

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....

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

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

including subsurface rights prior to development might later prove unfair.

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

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

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

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

*The "majority" was discovered by use of a manipulation of census data to show that the five villages which sent representatives to the Council were more populous than the five traditional villages which refused to have anything to do with the Council. This is the same technique which the BIA had used in demonstrating that Boyden's claims attorney contract was supported by a "majority" of Hopis. Again, highly questionable census data was used. (See Exhibit 49A.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

continued to stress the importance of promptly obtaining counsel.

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

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

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

Certain facts are apparent:

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

I feel the following should be done:

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

land claim before the Indian Claims Commission.

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

...

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

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

Associate Commissioner Louis J. O'Marr
Indian Claims Commission

Dear Sir:

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

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

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

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

Sincerely,

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

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

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

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

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