddaddy" of all Indian land claims cases, the Lakota Sioux attempt to gain back part or all of the Black Hills under a treaty of 1868. Various investigating commissions and the U.S. Court of Claims denied the Lakota claims, and in their first appearance before the

Indian Claims Commission, the ICC also turned them down. They reversed themselves in 1974, however, providing for an award of \$17,553,484. The Court of Claims, after first overruling the ICC, later approved the claim and said the Lakotas were entitled to the fair market value of the land plus some \$85 million more in interest. The U.S. Supreme Court affirmed that ruling. Congress eventually appropriated more than \$100 million and put it in the Treasury, drawing interest, for the Lakotas. The tribe, however, determined they wanted the Black Hills themselves, not money, and have refused to take the award, which is now about \$350 million. See Donald Worster, *Under Western Skies: Nature and History in the American West* (New York: Oxford University Press, 1992), pp. 106-53 for a full treatment of this case.