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Without Due Process: The Alienation of Individual Trust Allotments of the White Earth Anishinaabeg

HOLLY YOUNGBEAR-TIBBETTS

INTRODUCTION

Interracial tensions have run high for more than a decade on the checkerboarded White Earth Indian Reservation of northern Minnesota. While institutional racism and mutual suspicion have long marked relations between the Anishinaabeg and their Anglo neighbors, current levels have reached unprecedented heights. The impetus lies, predictably enough, in conflicting claims to reservation lands—claims that were brought to community attention through the documentation of some thirteen hundred validated land title claims in the Minnesota Chippewa tribe's (MCT) "Section 2415 Land Research Project." (See fig. 1.)

The project was initiated in 1978, under a Bureau of Indian Affairs contract, for the purpose of investigating land tenure status on the MCT's six member reservations. Project researchers anticipated that their findings would reveal parcels of Indian lands upon which non-Indians had engaged in long-term trespass for agricultural, right-of-way, forestry, or mining purposes.[1] Indeed a significant number of illegal land use practices were documented.[2] The investigation also uncovered a multitude of illegal and unauthorized title conveyances dating as far back as the 1905 allotment of treaty lands and as recently as the 1960s.[3]

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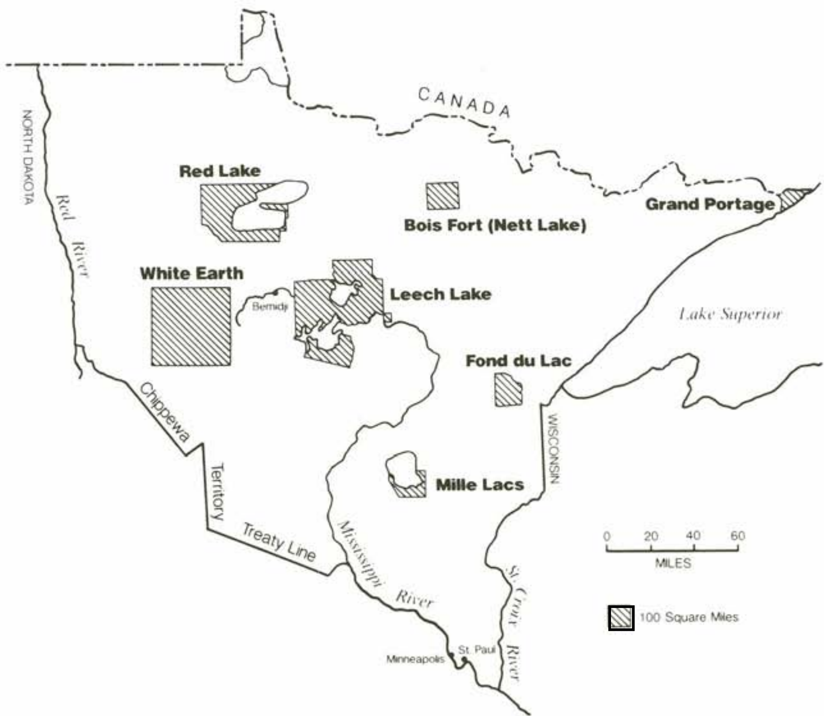

FIGURE 1. Reserved Anishinaabeg lands of northern Minnesota.

Initially the 2415 project staff placed the greatest emphasis on identifying those land claims that followed the precedents established in the previous case of *Zay Zah v. Clearwater County*. *Zay Zah*, which was favorably adjudicated in 1978, contested the illegal entry of Zay Zah's trust allotment on Clearwater County's tax rolls.[4] In addition to having placed lands on the tax rolls when their trust status precluded their tax liability, Clearwater County eventually had declared them tax-delinquent and offered them for public sale. When the purchasers, the Stevens family, filed for quiet title, Zay Zah's grandson, George Aubid, Jr., contested both the taxation and the sale. The court found that the lands indeed had been inappropriately entered on the tax rolls and ordered the lands restored to trust on behalf of Aubid.

While the number of cases following *Zay Zah* mounted, other cases arose which appeared to contravene the tenets of trust protection. What, for example, was the legal disposition of a title conveyed by a minor—taken under duress as compensation for old-age assistance from an estate illegally probated by the county? An administrative procedure was developed whereby initial findings of questionable title were forwarded to the Office of the Solicitor General, who rendered an opinion as to the validity of claim based on the manner of dispossession.[5] These decisions, in turn, informed researchers of additional criteria by which to analyze title conveyances.

Distinctive patterns of dispossession soon became recognizable for each reservation. Grand Portage and Fond du Lac reservations contained only a modest number of validated title and trespass claims. Nett Lake (Bois Forte) had, in fact, increased its land base by nearly 4 percent since the allotment era. At Mille Lacs Reservation, a substantial number of trust allotments had been alienated, but many parcels had subsequently been repurchased by the Minnesota Chippewa tribe. While these four reservations suffered relatively few alienations of trust allotments, dramatically different patterns emerged on both Leech Lake and White Earth.

On Leech Lake, massive dispossession had been accomplished through federal collusion. Without the consent of all heirs, the secretary of the interior simply had transferred 437 allotments from individual trust, conveying them to the secretary of agriculture for inclusion in the Chippewa National Forest.[6] Such "secretarial transfers," as they came to be designated, ultimately came to 26,824.59 acres.

But the dispossession of allotted lands on Leech Lake pales when compared to the dispossession of the White Earth Anishinaabeg. (See figs. 2 and 3.) In order to document the scope and magnitude of what Minnesota historian William Folwell fifty years earlier had called the "tragedy of White Earth," the 2415 project investigators began the difficult and often painful task of reconstructing the suppressed historical geography of the White Earth Anishinaabeg. To their surprise, they discovered that theirs was not the first investigation but the seventh in a series of inquiries that had, in the main, proven that the Anishinaabeg allottees and their heirs had suffered wrongful dispossession of their allotted trust lands. They also discovered that theirs would not be the first compilation of evidence for litigation of allotment land claims on White Earth. A nearly identical case load had been prepared for the Department of Justice in 1920 but was never heard.

While several scholars have documented the atrocities resulting from the allotment of White Earth Reservation, little attention has been paid to the "equity suits" that allegedly resolved the resultant White Earth land claims.[7] White Earth allotment and the related timber scandals were characterized by fraud, malfeasance, federal collusion, and ultimately the bifurcation of the Anishinaabeg community according to blood quantum. The adjudication of consequent land claims was equally tainted. Despite the fact that the claims had been thoroughly documented and validated by the attorney general, at the last moment the property rights of the Anishinaabeg were compromised, and the litigants were denied their day in court. Perhaps the greatest "tragedy of White Earth" is the continual denial of the Anishinaabeg right to "equal protection before the law." Had such protection been accorded to them in 1925 when their claims were first heard, the land claims that divide the community today might have been resolved long ago. Time, in this instance, has not healed but exacerbated community tensions, as well as complicated legal title, rights of heirship, and jurisdictional administration.

Following a brief summary of the documentation of the theft of White Earth, this paper focuses on the equity suits filed by the United States on behalf of the Anishinaabeg who had been wrongfully dispossessed. It further details the political, judicial, and legislative maneuvers that effectively denied the Anishinaa-

beg their day in court in 1925. It was this transgression that revived those unsatisfied claims, bringing them again before the court. These land claims could have been resolved equitably seventy-five years ago. That they were not has left a legacy of injustice and a community unable to reconcile the interests of its members. The paper concludes with a synopsis of the White Earth Land Settlement Act (WELSA) and the community's response to this latest federal attempt to deny the Anishinaabeg due process in securing their properties.

DOCUMENTING THE THEFT

Allotment and the related timber scandals accomplished the nearly complete dispossession of the White Earth Anishinaabeg, and the only voices raised in protest were those of the resident full-bloods who dared to defy Indian agent Simon Michelet. In an era when virtually every aspect of community life was controlled by the agent, the full-bloods nonetheless ignored his prohibition and appealed to the commissioner of Indian affairs and the Boston-based Indian Rights Association for an investigation of the conspiracy that had robbed them of their valuable timber and unleashed the corporate terrorism of the pine cartel, which dispossessed them of their lands.

Both the commissioner and the association responded by sending investigators, but even as the investigations were taking place, ongoing events further complicated the travesty that allotment had brought to White Earth. While one investigator was documenting the fraud perpetuated by the pine barons, new and even more devastating legislation was being orchestrated by the political hacks of the cartel. As another investigator was examining irregularities in the allotment process, a horde of land agents, bank presidents, and elected officials were filing fraudulent deeds and mortgages on trust lands assigned to full-blood Anishinaabeg. Each investigation exponentially increased the documentation of the wrongful dispossession of White Earth. Some indication of the breadth of the scandal can be gained from the preface to the preliminary report filed by the third investigator, anthropologist Warren K. Moorehead, as he petitioned the commissioner of Indian affairs to conduct a full-scale inquiry:

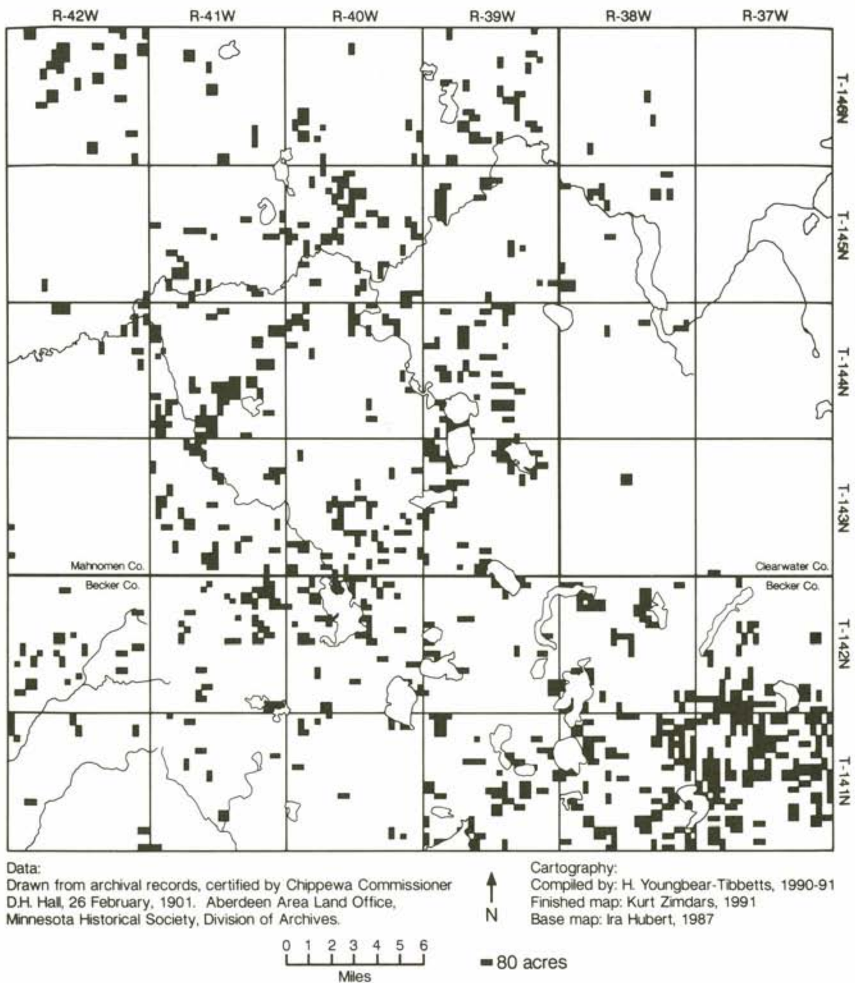

FIGURE 2. Original trust lands allotted to full-bloods, White Earth Indian Reservation, Minnesota. All maps show the reservation as of the Treaty of 1867. Four townships of R. 37 W. are disputed [T. 143 N., T. 144 N., T 145 N., and T. 146 N.] since cession in 1889.

T-146N
T-145N
T-144N
T-143N
T-142N
T-141N

Allotments in Trust, July 1986

WHITE EARTH INDIAN RESERVATION

of the Minnesota Chippewa Tribe

Data: Bureau of Indian Affairs
Cass Lake, MN

Compilation & Cartography:
Holly YoungBear - Tibbetts
Univ. of Wisconsin - Madison
1987

FIGURE 3. Allotments in trust, July 1986. White Earth Indian Reservation, Minnesota.

> The investigation soon developed that millions of dollars worth of pine timber lands had been stolen from the Indians. As soon as it was ascertained that I was working in the interest of the Indian, the lumber companies and the mixed-blood and French Canadians attempted in every possible way to end the investigation. They first tried bribery, and later intimidation. They lured away several of my witnesses, and even some of the Government employees informed me that it was hopeless to fight the great land and timber interests back of the despoliation of 5,300 Indians. . . . I had at that time one hundred and three affidavits representing more than a million dollars worth of property, and involving county officials, lumbermen, and presidents of national banks.[8]

Moorehead's report shocked then Commissioner of Indian Affairs Robert G. Valentine. He dispatched Special Agent Linnen to accompany Moorehead back to White Earth for the purpose of fully documenting the dispossession and creating a reliable enrollment of the Anishinaabeg by blood quantum. The latter task was necessary, because the enabling legislation had differentiated between mixed- and full-bloods, affording trust status only to the allotments of the latter.[9] Under the broad authority of the commissioner's directive, Moorehead and Linnen returned to White Earth on 1 July 1909. Their first task was to complete the documentation initiated during Moorehead's prior investigation. Preparation of the White Earth enrollment by blood quantum was the most exacting aspect of Linnen's and Moorehead's investigation, requiring three separate affidavits from each allottee and two from interpreters:

> One affidavit of the Indian himself as to his blood relationship and parents was taken, another signed by the old witnesses to the same effect. A third affidavit related to the property possessed by the Indian, with number and description of allotments, and by careful questioning we ascertained when and where he had disposed of his land. The fourth affidavit was by the interpreters in which they solemnly declared that they had correctly interpreted our statements to the Indian

and his answers to us, and that he understood the nature of the papers that he had signed.[10]

Beyond the scrupulous and systematic compilation of affidavits, Linnen and Moorehead prepared their roll under the full scrutiny of the community. As they moved throughout the reservation, large numbers of Anishinaabeg accompanied them, establishing encampments along the way and following, with great interest, their tasks at each locale. The findings of the Linnen-Moorehead investigation revealed some of the most blatant of the allotment swindles. Few Indians—either full- or mixed-blood—had had the papers they signed read or interpreted to them, and few had known if they were signing receipts, mortgages, deeds, or releases.[11] The team maintained a list of irregularities in mixed-blood sales, and though there was no assurance of any redress, the list was forwarded to the commissioner. The investigation resulted in the most reliable enrollment by blood quantum ever constructed for the Anishinaabeg and documented transgressions against trust status of some twelve hundred allottees.

Ultimately, the Linnen-Moorehead report was forwarded to the commissioner of Indian affairs, the House Subcommittee on Indian Affairs, and the Department of Justice for prosecution of more than twelve hundred cases in which Anishinaabeg allotted lands were wrongfully taken. The commissioner had little desire to untangle the mess. He took the view that Congress had facilitated the great wrongs at White Earth and, therefore, Congress was the most appropriate body to right them. The Minnesota delegation, little disposed to act in the interest of a disenfranchised minority against the very corporate interests that had promoted the delegation's election, remained silent in regard to the Linnen-Moorehead enrollment and report.

The House committee initiated an inquiry of its own, headed by the Honorable James M. Graham; it would be the fifth investigation. Six members of the Committee on Expenditures in the Interior Department were designated to act as a subcommittee of the whole and to independently investigate the White Earth allotment scandal under House Resolution 103 of the Sixty-second Congress. The Graham Commission substantiated every charge that prior investigations had disclosed and petitioned Moorehead to appear before them with a full report. Moorehead's report would not be the most dramatic evidence that the

commission would gather, however. Taking testimony at the reservation, the commission observed for themselves the consequences of mass dispossession.

> Scenes more pitiful than those witnessed by your subcommittee could hardly be imagined. . . . Sometimes ten or more Indians were huddled together at night in a single room, trying in vain to keep out the cold. . . . The conditions at Round Lake, Elbow Lake, and White Earth were not quite as terrible as at Pine Point, but everywhere convincing evidence of poverty and disease was plainly visible. But amid these conditions, which would seemingly melt a heart of stone, the land sharks continue to ply their nefarious trade. Your subcommittee found in one desolate hut, three women, who, although blind, were about to be ejected on a mortgage deal, and their case was typical of many others.[12]

The commission subpoenaed former Commissioner of Indian Affairs Leupp, allotting agent Michelet, and the mixed-blood agents of the lumber companies, five of whom confessed their complicity in the land frauds.[13] On 13 November 1913, conspiracy charges were filed against M. J. Kolb, J. E. Perrault, and William Uran. All were accused of "inducing United States officials to issue land patents to full-blood Indians."[14] Michelet and McLaughlin were not charged or even officially reprimanded for their actions in the allotment process. Subsequently, conspiracy charges were filed against Lucky S. Waller, Andrew Venoss, and Louis D. Davis. Civil charges were lodged against the Nicholas-Chisholm Lumber Company. Illegal sales of 1,529 trust allotments were forwarded to the Department of Justice for adjudication.

WITHOUT DUE PROCESS

Litigation of the White Earth claims was, from its inception, marked by dirty politics, wheeling and dealing, and unequal protection before the law, despite the fact that Commissioner of Indian Affairs Valentine had issued a directive instructing his staff to "get to the bottom of the thieving regardless of who might be hit."[15] The secretary of the interior requested that the Department of Justice pursue litigation of the Anishinaabeg claims and de-

tailed Indian Service personnel to assist the Justice Department in the preparation of suits. Special Assistant to the Attorney General Marsden C. Burch was assigned to direct the adjudication.

The new initiatives, however, were marked by questionable procedure: Upon his first visit to Minnesota, Burch conferred with representatives of the pine cartel. They were, he said, "very tractable and decent in every way," consenting to "satisfactory stipulations in regard to the removal of timber."[16] Some cases were filed in the summer of 1910 but received little attention from Burch, who devoted much time to the Graham Commission's continuing investigation. Once Burch's negotiations with the pine cartel were revealed, the Anishinaabeg held little hope that he would prosecute aggressively in their best interests. They noted with dismay that despite the thorough documentation of the Moorehead-Linnen investigations of just the previous year, Burch had requested no injunctions to halt the logging of disputed lands. Such departmental laxity was soon overshadowed by congressional intrigues.

Minnesota Senator Moses Clapp introduced an amendment to the Indian Appropriations Act seeking yet another census of the White Earth Anishinaabeg—but with a notable departure. Clapp's amendment called for a roll stipulating that "those having any trace of white blood be classed as mixed-bloods."[17] By this time, the number of cases compiled by the Department of Justice affected 142,000 acres of Anishinaabeg private property. The purpose of the Clapp Amendment was to preempt litigation on cases pending in the federal district court. Even Marsden Burch saw the amendment as an effort to deny the Anishinaabeg their day in court:

> There are today over 1200 suits in the United States District Court for this state which raise pointedly the question of the blood status of the Indians involved. That question to which the Amendment relates was precisely what we were trying to get the court to pass an opinion upon in these suits. If the Commission (proposed to create the new roll) decides the Indians involved are of mixed-blood, the courts are precluded from trying the equity suits.[18]

The Indian Appropriations Bill was "talked to death" in the last days of the Sixty-second Congress. But the pine cartel's insis-

tence that a "new" roll be taken would not be easily defeated. The last official enrollment, that conducted by Moorehead and Linnen, had identified 591 full-blood Anishinaabeg, far too many for profiteers fearful of indictment.[19] Creation of a new census more favorable to the interests of the profiteers and conspirators was critical to the cartel, who maintained that there were but "a handful" of full-bloods on White Earth.

Cartel demands for a new roll were granted by their politicians once again. Recognizing that more blatant attempts to manipulate the new roll would not go unnoticed, the defense settled on a new and more subtle strategy. Rather than stipulating the method of constructing the new roll, they would content themselves with "stacking" the Enrollment Commission. Legislation offered by Minnesota Senator Moses Clapp had in fact been authored by defense attorney Ransom Judd Powell:

> That bill is one that I drew myself, and have (after great difficulty) secured its approval by the Department of Justice and the Interior Department. . . . The purpose of the bill is to establish a basis for quieting all of the titles on the reservation. I am assuming all responsibility for its authorship and operations. . . . The Commission to be appointed under that bill will be made up of a person to be selected by the Department of Justice, and it is understood that the person must be satisfactory to the parties I represent, and in all authority, I shall be the other Commissioner.[20]

In representing the pine cartel and the land sharks of White Earth, Powell effectively became an unelected congressman—but his influence did not end there. The correspondence quoted above is taken from a communication to N. B. Hurr, president of a land and loan company, a defendant in the claims litigation, and one of a network of spies whom Powell had stationed on the reservation. Some of the spies had vested interests in the land disputes, while others were simply paid agents. The Anishinaabeg protested Powell's bill for a number of reasons. They had already submitted to a series of such enrollments and held that the Moorehead-Linnen roll was both accurate and complete. Moreover, their own concern ran to purging the roll of those whom they knew to be inappropriately registered. Federal attention, they believed, should be less consumed with establishing

some long-assimilated Anglo progenitor and more concerned with eliminating French Canadians, Wisconsin Indians, and some three hundred white men from the roll, all of whom had received land allotments. Protests notwithstanding, the appropriations bill was passed with the amendment authored by Powell and submitted by Moses Clapp. A "new" Chippewa Commission was created.

The Perplexing Issue of Blood Quantum as a Legal Doctrine

The commission did little initially, because both Powell and Gordon Cain, who represented the Justice Department, were preparing for the upcoming litigation of land claims. The nexus of the suits depended on the interpretation of the term *mixed-blood* as used in the Clapp Amendments of 1906 and 1907. Federal prosecutors took the position that mixed-blood implied a person with one-half or more white blood. Powell argued that any non-Indian ancestry constituted a mixed-blood. Powell and Marsden Burch agreed to a stipulation of facts in three test cases in which the only contested question was that of blood quantum. The facts of the case were these:

> The three Indians here involved are adult Chippewa Indians residing upon the White Earth Reservation. O-bah-baum has some white blood derived from a remote ancestor, but not to exceed one thirty-second; Bay-bah-mah-g-wabe has one-sixteenth of white blood and Equay-zaince has one-eighth of white blood.[21]

Judge Page Morris heard the cases, finding for the United States in the first two and dismissing the third. Morris issued a "declaratory ruling," stipulating that an Indian having one-eighth or more white blood was a mixed-blood and able to convey title to allotted lands.[22] His decision bolstered the line of argument for the defense, but did not entirely alleviate the dilemma. The ruling went on to state that the burden of ascertaining proof of blood quantum lay with the purchaser of allotted lands.

While the question of blood quantum was pivotal to restoration of Indian title, other important circumstances were ignored. The claims of the Anishinaabeg had heretofore been based on issues of morality, rather than legality. In the legal arena, little was done by attorney Burch to go to the heart of the matter. Despite

the fact that thirty-seven individuals and corporations who had been largely responsible for the land swindles had already been identified, little was done to bring them to task for their actions. Apparently Indian Commissioner Valentine's mandate to "get to the bottom of the thievery" meant little to one who found the timber barons so "decent and tractable"—for as Burch himself said of the test cases, he had filed a bill as "mild as a May morning."[23] Burch neither contested the constitutionality of the Clapp Act nor the failure of the Indian Service to protect the interests of its wards. Nor did he request an injunction against cutting timber on disputed parcels.

Judge Morris's ruling, which ostensibly resolved the definitional question of blood quantum, satisfied neither litigant, and it was forwarded to the Circuit Court of Appeals. Before the case was heard, however, Marsden Burch was removed as prosecuting federal attorney and replaced by Charles C. Daniels of North Carolina, brother of Josephus Daniels, secretary of the navy for the Wilson administration.

An Advocate for the Anishinaabeg

Daniels's relationship with the administration immediately cast him into the limelight, nor did he object to the attention of the press. After completing his briefing on the cases, he publicly declared his advocacy for the plight of the Anishinaabeg and vowed that each and every case would be pursued until justice had been served. Daniels correctly perceived the legal status of the disputed title claims as private property of individual Indians who were entitled to due process of law. This notion, however, had never seriously been extended to title restoration. Attorney Burch had presumed to ignore that right for the goal of expediency. In Daniels, the Anishinaabeg had an articulate advocate and an aggressive prosecutor. Obviously, such representation would not go unchallenged when the fortunes of some of Minnesota's most prosperous and influential citizens were at stake. Defense attorney Ransom Powell set his network of agitators at White Earth into action, ordering them to provoke controversy over Daniels's approach to the litigation. Pending the appellate court decision on the question of blood quantum, Daniels had pressed criminal charges against individuals who had facilitated the land theft.

The first case was known as the Kolb-Perrault case, and it charged M. J. Kolb, president of the Ogema Land and Timber Company, with criminal conspiracy and inducing federal officials to issue land patents to full-blood Indians. Daniels won the case handily and was confident that the victory signaled the end of Indian land frauds. Kolb and Perrault were given modest fines, but no criminal sentence or record. The defendants made restitution in money and restored title amounting to approximately $10,000. Thirteen Anishinaabeg whose lands had already been transferred by Kolb were awarded amounts ranging from $400 to $1,400 which were escrowed with the agency superintendent. Anishinaabeg lands still in the defendants' possession were restored to trust status.

Jubilation about the victory was short-lived, however, for on the same day that the Kolb-Perrault convictions were secured, the United States Circuit Court of Appeals reversed the declaratory judgment that Judge Page Morris had delivered.[24] Daniels foresaw that the issue of defining quantum would necessarily be dependent on a reversal of the circuit court's decision; he filed for a review by the Supreme Court and also argued his case for the public in the Minnesota newspapers:

> I cannot help but believe that the Supreme Court of the United States will take a broader view of the case and that it will not declare that if it can be shown that one of an Indian's ancestors, ten generations back, was a negro that by the infusion of that strain of blood that the Indian thereby received an infusion of blood that forces the presumption that he is able to cope with the white man and protect himself from the shrewd and unscrupulous.[25]

On 8 June 1914, the Supreme Court upheld the decision of the circuit court of appeals, and rumors spread like wildfire that this would mark the final chapter in the allotment scandals. Defendants confidently asserted that the claims would soon be dropped. Interested second and third parties to the transactions hoped that at last their titles would be cleared. Defense attorney Powell dispatched his agents at White Earth to secure testimony on mixed-blood genealogy. Powell's strategy had long been to outwait rather than outwit federal prosecutors. As Indian witnesses, now

homeless, were forced to move, and as elders knowledgeable about Anishinaabeg heritage died, the confidence of the defendants spiraled. Delay was the tactic best suited to the cartel's interests, but with the Supreme Court decision, such stalling tactics would come to an end. Daniels, himself candid in appraising the time necessary to hear the cases on an individual basis, would not compromise an individual trust allotment through the expediency of class action.[26]

The cases prepared by Daniels for the November 1914 judicial session were forestalled by Judge Page Morris's absence from the bench. Daniels and defense attorney Powell met in December and agreed instead to bring the cases before a mutually acceptable "master-in-chancery" appointed from the ranks of the St. Paul judiciary. The first case, heard in the spring session of 1915 by the appointed referee, George O'Reilly, was that of a fraudulently forced sale of full-blood title and was found in favor of the government; the allotted parcel was restored to trust. Daniels personally conveyed the news of the victory to the Anishinaabeg during their annual celebration of nationhood on 14 June 1915:

> The Indians manifested their approval of this declaration with grunts "how," "how". . . . May Chuzk-eah-Wung walked across the floor and shook hands with Mr. Daniels. "I do that because I believe you are here in the interest of the real Indians," he said. "We can trust you."[27]

The second case (also a coerced full-blood sale) was similarly found for the government and set the precedent for comparable pending suits.

Daniels faced more complex legal challenges in prosecuting illegal sales by mixed-blood minors and resolving the question of jurisdictional venue in the probate of allottee estates. The probate issue was temporarily resolved on 30 July when the court ruled that the probate courts of Minnesota had no jurisdiction in determining heirship and descent of allotment on White Earth in cases where the allottee had died prior to secretarial approval of the allotment. The issue of minor sales was addressed in a special session of the United States federal court at Fergus Falls, where the validity of the mixed-blood minor sales revolved around cases in which illegal sales had been validated by purchasers securing new deeds when allottees came of age. Daniels contended that

the first transactions were fraudulent, and hence new deeds were merely a continuation of the fraud and should be set aside. Powell argued, for the defense, that in the first instance, the deeds given by minors were void, but that the federal government had no interest in their transactions once they reached their majority. The allegation of fraud in most of the cases was not, he argued, the business of the federal trustee, rather the responsibility of individuals to pursue through the state courts. Judge Morris accepted the reasoning of Powell's argument and dismissed all of the pending minor sales cases. The implications of his decision were, however, more far-reaching than the irrevocable loss of thirty-two hundred acres. For in accepting the proposition that the "trustee" (the federal government) did not have the right to file suit on behalf of individuals, he effectively denied legal recourse and the practical exercise of constitutional rights.

This judicial fiat would not be the only obstacle that the prosecution faced. Daniels petitioned the court to hear a number of cases subsumed under one class action on behalf of the heirs to the estate of Omo de ay quay, who had inherited the allotment of her grandfather, Sho de ay, who, the court had concurred, was a full-blood. He had been the subject of the first case heard by the O'Reilly court. The master in chancery declined the petition, accepting the contention of the defense that no further cases should be heard until the constitutionality of the Clapp Act was determined.[28] It was a tactical ruse perpetrated by the defense and had no bearing on the disposition of the ten previously heard cases of restoration contingent on Omo de ay quay's estate. Daniels had rigorously constructed the class described in the action, and while his interest was to expedite disposition of the suits, he gave careful attention to assure that the rights of individual property owners were protected. It was this dedication to the principle of due process that made Daniels vulnerable to the attacks of the mixed-blood faction in collusion with the pine cartel. On his first visit to White Earth, the mixed-blood agents attempted to beguile and co-opt Daniels—inviting him "to lay down principle."[29] After Daniels's early success in the federal suits, one of the pine cartel's mixed-blood agents, Gus Beaulieu, escalated the attack on Daniels, charging him with prolonging the litigation merely to "continue indefinitely his salary of $5,000 and expenses."[30] The charges, despite their inaccuracy, found acceptance among frustrated white settlers and others eager for an end

to the Anishinaabeg title challenges. The mixed-blood faction successfully circulated a petition based on these allegations, calling on President Wilson to appoint a commission to investigate Daniels's work and demanding that he be removed for his sympathy toward "the warehouse faction."[31]

The "warehouse faction" to whom Beaulieu referred were those Anishinaabeg made landless by the thefts and frauds of allotment. Daniels readily admitted that his sympathies lay with the defrauded Anishinaabeg and protested the charges made by Beaulieu.[32] The mixed-blood faction opposed what they called "injustice to whites" and sought to protect "the white farmers on the reservation, who have made it so prosperous, from being despoiled of the lands they purchased in good faith, and upon which they have placed valuable improvements."[33]

In point of fact, many of the victimized purchasers had bought their lands from the mixed-blood agents or those to whom the agents had conveyed title, with only the affidavit of these brokers that the allottee was a mixed-blood adult entitled to sell. Reprisals from the current holders of these clouded titles were a very real concern to Beaulieu and other agents of the pine cartel. Restitution demands for even a modest number of the transfers would have bankrupted them. Therefore, their alliance with white interests was beneficial in two ways: It strengthened the impact of the mixed-blood petition for a commission to expedite the title disputes, and it saved the cartel's agents from the potential wrath of innocent purchasers.

The furor created by the Beaulieu faction's petition prompted the Department of Justice to send another staff member, Francis J. Kearful, to investigate the status of the litigation. Daniels had been too forceful an advocate for the Anishinaabeg. He was also a casualty of a partisan power conflict. A schism within the Minnesota Democratic party had pitched the Bryan Democrats, with whom Daniels was aligned, against those in the party who resented his appointment over one of their colleagues, Julius Coller of Shakopee. Bitterness over the appointment of the "carpetbagger," as Daniels was called, rather than a native son of Minnesota threatened a revolt within the party and an embarrassment to the Wilson administration. On 22 November 1915, United States Attorney General T. W. Gregory announced that Daniels would be removed as prosecuting attorney. Still pending were the bulk of title suits and a number of conspiracy charges that Daniels had

filed against the pine cartel, other individuals, and corporations. Kearful was appointed as the new prosecuting attorney, much to the jubilation of the defendants.

An Expeditious Prosecution

Full attention of the Anishinaabeg now focused on Kearful, in the hope that he would prove as dedicated a litigant as his predecessor. It was not to be. Whereas Daniels had proceeded on a case-by-case basis in accordance with the spirit of the Fifth Amendment to the Constitution, assuring each allottee protection of his or her private property interests through due process, Kearful succumbed to demands for expediency.[34] The Anishinaabeg were to be denied their day in court, and the government, as trustee, would seek a negotiated settlement—compensation rather than restoration of title. The decision of the Justice Department to follow this course nonetheless was still in large measure contingent on determining the blood quantum of each Anishinaabeg. Here, Ransom Powell's earlier strategy became the final determinant of whose lands would be protected, whose sacrificed.

As head of the Chippewa Enrollment Commission, Powell was assured not only protection for his clients, but also a lucrative second income for his law firm. Given that the defense's strategy had been built on foot-dragging, Powell was now in the position to set the cadence of the investigation. Although the best available evidence for the genealogies of the allottees had already been gathered by Moorehead and Linnen, Powell seized the opportunity to draw out the creation of a new enrollment, both for his own purposes and for the best interests of his clients.

"Scientific Racism"

Judge Page Morris's decision that the burden of proof of mixed blood lay with the defense remained in force, and Powell turned to the scientific community for the evidence he sought. This was a heady era for the newly emerging social sciences, which embraced staggering doctrines of environmental determinism. Among the social sciences, anthropology found itself playing center stage to devoted professional and lay audiences—and nowhere did the limelight shine more brilliantly than on the work of the physical anthropologists. It was here that Ransom Powell

found the collaborative testimony that would establish the mixed-blood lineage of "all but a handful" of the Anishinaabeg. None other than Dr. Aleč Hrdlička, director of anthropology for the Smithsonian Institution, was called as an expert witness.[35] Hrdlička was adamant that his methodologies could determine the exact blood quantum of each allottee based on physiological attributes.[36]

Six hundred and ninety-six allottees who demanded recognition as full-bloods were examined by Hrdlička. During the laboratory analysis of the collected hair samples, Hrdlička's assistant, Jenks, reported to Powell, as a matter of humorous interest, that the reliability of the tests was questionable:

> You will be interested to know that your micrometer is revealing some very new and interesting facts concerning the nature of human hair. Among the things revealed are the following: Both Hrdlička and myself have hair of the most typical negro type; and the Scandinavians have hair more circular in cross-section than our pure Pima Indians. I am not sure yet just what these facts mean, but . . . the old classification of human races by hair texture is not of scientific value. . . . Apparently Dr. Hrdlička (an immigrant Bohemian) and I are related to the negro, and the Scandinavians are simply bleached out Mongolians.[37]

Despite such facts, which became increasingly apparent to the expert witnesses, the deterministic foundations of eugenics prevailed. Relying on generations of community history and personal knowledge, the Anishinaabeg attempted to inform the examiners of the physiologic diversity of the tribe. "Anishinabeg informants understood genetic variations better than did the anthropological experts."[38]

> Mezhucegeshig informed the examiners "of course, it wouldn't make any difference if he was curly-headed. . . . Some Indians are blacker than others, and some are lighter." Mah-do-say-quay echoed this evaluation. "Generation after generation in the Indian, sometimes there is one lighter than the others . . . it just happened."[39]

The "evidence" that Hrdlička and Jenks compiled supported the position of the defense—only 104 living full-bloods were identified

—but it was ludicrous in its inaccuracy. Siblings were differently designated. Parents adjudged "mixed-blood" had presumably given birth to children of full Indian blood. In no instance did the more pertinent cultural appraisals forwarded by the Anishinaabeg influence the roll.[40] Despite the assertions of the scientific investigators, the findings failed to meet the stipulation that the exact blood quantum of each allottee be determined. The obvious solution, in Powell's estimation, was an amendment to the enabling legislation to remove the necessity of such determinations in favor of a simple dual classification system designating allottees as either full- or mixed-blood.

Federal Intrigues and "Indian Business"

The Indian Appropriations Act of 1917 afforded the Minnesota delegation the opportunity to offer such an amendment, and it was passed without controversy. One might presume that the pending cases were thereby resolved, if injudiciously and unfairly. That, however, was not the case. The settlement plan devised earlier by Kearful and agreed to by Powell had been in abeyance pending the completion of the anthropological determinations. The final dual roll was to be prepared by the Chippewa Commission chaired by defense attorney Ransom J. Powell.

The settlement plan itself did little to assure protection of the individual property interests of the Anishinaabeg. Pending completion of the dual census, title resolution was to be contingent on three categories of title protection based on blood quantum as established by Powell's commission:

- Cases involving the incompetent, full-blood Indians about whose status there is no doubt: Decrees will be entered for the government clearing the titles to the lands and the Indians will be entered on the final blood roll to be prepared;
- Competent mixed-blood Indians about whose status there is no doubt: Decrees will be entered for the defendants in those cases and the Indians will be inscribed on the final mixed-blood roll;
- The other cases (constituting the large majority) will be disposed of on an equitable basis without regard to the Indian status: The defendants will pay over to the Indian Office the difference between the amount

> in money or actual money's worth received by the Indian, and the fair market value of the land at the time of transaction with the Indian, with interest at the rate of six percent from that time to the date of settlement; the title to be made good in the purchase by fee patent, approval of deed, decree of court or inscription on the final mixed-blood roll as may be found convenient or desirable.[41]

In short, the settlement plan resolved little. The first two categories were not in dispute, and the third category simply abrogated the constitutional right of the Anishinaabeg to due process in securing their private property entrusted with the United States government. Nor was Powell, as chairman of the commission, disposed to move expeditiously in the execution, for he had discovered that the "Indian business" was profitable business indeed. Indians, purchasers, county title clerks, county auditors, and mortgage holders for third parties were all dependent on Ransom Powell for determinations that would either clear or nullify their title claims. Powell understood well how to capitalize on such authority and demonstrated a truly creative intelligence for generating outside income from his official commission work. Powell even initiated a $50 service for interested public officials charged with preparing titles of record.[42] Single inquiries from major financial institutions were often fulfilled at no charge, in exchange for "business at a future time."[43] J. B. Schermerhorn, an oil producer who maintained Chicago offices, had acquired more than one hundred parcels of prime agricultural land—many through the services of L. S. Waller, of Luck Land Company, one of Powell's clients in the conspiracy cases. Powell agreed to Schermerhorn's request for a bulk rate fee and blatantly acknowledged his conflict of interest:

> I have been doing a great deal of this work outside of the litigation I have been conducting up there, and my office is fully equipped to take care of anything of that sort that might come along. I feel also that I may properly claim to be the better equipped by experience and information to pass on these questions than any other attorney in Minnesota.[44]

In addition to a virtual monopoly on White Earth title opinions, Powell's commission appointment enabled him to protect the ille-

gal titles held by some of the defendants by having them conveyed to his name as trustee.[45] This conflict of interest drew little public attention and no notice from the Indian Service for two years, despite Anishinaabeg protests and a petition filed against the commission based on Powell's conflict of interest. When it was expedient to the interests of Powell's clients to legitimize a sale, birth dates were altered to falsify adult mixed-blood competency, or competency was determined based on Hrdlicka's spurious evidence.

Threatened with the termination of the commission and the end of his lucrative entrepreneurship, Powell submitted a final census in which the blood quantum of 760 full-bloods was altered literally overnight.[46] The great bulk of cases in which individual trust properties had been wrongfully alienated were never heard. Full-blood Anishinaabeg were deprived of their lands in trust and their day in court. This premature federal negation of trustee responsibility sought to close the books on the allotment scandal at White Earth. It was an ill-advised compromise, for it left unresolved and indeed further complicated the title to disputed lands. Nor did it stop the further alienation of trust lands from heirs of full-bloods enumerated in the fraudulent census. Registrars of deeds who had accepted Powell's determinations and assurances that a parcel was legally transferred by a mixed-blood neglected to cross-check federal records, and erroneously entered trust lands on the tax rolls. Descendants of homesteaders, who assured Powell that they had secured affidavits of competency, failed to secure adequate title search by the Indian Service. Even prudent third parties who secured title insurance failed to grasp the implications of disclaimers denying responsibility for determining whether lands had been legally transferred by their original allottees.

A Legacy of Wrongful Dispossession

The passage of time compounded injustices and left earlier wrongs uncorrected. Such illegal practices, once the province of unscrupulous land agents and corrupt officials, became standard practice in the acquisition of public lands. Counties illegally probated Indian estates in defiance of a 1906 court ruling to the contrary. The state of Minnesota assembled a lucrative state forest from the tracts of trust land that had mysteriously become "tax delinquent" (see fig. 4), and the federal government, through the

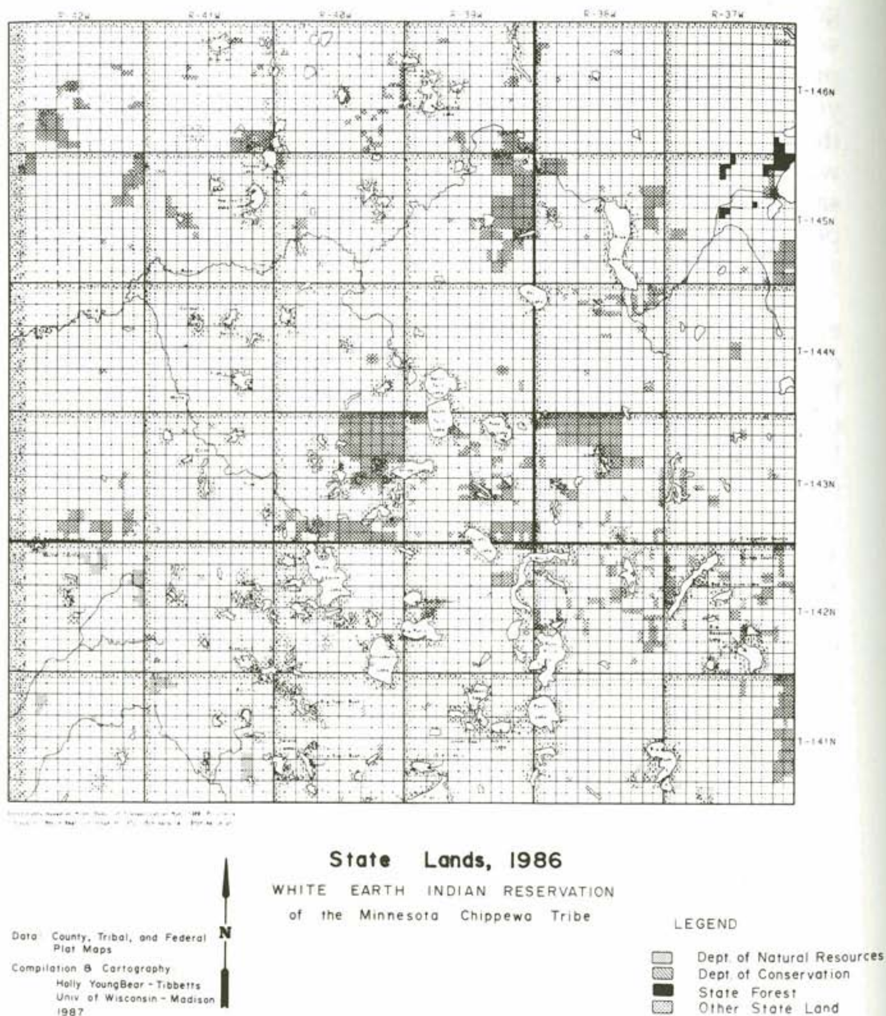

FIGURE 4. State lands, 1986. White Earth Indian Reservation, Minnesota.

process of eminent domain, obtained one of the most pristine of federal reserves, Tamarack Wildlife Refuge (see fig. 5). Not only were the books not completely closed on the scandal at White Earth, but new and incalculably more complex chapters were added. Those books were to be reopened by the 2415 Claims Project, and with them the wounds and antagonisms of fifty-eight years of federal malfeasance. Although it was in the context of this historical reconstruction that the claims of individual allottees would be validated by the solicitor, the history was little recognized by the public when the list of disputed properties was published.

COMMUNITY RESPONSE

With each of the solicitor's determinations of wrongful land acquisition, the White Earth case files mounted. By 1982, the magnitude of validated claims was such that the Rights Protection Division of the Bureau of Indian Affairs began notifying current "owners" that they were occupying lands whose titles were in some respect "clouded." Nearly concurrently, the 2415 claims investigators published a list of those allottees whose lands had been illegally alienated, so that White Earth enrollees could, by identifying an ancestor, determine whether or not they were parties to a land claim. The effect of both public notices was to send the communities of White Earth—Indian and non-Indian—into one of the most complex Indian land controversies in the history of the nation, and to immediately galvanize both Indian and non-Indian interests on White Earth into discrete and antagonistic interest groups. Interestingly, both communities initially responded in the same manner by organizing broadly based citizen groups. Neither community, however, was in unanimity as to its preferred resolution to the problems presented by such a magnitude of clouded titles.

The non-Indian community of White Earth is perhaps typical of the most extreme political conservatism of the rural Midwest—but it is conservatism laced generously with racism in general and anti-Indian sentiment in particular. Those towns and villages created through the railroads' acquisition of dead allotment lands are in most respects comparable to reservation border towns whose political economy is best described as a love/hate relationship with their indigenous neighbors. Although some of the

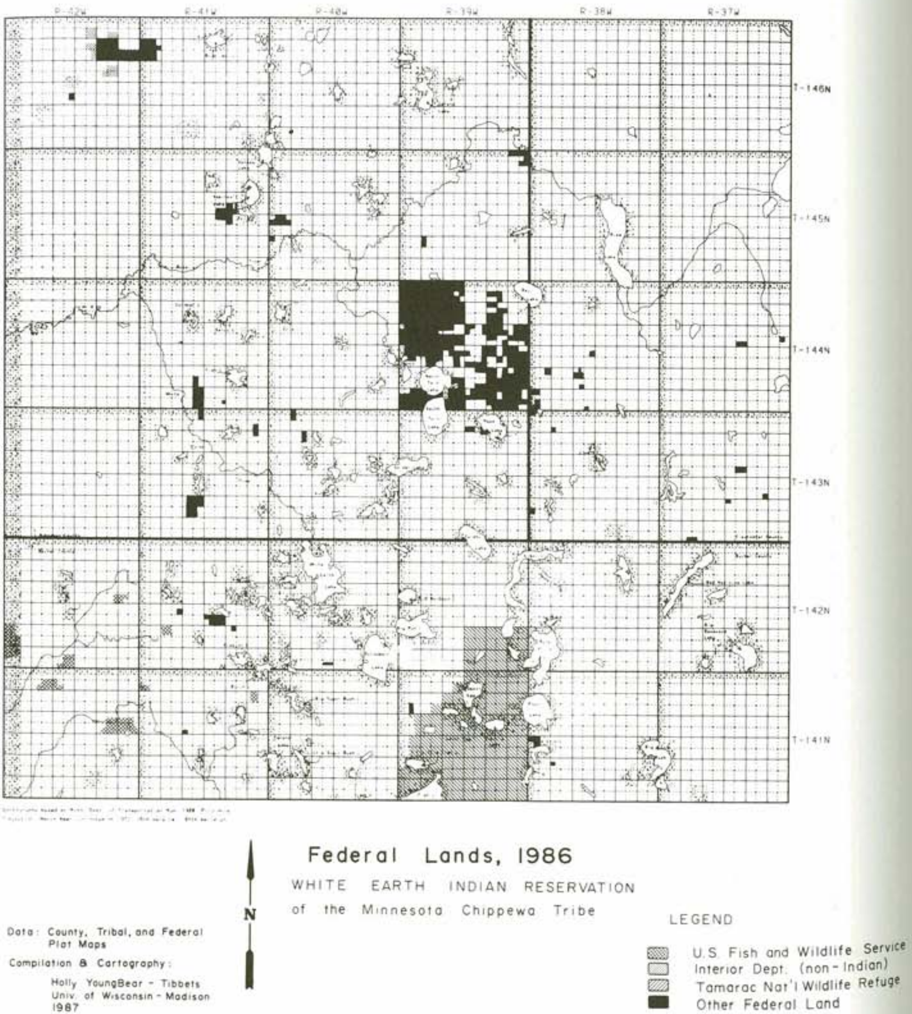

FIGURE 5. Federal lands, 1986. White Earth Indian Reservation, Minnesota.

predominantly white institutions such as the liberal Protestant churches were sympathetic and, in some cases, directly supportive of the claims of Indian heirs, their voices were muted by the clamor of non-Indian homestead and corporate landowners who advocated extreme and, in some instances, even violent measures. Most vocal were, understandably, those whose property interests were directly challenged by the Department of Justice's determinations; with their supporters, these individuals convened as the United Township Association (UTA).

Heirs to alienated Indian allotments organized themselves as Anishinaabe Akeeng (The People's Land) and initiated a series of community meetings throughout the reservation to explain the allotment claims and the process for determining one's heirship estate. More than adverse interests distinguished the Indian and non-Indian groups; from the onset, it was clear that the two organizations were to operate on a less than equal footing.

Initially this disparity was an historic consequence of the political economy of the reservation and its surrounding region. Simply said, farmers, resort owners, and timber corporations have means to underwrite community organization and can leverage political patronage in ways that individual, dispossessed Indian families cannot. But the imbalance of available revenue is only one example of disparate resources. The confrontation of the two factions through their organizational strategies was, from their inception, heavily weighted in favor of the UTA. While fiscal resources were uneven, the lack of parity was as well-defined in other and less material expressions of power: available outside support groups and networks; well-informed and easily identifiable constituencies; access to fundamental legal documents and instruments of title; and preexistent organizational institutions and facilities.

External Support

The United Township Association had access to extensive networks of support to further its goals.[47] Principal among these was the hierarchy of state and local governments that would champion its cause. Not only had these governmental units conveyed faulty title, but they had also acquired substantial holdings within the reservation: state and county forests, parks, and wildlife

refuges. As co-respondents in any future litigation, the state and the non-Indian factions on the reservation shared common interests. Given that mutuality of interests, UTA profited from the battery of expertise represented by state and county title clerks, attorneys, recorders of deeds, and elected officialdom.

No such comparable governmental support existed for disenfranchised owners of private trust properties. Beyond their participation in the documentation of valid title claims, tribal and reservation governments were little wont to intervene on behalf of dispossessed heirs. Moreover, the rhetoric deployed by the UTA in garnering community support relied on ideologies not pertinent to the facts of the claims but was calculated to exacerbate already strained community relations. While the land claims essentially constituted a dispute over specific private property interests, the United Township Association recast them as claims arising from treaties. Unchallenged, their allegations portrayed the dispute as a conflict between "outdated treaty obligations" and the privileges and entitlements associated with the "private property interests of honest white settlers." Dividing the community along racial and political lines allowed the UTA to gloss over the private property interests of the heirs to allotment and to claim the psychological advantage as "victims" of no longer timely Indian jurisdictional precedents.

The consequences of this manipulation were threefold. First, protection of trust properties is a federal responsibility, from which no tribal government would willingly release its federal treating partner. Neither would a tribal government assume the burden of reconciling the effects of a century of federal malfeasance. Second, the UTA's maneuvers placed tribal and reservation governments in a defensive posture, which forced careful consideration of the political costs that would result from a staunch advocacy of the property rights of selected individual members.[48] Third, tribal intervention would, even if inadvertently, enhance the UTA's interpretation of the conflict as having its genesis in the provisions of the 1867 treaty, rather than in the subsequent litigation of the equity suits. In promoting treaty abrogation, the racial ideology forwarded by the UTA gained them affiliation with a broadly based network of anti-Indian organizations. Through those affiliations, the UTA gained additional political patronage, access to organizational expertise, and the complex of benefits

associated with a well-financed national movement.[49] In that the interests of such anti-Indian community groups are coincident with those of energy corporations, it is noteworthy that even the sympathies of the district's congressional representative were heavily biased in favor of the UTA, despite federal responsibilities to protect Indian trust lands.[50]

Anishinaabe Akeeng enjoyed no such outside support. White Earth was the first reservation on which such extensive allotment title claims had been validated. No other Indian community could offer expertise or experience. Indeed, many were themselves watching the White Earth case closely in order to assess if and how to proceed with claims of their own. No attorneys flocked to White Earth to advocate for protection of trust allotments, as they had with earlier tribal claims. Private property claims that might drag on for decades assured no substantial fees like those associated with litigation of tribal lands. Neither were tribal attorneys or Indian Legal Services personnel available to dispossessed heirs.[51] Anishinaabe Akeeng had to look within its own ranks and develop its own resources, strategies, and expertise. Its greatest asset was the ability to forge an ideological stance that would capture the imagination and dedication of its membership. That ideology would prove a powerful tool, for Anishinaabe Akeeng dedicated itself to the restoration of title and to the eventual return of illegally alienated trust allotments. It would be a poignant appeal to community conscience and a foundation for the creation of a constituency.

Identifiable Constituencies

The United Township Association was aptly named. It relied from its inception on the records, facilities, and established leadership of the township system. Access to potential members could easily be drawn from tax rolls. Residents were advised to check the title status of their lands, lest they be next to discover that their lands were in jeopardy. UTA scare tactics were, in a sense, never necessary, for the *Zay Zah* case caught the attention of most white reservation residents. Some even attempted to move for legal resolution of title before any disputed tract was identified within their ostensibly secure property lines. With the exception of a few churches in sympathy with the dispossessed

Anishinaabeg, there was no dissent within the non-Indian reservation community regarding the preferred resolution to such clouded titles. The major controversy among UTA members revolved around the question of whether heirs should even be compensated for their loss. The UTA also enjoyed locational advantages in assembling its constituency, since potential members were all resident and available for regular and frequent meetings.

In contrast, the potential constituency of Anishinaabe Akeeng was obscured within the larger enrollment and often was difficult to locate. No rosters comparable to the UTA's tax rolls existed, and those records maintained by the Bureau of Indian Affairs, ninety miles distant at Cass Lake, were neither accessible to public scrutiny nor adequately maintained to be of great use.[52] Only about 40 percent of potential membership was resident on the reservation, and few of these even knew if their ancestors had trust allotments, much less where such lands might have been located. The original record of allotments is fraught with duplicity and error, as is the designation of allottees in the land claims enumeration. Sometimes Christian names were used, sometimes Indian names. In too many cases, nicknames and vernacular names such as the Anishinaabemowin (Chippewa language) equivalent of "old lady," "young man," or "little girl" were used. To determine heirship, one might need to know the location of ancestral allotment and the means of alienation, and have some assessment of a solicitor's opinion of the disposition of that category of title claim. Detailed information regarding the 2415 land claims were very much *terra incognita* to the community. Few had taken note of the *Zay Zah* decision, and many had no surviving elders to make the critical identification of ancestors three generations removed. Moreover, little information existed at the community level about the specifics of land losses. The geography as well as the history of White Earth had been suppressed and denied as effectively as had been the ancestral lands. The testimony of ninety-six-year-old Maggie Hanks is typical: "They say I lost my land in 1936. . . . I never signed for it or sold it. . . . They just took it away."[53] In terms of building a constituency, Anishinaabe Akeeng had to overcome both time and distance.

Organizational meetings had to be convened in Minneapolis and St. Paul, and word spread to distant urban and reservation communities where White Earth enrollees resided. Eventually a Twin Cities chapter of Akeeng was organized to serve the urban

White Earth membership.[54] Anishinaabe Akeeng was handicapped not just in expending time and energy to rally its membership, but also in seldom being able to convene a meeting of the whole organizational body. Even once convened, meetings of Akeeng were pressed to fill the void created by problems of information access and dissemination. The group had no formal access to title records or inheritance designations, and few human resources to aid in the translation of legal descriptions into the more pragmatic Anishinaabeg geosophy. When information was developed or located, they had fewer informal occasions through which to disseminate it to distant communities. Nor did they enjoy the unanimity of support available to the UTA.

Because the validated land claims again were based only on the estates of full-bloods, the ideology of restoration may have revived divisions that historically had marked the White Earth settlement experience. Some mixed-blood descendants were supportive of Akeeng's efforts, but most saw little advantage in becoming embroiled in a controversy that gained them nothing but potential political reprisals. As resolution of the claims proceeded, unaffected community members were offered ample incentives for withholding their support of Akeeng's ideological commitment.

Anishinaabe Akeeng, nonetheless, was not bereft of tactical resources of its own. Primary among these were ethical considerations, for the injustices of dispossession placed their claims on higher moral grounds. Bolstering the moral justice of their claims were the doctrines of federal Indian law and the federal responsibility to secure trust lands for the benefit of individual Indian people, within the context of treaty agreements and the Constitution.[55] Within its own membership, Akeeng recaptured its history and its geography and, by rediscovering the "historicity" of White Earth, became "actors through history, rather than victims of history."[56] Win, lose, or draw, Anishinaabe Akeeng offered its membership the opportunity to stand in assertion of their rights as guaranteed by the Constitution of the United States and to assert their entitlement as members of the Anishinaabeg Nation. The result was no less than complete community empowerment. From the ranks of Akeeng and its sympathizers within the 2415 research staff would emerge scholars, lawyers, tribal historians, community organizers, land surveyors, journalists, and ultimately a challenge to the established political regime.

CLAIMS RESOLUTION

The resolution of the 2415 claims revolved around the careful orchestration of an array of interested parties. The United Township Association flew to Washington to brief legislative and administrative officers.[57] The Minnesota congressional delegation assigned staff to research and coordinate a legislative solution to the claims. Congressman Arlen Stangland met with farmers and assured them that he would secure clear titles on their behalf. The state of Minnesota, through its attorney general as well as its executive and legislative branches, met to consider potential resolutions. Congressman Stangland also met with the White Earth Reservation Business Committee and offered them a ''package'' of compensation in exchange for their support of a legislative solution.[58] In short, seemingly everyone but the dispossessed heirs were consulted on the question of how the claims should be resolved. The federal executive branch was no less intent in its own course of action. Although the 2415 investigation was only partially completed, Secretary of the Interior James Watt terminated the project, ignoring the fact that deadlines established by the enabling legislation had not expired.[59] Existing title claims were transferred to the Rights Protection Program of the Bureau of Indian Affairs.[60]

The White Earth Land Settlement Act (WELSA)

Beginning in 1982, Congressman Stangland introduced, during every congressional session, legislation to nullify the 2415 claims in favor of their current non-Indian ''owners.'' The legislation initially fared poorly; its first four submissions were aborted by committee. Before Stangland could draw his fifth bill, the state of Minnesota entered the fray with its own ''sweetheart legislation.'' The state bill offered the return of ten thousand acres within a prescribed area (about 10 percent of the lands illegally obtained by the state reservationwide) in exchange for acceptance of federal legislatioin.[61]

Anishinaabe Akeeng opposed the legislation on three grounds: confidence that they could win a favorable judicial decision returning all state-confiscated lands; the fact that the state had conditioned the return on acceptance of federal legislation that would forever close all title claims—not only those by which the

state had obtained lands; and, most critically, the fact that the lands would not be returned to their rightful Indian owners, but to the reservation's governing body.[62] Akeeng's opposition was not, however, simply obstructionism. They drew up alternative legislation for both the state and the federal government which was more temperate and, ultimately, more just. Their alternative bill combined compensation, land restoration, and life estates for current non-Indian occupants of lands whose title would ultimately revert to appropriate Indian ownership. In no case did they seek to dispossess current residents who were owner/occupiers. Such cases were so few in number, when compared to the public and corporate holdings, that in the opinion of Akeeng, they warranted special consideration. The state of Minnesota, however, did not entertain debate on alternative proposals, but orchestrated the immediate passage of its own resolution—an unconscionable miscarriage of responsibility that demonstrated to the Anishinaabeg that the intervening decades had done little to alter the state's attitudes toward its Indian constituents. In Minnesota, the politics of compromise still prevail, and if the ''carrot'' of land restoration—paltry though it be—was not to be effective, the legislation also contained a ''big stick.''

The most onerous aspect of the Minnesota legislation was a ''sundown'' clause, which would withdraw the offer of land restoration if federal legislation were not enacted by 31 December 1985. Despite an intensive lobbying effort by Akeeng, they ''would find only seven friends in the Minnesota House of Representatives,'' according to John Morrin, community historian and heir. [63] They would also find only seven friends in the state senate when the concurrently introduced bill came to a vote.[64] In an uncharacteristic burst of efficiency, it took less than one month from the bill's introduction for Governor Rudy Perpich to sign into law Minnesota Statute 539 for the ''Settlement of Land Claims on the White Earth Reservation,'' with the sundown clause intact.

The Minnesota law, from its inception, intensified the growing divisions among the Anishinaabeg enrolled at White Earth. The federal legislation on which the senate land restoration scheme was based offered lucrative incentives for acceptance. Seventeen million dollars was to be granted to the reservation for purposes of economic development and investment. Reservation leadership equivocated only slightly before endorsing the

federal and state proposals.[65] Theirs was an ill-advised political judgment. On 13 May 1985, Anishinaabe Akeeng invited members of the reservation business committee to explain the pending federal legislation and their support of its passage. The council had misgauged the intensity of the community's commitment to the preservation of tribal homelands. Tension was apparent as the hall filled to overflowing.[66] Children from the Heart of the Earth Survival School, who had staged a "Run for the Land" earlier in the day, were a poignant symbol of the legacy that would be denied to future generations. Elders, some infirm, came to testify to the struggle that had been as much a legacy as the land, and demanded to know how their leaders could so easily compromise the future of the reservation land base. After two hours, the reservation business committee agreed to rescind the resolution. Unfortunately, their earlier endorsement had irreparably damaged the struggle for land restoration.

On 5 June 1985, Congressman Arlan Stangland introduced, for the fifth time, a bill to settle the claims at White Earth. Touting this latest version as a "consensual measure endorsed by the Indians," Stangland rallied support for its passage.[67] Within two weeks, Minnesota Senators Durenburger and Bostwitz introduced companion legislation. The only significant difference between the bills was the reduction of settlement compensation by $6 million. The Senate version was endorsed by committee staff as "the best deal White Earth was likely to get, including the restoration of some State land."[68] The Select Committee stood divided on passage until chairman Mark Andrews (Republican, North Dakota) cast the decisive vote in favor of recommendation to the Senate.[69] Although Indian legislation typically receives little attention on the Senate floor, this was not the case with the White Earth Land Settlement Act (WELSA). That the debate was heated and lengthy is a testimonial to the efforts of Anishinaabe Akeeng. After two full days of debate, the measure passed on 13 December 1985 with a majority of only twenty-one votes.[70]

In the House of Representatives, Congressman Stangland's efforts fared poorly, and the bill was not approved before the Minnesota sundown clause went into effect. Speaker of the House Udall refused to schedule its consideration after it was reported out of committee, and the congressional session closed without its consideration.

Anishinaabe Akeeng lobbied relentlessly against further con-

sideration of the Stangland bill and closely calculated the number of votes that would be needed to assure defeat should it be reintroduced. What they had not anticipated, however, was the potent, ongoing anti-Indian feeling that apparently was inherent in the Minnesota delegation.[71] The game of power politics indeed involves shifting rules. Despite a 1925 statute prohibiting such abuses, Stangland introduced WELSA under a suspension of the rules before only a dozen members of Congress. Suspension of the rules of Congress eliminates the requirement of a quorum for consideration of "non-controversial" agenda items. It is a mechanism of convenience for attending to congressional housekeeping items such as posthumous military awards, restoration of pension benefits, and the like. Only items of no controversy are supposed to be eligible for consideration. The previous Senate debate of WELSA for two full days suggests that significant controversy surrounded the proposed legislation. Nevertheless, the measure was carried by a voice vote on 11 March 1986 and subsequently signed into law.[72] No written record is maintained of votes cast under a suspension of the rules.

In broad outline, WELSA abrogates the private property interests of heirs in lieu of payment to the reservation government and offers in compensation restoration of ten thousand acres of land from the state of Minnesota. Additionally, the act provides $500,000 to the Bureau of Indian Affairs for the purpose of identifying and notifying all potential heirs to allotment claims and establishes a deadline of 180 days following such notification in which any challenging litigation must be filed.[73]

The state of Minnesota moved quickly to endorse passage of the federal legislation. Representative Rose introduced the legislation in the Minnesota House of Representatives only four days after Stangland's congressional maneuver, as an amendment to a wild rice license requirement bill. Two days later, state senators Moe and Peterson reintroduced the bill in the state senate. On 24 March 1986, the Minnesota version of WELSA was signed into law.

The Quest for Due Process

Passage of WELSA meant that anyone contesting legislative resolution of land claims had but 180 days in which to file suit for restoration of title.[74] Would-be litigants were often discouraged by

the fact that any who filed suit, as well as relatives who were party to heirships, would be denied participation in the WELSA settlement. In addition, the larger Indian community of White Earth, divided by ideology and entitlement, actively disparaged those seeking restoration instead of a general settlement in which all would gain the federal windfall.

Although Akeeng had always anticipated that litigation would be necessary one day, research had been focused on documenting the breadth of claims, rather than on establishing individual suits. With the passage of WELSA, a shift in tactics became necessary. Two cases were developed that encompassed every means of wrongful confiscation previously validated by the solicitor general.[75] In addition, a third case was filed that challenged the constitutionality of the White Earth Land Settlement Act by charging that it violated the Fifth Amendment by denying ''due process of law'' in the alienation of private property.[76] *Little Wolf v. Hodel* raised the constitutional issue juxtaposing Indian citizenship with the right to due process.[77] The issue that *Little Wolf* addresses has broad implications for Indian protection of Indian lands. Trust status affords little assurance of protection in the absence of a ruling that guarantees due process of law. Nor do allottees have any substantive protection from administrative dispossession, ''secretarial transfers,'' or other novel tactics of quieting Indian title. Regrettably, the Supreme Court has not moved to affirm the integrity of individual Indian title. Rather, on 16 January 1990, the Supreme Court of the United States formally declined to hear the *Little Wolf* petition, referring it back to circuit court. Akeeng and its legal counsel are currently evaluating other potential lines of argument upon which to base a constitutional challenge.

The two cases that dealt specifically with alienated lands—*Many-Penny v. U.S.* and *FineDay v. U.S.*—sought redress against the United States, the state of Minnesota, counties claiming jurisdiction, and the ''owners'' of record. In response, both the United States and the state of Minnesota refused to waive sovereign immunity despite the fact that their interests far exceeded those of the other defendants.[78] The counties of Mahnomen, Becker, and Clearwater argued before Judge Doty of the United States District Court for the state of Minnesota that the federal and state governments were ''indispensable parties'' to the suit and that no fair hearing could be concluded in their absence. Judge Doty,

in a leisurely considered opinion, applied a four-part test to the question of indispensability in an effort to weigh the balance of interests represented by the suits.[79] The test seeks a means by which to reconcile the interests of the plaintiff and his "need in equity and good conscience of a litigative forum against those of the party removed from the law suit, the importance of their interests, and the nature and effect of the litigation."[80]

By such judicial consideration, Judge Doty determined that on two counts the plaintiffs would be denied the equity of a litigative forum, but on the other two counts the interests of the counties and private parties would be compromised. In effect, although neither had the "luxury of claiming sovereign immunity, they were relieved of responsibility."[81] Here the judicial reasoning became somewhat obtuse. Doty ruled that despite the equality of considerations, the federal interests were greater than those of the plaintiff, in that if lands were restored to trust status, the federal government would be encumbered with their administration.[82] Ultimately, Doty's ruling was as inconsistent as his reasoning. He ruled that the counties could not be sued without the presence of the United States and the state of Minnesota. Doty apparently recognized that the rights of the plaintiffs to an equitable litigative forum had been compromised, but declined to include the admission in his formal opinion. Instead he relegated to a footnote the observation that "the Indians are in a catch-22 relationship."[83]

The cases should have been heard on their individual merits, but they were not. Doty's decision was appealed before the Eighth Circuit Court of Appeals on 20 November 1990.[84] In preparing for that litigation, attorneys for Anishinaabe Akeeng echoed sentiments not unlike those expressed sixty years earlier by C. C. Daniels on behalf of an earlier generation of litigants:

> The reason that we're not winning these cases has nothing to do with their merits. We cannot win because to do so would, in the eyes of the courts, undermine the whole foundation of the U.S. legal system. Despite the fact that 2415 claims represent individual private property rights of Indians, the legal emphasis has always been on their "Indianness" rather than on their individual property rights as citizens. Our legal system was

> created to validate the unscrupulous dispossession of indigenous people and secure WHITE property. It was simply never envisioned that as citizens, Indians too, are entitled to due process under the law.[85]

Ultimately, Judge Doty moved for consolidation of the *Many-Penny* and *FineDay* cases, and further ruled that the plaintiffs be responsible for notification of all concerned litigants. As of this printing, all but three defendants have responded and have subsequently been removed from the case. *ManyPenny* and *FineDay* have since been consolidated, and on 20 November 1990, an appeal of Judge Doty's decisions was filed with the Eighth Circuit Court of Appeals.[86] That appeal is based on four contentions:

- By enacting WELSA, Congress expressly waived the United States government's sovereign immunity;
- Statutes of limitation are not applicable to actions where the matter is within the government's trust responsibility;
- By participating in WELSA, the state of Minnesota has waived its Eleventh Amendment immunity for claims relating to the transactions described in the act;
- The United States is not an indispensable party to this action.

CONCLUSION

The cases forwarded by Anishinaabe Akeeng represent the most forceful consideration of individual Indian property rights to date. In combination, the legal cases brought by Anishinaabe Akeeng raise the salient point that if Indians are citizens as acknowledged by the Fourteenth Amendment, then they are also entitled to the protection of the Fifth Amendment, securing their property through the guarantee of "due process of law." *Many-Penny* and *FineDay* are the legacy of political compromises struck in the 1925 negotiated settlement of Anishinaabeg allotment land claims. It is a travesty of history that they remain unresolved equitably. Had they been given the "due process of law" that was promised to Indian citizens when the cases were first heard, rather than compromised by the wheeling and dealing of political appointees and a recalcitrant federal government, the wounds

of White Earth might have been healed long ago. Today those wounds are open sores of community disruption. The legislative solution posed by WELSA is not merely inept and inadequate, it is an insult to the Anishinaabeg of White Earth. As an analogy, there is little evidence that non-Indian property owners would be satisfied if their lands were confiscated and restitution were made to a county or state for purposes of economic development. For the rest of the country, depressed regional economies are not relieved through the dispossession of private property, for they are individual problems requiring distinct solutions.

If the White Earth private property claims continue to be treated today as cavalierly as they were in 1925, they will persist as open sores of community conflict and as a reminder of the irreconcilable disparity wrought by a system of justice based on ethnicity rather than equity. Moreover, the land claims of White Earth will not so simply disappear, but will rise to challenge new generations. They will not be forgotten, nor will they be resolved until individual Indian owners are accorded the due process guaranteed by the Constitution. Ignored by the public or dismissed by the courts, they will simply become more complex with the passage of time. At White Earth—as in much of Indian Country—one may not inherit the land, but one does inherit the struggle.

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NOTES

1. There were, at the inception of the project, two opposing interpretations as to which claims were covered by the enabling legislation. The narrower of these held that 2415 applied only to cases of trespass; the broader interpretation held that all claims discovered under the 2415 process could be validated. Ultimately, the Department of Justice adopted the narrower view and transferred title claims to the Rights Protection Division of the BIA.

2. On White Earth, seven trespass claims were established: four of boundary encroachment; one by a state road; one agricultural use; one by a utility easement. In addition, three contract claims were documented, as well as one

natural resource claim in which the Indian owner was not compensated for natural resources removed from his property.

3. The bulk of these transactions had occurred between 1905 and 1919.

4. *State of Minnesota et al. v. Zay Zah*, filed 21 October 1977; 259 *Northwest Reporter*, 2d 580. The *Zay Zah* precedent subsumed four distinct classes of wrongful taking: minor sales; county court sales; nonconsent claims; and the dissolution of individual Indian allotments secured through the provisions of the 1867 treaty. At the time that Secretary James Watt annulled the MCT's 2415 Claims Project—when 25 percent of the case files were yet to be given even a cursory review—some 219 cases following *Zay Zah* had been documented.

5. During the 2415 research project's duration, 1,198 claims were submitted by the MCT on behalf of White Earth. Two hundred sixty-three cases were rejected by the field solicitor as not being valid and prosecutable under 2415.

6. For a useful comparative case, see Sandra L. Faiman-Silva, "Tribal Land to Private Land: A Century of Oklahoma Choctaw Timberland Alienation from the 1880s to the 1980s," *Journal of Forest History* (October 1988):191–204.

7. See, for example, Warren K. Moorehead, ed., *The American Indian in the United States, 1850–1914* (Andover, MA: Harvard University Press, 1920); William Watts Folwell, *A History of Minnesota*, vol. 4 (St. Paul: Minnesota Historical Society, 1930 and 1969); Melissa L. Meyer, "Tradition and the Market: Social Relations of the White Earth Anishinabeg, 1889–1920" (Ph.D. dissertation, University of Minnesota, 1985); Holly YoungBear-Tibbets, "Every Place Has Its Story . . . Every Place Has Its Struggle: The Episode at the White Earth Indian Reservation of Northern Minnesota" (Master's thesis, University of Wisconsin-Madison, 1987).

8. The preface of Moorehead's report to the commissioner is reprinted in his 1920 edition of *The American Indian in the United States*, 172.

9. 34 Stat. 325.

10. *Report in the Matter of the White Earth Reservation, House Calendar No. 357, 620 Congress, 3rd Session Report No. 1336, presented by Mr. Graham from the Committee on Expenditures in the Interior Department* (hereafter *Graham Committee*) 16 January 1913 (Washington, DC: U.S. Government Printing Office, 1913), 74.

11. *Graham Committee*, 75.

12. Ibid., 19–20.

13. For a report of the confessions, see the *Minneapolis Journal*, 16 January 1913, 1.

14. Ibid., 13 November 1913, 1.

15. The secretary is quoted in Folwell, *A History of Minnesota* (1969), 284.

16. Ibid., 285n.

17. The bill is reported in the *St. Paul Pioneer Press*, 2 February 1912, 16.

18. Burch is quoted in ibid.

19. An interim roll had also been constructed on the instructions of Marsden Burch. It was, however, an unofficial census used only by the prosecuting attorneys for the purpose of case preparation.

20. Powell to N. B. Hurr, 30 April 1913, Powell Papers, P725, box 1, item 132, Minnesota Historical Society, Division of Archives and Manuscripts, St. Paul, Minnesota (MHS, DAM).

21. Transcript of Record, *U.S. v. First National Bank*, 234, *U.S. Syllabus*, 261.

22. Page Morris's stated considerations were as follows: "The natural and

usual signification of plain terms is to be adopted as the legislative meaning; the rule that provides that interpretation must be based on the meaning of the terms as understood by the Indian does not apply, as the statute is not in the nature of a contract and does not require the consent of the Indians to be effective; the after facts have but little weight in determining the meaning of legislation and cannot overcome the meaning of the plain words used in a statute, nor can courts be influenced in administering a law by the fact that its true interpretation may result in harsh consequences; the responsibility for the justice and wisdom of legislation rests with the Congress; the policy of the government in enacting legislation is often an uncertain thing as to which opinions may vary, and it affords an unstable ground to statutory construction; Congress has on several occasions put full-blood Indians in one class and all others in another class; if a given construction was intended by Congress, which it would have been easy to express in apt terms, other terms actually used will not be given a forced interpretation to reach that result; while the early administration of a statute showing the departmental construction thereof does not have the same weight that a long-observed departmental construction has, it is entitled to consideration as showing the construction placed upon the statute by competent men charged with its enforcement; courts may not supply words in a statute which Congress has omitted, nor can such course be induced by public policy of the desire to promote justice in dealing with dependent people; the Clapp Amendments of 21 June 1906, . . . by removing restrictions imposed by the act of 8 February 1887 upon alienation of Chippewa allotments as to mixed-bloods apply to mixed-bloods of all degrees and not only to those of half or more than half white blood."

23. Burch is quoted in *Graham Committee*, 1308, and also in Folwell, *A History of Minnesota*, 289n.

24. The decision is quoted in the *Minneapolis Star and Tribune*, 14 November 1913, 12.

25. Daniels's press release is printed in the *Minneapolis Journal*, 14 November 1913, 12.

26. See, for example, reports of Daniels's speech in the *Minneapolis Journal*, 19 June 1914, 2.

27. Quoted in *Minneapolis Tribune*, 15 June 1915, 14.

28. This particular stall is interesting in that it illuminates the measure of Powell's influence with the court. The constitutionality of the act had not been formally challenged. It had been alluded to in an impassioned closing argument posed by the assistant prosecutor in Daniels's absence. Upon returning, Daniels denied that the Justice Department would challenge the constitutional question. He felt certain that the suits would be won on their own merits.

29. Daniels is quoted in the *Minneapolis Tribune*, 19 December 1915, 4.

30. Gus Beaulieu's assertion is quoted in ibid., 6.

31. Gus Beaulieu, who edited a White Earth newspaper, *The Tomahawk*, used his paper to fan the fires of divisiveness on the reservation. He charged Superintendent Howard with pandering to lazy, indolent full-bloods, and attempted to implicate the series of federal investigators and prosecuting attorneys in encouraging the warehouse faction. Such charges were frequently picked up by the traditional media in the Midwest. See, for example, Beaulieu's charges against Daniels in the *Minneapolis Tribune*, 19 December 1915, 6.

32. Daniels told a reporter for the *Minneapolis Tribune* that he "recognized that the full-bloods have been robbed and outrageously treated . . . and that the people who have done this to the Indians have great influence in business and politics (19 December 1915, 6).

33. Gus Beaulieu's statement to the *Minneapolis Journal*, 9 December 1915, undated clipping found in the Folwell Papers, box 1, MHS, DAM.

34. It must be recognized that responsibility for this decision lay with Attorney General Gregory. The distinction between Daniels and Kearful runs more to the issue of accepting full responsibility for the legal strategy than to the decision itself. Kearful's first act was to go to Washington for instructions, rather than to make his own decisions regarding the suits. Because the Minnesota delegation was a direct party to the interests of the defendants, deference to the department, itself dependent on congressional goodwill, worked against Anishinaabeg interests.

35. Hrdlička should have been the principal expert witness for the Anishinaabeg, and indeed C. C. Daniels had travelled to Washington to secure his services, as the federal government's leading anthropological authority. Hrdlička declined, saying he was unwilling to make a deposition in the government's favor—and for good reason, as he had been in the employ of Ransom Powell since the previous November, agreeing to conduct examinations of the Anishinaabeg for the defense, at a rate of twenty dollars per day.

36. Hrdlička had devised a method of comparative physiology, by which he measured tribal people against baseline data collected on the Pima, whom he considered the most Indian of all Indians. The procedure consisted of measuring the relationship of the length of the nose to the breadth of the face, scratching the skin and timing the presence of discoloration, and determining the relative "roundness" of hair follicles.

37. A. E. Jenks to Powell, 25 February 1916, Powell Papers, P725, box 1, MHS, DAM.

38. Meyer, *Warehousers and Sharks*, op.cit., 1985, 284.

39. Quoted in ibid., 284.

40. For a more detailed discussion of the eugenic analysis of the Anishinaabeg, see ibid.

41. The terms of settlement are outlined in the *Minneapolis Tribune*, 8 August 1916, publication and date hand-noted, no page number, Folwell Papers, 335, box P, MHS, DAM.

42. See, for example, his correspondence with Ole Nelson, register of deeds at Detroit Lakes, 24 June 1918, Powell Papers P725, box 1, item 67, MHS, DAM.

43. Quoted from correspondence with Bankers Trust of Des Moines, IA. See also similar correspondence with numerous Minnesota financial institutions and investment corporations, Powell Papers P725, box 1, MHS, DAM.

44. Powell to Schermerhorn, 7 December 1917, Powell Papers P725, box 1, item 137, MHS, DAM.

45. Powell held such land titles for J. W. Nunn, the Beaulieus, and Fred Sanders.

46. Leah J. Carpenter, Esq., "The White Earth Land Controversy: Is History Repeating Itself?" (Unpublished student paper available from the author, Rte. 1, Bemidji, Minnesota 56601, 1985), 11.

47. The non-Indian interests in White Earth have typically been portrayed quite sympathetically. The UTA in particular has striven to portray the title dis-

putes as victimization of innocent homesteaders. The fact is, of course, that farming is a commercial interest. Moreover, there is not one instance in which the disputed title affects all of a farmer's holdings.

48. The entire tribal membership of White Earth, some eleven thousand individuals, would in few tangible or economic respects gain from the restoration of allotment trust lands. On the other hand, if the reservation government held an ostensibly neutral position in the claims process, the entire membership stood to gain significant economic rewards. The argument could be made, but to my knowledge has not been, that support of the heirs would jeopardize relationships with other non-Indian units of government which, in the estimation of reservation officials, were more valuable than the property interests of selected individuals.

49. The largest and most powerful of the national (and now, by self-acclamation, international) anti-Indian organizations is the Interstate Congress for Equal Rights and Responsibilities (ICERR). For a discussion of ICERR and affiliates, see Eileen M. Stillwaggon, *Monthly Review* (November 1981): 28–41. For a discussion of anti-Indian organization (PARR) in neighboring Wisconsin, see Donald L. Fixico, "Chippewa Fishing and Hunting Rights and the Voigt Decision" in *An Anthology of Western Great Lakes Indian History*, ed. Donald L. Fixico (American Indian Studies Program, University of Wisconsin-Milwaukee, 1987).

50. Congressman Arlan Stangland became an indefatigable advocate for the UTA interests, introducing legislation at every session of Congress to quiet Indian title claims. Stangland, himself a prosperous farmer, has consistently earned derisive remarks in congressional ratings prepared by Americans for Democratic Action for his unilateral support of the energy interests, even when they conflict with the interests of his rural constituents.

51. Legal Services attorneys are, as a matter of course, restricted from any practice that generates either compensation or economic assets. To the extent that any legal practitioners offered counsel to the heirs, they did so beyond their official capacity at Legal Services. Tribal attorneys tend to be neither interested nor practiced in Indian private property law but, on the reservations of the Minnesota Chippewa tribe, are more comparable to corporate counsel. Given that they have a weighty case load in this respect, a reluctance to take on individual cases is understandable. Moreover, in the later days of negotiation following passage of the White Earth Land Settlement Act, tribal counsel participated in negotiation on behalf of the reservation government.

52. The BIA is charged with the responsibility of maintaining complete records of property inheritance, but, in fact, there is an enormous backlog of record maintenance; it is a difficult task, even for personnel trained in management of bureau records, to provide a complete analysis of individual property rights. It was for this reason that White Earth Reservation initiated a genealogy and probate project.

53. Maggie Hanks's testimony is recorded in the White Earth Oral History Project videotapes housed at the Indian Studies Program, Bemidji State University, Bemidji, MN.

54. The Minneapolis-St. Paul chapter is housed at the Regional Indian Center, 1515 Franklin Avenue, Minneapolis, MN.

55. In this sense, the issue of Indian land claims is particularly strapped. Historically, when tribal people have won land claims cases, the federal government has simply created a new body of law to plug the loophole, preventing

other tribes from benefitting. Virtually no work has directly addressed this very delicate issue of moral claims versus legal claims in Indian Country, yet most scholars implicitly have recognized the moral superiority of Indian land claims.

56. For a thoughtful discussion of the implication of the term *historicity* as moral inquiry, see Glenn E. Tinder, *The Search for Community: A Tragic Ideal* (Baton Rouge and London: Louisiana State University Press, 1980).

57. This questionable lobbying tactic came to the attention of the 2415 claims staff through one of the UTA's publications, which failed to conceal that the UTA had been officially brought to Washington to air their grievances to the secretary of the interior and the Congress.

58. Communiqué from Andy Gildea, public relations officer for Arlan Stangland, dated 24 March 1982 (in author's possession), confirming that the congressman had met with the chairman of the RBC and that they had concurred on a five-point plan which essentially rewarded the reservation for abrogating its responsibilities to its membership.

59. Official estimates by then Project Director Lenee Ross that 20 percent of the White Earth files had not been researched suggest that as many claims were undocumented as were already compiled. The reason for this is administrative procedure, in that when the solicitor made a determination of validity, files previously researched were not recalled and reexamined in light of additional rulings. Investigators for the White Earth Reservation have subsequently identified an additional 300–400 cases, and their investigation is still incomplete. The total number of claims is, as of this writing, inestimable.

60. Departmental memorandum to area directors from the deputy assistant secretary, 10 March 1982.

61. The figure of ten thousand acres reportedly was arbitrarily selected by the state's attorney general, Hubert H. "Skip" Humphrey III.

62. State confiscations had, in general, resulted from illegal taxation and have been subject to the precedent established in *Zay Zah*. The Minnesota statute also sought to extinguish claims resulting from illegal probate, minor sales, and forced fee patent.

63. The vote was 111 to 0 in favor of passage.

64. Senate legislation had been introduced by Majority Leader Roger Moe and was passed on 18 April 1984, 49 to 7.

65. White Earth Reservation Resolution No. 001-85-018, 2 April 1985.

66. Crowd estimates ranged from 700 to 1,000, according to local news media. Video coverage of the meeting confirms the SRO conditions and the anger of the assembled crowd. See, for example, outtakes and edited copy of Randy Croce's documentary, "Clouded Title," available from the producer, 1117 Churchill, St. Paul, MN 55117.

67. H.R. 2628.

68. Personal interview with Peter Taylor, staff director, Senate Select Committee on Indian Affairs, July 1985.

69. The committee had previously heard two similar submissions by the Minnesota senators, and the committee had previously stood divided on the issue. In both prior considerations, committee chairman Senator Melcher of Montana had voted to reject recommendation.

70. The vote was by roll call (in itself a significant demonstration of its controversial nature) and reported at 56 to 35 in favor (14 not voting).

71. It should be noted that the UTA is also on record in opposition to WELSA. Some Anishinaabeg have speculated that many farmers caught in the farm crisis had hoped for a legislative alternative that might create a buy-out fund for their interests. See, for example, testimony of farm families eager to sell their holdings on White Earth. Videotape, White Earth Oral History Project, housed at American Indian Studies, Bemidji State University, Bemidji, MN.

72. Public Law 99-264, 24 March 1986, 99th Congress 100 *Stat*. 61.

73. The act is arguably deficient in this respect. It provides under section 6 that a 180-day statute of limitations be imposed for the purpose of filing suit. Yet, in the main, courts have concurred that in those trust relationships that are not solely fiduciary in nature, Indian claims are subject neither to the six-year limitations imposed by 28 U.S.C. 2401(a) nor the twelve-year limitation established by the Quiet Title Act, 28 U.S.C. 2409(a). Rather, the courts have in general held with the disposition of *Manchester Band of Pomo Indians v. United States*, 363 F.Supp. 1238, 1249 (N.D. Cal. 1973) and *Copoeman v. United States*, 440 F.2d 1002 (Ct. Cal. 1973).

74. Initially there was some dispute over the actual length of time allowed for plaintiffs to file court actions. The nature of the dispute lay in whether the 180-day limit became effective upon enactment or from the date by which the Bureau of Indian Affairs had completed its mandated responsibilities. Eventually the dispute was resolved in favor of the latter consideration. The difference allowed adequate time for the *FineDay* case to be filed.

75. The cases also included questionable takings upon which the solicitor had not concurred. It is noteworthy that the solicitor, who had in the first instance validated the claims against the government, was subsequently transferred to the position of defense attorney for the government.

76. *LittleWolf v. Hodel*, 681 F.Supp. 929, D.D.C., 1989 filed in the federal district court of Washington, D.C. Subsequently, *LittleWolf v. Lujan*, 877 D.2d 1058, (D.C. Cir. 1989).

77. 681 F. Supp. 929 (D.D.C. 1988).

78. *ManyPenny* was the first heard, having been previously filed, and became the essential test case. *FineDay*, filed only twenty days prior to the statutory limit, has not only followed form, but the bench has delayed judgment on *ManyPenny* until the *FineDay* case has "caught up" to it. Orders for entry of final judgment were issued on 29 June 1990 and 14 August 1990, respectively.

79. The defendants moved for dismissal on the grounds that the United States and the state of Minnesota were indispensable parties to the suit, based on the precedent of *Nichols v. Rysary*, 809 F2d 1317 (8th Cir., 1987). Judge Doty relied on a four-part test of indispensability derived from *Provident Tradesman Bank & Trust Co. v. Patterson*, 390 U.S. 102 (1968).

80. Interview with attorney for Anishinaabe Akeeng, 24 November 1989. The four-part test of *Provident Tradesman Bank & Trust Co. v. Patterson*, 390 U.S. at 109–111 poses four considerations: (1) whether the plaintiff has an interest in having a forum; (2) whether the defendant may properly wish to avoid multiple or inconsistent relief, or sole responsibility for a liability he shares with another; (3) the interest of the outsider whom it would have been desirable to enjoin; and (4) the interest of the courts and the public in complete, consistent, and efficient settlement of controversies.

81. Interview with attorney for Anishinaabe Akeeng, 24 November 1989.

82. The logic of this reasoning is somewhat circular, in that the federal government not only has treaty responsibilities for such rights protection but also has an administrative procedure for trust administration, including the exercise of trust responsibility for twenty-four hundred acres of land on White Earth Reservation. In actuality, little more would be required than entering restored lands to the roster.

83. Interview with attorney for Anishinaabe Akeeng, 24 November 1989.

84. *Marvin ManyPenny et al. v. United States of America et al.*, No. 90-5480 MN, 8th Cir., 1990.

85. Personal interview, 24 November 1989.

86. No. 90-5480MN, 8th Cir., 1990.