

RANSOM POWELL *and the* TRAGEDY *of* WHITE EARTH



KEN PETERSON

IN 1905 MOST OF THE 750,000 acres of White Earth Reservation in northwestern Minnesota belonged to members of the Minnesota Chippewa Tribe, either as individual allotments or as property held in trust for the tribe by the federal government. Over the next five years, in what historian William W. Folwell called the "Tragedy of White Earth," most of that land was lost to non-Indians.[1]

A variety of Euro-American interests were responsible for this wholesale transfer of property: timber companies wanting to log the reservation's pinelands, farmers desiring a share of the rich Red River Valley soil, speculators understanding the property's real value, and banks wishing to expand their business. At different times, these parties were assisted by sympathetic Indian agency staff, federal judges who, in the fashion of the era, consistently interpreted the law favorably to Euro-Americans, and, most significant, members of Congress looking out for non-Indian economic concerns. Tying together these interests and helpers was one indispensable individual: Minneapolis attorney Ransom J. Powell. Though his chief clients were timber companies, at one time or another Powell either represented or worked closely with all who had a hand in dismantling White Earth Reservation.

White Earth was established by an 1867 treaty between the Ojibwe and Congress, with the idea that all Minnesota Ojibwe, except members of the Red Lake band, would live there. The area was a square—36 miles on each side—comprising 36 townships and 1,296 square miles in Becker, Clearwater, and Mahnomen counties. The land was physically varied with good soil for farming in the western townships; plentiful timber, particularly white pine (a source for regular income) in the east; and in the middle, substantial woodlands of pine and hardwoods amidst lakes and streams, a good environment for hunting, fishing, and wild-rice harvesting. Despite promises and federal incentives to relocate, fewer than 35 percent of the Ojibwe ever moved to White Earth from their homes near lakes such as Mille Lacs, Leech, Cass, and Winnibigoshish.[2]

In 1867 when the treaty was made, Congress favored vesting tribes with authority over reservations. During the next few decades, however, non-Indian reform groups came to believe that destroying tribal authority and encouraging private ownership of reservation lands would secure a better future for Indians, whose very survival depended upon their "Americanization." While these "friends of the Indian" supplied the intellectual rationale, much of the

FACING: *Horse-drawn wagon in a forest of Norway pine, Elbow Lake, White Earth Reservation, April 1901*

Ken Peterson, Minnesota's commissioner of labor and industry, began his career as a legal services lawyer on the Leech Lake Reservation. For eight years as a deputy attorney general, he coordinated the State of Minnesota's legal relations with tribal governments.

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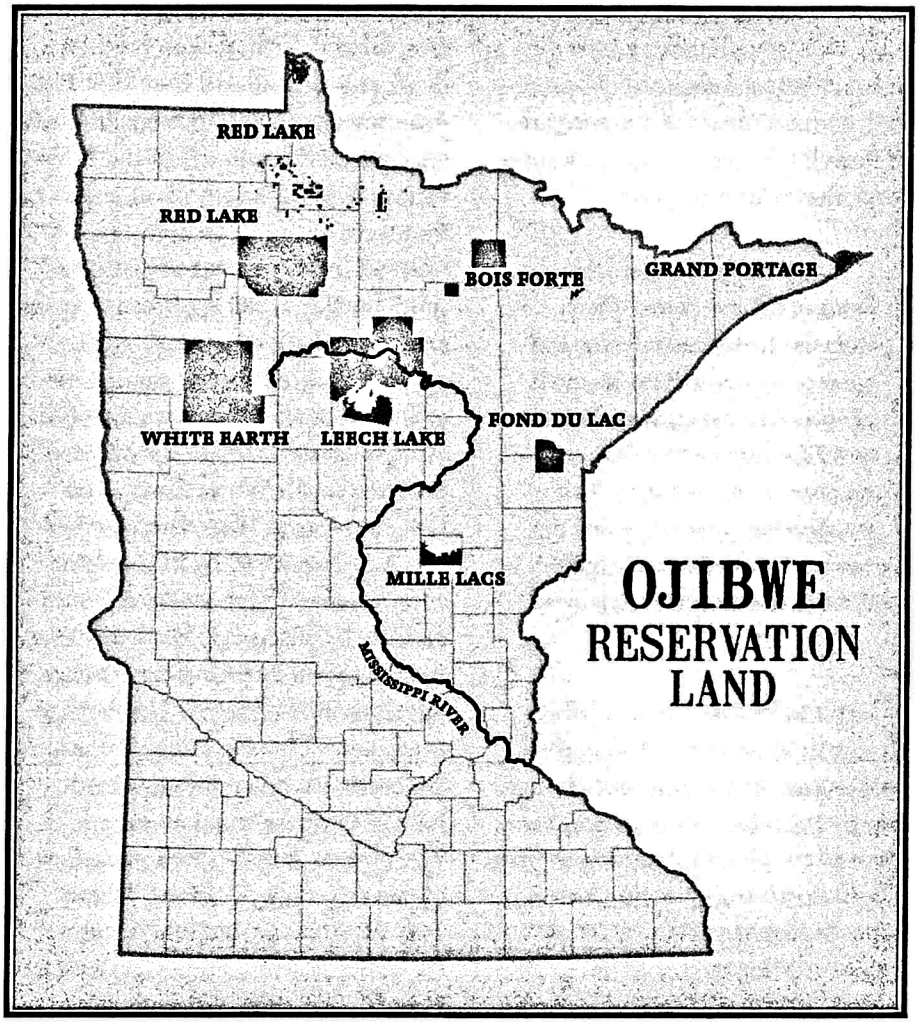
political muscle behind the allotment movement came from the pressures of land-hungry settlers and other economic interests.[3]

The reformers' ideas became national policy in 1887 when Congress approved the Dawes Act, which called for allotting parcels of land to individual Indians and then selling the remainder of the reservation to white settlers and companies. This policy paved the way for the eventual loss of Ojibwe property on White Earth.[4]

Though this loss has been well described and analyzed, Powell's role in the debacle has not. One reason may be that he was not a political leader assembling a coalition, a businessman building an empire, or an intellectual melding words into enduring precepts. Instead, Powell was a practical lawyer, representing clients with whatever tools he could: unique legal theories, thorough investigations, intelligence gathered by his agents, hard work, and, most important, relationships. In what today would be considered an absolute conflict of interest, he even got himself named head of the federal panel that decided which White Earth tribal members the government would protect from his own clients and other land purchasers. When Powell is judged by his accomplishments on behalf of his clients, he succeeded fabulously. Beyond the central role he played in dismantling Indian ownership of White Earth Reservation, Powell is also of interest today for the light his work throws upon the making of Indian policy in the early 1900s and the methods he used in representing his clients.[5]

RANSOM POWELL was born in 1865 in Pine Island, Minnesota, the third of five children of prominent circuit-riding Methodist minister John Walker Powell and his wife, Rhoda Powell. After public schooling in several southern Minnesota towns, he went on to attend and graduate from Hamline University.[6]

Next, Powell engaged in several businesses. For two years he was superintendent of the Mankato Gas Light Company and later supervised the city's first electric plant. In 1890 he opened the plumbing firm of Willard and Powell in Duluth, supplying heating and plumbing systems to commercial buildings. Powell mar-

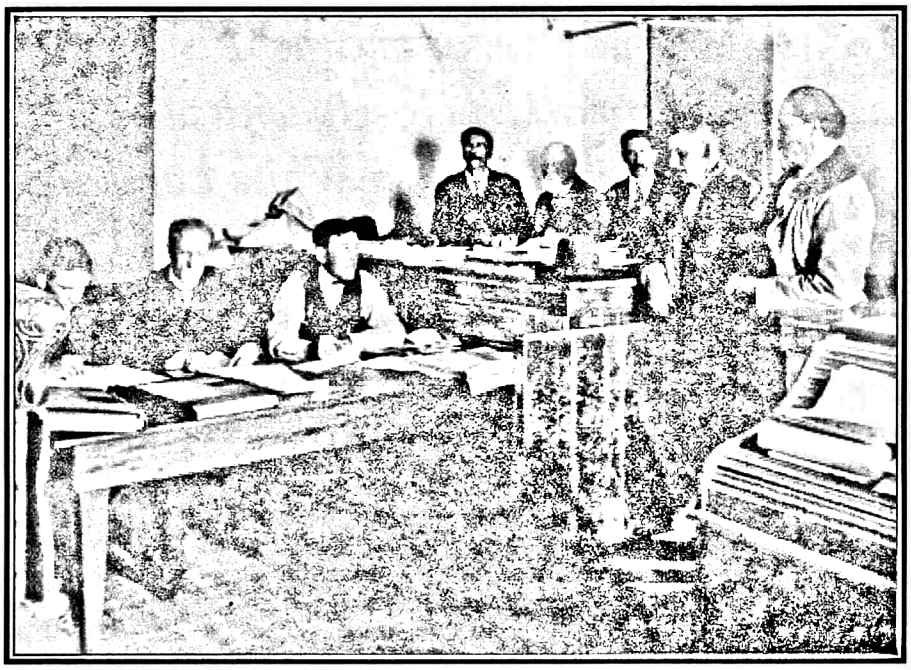


ried Abbie Davis of Mankato in 1891. They had a son and daughter.[7]

In 1899, at the age of 34, Powell received his law degree from the University of Minnesota and began a legal practice in Mankato. After a few years there, he joined Minneapolis lawyer A. Y. Merrill in a firm representing a number of lumber companies, both inside and outside of Minnesota. He remained with the same firm throughout his legal career except for 1904–05, when he managed a mining company in Nome, Alaska, on behalf of several clients.

According to a memorial delivered to the Hennepin County Bar Association after his death, Powell was a many-sided man. He was an accomplished pianist and composer whose work was played in Twin Cities churches. He was also a poet and, in his later years, under a *nom de plume*, wrote a delightful children's book about a mischievous penguin. Of Powell's representation of lumber firms, the memorial states:

> He enjoyed nothing more than living in lumber camps where, from day to day, he could see and come to understand the methods of operation and business hazards and difficulties of those whom he represented in the courts. This combination of practical and theoretical knowledge made him a difficult and respected opponent.



Ojibwe men lining up for land allotments, White Earth Indian Agency, about 1890. Agent Simon T. Michelet, later accused by congressional investigators of "fraudulent partiality" in assigning allotments, sits at center.

THE PRESSURE to open White Earth to non-Indians resulted at least in part from economic changes that by 1900 had come to northern Minnesota. The lumber industry had moved north from the St. Croix River valley in search of more pine. By 1900 three out of four of the world's largest mills were in Minnesota, and new, large mills had been built in nearby Cass Lake and Bemidji.[8] Both American-born and immigrant farmers coveted the rich soil of the reservation: tens of thousands of acres that were off limits to them. By 1902 railroad lines ran near the reservation's northern and southern boundaries and along its western edge.

In measures over 15 years, Congress, led by its Minnesota members, stripped away many of the original protections for White Earth. The first step was in 1889 when the Nelson Act, sponsored by Minnesota congressman (later senator) Knute Nelson, implemented the Dawes Act in Minnesota by providing 80-acre allotments of primarily farmland to every adult Ojibwe. The reservation's timberlands, however, remained held in trust for tribal members. The Nelson Act also took away four of the reservation's 36 townships. Foreshadowing what was to come, the same timber companies that later logged most of the reservation's pine acquired great areas of these townships at below-market prices.[9]

The next significant step was in 1902, when Congress opened the reservation to Euro-Americans for the first time by allowing heirs to allotments to sell them to non-Indians with the approval of the Interior Department. Initially, only a few non-Indians owned agricultural property on the reservation. But White Earth's approximately 500 million feet of white and Norway pine was very attractive to timber companies which, as one of Minnesota's preeminent industries, had access to the state's political leaders. Those leaders responded. In 1904 a two-part congressional process opened White Earth for logging.[10] The key to this process would be legally differentiating, in the parlance of the times, full bloods (those of total Ojibwe ancestry) from so-called mixed bloods.

While many White Earth families had few Euro-American ancestors,

others were the products of generations of intermarriage. Over the centuries, some mixed-blood people had played intermediary roles between Euro-Americans and more traditional, subsistence-oriented Indians, serving as merchants, traders, and surveyors. Other mixed bloods lived lives of tradition. To the Ojibwe, the differences had more to do with culture and lifestyle than with blood quantum. For example, White Earth allottee Nee geshig wrote to Powell, "I don't know or remember any of my grandparents, whether they had any whites' blood. They were Indians and lived like it."[11] Some government officials, however, mistakenly assumed that, since some mixed-blood people succeeded in entrepreneurial activities like farming and business, all were sophisticated in the ways of non-Indian society.

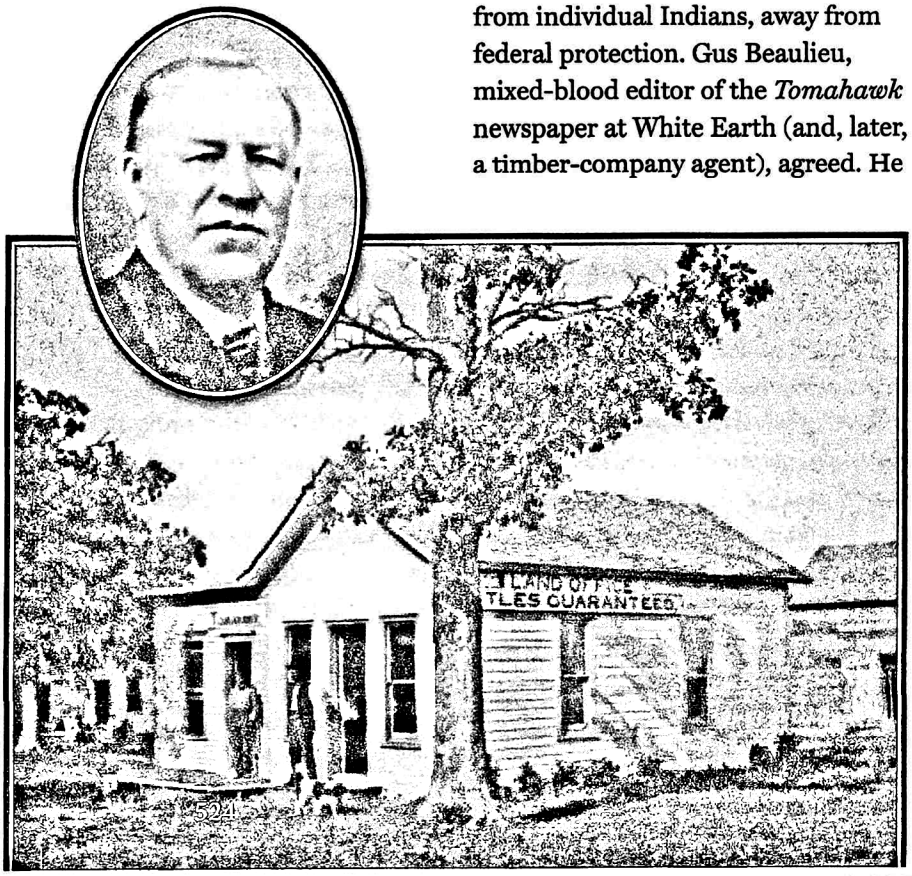
This assumption that having some European ancestry led to a better understanding of the market economy underlaid the congressional actions toward White Earth that followed. The first step was taken by one of Minnesota's U.S. senators, Moses E. Clapp, a former timber-industry attorney. He successfully attached a provision (the Clapp Rider of 1904) to the Senate's Indian appropriations bill, granting allottees the ability to sell any timber that happened to be on their mostly agricultural land. A few days later, northwestern Minnesota's U.S. congressman, Halvor Steenerson, successfully sponsored a bill providing 80-acre allotments of pinelands to White Earth members in addition to the mostly agricultural land they had already received. No longer would pinelands be owned in common for tribal members' benefit. Instead, individual Ojibwe owned these tracts.[12]

Timber companies still had one major obstacle, though: the Office of Indian Affairs. After issuing the timber allotments, the Indian office in the fall of 1905 attempted to maximize profits for White Earth members by packaging all for-sale timber as one unit and selling it at auction. Wisconsin lumberman Fred Herrick had the highest valid bid, yielding the Indians $600,000 more than his nearest competitor.[13]

AT THIS POINT, POWELL made his first appearance in White Earth's history, representing Herrick's two closest competitors: Minnesota-based Lyman Lumber and Nichols-Chisholm, both controlled by Minneapolis businessman Thomas L. Shevlin. Making questionable assertions, Powell claimed that both companies had higher bids and threatened to sue. Of Shevlin, the Indian office's logging superintendent, Joseph Farr, in 1905 wrote, "He has been connected to a large extent with every timber scandal on reservations in Minnesota since I can recall."[14]

Powell never had to file his threatened suit. Instead, Shevlin, a former Republican Party national committeeman for Minnesota, went to work on his congressional contacts. He persuaded Senator Clapp, a Republican, to intercede with the executive branch to have the public sale set aside. Clapp succeeded, aided by a serendipitous telegram from five White Earth chiefs, complaining of low prices, followed by a meeting with President Theodore Roosevelt, Interior Secretary Ethan Hitchcock, and Indian Affairs Commissioner Francis Leupp.[15]

The state's timber barons, of course, did not want to pay any more than necessary for White Earth pine. Nor did they want to risk losing out on another single-block sale. They wanted to obtain timber directly from individual Indians, away from federal protection. Gus Beaulieu, mixed-blood editor of the *Tomahawk* newspaper at White Earth (and, later, a timber-company agent), agreed. He



Gus Beaulieu, Tomahawk *editor, and the building shared by the newspaper and a land office, both photos about 1910*

urged the government to "set aside every restrictive rule which applies to . . . these allotments, and give those [mixed-blood allottees] the right to use their own judgments." Moreover, Commissioner Leupp generally favored accelerating white control of reservation resources "for their [Indians'] own good."[16]

Minnesota's congressional delegation soon responded. Clapp, chair of the Senate's Indian Affairs Committee, inserted a provision into the 1906 appropriations bill removing the major remaining obstacle to wide-scale logging. The Clapp Rider of 1906 lifted all restrictions on sales of White Earth lands by mixed-blood Ojibwe, excepting minors. Also, full bloods were allowed to sell their lands if the Interior Department judged them competent. The bill became law and within three years, 85 percent of White Earth's land had passed into private hands at minimal cost to the purchasers.[17]

The chief means for taking allotments out of Ojibwe hands were mortgages, often issued to an allottee by a mixed-blood agent for timber companies or developers. In exchange for a mortgage with interest due in advance, Ojibwe typically were paid $275 in cash plus $25 for "reserving" the mortgage until the 1906 Clapp Rider took effect. Lured by the promise of ready cash, many full-blood people signed affidavits claiming that they were mixed bloods in order to mortgage their allotments without government oversight. Similarly, minors claimed they were adults. During the first three weeks that the Clapp Rider was in effect, Becker County alone recorded more than 250 mortgages.[18]

In a few months, when individuals fell behind in their mortgage payments, their property was promptly foreclosed. Historian Anton Treuer cites a case of a man losing his allotment for failing to pay grocery bills. According to a 1909 federal investigation, some deceased tribal members were "actually resurrected long enough to dispose of land which they had neglected to convey during life." Issuing and then foreclosing on mortgages was an inexpensive way to obtain land; the cost for many of the foreclosed-upon 80-acre allotments averaged less than $4 per acre for land that, in some cases, was worth anywhere from $25 to $300 per acre.[19]

Federal agents, too, trafficked in reservation land. A recent survey by White Earth Community College students found that reservation agent Simon T. Michelet bought and sold more than 100 parcels during this time under the alias of C. M. Martin. Even Powell, who later represented Michelet on several transactions, was concerned that his client had swindled a mixed-blood woman out of her property.[20]

After foreclosures, timber companies quickly acquired property with white and Norway pine and immediately began clearing it. By 1909 three companies—Nichols-Chisholm, Park Rapids, and Wild Rice—possessed most of the reservation's merchantable pine. Shevlin's congressional and White House lobbying had paid off. Nichols-Chisholm, which he owned, wound up with more than half of White Earth's timber.[21]

By then, Powell represented each of these timber companies. They needed his representation, since R. G. Valentine, newly elected President William Taft's commissioner of Indian affairs, promised to "get to the bottom of the thieving" at White Earth. In 1909 he ordered an investigation and asked the U.S. attorney general to appoint a special attorney to take the legal actions necessary to remedy the situation.[22]

Marsden Burch, from the Justice Department, was appointed. He quickly assembled a staff and began collecting information. In the summer of 1910, Burch started filing suits asserting that allotments had been wrongfully obtained from both full bloods and minors. Eventually, the government filed more than 2,000 challenges to transactions involving over 2,500 allotments and 142,000 acres of land. Powell's timber-company clients had already logged most of the contested parcels.[23] In the short term, they wanted to log the remaining allotments, and in the long term they wanted protection from the government's lawsuits. So Powell devised a set of strategies that eliminated many of the lawsuits, slowed progress on the remaining ones, and ultimately ensured that most of his clients' purchases were protected for a comparatively small cost.

ONE STRATEGY was to protest the ability of the federal government to represent Ojibwe who had lost their land. Presumably, Powell knew that the Indians would not be able to afford their own lawyers and, therefore, depended on federal representation. In a 1909 exchange of letters with a Detroit Lakes banker, Powell said he was considering the idea that the federal government was barred from bringing suit on behalf of individual allottees. His rationale was that the U.S. Constitution granted Congress authority to handle relations with tribes, not individuals.[24]

Seven years later, as federal hearings on the suits were in process, the U.S. Supreme Court upheld a

modified form of Powell's theory, ruling that the federal government had no authority to sue for damages on behalf of mixed bloods who were defrauded of their allotments. Powell had also successfully used the same argument in 1915 before Minnesota's chief federal district court judge, Page Morris, whom Powell presumably had known since he was a Duluth businessman and Morris was city attorney. Morris ruled that once a minor reached adulthood, the federal government could not bring actions alleging fraud since an adult could do so in state court.[25]

Powell's toughest legal challenge was finding out which allottees were mixed bloods, legally free to sell their land, and which were full bloods. The federal government had already conducted two efforts to identify members of each group. First, during the 1909 investigation into reservation fraud, anthropologist Warren Moorehead and Indian inspector Edward B. Linnen prepared an enrollment list that identified 591 full bloods. Since they were not able to reach everybody on the reservation, a second attempt was made the following year by White Earth special Indian agent John H. Hinton. He took information from allottees, their parents, and older Indians acquainted with family history. What came to be referred to as the Hinton Roll designated 927 White Earth Ojibwe as full bloods.[26]

Many of the people that Hinton identified as full bloods had, without legal authority, either sold their allotments outright or lost them through mortgage foreclosure. Most of the improperly transferred properties were in the hands of timber companies, but some were held by farmers and speculators, many of whom Powell represented or eventually would represent. Lacking clear title, Powell's clients wanted a new roll with fewer full bloods and more mixed bloods who, under the 1906 Clapp Rider, could transfer their property.



Federal judge Page Morris, 1921

Thus, Powell quietly began to assemble his own ancestral roll. His first step toward procuring evidence of non-Indian ancestry was to establish what he would later call "a sort of bureau" at White Earth, which operated from 1910 to 1915. He employed several Ojibwe as agents who interviewed hundreds of allottees and family members. Much of the work was coordinated by N. B. Hurr, a former Pine Point boarding-school principal who had helped Linnen and Moorehead collect their roll. Hurr also owned a land-and-loan company in the reservation village of Ponsford. To pay his agents, Powell assessed lumber companies and other clients, who contributed in proportion to the number of government suits against them. According to historian Folwell, compiling Powell's genealogy cost $20,000 (about $430,000 today).[27]

At times, Powell and his agents paid tribal members directly. He summed up his philosophy in a letter to a St. Paul attorney: "In dealing with these Indians and half breeds we have to contribute to their support in order to get satisfactory information." Some of Powell's "support contributions" were for goodwill, such as sending a check for a reservation anniversary celebration. Others provided direct aid to the impoverished (in one case, a winter coat) or paid helpful mixed bloods for interpreting services.[28]

With Euro-Americans, Powell was more straightforward. In a letter to M. J. Kolb of Bagley, a client who owned several banks and land companies, Powell relayed another client's advice about a litigation witness: "Almost any other person with whom Nancy Ayne-wausch is acquainted could go to her and, for a small payment, procure a complete disclaimer of any papers she had executed."[29]

A collateral benefit of Powell's bureau was that his agents provided reservation intelligence. Hurr was particularly useful as an advocate for the interests of Powell's clients. For example, in June 1912 he reported that Thomas Harper of the Justice Department was telling Indians to stand by their contentions that they were full bloods.[30]

There is no question that, despite his cynical approach to gathering evidence, Powell had good relations with many White Earth Ojibwe. Letters from them often call him "My dear Friend." One mixed blood man, Edward Tanner, called Powell his "younger brother" and Powell, in turn, called him "my dear older brother." That relationship, too, benefited Powell. Tanner ultimately turned his property over to Powell in exchange for monthly checks. After Tanner died suddenly, Powell bought the property at a value set by the Interior Department.[31]



Ransom J. Powell and three Indian women, probably at White Earth Reservation, about 1910

Years later, Powell told historian Folwell that, in putting together his roll, he would select "a remote, but fully authenticated, ancestor . . . and then carefully and painstakingly search out and establish all of the living and dead descendants." Using cross-references derived from their interviews, he and his helpers traced a network of marriages and the resulting children. The process took several years and resulted in detailed records of 92 extended family groups. Finding some European ancestry was not particularly difficult, since Ojibwe people had been intermarrying with European traders and trappers for about 200 years.[32]

Much of this genealogical information may have been accurate but, because of its hearsay nature, could not be used for legal evidence. Powell told Folwell that his roll, from a legal standpoint, was "a monument of no particular value," while acknowledging that it would have considerable historical interest. However, Powell probably used the information in his next, more successful, effort at creating a definitive White Earth blood-quantum roll.

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THIS NEW TACTIC may have been conceived at a November 23, 1912, meeting with Senators Nelson and Clapp and Representative Steenerson at the Detroit Lakes Commercial Club. In attendance were more than 100 farmers, businesspeople, and timber-industry representatives, including Powell. Most had bought reservation lands and now, as defendants in the government suits, feared losing rights to what they considered their property. Also present were some mixed bloods who were being sued by special U.S. attorney Burch for facilitating improper land sales. The congressmen promised to consider new ways to resolve the lawsuits and, implicitly, reduce the number of enrolled full bloods, thereby making the land purchases more secure.[33]

Within the next few weeks, Powell wrote a bill to be presented to Congress. It called for a two-person enrollment commission charged with determining the "fractional amount of Indian ancestry" of every White Earth allottee. As Powell told Hurr, his agent, "The purpose of the bill is to establish a basis for quieting all of the titles on the Reservation." The Justice Department would appoint one commissioner, and the Minnesota federal district court would name the other. On December 31, 1912, Powell met in Duluth with chief federal judge Morris, who may have agreed to appoint Powell at this time.[34]

Three days later, Powell boarded a train to Washington, D.C. His trip was successful. Both the Justice and Interior departments agreed to back the measure. On January 24, 1913, Steenerson introduced the commission bill in the House, and Clapp introduced it in the Senate as an amendment to that year's Indian appropriations bill.[35]

In April 1913 Powell wrote to Hurr that the bill was sound. Based on "all probability," he would be one commissioner, and the other

appointee "must be satisfactory to the parties I represent." Congress approved the measure, funded at $5,000 per year, on June 30. Powell was appointed by Judge Morris soon after enactment and the Justice Department chose attorney Gordon Cain. (In 1916 Commissioner Cain joined Powell's law firm to handle Indian land title cases.)[36]

We do not know how much Powell was paid for his work on the commission. However, assuming he and Cain were paid $2,000 each and $1,000 was set aside for expenses, Powell would have annually earned today's equivalent of $42,318. It is likely that he earned much more than that, since Cain was already on the Justice Department payroll and presumably could not be paid twice as a government employee.[37] More important, Powell's work as commissioner benefited most of his clients—who were already paying him.

Powell also used his new position to generate fees from non-clients. For example, responding to a letter from attorney Frank D. Beaulieu of White Earth, Powell first explained the difficulties of getting the government to approve mixed-blood status in order sell a parcel. Then, Powell offered to have the commission approve the matter for a payment of $25 (about $310 in 2012) to his firm.[38]

Today, it is inconceivable that a supposedly neutral federal judge such as Page Morris would give the lead defense attorney in complex and critical litigation a key role in deciding who could sue his own clients. Even at the time, conflict-of-interest questions were raised, notably by President Woodrow Wilson's interior secretary, Franklin Lane. Nevertheless, Powell remained on the commission until it was disbanded in 1920.[39]

Since the suits hinged on who was mixed blood and legally entitled to transfer land under the Clapp Rider of 1906, the first step for Powell and the government attorneys was getting a judicial definition of mixed blood. Earlier efforts had failed, including Clapp's proposed 1912 stipulation that "those having any trace of white blood be classed as mixed bloods."[40] Nor did the law setting up Powell's enrollment commission define "mixed blood." That left the definition up to the courts, which is likely where Powell wanted it.

Powell and federal prosecutors agreed on a test case, which was tried in 1913 before none other than Judge Morris. The government assumed that mixed blood meant one-half or more non-Indian ancestry. But Morris ruled that being one-eighth Indian was enough to qualify. Both the government and the timber companies appealed. The Circuit Court of Appeals and the U.S. Supreme Court in June 1914 (*United States v. First National Bank*) gave the phrase even broader meaning, as Clapp had earlier wished, ruling that any non-Indian ancestry, no matter how small, made an individual a mixed blood—and thereby capable of selling his or her allotment.[41]

Not only was the *First National Bank* ruling an important victory for Powell, but waiting for it until 1914 had also slowed decision-making on other cases, a big advantage for his clients. One later writer observed, "Powell's strategy had always been to outwait, not outwit, the federal prosecutors."[42] In fact, Powell did both. While the litigation ground on, the timber companies continued to log their White Earth properties. As they did, the value of those lands decreased substantially.

At the same time, turnover of



Senator Moses E. Clapp, about 1905

chief prosecutors was a major problem for the government. Marsden Burch, appointed by the Taft administration in 1910, brought more than 1,000 suits in his first year but quickly ran into the problem of establishing blood quantum for the people he was trying to protect. After a time, Burch also found working with timber-company representatives much better than he thought, deeming Powell and others to be "very tractable" and "very decent in every way."[43]

The Wilson administration in March 1913 selected a more aggressive lead prosecutor, Charles Daniels. In 1915, with all parties frustrated at the long delay, hearings finally began in St. Paul before a federal special magistrate, George O'Reilly. Daniels won his first case, convicting Powell's client, banker and developer M. J. Kolb, of "criminal conspiracy and inducing federal officials to issue land patents to full blood Indians." As he continued trying cases before Magistrate O'Reilly, Daniels was hampered by the Supreme Court's decision on blood quantum and by Powell's successful contention before his patron, Judge Morris, that individuals who were no longer minors should bring their own cases in state court. Add-

ing to Daniels' problems, Powell was interposing motions and asking for continuances that Folwell later characterized as "appropriate for procrastinating litigation." Ironically, considering that Powell was responsible for most of the delays, in early 1916 Daniels was dismissed due, at least in part, to charges that he was unnecessarily slow.[44]

Daniels' successor, Francis J. Kearful, determined that, since a decade had passed since many of the frauds had occurred, it would be difficult to prevail at trial due to lack of witnesses and faulty memories. So, in most disputes he sought out-of-court settlements. Thus, most of the challenged White Earth transactions were never considered by a judge.[45]

Kearful and Powell, in his role as attorney for the defendants, worked out a three-part general arrangement: Land would be restored to full bloods; the cases involving mixed bloods who were competent to sell would be dismissed; and others who were defrauded, such as minors, would receive the difference between their original payments and the fair value of the property at time of sale, plus six percent interest to the time of settlement.[46] Significantly, no remedy was established for mixed bloods who had been defrauded.

The Kearful-Powell compromise required the enrollment commission to determine who was mixed blood and who was full blood under the criteria of the Supreme Court's 1914 *First National Bank* ruling. The commission was helped in that effort by two practitioners of the emerging social science of physical anthropology, whom Powell hired with timber-company funds in late 1914—after the high court's decision but before his compromise with Kearful. Powell's lead expert was Dr. Aleš Hrdlička, head of anthropology at the Smithsonian Institution. He was assisted by the University of Minnesota's Dr. Albert E. Jenks, later to become the first chair of the school's anthropology department.[47]

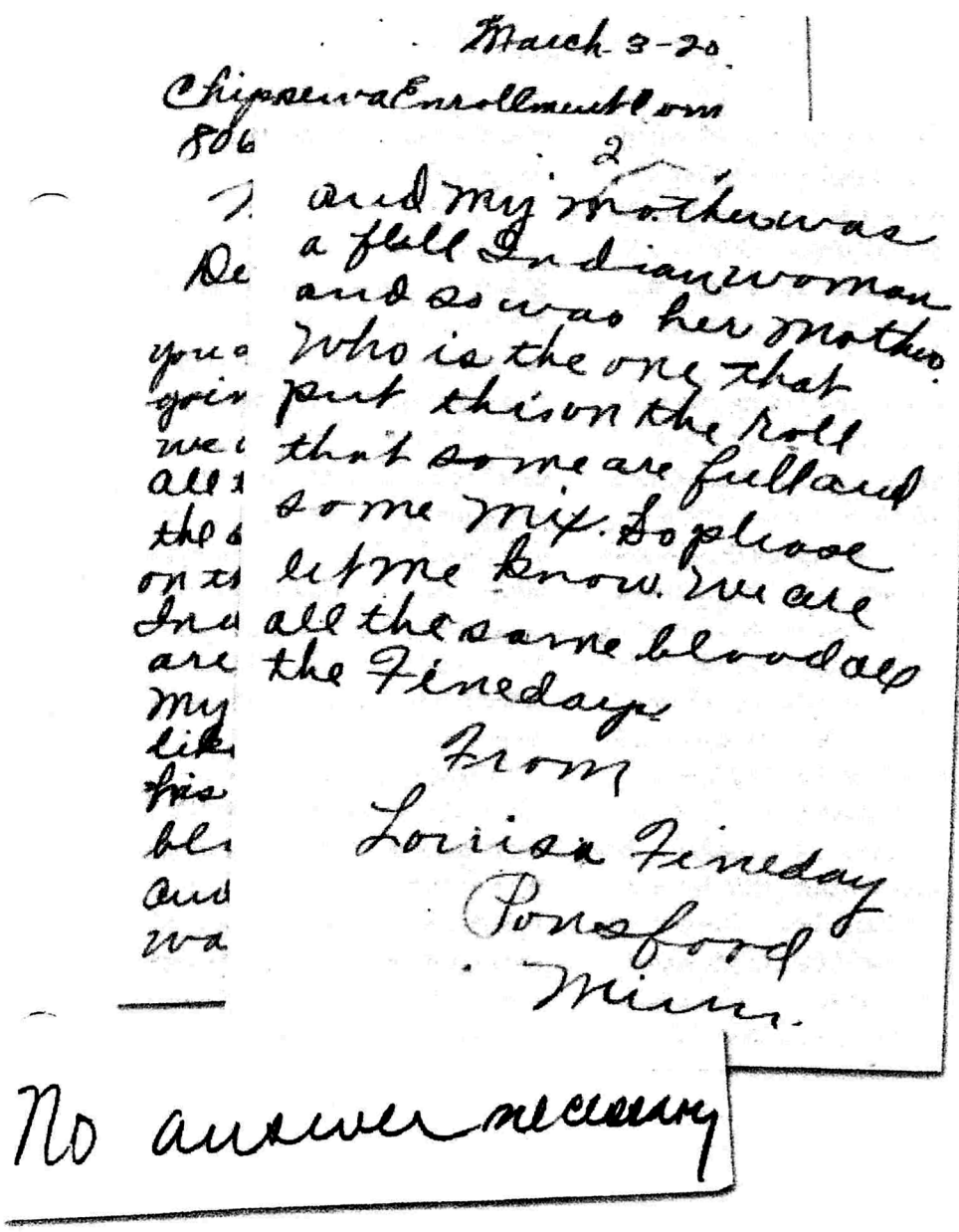


Anthropologist Albert E. Jenks, 1932, when his career focused on archaeology

In 1915 and 1916, Hrdlička and Jenks examined 696 allottees who claimed to be full bloods, comparing their physical attributes to the Pima Indians of the southwestern United States, whom the anthropologists considered the most racially "pure" American Indians. They carefully measured and calibrated hair, eyes, nails, gums, head shapes, and teeth of White Earth Ojibwe and compared this data to measurements of the Pima. Another exam involved pressing a fingernail across a subject's chest to see how irritated the skin became. The more an Ojibwe person's physical attributes resembled a Pima's, the more likely she or he would be considered a full blood by the anthropologists. They also measured attributes of 100 Frenchmen and 50 Scots, who were, in Jenks' words, "the two racial groups contributing most of the 'white blood' to the mixed blood Indians of Minnesota." The results were messy and in many cases, dubious. Children with the same parents were classified differently, and full-blood children were attributed to mixed-blood parents.[48]

Since his clients were paying for the anthropologists, Powell did not hesitate to say which Indians ought to be examined first. For example, in July 1915, even before the Kearful compromise, he instructed Hurr to have Jenks examine all descendants of Wa-Boose and those of any others who were currently suing.[49] Because Powell had completed his own roll, it is likely that he directed Hrdlička and Jenks to focus on allottees he thought were most likely to be found as mixed blood.

THROUGHOUT MUCH of 1915 and 1916, Hrdlička and Jenks either testified in hearings presided over by Magistrate O'Reilly or supplied testimony through depositions. Though the anthropologists claimed otherwise, they could not prove the "fractional amount of Indian ancestry" required by the 1913


March 3-20
Chippewa Enrollment Com
806
2
I and my mother was
a full Indian woman
and so was her mother
Who is the one that
put this on the roll
that some are full and
some mix. So please
let me know. We are
all the same blood as
the Fineday's
From
Louisa Fineday
Ponsford
Minn.
No answer necessary

From Powell's papers: Louisa Fineday's 1920 letter to the enrollment commission, complaining that her family was misclassified and requesting a response—and Powell's reaction.

enrollment-commission law. Empowered by the 1914 Supreme Court decision on blood quantum, Powell arranged for an amendment to the 1917 Indian appropriations bill that allowed the commission to record only whether a tribal member was mixed blood or full blood, instead of setting out fractions.[50]

Not surprisingly, Hrdlička and Jenks reported highly favorable results for Powell's clients. Of the 5,173 White Earth allottees, only 408 were considered to be full bloods—and 306 of them died before the roll was finalized in 1920. The anthropologists claimed that more than 500 of the 927 listed as full bloods on the Hinton Roll were mixed bloods. This meant that few White Earth members received their land back. Still, years later, Powell complained to historian Folwell that the work of the anthropologists was "greatly hampered by the refusal of doubtful Indians to permit an examination."[51]

Even Jenks had doubts about his tests. After they were finished, he told Powell

> Among the things revealed are the following: Both Hrdlicka and myself have hair of most typical negro type and the Scandinavians have hair more circular in cross section than our pure blood Pima Indians. I am not sure yet just what these facts mean; but either the old classification of human races by hair texture is not of scientific value or Dr. Hrdlicka [a Bohemian immigrant] and I are related to the negro, and the Scandinavians are simply bleached out Mongolians.

Yet after the work was completed, Powell thanked the University of Minnesota's Board of Regents for allowing Jenks to assist him and commended the results, which "had the effect of demonstrating the unreliability of the Indians' testimony."[52]

Ultimately, Powell's enrollment commission formally approved the three-part Kearful-Powell compromise, thereby disposing of hundreds of suits. The remaining settlements were issued after Judge Morris accepted the commission's roll in November 1920. Informally referred to as the Powell Roll, it remains to this day the basis for membership in the White Earth Band and for claims regarding federal or state benefits.[53]

Were the findings accurate? On one hand, Powell and his agents spent a great deal of time researching ancestry by meeting with people involved. On the other, the anthropologists' theories and methods have rightfully been discredited. Besides, Powell had every incentive to bend facts to fit his clients' interests. Nevertheless, overturning the findings today would be very difficult, since they were upheld by the court to which Congress assigned jurisdiction.

Powell finished his work at the right time, since by 1920 significant logging on White Earth—and in most of Minnesota—was done. The last lumber mill in Minneapolis closed in 1919. Smaller mills remained in northern cities and towns, but the great timber companies were focusing their energies on the Pacific Northwest.[54]

Powell's chief clients, the two largest timber companies, came out extremely well in the litigation. According to figures he provided Folwell in 1926, Nichols-Chisholm paid out only $48,497 and its sister firm, Park Rapids Lumber, only $23,015. Those were small sums compared to what the same companies earned from the timber. Lacking solid cost data, it is impossible today to ascertain their profits. One thing is clear, however: profit margins were substantial. White Earth Superintendent John Howard told government investigators that the average value of timbered allotments was about $8,000. While a few sellers received that much and more for their allotments, most parcels appear to have been sold for less than $500.[55]

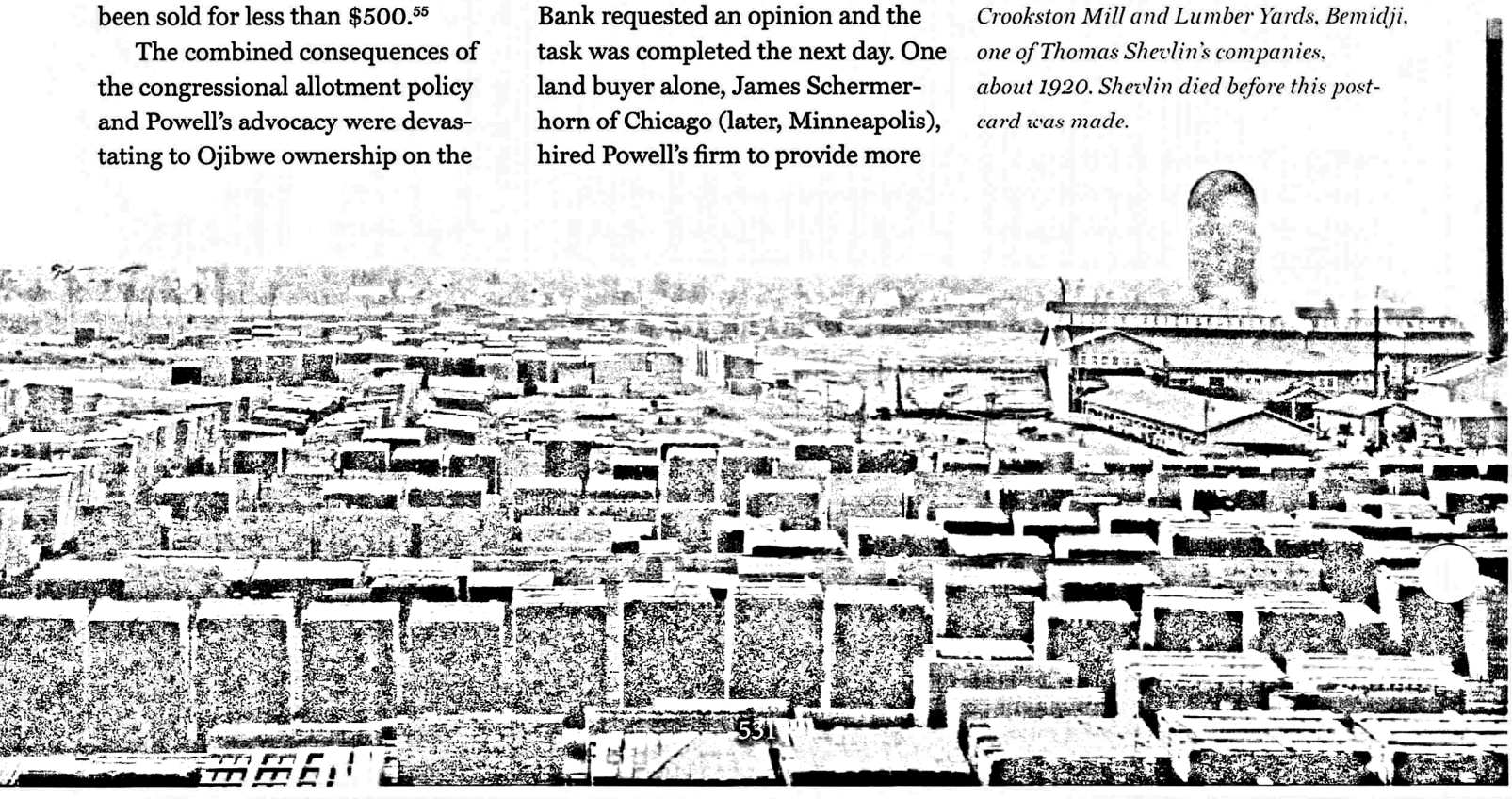
The combined consequences of the congressional allotment policy and Powell's advocacy were devastating to Ojibwe ownership on the reservation. Of the 99.5 percent of White Earth that was allotted, 94 percent was sold to non-Indians by 1933. The tribal government itself owned 810 acres, a little more than one-tenth of one percent of the land.[56]

Still, the most lasting effect of Powell's work may have been decreasing the number of individuals who could be considered full blood. His results were dramatic. The 1900 census reported that 44 percent of White Earth Indians were full blood. In 1910 the number had shrunk to 15 percent, and in 1930, after Powell's advocacy was complete, only 1 percent were considered full blood.[57]

By 1917 Powell and his law partners had found a new profitable line of business—issuing title opinions on White Earth lands. The firm was ideally situated for the job, since both Powell and his firm's newest member, Cain, were the commissioners who decided which White Earth members could transfer their property. Title examinations were conducted rapidly. For example, on July 17, 1918, the Park Rapids State Bank requested an opinion and the task was completed the next day. One land buyer alone, James Schermerhorn of Chicago (later, Minneapolis), hired Powell's firm to provide more than 100 title opinions on reservation parcels.[58]

Due to ill health, Powell retired from law practice in 1932. He died at his home in Anoka on November 14, 1937. His *Minneapolis Journal* obituary called him a "pioneer lawyer" and pointed out that he gained national prominence for defending lumber companies against title actions. It noted that Powell had been a recognized expert on Indian treaties and laws.[59] Nothing was said of the White Earth Ojibwes' loss of their lands.

Powell's historical role was defending the actions by which White Earth members lost their lands and then delaying resolution of disputes. In legislative, judicial, and administrative arenas, his skills, hard work, and relationships prevailed again and again on behalf of his clients. He made the prospects of justice for individual Indians much more difficult. From 1907 to 1920, more than any other individual—Indian or not—



Crookston Mill and Lumber Yards, Bemidji, one of Thomas Shevlin's companies, about 1920. Shevlin died before this postcard was made.

Powell dominated decision-making affecting White Earth.

Was White Earth's fate any worse than that of other reservations in the early 1900s? Tribes such as the Rosebud Sioux in South Dakota, the Kiowa in Oklahoma, and the Shoshone and Arapahoe in Wyoming also lost substantial parts of their reservations during that time.[60] One difference between them and White Earth was that the latter had rich resources, and the Ojibwe, because of their long relationship with Europeans, were in a better position to take full advantage of that potential. That opportunity was denied them.

THE RESERVATION is slowly recovering from the ravages of a century ago. In 1977 the Minnesota Supreme Court found in *Minnesota v. Zay Zah* that the tax forfeitures of Powell's era were improper. Prompted by this decision, investigations of these and other land transfers produced demands for compensation. A compromise in 1986 resulted in congressional passage of the White Earth Land Settlement Act. Under the act, allottees and their heirs wrongfully deprived of their land were paid the land's value at the time of transfer plus interest to date. The reservation government also received $6.6 million for economic development and 10,000 acres of land from the State of Minnesota. Today, about 10 percent of White Earth is in Indian hands.[61] ◘

Notes

1. William W. Folwell, *History of Minnesota*, rev. ed. (St. Paul: Minnesota Historical Society, 1969), 4: 261. This article uses the term *Ojibwe* to designate the people whom Euro-Americans, over the years, have called Chippewa or Ojibwe (both with variant spellings). The tribe is officially the Minnesota Chippewa Tribe.

2. Melissa L. Meyer, *The White Earth Tragedy: Ethnicity and Dispossession at a Minnesota Anishinaabe Reservation* (Lincoln: University of Nebraska Press, 1994), 56; U.S. Office of Indian Affairs, *Annual Report, 1900*, 642. For the March 19, 1867, treaty, see 16 *U.S. Statutes at Large*, 719. Since the Red Lake Chippewa never ceded their territory to the U.S., Congress in 1886 decided not to seek their removal to White Earth.

3. D. S. Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1973), 20.

4. For the Dawes Act, see 24 *U.S. Statutes at Large*, 388. Congress stopped making treaties with Indian tribes in 1872. Thereafter, it simply passed laws, sometimes after considering views of tribal members but often not.

5. Meyer, *White Earth Tragedy*; Folwell, *History*, 4: 261–96. For a general legal history, see Edward Peterson, "That So-Called Warranty Deed: Clouded Land Titles on the White Earth Indian Reservation in Minnesota," *North Dakota Law Review* 59 (1983): 159–81. Records of Powell's legal work involving White Earth, including correspondence and the genealogical data he compiled, are in the 15 microfilm reels of the Ransom Judd Powell Papers, Minnesota Historical Society (MHS).

6. *Mankato Free Press*, July 24, 1905, p. 1; Hennepin Co. Bar Association, Memorials, 1938, MHS.

7. Here and two paragraphs below (through quote), Hennepin Co. Bar Assn., Memorials, 1938; Peter Guy, *Percy Penguin and His Pals* (St. Paul: Webb Publishing, 1925), copy in MHS. Powell's daughter, Alyce Vick, illustrated the book; Powell held the copyright.

8. Agnes M. Larson, *History of the White Pine Industry in Minnesota* (Minneapolis: University of Minnesota Press, 1949), 243.

9. 25 *U.S. Statutes at Large*, 642 (Nelson Act). For details of these fraudulent and collusive maneuvers, see Folwell, *History*, 4: 232, 242–43, 249–53.

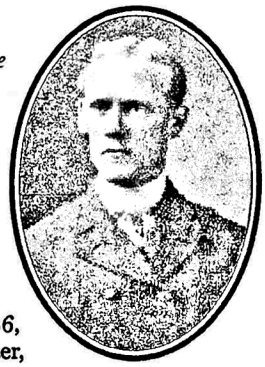
10. 32 *U.S. Statutes at Large*, 245; Folwell, *History*, 4: 265–67.

11. Meyer, *White Earth Tragedy*, 35; Nee geshig to Powell, n.d., microfilm roll 1, frame 15 (style hereinafter, 1: 15), Ransom J. Powell Papers, MHS. Unless otherwise noted, all correspondence is in these papers.

12. 33 *U.S. Statutes at Large*, 209, 539; Folwell, *History*, 4: 265–67; Larson, *White Pine Industry*, 321–25. The Dawes Act promised 160-acre allotments but was amended so that individuals originally received only 80 acres; Folwell, *History*, 4: 266. Almost immediately, many full bloods protested—ultimately, to no avail—claiming that better acreages were given to mixed bloods; *St. Paul Pioneer Press*, Nov. 24, 1905, p. 2. Years later, a congressional committee investigating expenditures accused White Earth agent Simon Michelet of "fraudulent partiality" in assigning allotments to those Ojibwe who could most easily be manipulated by lumber-company representatives; *Minneapolis Journal*, Jan. 16, 1913, p. 1. Rep. James Graham (D. IL) headed the committee, whose findings are generally called the *Graham Report*.

13. Folwell, *History*, 4: 274–76.

14. Committee on Expenditures in the Interior Dept., *Report in the Matter of the Investigation of the White Earth Reservation*, 62 Cong., 3 sess., 1913, House Report 1336, p. 2281, 1703 (hereinafter, *Graham Report*).



Simon Michelet, White Earth Indian agent, about 1910

15. Folwell, *History*, 4: 275–76; Meyer, *White Earth Tragedy*, 151.

16. John R. Howard, former White Earth superintendent, interview by W. W. Folwell, June 25, 1926, box 114, vol. 90, William Watts Folwell and Family Papers, MHS. Folwell compiled these important, valuable "Notes on Minnesota History" while researching his magisterial *History*. Meyer, *White Earth Tragedy*, 151–52 (Beaulieu).

17. 34 *U.S. Statutes at Large* 325, 353; Folwell, *History*, 4: 277; Meyer, *White Earth Tragedy*, 160. Like others who participated in White Earth's dismemberment, Clapp resists easy categorization. In 1912 he joined the Progressive Party, excoriating "the defenders of special privilege." For this apostasy in 1916 the state GOP refused to renominate him for a fourth term, ending his political career.

18. Folwell, *History*, 4: 278.

19. Anton Treuer, *The Assassination of Hole in the Day* (St. Paul: Minnesota Historical Society Press, 2011), 197; Warren K. Moorehead, *The American Indian in the United States: 1850–1914* (Andover MA: Andover Press, 1914), 76.

While acknowledging that value varied tremendously from allotment to allotment, White Earth Superintendent Howard esti-

mated that the average value of 80-acre timber parcels was $8,000; Moorehead said values ranged from $2,000 to $25,000. *Graham Report*, 115, 73 (respectively). White Earth members also lost an estimated 100,000 acres through tax foreclosures. Under the state's interpretation of the Clapp Rider of 1906, allotments were subject to property taxes which, if unpaid, resulted in foreclosure.

20. Andy Favorite, instructor at White Earth Community College, interview by the author, Aug. 28, 2009; Powell to N. B. Hurr, Dec. 14, 1920, and Hurr to Powell, Dec. 31, 1920, 3: 547, 564.

21. Larson, *White Pine Industry*, 389; *Graham Report*, 1112. As supply diminished after 1900, prices went up, making White Earth's timber even more valuable.

22. Folwell, *History*, 4: 284; *Graham Report*, 1351.

23. *Graham Report*, 103–05.

24. A. F. Amundsen to Powell, May 28, 1909, and Powell to Amundsen, May 29, 1909, 1:59, 65–66.

25. *United States v. Lucky S. Waller*, 243 US 452, 37 S. Ct. 430 and 61 L. Ed 843 (1917). A White Earth husband and wife, both mixed bloods, received $145 for land that the Supreme Court said was worth at least $2,500, with timber worth at least an additional $2,000. The court acknowledged, "It is quite evident that the Indians here were incapable of making an intelligent disposition of their lands" but nonetheless ruled that lawyers employed by the government could not represent the couple in federal court. On the district court decision, see Holly YoungBear-Tibbetts, "Without Due Process: The Alienation of Individual Trust Allotments of the White Earth Anishinaabeg," *American Indian Culture and Research Journal* 15: 2 (1991): 109.

26. YoungBear-Tibbetts, "Without Due Process," 104; Folwell, *History*, 4: 282. The Hinton Roll was published in 1911 by the Office of Indian Affairs as *Lists Showing the Degree of Indian Blood of Certain Persons Holding Land upon the White Earth Reservation in Minnesota and a List Showing the Date of Death of Certain Persons Who Held Land upon Such Reservation.*

27. Powell to Folwell, May 18, 1926, box 114, vol. 90, Folwell papers; *Graham Report*, 1351; Folwell, *History*, 4: 291 note 15. For currency conversions, see *www.halfhill.com.*

28. Powell to N. H. Clapp, Jan. 30, 1918, 1: 421; Powell to Hurr, June 10, 1913, 1: 132; Mrs. Jack Rabbit to Powell, Dec. 30, 1914, and Powell to Mrs. Jack Rabbit, Jan. 11, 1915, 1: 225, 228; Powell to Sha-go-se-kung, Sept. 15, 1914, 1: 208; Julius H. Brown to Powell, Jan. 30, 1915, and Powell to Brown, Feb. 17, 1915, 1: 231, 234.

29. Powell to M. J. Kolb, Oct. 24, 1913, 1: 178. Kolb was no stranger to such shenanigans, as his 1915 conviction in federal court (see below) would show.

30. YoungBear-Tibbetts, "Without Due Process," 105. For Hurr's report and follow-up, see Hurr to Powell, June 10, Dec. 3, Dec. 10, all 1912, 1: 102, 117, 119.

31. Edward Tanner to Powell, Aug. 25, 1915, and Powell to Tanner, Aug. 31, 1915, 1: 201; Mary W. English to Powell, July 8, 1918, and Powell to English, July 11, 1918, 1: 503–06.

32. Here and below, Powell to W. W. Folwell, May 18, 1926, box 51, Folwell papers.

33. *Detroit Record*, Nov. 29, 1912, p. 1.

34. Powell to Hurr, Apr. 30, 1913, 1: 148. Telegrams: Powell to Morris and Morris to Powell, Dec. 30, 1912, 1: 123–24. Morris served in the U.S. House of Representatives from 1897 to 1903, when he was appointed to the federal bench; Bruce M. White et al., *Minnesota Votes* (St. Paul: Minnesota Historical Society, 1977), 224.

35. Folwell, *History*, 4: 286–87.

36. Powell to Hurr, Apr. 30, 1913, 1: 148; Folwell, *History*, 4: 287. Cain completed many White Earth title opinions after joining Powell's firm and also authored "Indian Land Titles in Minnesota," *Minnesota Law Review* 2 (Feb. 1918): 177–91.

37. *Graham Report*, 49.

38. Powell to Frank Beaulieu, Nov. 22, 1919, 2: 491.

39. Meyer, *White Earth Tragedy*, 164.

40. YoungBear-Tibbetts, "Without Due Process," 103, citing *St. Paul Pioneer Press*, May 2, 1912, p. 16.

41. *U.S. v. First National Bank of Detroit, et al.*, 234 U.S. 245 (1914).

42. YoungBear-Tibbetts, "Without Due Process," 107.

43. Folwell, *History*, 4: 285 note 6.

44. *Graham Report*, 103–05 (Powell was Kolb's defense counsel in the criminal case); YoungBear-Tibbetts, "Without Due Process," 102, 107–09; Folwell, *History*, 4: 289–90; *Minneapolis Journal*, Dec. 19, 1915, sec. 6, p. 6. Another possible reason for Daniels' dismissal is that Minnesota Democrats wanted one of their own in the position; Folwell, *History*, 4: 290.

45. Powell to Folwell, May 24, 1926, box 52, Folwell papers.

46. Powell, interview by Folwell, Apr. 23, 1926, box 114, vol. 90, Folwell papers; *Minneapolis Journal*, May 1, 1918, p. 1, May 5, 1918, sec. 1, p. 12.

47. Jenks is better known for his 1930s investigations of Minnesota Woman and Browns Valley Man, demonstrating that Minnesota had been inhabited 9,000 years ago, much earlier than previously thought. Clark A. Dobbs, "A Brief History of Archaeology in Minnesota," Institute for Minnesota Archaeology, *www.fromsitetostory.org /sources/papers/mnhistory/mnhistory.asp #ref* (accessed July 9, 2012).

48. Aleš Hrdlička, "Trip to the Chippewa Indians of Minnesota," *Smithsonian Miscellaneous Collections*, 66, no. 3 (1915), 74; A. E. Jenks to W. W. Folwell, May 21, 1926, box 52, Folwell papers; Louisa Fineday to Chippewa Enrollment Commission, Mar. 3, 1920, 3: 119–20.

49. Powell to Hurr, July 9, 1915, 1: 248.

50. Meyer, *White Earth Tragedy*, 170.

51. Powell to W. W. Folwell, May 18, 1926 ("Statement as to Timber") box 51, Folwell papers.

52. A. E. Jenks to Powell, May 21, 1917, 1: 352; Powell to Fred Snyder, Mar. 6, 1916, 1: 307.

53. Peterson, "So-Called Warranty Deed," 169.

54. Larson, *White Pine Industry*, 398.

55. Powell to Folwell, May 24, 1926, box 52, Folwell papers; *Graham Report*, 115.

56. Richard Weil, "Destroying a Homeland: White Earth, Minnesota," *American Indian Culture and Research Journal* 13: 2 (1989): 69, 82.

57. Meyer, *White Earth Tragedy*, 118.

58. W. R. B. Smyth to Powell, July 17, 1917, and Powell to Smyth, July 18, 1917, 1: 365–66; James Schermerhorn to Powell, Nov. 28, 1917, 1: 373.

59. *Minneapolis Journal*, Nov. 15, 1937, p. 1.

60. William T. Hagan, *Theodore Roosevelt and Six Friends of the Indian* (Norman: University of Oklahoma Press, 1997), 91–112.

61. *State of Minnesota v. Zay Zah*, 259 NW2d 580, 1977, *cert denied*, 436 U.S. 917 (1978); *www.indianaffairs.state.mn.us /tribes_whiteearth.html* (accessed June 18, 2012).

All images are in MHS collections, including p. 98, from roll 3, Ransom Judd Powell papers. The photo on p. 88 is by state forestry commissioner C. C. Andrews, p. 94 and 100 are by Lee Brothers, and p. 97 is a Minneapolis Star Journal *photo.*