

Mr. EDMONDSON. So, an additional allowance of \$26,000 fee is based upon the second year's rent, an allowance of \$6,000 from it; the third year's rent, an allowance of \$10,000 from it, and the fourth year's rent, an allowance of \$10,000 from it. I think you would have to agree with me that that is a rather unusual basis for an attorney's fee to be allowed.

Mr. CLEARY. Yes, sir; and if I may, I can—I'm trying to explain that this was one of the areas of trial-and-error. If the full fee had been ordered in the first year, the estate would not have paid it, or if the estate had paid as much of it as possible, there would have remained no money for the support of the ward, and therefore, our local judges, in attempting to adequately compensate the fiduciaries and the attorneys, and yet at the same time, leave enough money in the estate for the adequate support of the ward ordered the fees paid but ordered them paid out of future income, thus, they would be paid only if that which they produced was productive of money. We found out later that such a practice was without Bureau approval, so was illegal.

Mr. EDMONDSON. What did the income tax people think about it?

Mr. CLEARY. I hadn't filed any income tax on that, so I don't know.

Mr. TUNNEY. Will the chairman yield?

Mr. EDMONDSON. Congressman Tunney.

Mr. TUNNEY. It's my understanding, Mr. Cleary, that Mr. Hollowell testified that he did charge a percentage fee of those leases which were negotiated, but he did not charge any fee at all for leases which he worked on which fell through so, this \$28,000 fee, to my understanding, represents a percentage fee; does it not?

Mr. CLEARY. I didn't hear him say he charged a percentage or, if he did, that was in his testimony.

Mr. TUNNEY. Right. Now, isn't it customary for real estate agents also to charge a percentage?

Mr. CLEARY. Yes, sir; as I understand it.

Mr. TUNNEY. Then, if this is a percentage that is being paid an attorney, then what's the difference between that and a percentage fee which was being paid to a real estate broker?

Mr. CLEARY. In this case, it would have been \$12,000 and a real estate broker would have gotten about \$40,000.

Mr. TUNNEY. I see. It's a difference—I can see a difference on quantity, but not quality.

Mr. CLEARY. And, I do not know, because I do not participate in a request for fees. I do not know how Mr. Hollowell presents it to the court. The exhibit here, 12, is not supportive of the statement immediately preceding it.

Mr. EDMONDSON. I think you have a very definitely arguable point on that, and we will ask for the Bureau of Indian Affairs to comment on that subject, I assure you.

Mr. CLEARY. The next is page 15, "There is frequent duplication of services rendered by fiduciaries and attorneys, resulting in the payment of two fees for essentially one service. For example, a fiduciary bills an estate for his efforts in effecting a lease of trust property, for handling a right-of-way transaction or for attending a meeting. The same accounting which presents the fiduciary's request for fees for these services also requests that the attorney for the fiduciary be sepa-