

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.

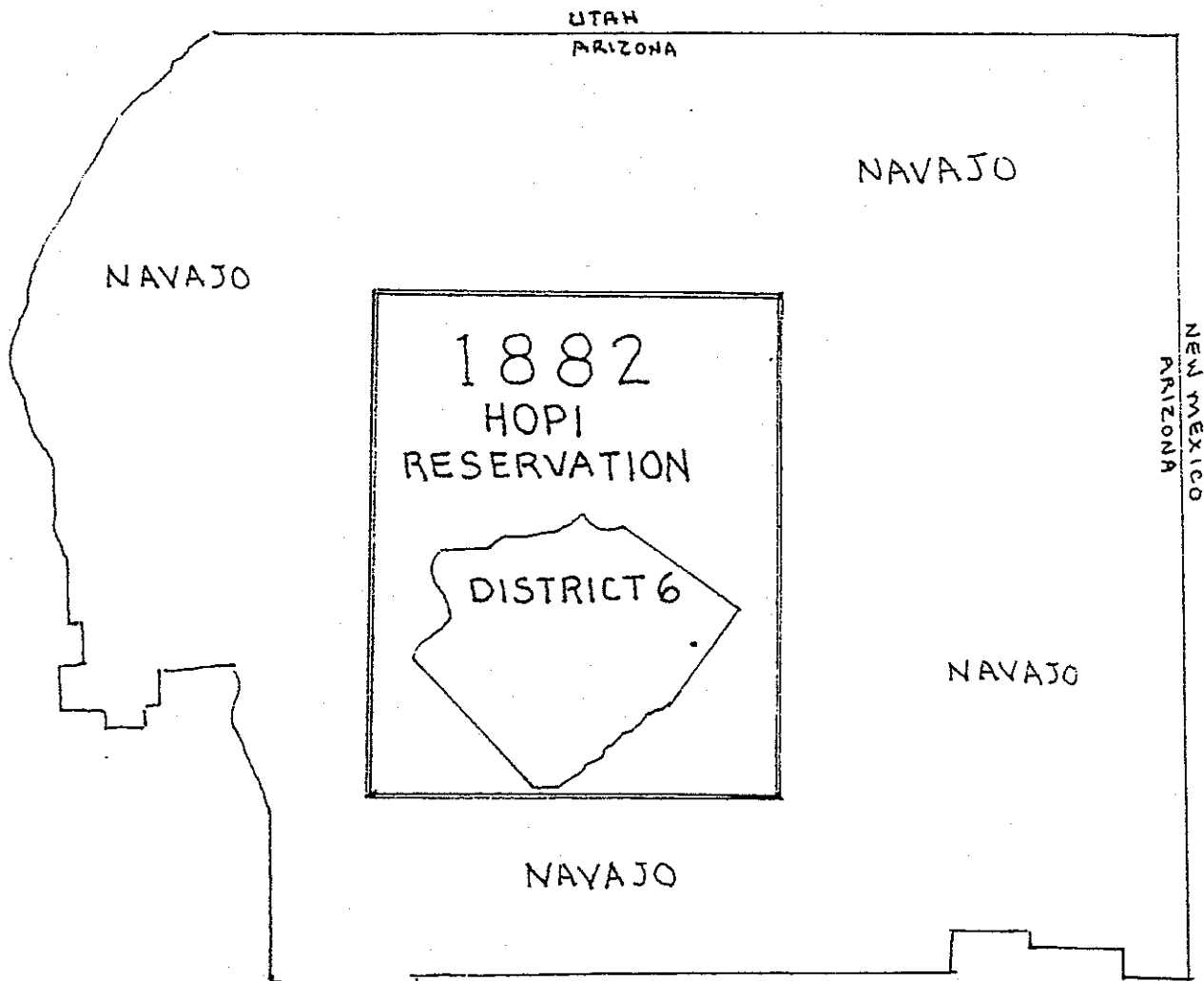
\*\*LaFarge, Notes, p.2.

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.

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-



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.

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.

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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.

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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 herdsman 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."\*

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\*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, Shungopövy 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.)

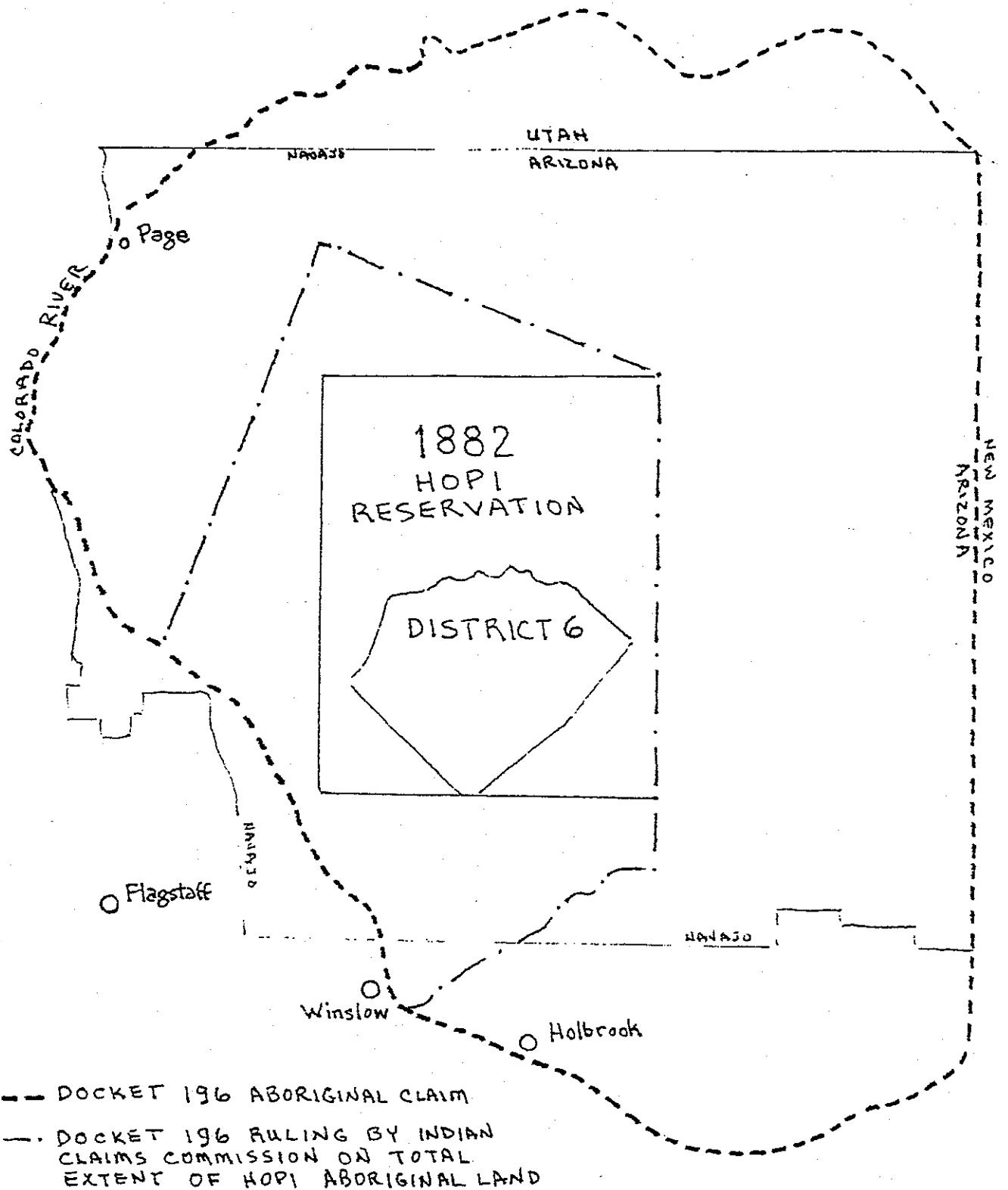
First Mesa (Consolidated Villages of Walpi, Shitchumovi and Tewa), Mishongnovi, Sipaulavi, Shungopavi, Oraibi, Kyakotsmovi, Bakabi, Hotevilla and Moenkopi v. The United States of America. (Exhibit 49.) Upon filing, it was designated "Docket 196." Boyden had through this petition proclaimed himself the 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.