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**AGUA CALIENTE INDIANS CONSERVATORSHIPS
AND GUARDIANSHIPS**

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HEARING
BEFORE THE
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 17273

TO AMEND THE ACT OF SEPTEMBER 21, 1959 (PUBLIC LAW
86-339) RELATING TO THE RESERVATION OF THE AGUA
CALIENTE BAND OF MISSION INDIANS

HEARING HELD IN
PALM SPRINGS, CALIF., MAY 31, 1968

Serial No. 90-28

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Note: The chairman, Hon. Wayne N. Aspinall, and the ranking minority member, Hon. John P. Saylor, are ex officio members of each subcommittee.

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CONGRESSIONAL HEARINGS ON THE AGUA CALIENTE INDIANS CONSERVATORSHIPS AND GUARDIANSHIPS

FRIDAY, MAY 31, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Palm Springs, Calif.

The subcommittee met, pursuant to notice, at 9 a.m., in the council chamber, Palm Springs city hall, Hon. Ed Edmondson, presiding.

Mr. EDMONDSON. The subcommittee will come to order.

Before making my own statement on the purpose of this hearing, and the rules which will be in effect for it, I would like to yield to your very able and very distinguished Congressman from this district who is the author of the bill that is the subject matter of the hearings, my very good friend, John Tunney.

Mr. TUNNEY. Thank you, Mr. Chairman, I also, and most particularly, would like to welcome Congressman Edmondson and Congressman Burton to the 38th Congressional District and to Palm Springs. It was a particularly nice thing for them to come here today to serve as a subcommittee for the purposes of this investigation.

As somebody pointed out, in an election year, a Congressman's place usually is in his own district if it's not in Washington, D.C., and the fact that they would give up a valuable weekend and volunteer to be with us today indicates their dedication.

Congressman Edmondson is an Oklahoman who has been in the House of Representatives since 1952, which demonstrates how well he is regarded by everybody who knows him.

He is a lawyer, a Navy veteran, and a former FBI agent.

His record in Congress has been no less illustrious. He has been an assistant Democratic whip since 1953, cochairman of the Congressional Speakers Bureau in 1956 and 1962, and is a member of the Committee on Public Works and the Committee on Interior and Insular Affairs, serving as the chairman of the Subcommittee on Mines and Mining.

Congressman Burton is from Utah and has been in the House of Representatives since 1962.

I should say that he has been in the House of Representatives as a Congressman since 1962. He was there as early as 1957 as a legislative assistant and following that he was the administrative assistant to the Governor of Utah for 3 years. He is also a former college professor.

Congressman Burton is a member of the Select Committee on Small Business and the Committee on Interior and Insular Affairs.

He is an assistant Republican whip and a member of the Public Land Law Review Commission.

You will not find two Congressmen who are more highly thought of than these two Congressmen who are here today. I know them well and know them as friends and as highly thought of members of not only the Interior and Insular Affairs but also of the Congress of the United States.

Both have an extraordinary reputation for integrity and ability, and I want to thank you very much and welcome you to Palm Springs.

Mr. EDMONDSON. Jack, I was going to give you another 10 minutes as long as you have been as kind and thoughtful and complimentary as you have been.

I am sure most of you know that your own Congressman has just returned from Vietnam and I think he flew in yesterday. I know that he will have some reports of interest to the district on that subject, and I am looking forward to discussing his findings and his observations on that situation at the first opportunity myself.

On my right is the very able gentleman from Utah, who assures that this is a bipartisan hearing. He is one of the very able members of the minority in the House, and we hope he will be in the minority in the next session. My good friend, Laurence Burton from Utah.

Mr. BURTON. Thank you, Mr. Chairman. It's a real pleasure for me to have the opportunity to come back to this 38th Congressional District which is beautiful and has such a varied economy and sociology, and I want to say that I have the greatest respect for your own Congressman, Mr. Tunney. The next time I come into the district, I expect that I will be the chairman. Thank you.

Mr. EDMONDSON. I hope, Larry, you come back before that happens.

I also want to present to you the staff assistant and attorney for the Interior and Insular Affairs Committee, Mr. Lewis A. Sigler, who is on my left over here, and Jack, do you want to present your legislative assistant?

Mr. TUNNEY. Yes. I'd like to introduce my legislative assistant, Mr. Vincent Griffith, who is from my Washington office.

Mr. EDMONDSON. I want to note the presence of the executive secretary for the California State Indian Commission, Mrs. Bernice Tate, who is here, I understand, as observer on behalf of the State.

Also, I note the presence of the council for the Agua Caliente Band of Mission Indians; both the tribal council and the attorney for the tribe are here. Chairman Haley wanted me to give his personal greetings to the tribe. He remembers very fondly his last hearing out here, and regretted very much the time situation did not make it possible for him to get here and to get back to Washington for some commitments that he had personally.

It is a great pleasure for me to be here. This is my first visit to Palm Springs, and everything I have heard about it and read about it are true. It is a very beautiful place, and the hospitality of the people has been wonderful, and I hope that there will be an opportunity for me to return with more leisure at some time in the future.

It is also a great pleasure to be in the district of your very fine Congressman, and he has been pressing our committee to hold hearings on this subject for many months, and he has impressed all of us with the seriousness of this matter and the importance of congressional

attention to it. I just hope that these hearings will be constructive and profitable from the standpoint of legislative purpose.

Let me say that we are a factfinding subcommittee. We come to hear from the people who have, I think, very, very serious concern about the legislation that is pending on the subject of the modification of the guardianship and conservatorship as it relates to the Palm Springs Indians.

I personally was sitting on this subcommittee at the time that the first legislation was considered for 99-year leases and I have been following the development of various programs for full development of potential of Indian tribal resources, both human and land, for a number of years. I represent a district in which there are many Indians, and in which some of the same problems that you have here are shared by thousands of Indian citizens of Oklahoma, and so I want to say to you now that all of us represent constituents, Indian constituents. Congressman Burton has many of them in the State of Utah, and the problems of development of trust lines are not restricted to one locality in the country. There are problems that are shared all over the country, and the pursuit of the ideal approach to this problem is one that is being carried on in many parts of the United States today.

Now, let me begin this hearing by asking unanimous consent to place in the record at this point, the text of H.R. 13516, which is the bill by Congressman Tunney that has opened this series of hearings, and also the text of the later bill on the same subject introduced by Mr. Tunney. I don't know the number of that.

Mr. TUNNEY. H.R. 17273.

Mr. EDMONDSON. H.R. 17273, introduced May 14, 1968, together with the text of the departmental report on H.R. 13516. If there is no objection, these items will be made a part of the record at this point.

(The documents referred to follow:)

90TH CONGRESS
1ST SESSION

H. R. 13516

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 1967

Mr. TUNNEY introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To amend the Act of September 21, 1959, relating to the Palm Springs Indian Reservation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 4 of the Act of September 21, 1959 (73 Stat.
4 604; 25 U.S.C. 954), is amended by inserting "(a)" be-
5 fore the text of the section and by adding the following new
6 subsections:

7 “(b) The Secretary is directed to review from time to
8 time all appointments of guardians and conservators for the
9 estates of allottees which contain property held by the United
10 States in trust or the income therefrom. If the Secretary
11 concludes that an allottee is an adult capable of handling his

1 own affairs, he shall petition the court for a termination of
2 the appointment. If the Secretary concludes that a guardian
3 or conservator is not acting in the best interests of an
4 allottee, or that the estate of the allottee is endangered by
5 actions of the guardian or conservator, he shall petition the
6 court for the removal of the guardian or conservator and
7 for such further relief as may be appropriate.

8 “(c) The Secretary may require any guardian or con-
9 servator appointed in accordance with the provisions of this
10 section to account to him for the management of the trust
11 property contained in the estate and the income therefrom.
12 Failure to make an accounting satisfactory to the Secretary
13 shall be ground for removal of the guardian or conservator.

14 “(d) No guardian or conservator shall be appointed for
15 the portion of the estate of an allottee that consists of prop-
16 erty held by the United States in trust or the income there-
17 from unless the appointment is requested or agreed to by
18 the Secretary.

19 “(e) When a minor for whose estate a guardian has
20 been appointed in accordance with the provisions of this
21 section reaches his majority, no conservator of the portion
22 of his estate that consists of property held by the United
23 States in trust or the income therefrom shall be appointed

1 unless the appointment is requested or agreed to by the
2 Secretary.

3 “(f) Nothing in this section shall preclude the Secre-
4 tary from exercising any other authority he may have to
5 protect the interests of the allottees.”

90TH CONGRESS
2D SESSION

H. R. 17273

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1968

Mr. TUNNEY introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To amend the Act of September 21, 1959 (Public Law 86-339) relating to the Reservation of the Agua Caliente Band of Mission Indians.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 4 of the Act of September 21, 1959 (73 Stat.
4 604; 25 C.S.C. 954; Public Law 86-339) is hereby
5 amended in such a manner as to delete all of section 4 thereof
6 and by inserting in lieu thereof the following:

7 “(a) The Secretary may request the appointment of a
8 guardian of the nontrust estate of any minor Indian allottee,
9 minor Indian devisee or minor Indian heir and any adult
10 Indian allottee, adult Indian devisee, or adult Indian heir,

1 who in his judgment is in need of assistance in handling his
2 affairs, but notwithstanding any such judgment by the Sec-
3 retary the adult Indian in question shall not be denied due
4 process of law and the burden of proving his incompetency
5 shall be upon the Secretary. All such requests shall be made
6 in accordance with applicable State laws. Nothing in this
7 section shall be construed to confer any jurisdiction whatso-
8 ever in the State or its political subdivisions over any real or
9 personal property so long as title to such property is held by
10 the United States in trust for the sole and exclusive use and
11 benefit of the Agua Caliente Band of Mission Indians or their
12 Indian devisees or Indian heirs, and the exclusive jurisdiction
13 over such trust property shall be vested in the United States
14 of America.

15 “(b) No guardian appointed pursuant to section (a)
16 hereof, shall, without first obtaining the approval of the Sec-
17 retary, participate in the management or disposition of any
18 property, or of any interests therein, which is held in trust
19 by the United States for a member of the band or is subject
20 to restrictions upon alienation imposed by the laws of the
21 United States, nor shall such guardian be entitled to receive
22 any fee or other compensation for any services performed
23 with respect to such property unless the approval of the Sec-
24 retary has previously been given in the manner required pur-
25 suant to section 85 of title 25 of the United States Code. The

1 Secretary may promulgate regulations for the implementation
2 of this Act, and any actions taken thereunder by the Secre-
3 tary or his duly authorized representative shall be valid and
4 efficacious in all respects without participation or affirmation
5 by any guardian appointed under State law when the action
6 pertains to property to which title thereto is still held in
7 trust by the United States.

8 “(c) The Secretary may require an accounting by any
9 guardian appointed under State law, or by any other person
10 or entity who has acquired custody or possession of any
11 money or property belonging to a member of the band, and
12 the return to the United States of such money or property
13 which shall then be held by the United States in trust for
14 the individual Indian concerned. If any person or entity
15 required to do so by the Secretary fails or refuses to account
16 for or to return any such money or property to the satisfac-
17 tion of the Secretary, then the Secretary may cause an action
18 to be brought in the name of the United States in the United
19 States District Court for the Central District of California
20 for an accounting and a return of such money and property,
21 and for such other relief as may be appropriate, and said
22 court is hereby granted jurisdiction to hear and determine
23 such actions.

24 “(d) The Secretary may in his discretion suspend any
25 direct rental payments provided for in leases executed with

1 his approval pursuant to section 415 of title 25 of the United
2 States Code and in such event all such funds shall thereafter
3 be paid to the Secretary or his duly authorized representa-
4 tive, and if the Secretary believes that such funds heretofore
5 paid directly to a guardian have been used in an unauthorized
6 manner and can be traced, he is hereby further authorized to
7 initiate an action in the United States District Court for the
8 Central District of California for an accounting and recovery
9 of such funds. All such funds and any other property hereto-
10 fore or hereafter received by a guardian of a member of the
11 Agua Caliente Band of Mission Indians, their Indian devisees
12 or Indian heirs which were theretofore under the supervision
13 and control of the Secretary of the Interior or the title to
14 which was held in trust for such Indian by the United States,
15 shall not thereby become divested of the supervision and
16 control of the Secretary of the Interior nor shall the United
17 States be relieved of its trust; and such guardian shall not
18 sell, dispose of or otherwise encumber such funds or property
19 without the approval of the Secretary of the Interior.

20 “(e) Trust property as herein defined is any real or
21 personal property or any interest therein which shall include
22 but not be limited to water rights, leases, rights-of-way, and
23 easements so long as such property remains subject to a
24 restriction against alienation imposed by the United States
25 and cannot be alienated, encumbered or taxed without the

1 consent of the United States and is held for the sole use and
2 benefit of the Agua Caliente Indians.

3 “(f) Nothing in this section shall preclude the Secretary
4 from exercising any other authority he may have to protect
5 the interests of the Indian allottees, Indian devisees, or
6 Indian heirs.”

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 28, 1968.

HON. WAYNE N. ASPINALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: You have requested our views on H.R. 13516, a bill "To amend the Act of September 21, 1959, relating to the Palm Springs Indian Reservation."

We recommend that H.R. 13516 be enacted in the form of the enclosed draft bill.

The 1959 Act (73 Stat. 602) provided for the granting of equalized allotments of tribal land located in and near Palm Springs, California, to all members of the Agua Caliente Band of Mission Indians living on September 21, 1959. Children born after that date received no allotments. Section 4 of the Act provides:

"The Secretary shall request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who in his judgment are in need of assistance in handling their affairs in accordance with applicable State laws before making any equalization allotment or payment to such persons."

Under this provision, guardians were appointed for all minor members of the band for whom guardians had not previously been appointed, and conservators were appointed for adult allottees considered in need of assistance in handling their affairs. These guardianships and conservatorships are administered by the Superior Court of Riverside County, California.

The Department, through a special task force, has recently completed a review of the administration of these guardianships and conservatorships, and has concluded that the system has been intolerably costly to the Indians in both human and economic terms and should be replaced or radically revised. A copy of the task force report was sent to you by letter of April 2, 1968. The task force found that more than 44 percent of the ordinary income (exclusive of proceeds from sales of land) accruing to 84 (out of a total of 92) Indian estates had been expended for administration, primarily for fees paid to fiduciaries and their attorneys. It concluded that, quite apart from consideration of how honestly or efficiently it has been administered, a system which consumes so large a part of what it produces in administrative expenses must be deemed aberrant.

The task force also found great dissatisfaction among the Indians because of the state of dependency and ignorance of their own affairs in which they are kept under the present system. Adults have little opportunity to learn to manage their own affairs. Almost routinely, upon an Indian's coming of age he is subjected to a conservatorship.

Although the Secretary of the Interior is charged by law to supervise and approve all transactions involving Indian trust property, such transactions are cited in justification of the major portion of fiduciary and attorney fees. There is considerable duplication of the proper functions of the Secretary by the fiduciaries and attorneys to the economic detriment of the Indians.

We have reviewed H.R. 13516 and a draft bill transmitted to us by counsel for the Agua Caliente Band. We are persuaded that steps stronger than those contemplated by either of these proposals should be taken. We believe that our substitute bill would provide the necessary authority to take the actions to remedy this situation.

While it is our belief that the Secretary under existing law has some of the authority which the substitute bill provides, we feel that it would be helpful to reinforce this authority by legislation which, among other reasons, would obviate doubts of title of examiners and financial institutions.

H.R. 13516 would amend section 4 of the 1959 Act by retaining its present provision, quoted above, as subsection (a) and adding subsections (b) through (f). There is no need to retain the language of the present section 4 since all allotments authorized by the 1959 Act have been made, and the provision of the section has been executed.

The new subsection (b) would direct the Secretary to review periodically the guardianships and conservatorships established for allottees whose estates contain trust property or income from trust property; to petition for termination of conservatorships for adult allottees capable of managing their own affairs; and to petition for removal of fiduciaries whose actions endanger the estates of allottees under their charge.

Subsection (c) would authorize the Secretary to request accountings from

fiduciaries appointed under section 4 of their management of trust property and income therefrom, and would request removal of those who fail to give a satisfactory accounting.

Subsection (d) would require Secretarial approval of appointments of fiduciaries for allottees whose estates contain trust property or income from trust property.

Subsection (e) would require Secretarial approval before a conservator can be appointed to administer the trust property of an Indian under guardianship, upon his coming of age.

Subsection (f) would preserve existing Secretarial authority to protect the interests of allottees.

H.R. 13516 seeks to remedy the deficiencies and abuses of the present system by interposing the Secretary of the Interior between the court-appointed fiduciaries and the Indians. Under its provisions, the Secretary could request the removal of malefasant fiduciaries and control the appointment of future fiduciaries, but only with respect to trust lands and income therefrom and to members of the band who were allottees under the 1959 Act.

We believe that these limitations are unwise and unnecessary. When trust land is sold or leased, the proceeds, if paid over to fiduciaries rather than being retained under Secretarial control, lose their Federal trust identity. The court-appointed fiduciaries manage such proceeds and other nontrust assets. Attempting to measure or limit the powers of the Secretary to take protective action as to that portion of an Indian's estate in the hands of a fiduciary which represents proceeds from trust property would be a complex undertaking, practically and conceptually.

Moreover, the protective powers which would be granted under H.R. 13516 are all referenced to guardianships and conservatorships established under section 4 of the 1959 Act. Their exercise would thus be restricted to situations involving members of the band who were allottees under that Act, and could not be exercised on behalf of other members for whom guardianships or conservatorships may have been set up under State law outside of that Act; for example, children born after September 21, 1959, who have received trust property by devise or descent. We are convinced that the Secretary should have full control over the appointment and continuance of fiduciaries for any members of the band; that such fiduciaries should take no part in the management of trust property, except upon request by the Secretary; that the Secretary should assume control, wherever necessary, of funds of Agua Caliente Indians now under fiduciary control; and that he should, wherever necessary, control and manage, for members of the Agua Caliente Band, all their funds and property held in trust by the United States.

Our proposed bill would amend the 1959 Act by striking the present language of section 4 and substituting a new section 4 containing five subsections. As noted, the present provision of section 4 has been executed and its retention is unnecessary.

Subsection (a) of the proposed substitute bill stipulates that no guardian, conservator, or other fiduciary shall be appointed under State law for any member of the band, or continued in office, without Secretarial approval. This not only encompasses the provisions of subsections (b), (d), and (e) of H.R. 13516, but goes beyond them in that its operation is not limited to trust property and income therefrom. Moreover, this section, as do all sections of the proposal, covers not only the estates of allottees under the 1959 Act, but those of all members of the band. It will enable the Secretary to remove fiduciaries whose activities are not clearly in the best interests of the Indians; to prevent the automatic appointment of conservators for minors when they reach majority; and to control all appointments of guardians and conservators.

Subsection (b), which follows closely the provisions of the bill proposed by the band, prohibits court-appointed fiduciaries, even those serving with the approval of the Secretary, from handling trust or restricted property or from receiving fees for services in connection with such property without specific Secretarial approval. It further authorizes the Secretary to regulate the management and disposition of trust property and to provide protection for minor and incompetent members of the band without the participation of the court-appointed fiduciaries.

While we are of the view that the Secretary possesses the authority provided by this subsection—since existing laws providing for the disposition of trust property stipulate that such dispositions shall be subject to the approval of the

Secretary and made in accordance with such regulations as he shall provide—we believe it would be well to have the existence of such authority reiterated by Congress.

First, it will relieve doubts which might otherwise exist in the minds of title examiners and lending institutions that trust property may be disposed of under Secretarial regulations without the participation or affirmation of court-appointed guardians or conservators.

Second, while it would probably be possible under existing law to handle the disposition of trust property without the intervention of such guardians and conservators, and to pay the proceeds directly to the Indians concerned, their ability to function as free economic agents will be encumbered so long as they are apparently subject to court-established guardianships and conservatorships.

For example, without participation by his conservator, an Indian and the Bureau of Indian Affairs might successfully conclude a lease of some of the Indian's trust land to a third party, and require payment of rents to be made to the Bureau. The Bureau could then make the proceeds directly available to the Indian. But, because he was subject to a conservatorship under State law, the Indian's ability to utilize the money in any way involving the making of a formal contract would be greatly impaired. While he was subject to the conservatorship, it could be anticipated that any broker or banker with whom he attempted to open an account, or any merchant from whom he desired to purchase a major item of personalty, would insist that his conservator join in the transaction.

In our letter of April 2 we stated that:

"The Bureau of Indian Affairs will immediately assume sole and complete responsibility for the management of all trust properties. This means that all leases, sales and other dispositions of interests in trust lands are to be accomplished by Bureau of Indian Affairs personnel in consultation with the Indian owners and such business advisers and attorneys as may be retained, but with minimum involvement of guardians, conservators and their attorneys."

Because the Secretary is charged by law with the duty of supervising and approving transactions involving trust property, we believe that, except in situations where they can make real contributions, guardians and conservators appointed under State law should be precluded from participating in such transactions in order to relieve the Indians of the expense of such participation.

Subsection (c), proposed by both the band and the Department, authorizes the Secretary to require an accounting by court-appointed fiduciaries or by any other persons or entities having custody or possession of money or property belonging to any member of the band, and the return of such property to the United States to be held in trust for the individual Indian concerned. It provides a judicial remedy for failure to comply with these provisions. This subsection is comparable to subsection (c) of H.R. 13516, but is of broader scope. The latter is limited to trust property and income therefrom, and does not provide for return of money or property to the United States nor for a judicial remedy. The task force has found instances of faulty accounting for, and misuse of, nontrust funds. We think it would be unrealistic for Congress to limit remedies for the protection of the Agua Caliente Indians to situations involving trust property. The remedial powers granted the Secretary of this subsection are very similar to those which were provided by the Act of February 27, 1925 (43 Stat. 1008), for the protection of the Osage Indians.

Subsection (d), which has no counterpart in H.R. 13516, would confer broad power upon the Secretary to "use, advance, expend, exchange, deposit, dispose of, invest, and reinvest" money or property held in trust by the United States for individual Indians. Except for minors or incompetent adults, the consent of the Indian concerned would be required. Determinations of incompetency of adults would be made only after notice and hearing, and judicial review of such determinations would be afforded under the Administrative Procedure Act.

Present law narrowly restricts the authority of the Secretary to invest and otherwise employ trust funds of an individual Indian, even with his participation. This subsection would broaden the uses of such funds which could be made by the Indian owners and the Secretary acting together, while retaining the trust character of the funds. For example, it would permit trust agreements with financial institutions for management of funds. It would also enable the Secretary to make fiduciary arrangements for Indians in need of assistance in managing their affairs other than under State law.

Subsection (e), like subsection (f) of H.R. 13516, preserves the authority of the Secretary under any other provisions of law.

We believe the authorities given the Secretary by our proposed bill are adequate to remedy the abuses which exist under the present system and recommend its enactment.

Time has not permitted securing advice from the Bureau of the Budget as to the relationship of this report to the program of the President.

Sincerely yours,

DAVID S. BLACK,
Acting Secretary of the Interior.

A BILL To amend the Act of September 21, 1959, relating to the Palm Springs Indian Reservation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Act of September 21, 1959 (73 Stat. 604; 25 U.S.C. 954), is amended to read as follows:

"(a) No guardian, conservator, or other fiduciary shall be appointed under State law for any member of the band, or continued in office, except with the approval of the Secretary.

"(b) No guardian, conservator, or other fiduciary, except with the approval of the Secretary, shall participate in the management or disposition of any property or interests therein, which is held in trust by the United States for a member of the band or is subject to restrictions against alienation imposed by the laws of the United States, or receive any fee or other compensation for services performed with respect to such property or interests therein. The Secretary by regulation may provide for the management and disposition of such property and interests therein, and for the protection of the members of the band who, by reason of minority or otherwise, are incompetent to manage their own affairs. Actions taken pursuant to such regulations involving the use, expenditure, investment, deposit, or disposition of such property or interests therein, or proceeds therefrom, shall be valid and efficacious in all respects without participation or affirmation by any guardian, conservator, or other fiduciary appointed under State law.

"(c) The Secretary, at any time, may require an accounting by any guardian, conservator, or other fiduciary appointed under State law, or by any other person or entity who has custody or possession of any money or property belonging to a member of the band, and the return to the United States of such money or property. Any money or property recovered from any such guardian, conservator, fiduciary, or other person or entity shall be held by the United States in trust for the individual Indian concerned. If any person or entity required to do so by the Secretary fails or refuses to account for or to return any such money or property to the satisfaction of the Secretary, he may cause an action to be brought in the name of the United States in the United States District Court for the Central District of California for an accounting and return of such money and property, and for such other relief as may be appropriate, and said court is hereby granted jurisdiction to hear and determine such actions.

"(d) Under such regulations as he shall provide, and with the consent of the individual Indian concerned, unless the Secretary determines such Indian to be incompetent by reason of minority or otherwise, in which case such consent shall not be required, the Secretary, for the benefit of the individual Indian concerned, may use, advance, expend, exchange, deposit, dispose of, invest, and reinvest, in any manner and for any purpose, any money or other property held by the United States in trust for such Indian. The Secretary shall make no determination that an adult Indian is incompetent except after according him an opportunity to be heard upon reasonable notice. A person aggrieved by a determination of incompetency made by the Secretary shall be entitled to judicial review of such determination in accordance with 5 U.S.C. § 701-706.

"(e) Nothing herein shall be deemed to limit any authority possessed by the Secretary under any other provisions of law."

Mr. EDMONDSON. I also want to make a part of the record, if there is no objection, the Secretary's letter transmitting the task force report, the task force report itself, and the following exhibits from the task force report: Exhibit 1, which is a history of tribal affairs and background with regard to the subject matter of this legislation; exhibit 2, which is correspondence between the Committee on Government

Operations and the Department of the Interior on this same subject; exhibit 5, which is the memorandum of the Solicitor on this same subject; together with such other exhibits as subsequently reviewed and found to be necessary and appropriate. At this point, is there any objection? There is none, and without objection, it is so ordered.

(The documents referred to follow:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C. April 2, 1968.

HON. WAYNE N. ASPINALL,
Chairman, House Interior and Insular Affairs Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Transmitted herewith is the final report submitted by the Palm Springs Task Force which, at my direction, undertook review of the guardianships and conservatorships established under state law for the majority of the members of the Agua Caliente Band of Mission Indians, Palm Springs, California.

This report and the conclusions reached therein have my full approval.

The principal conclusion is that the present guardian-conservatorship system has been intolerably costly to the Indians in both human and economic terms and that it must be replaced or radically revised.

A review of the contents of the report leaves no doubt as to the soundness of this conclusion. In all frankness I must say that I am appalled that the state of affairs described in the report has not only existed under ostensible state and federal supervision; it has flourished.

As a lawyer I find it particularly disturbing that much of the responsibility for the morally-shabby state of affairs revealed must be laid at the door of some members of the local bar and court.

The report demonstrates that Eugene E. Therieau, now Judge of the Municipal Court of Palm Springs, and Mr. James Hollowell have, between them, been awarded fees of approximately one-half million dollars over the last seven years. The conduct of each reveals instances of apparent conflicts of interest, double charging and fee-splitting. In addition Judge Therieau was awarded a fee of substantial size which was determined by the appellate court to be illegal under California law.

Mr. Hollowell, as brought out in the report, also played a prominent role in assisting two local judges in efforts to profit from Indian estates.

The report indicates that Hollowell named Judge Hilton H. McCabe executor in wills he prepared for a number of Indians, that in at least one instance he served as attorney for the Judge while the latter was serving as executor for a deceased Indian's estate, and that he performed unauthorized legal services for an Indian estate in order to accommodate Judge McCabe in carrying out his duties as executor for the estate of an Indian decedent. Hollowell's services consisted of filing a petition for establishment of a guardianship despite the fact that the minor's family had discharged him as its attorney and objected strenuously to his representation. Though the estate, at its own expense, successfully opposed Hollowell's petition, he nevertheless sought and was awarded a fee for his so-called services in the matter.

Mr. Hollowell further offered his assistance to Judge Merrill Brown when the latter desired to sell some land. The potential purchaser was the conservator of an Indian estate Hollowell represented. Judge Brown not only exercised general supervision over the estate and conservator concerned, but was also the Judge who passed upon all the conservators' requests for commissions or fees. Fortunately, the proposed sale was not consummated.

Certain other members of the bar are also referred to in the report as participants in questionable transactions and activities.

The foregoing matters will be promptly called to the attention of the proper California authorities for their consideration and appropriate action. Some referrals have already been made.

I was equally disturbed at the Task Force finding that the present system of administering the estates and affairs of the Agua Caliente Indians is not only an economic drain but has also perpetrated a grave injustice upon the Indians concerned in human terms. The Task Force found that the Indians, on the whole, are frustrated by lack of knowledge about the administration of their

properties, disgusted by the high costs of the system and its abuses at the hands of some who are instrumental in its administration, and despondent because they do not see that any effort is being made to prepare them ultimately to assume control over their own affairs.

The Task Force also found that a share of the responsibility for the present state of affairs in Palm Springs rests upon the shoulders of this Department. When questions and complaints concerning the administration of these guardianships and conservatorships were first raised several years ago, we placed too great a confidence in the probity and ability of the state judiciary to exercise proper control and supervision over court-appointed fiduciaries and attorneys. As you know, I took steps to rectify this error a year ago.

At the outset of this investigation, I directed that certain intermediate actions, described in Exhibit 6 to the Task Force Report, be taken immediately. As a result of the findings and conclusions of the Task Force, I am supplementing my earlier instructions by the following:

1. All income from trust properties now being paid to the Bureau of Indian Affairs will, for the time being, continue to be paid directly to the Bureau of Indian Affairs administered through special accounts for the use and benefit of the particular Indians concerned; subject however, to modification permitting the restoration of the flow of funds to those individual conservators and guardians whom the Bureau finds to be trustworthy and competent.

2. I have directed the appropriate officers of the Department to immediately explore ways of assisting members of the Agua Caliente Band to make arrangements with institutional trustees when feasible for the management of their non-trust property as substitutes for court appointed fiduciaries.

3. The Bureau of Indian Affairs will immediately assume sole and complete responsibility for the management of all trust properties. This means that all leases, sales and other dispositions of interests in trust lands are to be accomplished by Bureau of Indian Affairs personnel in consultation with the Indian owners and such business advisers and attorneys as may be retained, but with minimum involvement of guardians, conservators and their attorneys.

4. Departmental auditors will selectively audit further estates in accordance with Departmental instructions.

5. The Solicitor's Office will provide a full-time attorney in Palm Springs to render necessary legal services.

6. The Department of Justice will be requested to pursue the legal actions heretofore undertaken and to institute any further actions deemed necessary to obtain accountings and recovery of funds rightfully belonging to Indian estates.

7. As above stated, copies of the Task Force report are to be presented to the proper California authorities for appropriate action.

Although some individual guardians and conservators have performed in a completely honorable and competent fashion, the Task Force has recommended that the entire Agua Caliente Indian guardianship-conservatorship system be abolished. The evidence amply supports this recommendation. A comprehensive study of this recommendation and what may be required to implement it is underway.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

Enclosure.

UNITED STATES
DEPARTMENT OF THE INTERIOR

REPORT ON

THE ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS
ESTABLISHED FOR MEMBERS OF THE
AGUA CALIENTE BAND OF MISSION INDIANS, CALIFORNIA

PALM SPRINGS TASK FORCE

MARCH 1968

(19)



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 27 1968

Memorandum

To: Secretary of the Interior
From: Palm Springs Task Force
Subject: Report of Investigation

Submitted herewith is the final report of the special task force which you appointed to investigate the administration of guardianships and conservatorships established under state law for certain members of the Agua Caliente Band of Mission Indians, Palm Springs, California. The report incorporates five schedules and 39 exhibits.

Due to the volume of material reviewed and information received, the exhibit or exhibits used in support of a given finding may not necessarily be exhaustive.

Robert L. Cox
Robert L. Cox, Chairman

Barry K. Berkson
Barry K. Berkson, Member

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I.	Statistical Information Relative to Estate Lands (43 estates)
II.	Income and Disbursements and the Relationship of Disbursements to Ordinary Income (43 estates)
III.	Analysis of Estate Assets to Estate Income (43 estates)
IV.	Income and Disbursements and the Relationship of Disbursements to Ordinary Income (41 additional estates)
V.	Recapitulation of Findings Disclosed in 36 Estates Audited.

Exhibits

<u>No.</u>	<u>Description</u>
1.	Report, January 26, 1968, by Area Director, Sacramento, entitled: Review of Policy, Programs and Procedures Relating to the Agua Caliente Reservation, with Particular Reference to the Involvement of the Probate Court in Indian Matters 1949 - 1967 (without attachments).
2.	Exchange of Correspondence, July 5, 1962 - July 9, 1963, between Chairman, House Committee on Government Operations and Department of Interior (5 letters).
3.	Letter, March 27, 1967, to Judge Brown from Director, Palm Springs Office, Bureau of Indian Affairs.
4.	Letter, April 11, 1967, to Director, Palm Springs Office, from Judge Brown.
5.	Briefing paper, May 12, 1967, by Regional Solicitor, Sacramento, for use of Solicitor's Office.
6.	Action Paper and Fact Sheet, May 19, 1967.

<u>No.</u>	<u>Description</u>
7.	Telegram, May 26, 1967, to Secretary from Palm Springs Task Force.
8.	Memorandum, June 8, 1967, to Palm Springs Task Force, et al., from Secretary.
9.	Memorandum, August 14, 1967, to Palm Springs Task Force, et al., from Secretary.
10.	Policy Memorandum for Guardianships, Conservatorships and Minors' Settlements, Indio Departments of Superior Court, Riverside County, California, February 11, 1964.
11.	Memorandum, September 1, 1964, to Guardians, Conservators and their attorneys from Judge McCabe.
12.	Attorney report on review of court file, Indio No. 510, Vincent Gonzales.
13.	Attorney report on review of court file, Indio No. 414, Benita Olinger.
14.	Attorney report on review of court file, Indio No. 414, Debra Olinger.
15.	Fourth Annual Accounts and Orders, Estates of Frances Patencio, Indio No. 779, and John Joseph Patencio, Indio No. 787; Sixth Annual Account and Order for the Estates of Ray Leonard Patencio and Ruth Elaine Patencio, Indio No. 389.
16.	Affidavit, September 21, 1967, by Raymond C. Simpson
17.	Memorandum, August 24, 1967, to Solicitor from Palm Springs Task Force.
18.	Briefing paper entitled: The Clara Bow Story (with attachments)
19.	Briefing paper entitled: The Anthony Joseph Andreas Story (with attachments).
20.	Canons of Judicial Ethics adopted by the Conference of California Judges (1965 ed.).

<u>No.</u>	<u>Description</u>
21.	Petition for Authority to Purchase Real Property, March 7, 1967, In the Matter of the Conservatorship of the Estate of Shirley Ann Kitchen, Indio No. 1511.
22.	Letter from Bureau of Indian Affairs, Palm Springs Office, to Security Title Insurance Company, March 27, 1967.
23.	Report of interview conducted September 21, 1967, with Roy Fey concerning administration of Lease PSL-53 made by the conservator of the Estate of Ray Leonard Patencio to Canyon View Estates (with attachments).
24.	Fifth Annual Account Current and Report of Guardian, February 20, 1964, In the Matter of the Guardianships of the Estates of Ray Leonard Patencio and Ruth Elaine Patencio, Indio No. 389.
25.	Six letters dated April 19, 1962; May 14, 1962 (2); July 13, 1962; August 2, 1962; and September 20, 1962, to Bureau of Indian Affairs, Palm Springs from James Hollowell, copies to Judge Hilton H. McCabe.
26.	Fourth Accounting, Supplemental Accounting and Order, Estate of Anthony Joseph Andreas, Jr., Indio No. 686.
27.	Report of Audit, December 1967, Palm Springs Lease PSL-47, Palm Canyon Country Club, Inc.
28.	Petition for Appointment of Guardian, August 9, 1965, In the Matter of the Guardianship of the Estate of Joseph Christopher Patencio, Indio No. 1823, and other documents relating to matter.
29.	Order Approving First Account and Report of Guardians, Authorizing Payment of Guardian and Attorney Fees and Authorizing Reimbursement of Moneys Advanced, Estate of Joseph Christopher Patencio, Indio No. 1823, May 26, 1967.
30.	Minute Entry, February 18, 1965, by Judge McCabe, In the Matter of the Estate of John Joseph Patencio, Indio No. 787.

<u>No.</u>	<u>Description</u>
31.	Report of Interviews conducted December 8, 1967, with Judge Eugene E. Therieau and James Hollowell by Barry K. Berkson concerning fees awarded conservator and attorney for the estate of John Joseph Patencio.
32.	Exchange of correspondence 1961-1962 between Department of the Interior and Raymond C. Simpson.
33.	Report of Audit, January 1968, Estates of Anthony Gilbert Gillette, Linda Delores Gillette and Robert Juan Gillette.
34.	Letter, November 17, 1967, to Charles Renda, Regional Solicitor, Sacramento, from Raymond C. Simpson re: Guardians and Conservators Association.
35.	Report of Audit, October 1967, Association of Conservators, Guardians and Allottees of the Agua Caliente Indian Lands and Estates.
36.	Reports of Audit, February 1968, Estates of Alana May (Segundo) Norte, Belinda Sue (Segundo) Rodriguez, and Leroy Francisco Segundo.
37.	Report of Audit, August 1967, Estate of Edmund Peter Siva.
38.	Report of Audit, January 1968, Palm Springs Lease, PSL-63, Tahquitz Canyon Trailer Park, Inc.
39.	Article, Daily Enterprise, February 20, 1968, by George Ringwald, "Palm Springs Indian Wins Fight to Keep Running His Own Affairs."

I. BACKGROUND

By Executive Orders of May 15, 1876 and September 29, 1877, most of the even-numbered sections of three townships, in and near the present City of Palm Springs, California, were set aside for the Agua Caliente Band of Mission Indians. Under the Mission Indian Relief Act of 1891 (26 Stat. 712), these "checkerboard" lands were conveyed to the Band under patents which provided they should be held in trust for it by the United States. This act authorized the Secretary to allot these lands to individual Indians when he thought they were sufficiently advanced for such ownership. The Act of March 2, 1917 (39 Stat. 969, 976), directed that allotments be made. Nevertheless, no allotments were made until 1949, after lengthy litigation initiated by some members of the Band against the United States. See, e.g., St. Marie v. United States, 24 F. Supp. 237 (S.D. Cal. 1938), aff'd., 108 F.2d 876 (9th Cir. 1940), cert. denied, for reason that application not filed within time provided by law, 311 U.S. 652 (1940); Arenas v. United States, 137 F.2d 199 (9th Cir. 1943), reversed and remanded, 322 U.S. 419 (1944); United States v. Arenas, 158 F.2d 730 (9th Cir. 1946), cert. denied, 331 U.S. 842 (1947).

Due to the way in which the Palm Springs real estate market developed, individual allotments varied in value and certain Indians objected to the allotment formula which was used. As a result, a Federal court directed that the United States allot the lands so

that the allottees would receive lands of equal value. United States v. Pierce, 235 F.2d. 885 (9th Cir. 1956).

In 1949, by enactment of Public Law 322, Congress conferred upon the State of California civil and criminal jurisdiction over Indian lands and residents of the Agua Caliente Reservation, at the same time prohibiting taxation, encumbrance or alienation of lands held in trust by the United States. Under Public Law 280, enacted in 1953, the state was given jurisdiction over Indians and Indian lands throughout the state.

In 1950, Congress made it clear that it thought the time had come to terminate, with respect to the Indians of California, the special relationship which existed between them and the Federal Government. The House of Representatives refused to appropriate funds that year for operations of the Bureau of Indian Affairs in California. H. Rept. No. 1797, 81st Cong., 2d Sess., p. 164. Although funds for this purpose were later restored, Congress made plain that it expected the Executive to move promptly toward termination.

Legislation intended to effect complete termination in California within five years was submitted to Congress in 1952. See Annual Report of the Commissioner, Bureau of Indian Affairs, for Fiscal Year 1952. No action was taken on this proposal but, at the next session, House Concurrent Resolution 108 was adopted (99 Cong. Rec. 10815) which declared it to be the sense of Congress that special Federal services to Indians should be discontinued at the earliest

practicable time, and directed the Secretary of the Interior to present legislation in 1954 to accomplish this objective with respect to certain geographic areas and groups of Indians. California was one of the areas specified. Such a bill was introduced in 1954 and hearings held (Joint Hearings Before Subcommittees of the Committees on Interior and Insular Affairs, 83rd Cong., 2d Sess., S. 2749 and H.R. 7322), but no further action was taken. In 1958 the Rancheria Act was passed, which provided for the distribution of lands and assets of various rancherias and reservations in California.

The Department, through the Bureau of Indian Affairs, had been preparing during the 50's for complete Federal withdrawal from the administration of Indian affairs in California. During this decade responsibility for education and welfare services for Indians was taken over by the state and its subdivisions. Under Public Law 280, supra, the state also assumed responsibility for maintaining law and order in the remaining areas of Indian country.

In sum, the policy of Congress and the Executive during the decade of the 50's was one of termination generally, with particular emphasis on California and certain other areas. It was into this ambience that the Equalization Act was launched in 1959. Although it was anticipated at the time by the Congress and the Department that the Federal trust responsibility for Indian lands in California would soon be terminated, the 1959 Act did not effect this and no further steps toward that end have been taken since.

In addition to confirming the equalization rule laid down by the Pierce case, supra, the Equalization Act of September 21, 1959 (73 Stat. 602, 25 U.S.C. §§ 951 et seq.), provided:

The Secretary shall request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who in his judgment are in need of assistance in handling their affairs in accordance with applicable State laws before making any equalization allotment or payment to such persons. Section 4.

The regulations promulgated to implement this section provided for appointment of conservators as well as guardians (25 CFR 124.5) apparently for the purpose of authorizing utilization of the California conservatorship law adopted in 1957.

Guardians had been appointed for many minors prior to this act, with approval of the Bureau of Indian Affairs, because of concern about the dissipation of minors' funds by some parents. One conservatorship had been established for an adult Indian prior to the act. Thus, the provisions of Section 4 of the Equalization Act were in accord with existing practice. Exhibit 1.

Some 5,000 acres of the approximately 31,000-acre reservation had been allotted prior to the passage of the 1959 Act. Approximately 24,000 acres were allotted after 1959; the remaining acreage was retained in tribal ownership. Upon completion of the equalization process, each of the 104 members of the Band who were allotted wound up with lands having a minimum value of approximately \$335,000.

In implementing Section 4, although it appears that the program was explained to the Indians and that they were informed of their

right to select fiduciaries of their choice, the Bureau in most instances took no part in the actual filing of petitions for appointment of guardians or conservators, despite the fact that the section states, "the Secretary shall request the appointment * * *."

In two instances the Bureau filed petitions but, as a result of administrative appeals to the Commissioner of Indian Affairs by the Indians concerned, the petitions were withdrawn and no conservatorships were established for them. Exhibit 1.

At the time of equalization there were in existence 60 guardianships and nine more were established. As noted, one adult member was already under conservatorship. Thirteen more adults were placed under conservatorships and 21 were determined capable of managing their own affairs. Age of the allottee appears to have been a determinative factor for appointment of conservators. Invariably conservators were considered necessary for young adults in their twenties.

Because of the then contemplated termination of Federal responsibility discussed above, it is understandable that the Department tacitly adopted standards of competency for the Indians and criteria for the selection of fiduciaries which were somewhat different from those it would have set up had it known that termination of the Federal trust relationship was not imminent. A person who might reasonably be expected to do a creditable job of handling the income is not necessarily capable of managing the corpus of his estate. Similarly, as long as a minor's wealth is principally in the

form of restricted land, his father may be reasonably competent to manage his business affairs. But if the minor possesses unrestricted fee title to lands of great value, a fiduciary possessed of other qualifications might be required.

The conservatorship program is relatively new in California. It was created by legislation which became effective in 1957. It appears that this program was intended to serve essentially the same purpose as a guardianship for an incompetent adult; to establish a conservatorship, however, the court is not required to find that the adult is insane or "incompetent." All that is required is a finding that the adult is in need of assistance in managing his affairs or that he is subject to "artful or designing persons," or simply that he has requested a conservator. (Cal. Prob. Code, Section 1751).

Judicial administration of the guardianships and conservatorships established for the Indians is by the Superior Court in and for the County of Riverside and, by and large, has been handled in the Indian Division of that court. Since fiduciaries were first appointed, 92 Indian estates have been under the court's administration at one time or another. As of February 1968 there were 50 guardianships and 24 conservatorships in existence. Twenty-three adult members of the Band now handle their own affairs. Although petitions to appoint conservators have been filed almost routinely as minor wards have attained their majorities, the Department has in no case participated in such actions.

The ink was hardly dry on the Equalization Act before Congress and the Department began receiving complaints from the Indians. In 1961, the Department reprimanded an attorney for conflict of interests arising out of his collecting fees from the lessee for services rendered the estate of an Indian in connection with the making of a lease.

In 1962, the House Committee on Government Operations made inquiries, and the Department, taking a narrow view of its residual responsibilities, conducted a truncated investigation of certain activities of Indian guardians and conservators and reported its conclusions to the Chairman in 1963. Exhibit 2.

Early in 1964, the Tribal Council transmitted an extensive list of grievances to the Commissioner of Indian Affairs about the manner in which the program was being handled. Thereafter, in 1965, the Department appointed a Resources Trust Officer in the Palm Springs office to work informally with the Superior Court in its administration of the program and to inquire into past operations. In a June 1966 report to the Area Director, Bureau of Indian Affairs, Sacramento, the Trust Officer reported that in 1965 approximately 37 percent of the ordinary income--exclusive of income from sales of land--accruing to Indian estates was consumed by fees and other administrative expenses.

On July 19, 1966, the Area Director forwarded the report to Washington. It was returned in January 1967 for further work.

In March 1967, Homer Jenkins, Director of the Palm Springs office of the Bureau of Indian Affairs, addressed a letter to Judge Merrill Brown of the Superior Court in which he strongly objected to the appointment of James Hollowell as guardian of certain Indian estates and asserted that certain fees requested by Hollowell were unconscionable. Exhibit 3. At a subsequent hearing, Hollowell received the requested fees and appointments. Under date of April 11, 1967, Judge Brown wrote to Jenkins that he would no longer allow Bureau representatives to advise the court informally with respect to Indian guardianship and conservatorship matters coming before it. Exhibit 4. This exchange of correspondence occurred about the time Judge Brown's attempt to sell land to the estate of an Indian underguardianship aborted. The land sale proposal is discussed in more detail under Section II. C. 1. p. 24, infra. After these developments were brought to the Department's attention by Mr. Charles R. Renda, Regional Solicitor, Sacramento, in early May 1967, the present investigation was initiated by the Secretary who appointed this Task Force to look into the situation and report its findings. Exhibits 5-9.

II. FINDINGS OF TASK FORCE

A. Cost of Program to Indian Estates

1. Fees

a. General Statistics

(1) Audit information relating to 43 estates covering various accounting periods within the time span from July 1956 to May 1967 reflects:

Receipts to these estates from all sources, including ordinary income, sales of trust lands, and miscellaneous, totaled \$5,563,509.67. Ordinary income amounted to \$2,144,374.61. Proceeds from sales of trust lands were \$3,186,117.28. Miscellaneous receipts totaled \$233,017.78. Against these receipts, fees were awarded to fiduciaries and attorneys in the sum of \$891,966.19. Of this amount, \$677,244.83 was actually paid. Thus fees awarded amounted to 16 percent of the total receipts of the estates and 42 percent of ordinary income. Fees paid amounted to 12 percent of total receipts and 32 percent of ordinary income. Schedule II.

(2) Information furnished by the Bureau of Indian Affairs on 41 other Indian estates covering various accounting periods within the time span from October 1956 to November 1967 reflects:

Receipts to these estates from all sources, including ordinary income, sales of trust land, and miscellaneous, totaled \$5,296,528.89. Ordinary income amounted to \$2,029,766.03. Proceeds

from sales of trust land were \$3,260,817.46. Miscellaneous receipts totaled \$5,945.40. Against these receipts, fees were awarded to fiduciaries and attorneys in the sum of \$633,024.77. Of this amount, \$535,085.22 was actually paid. Thus fees awarded amounted to 12 percent of total receipts of the estates and 31 percent of the ordinary income. Fees paid amounted to 10 percent of total receipts and 26 percent of ordinary income. Schedule IV.

(3) Combining the data from (1) and (2) above, we find with respect to the 84 estates included (out of the total of 92 which have existed at one time or another) that:

Receipts to these estates from all sources, including ordinary income, sales of trust lands, and miscellaneous, totaled \$10,860,038.56. Ordinary income amounted to \$4,174,140.64. Proceeds from sales of trust land were \$6,446,934.74. Miscellaneous receipts totaled \$238,963.18. Against these receipts, fees were awarded to fiduciaries and attorneys in the sum of \$1,524,990.96. Of this amount \$1,212,330.05 was actually paid. Thus fees awarded amounted to 14 percent of the total receipts of the estates and 36.6 percent of ordinary income. Fees paid amounted to 11 percent of total receipts and 29 percent of ordinary income.

When broker fees and other estate expenses are added to fiduciary and attorney fees, the result is that more than 44 percent of ordinary income was awarded and 37 percent paid out for administration expenses. Schedules II and IV.

(4) Fees awarded by the Superior Court to fiduciaries and attorneys have ranged from 1 percent to 340 percent of total receipts. The breakdown is as follows:

<u>Estates</u>	<u>Percent</u>
41	1 to 15
11	16 to 25
16	26 to 50
11	51 to 100
5	101 to 340

b. Principal Recipients

The individual who received the largest amount as fees is Judge Eugene E. Therieau. For his services rendered in various capacities, he was awarded in excess of \$257,000 over a period of approximately seven years.

Receiving the largest amount as attorney fees was James Hollowell. From October 1961 to February 28, 1967, his awards amounted to \$227,373.64. It should also be noted that Mr. Hollowell is now conservator or guardian for seven estates and since February 28, 1967, has been awarded fees for services in such capacities as well as additional attorney fees in other estates.

Fees awarded to Therieau and Hollowell were assessed against approximately 28 Indian estates.

Thus, out of approximately \$1,500,000 total fees awarded to fiduciaries and attorneys against 84 Indian estates, these two individuals were awarded approximately \$485,000, or about 30 percent.

c. Basis of Fee Awards

Fees awarded have not been uniform for seemingly identical kinds of services performed for different estates. For example, one attorney charged \$90 for securing an ex parte order to sell or purchase securities; another charged \$250 for the same service. Compare Fifth Accounting filed in the Estate of Grace Belardo Toro, Indio No. 937 (accounting period November 1, 1965, to October 3, 1966), with First Accounting filed in the Estate of Clarice Bow, Indio No. 1947 (accounting period February 7, 1966, to December 31, 1966). Charges for filing annual accountings have ranged from \$50 to \$500. Compare Fourth Accounting filed in the Estate of Darlene Marie Diaz, Indio No. 390 (accounting period May 6, 1966, to February 21, 1967), with Third Accounting filed in the Estate of Michael R. Milanovich, Indio No. 1378 (accounting period December 30, 1965, to December 31, 1966).

In our view state law and practice relating to the allowance of fiduciary and attorney fees in guardianships and conservatorships are wholly inadequate. Unlike the specific formulas and limitations set forth in the statutes for analogous fees in the administration of decedents' estates in California, the code provisions dealing with guardianships and conservatorships merely provide for "reasonable" fees. (Cal. Prob. Code, Sections 900-903; 910; 1556; 1556.1; and 1908). Consequently, the determination of fees in guardianships and conservatorships is left entirely to the discretion

of the court. In the Indio court this means practically automatic approval of fees requested by fiduciaries and their attorneys in Indian estates unless objections are made.

In this regard, however, it must be noted that the volume of probate matters (which in California includes guardianships and conservatorships) coming before that court, is so great that, regardless how conscientious, the judge assigned to the weekly probate calendar could not adequately review and evaluate the services alleged in each case in support of fees requested.

We are informed that some Superior Courts in California (e.g., those for Kern, Los Angeles, San Bernardino, and San Francisco counties) have probate commissioners whose primary responsibilities are to review and evaluate fees requested in probate matters. The Superior Court for Riverside County has no such commissioners.

The court in Indio, on February 11, 1964, issued a policy memorandum which, among other things, provided that a guardian or conservator would be entitled to a fee in the amount of three-fourths of one percent of the current value of his ward's estate, excluding trust property, for "ordinary" services, including filing the required annual accountings. Exhibit 10. He would, however, be permitted to claim additional fees for "extraordinary" services; but there has been no uniformity among fiduciaries and attorneys as to the types of service treated as ordinary and extraordinary.

The policy memorandum defines extraordinary services as negotiating leases, handling complex real estate transactions, participating in litigation, and performing similarly demanding tasks. Accountings reflect, however, that clearly routine services such as purchasing cars or securities, preparing income tax returns, attending meetings, or consulting with wards or conservatees are frequently classified as "extraordinary." The prescribed formula is more honored in the breach than in the observance.

In a number of cases, attorney fees for lease negotiations have been allowed by the court based upon fees normally charged by licensed real estate brokers. A letter of September 1, 1964, from Judge McCabe to fiduciaries and attorneys sanctioned this practice. Exhibit 11. For example, in the Estate of Vincent Gonzales, Jr., Judge Brown allowed a \$28,000 fee to attorney Hollowell during the fourth accounting period which appears to have been calculated on the basis of the amount a licensed real estate broker might have charged. Exhibit 12.

In the Estates of Benita Olinger and Diane Voorhees, the attorney, Raymond C. Simpson, was actually awarded fees of \$7,630 for each estate--a total of \$15,260--for negotiating a 65-year lease with the Myers-Koozin Company. He based the fees on 218 hours of work for each estate, at \$35 an hour. The Olinger file reflects, however, that it was his original intention to request as his fee two and one-half percent of \$1,404,000--the total guaranteed minimum rent anticipated over the full period of the lease--and to

charge lessees for the difference between this amount and the fee awarded by the court from the ward's estate.

Exhibit 13.

This insertion of the practices of the market place into fiduciary relationships seems clearly improper.

See: In re Guardianship of the Estate of Prieto, 52 Cal. Rptr., 80 (1966); Haas v. Greenwald, 275 U.S. 490; Gage v. Billings, 108 P. 664 (1910).

2. Duplication of Services

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 separately recompensed for services purportedly rendered in connection with the same matters. Exhibits 12 and 14.

In many instances the attorney's services are purely routine, such as obtaining ex parte orders. In several estates the fiduciary's attorney performs services normally performed by the fiduciary, and claims attorney fees for them even though the fiduciary receives his full "ordinary" fee. If the same attorney handles several estates in a particular transaction identical fees may be charged to each estate regardless of the routine and duplicative nature of the services.

Eugene Therieau, for example, has been guardian of the estates of Ray and Ruth Patencio and conservator of the estates of their parents, John and Frances Patencio. In the Ray Patencio estate Therieau requested fees for extraordinary services, described as: negotiating for discount of judgment obtained against ward by victim of ward's automobile accident; securing loans from estates of ward's sister and parents for settlement of the judgment; obtaining authority from Bureau of Indian Affairs for assignment of ward's rental income to repay these loans; rendering services in connection with lease amendments and rights-of-way; petitioning for broker's fee; petitioning for increase in ward's allowance; and purchasing

a motor bike. He was allowed \$3,000 in extraordinary fees. James Hollowell, attorney for the estate, was allowed \$1,540 for assistance with the above services. Moreover, some of these same services were included in support of extraordinary fiduciary fees requested from the estates of Ray's sister and parents, and attorney fees were also requested in these estates for assistance with the services for which the fiduciary was recompensed. Exhibit 15.

There is also duplication of the functions of the Bureau of Indian Affairs by the Superior Court whenever trust lands are involved in a transaction. All dispositions of trust lands, such as sales, leases, grants of rights-of-way, etc., require approval by both the Bureau and the court. This dualism results in unduly complicating and delaying the consummation of transactions as well as in creating a great deal of unnecessary expense to Indian estates. Transactions involving trust lands are cited by fiduciaries and attorneys as justifying the major portion of their fees.

3. Inadequacy of Records

In 36 estates a thorough check was made not only of the official accountings but also of records maintained by fiduciaries and attorneys, with the following results:

No adverse findings	9 cases
Records not adequate	23 cases
Inadequate supporting documentation	25 cases
Income not properly accounted for	15 cases
Assets overstated	7 cases

Assets understated	10 cases
Cash shortages	6 cases
Cash overages	2 cases
Accountings not submitted on timely basis	7 cases
Expenditures made without prior court approval	4 cases
Ordinary receipts not identified	2 cases
Duplicate payments made	1 case
Transactions not disclosed to court	8 cases
Income tax not paid on taxable income	2 cases

Schedule V.

In other estates for which only court records were reviewed, similar defects in accounting were noted.

B. Development of Indian Estates1. Land Status

Analysis of 43 Indian estates reveals the following with respect to the lands included therein:

a. Twenty estates, or 46 percent, have no long-term leases in effect.

b. Out of 38 long-term (primarily 65-year) leases executed, 12 have been terminated. This represents a

termination rate of about 32 percent.

c. Acreage allotted, inherited, or purchased totaled 12,741.49 acres, of which 10,653.76 acres were allotted.

d. Acreage sold totaled 641.71 acres, or about five percent of the total in item c. above.

e. Total acreage covered by 26 active leases is 687.39 acres, slightly more than 5 percent of the total in item c. above.

f. Remaining unproductive are 11,412.39 acres, slightly more than 94 percent of the total acreage, excluding lands sold. This includes a considerable amount of isolated and mountainous land which has little immediate development potential.

g. The anticipated income from the 26 active long-term leases based upon minimum rents and absent defaults is \$24,709,886.39. For the most part these are 65-year leases.

Schedule I.

2. Impediments to Development

Aside from market conditions, the following circumstances appear to impede development of Indian land in comparison with equally desirable non-Indian land:

a. Authorization for trust land transactions must not only be obtained from the Bureau of Indian Affairs, but from the Superior Court as well, a procedure which is time-consuming, burdensome, and expensive for the Indians and lessees.

b. Frequency of personnel changes in the local Bureau office has contributed to the lack of momentum in the development program.

c. It is difficult for lessees to arrange financing for Indian leases.

d. The fact that some lessees have had to pay the lessors' fiduciaries and attorneys, as well as their own attorneys and brokers, is an additional encumbrance to the development of Indian lands. The Palm Canyon Country Club and Tahquitz Trailer Park leases are outstanding examples of this and necessarily involve conflicts of interests. They are discussed under Section II. C. 2., p. 32 , and Section II. C. 4., p. 40 , infra.

3. Decline in Estate Values

Statistical studies of 43 estates revealed the following:

a. Forty-two estates showed increases in the value of assets subject to administration by the fiduciaries. This does not mean, however, that the total holdings of the wards and conservatees increased. Fiduciaries account only for assets not under Federal trusteeship. The Indians' non-trust assets are, of course, increased when their trust lands are sold and the proceeds paid over to their fiduciaries. Thus, the total holdings of an Indian, trust and non-trust, may have declined while his non-trust assets in the hands of his fiduciary increased due to the addition of proceeds from conversions of trust property to non-trust property. In this connection it is significant that income from sale of trust lands has far exceeded ordinary income. Section II. A. 1., page 10, supra.

(1) Seventeen estates, or 40 percent, have declined in overall value during the period of fiduciary management due to

disbursements having exceeded ordinary income. Rates of decline as measured against assets on hand are as follows:

- In 9 cases, the declines ranged from 1% to 10%;
- In 6 cases, the declines ranged from 14% to 24%;
- In one case, the decline was 37%; and
- In another it was 214%.

(2) Twenty-six estates, or 60 percent, showed increases in overall value during the periods of fiduciary management as a result of ordinary income having exceeded disbursements. The rates of increase as measured against assets on hand are as follows:

- In 15 cases, the increases ranged from 0.4% to 10%;
- In 9 cases, the increases ranged from 11% to 24%;
- In one case, the increase was 61%; and
- In another, it was 77%.

(3) In the forty-third estate, the value of assets has so declined that a net deficit exists. Schedule III.

b. Analysis of 84 estates disclosed total disbursements for use of the Indians amounted to \$2,923,897.34, or approximately 70 percent of ordinary income, and total disbursements for the use of the Indians and for administrative expenses, including fees, amounted to \$4,450,176.61, or approximately 107 percent of ordinary income. Ordinary income amounted to \$4,174,140.64. Schedules II and IV.

C. Involvement of Individuals

1. Superior Court Judges

Since passage of the Equalization Act, judicial administration

of the majority of the estates of the Agua Caliente Indians has been assigned to Judge Hilton H. McCabe (former Superior Court Judge, Riverside County, California) and Judge Merrill Brown (present Superior Court Judge, Riverside County, California). They were responsible for the appointments of most of the guardians and conservators who have represented the Indians. Judge McCabe is now a Justice of the State Court of Appeals, San Bernardino, California.

a. Judge Hilton H. McCabe

Following the establishment of the guardianship and conservatorship program for the Indians, Judge McCabe, who took over judicial administration of the system, was in position to formulate the policies and practices adopted for its operation. He not only appointed the original groups of fiduciaries but sat in judgment on their requests for fees. Obviously, if Judge McCabe had seen fit to do so, he could have set excellent precedents and guidelines. It is unfortunate that he did not.

(1) While serving as Superior Court Judge at Indio and sitting on most guardianship and conservatorship matters involving Indian estates, Judge McCabe apparently encouraged the attorneys for the estates to get the wards to make wills, letting it be known that he was available and willing to serve as executor. Exhibit 16.

Review of 27 wills of living Palm Springs Indians on file in the office of the Examiner of Inheritances at Phoenix revealed that Judge McCabe is named as first executor in ten. James Hollowell was the scrivener of nine of these wills. Every

will in which Judge McCabe is named as executor contains a provision that he serve without bond. Exhibit 17.

Several Indians who made the wills stated variously to the Task Force that they did not understand that it was their prerogative to name an executor, that an executor had been named, that the executor's bond had been waived, and that the executor was entitled to fees.

The records of the Superior Court for Riverside County evidence that Judge McCabe has served as executor of the estates of five deceased Indians and has been awarded fees in excess of \$19,000 for such services. The estates were those of Clara Segundo Fow, Indio No. 1046; Celia P. Hopkins, Indio No. 1740; Albert Richard Welmas, Indio No. 1499; Audrey Elizabeth Welmas, Indio No. 1541; and Joaquina Nombrie Segundo, Indio No. 1482.

In the case of Clara Segundo Bow (Clara Marie Bow), McCabe, as Judge, actually signed the order discharging her guardian inter vivos and transferring her estate to himself as executor under her will. Exhibit 18.

(2) On interview, Mr. Hollowell stated that at Judge McCabe's request he had petitioned the Superior Court, Judge Merrill Brown presiding, for appointment of a guardian over the Estate of Joseph Christopher Patencio. Hollowell admitted that he recently had been discharged as attorney for the Patencio family and that he was not representing anyone when he filed the petition. He said that at the time Judge McCabe was serving as executor of the Estate of

Celia Hopkins and was anxious to distribute assets. This could not be done until a guardian was appointed for Joseph Christopher Patencio, a distributee under the Hopkins will. This matter is discussed further under Section II. C. 2. a., p.29 , infra.

(3) Another instance of Judge McCabe's acting in two incompatible capacities occurred when he ruled upon a petition granting an Indian estate authority to purchase property from the estate of a decedent (Lawrence Crossley) while he was serving as co-conservator for the widow and principal beneficiary. Exhibit 19.

(4) Judge McCabe made known to Bureau personnel that he did not favor advising Indians of their rights to nominate persons of their choosing as conservators and guardians.

Although such determinations are beyond our ken, we believe that the activities of Judge McCabe should be reviewed by appropriate authorities for compliance with the Canons of Judicial Ethics, particularly 4, 20, 22, 23, and 25. Exhibit 20.

b. Judge Merrill Brown

(1) In early 1967, Judge Brown attempted to effect a sale of some land which he owned to an Indian conservatorship estate which was subject to his supervision as Judge of the Superior Court.

On March 7, 1967, James Hollowell, as attorney for Lew Levy, conservator of the Estate of Shirley Ann Kitchen, filed a petition with the Superior Court for authority to purchase certain lands belonging to Judge Brown. The petition did not disclose the fact that the lands were owned by Judge Brown. It recited that the

conservator felt that the subject property was a good investment and that the matter of the purchase price would be left to the discretion of the court. Exhibit 21.

Lew Levy stated upon interview that while he was in Hollowell's office in February 1967, Judge Brown telephoned Hollowell, who interrupted the telephone conversation to ask Levy whether he would be interested in handling a parcel of land Judge Brown wanted to sell. Levy stated that he expressed interest, with the idea that he might find a buyer and earn a real estate commission. He said that he accompanied Judge Brown and Hollowell on an inspection of the property a day or two later, and that, shortly thereafter, Hollowell telephoned him and asked whether Judge Brown's land might not be a suitable investment for Shirley Ann Kitchen's estate. Levy said he told Hollowell that Shirley's estate had funds available for investment, and that the purchase was a possibility, but thinks he made no commitment. He indicated that he did not fully understand the import of the petition filed with the Superior Court.

Levy said he felt some shock when Homer Jenkins, Director of the Palm Springs office of the Bureau of Indian Affairs, advised him about March 23, 1967, that the Bureau had appraised the land at \$1,500 per acre, that if the court approved a sale at this price there would be no objection to the sale from the Bureau, and that Levy would, in effect, be committed to make the purchase. Levy then asked Mr. Jenkins' advice as to how to call off the deal, and Jenkins assisted him in drafting a letter to Hollowell directing

that the petition be withdrawn.

Mr. Jenkins stated upon interview that he was disturbed by the apparent attempt by Judge Brown to conceal ownership of the land. He stated that during a court ceremony at Indio on March 22, 1967, Judge Brown handed him a handwritten draft of a proposed letter from the Bureau of Indian Affairs to a title company expressing Bureau approval of the purchase of the land at \$1,800 per acre. Jenkins said Brown told him that this letter would simplify and expedite the sale of the property. The Bureau of Indian Affairs prepared the letter as drafted by Judge Brown but substituted the figure \$1,500 per acre, the value established by a Bureau appraisal. Exhibit 22.

Cyril Swanson, BIA appraiser, on interview recalled that he had discussed the proposed land sale with Judge Brown, that the Judge did not mention the conservator or Indian allottee involved, that he indicated that at the time he acquired the land it was estimated to be worth about \$900 per acre, and that he wanted to sell it because of personal financial problems.

We believe that it was unethical for Judge Brown to attempt to sell his own land to an estate over which he exercised judicial supervision, particularly under the circumstances described, using a conservator's attorney, James Hollowell, as the catalyst for the transaction.

(2) In September 1961, Judge Brown ordered the lessee to pay a fee of \$20,000 to Eugene E. Therieau as attorney for

Lawrence Crossley, conservator of the Estate of Joseph Patrick Patencio, for his services in negotiating the Tahquitz Trailer Park lease for Patencio and three other Indian landowners. The court's authority over the lessee seems highly questionable. The petition to approve the lease did not indicate that payment was expected from the lessee. This matter is also discussed under Section II. C. 4., p.40 , infra.

(3) As discussed under Section III. E., p. 49 , infra, the current litigation involving fees collected by Eugene Therieau in connection with the Senci lease has been removed from Judge Browi's court because of possible bias and prejudice. In connection with the Senci lease, Judge Brown awarded fees to Therieau for brokerage services although Therieau was not a licensed broker. See: In re Guardianship of the Estate of Prieto, supra.

(4) Judge Brown also acted in the Joseph Christopher Patencio matters discussed under Section II. C. 2. a., p. 29, infra.

2. Attorneys

Our more significant findings concerning various attorneys involved in the administration of Indian estates are as follows:

a. James Hollowell

(1) Conflict of Interests

Mr. Hollowell serves as attorney for the conservator of the Estate of Ray Leonard Patencio. He secures court orders authorizing and approving real estate transactions. Mr. Roy Fey,

lessee under a lease from the estate, has been unable to secure court orders necessary to operate the lease without paying attorney fees to Hollowell in addition to fees charged by his own counsel. Hollowell charged both Mr. Fey and the Patencio estate for the same work. Exhibits 23 and 24.

As stated above, Hollowell prepared nine of the ten wills in which Judge McCabe is named executor and some of the Indians indicated that Hollowell did not make clear to them the import of the executor clauses. Hollowell kept McCabe advised of the preparation of wills in which McCabe was named executor. Exhibit 25.

Radio Station KDES in Palm Springs acquired rights-of-way from two Indian estates represented by Hollowell, and from a third Indian estate represented by another attorney. Although Hollowell did not represent KDES, its representatives stated on interview that he had billed it for \$3,500 for his services. For approximately the same service rendered to the third Indian estate, the other attorney billed KDES \$250. KDES succeeded in getting Hollowell to reduce his fee to \$500 after it was pointed out to him that he was charging one of his Indian estates for the same service.

Hollowell attempted to correct the accounting he had previously filed with the court in the Indian estate to delete reference to these services as supporting the fee he had been awarded, but it appears that at least part of this fee constituted payment for services performed in connection with the KDES rights-of-way. Exhibit 26.

As attorney for two Indian lessors, Hollowell received \$557.50 from the lessee for an ex parte order authorizing amendment of the Palm Canyon Country Club lease. Exhibit 27.

(2) Unauthorized Representation

On August 9, 1965, Hollowell filed a petition for the appointment of a guardian for Joseph Christopher Patencio. The petition stated that the minor was under the care of his parents and had been designated to take property under the will of Celia Lopez Hopkins. It requested that a suitable person be appointed guardian. Prior to the petition, the mother had employed attorney Raymond C. Simpson to request the appointment of a guardian for the child. Hollowell, in an interview, said that Judge McCabe, while serving as executor of Celia Hopkins' estate, requested that Hollowell file the petition because a guardianship was needed for Joseph before McCabe could wind up the affairs of the Hopkins estate. Hollowell knew at the time he filed the petition that he was not employed as attorney for the family, and that differences existed between him and the family which had resulted in his having been discharged as their attorney. He contended that anyone can file such a petition under California law as a "friend," and that he has always considered himself the family's attorney, notwithstanding his discharge.

On August 20, 1965, a hearing was held on Hollowell's petition. At that time, through their attorney, the family requested that the mother and the Title Insurance and Trust Company be appointed co-guardians. The court, however, appointed the First Western Bank

as sole guardian. It changed the order to include the mother only after her attorney strenuously objected to the court's action of disregarding preference rights of parents under California law.

For his "services" in the matter, Hollowell, in April 1966, filed a petition requesting attorney fees and expenses of \$632.68. The court allowed him \$532.68. Exhibit 28. Under the circumstances the award of this fee was clearly an unconscionable milking of the assets of the ward. It should be added that the estate was further burdened by the necessity of retaining counsel to defend against this unauthorized intrusion by Mr. Hollowell. Exhibit 29.

(3) Fee Splitting

In the fourth accounting in the Estate of John Joseph Patencio (Indio No. 787), attorney Hollowell and conservator Therieau requested fees in the amount of \$15,000 each for assisting in the negotiation of a lease to the Sunquitz Corporation. The court approved the \$15,000 fee requested by Judge Therieau, but later after objection by the Bureau reduced it to \$11,000. The court refused to allow the \$15,000 fee requested by Hollowell. Judge McCabe, however, did allow attorney fees to Hollowell in the amount of \$2,000, but specifically disallowed fees for the Sunquitz lease matter. The order states:

Repetitively the duties of the Conservator are not delegable. The relationship of the conservator with his attorney is that of Attorney-client. Any work done by the attorney must have been ordered done by the conservator for legal work.

Exhibit 30.

Nevertheless, Judge Therieau split his conservator fee with Hollowell on a 60%-40% basis, Hollowell receiving 40%. This split was admitted by both Therieau and Hollowell during interviews on December 8, 1967. Judge Therieau stated that he felt the language of the order was indeed unusual, that he interpreted it to mean that the conservator was to pay his own attorney out of the fees awarded, and that Hollowell had not submitted a bill to him for legal services. Exhibit 31.

b. Raymond C. Simpson

(1) Conflict of Interests

Raymond C. Simpson has been retained as attorney for the Agua Caliente Band of Mission Indians since March 11, 1957. His latest contract was approved by the Department on March 7, 1966. In addition to his representation of the tribe, Mr. Simpson represents individual members of the tribe and some guardians and conservators.

In 1961 a special Departmental investigative team looked into complaints involving leases made by certain Indian estates which Simpson was representing. Simpson made no secret of attempting to collect his fees from the lessees rather than from his Indian clients. He maintained that he was charging the lessees with the full knowledge and consent of the Indians he represented; that he was saving the money of the Indians; and that the Superior Court in and for Riverside County, California, approved the practice. After an exchange of correspondence, and at least one conference, the

Department closed the matter with a warning to Mr. Simpson that should he receive fees from lessees, such fees should be " * * * promptly turned over to the Bureau of Indian Affairs * * *."

Exhibit 32. See also the references to Mr. Simpson under Section II. A. 1., p. 14, supra.

c. Schlesinger, Schlecht and McCullough

(1) Conflict of Interests

A review of the books and records of the Palm Canyon Country Club, Inc., of Palm Springs, lessee under a master lease from several Indian lessors, indicates that the law firm of Slaughter, Schlesinger and Schlecht (now Schlesinger, Schlecht and McCullough), while representing certain Indian estates involved, received fees from the lessee country club for right-of-way work and obtaining an ex parte order in connection with the lease. Exhibit 27.

(2) Inaccuracy of Accounting

The audit report on the Estates of Anthony, Linda, and Robert Gillette reveals that, as attorneys for the estates, Slaughter, Schlesinger and Schlecht failed to report to the court existing cash shortages in the estates during the third, fourth, fifth, sixth, and seventh accounting periods, covering the years 1958 to 1965. Further, savings account balances were reported to the court which did not exist or were, in many cases, more than six months past the end of the accounting period. The audit indicates that at the close of the seventh accounting on January 6, 1965, cash shortages totaled \$32,028.44. Shortly thereafter, the

attorneys disclosed the shortages to the court. Work sheets in the law firm's files disclose that the firm was aware of the shortages and that balances reported in the accountings to the court were overstated. When we discussed these findings with the attorneys, they did not deny knowing of the shortages prior to disclosure to the court but contended that they subsequently disclosed the matter to the court's satisfaction and that the shortages were made up by the guardian. Exhibit 33. Details of the shortages are discussed under Section II. C.3., p. 36, infra.

d. John P. Carroll

In the Estate of Elizabeth Ann Welmas, John P. Carroll, the attorney for the estate, asked for a total fee of \$250 for filing Supplemental Agreement No. 5 to the Palm Canyon Country Club lease and for preparing the second accounting and drafting an order. The Department's amicus called attention to the fact that Mr. Carroll had received from the lessee a payment of \$150 for obtaining Supplemental Agreement No. 5; that this service, therefore, should not be considered in justification of his fee request; and that he had placed himself in a conflict-of-interest position by accepting a fee from the lessee at the time he was representing the lessor. The matter is under submission to the court. Exhibit 27.

e. Saul Ruskin and Thurman Arnold

Saul Ruskin and Thurman Arnold, attorneys for two lessor Indian estates, received fees from the lessee for ex parte orders authorizing amendment of the Palm Canyon Country Club lease,

thus placing themselves in a conflict-of-interest situation.

Exhibit 27.

We believe that the matters discussed under this heading concerning attorney conduct should be referred to the appropriate California authorities.

3. Fiduciaries

a. Association of Conservators, Guardians, and Allottees of the Agua Caliente Band of Mission Indians

Judge Hilton H. McCabe was instrumental in the founding of this association, which was organized February 7, 1962. Its stated purpose was "to advance and improve the capabilities of the members of the Association in guarding and conserving the Estates of the Wards and Conservatees under their control and management by coordinating the development of Indian land to its best and most profitable use."

To fund the association, the Indian estates represented were assessed 0.1 percent of their values. Forty-five estates paid assessments ordered by the Superior Court in the total amount of \$12,653.84. Seven estates gave notes for assessments in the total amount of \$2,345.92; ten estates assessed have not paid; and thirty estates were not assessed. The money was to be used to maintain an office and information center in which maps and pertinent information would be available to prospective developers and lessees. (Such materials and information were always available from the Bureau of Indian Affairs in Palm Springs.)

The information center was never established. It appears that some funds contributed by the Indians have not been used for the stated purposes of the organization. The few Indian members who originally joined the association no longer participate. The Band has expressed disillusionment with the Association and has requested the United States to take appropriate action to recover funds derived from Indian estates. (See Section III. E. 2., p. 51, infra.)

b. Harold P. Machen

Harold P. Machen serves as conservator-attorney for the Estates of Alana May Norte and Belinda Sue Rodriguez and was conservator for the Estate of Leroy Francisco Segundo, since terminated.

Audits of these estates revealed:

(1) Machen has a practice of destroying all cancelled checks, checkbooks, etc., one year after the court's approval of his accountings. He also destroys all invoices, vouchers, receipts, etc., immediately upon payment. Because of these practices, the auditors advise that it was impossible to determine the propriety of the disbursements reported in accountings from 1958 through December 31, 1965.

(2) Estate funds disbursed were not reported to the court. Computation of rental income was inaccurate and cash balances reported to the court could not be reconciled.

(3) Leroy Segundo's and Belinda Sue Rodriguez' estates revealed shortages of funds.

(4) In the Leroy Segundo estate, Machen converted funds to his own use. Exhibit 36.

We believe that corrective court action should be undertaken and that these matters should also be referred to the appropriate California authorities.

c . Gloria W. Gillette

Mrs. Gillette, the mother of Linda Delores, Robert Juar. and Anthony Gilbert Gillette, was appointed guardian of their estates on July 13, 1956. Audits of these estates revealed:

(1) No formal journals or records were established or maintained for the three estates.

(2) Delinquent land rental is owed by the guardian in Linda's estate. She agreed rental was due and offered to convey a house to the estate in satisfaction of the obligation.

(3) Rental income in Robert's estate in the amount of \$305 had not been reported. Guardian agreed with audit findings and advised that these rentals were omitted because of computational error. The rent will be reported in the next accounting.

(4) Guardian used wards' funds for personal benefit during period covered by several accountings. During the seventh accounting period, shortages reached a total of \$32,028.44. The court was advised of the situation and restitution was made. It appears that a shortage of \$2,219.78 existed as of the closing date of the eighth accounting period, June 30, 1966. Exhibit 33.

d. Stanley Spiegelman

The audit report on the Estate of Anthony Joseph Andreas reveals an apparent overstatement of assets by conservator Spiegelman resulting from the purchase, in 1963, of a one-half interest in a parcel of land, described as Tract 39, for \$14,000 from the Estate of Lawrence Crossley and its valuation for court accounting purposes at \$30,000. Further inquiry revealed that the \$30,000 was intended to reflect the value of an entire interest in Tract 39, family homesite of the Andreas, since one-half interest had been deeded to Anthony Joseph by his grandmother in 1959 prior to his purchase of the outstanding half interest. By the same deed, she had conveyed this other half interest to Lawrence Crossley.

It appears that Mrs. Andreas executed the deed at Crossley's suggestion, without consideration, to insulate the property from a potential judgment debt. Therieau, as attorney for Crossley, drew the deed. Crossley later became Anthony's conservator

and Therieau his attorney. Upon Therieau's elevation to the bench in 1961, Hollowell took over as attorney for Anthony's estate. When Crossley died, Therieau was appointed executor for his estate and chose Hollowell as his attorney. Judge McCabe became a co-conservator, with Therieau, for Crossley's widow. Spiegelman succeeded Crossley as conservator for Anthony and Hollowell stayed on as his attorney. Spiegelman, in the capacity of State Inheritance Appraiser, appraised Crossley's interest in Tract 39.

Mrs. Andreas died shortly after Crossley. Anthony was one of her principal heirs. He informed his new conservator, Spiegelman, and his attorney, Hollowell, about the circumstances of his grandmother's conveyance of the half interest in Tract 39 to Crossley. Spiegelman told him it was too late to do anything about the matter, and Hollowell, now acting also as attorney for Crossley's estate, told him he could not get involved.

Anthony told them he wanted to preserve the family home-site. Spiegelman (conservator of Anthony's estate and State Inheritance Appraiser for the Crossley estate) then, presumably, entered into negotiations with Therieau (executor of the Crossley estate, formerly attorney for Anthony's conservator, Crossley, and scrivener of the deed whereby Crossley had acquired the interest from Mrs. Andreas for no consideration) to purchase the one-half interest in Tract 39 from the estate of Crossley (formerly conservator for Anthony), both, presumably, advised by their legal counsel, Hollowell.

The papers were prepared and laid before the Superior

Court, Riverside County, Indio Division, Hilton H. McCabe (Judge of said court, co-conservator for Crossley's widow, and executor designate under the will of Anthony) presiding.

The purchase was approved. The estate of Anthony Andreas was diminished by \$14,000, and the estate of Crossley augmented by the same amount.

Neither Spiegelman nor the predecessor fiduciaries and attorneys for the estate (including Crossley and his attorney, Therieau) had revealed Anthony's ownership of the half interest as an asset of his estate prior to Spiegelman's petition seeking authority to purchase the other half interest from Crossley's estate, although Therieau had prepared the 1959 deed to Crossley and Anthony Andreas. Exhibit 19.

e. Frank Bogert

Frank Bogert, realtor and former mayor of Palm Springs, served as conservator for the Estate of Edmund Peter Siva from June 8, 1960, until July 15, 1963, when the conservatorship was terminated.

For his services as conservator based largely on negotiating a lease with the Carlotta Estate, the court awarded him fees of approximately \$13,000, and a further fee to Paul King, a real estate broker, in the amount of \$6,182. According to Mr. Bogert, Mr. King split his fee with him. Exhibit 37.

We are of the opinion that this fee-splitting between a broker and a conservator, as well as other similar instances of fee-

splitting by or with fiduciaries, is improper under California law. We suggest that Mr. Bogert's share of these fees rightfully belongs to the Siva estate and may be deemed held in constructive trust therefor. See Bank of America v. Ryan, 207 CA 2d 698, 24 Cal. Rptr. 739.

4. Eugene E. Therieau

Judge Therieau has never served on the Superior Court which administers the guardianship-conservatorship program. Since October 31, 1961, he has served as Judge of the Desert Municipal Court of Palm Springs. Prior to that time he was a practicing attorney in Palm Springs and specialized in Indian matters.

a. The California District Court of Appeals rendered an opinion in 1966 in the case of In re Guardianship of the Estate of Prieto, supra, wherein it was held that broker fees awarded Therieau were illegal. Despite the Prieto decision, Judge Therieau has not voluntarily returned fees awarded and paid to him in four companion Indian estates for these identical services; on the contrary, he has steadfastly resisted efforts by the Government to obtain their repayment and has been instrumental in seeking to obtain an order from Judge Brown ratifying the payment of these fees. A more detailed discussion of the Prieto case and pending litigation to recover the fees here concerned can be found under Section III. E., p. 49, infra.

b. In 1961, Therieau served as attorney for Lawrence Crossley, conservator of the Estate of Joseph Patrick Patencio. In this capacity he participated in the negotiation of a lease with the Tahquitz Trailer Park on behalf of Patencio and three other Indian landowners. Judge

Brown ordered the lessee to pay \$20,000 to Therieau in lieu of the latter's charging fees to the Indians. As stated above, page 27 , the court's authority over the lessee seems questionable. The developer indicated that he felt Therieau would block the lease if payment wasn't made and that his attorney informed him, "That's the way things are done around here."

Despite the "in lieu of" order, Therieau received \$4,000 from the Patencio estate for services which clearly appear to include those rendered in connection with the negotiation of the Tahquitz lease, and \$10,000 from Priscilla Gonzales for representing her in the same matter. Mrs. Gonzales was not under conservatorship and negotiated on her own behalf

When it was pointed out to Therieau that the fee paid by the lessee was to be in lieu of fees from the estates of the lessors, he stated to the interviewers that the \$20,000 fee represented only his services for the Joseph Patrick Patencio estate and that he made an additional charge of approximately the same amount for his services to his other client, Priscilla Gonzales. Therieau did not explain the discrepancy between the \$10,000 fee charged Mrs. Gonzales and the \$20,000 fee which he alleges represented services rendered the Patencio estate, nor did he explain the additional sums paid by the Patencio estate. Exhibit 38.

5. Heavy Involvement of a Few Individuals

It is noteworthy that a few names appear repeatedly in connection with transactions involving Indian property which resulted in

sizeable fees and commissions. As has been shown, conflict of interest situations involving these individuals abound. See e.g., the Clara Bow and Anthony Joseph Andreas cases. Exhibits 18 and 19.

D. Misuse of Conservatorship Proceedings

The following are examples of the ways in which guardianship and conservatorship proceedings are used against Indians for purposes wholly unrelated to their protection or to the preservation of their estates.

1. Estate of Edmund Peter Siva

In a petition filed on October 13, 1967, Mr. Bogert, former conservator for the Estate of Edmund Peter Siva, joined with Siva's former wife, Marlene, guardian of the person of Edmund C. Siva, minor son of Siva, and attorney James Hollowell, as guardian of the Estate of Edmund C. Siva, seeking establishment of a guardianship or restoration of a conservatorship for Edmund Peter Siva. Bogert said he was in favor of the petition but did not know whether he learned of the petition before or after Hollowell filed it. In a newspaper article appearing in the Riverside Press Enterprise under date of December 7, 1967, Bogert was quoted as saying the present proceedings were Hollowell's doing, not his.

Among the alleged grounds for restoration of the conservatorship were failure to meet child care payments and failure to pay a conservator fee of \$6,000 awarded to Bogert for services in connection with the Aztec Palms lease, which was negotiated during his conservatorship and terminated in 1967. Siva felt that this award was unjust,

contending that all services relating to the lease were performed by Siva's attorney, Mr. Simpson, but did not object when the matter first came before the court, since he was seeking termination of his conservatorship and did not wish to antagonize his conservator. This petition was filed despite the fact that under California law a creditor may not apply for the appointment of a conservator.

Prior to the hearing on the petition, the attorneys for Siva apparently determined that it would be in the interest of their client to have the matter heard by a judge other than Brown. They obtained a transfer of the matter to the Riverside division of the court. The petition was denied with dispatch upon the ground that the petitioners were in fact creditors and no sufficient showing had been made to warrant the imposition of a guardianship upon Mr. Siva. Exhibit 39.

It is also worth noting that the cost to Mr. Siva for defending this action is expected to approximate \$5,000.

2. Estate of Eugene Segundo

During pendency of a divorce action against his wife, Geraldine, Eugene Segundo petitioned for the removal of James Hollowell as his conservator and substitution of a conservator of his own choice. It was alleged that Hollowell failed to keep Segundo advised of the state of his property and affairs and had furnished certain funds to Geraldine without Eugene's sanction. Geraldine, apparently motivated by the domestic situation, opposed the petition and proposed a corporate guardian or conservator. What

normally would have been a one-day hearing extended over a period of eight months.

Geraldine's attorney requested a fee of approximately \$4,000 from Eugene's estate for his services in opposing Eugene's petition. Not only was Eugene's estate subjected to the \$4,000 claim--which the court disallowed upon objection by the Department's amicus--but also to fees charged by Eugene's attorney and by Mr. Hollowell, who filed a claim for about \$6,000. Although he requested compensation as a conservator, Hollowell's charges covered time spent in attending court proceedings to which he had been subpoenaed and services rendered as an attorney. It is not permissible, under California law, for a conservator to charge fees for legal work. Despite objections by the Department's amicus, Judge Brown awarded Hollowell a fee of \$5,500.

E. Fee Splitting and Double Charging

These subjects have been discussed under Section II. C., pages 27, 28, 30, 33, 39, 41, in connection with specific situations and individuals.

F. Indian Dissatisfaction

The majority of the adult members of the tribe were interviewed. With few exceptions, they expressed serious dissatisfaction with the program. Primary objections centered around:

1. Lack of knowledge about their estates.
2. Confusion and misunderstanding about their rights.
3. Failure of the program to train them to handle their own affairs.

4. Frustration about not being able to foresee an end to the program.
5. High fees assessed against their estates by the Superior Court.
6. Their exploitation by some guardians, conservators, attorneys, and judges.

One of the reasons the Indians under the fiduciary system have lacked knowledge about their property and affairs is that California law does not require that a ward or conservatee or his parents or family receive adequate notice of proceedings affecting them. Moreover, these conservatorships are unique in that the Indians were given to understand that their conservators would undertake to educate them to handle their own affairs. Exhibit 10.

III. CORRECTIVE ACTIONS TAKEN

The Task Force has been able during the course of its work to inaugurate some corrective measures. These include:

A. Conservatorship Terminations

As of February 5, 1968, five of the 29 conservatorships for adult Indians in existence when the Task Force was established had been terminated. These were for:

1. Leroy Segundo
2. Joseph Patrick Patencio
3. John Damon Andreas
4. Richard M. Milanovich
5. Renona Lopez Pennington

During the eight-year period which preceded the efforts of the Task Force, only two conservatorships had been terminated.

Upon recommendation of the Task Force, concurred in by the Area Director, notice has been given to eight other Indians that the Bureau feels they are able to handle their own affairs and is prepared to assist in termination of their conservatorships if they so desire. They are:

1. Beverly Patencio Diaz
2. Ray Leonard Patencio
3. Mildred Kitchen
4. Belinda Segundo Rodriguez
5. Alana Segundo Norte
6. Winifred Patencio Preckwinkle
7. Priscilla Ann Pete
8. Anthony Joseph Andreas, Jr.

With the assistance of personnel from the Sacramento Area Office, we reviewed the other sixteen conservatorships and talked

with many of the conservators. While we believe that the subjects of these conservatorships require some assistance at this time in the management of their affairs we are of the view that this should be provided by other means.

B. Reduction of Fees

Prior to the creation of the Task Force, Bureau of Indian Affairs personnel had not formally participated in court proceedings involving Indian estates. At the request of the court, they had from time to time submitted comments to the judge on certain matters. These comments were not entered on the record and were often disregarded in the awarding of fees.

Following the creation of the Task Force and the appointment of the Regional Solicitor, Sacramento, as Special Assistant to the United States Attorney, a motion was granted whereby the Trust Officer of the Bureau's Palm Springs office was appointed amicus curiae to participate in probate proceedings involving Agua Caliente Indians. The Regional Solicitor was designated attorney of record for the amicus. In this way, the Department for the first time was enabled to participate formally in state probate proceedings involving Indian estates.

Since this procedure has been established, the amicus and his attorney have successfully negotiated reductions in fees claimed by fiduciaries and their attorneys in a number of situations.

Recent efforts to formulate guidelines for distinguishing between ordinary and extraordinary services have met with some success.

A special committee of the Desert Bar Association has been appointed for the purpose of making recommendations as to what should be deemed ordinary and extraordinary services. This same committee has been asked to suggest a fee schedule for attorneys for routine probate matters. However, much remains to be done along these lines if the present system is to be continued, and the modest improvements effected will quickly fade unless provision is made to continue the Departmental activities which produced them.

C. Control of Trust Funds

When the investigation was launched, the Secretary ordered all income accruing from Indian trust lands retained in the control of the Bureau of Indian Affairs. He authorized its return to fiduciary control at the discretion of the Area Director. Exhibits 6 and 9.

This assumption of control over lease income has required the close attention of the Task Force and the Bureau to assure that the financial needs of the Indians are met. Since the start of this investigation, 14 Indian estates have been restored to fiduciary administration. Since our preliminary report, no further action has been taken to restore additional estates, pending receipt and review of audit reports. If a new system of administration is not established, we recommend that the Bureau continue the work of reviewing the Indian estates with a view to returning administration of those which have been well and economically handled to the fiduciaries.

D. Changes of Fiduciaries

Where it is concluded that the estate of a minor or of an adult who is not capable of managing his own affairs has not been well or economically administered, the Bureau should retain control of income accruing and administer the same under individual Indian money accounts until changes of fiduciaries or attorneys can be effected or other arrangements made. This is a task requiring great discretion and consideration of the desires of the individual Indians concerned, but it should proceed without delay.

E. Litigation

1. Senci Lease

The Senci lease is the principal matter presently in litigation in which the United States has appeared on behalf of the Indian interests involved.

On April 23, 1963, Secretarial approval was given to the so-called Senci lease. This lease was for a term of 70 years and covered approximately 600 acres of Indian trust lands in Palm Springs which had been allotted to five minor Indians. Due to the death of one of the principals and the resulting inability of the lessee to meet rental obligations, the lease was terminated in December 1965.

The litigation involves a fee or commission of \$50,000 awarded by the court for services allegedly performed incident to the lease by Ernest Dunlevie Associates and Judge Eugene E. Therieau. Four Indian estates have paid in excess of \$17,000 of the \$50,000 fee.

Additionally, Therieau has collected \$4,000 as attorney for the Estate of Lawrence J. Bow for what appear to be the same services for which the \$50,000 fee was awarded. In other words, Therieau claimed and received two fees in this estate for the same services, one as part of the \$50,000 "commission" and another as attorney for the guardian.

The fifth Indian estate concerned appealed the lower court's order directing that it pay a proportionate share of the \$50,000 fee. The appellate court, on June 22, 1966, ruled that the order granting the fee, as well as subsequent orders concerning payment thereof, were improper and illegal. In re Guardianship of the Estate of Prieto, supra. By the time the appellate decision was issued, the Senci lease had been terminated and the remaining four estates had already paid \$21,627.20 in fees to Dunlevie Associates and Therieau.

Subsequently, the guardians of three of the estates concerned filed a petition with the Superior Court in Indio asking that the prior payments to Dunlevie Associates and Therieau be returned.

After preliminary hearings on the petitions to ratify, it appeared to us that Judge Brown could not be relied upon to be entirely impartial in the matter. It was, therefore, decided that the United States should intervene on behalf of the Indians to obtain standing to challenge the judge and appeal if necessary.

The United States entered appearances on behalf of all four estates concerned, filed objections to the petitions to ratify, filed an affidavit of prejudice against Judge Brown, and obtained a transfer of the matter to another judge. The objections were based on the holding of the Prieto case, supra. The Government further petitioned the court to issue orders to Dunlevie Associates and Therieau to show cause why they should not be ordered to return all fees received in connection with the Senci lease.

The petitions for ratification and the Government's objections were heard in Riverside on November 30, 1967, by Judge Leo A. Deegan. Judge Deegan denied the petitions to ratify and issued the requested orders to show cause. The orders have been served upon Dunlevie and Therieau. A hearing is expected to be held soon.

2. Association of Conservators, Guardians, and Allottees

We believe that the United States should file suit against the Association of Conservators, Guardians, and Allottees for an accounting and recovery of all Indian monies turned over to the Association, at least to the extent that it cannot be shown that they were used in ways directly beneficial to the Indians. It appears that such monies are now being expended in attempts to vindicate the activities of the Association and its members, a use hardly compatible with the professed purposes of the organization or the interests of the Indians. The Tribal Council, individual

members, and the Area Director have all requested that appropriate action be taken against the Association to prevent further misapplications of Indian funds in its possession. Exhibits 34 and 35.

CONCLUSION

The principal conclusion we draw from our investigation is that the guardianship and conservatorship system under which the property of a majority of the members of the Agua Caliente Band is being administered has been intolerably costly to the Indians in both human and economic terms.

While we must observe also that it has been extremely profitable for a few non-Indians, we would caution against being distracted by this fact from the essential vice of the system which, as stated, is its inordinate cost to the Indians.

It is important to keep in mind that the function of this system, on the economic side, is the conservation, development and production of the Indians' property. It is in terms of the performance of this function that it must finally be evaluated.

Quite apart from consideration of how honestly or efficiently it is administered, a system whose function is the production of property which consumes so large a part of what it produces in administrative expenses, in our view, must be judged aberrant.

On the human side, the function of the system is to equip the Indians to take over the management of their own property and affairs. Judged in terms of the performance of this function, we submit that it has failed even more distressingly than on the economic side. With few exceptions, talks with the adult members of the Band who have been subjected to it disclosed feelings of frustration, disgust,

and despair. They are frustrated by lack of knowledge about the administration of their property by their fiduciaries. They are disgusted by the high costs of the system and what they conceive to be its abuses by some who are instrumental in its administration. They despair because they do not see that any effort is being made to prepare them to take over the conduct of their affairs; because they can see no light at the end of the tunnel.

Even were we convinced that the conduct of all who participated in its administration had been above reproach, and that the fees charged in all cases had been earned, we would still be forced to conclude that the system is a failure in terms of its human and economic objectives.

In our view the Department should have been more aggressive in surveillance of the administration by the court of Indian guardianships and conservatorships, particularly of fees awarded in connection with real estate transactions which required its approval.

Although we believe that the operation of the system has been encumbered by some venality, and that this could have been controlled had the Department taken a broader view of its responsibilities, we are convinced that the essential causes of its failure are inherent in the system itself.

We believe that the courts are not suitable institutions under which to attempt to conduct dynamic and continuing programs for the development of people and the production of property.

We do not intend any disparagement of the judicial system, but only to point out that the functions it is primarily designed to perform are not the kinds which the development of the Agua Caliente Indians as social and economic beings requires. The courts are just not set up to operate dynamic educational and property management programs.

Whatever else is done, we are convinced that court appointed fiduciaries should be completely removed from the administration of the Indians' trust property. The responsibility for the administration of such property is by law assigned to the Secretary of the Interior. There is no need to superimpose upon the trust relationship which exists between the United States and the Indians another fiduciary structure erected on state law. The function of assisting the Indians in the management of their trust lands should be left to the United States so as to eliminate the charging of fees by individuals in connection with its performance.

We are also firmly of the opinion that the establishment of conservatorships for adult Indians should be discouraged. We have grave doubts that Section 4 of the Equalization Act, which speaks of guardians only, contemplated the employment of conservatorships in the discharge of its mandate. Under California law guardians may be appointed for adults as well as minors who are incapable of managing their own affairs. As noted, the standards for appointment of conservators are less rigorous than those for the appointment of guardians. Certainly the practices of routinely

converting guardianships for minors into conservatorships for adults upon the ward's coming of age finds no sanction in the Equalization Act. This practice should be stopped.

As a general rule, unless an adult Indian can be shown to be so incapacitated as to warrant the appointment of a guardian (as distinguished from a conservator), we think the management of his affairs ought be left to him. When an adult desires or is in need of assistance in the management of non-trust property, consideration should be given to the employment of means other than court appointed fiduciaries.

For example, particularly in cases of adults possessed of relatively liquid non-trust assets of considerable value, consideration might be given to the establishment of institutional trusts under agreements tailored to the individual situations. Even in cases of minors and truly incompetent adults for whom guardians of their persons may be necessary, consideration should be given to such arrangements for the administration of their estates to minimize the role, and consequently the charges, of guardians as active managers.

We are convinced that the court administered fiduciary system under which the property of a majority of the members of the Agua Caliente Band has been managed for the last decade has wholly failed their needs and must be replaced or radically revised.

EXHIBIT 1

REVIEW OF POLICY, PROGRAMS, AND PROCEDURES RELATING TO THE AGUA CALIENTE RESERVATION WITH PARTICULAR REFERENCE TO THE INVOLVEMENT OF THE PROBATE COURT IN INDIAN MATTERS, 1949-67

This report is a summary review of the background and events relating to the involvement of the Superior Court of Riverside County in the affairs of the Agua Caliente Indians. While the Equalization Act of 1959 gave statutory authority and direction to utilize the court, numerous actions on the part of the Bureau of Indian Affairs, the Department of the Interior, the Congress and the Federal Courts had already involved the Superior Court prior to the approval of the Equalization Act.

1955 AND PRIOR YEARS

As far back as the 1940's and perhaps longer, there developed a feeling in governmental circles that the services of the Bureau of Indian Affairs to California Indians should be discontinued. In 1949 the Appropriation Committee in the House of Representatives and the House itself, in enacting the appropriation bill, disallowed funds for the support of the Bureau of Indian Affairs in California for the ensuing fiscal year. Although funds were restored, this action focused attention on California and the Congress let it be known that it expected some prompt action in the direction of termination.

In the Spring of 1950, a new Commissioner of Indian Affairs was appointed who was committed to terminal actions wherever this was feasible. California was high on the priority list. Staff was assigned to develop plans in 1951 and in early 1952 the Department of the Interior submitted a bill to accomplish complete termination within a 5 year span. No exception was made for the Agua Caliente Reservation. The Governor of the State of California endorsed the legislation and hearings were held by the Interior and Insular Affairs Committee. However, no action was taken on the bill in that session of Congress.

The following Congress approved Concurrent Resolution 108, which declared it to be the sense of Congress that special services to Indians should be discontinued at the earliest practical time and the Secretary was directed to submit legislation to this end at the time of the convening of Congress in early 1954 for certain areas and tribes. California was one of the areas specified. A bill was prepared and submitted and hearings held that year. The bill was not enacted. The Agua Caliente tribe was excluded from the bill but only on the commitment that a special bill for that reservation would be presented.

In the meantime, the Sacramento Area staff was directed to move toward termination. As a result, health services were curtailed, welfare services were discontinued, law and order responsibilities were transferred to the State pursuant to the enactment of Public Law 280 in 1953, disposal of Public Domain allotments was stepped up and other actions taken. The policy of termination was enunciated and little doubt remained with regard to the intentions of the Congress and the Department.

The Agua Caliente Reservation has had special problems for many years. Of principal concern was the extended controversy over the allotment process. After an amendment to the Mission Relief Act of 1891 in 1917, steps were taken to allot the reservation. Dissension among the Indians prevented any definite action for several years. In 1938, a suit was brought in Federal Court against the United States to force allotments. These were known as the St. Marie cases. The court held for the defendant United States. In 1940, the Arenas case was filed and was eventually decided in favor of the plaintiff and the Department was directed to proceed with the allotment program. The first allotments were made in 1949 and the others followed. Certain Indians objected to the allotment program and filed the Segundo case. In addition to settling the controversy over specific allotments the decision included a directive to the Secretary to equalize the values of the several allotments. Allotments were made to the contestants and newborn children were allotted currently, as had been the practice after 1949.

In late 1954, the Secretary of the Interior appointed a Citizen's Committee of prominent businessmen, headed by Mr. Floyd B. Odlum, to study the problems of the Agua Caliente Indians.

1955-59

The span of years between the passage of the Long Term Leasing Act and the Equalization Act was significant in the history of the Agua Caliente Reservation. Litigation affecting the reservation was concluded, the 50 year leasing authority became law, leasing regulations were changed, the tribe became organized and employed an attorney, the Odium Committee rendered its report, and the economy of the area took a pronounced upswing.

The Odium Committee submitted its interim report to the Secretary on April 25, 1955. A review by the Department was transmitted to Mr. Odium on June 23, 1955. Reconsideration by the Committee after meetings with the Indians and representatives of the Department resulted in its final report dated April 18, 1956. Among other things, the Committee recommended that tribal assets be removed from Federal trust status and transferred to a private trustee, under condition that it be used in part to equalize allotments and for distribution per capita to tribal members. It further recommended that the trust be liquidated within 22 years. It was also recommended that allotted land be transferred to the same trustee. The Assistant Secretary, in his letter to Mr. Odium of May 21, 1956, stated that "Commissioner Emmons and I have reviewed your report and we feel that it will provide a sound basis for legislative action."

In January of 1956, the Commissioner and Associate Commissioner spent one week in Palm Springs conferring with the Indians, representatives of the City, the Citizens Committee and others. Considerable discussion revolved around the practicality of setting up a private trust as a solution to the land problem. Long term leasing was discussed at length, but no immediate action was taken. There was considerable pressure from the Indians and the lessees who had only 5-year leases or less to convert them to 25 year leases. The Bureau of Indian Affairs was concerned that such abrupt action would be disadvantageous to the Indians because it might well set a pattern of land use which would be detrimental in the long run.

On July 27, 1956, Assistant Secretary D'Ewart sent a letter to the Area Director which outlined the policy of the Department at that time. It stated that (1) the Department intends to seek the enactment of legislation along the general lines of the Odium Committee recommendations; (2) we shall continue the present policy—which is (a) no leases under the long term leasing act except for the Mineral Springs Reserve, (b) renewals of expiring leases for one-year terms only, (c) new leases for one-year terms only; (3) pending the enactment of such legislation, the Department will authorize the issuance of patents in fee only to Indians who make application and who are determined to be unquestionably competent; (4) the procedures for leasing of minors' lands and for handling rentals or other funds of minors should be tightened up immediately, before the enactment of any new legislation; (5) we understand that the tribe has decided to proceed with the proposal to contract for preparation of a development plan for section 14. We concur in this proposal, and while we do not believe that the development plan can be used immediately as a basis for long term leases it will be useful to the private trustee contemplated under proposed legislation.

The dissipation of minors' funds by the parents had become serious and on March 17, 1955, the Tribal Council expressed its concern in this matter at a meeting on that date. In the summer of 1956, action was taken by this office with the approval of the Commissioner, to have guardians of the estates of several minors appointed by the Superior Court. At the outset, the Court appointed a parent and a bank as co-guardians. During the year 1956, several guardianships were established. The question arose as to whether the guardian could collect lease rentals on behalf of the minor. It was decided at the outset that this could not be done but this was later changed. In the 1957 edition of 25 CFR it was provided that rentals on minors' lands shall be paid to the superintendent with certain exceptions. On September 11, 1957, new regulations were issued applicable specifically to Palm Springs which provided that leases may be negotiated by guardians and leases so negotiated shall provide that rentals may, in the discretion of the Secretary, be paid to such guardians. A number of the Indian parents depended upon the minors' income for family support and were motivated to apply for guardianships after regulations were changed to require lease rentals to be paid to the Superintendent. Additional guardianships were established during 1957.

The Agua Caliente Reservation continued to receive a great deal of attention from the Department, the Commissioners and this office. In early 1957, the staff at Palm Springs was expanded and upgraded. Steps were taken to equalize

the allotments in accordance with the decision in the Segundo case. Equalization appraisals were undertaken in mid-1957. Concurrently, an equalization bill was drafted and discussed with the Band. The Interior and Insular Affairs Committee of the House of Representatives held hearings in Palm Springs on the proposed bill in October of 1957. The Land Use Plan prepared by Victor Gruen and Associates was completed. On March 1, 1957, the Acting Secretary addressed a letter to the Area Director which modified previous instructions to some extent. It stated that general application of long term leasing regulations would continue to be delayed until approval of a master land use and development plan. However, long term leases would be approved under exceptional circumstances.

An item in the Desert Sun newspaper dated October 11, 1957, carried a headline that "Judge Charges Guardians of Indian Minors Lax". This article goes on to say "Superior Court Judge Hilton McCabe charging that guardians of Indian minors have been lax in administration of their duties, yesterday ordered the guardians of 30 minors and incompetents of the Agua Caliente Tribe to file within three weeks in his court a complete accounting." . . . The Judge went on to explain the recent changes in the leasing regulations wherein the guardians could assume additional responsibilities.

On February 21, 1958, Judge Hilton McCabe of the Riverside Superior Court, called a guardianship conference related to Indian land in Indio, California. Present at the conference were Associate Commissioner H. Rex Lee, Leonard M. Hill, Robert Cole, Credit Officer from the Phoenix Area, representatives of title insurance companies, local bankers, attorneys and others. The discussion covered many aspects of the Palm Springs problems but was concerned primarily with development of Indian land. Mr. Lee spoke at length on many aspects including the fact that the Congress had set termination as the goal in California. He stated that ". . . from an overall policy viewpoint that we are trying to channel these things into normal channels, and we want the court, the guardians, to take just as much responsibility as we, under the law, can possibly give them, so one of these days when Congress does pass a piece of legislation saying you get out of California this isn't going to be a sharp cut-off, the machinery will all be set up, and is going to be operating normally. I think that is the way any kind of termination has to be, it has to be an orderly transition. That is why we are encouraging this thing to move in normal channels, as you know." In discussing the guardianship situation in relation to California, Mr. Lee went on to state that "Now, I am delighted to hear these people feel that in California you have a practical law and a practical means of approaching this problem." In his closing statement, Mr. Lee said that, "We appreciate these guardianships, and I'm sure they will work out, Judge McCabe, if we sit down and face up squarely to the problems." Thus in early 1958, the Bureau was in full accord with the guardianship arrangements.

Later that year the Commissioner authorized the Director of the Palm Springs Office to petition the Court to establish Indian guardianships. In the summer of 1958, in further attempt to involve the business community in Indian land development, Mr. Lynn Lloyd, a former bank trust officer, was hired as a consultant to review long term leases. Guardianships continued to be established.

Until the Equalization Act was adopted in September of 1959, the Department and the Bureau issued regulations and took other actions to proceed with the equalization process in accord with the decision in the Segundo case. After the Act was passed, renewed efforts were directed toward equalization in accordance with the Act.

1960 AND AFTER

It is interesting to note that in a letter dated April 13, 1960, from Eileen Miguel, Chairman, Tribal Council, Agua Caliente Band of Mission Indians to Congressman D. S. Saund, it is stated that: "Section 4 of the Equalization Bill provides that the Secretary shall request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who, in his judgment, are in need of assistance in handling their affairs in accordance with applicable state laws before making any equalization allotment or payment to such persons. This Section had been requested by the tribe because it did not want the Secretary to arbitrarily make a determination concerning capacities of individual members without being subject to those limitations of competency embodied in the California law. In the new regulations proposed by the Secretary, designated as C.F.R. 124.5, the Bureau of Indian Affairs has expanded the admonition of the Congress to the Secretary to include the appointment of a conservator. This has

caused considerable anxiety among the members of our tribe because it is difficult for us to see why the Bureau has added such a provision if it is acting from proper motivation.

"At a full tribal meeting, questions concerning this addition were addressed to Mr. Rex Lee who replied no one should become excited since the Bureau had possessed this power for years. Hence our members repeated the question in a different manner by merely asking why it was being included as part of the Equalization program if it has always possessed such a power. Quite frankly, it is our belief that it should be deleted from the Equalization instructions, thereby leaving the Secretary with the right of requesting the appointment of conservators for reasons unrelated to equalization when in his judgment such is necessary for the best interest of the Indian."

Prior to September 21, 1959, the date of the Equalization Act, there were 61 guardianships and conservatorships established. From the foregoing it appears that the Equalization Act, rather than introducing the concept of guardians for Indian minors and adults in need of assistance, actually validated what had been the policy of the Department and the Bureau for a considerable period.

However, there were a number of minors who had no lease income or for other reasons hadn't had guardians appointed for them and a number of adults for whom it was deemed advisable to set up protective arrangements. In April of 1960, an attorney from the Regional Solicitor's office went to Palm Springs and with the Director of that office, who was Raymond W. Jackson at that time, interviewed both the minors and adults in question and explained what was involved. The Indians were informed of their rights to request appointment of guardians or conservators of their choice and in most cases it is believed that their choices were honored by the court where this was feasible. However, it is also true that a number made no choice and left the choice to the discretion of the court. In the great majority of cases, the petition to the court was filed by the person chosen by the Indian or other third party. In only 2 or 3 instances did the Bureau of Indian Affairs file the petition. In two instances the Bureau of Indian Affairs requested appointment of conservators but the adults involved objected and appealed the decision. Their appeals were upheld and no conservators were appointed.¹ Subsequent to the initial appointments after the Equalization Act was passed, the Bureau of Indian Affairs took no part in the guardianship-conservatorship appointment process, although there were numerous actions taken in this respect. The change in status when a minor reached his majority generated a substantial number of such actions. It wasn't until the spring of 1967 that any formal representations were made to the court when the Director of the Palm Springs office communicated with Judge Merrill Brown with respect to one James Hollowell, who had petitioned the court for appointment as guardian to replace one who resigned. This triggered the current Departmental investigation.

Some attention to attorney fees was given by the Department when the Solicitor in his letter of December 4, 1961, corresponded with Raymond C. Simpson in connection with his fee arrangements with lessees of Indian land. Further correspondence emanated from the Solicitor's office to Mr. Simpson in the following year.

The Area Office became concerned with the amount of fees awarded to attorneys, guardians and conservators and completed a statistical summary of such awards. This information was transmitted to the Commissioner's office in 1962. The House Committee on Government Operations, to which apparently complaints had been relayed, sent investigators in early 1962 to Palm Springs ostensibly to inquire into leasing procedures employed by the Bureau. In the course of the inquiry the investigators received complaints from a number of Indians regarding the manner in which the guardianships and conservatorships were being handled by the Superior Court. As a result of these inquiries the committee addressed a letter to the Secretary requesting his reply to certain questions concerning the guardianship and conservatorship operations. The Secretary replied in his letter of August 13, 1962, copy attached.

A review was made in early 1963 by a member of the Washington staff, Mr. Dinsmore Taylor, and as a result the following letter was addressed to the Dawson committee: (See exhibit 2.)

In view of the position taken by the Department, this office felt constrained to remain aloof from Superior Court proceedings in this matter.

¹ See copies of letters attached.

In the summer of 1963, Judge Hilton McCabe conceived the idea that it would be helpful if he and the Area Director issue a joint letter to all conservators and guardians outlining their duties and responsibilities. The advice of the Commissioner's office was requested and it was decided that such a joint statement was inappropriate and none was issued. In the meantime, certain rumors were extant to the effect that the Bureau was contemplating curtailing the activities of the conservators and guardians in dealings with trust land, whereupon the Director of the Palm Springs office addressed a letter to the Chairman of the Conservators and Guardians Association explaining that this was not the case and that the Bureau of Indian Affairs expected them to perform as heretofore.

In early 1964, the Tribal Council transmitted an extensive list of grievances to the Commissioner concerned mostly with the manner in which probate matters involving conservatorship and guardianship were being handled by the Superior Court. On October 7, 1964, Commissioner Nash responded to the grievance presentation. Prior to that date, in August, Deputy Commissioner Crow and Associate Solicitor Hyden, along with area office representatives, met with and discussed the grievances with the Tribal Council. Associate Solicitor Hyden, prior to his visit, had issued an opinion as to the legality of contracts with real estate brokers, attorneys and others which called for the payment of fees from future earnings from trust land. Generally it was his opinion that such contracts were invalid unless approved by the Secretary and that persons collecting fees under approved contracts were liable for collections made illegally. There was a general conclusion reached that the Department and the Bureau should exercise closer surveillance of the probate operations and it was decided to employ a Resources Trust Officer to be attached to the Palm Springs office who would work with the probate court and the guardians and conservators in an attempt to legalize operations and to work informally to prevent excessive award of fees, and to inquire into past operations. Mr. Robert Cox was appointed to this position effective January 24, 1965, and was transferred in June of 1966. Mr. Cox worked closely with the Superior Court, the conservators and guardians, and the attorneys on current matters. In a number of cases fee requests were reduced and in a few instances previous awards yet unpaid were compromised. He also reviewed all court approved transactions for the calendar year 1965 and his report was transmitted to the Commissioner on July 19, 1966. In his opinion, fees awarded by the court were excessive and he recommended major changes in handling guardianship and conservatorship estates.

The Area Director concurred in part with his recommendation, as did the Regional Solicitor. No action to change procedures was taken by the Bureau or the Department until May 1967, when the Secretary announced that an investigation of the matter would be made. He appointed a task force to operate locally with Mr. Robert Cox as Chairman. The task force is in process of completing its inquiry. For an interim period lessees were directed to make rental payments to the Bureau for disbursement to the beneficiaries. The Regional Solicitor was designated a Special Assistant U.S. Attorney to permit his participation in court proceedings. Several conferences have been held with the Tribal Council at which problems were discussed and the Council's views ascertained.

It was not possible in this short review to note all of the events concerning this subject over the past several years, and no doubt important items have been omitted. However, it is thought that the highlights have been included and sufficient detail presented to give the reader an insight into what occurred.

EXHIBIT 2

HOUSE OF REPRESENTATIVES, COMMITTEE ON GOVERNMENT OPERATIONS, *Washington, D.C., July 5, 1962.*

HON. STEWART LEE UDALL,
*Secretary of the Interior,
Department of the Interior,
Washington, D.C.*

DEAR MR. SECRETARY: At my direction, members of the staff of the Committee on Government Operations have been looking into the long term leasing of Indian

land in the area of Palm Springs, California. The field work on this study has been completed and a report to me is being prepared.

During the course of the staff investigation, a number of persons, including employees of the Bureau of Indian Affairs, indicated considerable concern regarding the fees being allowed to the conservators and trustees of the Indian estates. Questions were also raised regarding the designation of conservators and trustees and the attempts of the local court to force lessees to pay conservator's and trustee's fees either when or after the leases are approved.

We realize that the appointment of conservators and trustees with the approval of their fees are currently within the jurisdiction of the local court. However, it would not be unlikely that the existence and continuance of any irregularities or improprieties in connection with these matters might result in severe criticism of the Bureau of Indian Affairs and the Department of the Interior. Consequently, we believe that it would be prudent for the Department of the Interior to make a very careful and thorough study of these matters.

The study would, we believe, include the following:

1. How the trustees and conservators are selected.
2. Possible concentrations of trusteeships and conservatorships in certain individuals and corporations.
3. Relationship between the appointing judge and the conservators and trustees.
4. Relationship among the conservators and trustees. This should include a study of the newly formed association of conservators and trustees, the assessment of association fees against the estates, and the relationship of the Indians to the association.
5. Relationship between the conservators and trustees and actual and prospective lessees, real estate agents, brokers, etc.
6. The amount of the fees approved to the conservators and trustees and the concentration of such fees in certain individuals.
7. The reasonableness of the fees in relation to the amount of work performed by the recipients in earning them.
8. The extent to which there has been success or failure in the efforts of the local judge, the conservators and the trustees in forcing lessees to pay fees which are properly chargeable against the Indians' estates.
9. The reasonableness of attorneys fees and other such fees charged against the estates.
10. The relationship between the conservators, trustees and their attorneys on the one hand and local public officials.

It would be appreciated if you would let the Committee know whether the Department of the Interior will undertake such an investigation. If it does, the Committee would certainly appreciate being kept informed of its results.

Sincerely yours,

WILLIAM L. DAWSON,
Chairman.

AUGUST 13, 1962.

Hon. WILLIAM L. DAWSON,
*Chairman, Committee on Government Operations, House of Representatives,
Washington, D.C.*

DEAR MR. DAWSON: We have given careful consideration to your letter of July 5 in which you suggested that this Department investigate the appointment and performance of conservators and trustees for individual members of the Agua Caliente Band of Mission Indians of Palm Springs, California, appointed by and under the supervision of a California State Court.

As you know, judicial supervision over these particular estates represents an administrative effort to use existing legal institutions rather than create parallel and duplicating Federal guardianship machinery. As such, and recognizing the Department's residual responsibility to the Indian wards, it is incumbent upon us to assure that the fees and expenses assessed against the estates are not excessive or unreasonable. Consequently, it is entirely appropriate that the matters covered by Items 4, 6, 7, 8 and 9 as outlined in your letter be reviewed by the Department. This will be undertaken promptly and our conclusions made available for your consideration.

On the other hand, it is with considerable regret that I find it necessary to dissent from your apparent view of Federal responsibility concerning the other matters mentioned in your letter. In my judgment it would be highly improper for an executive agency of the Federal establishment to generally investigate or

otherwise question the integrity of State judicial administration. The estates of Palm Springs Indians are administered in the same manner, under the same laws and through the same judicial officers as would be the case for any of the other 16 million citizens of California whose affairs become subject to court supervision. This is entirely consistent with the general objective of bringing the Indian population into the framework of American society. As I view it, our responsibility rests with the assurance that Indian estates are properly protected against waste or dissipation. This is adequately guaranteed by the substantial fidelity bond which must be furnished by every person appointed to act as conservator or trustee under court supervision.

If the information brought to your attention is considered to reflect seriously upon the administration of California justice, the only proper course would seem to be that of placing it before the proper State Government authorities for proceedings in accordance with its law.

You will be informed of the results of our review of the study concerning fees after it has been completed.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 22, 1962.

HON. STEWART L. UDALL,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: We have received your letter of August 13, 1962, replying to the Committee's letter of July 5th, both dealing with the handling of the lands of the Agua Caliente band of Mission Indians at Palm Springs, California. We look forward to receiving the results of your review based upon Items 4, 6, 7, and 9 of the July 5th letter.

On the other hand, we believe that the hands off attitude of the Department with respect to the other items in the July 5th letter is not well advised. Administrators and conservators of the Indians' estates were appointed pursuant to Section 4 of Public Law 86-339 of September 21, 1959 (79 Stat. 603). That section reads:

"The Secretary shall request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who in his judgment are in need of assistance in handling their affairs in accordance with applicable State laws before making any equalization allotment or payment to such persons."

We are informed that following the enactment of this law agents of the Bureau of Indian Affairs played an extremely active part in persuading various Indians to consent to the appointment of guardians. Under these circumstances, the Department of the Interior cannot divorce itself from responsibility in connection with them.

The assertion that you have assurance that the Indian estates are properly protected against waste or dissipation because of the conservators' and trustees' fidelity bonds ignores the fact that such waste or dissipation must be detected and proved before collections can be made upon the fidelity bonds. Consequently, the existence of fidelity bonds provides no assurance against waste or dissipation. They merely provide a source of funds to furnish compensation when waste and dissipation are proved.

For the reasons stated above it is suggested that it would be prudent for the Department to reconsider the limitations placed upon its current investigation and undertake to look into all of the matters raised in the July 5th letter.

Sincerely yours,

WILLIAM L. DAWSON,
Chairman.

SEPTEMBER 11, 1962.

HON. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations, House of Representatives,
Washington, D.C.

DEAR MR. DAWSON: Thank you for your letter of August 22, 1962, again referring to the lands of the Agua Caliente Band of Mission Indians at Palm Springs, California.

You may be certain that our review at Palm Springs will be of such scope as to ascertain whether there is occurring any waste or dissipation of these Indian trust estates.

Sincerely yours,

JOHN A. CARVER, JR.,
Assistant Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 9, 1963.

HON. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations, House of Representatives,
Washington, D.C.

DEAR MR. DAWSON: Reference is made to your letters of July 5 and August 22, 1962, and our acknowledgments of August 13 and September 11, all relating to certain aspects of the administration of the estates of individual members of the Agua Caliente Band of Mission Indians of Palm Springs, California, by guardians and conservators appointed by and under the jurisdiction of the superior court for the State of California.

In this interchange of correspondence we agreed that in making use of existing administrative facilities offered by the California courts, we had the responsibility of ascertaining that the fees and other expenses charged against Indian estates were not excessive or unreasonable. To that end, representatives of the Department were instructed to conduct the necessary studies which would enable us to make an enlightened review of the matters outlined in Items 4, 6, 7, 8, and 9 of your letter of July 5 and to determine whether there is occurring any waste or dissipation of the Indian trust estates.

We now have had an opportunity to complete our study. Our findings, with specific reference to the items mentioned above, follow:

Your *Item 4* relates primarily to the newly formed Association of Conservators, Guardians and Allottees of Agua Caliente Indian Lands and Estates, the assessment of association fees against the estates, and the relationship of the Indians to the association.

The formation of the association was the outgrowth of an idea presented informally to a group of conservators and guardians by the superior court judge sitting permanently in the Indio Division of the Riverside County Superior Court and who hears a majority of the Indian conservator and guardian cases. In interviews with the judge, local officials of the Bureau of Indian Affairs, representative Indian landowners, and several corporate guardians and/or conservators specializing in and experienced in the field of trustee management, the need for such an organization was repeatedly stressed.

The main purpose to be served by the association is to coordinate the development of the Indian land represented by its members to its best and most profitable use. The association proposes an active promotional campaign, possible nationwide in scope to attract responsible investors. It envisions an effective and authoritative role in representing the best interests of its landowners before public bodies on such matters as zoning, street right of way proposals, and long-range planning for flood control. Instances were cited where both the Flood Control District and the municipality of Palm Springs sought to treat individual Indian lands on a less favorable basis than other lands within the same area.

Admittedly, there was not a complete unanimity among the tribal organization, the Indian landowners, nor even among the employees of the Bureau of Indian Affairs as to the worth of the conservator-guardianship organization.

An association such as this could serve a very beneficial purpose and be a strong voice in representing the Indian landowners whose properties are still undeveloped. Particularly would this be true in those instances where, because of conflicts of interest between tribally owned and individually owned lands, neither the Agua Caliente Tribe nor the Bureau of Indian Affairs is in a position to speak solely for this class of land ownership. Furthermore the association, if properly managed, could be far more effective in attracting the interest of potential investors for the development of the Indian lands to their highest and best use, than any of the facilities now existing.

Considering the objectives and based on present limited experience, a fee of one-tenth of one percent of the appraised value of an estate, which is being allowed by the court, may not be unreasonable. The books of the association

are open to audit by representatives of the Bureau of Indian Affairs and should the collection of these fees prove excessive or produce no real benefits within a reasonable period, the Bureau has been directed to so advise this Department and we can at that time again review our position on this matter.

Items 6, 7, and 9 all involve the question of the reasonableness of the fees being allowed to the conservators and guardians and to their attorneys, and will be treated together.

Our study covered an examination of the court files for all pending estates, with a compilation of the amounts of the fees allowed the fiduciaries and their attorneys and a compilation of the names of the persons or corporations to whom the fees were paid.

Approximately one out of four of the pending cases, selected at random, were then subjected to a detailed examination which included an analysis of the work involved on the part of the fiduciary and his attorney, the fees allowed, and the factual showing submitted in support of the fees requested. In addition, every non-Indian conservatorship or guardianship proceeding instituted in Riverside County in the past five years was examined to ascertain the comparability of the fees allowed as against those allowed in Indian estates.

Although, just by looking at the bare record, there may be a number of instances where fees appear to be high, yet after a close analysis of the services in fact rendered, it cannot be said that they are unjustifiably so. The services, the fiduciaries and their attorneys are called upon to perform are, on the whole, far from routine. They involve the exercise of land development and land management skills, the exercise of sound judgment in advising on problems arising from the operation of business enterprises, the prudent handling of funds for persons unaccustomed to income of the size they have suddenly begun to enjoy, the consumption of endless hours attending meetings of public and semi-public bodies, and, in many cases, almost daily consultations with beneficiaries and members of their families. Intricate legal problems are oftentimes involved.

One important difference present in these proceedings but absent in the ordinary non-Indian estate proceeding, is that more often than not the guardian or conservator of the Indian estate finds himself acting unofficially in the capacity of a personal guardian and he may be called upon any time of the day or night to assist the ward in resolving personal difficulties. These extra services have involved, among others, such matters as traffic and criminal law violations, marriage annulments, charges of breach of peace, finding foster homes and providing for the future welfare of minor children neglected or even abandoned by parents who are under conservatorship, school reinstatements, seeking proper occupational training facilities for wards, providing psychiatric care for wards, and involvement with the Selective Service. None of these responsibilities is a part of the management of trust property and yet innumerable hours of the guardian's or conservator's time is spent on such matters.

In hearing petitions for the allowance of fees, the investigation disclosed that the court was fully informed as to the nature and extent of the services performed. In practically all instances, the record is fully documented with detailed itemizations, some running ten to twelve pages in length. Hearings have been set by the court seeking expert evidence as to the value of some of the more technical services for which fees were claimed. There are instances in the court records where after the hearing, the court has reduced the amount of the fee requested. It was also found that despite the volume of work involved or the extent of the responsibility exercised by the fiduciary or his attorney, annual fees of a rather nominal amount were allowed by the court during those periods when the assets or the income of the Indian beneficiary were insufficient to permit the payment of any greater amount. It might be added further that there was no discernible difference in the setting of fees, irrespective of which one of the three Riverside County Superior Court Judges made the allowance. Finally, the fees in Indian conservatorships and guardianships were found to be generally commensurate with the fees allowed in non-Indian cases involving comparable values.

From all of this, it is our conclusion that a charge that the fees are unreasonable or excessive cannot be supported.

A considerable proportion of the estates are being administered by corporate fiduciaries. These are expert facilities and offer the most experienced estate management services available. There are only a limited number of these institutions having offices in the area. In all cases, corporate or individual, in selecting a representative, the court must give consideration to the nominations made by adult Indians, both for themselves and for the estates of their minor children.

The record discloses that there have been instances where the court has been able to persuade petitioners to agree to the appointment of more qualified persons than those first nominated. The several individuals who are acting as guardians and conservators for a number of estates are for the most part competent business or professional men in the community who were nominated by the Indians because of special trust and confidence reposed in them. Many times such relationships of confidence arose long years before the institution of the conservatorship or guardianship proceeding. So far as we have been able to determine, the court has been conscientious in the exercise of this responsibility.

Item 8, the matter of split fees, is the one field where, on occasion, the highest ethical standards have not been always observed. We did find cases where there had been a sharing of fees or where compensation had been sought from lessees. This practice is not condoned by this Department and our views have been made known to the judge and to the conservators and guardians who have indulged in such activities. The local practices in this regard are now being re-examined by those concerned, and we have been given to understand that these parties will hereafter adhere to procedures more strictly in accord with ethical standards and which do not offend conflict of interest concepts.

Summarizing all that is said above, we find:

a. The fees being allowed to conservators, guardians, and attorneys, when all the facts and circumstances are carefully considered, are neither excessive nor unreasonable.

b. Under the circumstances existing in the Palm Springs area, we do not believe there is any unwarranted concentration of fees.

c. The newly formed association of conservators and guardians can serve a beneficial purpose if properly administered.

d. There have been past instances of questionable practices involving fee splittings and other similar arrangements.

e. There is no evidence of waste or dissipation of the Indian trust estates arising out of the conservator-guardianship proceedings under review.

We fully share your concern that there be no maladministration of these estates. In the one area where we found that criticism might be justifiably leveled (your Item 8), we have registered our disapproval and have taken appropriate steps to preclude repetitions in the future. The effectiveness and appropriateness of the Association of Conservators, Guardians and Allottees of Agua Caliente Indians Lands and Estates will be evaluated periodically. Finally, to guard against the possibility of irregularities or improprieties in the matter of fee allowances in the future, including payment to the Association, we are arranging for a review by representatives of the Department's Solicitor of the annual and final reports filed by conservators and guardians and for representation at the hearings for the setting of fees, should such latter action ever be deemed necessary or advisable.

Sincerely yours,

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

EXHIBIT 5

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Sacramento, Calif., May 12, 1967.

For use of Solicitor's Office only

Subject: Background briefing re pending conference on Agua Caliente Indian conservatorship and guardianship problems.

As you are aware, the problems here concerned are not new and have been under consideration by this office and the Commissioner of Indian Affairs for a number of years. Over this period of time various investigations, studies, and recommendations have been made. See, for example, Commissioner Nash's letter to the Chairman of the Agua Caliente Tribal Council dated October 7, 1964; the report of June 10, 1966, of Robert L. Cox, Resources Trust Officer for the Palm Springs Bureau of Indian Affairs office; recommendations of Leonard Hill, Area Director, Sacramento Area Office, and Frank B. Horne, Regional Solicitor, Sacramento Region, as attached to and set forth in Mr. Horne's memorandum to the Associate Solicitor, Indian Affairs, of July 20, 1966; and more recently the re-

quest of the Commissioner of Indian Affairs to Mr. Hill by letter of January 18, 1967, for a supplemental investigation and recommendations.

In mid April of this year I was requested by Mr. Homer B. Jenkins, Director of the Bureau of Indian Affairs Palm Springs office, to confer with him concerning a recent order from the State court barring Bureau of Indian Affairs representatives from taking active part in reviewing and commenting on matters and fees involving conservatorships and guardianships of the Agua Caliente Indians.

After generally familiarizing myself with the matters contained in our files I decided to personally look into the situation in Palm Springs. For this purpose, along with Mr. Berkson of my staff, I went to Palm Springs and spent several days (May 3-5) interviewing various people and perusing several files in the Palm Springs Indian office. During our stay in Palm Springs we attempted to and I believe succeeded in interviewing at least one spokesman for each of the various interests involved.

As a result of the foregoing, I have concluded that the Palm Springs situation has again reached the crisis stage and, in my opinion, is in need of immediate attention and action by the Department to forestall what may soon become a public scandal reflecting adversely not only upon the Department generally but also upon the Solicitor's office if we fail to act in these circumstances.

In summary, these are my conclusions:

(a) The Agua Caliente Indians are, generally speaking, continuing to be victimized by various individuals who are directly involved in the guardianship and conservatorship procedures set up at the request of the Department and ostensibly under the supervision and guidance of the California State courts.

(b) The Indians, due to a variety of reasons, are unable to extricate themselves from this situation without government assistance, either Federal or State.

(c) This situation has become practically common knowledge in the Palm Springs area and is on the verge of public exposure through the press or the courts as evidenced by recent visits and inquiries from the Los Angeles Times and American Civil Liberties Union.

In my view the Department should and does have a continuing interest in the administration of these fiduciary relationships, which were in the main instigated at our request, albeit pursuant to Congressional direction.

In the light of the foregoing I intend to recommend that immediate consideration be given to the following:

(a) The appointment of a Secretarial task force, including representation from the Bureau of Indian Affairs, the Solicitor's office, and the Agua Caliente Tribe to investigate this situation in detail and make recommendations for corrective procedures, including possible legislation.

(b) In the interim, I suggest that:

(1) we seek the cooperation of the Agua Caliente Tribal Council to work with the Palm Springs Bureau of Indian Affairs office to provide legal and financial advice to the Indians on personal matters in order to avoid claims for extraordinary fees in connection with the guardianships and the conservatorships.

(2) that we make a formal request to the Superior Court to appoint a representative from the Bureau of Indian Affairs and the Agua Caliente Band as *amicus curiae* for the purpose of reviewing and commenting on fees, petitions, and other proceedings involving conservatorships or guardianships of Agua Caliente Indians.

(3) that the position of Resources Trust Officer in the Palm Springs Bureau of Indian Affairs office, which is currently vacant, be filled by someone with legal training, and that he be the Bureau of Indian Affairs representative designated as *amicus*.

(4) that we explore the possibility of seeking a change of venue from the courts sitting in Indio to those sitting in Riverside.

(5) have one or more attorneys from the Regional Solicitor's office designated by the Department of Justice to represent the Bureau of Indian Affairs and/or the Indians in State court proceedings involving these matters where necessary.

CHARLES R. RENDA,

Regional Solicitor, Sacramento Region.

Mr. EDMONDSON. Our first witness here this morning, and I am going to ask him to step to the microphone which has been reserved for witnesses, is the chairman of the tribal council for the Agua Caliente Band of Mission Indians, Mr. Joseph Patrick Patencio.

Mr. Patencio, would you move to the witness stand and take with you whomever you please from your tribal organization, and would you please present the other members of the tribal council who are here and available for questioning in connection with the tribe's testimony.

Mr. PATENCIO. Thank you, Mr. Chairman. First, I would like to introduce the vice chairman, Mr. Lawrence Pierce, a member, Mr. Raymond Patencio, secretary of the council, Mr. Peter Siva, and the other member, Mr. Leroy Segundo.

Mr. EDMONDSON. Would you identify also, the——

Mr. PATENCIO. The tribal attorney, Mr. Raymond C. Simpson.

Mr. EDMONDSON. Fine. Would you proceed.

STATEMENT OF JOSEPH PATRICK PATENCIO, CHAIRMAN OF THE TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF MISSION INDIANS; ACCOMPANIED BY RAYMOND C. SIMPSON, ATTORNEY FOR THE TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF MISSION INDIANS

Mr. PATENCIO. Mr. Chairman, and members of the committee, my name is Joseph Patrick Patencio. Recently, I was elected chairman of the tribal council and in that capacity, I would like to state that in conservatorship relief, a number of cases now dominate the picture and the main issues now become somewhat obscure. After all, if just the emotions take over, no constructive purpose would be shown at this time in my judgment so I will stick directly to the bill at hand, which is H.R. 17273, with the understanding that if additional testimony on my part is considered necessary, it may be given at the later hearings contemplated for Washington, D.C., where either rebuttal or further positive testimony might be given.

After passage of the Equalization Act a problem arose from a provision of section 4 which required that the Secretary of the Interior, or his authorized representative, should request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who, in his judgment, were in need of assistance in handling their affairs, and that this should be done according to applicable State laws before the Secretary could make any equalization allotment or payment to such persons. If only a few members of our tribe had been affected by section 4 of the Equalization Act, perhaps no one would have become aware of the present problem, but at the time of the passage of the act, nearly 80 percent of our members were minors. This meant that the superior court for Indio was placed in a position of direct control and supervision over most of our members. It is important to note that shortly after the passage of section 4 some of the Indians themselves complained, which tends to explain that at that time, which is 4 years ago, we had the same problems we have now.

Section 4 of the act was originally intended for the supervision and control over a minor's estates and I should repeat at this time, nearly 80 percent of our band are under the 21 years of age bracket. In application, section 4, which only called upon the Secretary to request the appointment of guardians, went much further. For instance, the members of our band never intended to have guardians for adults appointed

by the superior court unless the Indian was, in fact, legally incompetent.

Mrs. Miguel, as chairman of the tribal council, wrote to Congressman Saund at that time, for the purpose of objecting to the inclusion of the word "conservatorship" in the proposed Federal regulations. Mr. Simpson, in his capacity as tribal attorney and after direction of the tribal council, wrote to Congressman Saund, and this is what he said:

Mr. SIMPSON (reading) :

This language accepted by the Congress made it clear that the guardianship law set forth in the Probate Code for the State of California would be the guide. Hence, since the guardianship law in its application is restricted to minors and to adults who have been judicially decreed to be incompetent, it follows that competent adults would not have guardians appointed. In promulgating their regulations, the Bureau under the New section designated by it as CFR 124.5 added a new phrase to the language which had been approved by the Congress. That phrase consisted of two words "or Conservator".

As you and I know, there was no testimony whatsoever before the Congress concerning the need for conservators. Some people are inclined to loosely describe guardians and conservators as being one and the same. This is not correct because as I have already indicated, the law pertaining to guardianships would not result in the appointment of a guardian for a competent adult. In fact, it was for this very reason the California Legislature recently added an entirely new section to the Probate Code providing for the appointment of a conservator if a competent adult person was in need of assistance in the handling of his affairs. The law was passed primarily for the benefit of elderly people who did not wish to be subjected to the stigma of incompetency but who candidly admitted that their physical condition placed them in need of assistance in the handling of their affairs. Hence, they were willing to relinquish 'control' over their estate to a third party which the law permitted them to personally nominate if they so desired.

In carrying out its plan under equalization regulations, the Bureau of Indian Affairs has already determined that practically every adult person who will receive additional land by reason of the equalization bill, should have a conservator appointed. This decision has been made without regard to whether the adult person was competent and has been based upon the rather broad conclusion that the competent adult Indians should have an outsider controlling their estate.

Mr. EDMONDSON. This was a quote from your letter to Judge Saund and not from Judge Saund; is that correct?

Mr. SIMPSON. That is correct, Mr. Chairman.

Mr. PATENCIO. It must be realized that the burden of proving incompetency can be extremely difficult so the superior court and the Bureau of Indian Affairs devised a new gimmick in order to control nearly all Indian estates.

The members of this committee will note if they merely read section 4, that it contains no reference to appointment of guardians. Nevertheless, in its application, both the Bureau of Indian Affairs and the superior court expanded it to embrace a new California law known as the conservatorship law.

Our Indians still believe that if an adult Indian is non compos mentis, or incompetent, he should have a guardian appointed, but also firmly believe that Indians, like all other persons, should be entitled to the presumption that they are competent to handle their own affairs upon reaching 21 years of age, and that this presumption should never be disregarded. An Indian upon reaching his majority, should be given a chance to handle his own affairs and if his performance record thereafter shows legal incompetency, then a request could be made for an appointment of a guardian. Since the Bureau of Indian Affairs and the

superior court did not share this view, all Indian estates of minors under superior court-appointed guardians were almost automatically placed in the hands of a conservator when the Indian reached 21 years of age.

This committee is no doubt completely aware of the task force report which graphically illustrates both the undesirability and the costly nature of the conservatorship problems to the Indians. Our tribal council feels so strongly opposed to the continuation of the conservatorship system that on March 8 of this year they passed Resolution No. 846 opposing the passage of the original Tunney bill, H.R. 13516, which in practically every section referred to the conservators. Mr. Tunney introduced that bill because of complaints received from tribal delegates, our tribal attorney, and the findings set forth in the first Cox report which had collectively caused him to become aware of the shirking of responsibility by the Bureau of Indian Affairs, of the administrative abuses by the superior court at Indio, and the somewhat shockingly high administrative costs which had been placed upon Indian trust estates. I would now like to make our Resolution No. 846 a part of the official records by having Mr. Simpson read it to you.

(Agua Caliente Band of Mission Indians, Palm Springs, Calif., Resolution No. 846 was read by the tribal attorney, as follows:)

Mr. SIMPSON (reading).

Whereas the Congress of the United States in passing Section 4 of the Act of September 21, 1959 (73 Stat. 604; 25 U.S.C. 954), did require that the Secretary of the Interior appoint guardians of the estates of all the minor allottees of the Agua Caliente Band of Mission Indians and for those adult allottees thereof, who in the Secretary's judgment were in need of assistance in handling their affairs and did request such appointments in accordance with applicable state laws before making any equalization allotments or payments to such persons; and

Whereas the practical impact of said Section 4 of said Act of September 24, 1959, was to cause more than 80% of the members of the Agua Caliente Band of Mission Indians to be brought under the administration of the Superior Court of California through Guardians and Conservators appointed under the authority of said Superior Court; and

Whereas the members of said Band and the Tribal Council thereof did subsequently complain to the Commissioner of Indian Affairs about certain abuses and improprieties in the administration of said estates; and

Whereas the Bureau of Indian Affairs in response to said complaints did send one Robert Cox to the Palm Springs office in the capacity of a special Resources Trust Officer with the specific request that he attempt to make a general survey respecting the administration of said estates and that he thereafter submit a written report; and

Whereas said Robert Cox did submit said written report with documented and substantiated conclusions both verifying and amplifying those previously asserted by said Tribal Council; and

Whereas Secretary of the Interior Udall was sufficiently alarmed and motivated by said Cox report to order a special investigation and audit of all of said estates; and

Whereas in the wake of national publicity and attention given to said investigation by the Department of the Interior, Congressman John Tunney whose district embraces the Agua Caliente reservation, did proceed without consulting the Agua Caliente Band of Mission Indians or their Tribal Council to introduce H.R. 13516 on October 16, 1967. After having had his office hastily prepare a draft thereof which his administrative assistant, Mr. Dave Tunno, declared was merely a vehicle for the procurement of early hearings respecting said guardianships and conservatorships program and he did further declare that the draft which had been introduced was "no sacred cow," and that the members of the Agua Caliente Band of Mission Indians should feel free to disregard the text of H.R. 13516 and to propose their own ideas and suggestions at the time of the contemplated hearings thereunder: Now, therefore, be it

Resolved, that the Tribal Council for the Agua Caliente Band of Mission Indians after calling a special tribal meeting does hereby wish to go on record as being unalterably opposed to the passage of H.R. 13516 because:

1. Section 4 of the Act of September 21, 1959, was limited by the Congress of the United States to appointment of guardians of the estates of all the minor allottees and for those adult allottees who in the Secretary's judgment were in need of assistance in handling their affairs *before* the Secretary would be entitled to make any equalization allotments for payment to such persons.

2. The Equalization Program provided for by the Congress as implemented by the Secretary of the Interior has been completed so that said Section 4 of the Act of September 21, 1959, is no longer functional.

3. The proposed amendatory language embodied in H.R. 13516 would serve to both resurrect a presently nonfunctional Section of Federal Law and to compound the problems presently confronting the Indian by also allowing the appointment of Conservators when in fact such appointments were never completed by the Congress and are deemed to be inimical to the best interests of the members of said Band in what it would tend to perpetuate an unsavory element which has unfortunately been allowed to enter the picture under the administration of the Superior Court of California.

4. The amendatory language of H.R. 13516 will not serve to correct the present abuses nor to effectively diminish the future abuses, but if enacted, will only serve to impose an economic straight-jacket upon said Indians in the handling of their estates inasmuch as it ignores the essence of the problem which has arisen due to a lack of definitive procedures respecting the jurisdictional division between the Superior Court of California over non-trust property and the exclusive jurisdiction of the United States as trustee over the trust property which should be construed to include leases, sales, rights-of-way, or easements pertaining to said trust property which can only be accomplished by legislation invoking definitive amendments to 25 USC 954 and 28 USC 1360 (b) so that the Superior Court of California will unequivocally be precluded from assuming any jurisdiction whatsoever respecting any Indian land or any Indian interest therein held in trust.

Mr. PATENCIO. On the question of the high administrative costs to the Indian estates which has resulted from the guardianship-conservatorship system, I would like to briefly point out at this time that this, to a great extent, has been due to duplication of costs. Before the passage of the equalization law it was quite clear that leases could be made, that easements could be granted, and that rights-of-way could be given respecting Indian trust lands without involving the Superior Court. In other words, the Secretary of the Interior had exercised such power for a number of years without any significant costs whatsoever to the Indians, but when superior court-appointed guardians and conservators got into the act a costly and new dimension was added.

Under the new system the guardian or conservator would request that the attorney representing the Indian estate prepare a petition for superior court approval and the order to show cause showing that such approval had been given. Quite naturally, it followed from that that a charge would be made against the Indian estate for the services of the guardian or conservator and the attorney. In the instances of easements and rights-of-way, it would often happen that no money would pass to the Indian estate because the granting of the easement or right-of-way was to be considered to enhance the value of the Indian land, thereby accelerating development of Indian lands.

Nevertheless, under the new system the costs of services by a guardian, conservator, or attorney had to be paid for out of the Indian's estate. These costs have amounted to thousands of dollars each year despite the fact that the lands in question were trust lands over which the State courts have no jurisdiction. It is therefore, the considered opinion of the tribal council that part of the solution of this problem

would be new legislation making it completely clear that the State courts should in no way be concerned with matters pertaining to Indian lands to which title is still held in trust by the United States. This would mean that the approval of leases and granting of rights-of-way or easements would be handled in the same manner that they were handled before the passage of the equalization law which would save thousands of dollars annually for our Indians.

As chairman, I wish to submit some constructive comments with the hope that it might be of some assistance in the ultimate resolution of problems which now confront us due to section 4 of the equalization bill. Delegates from our tribal council have made several trips to Washington, D.C. to confer with the Secretary of the Interior and his representatives, and we have prepared a substitute bill for H.R. 13516 which in our judgment would effectively cope with the challenge now confronting this committee. For the record, our substitute bill has since been introduced by Mr. Tunney and is, in fact, the present bill under consideration known as H.R. 17273.

In order to come up with this draft, our tribal council has spent a great deal of time in deliberations, discussions and drafting. As you gentlemen perhaps know, under our approved constitution and by-laws our regular meetings are open to all of our members. With the widespread publicity given our problem by the press, we have concluded that any member who had not already expressed himself through the petition of grievance filed with the commissioner nearly 4 years ago would undoubtedly attend our meetings and express himself at this time. We also recently had two special tribal meetings on the guardianship-conservatorship problem in order for our members to give us the benefit of any new thinking which would assist in improving the present situation. In other words, the present draft of H.R. 17273 is the best product of our deliberations and present thinking. It may not be a "sacred cow" and the draftsmanship might need improvement, but in substance, it would be truly beneficial for all the members of our band, and for this reason our tribal council respectfully request that your honorable committee take affirmative action to convert it into effective law. Thank you.

Mr. SIMPSON. Mr. Chairman, members of the committee, Mr. Patencio has requested that as tribal attorney, I address myself briefly to some of the sections in the text set forth in the most recent bill introduced by Congressman Tunney, H.R. 17273, I would suggest that this bill, to the members of the committee, is an effort to solve the problems to which Mr. Patencio, as chairman, has alluded.

Section (a), without reading the context of it, basically accomplishes what could be called the restoration of human dignity to the Indians. Under the guardianship provisions of section 4 of the equalization bill, the gentlemen have become conversant with the fact that the conservators have also been appointed.

Now, at the time of the guardianship bill, or the guardianship provisions of the equalization act that were proposed in the first act, you had a type of legislation being considered in California known as the conservatorship law, so consequently, no reference was made to it whatsoever when the act was passed by Congress. The conservatorship law was not designed to apply in the sense that guardianship law had been applied, otherwise there would have been no purpose in pass-

ing this law. The conservatorship law was to cover a situation where the individual, although competent, did need assistance, where the guardianship law of California, of course, required an adjudication of an incompetency.

In section (a) of Mr. Tunney's latest bill, it is proposed that the Indians be given the benefit of what we might term due process of law, because it makes mandatory that they be entitled to the presumption that when they reach 21 years of age, they are, in fact, competent so that any person asserting incompetency on the part of the Indian would, of necessity, be required to assume the burden of proof in this, which would, of course, restore the Indians to the same status that all of the other citizens of the State of California now enjoy. This, we feel is what we would loosely characterize as the restoration of human dignity for the Indian, because as has been pointed out by Mr. Patencio, when the Indian has reached 21 years of age, it has been almost automatic as a practice to have a conservator appointed on the premise that he was just too young to handle the estate that was coming to him.

This particular law has no application to anybody in California but Indians. The Indians have felt strongly that they should have a chance to at least stand on their own two feet, and if they fell flat on their face, then you could talk about the appointment of a fiduciary to handle the estate.

We further point out that most of this estate is in trust anyway, very well supervised by the U.S. Government as trustee, but section (a) accomplishes one of the most important things for the Indians by entitling them to the same rights as all other citizens in the State of California, the presumption that they are competent.

Section (b) we might call the act of trust section. Unfortunately, after the passage of the equalization laws, it was believed by the tribal members and the tribal council as expressed in the petition of grievances filed with the Commissioner in 1964 that the Bureau of Indian Affairs really abdicated its responsibility, they more or less passed the ball to the superior court and said, "You take care of it from here on out." The supervision, surveillance, and control which it previously had been exercising was, in fact, disregarded. Under section (b) of the proposed bill, if a guardian of an Indian estate endeavors to participate in the development and management of that property and he has special abilities, he may be compensated for that provided he has approval of the Indian and approval of the Secretary of the Interior in doing this. This is considered, indeed, a vital step in putting the Secretary back into the business of being an active as opposed to a trustee. In addition to that, there is something else in the language of section (b) which I think is most important, and that is, in the last sentence thereof, on page 3, it is pointed out that the act of the Secretary would have legal effect. If you are having leases approved, if you have rights-of-way or easements, this is extremely important because some people have raised the question that if you have a guardian of an estate of a minor Indian, or a guardian of an estate of an adult Indian, and this guardian has been appointed by the superior court, of necessity, you would have to have the signature of that guardian or title companies would find it most difficult to come up with title insurance to protect the leasehold interest. This has been a practical consideration.

We discussed it with title companies, this particular language which is added here would have the effect of clearing the way so that actually the Secretary, as Mr. Patencio pointed out, would be able to do that which he has done before the Equalization Act. Before the Equalization Act, he granted rights-of-way, he granted easements, he did, in fact, approve leases and it was not until after we got the State-appointed guardian into the act that we found the duplicity which led, of course, to a cost to the Indian estate which was considered to be unreasonable and unnecessary.

Furthermore, I would point out in respect to this particular section that the Indians themselves, contrary to what many people believe, contribute approximately \$30,000 a year to the maintenance of the Indian office in this particular locale. They have personnel who are working, personnel who are there to perform the services which, under the guardianship and conservatorship program had also been performed by the guardians and conservators, so the Indians are not receiving a gratuity which is carried at the expense of the taxpayers, but have, in fact, paid for professional help to assist them in carrying on the management of their estates. Section (b) would, again I repeat, put the Secretary in the business of an active trustee, working with the Indians and receiving compensation to help carry it out without the barnacle or appendage being added of duplication or going to the superior court to get an order to do that which the Secretary is going to have to do anyway.

Section (c) of the bill deals with the right of an accounting. Now, this is something which the Secretary has not followed through with, and which, under existing Federal law, we will state, he had the right to, so you might say the language is really unnecessary, but by inserting such language we are actually putting the Secretary in the role where as trustee, he performs his fiduciary responsibility so that from time to time he will definitely be checking, if not all the time, which would be the hope respecting the management of these estates which come under his jurisdiction.

Section (d) is a different type of section, which is somewhat similar to section (c), but it goes further because we know as a matter of Federal law, that the jurisdiction of the Federal Government is over the property which is called trust property and which is held, the title thereto, by the United States. Section (d) is, in a sense, patterned after the Osage Act of 1925 when you had unauthorized use of moneys which had come from trust properties. The point of section (d) is to give the Secretary the power where you can trace assets which originated with trust property which have been utilized in an unauthorized manner, and to bring them back in as part of the corpus of the trust.

We believe, for this reason, that it would be beneficial to the tribe and it would certainly give some teeth to the Secretary in performing as an active trustee.

Section (e) is a definition of trust property and I therefore would like to read it and comment upon it.

Trust property as herein defined is any real or personal property or any interest therein which shall include but not be limited to water rights, leases, rights-of-way, and easements so long as such property remains subject to a restriction against alienation imposed by the United States and cannot be alienated, encumbered or taxed without the consent of the United States and is held for the sole use and benefit of the Agua Caliente Indians.

It might be stated that in this section, the definition of trust property is unnecessary because the courts have addressed themselves to and defined it, and the Congress has, on numerous occasions, done likewise. It is suggested that section (d) does have merit and should be retained principally because it is the twilight as far as jurisdiction. The superior court has been in the somewhat confusing position of recognizing that if there is a lease and there is a guardian, and the title companies have wanted to have the signature of the guardian on there, the guardian came under the jurisdiction of the court that appointed him, that of necessity, they would have to act upon a lease upon a grant of right-of-way. The right-of-way might not bring any money to the Indian, it might be an enhancement of the property, or an easement for a utility company or some such thing. Under this particular section, we endeavor to make it clear that when we speak of trust property which even the superior court has consistently said should not be included in the inventory and appraisal for purposes of appraisal but only for purposes of information.

It would make it clear that it is unnecessary to run this route of the superior court with respect to trust property and interest in trust property, such as those that I have mentioned. In this way, we may eliminate the twilight zone. We make it clear, and the task force report makes it clear the high administrative cost of handling this program constitutes one of the major attacks upon it, therefore, we would suggest that if you make this definition clear thereby eliminating the twilight zone of jurisdiction so that the trustee knows what he has and the superior court knows what they have to deal with, then you would save the Indians thousands of dollars every year.

The last section, section (f), of course, speaks for itself, stating that:

Nothing in this section shall preclude the Secretary from exercising any other authority he may have to protect the interests of the Indian allottees, Indian devisees, or Indian heirs.

We want this to be a step forward, a constructive step, and we definitely express our appreciation to Congressman John Tunney and his office for the excellent cooperation they have given to formulating corrective legislation which should prove to be of immeasurable benefit to the tribe.

Mr. EDMONDSON. Do you have anything further on behalf of the tribe, Mr. Chairman?

Mr. PATENCIO. I just want to say the rest of the council is open for any questions if you have anything further on it.

Mr. EDMONDSON. May I ask individually at this time, Mr. Pierce, do you endorse and agree with the statement that has been made by the chairman with regard to H.R. 17273?

Mr. PIERCE. I do.

Mr. EDMONDSON. May I ask, Mr. Segundo, if you do?

Mr. SEGUNDO. Yes.

Mr. EDMONDSON. Mr. Patencio, Mr. Raymond Patencio?

Mr. PATENCIO. I'm in complete record.

Mr. EDMONDSON. Mr. Siva?

Mr. SIVA. I'm in complete accord, also.

Mr. EDMONDSON. So, the tribal council is unanimous in its endorsement of the text of H.R. 17273?

Mr. PATENCIO. Yes.

Mr. EDMONDSON. May I ask, Chairman Patencio, if you have had an opportunity to become familiar with the departmental report on that bill, and with the substitute that has been proposed by the Department?

Mr. PATENCIO. We just received it last week. We haven't had the opportunity, but we're hoping to get together with the Bureau with some similarity to what our thinking is.

Mr. EDMONDSON. Would you like to reserve any—

Mr. PATENCIO. Yes, I would.

Mr. EDMONDSON (continuing). Official statement on behalf of the Council with regard to—

Mr. PATENCIO. Yes.

Mr. EDMONDSON (continuing). The substitute that has been proposed?

Mr. PATENCIO. Yes.

Mr. EDMONDSON. Can you supply for the record a copy of your 1964 Petition of Grievances to which you referred in your testimony?

Mr. PATENCIO. Yes.

Mr. EDMONDSON. It will be supplied?

Mr. PATENCIO. Yes, it will be supplied.

Mr. EDMONDSON. If there's no objection, it will be made a part of the record at this point.

(The document referred to follows:)

Re responsibility and jurisdiction of the BIA.

Mr. PHILLEO NASH,
Commissioner of Indian Affairs,
Department of the Interior,
Washington, D.C.

DEAR COMMISSIONER NASH: It is the considered opinion of the members of the Agua Caliente Band of Mission Indians that some extremely severe problems are presently confronting us because the Bureau of Indian Affairs has been shirking certain responsibilities required by Federal Law. These problems arise in part due to Public Law 280 and the Equalization Act the Congress passed pertaining to our reservation.

It is our understanding that Public Law 280 conferred jurisdiction upon state courts respecting Indians in both civil and criminal matters, but that under the provisions of sub-paragraph (b) thereof, the Congress expressly stated that this should in no way be construed as bestowing jurisdiction in the state courts over property held in trust by the United States of America for the benefit of the Indians. Obviously, this would mean that the state courts would not have jurisdiction over any of the allotted properties included within our reservation which are still held in a trust status. In fact, this interpretation has received approval from the Judge of the Superior Court in Indian, the Honorable Hilton McCabe, who has stated that with this in mind he has instructed State appointed appraisers to abstain from appraising trust property whenever a guardianship or conservatorship was involved. This interpretation gains further support from the fact that no trust property is included for the purpose of probate administration in the state courts, and it is handled by the Federal Inheritance Examiners.

With the passage of the Equalization Act, however, a problem arose by reason of the requirements set forth therein that the Secretary of the Interior or his duly authorized representative should request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who in his judgment were in need of assistance in handling their affairs, and that this should be done in accordance with applicable State laws before he made an equalization allotment or payment to such persons. Had only a few members of our Tribe been affected by this requirement of the Equalization Act, perhaps it is possible that no one would have become aware of the problem, but at the time of the

passage of this Act, approximately eighty percent of our members were minors, and this meant that the state court was placed in a direct contact with most of our members.

At the outset, our Indian Office in Palm Springs acted in concert with the Sacramento Area Office to make up a list of the people who in their judgment were in need of assistance, and thereafter recommended to the Superior Court that guardians or conservators be appointed for them. This they did with all the minors and a number of the adults. In our judgment this constituted an unwarranted abdication of responsibility in favor of the Superior Court. The bulk of the estates involved consisted of unimproved real property held in trust by the United States Government for our benefit. From this fact it is exceedingly difficult to conclude that anyone would be able to take advantage of us. After all, under existing Federal law our Indians could not sell or lease their land without the consent of the Secretary or his duly authorized representative. This Federal restriction impresses us as being sufficiently protective. In other words, in the absence of a showing that some harm might come to the estate of the Indian, it is believed that the restrictions imposed by Federal law with the Secretary as trustee are sufficient.

Notwithstanding these restrictions imposed by subdivision (b) of Public Law 280, the Superior Court in California has proceeded under the quasi delegation of power prompted by the Equalization Act to take over the role of the Bureau of Indian Affairs with respect to the guardianship and conservatorship estates. In observing this, we have seriously sustained the legal right of any Judge of a state court to exercise the powers which they are now being exercised with respect to Indian guardianship and conservatorship. It would seem that the only thing that is happening at the present time is that the restrictions imposed by Federal law are being compounded into an almost impossible hurdle for our Indians by the intrusion of the state courts into a domain where the Congress never intended they should tread.

In an effort to seek a solution to the problems presented by this situation, special Tribal meetings were called with Judge Hilton McCabe, representatives of the Palm Springs Board of Realtors, members of the Guardians and Conservators Association, and representatives of our local office for the Bureau of Indian Affairs. Following these meetings which did not bear much fruit, the members of our Tribe agreed that a statement of the grievances presented should be transmitted to the central office in Washington, D.C. We do, therefore, submit the following:

(1) No sale or lease of Indian trust lands can be made without the approval of the Secretary of the Interior or his duly authorized representative. With guardianships and conservatorships, the approval procedure is compounded since the approval of the state court is also required. It is submitted that this does not constitute an advantage for the Indian allottee, and that it only means delay plus the legal expense for payment of the guardian or conservator and their attorney to prepare the Petition for Authority and the court appearance and hearings pertaining to this. This is even true in the cases where such court approval has been obtained and a conditional approval is thereafter given by the Secretary since a second approval must then be secured due to the conditions. State court approval is also needed where rights-of-way or easements are given.

(2) The Superior Court has given its blessings to the establishment of an independent organization known as the Guardians and Conservators Association for the Agua Caliente Band of Mission Indians. The personnel of this association consists mostly of non-Indians appointed by Judge Hilton McCabe. Their avowed objective is to work in concert for the economic development of our Indian lands. In order to facilitate their organizational activities, the Superior Court has approved assessments against the estates of minors even where there was in fact, no money available. It is our belief that this is an act beyond the jurisdiction of the Superior Court which negatively reflects upon the United States Government. In other words, the local Indian Office in Palm Springs is assigned and maintained for the purpose of accomplishing the very objectives of this organization without cost to the Indian allottees involved. If this program is continued it is conceivable that some of the minors upon reaching twenty-one years of age would find that their estates are so burdened by the assessments approved by the Superior Court that they will still be without any income whatsoever. As far as we know, the Bureau of Indian Affairs has never investigated, nor have they objected to, this particular procedure even though they have been fully aware of it.

(3) From the information available to us many of the guardians and conservators were practically told by the Judge to form this organization and have done so as a result of his direction. In addition, they have enlisted their wards as members and where money was available, dues were paid; those without money were subject to the assessments referred to in the preceding paragraph so that they would be required to pay the money when it was available. Why has the Bureau of Indian Affairs neglected to investigate this condition when they are not only fully aware of its existence, but have even mimeographed materials for them at government expense? Copies of letters concerning dues and assessments are appended hereto for the record.

(4) The Superior Court has provided no program for the education of wards or conservatees so that upon reaching a certain level of maturity the Indian would be in a position to handle his or her own affairs. This has been graphically illustrated by petition filed by Indians who have felt they had reached a stage where they could manage their own affairs, and the Superior Court has denied the petition on the ground that the Indian must first acquire special qualifications, but then neglected to establish any educational programs which could one day permit the termination. This, of course, leads us to the question as to how a member is ever to learn if he or she is never given the chance. On this point, it should be noted that a policy of consulting with parents concerning the sale or leases of the children's trust lands would help since the parents have more contact with the children who should be assisted concerning the scope and extent of their estates.

(5) The record discloses what appears to be a preferential treatment by the Superior Court in favor of the City National Bank. Other banks located in Palm Springs, including the Security First National and the Bank of America, have received only one or two appointments as guardians while the City National Bank has received ten or twelve with most of the appointments being made before they even opened a branch in Palm Springs. A special fact pertaining to the appointments on behalf of City National Bank is that Mr. Charles Z. German, the former director of the Palm Springs Indian Bureau resigned his position as director and immediately became the new Trust Officer in charge of these guardianships for City National Bank. The attached list of guardians and conservators supports this fifth grievance.

(6) The City National Bank has expended the sum of approximately \$28,000.00 to publish a brochure pertaining to Indian lands, which has been mailed throughout the country with copies going to the local Indian Office and to the Central Office in Washington, D.C. of particular interest and importance with respect to this item is the fact that Indian estates under their control as guardian or conservator were in fact assessed to aid in payment of this particular brochure.

(7) The City National Bank refused the request of a member to build a home on his Indian trust property, but then offered to increase his monthly allowance to permit him to buy a home on non-Indian land, as has been done in several instances during the past, where he would then be liable for taxes.

(8) The Bank of America in its capacity as guardian for a minor member of the Tribe sold twenty acres of land for a purchase price of more than \$100,000.00. The parent of the minor later read the newspaper and learned that an additional ten acres had been sold for the same minor despite the fact that the minor did not need any more money and was very much distressed as she had no knowledge of any such sale. This, of course, was done with the approval of the Superior Court and with the approval of the local office of the Bureau of Indian Affairs. Why was this permitted?

(9) A sale of Indian land for approximately \$100,000.00 took place without any consultation or discussion with the Indian allottee. Out of the proceeds the conservator extracted his fees and then proceeded to loan the balance to another source without considering the Indian allottee's wishes or needs.

(10) The Superior Court has made orders for the payment of real estate commissions by the guardians or conservators of Indian estates where real estate brokers never have had any contact whatsoever with the guardian or conservator. Under existing state law it is mandatory, if a real estate broker desires to recover a commission, that he establish that an agreement with the person requesting services had been made in order to comply with the statute of frauds that the agreement be reduced to writing. Despite this requirement the Superior Court has made orders for payment of the commission contrary to existing state law. Furthermore, under existing Federal law, such as Section

85 of Title 25 of the United States Code, it is quite clear that the rendition of such services must first be approved by the Secretary or his representative if compensation is to be paid therefrom. This very problem precipitated an opinion from the Regional Solicitor in Sacramento, which was forwarded to the Central Office in Washington. This also led to the drafting of a rough resolution by Mr. Paul Hand, which is attached hereto, asking that the Secretary sponsor legislation which would cure the present problem. It is the conviction of the members of the Tribe that legislation is not needed, but, that a clear declaration of policy is needed. In other words, if the conclusion set forth in the Regional Solicitors opinion are deemed to be correct, and that the evil can only be cured by legislation, it becomes very clear that a tremendous problem will be confronting the government and the state courts because under the logic of this conclusion all persons who had received any compensation for services rendered in connection with trust property would be required to return that sum to the estate of the Indian allottee involved. In many instances the money which was approved by the Superior Court has already been spent so as a practical matter, it would be impossible to comply with an order that it be returned. It is believed, however, that a letter from the Secretary of the Interior approving retroactively the contracts for services which have been made to date could solve this problem. The future situation could also be solved by having the Secretary rather carefully define the break-off point between trust property and unrestricted non-trust property so that persons dealing with the non-trust property could make a contract with the Indian without the necessity of securing the approval of the Secretary. On the other hand, if the Secretary could delegate approval authority for real estate broker's contract to the local office in Palm Springs, the land development program could be greatly expedited by this time saving device.

MISCELLANEOUS GRIEVANCES

(1) Better inheritance procedures—more detailed examination and study is needed with respect to the inheritance procedures for Indian trust land, especially where there are wills involving valuable land such as is found in Palm Springs. Problems have arisen which in fact demonstrate that the heirs need more protection, but this can only be accomplished if the Bureau of Indian Affairs will diligently survey the situation. In other words, it would appear that the Bureau of Indian Affairs as trustee over trust land should thoroughly screen the wills that come in to ascertain that they have been understood by all the persons involved, and that no duress or force of any kind has been utilized in the execution thereof. If this is not done, more and more of the Indian land will become vested in non-Indians and our Tribe will be looked upon more as a band of wooden Indians instead of proud, real Americans that we are.

(2) At times the tendency to sell instead of holding for leasing becomes too strong. For instance, one family in our particular band had approximately half of their four minor allotments sold instead of being held for leasing. This again was done where particular need was made clear for the sale.

(3) It is our understanding that under existing Federal law that neither the state of California nor any of its political subdivisions have the right to zone Indian land. We, of course, have cooperated with the City of Palm Springs on this issue in order to affect an orderly development of our land, but it would seem that this could be accomplished in a far more beneficial way to the Indians if the Government as trustee would provide an expert in land development to confer with the Tribe before they approve any particular plan that the city presents. Mr. John Crow has already written a letter to the City Planning Commission emphasizing that there should be no discrimination against the Indian landowners, but a more affirmative consideration of the entire proposed zoning plan for the City of Palm Springs should be reviewed by the Government, in order to ascertain that the Indians are receiving completely fair treatment in the development of their land to its highest and best economic potential.

(4) The City of Palm Springs continues to annex more and more Indian land. We are not convinced this is necessarily in the best interest of the Indians and believe that the Government as trustee should advise regarding this particular action, which we have been informed by a number of individuals is illegal without the consent of the Congress of the United States.

(5) It is our suggestion that the unique economic nature of Palm Springs and the Indian lands involved in and about this area be considered in such a light

that Palm Springs might have a direct wire established with Washington. In other words, the delay occasioned by sending everything through channels to Sacramento has proven to be both time consuming and costly. Hence, we suggest that an Area Director for Palm Springs be appointed.

Respectfully submitted on behalf of the named members of the Agua Caliente Band of Mission Indians.

AGUA CALIENTE BAND OF MISSION INDIANS,
Palm Springs, Calif., March 4, 1964.

Re letter of grievances to Commissioner Nash from Agua Caliente Band of Mission Indians, presented February 17, 1964.

Mr. E. REESEMAN FRYER,
*Assistant Commissioner of Indian Affairs,
Department of Interior,
Washington, D.C.*

DEAR MR. FRYER: On the morning of February 18, 1964, you were most considerate in complimenting us on our letter to Commissioner Nash, and in suggesting that we supplement this with a further letter setting forth the suggested solutions so that your office could proceed to implement them. Therefore, in accordance with your request, we submit the following:

1. The right of Indians to contract for services.

(a) It is our suggestion that a formal letter be prepared to the central office spelling out with some degree of certainty what is meant by "restricted property" and "unrestricted property." In other words, this letter should eliminate the uncertainty that existed before the Regional Solicitor in Sacramento prepared his opinion on the subject plus the conclusion which followed. We feel that an explanation along the lines discussed in your office regarding the effect of a "direct payment" of rent lease would do much to accomplish this, thereby removing the apprehensions in the minds of those professional people who are willing to render services which may aid immeasurably in the development of our land to its highest and best economic use. This includes real estate brokers, appraisers, land planners, and all others who are in a position to assist Indian allottees. The letter should also explain the application of the "direct payment" factor to both guardianships and conservatorships. By so doing you will be paving the way for constructive and beneficial contracts for our Indians.

(b) It is suggested that your letter explaining the right of an Indian to contract for services should, if possible, provide specific illustrations. For example, reference could be made to the fact that income from trust property loses its restricted status when the recipient thereof may utilize it as each may wish, such as the purchase of an automobile, clothing, furniture, services of a doctor or such other services as they might desire. Perhaps part of the explanation could be extracted from that certain opinion of the Solicitor, which was rendered on February 13, 1937 which stated:

"It should be pointed out that an Indian, although a tribal member and a ward of the government, is capable of making contracts and these contracts require supervision only insofar as they may deal with the disposition of property held in trust by the United States."

"Consider: *Rider v. LaClair*, 77 Wash. 488, 138 Pac. 3 (1914), which held that Indians could mortgage crops growing on allotments without the government's consent. (These crops are tax exempt under the *Squire* case as part of the trust property.) Also see Act of May 31, 1870, Sec. 16, 18 Stat. 140, 144, guaranteeing the right to enforce contracts to all persons within the jurisdiction of the United States."

2. Eliminate duplication in costs.

It is suggested that steps should be taken to see that the Indian who has a court appointed guardian or conservator faces no greater costs in the leasing of his land than an adult who is allowed to act for himself, subject to the approval required by the Secretary. Public Law 280 does not grant the state courts jurisdiction over trust lands; so why should the leasing or sale thereof require state court approval? This is particularly significant since any conclusion to the contrary leads to the further conclusion that state court approval is needed for rights-of-way and easements. If your office determines that the approval procedures of the Secretary are sufficient protection for the Indians, you will save thousands of dollars each year for our Indians, which they are

now paying to guardians, conservators, and the attorneys who secure the approvals required by the state courts at the present time.

3. Investigate the activities of the Guardians and Conservators Association.

The complaints detailed in our letter to Mr. Nash, designated as grievances (2), (3), (5), and (6) thereof disclose why this must be examined. A copy of said letter is herewith enclosed. If continued as presently constituted, this organization becomes an heir to the fiduciary role which should be exercised by the Bureau of Indian Affairs. Furthermore, this apparent abdication by the Bureau is proving costly to the Indians.

4. Require participation by Bureau personnel.

Those grievances designated as (7), (8), (9), and (1), (2), (3), and (4) under Miscellaneous in said enclosed letter would be solved if Bureau personnel were required to be active trustees. This would mean that the demeanor of the guardians and conservators would be watched, that the City, County, and State would be dealt with more effectively, and that our Indians would know at all times where to turn for constructive help. By way of specific suggestion, we believe that Bureau personnel should assist us in our present fights with the City of Palm Springs respecting zoning and the annexation of tribal land. In fact, it is our sincere conviction that we should establish an Indian planning commission to co-operate with the City of Palm Springs, but premised in its existence upon the fact that the city has no jurisdiction over our trust land. In doing this we would, of course, expect and desire the assistance of the Federal Government.

5. Make the Palm Springs office an area office.

It is suggested that the economic tempo and problems presented by Palm Springs creates a unique situation which is somewhat removed from both Sacramento and Washington would obviate the present costly delays and confusion.

Respectfully yours,

AGUA CALIENTE TRIBAL COUNCIL,
EILEEN MIGUEL, *Chairman*.
DORA JOYCE PRIETO, *Vice Chairman*.
PRISCILLA GONZALES, *Secretary*.
VIRGINIA SANCHEZ, *Member*.
ELIZABETH MONK, *Member*.

Mr. EDMONDSON. Do you also have available in document form here, the Bureau regulations on guardianship that you have referred to as CFR 124.5 that contain the objectionable addition of the phrase "or conservator?"

Mr. SIMPSON. Mr. Chairman, we do not have it here, but we will be happy to make sure the committee is supplied it.

Mr. EDMONDSON. It would be helpful if we could have the text of the particular set of regulations including that language which is the objectionable part of the regulations.

Mr. SIMPSON. Yes.

Mr. EDMONDSON. Without objection, it will be made a part of the record at this point.

(The document referred to follows:)

§ 124.5 Protection of incompetents and minors.

The Secretary shall cause the appointment of a guardian or conservator of the estate of all minor allottees and for those in need of assistance in handling their affairs, in accordance with applicable State laws before making any equalization allotments to them.

Mr. EDMONDSON. In your judgment, Chairman Patencio, is your tribe ready for termination of Federal supervision insofar as the tribe's membership is concerned?

Mr. PATENCIO. No; I personally don't believe that we are. I think that.

Mr. EDMONDSON. You have some individuals in the tribe who have

been freed from Federal supervision with regard to their estates and with regard to their properties?

Mr. PATENCIO. No; with—not real supervision.

Mr. EDMONDSON. I had understood that there was some who had nonsupervision by the Department with regard to the majority of their property. Am I incorrect in that assumption?

Mr. PATENCIO. Mr. Chairman, there are about 6,000 acres of the original 32,000 acres of the tribe's land that has been fee patented for purposes of sale or because individual Indians have requested that they receive a fee patent, and the question, I believe, goes basically that there are some people who have requested fee patents to more than 50 percent of the land which has been allotted to them.

Mr. EDMONDSON. I see, but on the other side of the coin do all of the tribal members still retain some property that is under the supervision of the Department classified as trust property?

Mr. SIMPSON. I believe I can honestly say that most of them, better than 50 percent do, I'm not sure.

Mr. EDMONDSON. Gentlemen, do you have any questions?

Mr. BURTON. Just one, I believe, Mr. Chairman.

Mr. EDMONDSON. Mr. Burton.

Mr. BURTON. Mr. Simpson, you said you want the Indians to be presumed competent at age 21, and then if he fails—and you used the expression “flat on his face”—then we could appoint for him a guardian or conservator. If you wait until he falls flat on his face, it is true, is it not, that he might have nothing to conserve?

Mr. SIMPSON. The question is an excellent one and one, I think, many people frequently propose. The answer is “No”; this is not true because if he is competent to handle his own affairs without a conservator, this does not mean, and I do not mean to suggest, that we terminate the Indian because most of the property, for example, the allotments that they have, as long as title is still held in trust by the United States of America, this means that if an Indian has, let's say, a \$350,000 allotment of land and that he has—I'm thinking of one particular case, an income, annual income of \$7,000 dollars—now, if he handles that \$7,000 and squanders it and shows himself to be totally incompetent to handle it, the portion of it which is not trust which is fed to him, then I would say that in that instance a person is like any individual, Indian or otherwise, in need of some definite assistance, but falling flat on his face in that manner, Congressman Burton, you would still have the Federal Government as trustee and, at the present time, they cannot sell, they cannot lease, they cannot do anything with the \$350,000 and the purpose of the trust is not endangered by permitting the Indian to proceed to handle the nontrust property.

Mr. BURTON. Thank you.

Mr. EDMONDSON. The gentleman from California?

Mr. TUNNEY. Thank you, Mr. Chairman. Did the tribe, Mr. Chairman, support the original legislation establishing State court control over the Indian estates? Did the tribe take an official position back in 1959?

Mr. SIMPSON. Mr. Tunney, since I was tribal attorney at that time, the answer is yes; the tribe did. The particular bill was designed to provide supervision mostly because of the minors. As Mr. Patencio

testified, approximately 80 percent of the tribe was under 21 at the time, and we knew one thing very definitely was going to happen. Under the Saund bill, the equalization bill, the airport was going to be sold to the city of Palm Springs. The airport had allotted lands and under the equalization bill, selections were made therein. This meant that some minors were going to have estates that would be nontrust property that would exceed \$100,000 or more so it was felt that this section carried merit as a protective device for the minors who might have nontrust estates that would be rather large.

Mr. TUNNEY. What was the attitude of the tribe at that time with respect to removing the direct control over their affairs from the Bureau of Indian Affairs?

Mr. SIMPSON. The answer is that 4½ years preceding that, you would have joint hearings in Washington on House Concurrent Resolution 103, and this tribe at that time, unalterably went on record as stating that they were not opposed to termination, which they figured eventually would come, but that they were opposed to any termination program which was premature, which would result in a tax impact that would cause them to lose the lands or compel them to sell the lands just to pay taxes, and therefore they opposed the bill of 1954, and they went on record as stating that they felt an intelligent plan would have to be worked out giving sufficient time to develop it, such as less than 50 percent of the total lands are generating any income at all; right now.

Mr. TUNNEY. But, there was no desire to remove the Bureau of Indian Affairs from supervision of the estates back in 1959 at the time the Saund equalization bill was being considered by the Congress?

Mr. SIMPSON. No, I can't speak for individuals, but the tribal position was unequivocally against that.

Mr. TUNNEY. So that I understand that, at the time the 1959 equalization bill was passed, there was no consideration given by the tribal council in support of this legislation that there were going to be conservators, conservatorship arrangements established with respect to the adult Indians.

Mr. SIMPSON. Not at all. You see, the first draft was prepared by the Department for equalization following the Segundo service of decision which was rendered in 1956. The first draft was in 1957, and at that time there was no conservatorship law in California so the language only addressed itself to guardianships. While this was going on, California passed a conservatorship law. When the Congress on September 21, 1959, said their law became law, there was no reference to guardians and no consideration at all to the concept of conservatorships by the tribes took place.

Mr. EDMONDSON. Mr. Patencio, reading from the language of section 4, which was advanced really as the test for guardianship, it says:

The Secretary shall request the appointment of a guardian of the estate of all minor allottees and for those adult allottees who in his judgment are in need of assistance in handling their affairs * * *

Mr. SIMPSON. That is correct.

Mr. EDMONDSON. Which phrase certainly falls considerably short of a finding of incompetence, because I think most every citizen at some time or other, if he has property of any size, is going to have need for

assistance of some kind in connection with management of that property.

Mr. SIMPSON. This is true, but the intention of the tribe at the time, Mr. Edmondson, was that that phrase where they were actually relating to the appointments of guardians for incompetent adults, although the language is not strong, and I think the letter from Mr. Miguel addressed to Congressman Saund in April when the regulations came out and the subsequent one addressed to him from me indicated that because following the tribal meetings, they felt there was a misunderstanding, at least the tribal intention was not being carried out.

Mr. BURTON. Will the gentleman permit a question?

Mr. TUNNEY. Yes.

Mr. BURTON. Mr. Simpson, tell me the technical difference between a conservator and a guardian.

Mr. SIMPSON. The technical difference can be expressed in one word, "incompetence."

Mr. BURTON. Guardian is a person who administers the affairs of an incompetent?

Mr. SIMPSON. Incompetent by reason of age, senility, or some factor justifying adjudication of it. Conservator does not carry any stigma of incompetence, although you treat the two synonymously, and if you do, it might.

Mr. BURTON. Do they have equal powers of administration?

Mr. SIMPSON. They are not exactly the same. Guardianships are considerably more detailed but they are sufficiently similar that we do reach the conclusion that many judges and people administering them have treated them as being one and the same. I want to go back to one observation, Mr. Burton. That is that if they were intended by the Legislature of California to be the same, there would have been no point in passing a conservatorship law. It was designed to deal with the type of a situation where a movie actor wants more than a business manager, or a person where the children figure if they have a guardian appointed, he will probably disinherit them. He'll battle them if it's the mother or the father, but as a conservator, when they say, "I'd like to help," he's willing to go along with that because he's involved in some other things.

Mr. BURTON. Thank you. Mr. Tunney.

Mr. TUNNEY. I have no more questions, Mr. Chairman.

Mr. EDMONDSON. I have just a couple of questions. For the record, would you tell us, Chairman Patencio, what the total membership of your tribe is, and how many are adults?

Mr. PATENCIO. Forty-seven adult members and 105—correction, 150 children total.

Mr. EDMONDSON. Do you have available, or could you supply for the record if you don't have it available, the data on the average education level of your 47 adults?

Mr. PATENCIO. Yes.

Mr. EDMONDSON. Do you know yourself what it comes to?

Mr. SIMPSON. We don't have that information at the moment, Mr. Edmondson, but we certainly, for the convenience of the committee, and any assistance we will provide it.

Mr. EDMONDSON. Can you say from your personal knowledge, whether a majority of your adults have completed high school?

Mr. SIMPSON. To my knowledge, about half.

Mr. EDMONDSON. Can you state for the record what the average evaluation of the holdings of each of these adults would be?

Mr. SIMPSON. The only average I can tell you is that according to appraisals, only about \$350,000. That's appraisal of the dry land without any improvements on it.

Mr. EDMONDSON. Of course, that would vary greatly according to the individual Indian, but you are saying that the average comes to approximately \$350,000?

Mr. SIMPSON. Yes.

Mr. EDMONDSON. Is there, in your opinion, Mr. Patencio, any basic inconsistency in your contention that there should be a presumption of competency to manage affairs at 21 for all of the Indians—and I want to say that I am in wholehearted agreement with that—with our position that a trust relationship should be continued between the Secretary of the Interior and a member of your tribe?

Mr. PATENCIO. Inconsistency in which way are you talking about?

Mr. EDMONDSON. In that in a trust relationship, as I understand it, there is normally a limitation upon management of property, and there is a requirement that transactions, whether they are sales, or leases of land, must be approved by the Secretary of the Interior.

Mr. PATENCIO. Yes.

Mr. EDMONDSON. Do you see anything inconsistent in asking for a continuation of that system?

Mr. PATENCIO. No; I don't.

Mr. EDMONDSON. And, in asking that there be a presumption of competency for your Indians to manage their own affairs at the age of 21?

Mr. PATENCIO. The presumption is on the Secretary now. It's on the part of the Secretary now.

Mr. EDMONDSON. I realize it is.

Mr. PATENCIO. Yes.

Mr. EDMONDSON. Do you feel that the Secretary's power as a trustee should be continued substantially as it is with regard to approval of your leases?

Mr. PATENCIO. Yes; I'm in agreement.

Mr. EDMONDSON. You do think that it should be?

Mr. PATENCIO. Should be continued in the same capacity as it is now?

Mr. EDMONDSON. Yes, sir.

Mr. PATENCIO. Yes.

Mr. EDMONDSON. And, you don't personally find any inconsistency in a request that your 21-year-old be treated as competent—

Mr. PATENCIO. Yes.

Mr. EDMONDSON (continuing). And a request that the Secretary continue to have the power of oversight and approval for all of their transactions that involve land?

Mr. PATENCIO. I agree.

Mr. EDMONDSON. Now, you would, I think, object to the Secretary's having control over whether or not to sell your car or whether or not you sell your horse—

Mr. PATENCIO. Yes.

Mr. EDMONDSON (continuing). Or personal property?

Mr. PATENCIO. Yes; personal property is nontrust.

Mr. EDMONDSON. But, the land——

Mr. PATENCIO. Trust property.

Mr. EDMONDSON. Trust property——

Mr. PATENCIO. Yes.

Mr. EDMONDSON. You feel this trust responsibility should be continued, and because of the value of the land and because of its additional trust character, you feel that supervision should be continued indefinitely in the future?

Mr. PATENCIO. Yes.

Mr. SIMPSON. Mr. Chairman?

Mr. EDMONDSON. Yes.

Mr. SIMPSON. May I, with the committee's permission, add one comment to Mr. Patencio's?

Mr. EDMONDSON. Before you do, I'd like to ask the individual members of the tribal council if they concur with that statement that the trust responsibility should be continued as to the trust lands in the future in the Secretary of the Interior, and I ask, Mr. Pierce, if you agree to it, that it should be?

Mr. PIERCE. Do you want a yes or no?

Mr. EDMONDSON. If you can give it yes or no, I'd like to have it.

Mr. PIERCE. Yes. I believe, and I don't see any inconsistency whatsoever.

Mr. EDMONDSON. Mr. Patencio, Mr. Raymond Patencio, do you feel they should be?

Mr. PATENCIO. Yes.

Mr. EDMONDSON. Mr. Siva?

Mr. SIVA. Yes; I agree.

Mr. EDMONDSON. And, Mr. Segundo?

Mr. SEGUNDO. Yes.

Mr. EDMONDSON. And, you want to add something?

Mr. SIMPSON. The only point I wanted to make, Mr. Edmondson, regarding the apparent inconsistency, is to on one hand claim you are competent, and on the other hand claim that you want to have somebody maintain a control and management position. The reason that is basically not inconsistent, and the tribe has taken throughout is that for years they have faced the situation where, in a competitive economy they have been unable to compete.

Now, at the present time, you have land carrying a value, according to the latest figures utilized by the Bureau of approximately 50 million. You have income from it in aggregate amounting to approximately 2 percent of that. The tax rate in Riverside County amounts on real property to approximately 2 percent so if this were all tribal property, tribal land, and you immediately ended the trust, to sell this in the position that the Bureau has, you would face a situation where the first year's rent on the tribal land would be going to the county to pay taxes. This, of course, is mostly allotted land, so some people have more income than others, but the members of the tribe believe that certainly they should retain this advantage until this land has been, or has approached the point where the income generated from it is sufficient to permit the payment of taxes and to also have a reasonable return from the corpus of the trust left over, and for this reason they feel that we have supplied money to the Bureau, that they

would receive appraisal services, would receive other services that would help them at this time to develop this land economically, and this is why they recognize the apparent inconsistency, but don't consider it inconsistent in light of the facts.

Mr. EDMONDSON. That's a long last statement. The gentleman from Utah has a question.

Mr. BURTON. Mr. Simpson, as a competent attorney, did I understand you to tell the committee a few minutes ago that under California State law, there is legally no difference between the power of a "conservator" and "guardian," that legally, there are no differences? That it is just psychological?

Mr. SIMPSON. No. I said unfortunately, some people have treated the two as the same, even members of the judiciary, but that there is a difference. In guardianships, in actual guardianships laws, you have far more rigid requirements than you do in conservatorship situations unless—under the conservatorship you do have a provision called special powers, and you can go and secure these special powers as a conservator if the court approves it. No, there's definitely a marked distinction. If you would put the two powers down and compare them, you would find that the objective might be called similar, but the procedures are not the same. One of them that I would give, for example, is that in the guardianship law, a person may not petition to have a guardian appointed for himself, but in the conservatorship law it starts with the language that any person may petition for the appointment of an individual who believes, subject to the jurisdiction of the court is in need of assistance and you go on to get procedural differences, and then differences in the powers.

Mr. EDMONDSON. Mr. Sigler, do you have any questions?

Mr. SIGLER. Yes, Mr. Chairman, I would like to proceed along that line you were developing through a couple of questions of Mr. Patencio. Mr. Patencio, I understood you to say that you wanted all Indians to be regarded as competent when they reached the age of 21 for the purpose of handling their nontrust property, but you want them to continue in need of a trust relationship with respect to their land. My question is, if the land were in some way freed from tax responsibility so the Indian would not be in danger of losing his land through tax processes, would that affect your judgment, or in another form, would you then think an Indian should have complete control over his land the same as he does over his personal property?

Mr. PATENCIO. Well, if the Indian loses trust, he would have control over his land.

Mr. SIGLER. My question is, Do you think that would be desirable?

Mr. PATENCIO. Would that be desirable at that time?

Mr. SIGLER. If the Indian could be given a tax exemption for his land, would you then recommend that he have full control over his land?

Mr. PATENCIO. Well, I would leave that judgment up to the Secretary of the Interior.

Mr. SIGLER. Well, I'm asking what you think.

Mr. PATENCIO. Personally, my thought?

Mr. SIGLER. Yes.

Mr. PATENCIO. If it involved me?

Mr. SIGLER. Yes.

Mr. PATENCIO. Well, yes; I would have control.

Mr. SIGLER. The reason I'm asking the question is to see how much importance the tax feature is in your thinking about continuation of the trust. I gather from your answer that you think that is one of the primary considerations?

Mr. PATENCIO. That is one of the problems, one of the considerations. That's just one of them.

Mr. SIGLER. The second question I'd like to ask, again for the purpose of completing the record is, if an Indian in your band had an income from a piece of trust property, substantial income many times the amount necessary to pay the taxes, do you think he should pay taxes?

Mr. PATENCIO. As a person, are you asking me?

Mr. SIGLER. I'm asking you for your judgment.

Mr. PATENCIO. That would have to be—that would have to be, I think, if he's in business.

Mr. SIGLER. Pardon?

Mr. PATENCIO. If he's in business, he'd have to pay taxes, naturally.

Mr. SIGLER. What I'm thinking of is, an Indian has leased a tract of land and he's getting \$30,000, \$40,000 income from that lease; do you think he should continue to enjoy tax exemption?

Mr. PATENCIO. I think every Indian should have every right that he can get.

Mr. EDMONDSON. That's a 100-percent American statement.

Mr. SIGLER. Thank you, Mr. Chairman, I have no other questions.

Mr. EDMONDSON. I think you're just like the rest of the Americans on that score.

Mr. BURTON. Mr. Chairman.

Mr. EDMONDSON. Congressman Burton has another question.

Mr. BURTON. Mr. Patencio, if you don't pay any taxes on your trust land, isn't it possible that some of your fellow citizens in this county might think you're taking a tax dodge? You drive on the streets, participate in the water, sewage systems, police protection, and all of the normal services that are supplied by a county and city, and yet on those particular lands that are in trust, there are no taxes. What do you have to say in response to that sort of problem?

Mr. PATENCIO. Well, if you look at the map behind you, you will see the problem that we have. We are all included in one bulk reservation not like other citizens, but now, if I felt this way, and the citizens felt this way, they'd have to cut between these two corners of every section to get out of town.

Mr. SIMPSON. Congressman Burton, may I say something to your question?

Mr. EDMONDSON. Yes.

Mr. SIMPSON. One thing I think that we could add to what Mr. Patencio said is the Indians actually do pay a great deal of taxes, and Mr. Udall, for example, in his speech to the Governor's conference a couple of years ago pointed out statistically that the real property taxes are such a small fraction of the real revenue that local authorities are very shortsighted and constantly trying to end the tax exemption, because the tax exemption can accelerate the development of Indian lands wherever it occurs. The local people derive revenue, they collect the possessor interest taxes from the establishments where you

have improvements. Wherever you have improvements on Indian lands, you have taxes being paid by the Indian lessees. Wherever you have the Indians driving an automobile, he's paying his gasoline taxes, which is one of the main sources of revenue today, or if he smokes cigarettes, or whatever it is.

Really, what we're talking about is something which basically permits two things. One, it gives the Indians something for the years of restriction they have faced, to catch up economically; and two, it certainly acts as an accelerator of economic development on Indian land if it is retained for a while, and the map behind you that Mr. Patencio pointed to, points to the lack of development that you see as Indian land. We'd like to see that filled in like the other sections.

Mr. EDMONDSON. Just one final question. Mr. Chairman, I understand that your holdings in trust have declined from about 32,000 to about 26,000 acres in the last, approximately, 10 years; is that correct?

Mr. PATENCIO. Correct.

Mr. EDMONDSON. Are you concerned about this decline in the total of trust holdings, which would indicate to me that at the rate it's going, within a few more decades there will be no trust holdings and tax exemptions?

Mr. PATENCIO. Yeah.

Mr. EDMONDSON. I see.

Mr. PATENCIO. Well, the allotment program which I explained earlier, it's up to the individual to do as he pleases with his property, and I'd like to see him keep it in trust, personally. I don't know what their needs are, or plans.

Mr. TUNNEY. Mr. Chairman.

Mr. EDMONDSON. Gentleman from California.

Mr. TUNNEY. Does the tribe envision the time when they feel that termination would be appropriate in reference to the statement of Mr. Simpson that the tribe feels that it ought to have an opportunity to economically catch up. Does the tribe envision a time when they will be terminated and will desire termination?

Mr. PATENCIO. I'm pretty sure that this is probably what they want. We want to take our place in society, no matter how long it takes, and we'd like to get down to accomplish that. To answer your question, I believe we are working toward that.

Mr. TUNNEY. Has there been any fee title given to trust land in the last 3 or 4 years?

Mr. PATENCIO. Yes, sir.

Mr. TUNNEY. Do you have any idea, Mr. Simpson, how much land has been disposed of by this method? How much has been taken out of the Federal trust in the last 4 or 5 years?

Mr. SIMPSON. The estimate, to the best of my recollection, that the Indian Bureau gave not long ago is that you have something approaching 5 to 6 percent.

Mr. TUNNEY. Thank you.

Mr. SIMPSON. That's in the past 4 years.

Mr. EDMONDSON. Mr. Patencio, members of the council, I want to compliment you on a very fine presentation. I think you have been very frank with us, and I think you demonstrate the knowledge and understanding of the issues involved here, and we appreciate very much

having you and thank you for your presentation. Thank you, Mr. Simpson.

Mr. SIMPSON. Thank you very much, we're glad to help the committee.

Mr. EDMONDSON. The next witness scheduled here is Mrs. Viola Ortner. Mrs. Ortner, would you come forward, please.

Mrs. ORTNER. I might say, Mr. Edmondson, I met you in Oklahoma a few years ago, and it's delightful to see you again. Mr. Sigler, whom I worked with when I was tribal chairman, I have a lot of respect for, and I'm glad to see you as counsel with the committee.

Mr. EDMONDSON. Would you identify the gentleman with you?

Mrs. ORTNER. My attorney, Mr. Edward Bailey, of Long Beach.

Mr. EDMONDSON. All right, would you proceed, please, Mrs. Ortner.

STATEMENT OF VYOLA ORTNER, MEMBER OF THE AGUA CALIENTE BAND OF MISSION INDIANS; ACCOMPANIED BY EDWARD BAILEY, ATTORNEY, LONG BEACH

Mrs. ORTNER. My name is Mrs. Viola Ortner. I reside at 30524 Oceanaire Drive, Palos Verdes Peninsula. I am a member of the Agua Caliente Band of Mission Indians, at Palm Springs, and am guardian of my two minor children, Benita Joyce Olinger, age 18, and Debra Sue Olinger, age 15.

As a member of this tribe I feel that it is my duty to express my personal views.

Although I have never seen the petition of grievances, I am in full accord with having the conservators, guardians, and all other interested persons investigated. I personally was involved with the Guardians & Conservators Association in its very beginning and served on the constitution and bylaws committee. I did not, however, agree with the voting procedures that were set forth nor with the fact that the assessments were to be made against each estate, even if they did not wish to join the association. I felt this was unfair and therefore left the association.

The Secretary of the Interior, Stewart Udall, in his letter to Congressman Wayne Aspinall, states that the blame lies at the door of some members of the local bar and court. Regarding the court, my only personal conflicts with the local court have been very minor, and I felt then, and I still do, that all the guardianships under the California State law, whether Indian or non-Indian, should be handled alike. In all fairness to the local court, my associations have always been fair and pleasant, and when I was questioned by Mr. Cox of the task force, I stated this position. I personally feel that the blame lies with the Bureau of Indian Affairs.

I feel if inequity and injustice are being practiced, they surely must be corrected. Mr. Udall in his letter further indicated that the situation present in Palm Springs had flourished under Federal supervision. Where does the blame really lay?

The Bureau of Indian Affairs has time after time unofficially approved court petitions knowing well in advance of the court hearing date, and could have protested it if they felt the Indians were being treated unfairly or were being taken advantage of, but no, they always

chose to look the other way until it was too late, then all of a sudden comes this big investigation. It happens time after time, only this time it was conducted in a most disgraceful manner by the Bureau of Indian Affairs officials.

People, Indian, and non-Indian alike, have been unfairly accused publicly and without a chance to present any explanation or reason for action which they may have taken. The Bureau should know that nothing is resolved by making someone else look back in an attempt to hide the egg on your own face.

The Bureau long ago should have seen to it that the Indians were protected by a personal interview with them as to their desires as to choice of guardian or conservator, or whether they were happy with the conduct of their affairs by their guardians or conservators instead of approving the actions of the guardians and conservators without asking the Indian his opinion. It seems everyone controls the Indians' holdings except the Indians. It's time the Indians in Palm Springs controlled themselves.

The Bureau of Indian Affairs does not represent the best interests of the Indians any longer, nor does the tribal council. The tribal council does not even conduct tribal elections legally, as members who did not receive their ballot in the last election can confirm. The tribal council does not keep the members informed of its actions by holding tribal meetings, as was the procedure in the past, and when such meetings were held, improper notice or no notice was given.

For instance, a notification sent out 1 day before the meeting that members should come to make an important decision on the Tunney bill amendment was definitely in violation of the constitution and bylaws of the tribe, which clearly states that a 5-day notice should be given, and I must say that I wonder what the Tunney bill is, let alone an amendment to it.

The tribal council holds its tribal meetings, passes its resolutions, then off to Washington to represent to the Bureau officials and congressional Members that this is the true position of the Agua Caliente Band of Mission Indians when the members know nothing of the resolution or what it contains.

On this particular occasion, even the tribal attorney admitted that it was not fair and the resolution did not represent the true tribal position. The tribal council minutes contain no real information on the rare occasions when they are mailed to members of the tribe. The tribal council refuses any opinion's advice, or recommendations offered by any tribal members who, because they are not on the tribal council, are referred to as "the sour grapes minority."

The tribal council refuses to assume its responsibility of the management of the cemeteries and a \$50,000 tribal building that is deteriorating because of the council's inaction.

Gentlemen, it is time for all concerned with this reservation to face squarely the solution to these problems. You can have all the misrepresentations by the tribe you wish, and you can have all the investigations by a task force and reports you want, and all the congressional hearings and legislation, and more legislation, but you will never solve the problems until you have a good and workable termination program. This reservation, unlike other reservations in

the United States, is ready to be terminated and ready to be released from Federal control.

In 1938 at a hearing before the Indian subcommittee in this very village, the Indians asked to be freed from Federal supervision. In 1954 we testified before Congress that we could be ready for termination in 10 years. We are ready now.

Only a small operation is necessary to manage our tribal holdings, which are the Spa, two cemeteries, five canyons and our tribal building, since all the remaining lands are allotted.

Only through a termination program that is constructive and free of Bureau restrictions will the Indian be allowed to exercise his intelligence in the business and economic world, and allow him to assume his responsibility in the community and his country.

One of the tribal members, Mr. Larry Pierce, whose intelligence and ability was recognized and commented upon by his commanding officer while he was in the service and applied for his fee patent, and who has finished 2 years of college, says we cannot be terminated because we are not educated. Yet, because of his very background he, as a man, should be more willing to assume his responsibility in the community instead of trying to selfishly find a property tax shelter.

Only through termination will you free the Indian from his guardians, conservators, council, business managers, and attorneys, who invest Indians' money at a low or no return or without security, or deal with the Indians' properties to their own self-interest.

Only through termination will you allow the Indian to seek the counsel of business managers and attorneys who are ethical, trustworthy, and working to the best interest of clients, because only through termination will the Indian be able to make the choices that he feels are to his best interest.

Although I am aware that this committee is not a termination committee, I certainly hope that you realize that termination is the only solution to the problem you are investigating. If and when a termination committee is organized, I would be more than happy to travel wherever the hearings may be held at my expense so that I may give my ideas and recommendations for a successful termination program. Thank you.

Mr. EDMONDSON. Thank you, Mrs. Ortner. I have a couple of questions here. I'm sure the other members will have some questions, also. I compliment you upon your frankness in stating your views.

Mrs. ORTNER. Thank you.

Mr. EDMONDSON. One question I would like to ask you is, whether you have read the letter from Mr. Udall to Mr. Aspinall which is the subject of your comment on page 1 of your statement?

Mrs. ORTNER. Yes.

Mr. EDMONDSON. You have read it.

Mrs. ORTNER. Yes.

Mr. EDMONDSON. And, did you say that in that letter the Secretary of the Interior stated that the blame lies at the doors of some members of the local bar and court?

Mrs. ORTNER. Yes.

Mr. EDMONDSON. You think that's a fair statement of Mr. Udall's statement on that subject?

Mrs. ORTNER. I can't say whether I think it's fair, but he made the

statement such as he did in his letter. I feel this way, that the investigation that was conducted should have been with more conference with the people that were involved and the accused, and I don't think that it's fair to blame the local bar or the attorneys without having some conference with them before you publish in the papers that all the things they are doing are wrong.

Mr. EDMONDSON. Let me read to you two quotes from the letter to Mr. Aspinall which I have here, dated April 2, 1968, the transmittal letter for the report, I assume you are talking about?

Mrs. ORTNER. That's the one.

Mr. EDMONDSON. "In all frankness I must say that I am appalled that the state of affairs described in the report has not only existed under ostensible State and Federal supervision; it has flourished." Now, that's the first statement. Let me read the second one to you. "The task force also found that a share of the responsibility for the present state of affairs in Palm Springs rests upon the shoulders of this Department."

Mrs. ORTNER. Yes.

Mr. EDMONDSON. Would you say that Mr. Udall put a share of the blame for this situation here upon his own department, the Bureau of Indian Affairs itself, in this letter?

Mr. ORTNER. Yes, it did, definitely, which I think is justifiable.

Mr. EDMONDSON. But, don't you think that it's a little bit out of place then for you to state in your statement that he puts the blame on the door of members of the local bar and the court?

Mrs. ORTNER. Maybe I should have said in my statement that he put a share of the blame on his own department.

Mr. EDMONDSON. I think he was pretty emphatic in his letter in saying that he's appalled by the Federal supervision situation and that he feels a share of the blame lies on the Department.

Mrs. ORTNER. True.

Mr. EDMONDSON. I'm not quarreling with your statement about his attribution of blame to the bar and the court, because he's emphatic about that, too, but I think he also recognizes in this letter that his department must share the blame.

Mrs. ORTNER. This is true.

Mr. EDMONDSON. It is stated pretty emphatically in his letter.

Mrs. ORTNER. Yes.

Mr. EDMONDSON. You made a reference a little bit ago to a tribal election that was not conducted legally. What tribal election was that?

Mrs. ORTNER. According to our constitution and bylaws, all the adult members are to receive an election ballot. It's been the procedure in the last few years, I don't recall, two or three, to send them out as if they were absentee ballots, and all the balloting is to be done by mail. To my knowledge, speaking with Mrs. Miguel, she and her brother and one other member of the tribe never did receive the registered letter or even a notification that the balloting was being held, or tried to be delivered by the post office.

Mr. EDMONDSON. What election was this?

Mrs. ORTNER. The annual tribal election where you elect your tribal council for the coming year, or certain members, for a certain period of years.

Mr. EDMONDSON. Who was the lady who did not receive her ballot?

Mrs. ORTNER. Mrs. Eileen Miguel. She is a former chairman of the tribal council.

Mr. EDMONDSON. Do you know any others by name who did not receive their ballot?

Mrs. ORTNER. Her brother, Robert Saubel did not receive one and I cannot recall the name of the third person who did not receive it—well, her husband, Richard Miguel was another one that did not receive it.

Mr. EDMONDSON. You have heard from them personally that they did not receive ballots?

Mrs. ORTNER. Yes, I did.

Mr. EDMONDSON. Did you receive a ballot?

Mrs. ORTNER. Yes, I did.

Mr. EDMONDSON. Your family, to your knowledge, received a ballot?

Mrs. ORTNER. Yes.

Mr. EDMONDSON. Who were the candidates in this election? Do you recall?

Mrs. ORTNER. The tribal chairman, Mr. Patencio.

Mr. EDMONDSON. Mr. Patencio?

Mrs. ORTNER. Yes; the present chairman, Mr. Patencio.

Mr. EDMONDSON. Was he chairman at the time the election was conducted?

Mrs. ORTNER. No, no; Mrs. Dora Joyce Prieto is the past chairman, and Mr. Patencio took her place in the last tribal election, in addition to two members that were elected, the two members that are present on the tribal council now.

Mr. EDMONDSON. Mr. Patencio was not on the council at the time?

Mrs. ORTNER. He was on the council as a member. He was not on the council in the present capacity as chairman.

Mr. EDMONDSON. You say this happened for the last two or three elections?

Mrs. ORTNER. No; this happened just in our last election in the month of March.

Mr. EDMONDSON. Just in the March election?—

Mrs. ORTNER. Yes.

Mr. EDMONDSON. That this happened?

Mrs. ORTNER. Yes.

Mr. EDMONDSON. Do you know how many members of the present council were on the council prior to the March election?

Mrs. ORTNER. I presume that it was four.

Mr. EDMONDSON. Were the four in control of your election machinery? Are they the ones that had the election?

Mrs. ORTNER. I don't know who is in control.

Mr. EDMONDSON. Who sent out the ballots?

Mrs. ORTNER. The Bureau of Indian Affairs types the ballots up and sends them out with the—registered mail.

Mr. EDMONDSON. The Bureau of Indian Affairs has the responsibility for sending them to all members of the tribe?

Mrs. ORTNER. Yes, sir; that's true.

Mr. EDMONDSON. So, your feeling is then, that the Bureau of Indian Affairs failed to send ballots to the Indians, rather than the tribal council which your statement says?

Mrs. ORTNER. I think it is the responsibility of the tribal council to see that every member receives a ballot, and when there is notification that their ballot has not come back, they certainly have the responsibility to the people they represent to investigate why they have not received their ballot.

Mr. EDMONDSON. Do you think a complaint was made to the council about a failure to receive ballots?

Mrs. ORTNER. I know that Mrs. Miguel made a complaint because I read about it in the paper. Now, whether she talked individually to tribal council members about her not receiving her ballot, I do not know.

Mr. EDMONDSON. Do you know what the total vote was that was cast on that election?

Mrs. ORTNER. No, no; I don't.

Mr. EDMONDSON. Do you know whether it was substantially below the total of 47?

Mrs. ORTNER. I don't have any idea because I didn't see the election returns. I read about them, and it would be very simple to ask the chairman.

Mr. EDMONDSON. Yes; we will get to that before we finish here. You have ideas of the tax exemption on the property of your tribe?

Mrs. ORTNER. I have different ideas. I do feel that the land that is producing income and can responsibly pay taxes, should do it. I feel that a program should be set up to protect the older members of the tribe. I feel that there should be some type of protection for maybe the minor whose land has not been developed. I definitely feel that the Agua Caliente Band of Mission Indians should be terminated from all Federal control; a termination program can be fair to everyone would—

Mr. EDMONDSON. You say that land that is producing income should be free from tax exemption, but the other land, until it is productive should be continued in a trust status?

Mrs. ORTNER. They could be for a certain period of time. It wouldn't be wise, naturally, to flood the whole market with all of the Indian land at once.

Mr. EDMONDSON. Do you know what percentage of that land presently is income producing?

Mrs. ORTNER. No, I don't; no. Mr. Simpson would have—

Mr. EDMONDSON. You're proposing tax exemption for 50 percent of the land, or 5 percent of the land, or 2 percent of the land?

Mrs. ORTNER. I don't have any idea. I'd say it would be closer to 25 percent. Mr. Simpson would have the exact figures, I'm sure, of the Bureau of how much land it is, but I do not know personally.

Mr. SIMPSON. Five.

Mr. EDMONDSON. Five percent of the land is producing income according to Mr. Simpson. So, what you really are proposing is termination of the 5 percent of land that is income producing, if that figure is accurate and continuation of supervision and tax exemption for the 95 percent that is not income producing; is that right?

Mrs. ORTNER. For a period of time.

Mr. EDMONDSON. How long?

Mrs. ORTNER. I don't rightly know now, because I have not thought that out too clearly, but I do feel that it has to be terminated. You have

so many restrictions, Bureau restrictions, and it takes so long to secure approval of your lease. I think this is of interest to the Indian to get the best economic return you can. Many times you lose a lessee while you are waiting for all of this Bureau approval.

Mr. EDMONDSON. I have a document here, Bureau of Indian Affairs, September 7, 1967, that states that there are presently in effect 56 long-term leases affecting 1,298.97 acres; and that 59 Indian landowners are participating in the above lease income; that there are also 76 commercial subleases, 422 residential leases, and 123 residential subleases, for a total 545 residential leases and subleases; revocable permits and short-term leases in effect, 29 covering 160.19 acres; so it would appear that of the 26,000 acres, approximately 1,300 acres were income producing according to this document. Does that sound about right to you, Mrs. Ortner?

Mrs. ORTNER. I don't have the figures other than what you give me, but this sounds percentagewise right, I would say.

Mr. EDMONDSON. Do you have any information as to the educational level of your tribe?

Mrs. ORTNER. No; I do not. I do know my son spent some time in college. I have a daughter graduating from high school that's going on.

Mr. EDMONDSON. You don't have any children over 21, do you, Mrs. Ortner?

Mrs. ORTNER. I don't know, do I? I have a son in——

Mr. EDMONDSON. You don't have to tell us——

Mrs. ORTNER. I never tell my weight, but I'm always willing to tell my age. I'm 47, but I feel that this termination—I feel—now, I never graduated from high school, but I certainly did not feel that I am an uneducated person. The school of experience has taught me many things which a college degree could never teach me, which I appreciate and I value. I think that all my children should have an opportunity to be educated and should not have to face, upon age 21, a conservator.

Mr. EDMONDSON. Have you applied for your own property to be freed from——

Mrs. ORTNER. Yes; I have applied. I sold my 40 acres out of my 47-acre allotment. I still have land in trust, a 2 acre and a 5 acre.

Mr. EDMONDSON. Have you applied for the——

Mrs. ORTNER. No; I have not. Being selfish, I thought, "Well, if they bring in a termination program, I'd just as soon enjoy this," but my property, I will say—I won't lose anything by being terminated from Federal supervision. I will be able to retain my property.

Mr. EDMONDSON. So, you don't find that it is such a hindrance that you'd be willing to dispense with it?

Mrs. ORTNER. Definitely.

Mr. EDMONDSON. You do or do not?

Mrs. ORTNER. I do feel that I would be able to dispense with it, with the nontaxing. I think I can pay the taxes.

Mr. EDMONDSON. So far, you have not decided it was a wise thing to do. I think you said, being selfish, you were not going to do it unless there was——

Mrs. ORTNER. Yes; this I did state, but I have also felt that termination is an inevitable program for this reservation.

Mr. EDMONDSON. It's available, really to a particular individual who is able to prove his competency, isn't it?

Mrs. ORTNER. Certainly.

Mr. EDMONDSON. So, you could accomplish it with an application, couldn't you?

Mrs. ORTNER. I most certainly could, but as I said myself, selfishness has prevented me from taking advantage of it, because actually, I receive my monthly income, which is very good, and you're putting a little nest egg away so that when you do have your taxing, then you're able to meet it.

Mr. EDMONDSON. The point I'm making is, in your instance, assuming that you are competent—and you appear to be highly competent to me—there is no roadblock to your having termination, is there?

Mr. ORTNER. No; but there is no hardship for me being in the position I'm in now, either.

Mr. EDMONDSON. Do you gentlemen have anything?

Mr. BURTON. I'd like to go back to this election. You say there were four members of the present council who were elected in March?

Mrs. ORTNER. Yes.

Mr. BURTON. Were there—

Mrs. ORTNER. No, no, no. There was the chairman who was elected on uneven years for 2 years, I guess it is, or the even years for a 2-year period, and then our tribal members are elected on a yearly basis, so it would be 3.

Mr. BURTON. Did the candidates that were running in March have opposition?

Mrs. ORTNER. Not that I know of; no.

Mr. BURTON. In other words, it was just their names on the ballot?

Mrs. ORTNER. Yes.

Mr. BURTON. So, what difference did the two or three ballots make?

Mrs. ORTNER. Well, I would be very indignant if I never received my ballot for a primary that I'm voting in next Tuesday, or if I didn't receive my ballot for a presidential election, and I think it's only fair when you pass 21 that you are to get your election ballot, that you should receive it.

Mr. BURTON. I certainly agree with that, and I can't understand why this lady did not phone up the Bureau and say, "Where's my ballot? I want to vote."

Mrs. ORTNER. I cannot answer for Mrs. Miguel. She will have to answer for that herself. All I know is that she spoke to me about it, and the unfairness about it.

Mr. BURTON. It's my understanding, Mrs. Ortner, that in reading this report and information we have here, that the tribal council meets twice a month. Is that your understanding?

Mrs. ORTNER. Yes.

Mr. BURTON. And, to your knowledge, have these meetings been open to the public? Are they open to the public?

Mrs. ORTNER. They are open to any member, any tribal member, not to the general public.

Mr. BURTON. They are open to any member?

Mrs. ORTNER. That's right.

Mr. BURTON. It's my understanding that tape recordings are kept

of all the hearings, and that these are available for any tribal member; is that your understanding?

Mrs. ORTNER. I have attended these tribal meetings, these tribal council meetings where the tapes are used, but also the tribal council has the responsibility to send out minutes since the contract, Mr. Simpson's contract says the quarterly payments are predicated upon how many meetings he has attended. The only way the Bureau can see how many times Mr. Simpson has been in attendance is by the tribal council minutes. He has not been coming out, they have been on the tape lots of times. Last year, I would say maybe we had a good five tribal minutes that were sent out to the members of the tribe, and when you do not have tribal meetings, full tribal meetings, the tribal members cannot be informed of what's going on, so you may have tapes but unless they are transcribed, what good are they? Are you all going to come from many miles away? My sister lives near San Francisco and this is ridiculous, she can't. The tribal council has the responsibility to the members to get them out.

Mr. BURTON. My point, in that line of questioning, is that I wanted to discern for myself whether the information was available, as necessary, and if it was possible for a tribal member to attend a meeting and see the business transacted. Apparently, that isn't so in your case.

Mrs. ORTNER. You can attend the meeting, but it was my experience that when you would go, and you would ask questions, they would sit there like a bunch of wooden Indians and say nothing to you when you talked, and I resent not being looked squarely in the eye if I have something to say and you have a rebuttal, or you have an explanation. Please look at me in the face and tell me, don't just sit there, and then when you adjourn the meeting say, "Whew, what a bag that is." You just don't do that. It isn't good business and it isn't fair, so they just sit there and if anything important comes up and you want an answer at that time, what do they do? Well, "We'll defer to the next meeting," so you get tired of hearing everything deferred to next meeting and you don't come, but you can attend, this, I grant.

Mr. BURTON. Thank you.

Mr. EDMONDSON. Mrs. Ortner, how many meetings have you attended since March?

Mrs. ORTNER. I have attended none.

Mr. TUNNEY. Mr. Chairman?

Mr. EDMONDSON. Congressman Tunney.

Mr. TUNNEY. You made a comment, Mrs. Ortner, in your statement on page 5 that "Only through termination will you free the Indian from those guardians, conservators, council, business managers, and attorneys who invest Indians' money at a low or no return or without security, or deal with the Indians' properties to their own self-interest." Then, in answer to a series of questions, from Mr. Edmundson, the chairman, you indicated that you saw a difference between developed land and undeveloped land as far as termination was concerned; is that right? As I understand your responses, you said you felt that with land that was developed and income producing you could have termination immediately; where it is undeveloped and nonproducing, that the termination should proceed over a period of time; is that correct? Is that my understanding of this?

Mrs. ORTNER. The last part of your question was?

Mr. TUNNEY. The last part of the statement of my understanding was, when the land was undeveloped and not income producing, that the termination should take place over a longer period of time?

Mrs. ORTNER. Yes, yes. Now, I have not worked this out on paper, which I would like an opportunity to do before comment, but there should be a given period of time, but I don't think it should be an unreasonable length of time.

Mr. TUNNEY. What percentage of the land that you now hold in trust is developed?

Mrs. ORTNER. I retain my original allotment of 7 acres, and it is developed.

Mr. TUNNEY. All of it is developed?

Mrs. ORTNER. Yes.

Mr. TUNNEY. Did you have a conservator at any time?

Mrs. ORTNER. No.

Mr. TUNNEY. Never had a conservator?

Mrs. ORTNER. No.

Mr. TUNNEY. Do you feel that there is any connection between the development of your land and the fact that you did not have a conservator?

Mrs. ORTNER. No.

Mr. TUNNEY. How did you get your land developed?

Mrs. ORTNER. Through leases, and I was very fortunate. On my 5-acre parcel I had a man approach me by the name of Mr. Harry Pitts who had a lot of integrity, and he leased my 5 acres originally on just a 5-year lease, and this is where my development of my 5 acres, I mean, my 2-acre parcel started. You can't do this with just everyone on such a short-term lease, but he is a very astute businessman and I thought an awful lot of him and that's how I got my start on the 2-acre parcel. My parents had developed some of this land with cottages prior to this business with Mr. Pitts.

Mr. TUNNEY. Had you had a conservator would you have been able to develop your land in the same way?

Mrs. ORTNER. I couldn't answer that.

Mr. TUNNEY. Would you feel that it would be fair that if you owned the only undeveloped land and it was in trust, would you feel that it would be fair to you to have the trust status terminated, if you had no other income?

Mrs. ORTNER. Me, personally?

Mr. TUNNEY. Yes.

Mrs. ORTNER. Yes; I think it could be terminated. I think I have the intelligence to seek out people who would develop the land. I could work. It may take me a little while to get going, but I'm sure it could be done.

Mr. TUNNEY. Even though you had no income-producing lands, you feel you should still be terminated?

Mrs. ORTNER. If I had no income, and it was terminated, I certainly would have to have something, a lease or something that was tangible that I could pay the taxes on when it was terminated.

Mr. TUNNEY. That's the point I'm trying to—I am making.

Mrs. ORTNER. Yes.

Mr. TUNNEY. In other words, if an Indian has only undeveloped lands then termination would act to his detriment, would it not, because

it probably would go to the country for taxes; is that not correct? Unless he has other sources of income.

Mrs. ORTNER. I would have to be like a lawyer, and say, "Well, the answer is yes and no," and then ask to explain. I feel you have two avenues of thought, one is—

Mr. TUNNEY. I certainly don't think that anyone can disagree with your statement that land which is developed and which is income-producing, produces a substantial income, that that person should have to assume his responsibility the same as any other citizen of the country, pay taxes, et cetera, but here we are dealing with land 95 percent of which is undeveloped, and I think you recognize that this does present a special situation, because you indicated that the termination should take place over a long period of time.

Mrs. ORTNER. That's correct.

Mr. TUNNEY. Now, you mentioned also in the statement that as far as the Tunney bill was concerned, on page 3, "I wonder what the Tunney bill is, let alone an amendment to it." Have you had an opportunity to see the Tunney bill?

Mrs. ORTNER. No; I've never been sent a copy of the Tunney bill.

Mr. TUNNEY. Did you ever ask for a copy?

Mrs. ORTNER. I did not ask for a copy because I really never knew anything about the Tunney bill, to be quite frank about it.

Mr. TUNNEY. When did you learn about it for the first time?

Mrs. ORTNER. I called Mr. Simpson's office for an appointment that we had set up. His office called and stated that he could not keep a luncheon date because he was in Washington on the Tunney bill, and I called Mrs. Prieto, who was the chairman, and I says, "What in the world is the Tunney bill," and so she said that she did not see the resolution, that the tribal council had passed regarding the Tunney bill, and said she did not know what was in it. I called Congressman Haley in Washington, D.C., and asked him what the tribal attorney and the tribal members that were there doing, and what was the resolution, and he said that they had not conferred with him in regard to what their business was, other than the fact that they stated they were meeting with the Secretary of the Interior, so I sent him a telegram to the Secretary of the Interior and he, in turn, referred it to someone in the Indian Commission's Office for answer, stating that the tribal council has had an—has acted on the resolution pertaining to the tribal council and not the tribe, but I have not, to this day, do I have the Tunney bill.

Mr. TUNNEY. Did you write to me and ask for a copy of this?

Mrs. ORTNER. No; I have not.

Mr. TUNNEY. I introduced the bill in October of 1967, October 16, 1967, and I have sent a number of copies to various individuals who have written to me asking for it, and I would have been happy, of course, to have sent you one or send your attorney one. I understand your attorney is standing there with you, alongside you, for his interpretation, and will be happy to make a copy available to you now. I would be happy to give you a copy of the original bill, or the second bill, or a copy of the administration's bill.

Mrs. ORTNER. We'd like to say, Mr. Tunney, in all fairness to myself, that had I known about the Tunney bill, I would have been more than delighted to have corresponded with you among other

Congressmen in Palos Verdes to request a copy of it, as I have done in the past, but I knew nothing about it until March.

Mr. TUNNEY. That's all I have; thank you.

Mr. EDMONDSON. I'd just like to come back to one further point and that has to do with the election, and your very strong language about the tribal council not conducting tribal elections legally. Is the tribal council prohibited from running for reelection, being reelected?

Mrs. ORTNER. No.

Mr. EDMONDSON. So, the tribal council can be reelected indefinitely, if they are able to get the votes?

Mrs. ORTNER. Oh, surely, surely.

Mr. EDMONDSON. Well, under the circumstances, don't you think that it's probably a fairer situation to have the tribal council not be responsible for mailing out the ballots and seeing who gets the ballots and so on, and having it conducted by the Bureau of Indian Affairs which has the official records of tribal members, rather than having the tribal council be the responsible agency in charge of mailing out the ballots?

Mrs. ORTNER. I don't care who mails them out. That isn't my point. My point is the fact that they should see, they have the responsibility to see that every member receives a ballot, and your ballots are mailed out in plenty of time in advance and the return receipt is requested and mailed back to the office, so it isn't a matter of not knowing who has received a ballot and who has not.

Mr. EDMONDSON. Some of these council members were candidates, from what you told me. Do you think a candidate for office has the responsibility to see that every voter in his constituency receives a ballot?

Mrs. ORTNER. I feel that with the small membership that we have; what is it? Forty-seven adult members. I don't think it's any pain or strain of this local tribal council to see that every member has a ballot.

Mr. EDMONDSON. Unless you called them up and asked about it, how would they know that you have not received a ballot?

Mrs. ORTNER. Before they'd even transported them and—that's not my quarrel. My quarrel is that the tribal council—

Mr. EDMONDSON. You charge that the tribal council illegally conducted an election, and I think your language is pretty strong without documentation here, and particularly since the evidence that I think has been received is that the Bureau of Indian Affairs sends out the ballots and not the tribal council. Now, to charge them with an illegal conduct of an election is pretty strong language, I'd say. It comes about on the same level with your charge about the Secretary of the Interior blaming everything on the courts and not recognizing his own Department is at fault in this.

Mrs. ORTNER. I possibly misread what I said here, but I do feel that the responsibility to see that everybody receives a ballot lies with the tribal council.

Mr. EDMONDSON. Do you think the tribal council should have to determine that every person has received a ballot?

Mrs. ORTNER. Yes; every adult member, I think they should. It's been done in the past, and it should be continued, as such. Whether

that individual exercises his right to vote is his prerogative, but every member should receive a ballot.

Mr. EDMONDSON. You don't think it is possible that some individual might have had a miscarriage of his mail, or might even have thrown the mail out with the bills that he didn't want to pay, and that there might have been a mistake on the part of some individual, rather than the tribal council committing an illegal act?

Mrs. ORTNER. I have known Mrs. Miguel for many years and she's a woman of integrity, and I respect her highly.

Mr. EDMONDSON. You do not think it is possible that she might have accidentally misplaced her ballot?

Mrs. ORTNER. No, I do not. I have no feeling of that whatsoever. If she says she didn't receive a ballot, she did not receive a ballot.

Mr. EDMONDSON. If there are no more questions?

Mr. TUNNEY. No, Mr. Chairman.

Mr. BURTON. No further questions.

Mr. EDMONDSON. Thank you. Our next witness is Mr. James Hollowell.

Mr. HOLLOWELL. May I defer to some people who have shorter testimony?

Mr. EDMONDSON. You would like to be heard this afternoon?

Mr. HOLLOWELL. Yes, sir. Some of the testimony is short, and some of these people would like to go home.

Mr. EDMONDSON. I think that's a reasonable request. We would be very happy to.

Mr. HOLLOWELL. Thank you.

Mr. EDMONDSON. Mr. August Kettmann.

STATEMENT OF AUGUST G. KETTMANN, ACTING POSTMASTER, PALM SPRINGS, CALIF.

Mr. KETTMAN. Mr. Chairman, members of your committee, tribal council, and guests, my name is August G. Kettmann. I am presently the acting postmaster in Palm Springs, and for purposes of identification, I want to state that I served as chief of police in Palm Springs from April 1945 to June 1964, with a year out in 1953, and as a conservator from June 1965 to date.

With this background, I've had some considerable acquaintance with the Agua Caliente Band of Mission Indians and their circumstances for the last 23 years.

The majority of the variously estimated 50 members in 1945 lived on the westerly half of section 14, a 640-acre square of land bordered on the west by Indian Avenue, north by Alejo Road, and on the south by Ramon Road. This section is centrally located and abuts on 1 mile of choice business frontage. It is probably the most valuable square mile in Palm Springs.

My purpose here today is to provide some historical information. On the Indian Avenue frontage, in 1945, there were one-story frame, or frame and stucco cottages, small businesses, and low-cost motels and rentals. Within 100 feet, a slum condition existed, with several hundred persons, including the Indian landlords, occupying substandard dwellings, shacks made of sheetmetal, tin, and cardboard. There were

no paved streets and, in some cases, lanes were rambling, dusty, and unnamed, and undedicated.

Indigent occupancy was commonplace and the area served as a refuge for drunks, vagrants, prostitutes, and floating crap games. It constituted a serious criminal problem for the community. In 1950, a study revealed that 48 percent of the arrests and criminal complaints occurred on one-quarter of section 14, although it represented only one-thirtieth of the incorporated area of the city. Purse snatching and assaults on women were commonplace after dark.

Until 1953, Federal law forbade the possession or consumption of alcohol by Indians. City police carried U.S. Indian officer commissions in order to deal with situations involving Indians. Manipulating tenants and other connivers often supplied their Indian landlords with liquor in lieu of rent or to accomplish some short-term leases. Because of the fear of apprehension, Indians drank excessive amounts of liquor to escape possession charges, only to collapse on the street and be taken into custody as drunks. Drunken fights, clubbings, knifings, shootings, and homicides grew out of this intolerable state of affairs.

After Congress lifted the drinking ban, the alcoholic problem with the Indian residents eased. The compulsion to immediately consume any liquor that came into their possession had been removed. They became relatively tranquil, and excesses were less frequent.

A few Indian families had limited income from 30-day permits and low-cost rentals, \$10, \$15, \$30, and up to \$50 per month. These were the Welmasses, the Hatchitts, St. Maries, the Segundos, Arenases, and the Patencios. You could almost count them on the fingers of one hand. The others were truly impoverished and deprived. They were on welfare and derived some income from admissions paid by visitors to the canyons and patrons of the bathhouses and mineral springs. This was distributed by the Indian Agency to tribal members.

The majority lived on section 14, while a few resided on South Palm Canyon Drive where they operated a low-cost trailer park. The tribe owned the same 25,000 to 30,000 acres it owns today. Its members, however, were uneducated and, with few exceptions, lacked leadership and management knowledge. Conditions on section 14 were chaotic and sanitation was nonexistent. In this slum section, venereal rates were high, and the Agua Calientes were truly an impoverished and deprived people.

About 1956, this blighted area and the plight of its owners and other occupants became a matter of community concern. The Indian Bureau urged the court to take notice of the situation. In 1956, the superior court, presided over by Judge Hilton McCabe, activated the conservatorship program. Examination disclosed that 25-year leases authorized in 1955 were proving useless, since they were found to be unbankable. In 1959, long-term, 99-year leases were sought and approved by the Congress.

The superior court appointed financial institutions, leading realtors, attorneys, and merchants, management firms, and businessmen to serve as conservators and guardians. These men have not limited their interest to financial matters. Frequently, they have had to assume responsibility in family matters and other difficulties that their wards were confronted with. In some cases, serious illness, judgmental deficiencies, and felony crimes complicated the problem of the guardian or con-

servator. In spite of the difficulties, dedicated conservators with the help of an interested court, within a decade, brought order out of chaos.

Cooperation between the city of Palm Springs, the Bureau of Indian Affairs, and the conservators gradually wiped out the slum by removal of scores and scores of shacks and other unsanitary makeshifts that blighted section 14 and discouraged potential developers. This started around 1960.

By 1961, the crime rate for the same section dropped from 48 to 12 percent.

At the same time, profitable leases were being negotiated, as evidenced by such developments as the Spa Hotel, the Villa Apartments, the Springs Apartments, Canyon Country Club, Canyon View Estates, the Pitts Indian Avenue development, Palm Ramon, and others.

Prior to 1960, yearly tribal income was a few thousand dollars. Today, it exceeds \$1 million. The Agua Caliente Indians have been lifted from their economic bondage. And, the exciting part of it is that their tremendous resources have hardly been touched. Their future is a happy prospect indeed.

Since 1965, I have had the pleasure of acting as conservator for Ray Leonard Patencio, the scion of one of our best-known Agua Caliente families. He is 21, married to a high school graduate classmate, and the father of two children. Recently, he moved his family into an attractive \$40,000 home in one of our best neighborhoods. Next week Ray will be graduated with an associate of arts degree from the College of the Desert.

Ray is only one of numerous young American Indians of the Agua Calientes whose educational, economic, cultural, and financial status has been skyrocketed from relative poverty during the past decade. He enjoys a tax-free income in excess of \$30,000 per year, and that will soon rise to \$50,000 per year.

In my opinion, the conservatorship program has accomplished a miracle. Like most conservators and guardians, I am proud of the gains that have been made and trust that this legacy, with its bright promise, is not shattered by premature conclusion.

Thank you for the opportunity to recite my experience.

Mr. BURTON. Thank you for a very fine statement, Mr. Kettmann. You say you're postmaster now?

Mr. KETTMANN. I'm the acting postmaster.

Mr. BURTON. Did you have anything to do with Mrs. Miguel's missing ballot?

Mr. KETTMANN. It's pretty hard for me to answer that question.

Mr. BURTON. No questions, Mr. Chairman.

Mr. TUNNEY. I have a few questions. Mr. Kettmann, did you have an opportunity to read the report of investigation which was conducted by a group from the Department of the Interior, that was transmitted by the secretary of the Palm Springs task force?

Mr. KETTMANN. I had an opportunity to view the investigation, and the audit of the Ray Leonard Patencio holdings only, and I'm familiar with that, with which I'm directly concerned. I haven't seen the total report.

Mr. TUNNEY. So, when you make a statement, and I guess it is on page 4 in your prepared statement, that "In my opinion, the program

has accomplished a miracle," are you referring to the general program or are you referring to that portion of the program which relates to Ray Leonard Patencio?

Mr. KETTMANN. I'm speaking in general terms from my long, 23-year knowledge of the chaotic conditions that existed to the relatively happy conditions that exist today, for a majority of the Tribe.

Mr. TUNNEY. In the report of the investigation, it is my understanding that Mr. Patencio had land which you, acting as conservator, leased to a Mr. Fey; is that correct?

Mr. KETTMANN. That's one of the holdings that he owns, yes.

Mr. TUNNEY. And, there is a charge made in the report of the investigation that the attorney who was handling the estate for you, was charging the estate for legal services for subleases, and at the same time, was charging Mr. Fey a fee for services performed on the same transaction. Are you familiar with that?

Mr. KETTMANN. I'm familiar with this—

Mr. TUNNEY. Charge?

Mr. KETTMANN (continuing). Belief. I am not aware that there was a duplication of charges by Mr. Hollowell to the estate and also to Mr. Fey. I know that he had represented Mr. Fey, and I had no feeling at any time that he was double charging.

Mr. TUNNEY. In other words, you were not aware of the fact that any fees may be charged to anyone other than to your ward?

Mr. KETTMANN. I don't believe that there is any—not to my knowledge, was there any double charging.

Mr. TUNNEY. At any time, did you feel that it was important that you have the power to be able to lease land without going to court to get a court order?

Mr. KETTMANN. As I look back, I took over in June 1965, and almost immediately thereafter, the conservatorship program was under attack, and because I was so new to the program and because I didn't want to assume responsibility for something that I was not thoroughly familiar with, I did not seek those powers, because of this apparent ongoing attack, and so that I wouldn't be subject to criticism, and also because I wanted to protect my ward.

Mr. TUNNEY. Would you just tell the committee briefly, what services you performed for your ward?

Mr. KETTMANN. Very briefly, my responsibility has to do with ascertaining that the rentals are paid on time, on the various leases of Patencio properties, of providing my ward with the agreed-upon monthly checks for his living, to assist him in making purchases of a substantial nature such as automobiles and things that would cost several hundred dollars, of recently bringing out a foreclosure notice on the Springs Hotel property which brought about the sale of the property and removed its ownership from a man whose assets were not as substantial as Mr. Hollister who acts for half of the property and I felt they should be. The sale was consummated by the previous owner and we now have a very able owner who has made substantial improvements and thereby secured the great value that the lease has on this particular instance. I have worked with Mr. Patencio and I like to call him my ward, because I've known him since he was a little baby, and he's a bright young man. I work with him on all sorts of personal problems, and we talked about acquiring a

home; we looked at numerous homes and we finally settled on one, and in spite of the fact that he didn't agree with me that in his interest he should stay on Indian land, we recently acquired a home on patented land which is subject to taxes, and one which he could very well afford, and I'm sure Iehs' made his family very happy. I was not in agreement with this, because I think in the long run his interests would have been better served had he stayed on Indian land and traded some of his property for a possible site on which to build, but I reversed my position and went along with him when he insisted in respect to the family wishes.

Mr. TUNNEY. Mr. Kettmann, have you been working with Mr. Patencio in the handling of his affairs so that he will be prepared at some future date to take over responsibilities of managing his own estate?

Mr. KETTMANN. Right. I have spent a lot of time with him and his wife and am very proud of his persistence and tenacity in furthering his education in preparing himself for a great responsibility. Within a period of 2 or 3 years he will have the status of a millionaire. He has great assets, his wife has great assets, and they are one of the bright young couples in the Agua Caliente galaxy. He's doing very well and I tell you, 20 years ago, I can't remember a single member of the tribe who achieved a college education level, and the changes culturally that the Calientes have achieved and are tremendous and most impressive.

Mr. TUNNEY. Do you feel that he is prepared to be able to manage his own estate at this time?

Mr. KETTMANN. My personal feeling at this time is that he's on the verge of qualifying to handle this tremendous wealth he has. I don't feel, as of today, that he has quite the experience but he's rapidly acquiring this judgment and maturity that's going to make him a competent mature adult and businessman.

Mr. TUNNEY. Do you have any complaints about the way in which the Palm Springs task force conducted their investigation so far as the investigation related to you and to your ward, Mr. Patencio?

Mr. KETTMANN. The investigation as it related to me consisted mostly of an audit of the accounts that I handle, which I am told in the report indicates are in complete order. Every penny is accounted for, every action that I have taken has been approved by the court, submitted to the court, and I can't say I have a quarrel with it. I'm happy. The books are wide open and I wasn't happy reading about things that were taking place in the newspapers concerning the business affairs of my ward prior to the time I was advised by the task force. That would be my only criticism.

Mr. TUNNEY. Thank you, Mr. Kettmann. That's all I have.

Mr. BURTON. I have no questions, Mr. Chairman.

Mr. EDMONDSON. Thank you, Mr. Kettmann. All right Mr. Schlesinger.

Mr. SCHLESINGER. Yes, Mr. Chairman.

**STATEMENT OF ROBERT A. SCHLESINGER, OF SCHLESINGER,
SCHLECHT & McCULLOUGH, PALM SPRINGS, CALIF.**

Mr. SCHLESINGER. My name is Robert A. Schlesinger, and I'm an attorney at law, and our firm—383 South Palm Canyon Drive—our firm over the past 10 years has represented approximately 30 percent of the tribe. At one time, our practice was about 20 percent oriented to doing Indian work and now we're down to about 3 or 4 percent, so I can say that our interest now is trying to work constructively with what can be done about the—with the Agua Caliente Indians at the present time.

I have given a statement to Mr. Sigler which was released to the newspapers some time ago regarding allegations involving our firm in the task force report. I don't particularly care to go into that at this time, because I'd rather deal with more constructive things, but I'd be happy to answer any questions.

Briefly, we certainly deny any charges of conflict of interest, and we steadfastly deny any allegations of inaccuracy of accounting that might be attributable to us in accounting matters.

Mr. EDMONDSON. Mr. Schlesinger, would you like to have this statement previously submitted made a part of the record at this time?

Mr. SCHLESINGER. Yes; I would, Mr. Chairman.

Mr. EDMONDSON. If there is no objection, it is so ordered.

(The document referred to follows:)

**STATEMENT OF SCHLESINGER, SCHLECHT & McCULLOUGH IN RESPONSE TO PALM
SPRINGS TASK FORCE REPORT, MARCH 1968**

The Palm Springs Task Force Report briefly mentions our firm for alleged conflict of interest and alleged inaccuracy of accounting. Both charges are false, unfair and irresponsibly made. Since 1956 we have represented more than 30 Indians to the best of our ability. Our Indian clients have prospered and their vacant lands have been developed. Our fees have been reasonable and we take pride in what we have helped our Indian clients accomplish. We resent having to explain erroneous statements made by investigators seeking to whitewash the agency by whom they are employed. If the individuals responsible for the report will come out from behind the protective shield of governmental immunity, we will bring legal proceedings for damages attributable to their libelous statements. We urge an immediate investigation of the false charges made against us. This investigation should be made by an independent objective agency. Those responsible for the report should be made to account for their actions.

The charge of conflict of interest demonstrates that the task force is biased and unqualified to perform its function. The investigators have deliberately ignored facts known to them that demonstrate the falsity of the charge. They know that the payment of fees to our firm by the tenant in connection with rights of way and rental adjustment was done at the insistence of our Indian clients and the Bureau of Indian Affairs and approved by the Superior Court. Our Indian clients and the Bureau of Indian Affairs were willing to give the requested rights of way and rental adjustments but did not want to pay legal fees. The tenant then paid the cost of the legal services performed by us for our clients. This is not conflict of interest and the investigators knew it.

The charge of inaccuracy of accounting made against our firm is another illustration of deliberate distortion of fact by the investigators. The report implies that we were in some way responsible for the shortages created by the Indian Guardian. The truth is that we relied on and respected the integrity of our client. When the client's own records disclosed shortages, we immediately proceeded with the client to inform the court. The Indian guardian admitted responsibility for the shortages. We arranged for full repayment with interest

by the client to the minor Indians within a short time. The repayment was carried out with the consent of the client and approval of Superior Court and the bonding company which at all times protected the minor Indians from loss.

Mr. SCHLESINGER. The remainder of my testimony refers to the statement that was delivered today.

The task force report and legislation currently before the U.S. Congress was critical of the conservatorship and guardian program in Riverside County. No mention was made of the substantial developments which have occurred through the efforts of the conservators and guardians and their representatives but only criticism of the cost of the program and alleged irregularities which have occurred in its administration. My only personal comments today, you've heard from Chief Kettmann—Postmaster Kettman now—describing what has happened, and you have heard reports of others in the developments that have taken place in the Agua Caliente Indian Reservation and the resultant benefit to the Indians.

Secondly, the Bureau of Indian Affairs is unable to administer the program alone. The conservatorship and guardian program has proved that the Bureau of Indian Affairs alone, without extensive augmentation of its staff, is unable to handle and process long-term Indian leases. The conservatorship and guardian program has further demonstrated that individual guardians and conservators and competent adult Indians can be instrumental in effectively developing trust lands.

The present program has proved inadequate. To abandon the present conservatorship and guardian program without a radical change in the method of operation of the Bureau of Indian Affairs stifles development of the Agua Caliente Indian land by discouraging developers. Prospective developers prefer fee land to leaseholds. When leased land is combined with dealing with the Bureau of Indian Affairs in addition to the probate court and county tax assessor, the developer is presented with a discouraging picture. Further, the continued exemption of Indian land while held in trust, even though developed under provisions of a long-term lease, from property taxation and the rental from income taxation has not proved effective in helping the individual Indian to become master of his own destiny.

A major point I'd like to make is gradual elimination of tax exemptions, No. 4. Mrs. Ortner spoke of this, and so did others, and I'm departing from my prepared statement to reflect on this at great length because I've tried to think what I would want, if I were an Indian and the tribal chairman, Mr. Patencio, tried to examine his own conscience as did Mrs. Ortner, and naturally we'd like to get the greatest amount of benefit we could get, and on the other hand, I think the Indians are no different from the rest of us in that they want something that is fair to all, and I think what they have said indicates that they want a fair solution to this problem.

I think a gradual elimination of this tax exemption will provide that fair approach. A program of gradual elimination of property tax exemption and income tax exemption should be adopted when Indian trust land has been leased. The elimination of the exemption should be sufficiently gradual to allow the Indian to adjust. For example: Once the lease reaches the point where the full minimum rental is payable, normally within 5 to 10 years from the date of approval

of the lease, the Indian would, over the next 10 years, be required to pay 10 percent or more of property taxes and income taxes each year so that at the end of 10 years from the date of full development and full minimum rental payable the property would be fully taxable from a property tax standpoint. The rental would be fully taxable to the Indian the same as any other citizen of the United States. As long as trust land remains undeveloped the present exemptions would continue. Though the Indian would have the legal responsibility for paying property taxes on the developed land, this could be compensated for by additional rental he could command from the lessee.

In conjunction with this, I think a point that's been ignored is the possibility of special courses for Indians at such institutions as the College of the Desert and the University of California at Riverside through its extension courses. These could be—these courses would be specially designed to train the Indian in the handling of his own property. Completion of such a course in a satisfactory manner would free the Indian from the imposition of a conservatorship or guardianship. The conservatorship and guardianship would apply the same to Indians the same as to non-Indians. Guardianships should be required only for minors and incompetents and the conservatorships should be imposed only with care. Where guardianships and conservatorships are required a competent parent or relative where available should be appointed and if none is available then professional trustees should be appointed.

Avoiding unnecessary duplication. This has also been referred to by other witnesses. The present system has led to many duplications of authority and responsibility resulting in failure of enforcement of provisions of leases. For example, and the most recent example is that numerous bonds have been required under leases to assure payment of the rent and these bond provisions have not been enforced in some cases. This has been the responsibility of the Bureau and should have been the responsibility of the conservator and guardian as well. Failure to have adequate bonds posted and kept current has resulted in substantial losses to various Indians.

This also, I feel, is a major point, that leases should be free from Federal regulations. The entire leasing procedure should be overhauled so that the lease would not have to comply with the Code of Federal Regulations or the United States Code. The solicitor's office could review each lease to make certain that it is not unfair in any way but the Bureau should not interfere with normal lending requirements and freedom of negotiations between lessee and lessor. This lack of flexibility has discouraged many a prospective lessee.

Another major point is No. 8, sale should be encouraged, ready for development. In departing from the text, if you will look at the map, the photographic map in back of you, the area map, section 14 is next to the part outlined in red which is the proposed downtown development, and as you can see, there is very little development there other than the Spa Hotel and the Springs Apartment House and Patencio and Wilmas Building. The rest of it has remained undeveloped, and it's obviously the mainstream of development. It is certainly possible that the highest and best use of that land has been in the past and not in the future, in that the highest economic return may have been in the past and not in the future. We hope this is not the case; but this

unfortunate development and retention of the land in an undeveloped status has caused serious problems to the Indians as well as to the community.

In connection with this program of encouraging sale, when the land is sold to encourage the Indian to sell, the Indian's income tax exemption should continue to be applied to the proceeds during the lifetime of the Indian.

Mr. EDMONDSON. A question at that point.

Mr. SCHLESINGER. Certainly, Mr. Chairman.

Mr. EDMONDSON. You mean that if the proceeds of the sale in turn produce income, either by drawing interest in the bank or being applied to purchase of stock and bonds and things of this sort, that revenue from the proceeds should be exempt from taxation for the lifetime?

Mr. SCHLESINGER. I think that that should be a benefit given to the Indian to encourage him to sell. I realize that is an extension, but I feel that the problem is so difficult to trace assets that the entire proceeds and their income should be exempt.

Mr. EDMONDSON. Just wanted a clarification.

Mr. SCHLESINGER. Yes; I feel that way. This will encourage the sale and development of lands rather than leasing. Leasing has proved awkward and expensive and has led to many of the alleged abuses discussed in the task force report. The use of conservators and guardians, if necessary, would be much simpler to review and approve where land management is not involved.

Indian independence should be encouraged. The Bureau of Indian Affairs has operated in an unimaginative manner and has only nominally met its responsibilities. The object of the Bureau should be to best prepare the Indian to become a responsible citizen. In this it has sadly failed. By encouraging sale, the Indian can achieve independence and respect and the land can be developed in its proper economic sequence.

To summarize, encouraging sale, making leasing more flexible, gradually eliminating tax exemption, and providing special education for Indians, guardianships and conservatorships will gradually be eliminated, Indian land will be developed to the highest and best use, and most importantly, the Indian will become a more responsible member of the community, increasing both his self-respect and independence.

Mr. EDMONDSON. Thank you, Mr. Schlesinger, for some constructive thinking on the subject of what can be done in the future. I think your suggestion about the development of special courses to assist in getting competent business management, and so on, is a very constructive one, and I think that there were several other points in your statement with which I would be in very definite agreement myself as to the failure to encourage independence of not only this tribe but of other tribes.

I think there has been a failure in this regard and I think Congress is part of the picture, too. I don't want to put it all on the Bureau of Indian Affairs because I think that Congress should share the blame in this regard, and the overly paternalistic attitude over the years has failed to encourage initiative and independence is something that has a lot of responsibility to share in that regard.

You have, in your filed statement, made some very strong statements with regard to the task force, and have indicated that there is falsity

in some of their findings. I would like to pinpoint some of those findings with you and ask for your comments on them if you would give them to me.

The task force, dealing with this accounting inaccuracy, say, and I quote from the task force report that “* * * Slaughter, Schlesinger & Schlecht failed to report to the court existing cash shortages in the estates during the third, fourth, fifth, sixth, and seventh accounting periods, covering the years 1958 to 1965.” Further, “savings account balances were reported to the court which did not exist or were, in many cases, more than 6 months past the end of the accounting period.” Would you like to comment on that?

Mr. SCHLESINGER. Yes; I would appreciate the opportunity. I'd like to—it's not a simple thing, because statements are made rather categorically and the answers are not simple. The basic problem is that we represent an Indian, Gloria Gillette, who is the guardian of her three minor children, and Mrs. Gillette had had very little business experience, if any, not a great deal of education, and when she was appointed guardian of her minor children, it was carefully explained to her what her duties were to be. She did not carry out these functions properly; despite continued urging of our firm she would not employ a professional accountant and kept the records herself. When it came time to make an accounting, she would bring in the information in very sketchy form, always way past the time the accounting was due. We would have to write letters requesting it. We had great respect for her honesty and integrity at all times. We never had any reason to doubt that she was using the funds properly for the children. As a matter of fact, she never requested a fee for herself, and the only money she received was relatively nominal amounts for the education and support maintenance for the children, so we felt that it was due to her inexperience that she was not doing the job, and that she just either didn't want anybody else in, or didn't want the expense of an accountant, and we were not supposed to supply accounting services, but we did spend most of our time trying to straighten out these receipts. We'd be given passbooks from savings and loan associations with marks in them as to where money came in and where money went out, and what the source of it was, and it was an extremely difficult job in the beginning.

Mr. EDMONDSON. Didn't these passbooks that were turned over to you show the current balances?

Mr. SCHLESINGER. Yes; but she would collect money herself and tell us that she had money in her possession that she had not deposited and she was going to deposit it, and we'd make up an account for the difference.

Mr. EDMONDSON. And, did you report that money as being in a savings account in your—

Mr. SCHLESINGER. We reported what she had told us, and that the money was going to be deposited in those accounts, and the amount showed the money was in hand or in the savings and loan account.

Mr. EDMONDSON. When you submitted your report, did you indicate what part of it was in the savings account and what part of it was cash?

Mr. SCHLESINGER. I can't remember—well, the first few years—in one year—again, I must explain this, that she would not take out her

fees and not take out her allowance that she got until after the moneys were accounted for in the accounting, even though the court had made the award that she could take those out monthly, so she would always wait and see what figures we came up with and then she would take out her moneys and said that she had the balance, whatever it was she had, and would put in, and she would put in that account. Now, some of the moneys were collected from section 14 where there is no written lease, just a revocable permit and she had been in the habit as all of the Indians were, the parents of the minor children who had lots producing income, and she would collect these herself and she did this before the guardianship program was started, so she still continued the same procedure, only now she was continuing the same procedure while not giving the full accounting that was required.

Mr. EDMONDSON. Is this an accurate statement in the task force report that says, "* * * savings account balances were reported to the court which did not exist * * *."?

Mr. SCHLESINGER. The balance did not exist as of the date that was shown in the accounting in the savings account. It existed in her representation to us that she had this money, and again, the differences were very, very small in the first few years so there was very little reason for us to question it. In one particular accounting period when she was a year and a half late giving us the accounting information, we wrote repeated letters saying she would be removed by the court if she did not. She then turned over the information to us, and when we went through it, again it was a very difficult job to try to reconstruct what happened. For the first time the discrepancies were so large that we realized that she was taking the money for her own use. The previous years the amounts had been relatively small, there was no question she had substantial property and income of her own, there was no reason to doubt what she had told us were the facts.

Mr. EDMONDSON. Well, giving you full credit for having confidence in your client, we still come back to that statement, was it false and unfair and irresponsible to report as the task force did, that savings account balances were reported to the court which did not exist?

Mr. SCHLESINGER. Well, I guess that what we could be guilty of is the confidence in our client, that it was as she represented. We did not audit her account, we could not get—we took her word there was cash.

Mr. EDMONDSON. But, you did have the passbooks in hand at the time you made your reports?

Mr. SCHLESINGER. We would give them back to her to make the deposits to make up the difference that was involved after she computed what her allowed fees were. It was a backhanded way of doing it.

Mr. EDMONDSON. So, this particular statement then that appears in the task force report on the subject of inaccuracy of accounting then, is, in substance, an accurate statement, is it not?

Mr. SCHLESINGER. As far as it relates to the amounts not being in those accounts at the time they made their accounting, that is correct.

Mr. EDMONDSON. Now, let me read you another statement from this same report.

Worksheets in the law firm's files disclose that the firm was aware of the shortages and that balances as reported in the accountings to the court were overstated.

Is that—

Mr. SCHLESINGER. This is the same exact situation. The accounts—she told us she had the cash and she was depositing it in there to make those balances meet what they'd been in those earlier years. They had been relatively small amounts. At that time, I think it was the sixth accounting in 1962, which was not given us until 1964, and the amount again was so large it was obvious that she did not have the money.

Mr. EDMONDSON. And, this statement:

When we discussed these findings with the attorneys, they did not deny knowing of the shortages prior to disclosure to the court but contended that they subsequently disclosed the matter to the court's satisfaction and that the shortages were made up by the guardian.

Mr. SCHLESINGER. No; that's not a correct statement.

Mr. EDMONDSON. That is not a correct statement?

Mr. SCHLESINGER. No; because we did not know there were any shortages, because she represented to us that the money was on hand and the balance needed to bring the account up to the amount that she should have been accountable for. Upon finding this one accounting in 1962 where the substantial—where she would not account for us for a year and a half; at that time we immediately reported it to the court when we realized how large the amount was, after we spent a great deal of time with her, establishing the amount and getting her to agree finally that she did not have this money.

Mr. EDMONDSON. So, what this boils down to is, when you discovered that the shortage was substantial, you did report it to the court, but when you discovered shortages that you did regard as substantial, you did not report it to the court?

Mr. SCHLESINGER. No; that's not correct.

Mr. EDMONDSON. Is that right?

Mr. SCHLESINGER. No; because we did not know in the previous years whether there were shortages. She told us the money was on hand and she had it, and was putting it in and in the 1962 accounting, she admitted that she did not have the money.

Mr. EDMONDSON. I think this all boils down to whether your reports made to the court were accurate reports that reflected a savings account balance of so much, and cash in hand that is to be put in the savings account as so much, or whether you simply reported to the court an inaccurate savings account balance. Can you tell us what you did?

Mr. SCHLESINGER. Yes; we took the client's word that they would be deposited in there, and we put—lumped it together without differentiating what was on hand and what was in the account.

Mr. EDMONDSON. So, in that respect, the savings account balances that were reported to the court were not accurate reports; were they?

Mr. SCHLESINGER. That's correct.

Mr. EDMONDSON. When you did, in 1964, discover one you thought was so substantial that the court needed to be informed of the situation, you then informed the court; is that right?

Mr. SCHLESINGER. Yes.

Mr. EDMONDSON. Thank you. I don't think I have further questions. Gentlemen?

Mr. BURTON. No; I don't think so.

Mr. EDMONDSON. The gentleman from California?

Mr. TUNNEY. Yes; I'd like to ask Mr. Schlesinger specifically, what statements made in the report, or what other statements made by the task force do you consider to be inaccurate and false?

Mr. SCHLESINGER. The statements regarding conflict of interest, Mr. Tunney. Those we feel demonstrate the task force was completely unaware of the subject of conflict of interest, and did not know what they were reviewing and what the significance was, and I think conflict of interest as it appears with the firm of attorneys mentioned in connection with lessees paying for the services of the attorney which were demanded by the lessor and the Bureau of Indian Affairs is not a conflict of interest. This was in connection with, for example, easements, where a utility company seeks easements and the Indian says:

I don't want to pay for it, it's unfair. It's something you want. I don't necessarily want it. Maybe it's something that's going to enhance the value of my land, but I don't think I should have to pay for it—

and the utility company says:

All right, we will pay whatever the reasonable attorney's fees are—

and the Bureau of Indian Affairs knows about it; the petition is filed and there is no question as to who we represent. We represent the Indian, except that the cost is going to be paid by someone else. There is just no conflict of interest. Conflict of interest is where your client doesn't know you represent the other party or—in this case, we know you represent the other party, and in this case we did represent the other party and received fees from the other party, and this was made fully—

Mr. TUNNEY. Did you receive fees from your client, the Indian, as well as from the other party?

Mr. SCHLESINGER. No. The fee was paid—I believe, because I personally didn't handle these in the office, but I think the fee was paid directly to the attorney by the utility company.

Mr. EDMONDSON. May I ask a question? It may be a technical matter on which there is room for a difference of opinion, but don't you, as an attorney, feel that when you weigh the difference between two adversaries or a negotiation between two parties that one party is going to pay you, and the other party is not going to be paying you, don't you feel in that situation it is very, very difficult not to get a warm feeling and some sentiment toward the position of the party that you know is going to be paying you a fee?

Mr. SCHLESINGER. Well, my answer to that is, an attorney, if he has any question that there is a conflict of interest, he should resolve it in favor of the client and not accept the case. In this particular situation, there was 100-percent no conflict of interest because the amount was going to be paid the same whether anybody paid it. The determination was not made by our office that the easement was wanted or desirable, it was made by the conservator or the guardian and the Bureau of Indian Affairs.

Mr. EDMONDSON. How about the amount of the fee? Was this negotiated between the parties?

Mr. SCHLESINGER. No. I believe the method was, the utility company or whoever was seeking the lease, or the lessee seeking the easement.

would ask what the cost would be, if he sought the easement and an estimate was given at that time.

Mr. EDMONDSON. By whom?

Mr. SCHLESINGER. By us. We requested how much the fee would be to perform the services.

Mr. EDMONDSON. So, you informed them what the fee would be?

Mr. SCHLESINGER. No. We would inform the guardian or conservator what our fee would be. In other words, the easement was not presented to us. It was presented to the guardian or conservator and if the guardian or conservator went—decided they would go along with the easement, that it was to the benefit of the Indian, and normally it was, because it was utilities or streets or something else to improve the property, and they would say to us, "Look, this easement is something that we think is reasonable, and we recommend approval but we don't want the ward having to pay for it. What would be your fee? Is the lessee or utility company willing to pay reasonable attorney's fees?"

Mr. EDMONDSON. Do you handle divorce cases?

Mr. SCHLESINGER. In our office we do. I do not personally.

Mr. EDMONDSON. Just wondered about the practice in a situation like that. Would you find any problem about handling a divorce case on behalf of a wife, for example, and having an agreement with the husband as to what the fee would be?

Mr. SCHLESINGER. You just don't do it that way in a divorce case. If the husband is going to be represented by a separate counsel, the fees are determined by the court what the fee is going to be paid, and the settlement is by a court order, and with a settlement without a court order it is between the two attorneys to negotiate what the fee would be and you have no problem. I frankly, prefer—not prefer, but definitely avoid these situations where there is a possibility—I don't like a situation where the client says "You get the attorney's fees from the other side." We, just as an office policy, don't do it.

Mr. EDMONDSON. It is awkward, isn't it?

Mr. SCHLESINGER. And, the easement situation is a standard practice, because the utility company is asking for something and the property owner just feels that the utility company wants it, they should pay for it, pay the cost.

Mr. EDMONDSON. Thank you. Congressman Tunney.

Mr. TUNNEY. You say, Mr. Schlesinger, your clients specifically asked you in each case, whether it was right-of-way that was being asked for, or an easement that was being asked for, asked you to get your fee from the party who was seeking the easement or right-of-way?

Mr. SCHLESINGER. Yes; that's correct.

Mr. TUNNEY. Specifically asked by your client—

Mr. SCHLESINGER. Yes. They would not grant it. It was made very strongly—stronger than that, they would not consider granting it unless the legal cost involved were to be absorbed by the person requesting.

Mr. TUNNEY. Mr. Schlesinger, I would like to ask you a number of questions with regard to the practice of charging fees for services performed for Indians, because I don't have really any knowledge at all of what the practices were and I am trying to develop a better

understanding, so if you will please do your best to answer the questions that are asked in the abstract, although all the questions do relate to information that is contained in the task force report, and I might say that the information is contained usually in critical fashion, so I would like to ask you questions in the abstract to find out just what your opinion is of certain practices.

Mr. SCHLESINGER. Be happy to do so, Mr. Tunney.

Mr. TUNNEY. If you should prepare a lease, should your fee depend on the complexity of the lease, or on the amount of money involved?

Mr. SCHLESINGER. Our practice has been in Indian matters, and this has been consistent since, I think it was 1964, that all fees are based on an hourly charge. We have not looked to the complexity of the matter, we have not looked to the amount involved. Our services have been strictly on an hourly charge. This was not clear, I think, until either 1963 or 1964, but this is now what is done normally, unless this is the arrangement which is made with the client.

Mr. TUNNEY. So, it depends on the arrangement that is made with the client as to whether you charge on an hourly basis or on a percentage basis?

Mr. SCHLESINGER. That's right, but in the Indian matters, it's always been on an hourly basis.

Mr. TUNNEY. In your case?

Mr. SCHLESINGER. Yes.

Mr. TUNNEY. And, do you have any opinion as to whether or not this was standard practice, this is the understanding in the bar in the area or was this just your own particular determination? Did you talk to the judge about it?

Mr. SCHLESINGER. Yes; we talked to Judge McCabe and Judge McCabe made it very clear—and Judge Brown following him—that he wanted the attorneys to perform attorney services when leases were involved or other documents and he wanted an hourly charge, and Judge Brown has preferred this schedule which we have always supplied of exact hours, dates, and we do keep very accurate time of this, and have done it that way. It's not that it's necessarily the fairest way, but it is the way that the court has wanted it, and it's been the simplest way, I might add, in certain of our Indian matters and, of course, we have had criminal and domestic relations and other things involving the ward other than lease matters and property matters, and in these matters we ask the court, specifically requested the court for approval of these fees because they are not on an hourly basis, but that is the exception, not the rule.

Mr. TUNNEY. In a lease similar to one prepared previously should the attorney's fee be less if the work has already been done once before?

Mr. SCHLESINGER. Our answer would be the same, that it's hourly, so it would obviously be less, since something that has been done before, you can do more easily the second time.

Mr. TUNNEY. What percentage of the lease may be filled in by using a form in these Indian estates? In most of the work done by utilization of a form book, or does it take a great deal of ingenuity and imagination in preparing these leases, from your experience?

Mr. SCHLESINGER. That's not a yes or no question. Having written the only form book on the subject, I can say that I haven't used it very

much. Every Indian lease that I've ever—well, I will say that most Indian leases, especially the most recent ones have sought something different every time. For example, one of the most successful developments in leased land in Palm Springs is the Seven Lakes Country Club development, a condominium development. Now, they proceeded with their first development and they couldn't get financing so they went—it was a time when tight money started coming into the picture among other factors, and they went to a savings and loan association in San Diego, Home Federal of San Diego, and Home Federal wanted substantial revisions in that lease and they were very involved. The president of the company, Mr. Sebbitt, had to go back to Washington to get this lease approved which had about the best lease provisions from a lender's standpoint and, mind, this is the whole cue of leasing. You've got to get the financing or you can't have the lease, and he got this lease through. Well, recently, another lessee sought the same provisions. There had been exceptions to the regulations on this Seven Lakes lease, so the next gentleman, who originally had been connected with Seven Lakes, sought this same exact language and the lease is still under consideration. I don't know if it's been approved yet, and he wanted the same exact words in there, and he even referred to the Seven Lakes lease and said, "All we want is exactly what Seven Lakes got" but it's taken him a year and he still doesn't have it, so it's just different in every case, and if you will go by the standard lease, you may have a great deal of—

Mr. TUNNEY. It's my understanding that almost all of the leasing which is done of Indian land was done by ex parte order of the court, is that correct?

Mr. SCHLESINGER. No; I would say that's wrong. There has been no ex parte order of Indian leasing that I know of—leasing of the master lease?

Mr. TUNNEY. Yes; leasing of Indian land.

Mr. SCHLESINGER. No. It's all been done on petition and notice of petition hearing before the court. The only thing that has been done is publications. If you were a non-Indian, the title company would probably require publication, but for some reason, title companies, since it is a trust land, do not require publication in the conservatorship and guardianship program, but there have been regular notices, 10-day notices, and the Bureau of Indian Affairs has always been notified.

Mr. TUNNEY. What about for subleasing under the original master lease. Have ex parte orders been used?

Mr. SCHLESINGER. Well now, where there are extensive subleases normally performed for, like in the Canyon Country Club development or buildings like the Walmas Building or Patencio Building, there are provisions for subleases, and once the original form has been approved, there should be no reason to go to the court. That's within the scope of the original master lease, and it's not necessary to go to the court. You merely go to the Bureau and supply the name of the new subtenant and pay the filing fee.

Mr. TUNNEY. Well, assuming that an ex parte order is required by subleasing, what would be considered a reasonable fee for an ex parte order to sublease, for instance, units in a condominium?

Mr. SCHLESINGER. You mean the same thing over and over again, never change?

Mr. TUNNEY. Yes.

Mr. SCHLESINGER. Well, the only—if the only nominal charge, if there were an ex parte, involves a petition and putting on a petition provisions for order of approval by the court, and the waiver of notice by the Bureau, and if that's all that's involved and attach a copy of the lease, it should only be a nominal charge. I'm talking about \$100, \$150. It would be tops but it isn't necessary. That's not—

Mr. TUNNEY. It's not necessary to have an ex parte order, you would say, in subleasing arrangements, that the master lease should provide for the attorney going to the Bureau of Indian Affairs and being able to sublease?

Mr. SCHLESINGER. For example, Mr. Fey's development at Canyon View, there have been, I don't know, 400—or 150 residences completed there, and in Seven Lakes they had about 120 now, Canyon Country Club, several hundred-plus subleases and they are exactly the same for everybody, every tenant, and as a matter of fact, they've been submitted to the real estate commissioner in connection with approval of condominiums, so they are exactly the same and fortunately, there hasn't been much expense involved in those because they are the same.

Mr. TUNNEY. How much has been charged for each one, do you know?

Mr. SCHLESINGER. We just don't have this situation where we had to come in and sublease because we always provide a master lease, and it is pre-approved form. Now, if these do deviate from the pre-approved form, it would have to be a substantial sublease to justify the attorney even seeking it. It would just be done on an hourly charge, and I estimate it wouldn't take more than a couple of hours to get it.

Mr. TUNNEY. Was it customary, or is it customary for the Desert Bar to charge Indian clients a full day's fee for appearance in court if a number of Indian cases would be handled by the attorney, and were handled by him, we'll say, in a few hours, charging each one of them a full daily fee?

Mr. SCHLESINGER. Well, we have avoided that problem because, as I said, we have done all our billing on the basis of hourly charges. We go down with three men, we divide it in three. This, because it is the only fair way we could feel to do it. If one matter requires more time, say, during the day than the other two, we'd bill that matter the portion of the day, in proportion. We've never double-charged or made additional charges because we're already down there.

Mr. TUNNEY. Is this accepted practice? Is this the customary practice? I want to get a feel for what the standards of conduct are.

Mr. SCHLESINGER. All I can do is contest it with domestic relations where you go down on a number of orders to show cause on domestic relations matters. It's a different situation because your attorney has already made his fee arrangement before that, and the judge is going to make his court order of attorney's fees based on each individual matter, not because one attorney may have six matters that day. You get the same fee, irrespective, because there had been a lot of other time involved. But, on Indian matters, if you are just going down, most of our Indian matters, frankly, are approved without the necessity of appearance, and the only time we have to make appearance is

when there are questions on accounting or other matters, there is something that someone can come in and object to, but normally they are matters that are approved without appearance and you don't have that problem.

Mr. EDMONDSON. One question. Do I understand you to say that ex parte orders were not obtained on lease matters?

Mr. SCHLESINGER. Mr. Tunney asked me in connection with subleases, what the charge would be on an ex parte order. My answer was that most subleases where they are going to be on a volume basis, you know you've got a development that contemplates 40 subleases, for instance, and they are all the same, the master lease provides for a pre-approved form, and those have been worked out by the Bureau, the Bureau constructed that because it saves everybody time and money, so the occasions have arisen very rarely when we need them.

Mr. EDMONDSON. We have just looked through here, Mr. Burton and I, and there are a number of exhibits here showing ex parte orders for amendments to leases. Is this a different proposition?

Mr. SCHLESINGER. That's something else, particularly on Canyon Country Club. There were several important amendments to that lease. Now, that's different from a sublease amendment. It could affect the rental, it usually affects an important part of the lease.

Mr. EDMONDSON. May I ask also, with regard to petitions for right-of-way and orders thereon, are these considered ex parte matters or not?

Mr. SCHLESINGER. Yes, these may be done ex parte but in that case, you can't use the same argument as in a sublease where you have the same document over and over and over. A right-of-way, by its very nature, involves a different situation.

Mr. EDMONDSON. Thank you. Congressman Tunney.

Mr. TUNNEY. In many of the Indian estates, it states it's alleged by the Department of the Interior that attorneys have charged both the estate and the lessee for their services, at times neither party knowing the other is paying. Do you see any potential danger in this practice?

Mr. SCHLESINGER. Yes. I think it is a practice that has to be—it's a very unethical practice and if it were proved, it would be a subject of disciplinary proceeding. You can only charge one fee and you must disclose it to your client if someone is doing the paying other than the client, because it's the same as—it's an undisclosed principal situation, and you have a very clear duty. The Code of Ethics, Professional Ethics of the Bar Association of the State of California cover that very specifically.

Mr. TUNNEY. When does the disclosure have to take place?

Mr. SCHLESINGER. From the moment that you know about it. For example, if you—I can only think of one situation in our office where we had—we were representing an Indian who had passed away at the age of 96 or so, and there wasn't enough money in that guardianship—I guess it was conservatorship, to pay attorneys' fees, and the wife, Mrs. Arenas, insisted here that in connection with a certain trade of property, the fee must be paid by the lessee. Well, we didn't like it, but we represented the Indian. We talked to the Bureau and said, "This is the only way Mrs. Arenas will go ahead with this lease," and they said, "All right, go ahead on that basis," and it was

spelled out in the lease and order and everywhere else, but it's not a good practice.

Mr. TUNNEY. But, you didn't charge both?

Mr. SCHLESINGER. No, no; the lessee. This was established and determined by the court and the lessee paid.

Mr. TUNNEY. Fine. Well, when you would go to the court with a request for approval of fees to be charged, would the court ever go behind the statement that you would make that these fees resulted in services performed? Did the court ever inquire into the background of the charge or was it assumed that the attorney was ethical and was going to charge only the fee he was entitled to?

Mr. SCHLESINGER. The fee was based on an hourly charge including representatives, as such, and properly supported by schedules. We have never been questioned in our office on fees until recently when Mr. Cox and Mr. Randall would review each petition. We always sent a petition to the Bureau, of course, in connection with any fee we charged.

Mr. TUNNEY. This is always done?

Mr. SCHLESINGER. Yes; but recently, even with the detailing of the exact time and exact purpose, and the amount of fee charged in a specific matter, Mr. Cox has questioned certain items, and though we have not agreed with him, in the spirit of compromise, we have reduced our fee a minimum amount and this has made him happy. The judge has not—in our hourly fee, he has not said, "This is not necessary, I won't grant it."

Mr. TUNNEY. You only charge hourly fees; is that it? Is that your testimony?

Mr. SCHLESINGER. Yes, sir.

Mr. TUNNEY. Have you had any occasion to make any will for any Indians?

Mr. SCHLESINGER. Yes.

Mr. TUNNEY. When you made the will for that Indian, or those Indians, did you explain to them what an executor was?

Mr. SCHLESINGER. Very carefully.

Mr. TUNNEY. What his function was? Did you explain to him he was entitled to fees?

Mr. SCHLESINGER. Yes.

Mr. TUNNEY. Did you ask him to name an executor, or did you name—

Mr. SCHLESINGER. Oh, no. I always ask their choice for executor.

Mr. TUNNEY. And was the executor somebody that they named, or somebody that you supplied?

Mr. SCHLESINGER. No; it was never anybody I supplied. The only time that I would—as a result of the person saying he wanted someone like the bank, it'd be the bank that normally—it would be the bank very frequently that was the conservator of the particular Indian, but we did not suggest that.

Mr. TUNNEY. Do you believe that the fact that some of the lessees have had to pay large size fiduciaries and attorneys, has been an encumbrance to the development of the Indian lands?

Mr. SCHLESINGER. Very seriously; yes, sir.

Mr. TUNNEY. The Bureau of Indian Affairs is charged with the approval of all dispositions of trust land, dispositions such as sales,

leases, grants of right-of-way, et cetera. Do you believe that attorneys and fiduciaries should be involved in the same transactions since the fees charged are quite high, at least according to the report of investigation?

Mr. SCHLESINGER. Could you say that first part again, Mr. Tunney?

Mr. TUNNEY. The Bureau of Indian Affairs is charged with the approval of all dispositions of trust property.

Mr. SCHLESINGER. Dispositions of trust property. You mean when they want to convert from trust status to a fee patent?

Mr. TUNNEY. Well; sales, leases, grants of rights-of-way, et cetera.

Mr. SCHLESINGER. I wasn't considering leases in dispositions. I thought you meant termination of the trust status. You've not limited it to that?

Mr. TUNNEY. No; no. As I say, do you believe attorneys and fiduciaries should be involved in the same transactions?

Mr. SCHLESINGER. No. As I also said in my statement, I think that the Federal Code and the Regulations should be eliminated. Either have one or the other, but not both. It's a duplication, and it's been a duplication of performance without a duplication of responsibility. Very often, it's like a tennis match. The shot goes down the middle and each one thinks the other has the shot, and on these bonds, the Bureau would come up and, say, 3 years later when here it was obviously at the very beginning that rental bond wasn't obtained or insurance wasn't obtained, the conservator, or guardian, particularly the unsophisticated variety or where individual Indians who had no previous experience, it would be a blow to them to find out 2 or 3 years later that the Bureau hadn't enforced the rental.

Mr. TUNNEY. So, if I understand your testimony in summary then, you feel that the present system is totally inadequate and that something has to be done either one way or the other. Either termination as you have suggested, over a period of time, or turn the entire thing back to the Bureau of Indian Affairs, but don't go down the middle, have a little bit of both?

Mr. SCHLESINGER. Well, I think when you deal with—if you're going to continue with the tax exemption which is the same as a trust status and the only reason for the trust status, then you should have just one entity in charge, because this way there are two. You've got to go everywhere, so I do agree with you that it should be one or the other.

Mr. TUNNEY. My statement is, do you feel that way?

Mr. SCHLESINGER. Yes, in my opinion, there should be one entity responsible. Either the guardian or conservator responsible, or the Bureau of Indian Affairs, but not both.

Mr. TUNNEY. Thank you. I don't have anything further.

Mr. EDMONDSON. Thank you.

Mr. BURTON. Thank you very much for your testimony, sir.

Mr. EDMONDSON. The subcommittee is going to take a recess here for the lunch period. It's our desire, if we have cooperation of the witnesses, to complete the testimony this afternoon. We do have witnesses who will require considerable time, so we expect a long afternoon session. With that in mind, we're going to take a longer lunch than normal in order to let each member of the subcommittee attend any business that he has in connection with this office, communicating

with his home and so on, on this lunch period. We will adjourn to reconvene here at 2 o'clock, and the first witness will be Mr. E. W. Hill, and for the information of the other witnesses who are scheduled, and to give them an idea of about what time they can expect to testify, we expect to follow Mr. Hill with Mr. Hollowell, and then to follow Mr. Hollowell with Mr. Cleary. Now, we have no notice, or at least I have been handed no notice of any other witnesses wishing to appear. I have a letter here from the law office of Carrol & Anderson, Mr. John Carroll, and it's my understanding, Mr. Carroll wanted his statement filed for the record. Is Mr. Carroll here?

Mr. CARROLL. I am.

Mr. EDMONDSON. Do you want your statement filed for the record or do you want to appear to testify?

Mr. CARROLL. I want it filed for the record. As I understand, Mr. Cleary's going to cover my position in this, so if he covers it, I don't think it's necessary for me to appear.

Mr. EDMONDSON. So, if there is no objection, your statement will be received and made a part of the record at this time.

(The document referred to follows:)

CARROLL & ANDERSON,
Indio, Calif., May 23, 1968.

Re Department of Interior Agua Caliente Investigation May 31 hearings, Palm Springs.

Mr. LEWIS SIGLER,
Legislative Counsel, Congressional Subcommittee for Indian Affairs,
Washington, D.C.

DEAR MR. SIGLER: The undersigned is one of the attorneys mentioned in the Department's report of March 1968, of its investigation of the guardianship and conservatorship program of the Agua Caliente Indians in Palm Springs. I am mentioned in the report at page 33, and therein supposedly connected by Exhibit 27.

I am enclosing herewith for your perusal a copy of a letter dated April 5, 1968, which I directed to the Editor of the Palm Springs Desert Sun Newspaper, in which I set forth my position in this matter. I would appreciate it if you would accept this as my statement to the Legislative Counsel and that it go into the record of this hearing. I intend to be in attendance at the hearing and would like to testify if it is necessary. I received a telephone call yesterday from Mr. Henry Cleary, who is the attorney for the Conservatorship and Guardianship Association, and he informed me that he had been in contact with you and that he was going to testify at length with respect to the report. It is my further understanding that Mr. Cleary will cover the Supplemental Agreement No. 5 of the Palm Canyon Country Club lease, which agreement is the basis for my being mentioned in the report. If Mr. Cleary adequately covers my position, then I believe that it would be redundant and time consuming for me to cover the same matters, and I will refrain from doing so. However, if for any reason, he does not do so, or if for any reason I feel that he has not covered it adequately, then I would like to be heard briefly in defense of my position.

Very truly yours,

JOHN P. CARROLL.

CARROLL & ANDERSON,
Indio, Calif., April 5, 1968.

Re Udall final report.
Mr. CARL W. SCHOOS,
Editor, *The Desert Sun Newspaper*,
Palm Springs, Calif.

DEAR MR. SCHOOS: I would appreciate it very much if you would print the substance of this letter in your newspaper.

I emphatically and categorically deny the charge of conflict of interest levelled against me in Secretary Udall's report. Mr. Udall and the three members of the

Task Force largely responsible for this report purport to be lawyers and it is inconceivable that such irresponsible charges would be made without first making themselves familiar with the rules of professional conduct pertaining to attorneys, and also checking the facts.

I am enclosing herewith the following: (a) xerox copy of Rule 7, of the Rules of Professional Conduct of the State Bar of California; (b) Canon 6 of the Canons of Professional Ethics of the American Bar Association; (c) xerox copies of California Jurisprudence 2d text relating to the subject matter of divided loyalty (conflicts of interest).

It is to be noted that the gist of the foregoing is that there is not a conflict of interest if the attorney acts in good faith and here is a *full disclosure and knowledge* by all parties concerned of the role the attorney is to play. I call your attention to that portion of California Jurisprudence which I have underlined in red.

The facts of the case in which the Secretary has chosen to involve me in his report are simple and were well-known by all the parties concerned, including various officials at the Bureau of Indian Affairs office in Palm Springs. A non-Indian lessee of land involving several different Indian estates sought relief from certain rental payments it was required to make under the leases. In other words, it was asking something from the Indians. All parties agreed that the case was such that the best interests of the Indians dictated that the relief be granted. After numerous meetings at the Bureau's offices in Palm Springs, a modification agreement was worked out, of which the Bureau of Indian Affairs fully approved. It was clearly understood by all that the Indian estates were to be put to no expense in obtaining the necessary court approvals, including attorney's fees. The Bureau was advised that the lessee would have to bear these costs and expenses I happened to represent one of the Indian estates and received a fee of \$150.00 from the lessee for presenting the necessary papers to the Court for its approval. For this I am charged with a conflict of interest—and this is my *only involvement in the report!* I might inferentially point out that the report released last Tuesday, April 2, 1968, stated that the matter was under submission to the court. A check of the Court records will reveal that the matter was resolved by the Court on December 8, 1967, nearly four months before the report was released.

I trust that you will give my position ample coverage for it does appear from preliminary research that I am powerless to seek legal redress from the Secretary and his staff. It is a classic example of a "wrong without remedy."

Very truly yours,

JOHN P. CARROLL.

Enclosures.

CALIFORNIA STATE BAR—RULES OF PROPER CONDUCT

Rule 7. A member of the State Bar shall not represent conflicting interests, *except with the consent of all parties concerned.*

AMERICAN BAR ASSOCIATION—CANONS OF ETHICS

6. ADVERSE INFLUENCES AND CONFLICTING INTERESTS

It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, *except by express consent of all concerned given after a full disclosure of the facts.* Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

SECTION 177

5. DIVIDED LOYALTY

§ 177. *In General.*—A lawyer owes undivided loyalty to the interests professionally entrusted to him.¹⁴ This general principle underlies several specific rules. Thus the Rules of Professional Conduct provide that a member of the State Bar shall not represent conflicting interests, *except with the consent of all parties concerned*,¹⁵ and that he shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment.¹⁶ The prohibition applies to successive as well as contemporaneous representation of conflicting interests,¹⁷ and it imposes upon an attorney the duty to terminate his relationship to a new client when he has reason to believe that it may conflict with the discharge of his duties toward another client.¹⁸

The chief purpose of the rule prohibiting an attorney from accepting employment adverse to a client or former client without the client's consent, in a matter in which the attorney has obtained confidential information by reason of his employment,¹⁹ is to protect the confidential relationship that exists between attorney and client.²⁰ It is in accordance with this principle that a receiver is not permitted to employ as his counsel an attorney representing other parties to the proceeding.¹ An indirect violation of the rule is committed by an attorney who causes his client to place himself in such a relation to the attorney that their interests might become antagonistic.²

The rule is designed, not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights or interests which he should alone represent.³ Where an attorney is confronted with a situation of having to represent claims inconsistent with those of his client, or with conflicting claims of two clients, he must terminate the attorney-client relationship with the client on whose behalf and in whose interest he would be unable to devote his entire energy.⁴ But it has been held that an attorney properly represented both an unmarried girl seeking adoption of her child and the couple who later adopted the child where the communications from the girl to the couple and to the attorney and vice versa were not confidential, and where the attorney told the girl it would be necessary for him to give any party interested in the matter all the information that would come to his attention.⁵ And where minority stockholders bring an action against the corporation and its directors, seeking redress for alleged misfeasance in office by the directors, a former attorney for the corporation is not disqualified from representing the shareholders in such an action, unless there is some showing that in so doing he may be called on to breach a professional confidence previously entrusted to him by his former client.⁶

*An attorney is not absolutely forbidden to represent conflicting interests. He may do so with the consent of all parties concerned,*⁷ in the absence of existing

¹⁴ Canons of Professional Ethics, American Bar Association, canon 6.

¹⁵ Rules of Professional Conduct, rule 7.

¹⁶ Rules of Professional Conduct, rule 6.

¹⁷ Cowdery, in re 69 C 32, 10 P 47; Galbraith v State Bar 218 C 329, 23 P2d 291; Sheffield v State Bar 22 C2d 627, 140 P2d 376.

¹⁸ Pennix v Winton 61 CA2d 761, 143 P2d 940, 145 P2d 561.

¹⁹ See Rules of Professional Conduct, rule 5.

²⁰ Jacuzzi v Jacuzzi Bros., Inc. 218 CA2d 24, 32 Cal Rptr 188.

Anno: Propriety and effect of representing interest adverse to former client, 51 ALR 1307, 52 ALR2d 1243.

Conflicting interests: vicarious disqualification after dissolution of partnership, 3 UCLA LR 105.

¹ Adams v Woods 8 C 306.

Anno: Existence of attorney-client relationship between attorney and one whose property he purchases at or through tax, execution, or judicial sale, 20 ALR2d 1280, 1309.

² Felton v Le Breton 92 C 457, 28 P 490.

³ Anderson v Eaton 211 C 113, 293 P 788.

⁴ Hammett v McIntyre 114 CA 2d 148, 249 P2d 885.

⁵ Arden v State Bar 52 C2d 310, 341 P2d 6.

⁶ Jacuzzi v Jacuzzi Bros., Inc. 218 CA2d 24, 32 Cal Rptr 188.

⁷ Rules of Professional Conduct, rule 7.

or contemplated litigation between the parties so represented.⁸ Nor does a mere possibility of a conflict of interests preclude him from accepting employment from two different persons. *For instance, the position of an attorney who acts for both parties, to the knowledge of each, in the preparation of papers needed to effect their purpose, and gives to each the advice necessary for his protection, is proper. Therefore, it is not considered to be inconsistent with professional ethics for attorneys to act for both parties in drawing up articles of copartnerships, in acting for grantor and grantee in the sale of real property, in acting for seller and purchaser in the sale of personal property, in acting for lessor and lessee in the leasing of property, and in acting for lender and borrower in handling a loan transaction, if done in good faith and with the full consent of all parties concerned.*⁹ And where of two parties having engaged the same attorney to prepare certain documents involved in a business transaction between them neither gives to the attorney any confidential information entitled to the protection of the attorney-client privilege, the attorney is not subsequently disqualified from representing one of the parties in an action against the other involving the same transaction and documents.¹⁰ But unless he has the consent of the other party,¹¹ he may not accept such representation if in the course of his former employment he has gained from the other party confidential information he will, or may, be called upon to use in litigation.¹²

Whether there is any inconsistency in representing particular interests must depend largely upon the facts presented by each case.¹³ For instance, where two parties seek to accomplish a common end result and engage the services of a single attorney to implement their joint plan, the fact that one of the parties would have been better off not to have entered into the transaction is not in and of itself enough to make the respective interests so conflicting as to prohibit an attorney from representing them.¹⁴ The fact that an attorney retained by the administrator of an estate acts also for one of the heirs as against other heirs, in an adversary proceeding related to the property of the estate, does not necessarily involve improper representation of conflicting interests.¹⁵ And in an action for wrongful death caused by an industrial accident, an attorney representing the decedent's survivors as well as the compensation insurance carrier was held not to represent conflicting interests, where the litigation of the compensation claim had been completed, the award had been paid, representation of the insurance carrier had been assumed after action on behalf of the survivors had been brought, and the reasons for that assumption were fully disclosed to the survivors and approved by the court.¹⁶

Improper representation of conflicting interests may be a ground, not only for an invalidation of a fee agreement,¹⁷ but also for disciplinary action.¹⁸ But a lenient attitude may be taken in certain situations involving no actual harm, as where an attorney inadvertently became the attorney of an insolvent debtor, though he had previously accepted a retainer to represent a claim against said debtor,¹⁹ or where an attorney, while representing an administrator for general purposes, also represented a creditor for a special purpose, and no injury to the estate was shown.²⁰

Mr. EDMONDSON. A letter from Mr. Clarence A. Brechlin enclosing a letter from Mr. Brechlin. Mr. Brechlin, do you wish to file this for the record?

⁸ *Lessing v Gibbons* 6 CA2d 598, 45 P2d 258.

An attorney is not precluded, in the absence of litigation, existing or contemplated, from representing adverse parties, provided his employment is within the knowledge and consent of each and he deals fairly with both. *American Box & Drum Co. v Harron* 44 CA2d 370, 112 P2d 332.

⁹ *Lessing v Gibbons* 6 CA2d 598, 45 P2d 258 (it cannot be said as matter of law that attorney is prohibited from acting for both parties with knowledge and consent of both.)

¹⁰ *Petty v Superior Court* 116 CA2d 20, 253 P2d 28.

¹¹ Rules of Professional Conduct, rule 5.

¹² *Galbraith v State Bar* 218 C 329, 23 P2d 291.

¹³ *Lessing v Gibbons* 6 CA 2d 598, 45 P2d 258.

¹⁴ *Moxley v Robertson* 169 CA 2d 72, 336 P2d 992.

¹⁵ *Jones Estate* 118 C 499, 50 P 766; *Healy Estate* 137 C 474, 70 P 455; *McCabe v Healy* 138 C 81, 70 P 1008.

¹⁶ *Burum v State Comp. Ins. Fund* 30 C2d 575, 184 P2d 505.

¹⁷ *Anderson v Eaton* 211 C 113, 293 P 788.

¹⁸ *Richardson v State Bar* 19 C 2d 707, 122 P2d 889 (attorney, while acting as administrator of estate, also acted as attorney for administrator of another estate against which first estate had a claim).

¹⁹ *Luce, In re* 83 C 303, 23 P 350.

²⁰ *Collins, In re* 147 C 8, 81 P 220.

Mr. BRECHLIN. Yes.

Mr. EDMONDSON. If there is no objection, Mr. Brechlin's letter with the attachment will be made a part of the record at this point. Hearing no objection, it is so ordered.

(The documents referred to follow:)

BRECHLIN'S OF PALM SPRINGS,
May 29, 1968.

Mr. LEWIS A. SIGLER,

Representative, The House Interior and Insular Affairs Committee, care of Palm Springs Spa Hotel, Palm Springs, Calif.

GENTLEMEN: Attached is a copy of my letter of October 19, 1967, to Mr. Robert Cox. Although I received a reply to my letter, as of this date, he has not answered my questions.

Upon my insistence, I was given permission to look at Mr. Cox's Preliminary Report and given photo copies of part of it. From these copies, I found I was named *Successor Executor* for the following:

Winifred Patencio Preckwinkle—whom I represent as Conservator; John Joseph Patencio—Father of Winifred; Frances S. Patencio—Mother of Winifred.

I have known both John Joseph and Frances Patencio since 1945 and had no knowledge of the fact that I was named as Successor Executor. I did have knowledge of the fact that I was named Successor Executor for Winifred as I was, and still am, her Conservator. Who would better know her estate?

Now, I ask this question of you: Since there are over 100 Indians in Palm Springs, do you think that being Successor Executor on three (3) wills should warrant this statement in the Preliminary Report? Such statement is partially quoted in my enclosed letter, 2nd paragraph, and was also on a front page of the Daily Enterprise.

I firmly feel that Government employees should be as careful in their actions as any other individual and if they libel people, should be subject to suit unless they publicly retract the statements.

Yours truly,

CLARENCE A. BRECHLIN.

PALM SPRINGS, CALIF.,
October 19, 1967.

Mr. ROBERT COX,
*Chairman, Secretary Task Force,
Bureau of Indian Affairs,
Palm Springs, Calif.*

DEAR Mr. Cox: Please refer to my letter of October 13, 1967, which reads as follows:

"As a matter of information, I would like to know from you which wills I am supposed to be involved in. Please state the date of the instrument, name of Testator or Testatrix. Am I named Executor or Contingent Executor? It would be nice to know these things. Also is there any evidence that I was supposed to know about this when it was done, other than the estates that I represented.

"According to the Daily Enterprise dated October 13, 1967, I quote, 'other persons heavily concentrated in the Conservatorship program and involved in wills are Judge E. E. Therieau, Attorney James Hollowell (who took over the practice of Judge Therieau upon the latter's appointment to the Municipal Court bench in October 1961), Clarence Brechlin, Lou Levy and Lawrence Crossley, deceased'.

"I would also like to know your definition of 'heavily involved.'"

On Monday, October 16, 1967, I reviewed this letter with you personally, and you verbally agreed that I was entitled to specific answers. Today, I received your letter dated October 17th and you have not answered my questions. I am sure if the situation were reversed, you would also be upset and angry with the run-around treatment. I am again requesting that you give me—in writing—the answers that I requested. Since you cannot seem to comprehend the questions I asked in my letter, I will set them forth herewith:

1. Which wills am I involved?
2. Date of the Instruments?
3. Testator or Testatrix is whom on each will?
4. Am I the Executor or contingent Executor (you call Successor)?

5. Is there any evidence that I was supposed to know that I had been named on any of these wills?

6. What is your definition of 'heavily concentrated and involved in the Indian Wills'?

Since you are the Chairman of the Task Force, I assume you are responsible for the phraseology of the Report; therefore, fully responsible for any injustices which may be done to any individuals who have been named in The Report. . . . I will be awaiting your reply.

Very truly yours,

CLARENCE A. BRECHLIN.

Mr. EDMONDSON. We will then, this afternoon, hear Mr. Hill, Mr. Hollowell, and Mr. Cleary and I expect, looking at the length of statements of Mr. Hollowell and Mr. Cleary, that this will be fairly extended testimony, so we will be here at 2 to begin taking their testimony.

Are there any other individuals now who wish to be heard as witnesses? Now, I want to remind you of the announcement I made at the start of the hearing and have made once since. You must notify Mr. Sigler, and you must supply him a copy of your statement, and we would like to have copies for each member of the subcommittee supplied at that time, if possible.

Please take care of that immediately, if you want to be heard this afternoon.

The subcommittee stands in recess until 2 o'clock.

(Whereupon, at 12:15 p.m., the subcommittee was recessed, to reconvene at 1 p.m., on the same day.)

AFTERNOON SESSION

Mr. EDMONDSON. The subcommittee will come to order.

Before the noon recess, I announced that Mr. Hill would be our first witness this afternoon. Mr. Hill has asked permission to file, as a statement, his letter to Mr. Tunney dated May 31, 1968, and if there is no objection, this letter will be made a part of the record at this point. Hearing no objection, it is so ordered.

(The document referred to follows:)

BANK OF AMERICA,
Palm Springs, Calif., May 31, 1968.

HON. JOHN V. TUNNEY,
House of Representatives,
Washington, D.C.

GENTLEMEN: I appreciate the opportunity of meeting with you this morning individually, and as a representative of the Bank of America NT&SA, Palm Springs District Trust Office.

By way of information only, this is a position which I have held since the fall of 1967, and therefore I am not familiar with the wealth of material and reports which exist and have previously been reviewed by your committee; however, I would like to take a moment of your time to review just one small but very significant part of the investigation having to do with the fees which have been charged in connection with the administration of the Conservatorship and Guardianship Program during the past eight years.

As you are aware, a court-appointed guardian or conservator is responsible for the complete management of the assets under his control for the benefit of the beneficiary.

It might be well to ask "What does the Bank do in regard to the management of securities and real properties?"

Let us just explore some of the services we provide in connection with security investments and some of the values which the ward or beneficiary gains from these services.

Each guardianship or conservatorship account is reviewed by senior officers of the Bank to ensure that it meets the ward's personal investment objectives. A Trust Officer and Portfolio Investment Officer are assigned to the account. Their constant personal supervision and responsibility are backed up by the experience and facilities of the world's largest bank. This individual service enables us to provide a sufficiently flexible investment program to meet the needs of any portfolio.

The Trust Department has at its disposal a large research department. Our extensive files of financial information, our national and international financial connections, as well as our contacts with thousands of business and government officials—all are used by the Bank's investment men in arriving at decisions regarding the investments.

We gain valuable inside information through our regular banking transactions—information the individual investor would find difficult to come by. As a leading underwriter of tax-exempt California and municipal bonds, and as a major factor in the Government bond market, we have up-to-the-minute information on bond issues and prices everywhere. We have new information every day on industrial and economic trends as well as on individual companies. All this information is at the disposal of our staff of security analysts who study stock values on a full-time basis.

The Bank's Trust Committees, consisting of senior bank officers from all departments, examine and approve all investment recommendations. Each individual account benefits from their review and group decisions. These men bring years of experience in all areas of finance to bear on each portfolio.

Our investment suggestions are strictly unbiased. We have no other interest than to serve the individual's interest. We have no securities for sale, nor do we receive any commissions or profits on transactions.

Now let me turn for a moment to real property held as an asset of a trust. We are responsible for not only the day-to-day maintenance and operation of a parcel of real property, but also to actively manage and market property to its full potential. This takes a keen knowledge of the community—its proposed development, values of land, and a knowledge of construction costs, together with the availability of money and its cost.

Real properties held as assets of a trust are under the complete supervision and direction of a Trust Committee which is composed of the branch managers in this area, who through their lending and banking experience are in a unique position to guide and direct the development of real estate.

Keeping in mind the previously mentioned activities, let me proceed to briefly explain other duties which the guardian or conservator performs as part of its management responsibility:

1. Prepares and files all necessary reports and tax returns required of various businesses, real estate, and other interests in the trust.
2. Prepares and files state and federal income tax returns which pertain to the trust.
3. Makes certain that taxes on real and personal property in the trust are assessed fairly and paid on time.
4. Sees that the assets are adequately protected by insurance or other required care.
5. Make necessary entries, reports, and payments in management of the assets.
6. Consults with and arranges living allowances for the immediate family.
7. Assembles and inventories all assets of the trust.
8. Has all assets properly appraised.
9. Keeps real property in good repair, maintains rental of income property, and collects rents.
10. Pays all real and personal property taxes when due.
11. Collects dividends and any other income from security or bond investments, and attends to all investment matters.
12. Accounts for all moneys received and disbursed by the trust, and submits a detailed report thereof to the court and other interested parties.
13. Makes final distribution as directed by the court.

As you will note, these duties are all concerned and connected with the management of the physical assets held in a trust.

I am sure you will appreciate that the management of assets cannot be completely separated from the guardian's or conservator's involvement with the human and personal problems of the beneficiaries. This particular phase, which we call the human or personal aspect of our administration, does require many, many

extra hours. It is as necessary an ingredient to the proper completion of the guardian's or conservator's work as it is for the congressman to know what the opinion of his constituents is on an important piece of legislation.

Although the conversations, conferences, and discussions of this nature are not generally reduced to writing or formal memos, they are most important in the management of property. Therefore a dialogue between the beneficiary or the minor's guardian of the person is most important to the management of the assets and is time-consuming.

The fees generally allowed and considered reasonable for the management and responsibility of these assets and the production of income are $\frac{3}{4}$ of 1% of the reasonable market value of the assets.

The Probate Rules of one county read in part as follows:

"The rate of $\frac{3}{4}$ of 1% per annum of the reasonable value of the corpus of the trust estate at the time such compensation is taken shall ordinarily be deemed reasonable compensation; subject, however, to the court's discretion either to increase or reduce such compensation, depending upon the work performed, the responsibility assumed, the results accomplished, and other factors. . . ."

It occurs to me that there is a question regarding the reasonableness of the basis for determining fees at the rate of $\frac{3}{4}$ of 1% per annum of the market value.

Let me cite a few examples of fees paid and accepted by the public as reasonable.

A real estate broker receives in this community, like most other communities, a 10% commission on the sale of unimproved real property, and a 6% commission on the sale of a residence, both based on the market value of the property sold. These transactions many times are completed within a 30-day period.

A conservator or guardian, on the other hand, is paid only a fractional percentage of 1% for an entire year's management of a variety of assets.

This appears realistic when related to that of a broker's commission, and based on the work performed, responsibility assumed, and results accomplished.

Let me cite another example—that of the fees charged for the management of mutual funds, which are well-known to all of us.

Based on statistics taken from the annual issue of Forbes Magazine, which rates these investment funds generally in August of each year, I computed the average cost for management, custodial, and operating expenses of 223 funds to be approximately $\frac{4}{5}$ of 1% of the asset value. The management costs varied from less than $\frac{1}{4}$ of 1% of the asset value to more than 3%. The average of the 223 funds, however, is approximately $\frac{4}{5}$ of 1% of the asset value.

Now, a guardian's duties encompass a great deal more than just the management of security investments. For example, we are responsible for determining, usually after many hours of consultation the advisability of discretionary payments, the adequacy of insurance, the payment of monthly bills, and, in summary, the management of the ward's everyday affairs, for which the reasonable compensation is $\frac{3}{4}$ of 1%. You will note that this is less than the average cost of the charges for the management, custodial, and operating expenses of mutual funds.

Now let me refer to that section of the U.S. Department of the Interior's Report on the Administration of Guardianships and Conservatorships for the Members of the Agua Caliente Band of Mission Indians Dated March 1968, regarding fees.

You will note on page 9 that the audit information relates fees paid to total receipts, rather than fees paid as a percentage of the reasonable market value of the assets which the guardian or conservator is responsible for.

Although this is a departure from the norm, it is interesting to note that the Task Force Report dated March 1968, indicates that fees paid as a percentage of total receipts vary from 10 to 12% of these receipts. I would like to call your attention to the fact that the Treasury Department's Report to Congress regarding private foundations, dated February 2, 1965, indicates that expenses incident to the production of income amounted to 9.67% of income receipts. This report covers the investigation of 14,865 foundations. In view of this, it does not appear that the averages as noted in the Cox Report dated March 1968, are excessive.

In reviewing the American College of Probate Counsel's "Fees of Executors, Administrators, and Testamentary Trustees", I note that in almost all instances, the fees to be paid to a trustee are left to the discretion of the court, and are not set forth in detail under any state statutes, as is the case with executors' commissions.

It is interesting to note that we have used as a guideline to reasonable fees $\frac{3}{4}$ of 1% of the reasonable market value of the assets being administered. This guideline is similar to those used in San Diego, Orange, and Los Angeles Counties. In addition, I observe that this is the same basis on which trustees' fees are calculated in the State of Utah. In the States of Oklahoma, Kansas, and Ohio, trustees' fees are generally based on $\frac{1}{2}$ of 1% of the reasonable market value of the assets administered.

As indicated above, the report dated March, 1968, relates fees paid to guardians and conservators as a percentage of receipts, which again is a departure from the norm; however, the receipts in these instances, are unrealistically low in relation to the reasonable market value of the assets, due to unproductive real property.

It is my understanding that the total carry value of the assets, exclusive of trust lands, amounts to \$35,400,478.45 for the period covered by the accounts.

The reasonable market value of the real property amounts to approximately \$256,000,000. The total estate managed by guardians and conservators, therefore, amounts to \$291,400,478.

A reasonable fee based upon what I have said, therefore is \$2,185,503.

According to the Report, fees paid to guardians and conservators, their attorneys, and real estate brokers, amount to \$1,904,682, or approximately \$280,-820 less than those which would appear reasonable.

Based upon the total guardianship program and the costs incident thereto, it does not appear to be excessively costly to the beneficiaries when we consider that the fees paid are for the guardian's or conservator's responsibility in managing the assets. There may be individual instances where the fees appear to be high or low; however, these matters have all been reviewed in detail before the court at such time as the accountings were heard and approved. It occurs to me that any parties to the proceedings who felt that the fees requested were not proper would have ample opportunity to be heard.

E. W. HILL, *Trust Officer.*

Mr. EDMONDSON. During the morning, the committee heard testimony regarding the failure of some members of the tribe to receive ballots in the election in March, and during the noon recess, we asked the Bureau of Indian Affairs representatives if they could account for this. The chairman was informed that three ballots were returned as not claimed by members of the tribe, and that a check with the postal officials revealed that each of the three people whose ballots were returned lived on a rural route, and according to the rural carriers had been left a notice in their box that registered mail was at the post office for them, and it could be picked up at the post office.

According to the Bureau of Indian Affairs representative, these letters containing ballots were held for the required regular period of time at the post office to be picked up, and then returned to the Bureau of Indian Affairs office in accordance with the law, and not having been claimed by the three individuals who were addressees.

Now, I have asked that the committee be supplied with a signed letter by an official of the Bureau of Indian Affairs documenting this with facts and with dates, where available, and with postal names where available, and I have been assured that that letter will be supplied for the record, so if there is no objection, that letter will be made a part of the record at the appropriate place.

Hearing no objection, it is so ordered.

(The information follows:)

UNITED STATES GOVERNMENT MEMORANDUM

MARCH 26, 1968.

To: Files.

From: Administrative Officer.

Subject: 1968 election for chairman and two members.

On this date the Administrative Officer received in the mail 4 letters which had been dispatched CERTIFIED—RETURN RECEIPT REQUESTED. These letters were UNCLAIMED and contained ballots for the Tribal Election. They were addressed to: Eileen Miguel, Richard Amado Miguel, Robert Steven Saubel and Dorothy Rice. Contact was made by phone with Eileen and Richard Miguel and it was stated by them that they were never notified by the Post Office to pick up their certified mail. The Post Office was contacted and it was learned that Eileen and Richard Miguel WERE notified on 3/8/68 through the regular Post Office procedures. The date of notification was so noted on the returned mail. Mr. Krasken, the head of the Post Office Annex said the Post Office would be happy to verify this. I was unable to contact Robert Steven Saubel as this office does not have a current phone number for him. Also, it was noted that Mr. Saubel was notified by the Post Office in the same manner as the Miguels.

EGBERT B. WARD.

Mr. EDMONDSON. Our first witness this afternoon, if he's here and ready to proceed, is Mr. James Hollowell. Mr. Hollowell, would you come forth, please?

Mr. Hollowell, this is a rather long statement, and I am a little bit embarrassed about asking you to stand for that period of time.

Mr. HOLLOWELL. Thank you.

Mr. EDMONDSON. So, we will try to make an arrangement for you so you can sit, because I know this may be an extended period of time, and we would not like to put any burden on you in terms of standing too long in one place.

Mr. HOLLOWELL. Thank you. Before I go into my statement, we heartily appreciate your being here. When this thing, as I put it, happened to us, we immediately contacted our Congressman, John Tunney, feeling that this would be the only forum in which we could be heard and all I can say is, Mr. Tunney has performed admirably, and we are just tickled to death that you are here, and that we can have our say, so to speak.

I felt it incumbent upon myself, in representing the association, to inquire as to the judges and the judges felt that this was not the proper forum for them and, therefore, the judges are not here.

Mr. EDMONDSON. What association were you representing in that—

Mr. HOLLOWELL. I'm president of the Association of Conservators, Guardians, and Allottees of the Agua Caliente Indian Lands and Estates.

Mr. EDMONDSON. And, in that capacity are you and Mr. Cleary also testifying as representatives of that organization, or are you the spokesman for that organization?

Mr. HOLLOWELL. In order to keep from having a multiplicity of one individual after another getting up and denying certain allegations, Mr. Cleary will cover the broad spectrum and this is to cover the many small witnesses. Since I am a major-named target of the task force, I am speaking for the association and then I will cover specific areas of charges of misconduct on my part which, obviously,

the committee might want to question me on, and I saw no need having Mr. Cleary represent me in that regard.

Mr. EDMONDSON. All right, sir, you may proceed.

STATEMENT OF JAMES HOLLOWELL, PRESIDENT, ASSOCIATION OF CONSERVATORS, GUARDIANS, AND ALLOTTEES OF THE AGUA CALIENTE INDIAN LANDS AND ESTATES

Mr. HOLLOWELL. My name is James Hollowell. I am an attorney licensed to practice in the State of California and the State of North Carolina and in the U.S. court of military appeals.

I have been practicing law in Palm Springs since April of 1958 and have specialized in Indian affairs and have represented approximately one-third of the local tribe for the past 6 years. For the past 2 years I have served as president of the Association of Conservators, Guardians, and Allottees of the Agua Caliente Indian Lands and Estates.

I have already given my exhibits to Mr. Sigler, your counsel, so I will just make reference to them here. A copy of the constitution and bylaws has already been offered as my exhibit "A."

The purpose of this association is to advance and improve the capabilities of the members of the association in guarding and conserving the estates of the wards and conservatees under their control and management by coordinating the development of Indian land to its best and most profitable use.

While this purpose is broad, the intent of the association at its inception was to unify the presentation to Palm Springs and the world at large of the lands of the Agua Caliente Indians so that they could be put to their most profitable use in the most efficient manner.

At our inception we were immediately met with opposition from the tribal council. After that meeting, members of the council refused to belong to our association and maintained that the association was duplicating efforts of the council and Bureau. Unfortunately, the Bureau at the time of the inception of our organization, was making no efforts whatsoever to actually promote the lands of the Agua Caliente Indians. As a matter of fact, the few efforts that were made before and after the inception of our association were inept in that the Bureau, through directives and policies in Washington, set such ridiculous standards for the leasing of Indian lands, that for a good period of time after the inception of the conservatorship program and the establishing of our association, the Indian lands were unleaseable because of the impractical conditions placed thereon by the Bureau and the Secretary of the Interior.

Such things as a 5-year nonoptionable lease and a 25-year nonmarketable lease are examples of that of which I speak.

On behalf of the association and its members, I would like to state that we have no ax to grind. We are not appearing here today in order to promulgate the system and thus our respective positions as fiduciaries. We have appeared here today for one reason and that is to rectify as best possible, the damage which was done to many reputations by the false and slanderous report prepared by Robert L. Cox and Barry K. Berkson and, second, to attempt to communicate to this committee a true factual picture of the conservatorship program as it has worked in the past, so that this committee can more intel-

lignently determine what, if any, legislation is needed to assist the Agua Caliente Indians.

Immediately following last year's unwarranted statement by said Secretary Udall, the vast majority of people involved in the conservatorship program felt that it would be fruitless to fight city hall, so to speak, and thus have participated little, if at all, in the attempt to ascertain and present the true facts to you today. Those of us who are here are, however, interested as I stated before in letting you gentlemen know the conditions that do exist, so that the legislation which is adopted will be for the benefit of all concerned, and not merely continue in a hodge-podge fashion, the inept system now in existence for caring for the members of this tribe by the Bureau of Indian Affairs.

Virtually the first act of the association was to determine the advisability of opening up an office in the city of Palm Springs wherein maps, aerial photographs, zoning ordinances; and all other pertinent documents relative to Indian lands could be maintained at one central location. We had hoped to staff this with a former retiring member of the Bureau of Indian Affairs, who would be well-versed in the problems concerned with leasing and/or purchasing of Indian lands and we therefore had intended to nationally advertise the availability of these lands.

Our efforts to establish this office met with opposition immediately from the tribal council, who felt we were infringing upon their rights and who felt that the Bureau could handle this task more readily and publicly stated so. Unfortunately, the Bureau was not equipped either physically or temperamentally to aggressively promote Indian lands as our association had anticipated, that we would do. Having met with such staunch opposition from the tribal council, our plans in these regards died a natural death.

The first constructive activity undertaken by the association was in connection with proposed zoning of section 14 by the city of Palm Springs, Section 14, as you know, is wholly Indian-owned and is in the heart of downtown Palm Springs. The city council proposed zoning for this section. I, with my extremely limited experience in zoning, felt it was improper zoning, as it was too restrictive and oppressive. The association agreed with me and we engaged the services of Herman Raney, a city planning consultant and former planning director for the city of Palm Springs. At public hearings held by the city of Palm Springs in connection with the proposed zoning, Mr. Raney, on behalf of the association, violently objected to the zoning which was being offered, although the tribal council tentatively approved the zoning and the Bureau remained mute. After our initial objections, the tribal council engaged their own planning consultant who concurred with Mr. Raney and the association that the zoning was improper and too restrictive for the Indians. Part of the association's funds were spent for Mr. Raney's services and my services as an attorney as I collaborated with Mr. Raney in the preparation of some of the presentation.

Following the tribal council's engaging of their own consultant, the association had Mr. Raney finish the project. We presented Mr. Raney's proposal to the Bureau and then we withdrew from the activity because of the heated objections from the tribal council.

When the investigation commenced in 1967 by the special task force, headed by Robert L. Cox, from the public announcements made by

the Secretary of the Interior, it was obvious that the investigation would not be an impartial one, but would attempt in some way to distort the facts and mislead Congress. We thereupon engaged the services of Henry Cleary, an attorney, to investigate the overall program and to present to Congress, if we were fortunate enough to have this hearing, what we found to be the true facts attendant upon this program, going into the audit report matters. We have paid Mr. Cleary \$1,500 on account of his fees and several hundred dollars on account of actual costs to date.

Subsequent events have proved the soundness of our reasoning since the report, which was concluded in March of 1968, is one of the most gross distortions of facts that it has been my misfortune to encounter.

Before leaving my comments on the association, it should be pointed out that at the time the association was organized, section 14 was potentially one of the most valuable pieces of real property in the desert, yet one of the most degrading sights in that it constitutes a dismal slum area. This slum area had been encouraged by the Bureau of Indian Affairs through their lack of foresight, in granting 30-day permits and only authorizing 5-year leases on any Indian land. No tenant whatsoever with any practical approach to real estate development would put up any more than temporary buildings or the tarpaper shacks, which were replete throughout section 14. The association took the initiative in the program of clearing the slum. The city of Palm Springs cooperated and paid some of the costs. The Bureau took no part therein, other than to approve our actions.

While I realize this committee is here primarily for the purpose of ascertaining facts which will enable them to adopt effective legislation, I feel it incumbent to make a few remarks in response to the slanderous accusations made against me by Mr. Cox in his privileged communication known as the task force report.

On page 11 of the report, Mr. Cox accurately points out that Judge Therieau and I have been awarded altogether, and I emphasize the word "awarded," fees approximating 30 percent of the total fees awarded. The fact that the fees have been awarded does not necessarily mean that they have been paid. I personally have a substantial amount of fees which have been awarded, but for which the estates obligated at this time have no funds with which to pay. It must be kept in mind, however, that Judge Therieau and I did approximately one-third of the work involved in handling all of these tribal estates over the past number of years.

Illustrative of this is the fact that on page 19, Mr. Cox points out that there is some \$24,700,000 in anticipated future rents from the existing active long-term leases. This means leases which have not defaulted. I personally have been involved and participated in negotiations, and drew six of those leases which will produce some \$7,700,000 in income. In addition to the active leases, I was also involved in preparation and negotiations involving four other leases, which at the time of their inception had an anticipated average income of \$11,964,000.

The fact that these leases are no longer in existence is regrettable and is a loss to the Indian lessors, but it should in no way reflect upon or diminish from the services required of myself in negotiating these

leases, because it has always been the policy of the Bureau of Indian Affairs, before approving any lease, to remove from the conservator's realm of jurisdiction the field of passing upon the financial qualifications of the prospective tenant. Each of the tenants of the leases which have failed have been individually approved as to financial ability by the Bureau of Indian Affairs.

On page 28 of the task force report it is stated, "Hollowell charged both Mr. Fey and the Patencio estate for the same work."

Gentlemen, this is an outright lie.

The report refers to exhibits 23 and 24 as ostensible proof of the charge. Now, I've prepared a rather lengthy detailed statement which Mr. Sigler has in which it goes in greater depth than I have here.

Exhibit 23 is photographs of checks and a recapitulation of sums paid by Mr. Fey to me. This exhibit is accurate.

Exhibit 24 is the accounting covering the year 1963. I received funds from Mr. Fey in the year 1963 as reflected by exhibit 23. I filed an accounting for the year 1963 as reflected in exhibit 24.

It must be remembered that with the establishment of the conservatorship and guardianship program in the Palm Springs area following the year 1959, there were no guidelines for the courts, the Bureau, or the attorneys or conservators or guardians to follow. The policies followed by the courts in demanding accountings and requests for fees has evolved to the one now followed.

Until 1964, when the policy memorandums were promulgated by the superior court, which memorandums are exhibits to the report, the practice which had been followed theretofore was that generally followed in other probate cases, and each case was handled differently depending upon the particular attorney and fiduciary involved.

It was my practice in the year 1963 to file an accounting specifying the number of hours I had devoted to the particular estate and to request compensation on an hourly basis. In conjunction with the 1963 accounting, I forwarded to Judge McCabe a letter setting forth the number of hours that I had devoted to that particular estate. This letter was and is inserted in the superior court file involving this estate. The task force report conveniently neglected to include that letter as part of exhibit 24, although it is an integral part of exhibit 24. Had the auditors been permitted to confer with me, they would have found that the time devoted to obtaining rights-of-way and other legal orders for Mr. Fey had not been charged against this estate, but were charged against Mr. Fey. Accordingly, there is no duplication of services or charges for the year 1963.

An even more flagrant abuse of the truth by the task force is their accusation that I double-charged in 1964. Mr. Fey did pay me money in 1964. My accounting for the year 1964 sets forth in detail the work I did at the request of Mr. Fey involving this estate and sets forth in detail the fact that I had been paid by Mr. Fey and was not charging this estate for any of the work paid for by Mr. Fey. Exactly the same situation existed for the year 1966. There were no services to Mr. Fey in 1965. Exactly the same situation existed for the year 1966. The fact that the accountings for the periods of 1964 and 1966 were not included as part of exhibit 24 cannot be condoned as an oversight by the task force for the simple reason that the task force at one time or another

had the official court files in their possession for a total of 155 days, and such an oversight must be presumed to have been intentional.

Mr. EDMONDSON. Mr. Hollowell, could I get clarification on that one point?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. Looking at exhibits 23 of the task force report, it shows Canyon View Estates payments to James Hollowell. Are you attorney for Canyon View Estates?

Mr. HOLLOWELL. Yes, sir. When I say "Fey," I mean the same thing.

Mr. EDMONDSON. It shows the payments for the years 1963, 1964, 1966, and 1967. It shows that in 1965 none were made. Are you aware that this document appears in exhibit 23?

Mr. HOLLOWELL. Oh, yes; I'm very aware of it and very familiar with the document.

Mr. EDMONDSON. Would you clarify what you mean by saying the failure to show the payments that were made in this exhibit was unpardonable, if I understand you correctly?

Mr. HOLLOWELL. Yes, sir. If the investigators had included the accountings covering the years 1964 and 1965, I stated in those accountings services rendered in regard to Fey and the fact that they were paid for by Fey, by omission they come up with this double-charging thing where I openly disclosed it.

Mr. EDMONDSON. You mean, by failure to detail what these charges were for in 1963 and 1964, that there has been a total omission. Is that the point you're making?

Mr. HOLLOWELL. Yes, sir. If they had included the accountings, I don't see how they could make the charge.

Mr. EDMONDSON. Thank you. Pardon me for interrupting you, but I was looking at that when you testified and I didn't understand quite what you meant by that. Thank you.

Mr. HOLLOWELL. The next exhibit which Mr. Sigler has is a file folder with a detailed statement of the Roy Fey matters, which I am sure your counsel can examine and inform you of the statements. I wouldn't expect to take the committee's time to go through that file now. On the inside of that exhibit on the top is a letter from the superior court showing when the task force had these particular files, so I'm not making a pointed accusation. They had the files for quite a while.

I have thereafter placed all of my accountings in the matter of Ray Patencio, together with all petitions, orders, and exhibits in regard to Mr. Fey in that file. You will find my letter dated February 23, 1964, which was omitted deliberately by Mr. Cox, and my accountings for 1964 and 1966, which puts the lie to this particular accusation. The miscellaneous documents concerning Fey are included in this exhibit so that your counsel can easily ascertain, in addition to the above, what I am about to say now.

Before leaving the double-charging accusation, please note that both the 1964 and 1966 accountings have an affidavit of mailing showing that they were mailed to the local Bureau of Indian Affairs office, which is additional proof that they had full knowledge of the contents of those accountings of my work for Fey.

Now, briefly turning to the "Fey statement" which is included in exhibit 23 of the task force, it is interesting to note in passing that this does not by any means purport to be a verbatim statement and is the

interpretation of a statement by Mr. Fey to representatives of the Bureau.

Mr. Fey was developing substantial amounts of real property in parcels. He was subdividing the real property and thereafter subleasing the individual units therein. As he subdivided each tract or series of tracts, it was necessary to obtain a court order approving the proposed subleases. Mr. Fey, early in his tenancy, discovered that his own attorneys at times were ill equipped and uneducated in the requirements established and maintained by the Bureau in regards to subleases and other matters and, therefore, called upon me from time to time to assist him in the obtaining of these court approvals. He knew, and I advised him, that I was representing the Indian landlord. He stated he would pay for my services because he expected and required prompt action in connection with all of his sublease and financing approvals.

Naturally, I was not going to perform extraordinary rush services at the request of a tenant and charge the landlord. Therefore, Mr. Fey did pay for these particular services.

When Fey had a tract which had been completed and needed a sublease approval before he was going into one, he wanted the approval as expeditiously as possible, and I performed these services for him, charging him for the services that I performed. By inference, the statement contained in the report is that I charged him for approval of each particular sale he sought, but Mr. Fey determined the extent of the orders that he sought.

As an aside, gentlemen, Mr. Fey prospered, I think, largely because he was a cautious man. He gets a large piece of property, divided it up and progressed in small parcels rather than going into the whole project at once and then being stuck with houses, so as he went along, he would need a court order authorizing the next 18, 20, or 30 units. Now, those petitions are voluminous. Your counsel can look at them. The petitions cover not only the standard form of sublease, but financing agreements, TV, notes, and the like.

Mr. Fey thereafter on each draft would then have the complete format. He would not have to come back to Jim Hollowell for any more work.

The alleged statement that I was—complaints that I was stalling him in not obtaining full powers for the conservator. If Mr. Fey had a complaint, he could have gone to the conservator who, in fact, did not want full powers, who, in fact, wanted court approval on every act because of the complexity of the development of Mr. Fey's project and the liability attaching to the conservator should he act improperly without prior court approval.

I have gone to the time and expense of preparing exhibit B because I think that when you get back in Washington, your counsel can give you the meat of the matter.

I direct your attention—the attention of the committee counsel—to the complexity of these subleasing and financing arrangements, and when we talk about an *ex parte* order, we're not talking about something I can whip out in a minute or two.

The task force sets up as a special heading "Alleged Misuse of Conservatorship Proceedings" and cites as examples of their conclusion two estates, each of which I personally was involved in.

In the estate of Edmund Peter Siva, the matter is still pending in the courts. It is not uncommon for an attorney to lose in the trial court and prevail at a subsequent hearing. In the matter of Mr. Siva, the fact that a conservator was not appointed for him in the trial court, while costly to Mr. Siva and to those who were petitioning for the appointment of a conservator, is not conclusive on the propriety of the establishment of a conservator for the simple reason that the decision of the trial court will be appealed, but the time has not yet elapsed.

In the matter of the estate of Eugene Segundo, the report not only—

Mr. EDMONDSON. Mr. Hollowell, would you suspend for just a minute?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. We haven't located—we're having a little difficulty identifying which is exhibit B.

Mr. SIGLER. Is this it?

Mr. HOLLOWELL. That's my statement. Open up the file, Mr. Sigler.

Mr. SIGLER. Is that the file for exhibit B?

Mr. HOLLOWELL. That's it, and the letter should be on the bottom of that pile of papers on the top, from the clerk's office.

Mr. EDMONDSON. And, the substance of exhibit B then consists of the pleadings that you have filed with the court roughly, from 1962 to the present time?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. All right.

Mr. HOLLOWELL. Mr. Segundo petitioned for the removal of myself as his conservator and the appointment of another fiduciary. I did not object. His wife, with whom he was engaged in a divorce action, did object, not to the change of conservator, but to the appointment of the successor who had been nominated by Mr. Segundo.

A long, involved, drawn-out fight ensued. Where Mr. Cox concludes that it was a simple 1-day hearing is beyond my comprehension. A contested fight involving as many witnesses and issues as this one did could never have been concluded in 1 day.

What Mr. Cox may have meant was that had the matter gone unopposed, as it would have if the wife of Mr. Segundo had not appeared in the action, the matter could have been handled by an ex parte order, which could have taken just about 5 minutes. The fact that it extended over the period of time that it did cannot be laid at the feet of any individual or institution.

The estate of Mr. Segundo was not charged with the \$4,000 fee of his wife's attorney. This claim was not only objected to by the Department, but it was objected to by Mr. Segundo through his own attorney.

The fees requested by me at the conclusion of my tenure as conservator covered not only the services rendered as conservator, but did cover the time spent in court. I appeared in court in connection with the change of conservators on numerous occasions, having been subpoenaed by the wife's attorney. Mr. Cox concludes the paragraph concerning this estate by a very misstatement of California law to the effect that it is not permissible for a conservator to charge fees for legal work. This is not the law.

My next exhibit is C and it contains my legal points involved in

the matter of Mr. Siva and the legal points filed by the amicus in regard to Eugene Segundo, and there again, I think your counsel can inform you in Washington. Your counsel can peruse these documents and advise you in regard to Mr. Siva. If he checks the legal points filed by the amicus in the matter of Mr. Segundo, he will find that all of the cases cited by the U.S. attorney do not actually state the proposition of law propounded by the amicus and the U.S. attorney, and brazenly set forth with no citation in the task force as a bold statement of actual fact.

Under the heading "Involvement of Individuals," the report attacks Stanley Spiegelman, one of my clients. The opening paragraph of the report concerning Mr. Spiegelman states that the audit reveals "an apparent overstatement of assets." In the initial audit conducted of Anthony Joseph Andreas, Jr., the auditors made a note that there was an apparent overstatement of assets because Mr. Spiegelman, as conservator, had purchased a one-half interest in a parcel of land for \$14,000, but he was carrying the land at \$30,000. The auditors apparently did not note that an interest in tract 39 was involved in both the acquisition and the accounting and that Mr. Andreas already owned half that property. I do not personally know if the auditors examined the court records, but if they did, they would have ascertained that the petition for authority to purchase a one-half interest for \$14,000 clearly showed that Mr. Andreas already owned the other half interest. Therefore, after the acquisition of the half interest from the Crossley estate, Mr. Andreas owned 100 percent interest. The half interest in the Crossley estate had been valued at \$15,000, and even though the purchase was for \$14,000, the combined half interests had been appraised at \$30,000 and that's the figure I carried in the accounting.

Of great interest on this point, however, and illustrative of the impartiality of the task force and the fairness of the task force, the chief of the auditing section acknowledged to me that this discrepancy could have and normally would have been discovered during a final auditing conference, but none had been held with Mr. Spiegelman. Mr. Broussard, the auditor, advised me that Mr. Cox had specifically instructed the auditing team to conduct no final conferences up to the time of the interim report.

Mr. Spiegelman, along with Judge Therieau and myself, is accused by Mr. Cox of alleged wrongdoing for not attempting to recover from the estate of Mr. Crossley the half interest that was subsequently purchased on behalf of Mr. Andreas. Mr. Cox claims that Mr. Andreas would have inherited this half interest had action been instituted to recover the property for the estate of his grandmother or himself. Such is not the fact because the grandmother's will, which I drew, would have left only one-third thereof to Mr. Andreas.

The facts existing at the time of the transaction were that Mr. Andreas claimed that Mr. Crossley was holding title to the property for the benefit of his grandmother. Assuming these facts to be true, nothing could be done under California law, for the simple reason that we had in effect at the time what is commonly known as the "dead man's statute." A claimant could not testify against a dead man. Mr. Crossley was dead. There were no other witnesses to Mr. Andreas' claim. Mr. Andreas' claim was based solely upon hearsay.

Hearsay is inadmissible over proper objection. This type of hearsay would have been objectionable. To institute an action against the estate of Mr. Crossley would have been an unnecessary expenditure of funds, not only for Mr. Crossley's estate but for Mr. Andreas' estate.

This ignores totally, however, the fact that for years prior to the transfer from Mrs. Andreas to Mr. Crossley, that Mr. Crossley had been financially supporting the family of Mrs. Andreas. The reason for this is obvious. The Bureau of Indian Affairs had not developed Indian land or allowed the Indians to develop their land to such an extent that they could support themselves. Now, I had a box in my office years ago containing all the canceled checks and vouchers of Crossley after the death of the grandmother, but I threw them away.

The task force concludes that Therieau, Hollowell, and Spiegelman all received fees in connection with the transaction involved. Certainly, we received fees. We worked and were entitled to these fees. Apparently, the inference is that there was some sort of conflict of interest here because Mr. Spiegelman was an appraiser involved in both estates.

We have an interesting situation right now in existence with the express approval and consent of the Bureau of Indian Affairs wherein two daughters, represented by the same conservator, and their mother are exchanging land in order to enable the mother to have a site large enough for the establishment of a post office on the land of the mother. All three of these parcels of property were appraised by the same appraiser, the Bureau of Indian Affairs.

Evidently the Bureau, because its head has been in the sand for so many years concerning the problems of the local Indians, does not have a conflict of interest, whereas those persons who have in the past exhibited an interest in their particular wards do.

My next exhibit, which Mr. Sigler has, is D, which sets out the Spiegelman matters in detail and which also shows in detail the post office transaction. Here again, the material is voluminous and I am sure Mr. Sigler can advise you of the contents.

In my lengthy and heavily documented report on behalf of the conservators and guardians, which was earlier forwarded to you, and which will be my last exhibit today, exhibit H, I go into the incident with Broussard, the chief auditor, in great detail. Here again, I am offering the exhibit and I feel that the contents therein can be briefly summarized for you by your counsel.

Besides informing me as to the cash accrual method of bookkeeping adopted by the task force, which area Mr. Cleary will cover, Broussard also told me that the auditors were wasting a tremendous amount of time preparing exhibits which were charts and tables concerning the finances of our Indian clients. Preparing such charts and tables is a specialty of Mr. Cox, which I discovered when he was first here in 1965 and 1966.

Mr. Cox wanted the auditors to prepare these tables and charts, thus giving them dignity. Broussard explained to me that the auditors' way of disclaiming liability for these wastes of time, and their way of further diplomatically stating that these charts and tables were of no value or significance was to place a note on them as follows, "statistical information presented in this exhibit was gathered, arranged, and presented as directed by the chairman, Palm Springs Task Force."

Please note as example, the exhibits contained in exhibits 19 and 23 of the final task force report and you will find this language.

One other accusation made against both myself and Judge Therieau should be mentioned regarding fees in some illegal manner. The accusation is based upon one transaction and that is in the matter of the Sunquitz lease and the minute order contained in the report as exhibit 31.

A simple reading of the minute order will indicate that at worst, it is ambiguous. The attorney and the conservator interpreted the minute order in a fashion which I believe is reasonable, to mean that the conservator should pay his own attorney that commission. Thus, after the award to Judge Therieau, who was the conservator, he, in turn, paid me, his attorney, for the legal services rendered to him in connection with that lease.

As a matter of fact, this interpretation was discussed subsequently with Mr. Robert L. Cox, and in the estate of Winifred Patencio Preckwinkle, Indio No. 687, the identical situation presented itself. Believing the just referenced minute order to be some new probate policy of the superior court, the conservator in the estate of Preckwinkle, filed a petition for instructions requesting an award of one fee or commission to him, alleging that he, in turn, would pay the attorney, myself. Following the filing of this petition, the conservator and I discussed the matter with Mr. Robert L. Cox, the author of the task force report, and in that discussion, we all agreed that the order made in the estates of Mr. and Mrs. Patencio was ambiguous; that it was intended that the conservator pay his attorney from his commission; that it would be better practice for the court to award a fee to the conservator for his services and a fee to the attorney for his services. In discussing the matter with Mr. Cox, the conservator, Mr. Cox and I agreed on fees for the conservator and myself in such a manner that I received the exact same fee in the Preckwinkle estate as I had already received in the estates of Mr. and Mrs. Patencio. The work was fairly identical, the leases were identical. It was actually the same leasee, and had the same minimum rent.

My next exhibit is E, which Mr. Sigler has. It is the Preckwinkle petition and the order, which completely confirms Judge Therieau's and my position in the matter of the Patencio estates. The petition clearly shows that we interpreted the minute order, the prior minute order as a new court policy.

The matter of the fees for the conservator and myself in the Preckwinkle matter were negotiated with Mr. Cox. After the negotiated fees and commissions in the Preckwinkle estate, Judge Therieau later reduced his commission in the Patencio estate, since both of these leases were identical. Therieau and I, in the Patencio estates, agreed that he would only pay me 40 percent of his commission, as his commission in those estates included not only a commission for obtaining the Sunquitz lease, but also other extraordinary services performed by Judge Therieau. Mr. Cox was completely informed as to all these matters. The conclusive proof of this is the fact that when you take 40 percent of the Sunquitz lease commission eventually paid to Therieau, you will find that this is attorneys' fees awarded to me, the exact sum negotiated with Mr. Cox and ordered paid to me as attorney in the other lease in the Preckwinkle estate. This is far too much,

gentlemen, to be a coincidence. With the full knowledge of all the facts, the task force has deliberately misrepresented to the world that I have participated in some sort of illegal fee-splitting.

I have confined my remarks generally to the false accusations made against me and some of my clients. The true picture of the conservatorship program insofar as it relates to the cost to the Indians will be discussed by Mr. Cleary.

I had wanted to have present here today, a certified public accountant who could advise this committee on the inaccuracies of the audit reports which were prepared under direction of the task force. However, early in April, Mr. Cox advised me that the reports would not be available for examination and this position was not reversed until last Friday when two letters were sent by Cox to myself advising that three of my audit reports were then available. The letter of authorization did not even extend to the conservators' attorney, therefore, it was felt that the Bureau would not permit an auditor to examine the reports, nor did time permit, since we had only a few working days to get ready for today's hearing.

This committee might be interested in the fact that despite the accusations made in May, reiterated in September in the Cox interim report, and again in March by the final task force report, and constantly throughout the past year by the newspaper of alleged improprieties, illegal activities, and gouging done by myself, the majority of my Indian clients have awaited until today's hearing to ascertain the full story before making up their minds, and this despite the fact that I have been devoting so much time to this matter, working in preparation for today, that I haven't had a chance to go into those matters with them in detail. Gentlemen, Indians make very loyal friends and I am sure you Congressmen know that.

My next exhibit is "F," which Mr. Sigler has, and it is a declaration by Attorney Mahaney in regards to the Palm Canyon Country Club lease transaction, wherein myself and many other attorneys have been charged with possible conflict of interest. Although Mr. Cleary is covering this phase of the task force report, this declaration is offered into evidence to show why I received more fees than some of the other attorneys. The lessee, Palm Canyon Country Club, the Bureau of Indian Affairs, and the landlords were all equally anxious to process the amendment to the lease. Mr. Mahaney, who represented the lessee, requested help in expediting the matter and it was given to him by my office, and the lessee paid for these services. The task force made no effort to follow up on their exhibit in this regard or they would have found out that some of the money I received was for the use of my office's Xerox machine by Mr. Mahaney. In addition to the sums paid to me for helping Mr. Mahaney, he paid, generously paid my secretary \$50 for working overtime and helping his secretary in preparing papers.

My next exhibit is "G," which are copies of two letters for the first time informing me that I could examine the audit reports of three estates in which I am the fiduciary. This came far too late for me to take effective action. However, through my efforts during the past year, I was able to relate sufficient information to Mr. Cleary wherein he could effectively explain to you, wherein the audit reports are of no value or use whatsoever.

My next exhibit is "H," which is the lengthy—and hastily-drawn reply to the task force. I have already forwarded it to Mr. Tunney's office after I received the final task force report.

Mr. Cleary will cover schedule 5 of the task force report, but since I am a chief target in this matter, please allow me to comment briefly in regard to that exhibit.

Only two of the seven estates in which I am a fiduciary are listed in schedule 5 and in these estates, schedule 5 sets out that records were not adequate, and that supporting documentation was missing. These are the only two adverse comments in regards to the estates of Joe and Frances Patencio. Yet, the audit reports do not cover the period of my stewardship. The fact is that in auditing three of my estates, wherein I had filed accountings, therefore, the task force had a comparison for it, but the task force could find nothing and since they had nothing derogatory to present, they omitted my three estates which had been audited and which gave me a clean bill of health.

Since they found that I had all of my canceled checks and vouchers, and had actually kept journals on all of my estates, and everything was in proper order, they abandoned the witch hunt in regards to me and they have not audited the rest of my estates. There are four more. Many of my conservators, for whom I am the attorney, find themselves listed in schedule 5, by inference, although there were no adverse findings in their audits. The task force deliberately chose the audit reports of those estates wherein there were one or more deceased fiduciaries, or fiduciaries who had already resigned, and for whom there were little or no records available.

On October 25, 1967, I mailed a lengthy and heavily documented letter to the Secretary of the Interior covering many of the areas covered by myself and Mr. Cleary. I sent this letter through Mr. Tunney's office and requested that he cause a copy to be made and send the same on to your committee. At that time, the Interior Department was put on full notice of how corruptly the so-called investigation was being conducted. On February 7, 1968, I directed another letter through Mr. Tunney's office to the Secretary of the Interior, bringing the Interior Department up to date on more recent findings by myself in regards to this little witch hunt. The letters were heated, angry, and indignant, and I admit it. However, the factual content was correct and the Interior Department was clearly informed as to the gross irregularities which were occurring in regards to the so-called investigation. Since the Interior Department has been fully informed twice by myself as to what was occurring, I feel their actions to date are completely inexcusable.

Mr. Cleary will make reference to the successful leases I have drawn, and also the unsuccessful leases. I have nearly \$8 million in leases drawn by me which is still in effect and working, and the leases which have been terminated and which were drawn by me, come up to almost \$12 million. Through no fault of mine did they go under, so that added to that is a vast list of leases I have drawn, leases which would result in income to my Indian clients of \$20 million tax-free and I'm proud of it.

I'm proud of the fact that the conservators and the guardians were able to conduct in 1 month a complete survey of all the court files

in Indio which the task force has been working on for a year and only done half of them.

One quite logical question should be answered for the benefit of all concerned, but primarily for the benefit of my Indian clients who are here today. Why have I been singled out by the task force? I think the reason is quite simple. When Mr. Cox was here in 1965 and 1966, I discovered what was happening and what the purpose of his investigation was. I was thoroughly familiar with the list of grievances sent to Washington. Every person who stood up to Mr. Cox during his first visit ended up being a major target in this past year's so-called investigation. The parties who stood up to Mr. Cox, and you have the list, were Judge McCabe, Judge Brown, Judge Therieau, Stanley Spiegelman, the Bank of America, and myself. As I resisted these efforts during the past year, I became more and more the target.

My exhibit "H," my lengthy earlier report clearly shows that I have been working for a solid year in pecking away at these investigators finding out what was wrong. Mr. Cleary will present to you what I think is an excellent critique of their report and I think he pretty well destroys it.

One last point is, Mr. Cleary makes certain alternative recommendations.

As a conservator and guardian myself, I am not recommending automatic termination of the trust status when an Indian client becomes emancipated by marriage or reaches the age of 21. The effect of the trust status over and over again has been declared by the U.S. Supreme Court to be that of wardship, the Indians being incompetent and thus protected by the United States of America. This is the legal effect of the trust status.

In January of this year the task force directed some form letters to certain of my Indian clients stating that the conservatee involved was sufficiently competent to handle his or her own affairs. This keys in with what Mr. Cleary will state, wherein the task force on page 5 states that a person who might reasonably be expected to do a creditable job of handling the income is not necessary capable of managing the corpus of his estate.

The effect of one of Mr. Cleary's recommended alternatives is to give the adult Indian a chance to choose or determine his future. If an adult Indian feels competent to handle his or her own affairs and the Bureau of Indian Affairs believes him competent, and the court should so determine that this is correct, then the Indian should be freed of the trust and be allowed all of the privileges of competency.

The position of the Bureau is deliberately intended to deceive the Indian. They are saying that although you are incompetent and we must preserve the trust status and keep you a ward of the United States, you do not need a conservator, for you're competent. The great white father speaks with forked tongue. What they really mean is that we wish to perpetuate the bureaucracy and keep the Indians dependent and subservient to the Bureau of Indian Affairs.

I am the conservator for a number of adult Indians. If they feel that they wish to remain as wards of the Government, Mr. Cleary's alternative proposal is open to them. They should be afforded the right to demand that the Bureau of Indian Affairs determine whether they are competent or incompetent. My Indian conservatees should be given

the choice of whether they wish to continue the status of wards of the United States. If they should so choose, then Mr. Cleary's alternative proposal would afford the later heirs and descendants of these Indian clients the right to make a choice for themselves when they come of age.

I thank you for your patience and if you have any questions, I will be glad to answer them to the best of my ability.

Mr. EDMONDSON. Thank you. I am quite sure that you have correctly brought out a situation here, and because of the volume of the material and the technical questions presented, it may not be possible to question you properly and adequately on a number of these items, without attempting to read them first. They are very voluminous and a lot of work and I can certainly assure you that every matter that you have covered is going to be followed through and that the Bureau of Indian Affairs is going to be asked to comment on each and every charge that you have made with regard to them.

May I ask one question of you. I'm not familiar with this phrase that appears at the end of your statement.

Executed at Palm Springs, California, this 29th day of May, 1968.

I declare under penalty of perjury that the foregoing is true and correct.

Is this a statement that corresponds to a sworn statement?

Mr. HOLLOWELL. Yes, sir. Under our law some people have a tendency not to want to take the Lord's name in that sort of this, so this is called a statement under due penalty of perjury which has the same effect as an affidavit.

Mr. EDMONDSON. You did not continue to read that in your presentation here.

Mr. HOLLOWELL. I'm sorry.

Mr. EDMONDSON. I wonder if that was an oversight on your part?

Mr. HOLLOWELL. It was.

Mr. EDMONDSON. I think it would be timely, if you read that, sir.

Mr. HOLLOWELL. I'd be more than happy. "Executed at Palm Springs, Calif., this 29th day of May 1968. I declare under penalty of perjury that the foregoing is true and correct." And, I have signed my name there.

Mr. EDMONDSON. Yes, sir. So, for purposes of the State of California this, then, is equivalent to a statement under oath before a notary public and is subject to the penalties provided in the State of California for perjury?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. Thank you very much, and I also want to compliment you for submitting it in that form, and I think it is to your credit that you are willing to stand on it, and to have it subjected to the test.

Mr. HOLLOWELL. I will stand on it, and I have a selfish motive; my reputation is at stake. Do any of you other gentlemen have questions?

Mr. EDMONDSON. I have several more questions. I'm not quite through.

Mr. HOLLOWELL. Fine.

Mr. EDMONDSON. You have used very strong language as to what you describe as the corrupt and deliberately deceptive work in the report of the task force, and you have attempted, in supplying

motivation for this, to say that it is because some people did not agree with Mr. Cox when he began his investigation and——

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. And, that some people were singled out as targets. Do you really believe that this would be motivation for a task force consisting of two public officers to make a finding on this point that does cover the the money points that are covered in this task force report?

Mr. HOLLOWELL. I do, sir; I'm familiar with the original list of grievances and I can go down that list and cover it point by point, and only in a few places I think they were legitimate grievances. I think that matter was handled badly. Instead of going over that original list of grievances and find out where the Indians were right and where they were wrong, an investigator was sent out to start using his pencil and get the facts. Now, I've seen this 1965 report and it contains the same things that we have here. He talked of nothing but income, not the total value of the estate. Bob Cox is a good attorney.

Mr. EDMONDSON. You keep referring to Mr. Cox. Was this a one-man task force in your understanding, or was it not the work of several officials and employees of the U.S. Government?

Mr. HOLLOWELL. My talks uncovered this. Mr. Cox is the chairman, Mr. Berkson, the other member, and Broussard stated specifically that because of the problems that had come up, the auditors had specifically been taken off, so the task force consisted of two men, Cox and Berkson.

Mr. EDMONDSON. Do you think that Mr. Berkson is subject to the same charge of corruption and deception as a participant in this report? Do you think that Mr. Cox is the man who is principally at fault?

Mr. HOLLOWELL. Well, knowing both men, I think Berkson was just following orders.

Mr. EDMONDSON. You stated at the start of your testimony that from the very beginning of the investigation in 1967, from the public announcements made by the Secretary of Interior, that it was obvious the investigation would not be an impartial one but would attempt in some ways to distort the facts and mislead Congress. Do you have the text of any of those public announcements that evidence that intent on the part of the Secretary of the Interior?

Mr. HOLLOWELL. Of course, that would be my only offense, sir. I have a folder, a newspaper file, and it's about that thick, but over and over again, the Secretary cross-quoting the information given to him regarding the percentage of income which I know was not a fair statement.

Mr. EDMONDSON. I want to say that I agree with one of your earlier conclusions very, very definitely, among others, when you speak about the lack of the Bureau of Indian Affairs initiative on the subject of leasing programs for Indian lands. I just thought your statement falls a little bit short of the full blame in the picture, because I think the Congress of the United States has to share with the Bureau of Indian Affairs a great deal of responsibility for that, for their failure to recognize this problem in the leasing regulations that we have set as a guide. We, in the Congress, cannot escape our farsighted responsibility for waiting until the late 1950's to get adequate long-term leasing authority into the law. I think the Bureau has a responsibility, and it is a very important one, but I think we, in the

Congress, share that responsibility, and I think it's only fair to acknowledge it.

Mr. HOLLOWELL. I think that's very fair. I think you're going to find that Indians are extremely individualistic and you are probably going to have to put the legislation that will not please everyone. Indians are no different than we are.

Mr. EDMONDSON. Now, Mr. Hollowell, I have read your statement and listened to it, and I have not found in it, or heard—perhaps I missed it—any response to one of the charges that appears in the task force report that all of us on this committee have discussed and consider very significant. I want to read it to you, and ask you to comment on it. It appears on page 28 of the report.

As stated above, Hollowell prepared nine of the 10 wills in which Judge McCabe is named executor and some of the Indians indicated that Hollowell did not make clear to them the import of the executor clauses. Hollowell kept McCabe advised of the preparation of wills in which McCabe was named executor.

Now, is this something that you would like to comment on at this time?

Mr. HOLLOWELL. I'd love to. I didn't want to go into it in detail. No. 1, I came into the interim picture in October of 1961, and right about that time, Judge McCabe had a large conference in Indian in his new courtroom to which the attorneys were not invited, where he covered 17 or 18 points in regard to the Indians. One of these was making wills. I didn't know anything about the procedure on Indian wills, so I immediately got hold of Ray Jackson, our then director, and Ray forwarded on to me a letter of instructions on how the Bureau would like an Indian will. I, therefore, prepared a large number of wills for some of my Indian clients, all of these wills being submitted to the Phoenix office of the Bureau of Indian Affairs where they were to be approved as to form by the Bureau. If the will—I didn't always make it the first time. Sometimes they'd find something wrong and send it back, but after the will was approved, I was then, according to the Bureau policy, to mail a copy to the local office of the Bureau and one to Sacramento, which I religiously did.

The wills that Judge McCabe figured in all popped up in about 1962. At that time—we've been wrestling with the Bureau since 1962—in talking to the individual Indians. I find them very much like other people, and when we got to the executor, they say, "What's that?" and I tried my best to explain that "He's the fellow who has to gather up the assets and administer the estate," and I explain specifically in every case, as I do in my regular practice, that the executor is paid and he's paid statutory fees which were based on a percentage in California. I would ask, as I do with all my other clients, "Who do you want for executor?" and most of my people—well, practically all, I would say, said, "I don't know," and this is not just an Indian; it's quite common. I suggested Judge McCabe because he was an excellent administrator, one whom I felt knew more about the files and regulations and the complexities and the whole miserable overlapping field than anyone else, and at that time, Judge McCabe was loved and liked and respected by our local Indians.

Now, this didn't last forever. In a subsequent year, a little book called "The Golden Checkerboard" came out and this is about the

point where Judge McCabe fell in great disrepute with the Indians; the Indians didn't like the book.

But, I swear to God, gentlemen, I explained that the executor got paid and you could choose anyone you want, and in that early group, by the way, I found one where Judge McCabe wasn't mentioned, but the Bank of America is, because in that particular case, my Indian clients wanted the Bank of America, and that was the end of the matter.

Mr. EDMONDSON. I assume, then, that this statement that nine of the 10 wills in which Judge McCabe was named executor were prepared by you, is an accurate one in the task force report?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. And, that you did keep Judge McCabe advised of the preparation of wills in which you named him executor?

Mr. HOLLOWELL. Not in every case. There, again, I supplied the cover letter in my first letter to Udall, one of my angry letters, and in that letter, I gave him a copy of every letter of transmittal, even including Phoenix back to me. All these letters of transmittal, also, my secretary did send a copy to Judge McCabe, but we do this with the Bank of America, and with other corporate, except in a few cases, and in those that didn't, I don't know what state of mind my secretary was in on that particular day.

Mr. EDMONDSON. And, the fact that you were having dealings with Judge McCabe then, in those judicial capacities, did not arouse any problems in your own mind of recommending him for executorships in connection with these estates?

Mr. HOLLOWELL. It didn't to me, because, and I'll be quite frank with you, I didn't get along with the man. I respected him, I really did, but I didn't always go along with what he said or what he did, and there's been many an unhappy time in court when I've asked for a fee and he's chopped it in half and I didn't like it, but—

Mr. EDMONDSON. Did you entertain the feeling, which would be human, that in having him named executor in a number of wills that it might improve his attitude toward you in his decisions with regard to you and your fees in court?

Mr. HOLLOWELL. I can honestly say I didn't, and it sure didn't improve my fees, because I know of a number of times after that where I had to have a matter of making a request and Judge McCabe made them substantially lower. He being the judge, I accepted his decision. I respected the man, but I didn't always get along with him.

Mr. EDMONDSON. Going on to the next point on the same page of the same task force report, there are several paragraphs dealing with radio station KDES in Palm Springs. Now, if you have the material before you, you can read it yourself and reacquaint yourself with the charge that is made. I didn't note in your testimony any specific reference to this charge either, and there is another point that I had drawn to my attention in reading through this material. It says, "Although Hollowell did not represent KDES, its representatives stated on interview that he had billed it for \$3,500 for his services." Is this an accurate statement?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. It says, "For approximately the same service

rendered to the third Indian estate, the other attorney billed KDES \$250." You probably have no way of knowing about that?

Mr. HOLLOWELL. I do; yes, sir. I know the lawyer.

Mr. EDMONDSON. Is this an accurate statement?

Mr. HOLLOWELL. No, sir.

Mr. EDMONDSON. It is not an accurate statement?

Mr. HOLLOWELL. No, sir.

Mr. EDMONDSON. He billed them for more than the \$250?

Mr. HOLLOWELL. He did not perform the same services.

Mr. EDMONDSON. It goes on and says, "KDES succeeded in getting Hollowell to reduce his fee to \$500 after it was pointed out to him that he was charging one of his Indian estates for the same service." Now, let's break that down. Did they succeed in getting you to reduce your fee from this \$3,500 to \$500?

Mr. HOLLOWELL. They sure did.

Mr. EDMONDSON. Did they make the argument to you that it should be reduced because you were charging your Indian client for the service?

Mr. HOLLOWELL. That was not the approach, and I hate to say it, but lawyers become rough when they are representing their clients, as you know. The approach to me was, "Gee, Jim, I'm sorry. We understand you are under investigation. I hate to come to you at a time like this, but"—and I'm reading the handwriting between the lines and catching the inference there that "you can't afford a big legal fight at the present time," and I capitulated.

Mr. EDMONDSON. You're saying that KDES in effect, put you under pressure to reduce your fee because an investigation was in practice?

Mr. HOLLOWELL. Yes; and that's what they——

Mr. EDMONDSON. Is that it?

Mr. HOLLOWELL. Yes, sir; and this has happened to me in other instances since this has been going on.

Mr. EDMONDSON. Let's go then to the last part of that statement, that you were charging one of your Indian estates for the same services. Is this an accurate statement?

Mr. HOLLOWELL. No, sir. I performed a multitude of miscellaneous services helping KDES get their lease.

Mr. EDMONDSON. Did you make any charge to the Indian estate, to any Indian estate for the work on the KDES matter?

Mr. HOLLOWELL. Yes.

Mr. EDMONDSON. The right-of-way?

Mr. HOLLOWELL. Yes. We had other Indian estates that were involved.

Mr. EDMONDSON. So, you did charge an Indian estate for the same work that you charged KDES for?

Mr. HOLLOWELL. No, sir.

Mr. EDMONDSON. You didn't understand my question then. Did you make any charge of an Indian estate listing the KDES work as a basis for a charge to that estate?

Mr. HOLLOWELL. No, sir. I was paid for some right-of-way through some other Indian estates, but in regards to KDES there were a multitude of incidental services that I performed in regards to that. There were two other Indian estates that KDES had to go over, or to reach Vista Chino, and there were charges in those other estates.

Mr. EDMONDSON. Let me direct your attention at this time to a document which I understand you filed, a pleading, July 6, 1966, in the matter of the conservatorship of the estate of Anthony Joseph Andreas, Jr., in which attorney's fees are listed and a charge is made over the signature of James Hollowell for an attorney fee in the amount of \$4,000. This item appears:

Said lessee, K.D.E.S., Inc., later found it necessary to require a non-exclusive easement for the purpose of ingress and egress to the K.D.E.S., Inc., lease premises. Attorney prepared Petition, Order and attended hearing concerning same.

Mr. HOLLOWELL. I know what's bothering you, sir. I had trouble with Mr. Cleary on this. Mr. Andreas owned a large piece of property. KDES only leased a small portion of it. Prior to the lease agreement that the landlord had with KDES, Andreas' estate would bear the cost of any rights-of-way from the tower site on the Andreas property through the remaining Andreas property that was not leased. Then, after we got up to the dividing line on his unleased parcel, we had two other Indian estates to go through to reach Vista Chino Street, so it is slightly confusing. A small portion of this big area was leased, I'd say one this large, and we had to give rights-of-way to KDES through the unleased portion and it was my burden to pay them from the estate.

Mr. EDMONDSON. Did you perform services for the Andreas estate in connection with the KDES right-of-way?

Mr. HOLLOWELL. Yes, sir. We had a —

Mr. EDMONDSON. And, you charged the Anthony Joseph Andreas, Jr., estate for this service?

Mr. HOLLOWELL. Through his own property.

Mr. EDMONDSON. And, is that a different service than the service for which you billed KDES for \$3,500 and later reduced your fee to \$500?

Mr. HOLLOWELL. Yes; certainly, definitely.

Mr. EDMONDSON. Would you tell us what, although you were not the attorney for KDES, what you billed them \$3,500 for doing?

Mr. HOLLOWELL. It would be hard without my files, but briefly this, the attorneys were not familiar with the Bureau procedure. They had me sort of running errands, they needed rights-of-way through these other estates. I helped them with those. The thing took about a year. I have a tremendous—certainly a thick—an inch-thick file of all the correspondence. KDES attorneys called me on the phone, saying "Jim, do this, do that," because from the very outset, KDES said "Take care of everything, Jim. This is the only tower site we can use and it's available and we'll take care of any extra costs."

Mr. EDMONDSON. So, this is not an accurate statement that you were not the attorney for KDES. You were, in effect, acting as attorney for KDES?

Mr. HOLLOWELL. Not officially, no. I was told by my conservator to do whatever was necessary to get the lease. KDES, through their attorneys asked me to help.

Mr. EDMONDSON. Who were you working for, the Indian estates or KDES?

Mr. HOLLOWELL. For the Indian estate. We wanted that lease.

Mr. EDMONDSON. Then, why did you bill KDES?

Mr. HOLLOWELL. Because they said to. They would pay for these extra services.

Mr. EDMONDSON. And, you did not see any problems in accepting a fee from KDES when you attempted to get the best possible deal for your Indian clients in connection with what was paid for the right-of-way?

Mr. HOLLOWELL. Not in this case because both parties knew it, and it was a good lease, and I drew the lease. I will agree with Mr. Schlesinger where he said in regard to duplication, what he said. The redtape involved in getting an Indian lease through is just monstrous, and I went through that redtape whereas their attorneys were not familiar with it.

Mr. EDMONDSON. Who do you think your responsibility was to in this situation, the Indian estates or KDES?

Mr. HOLLOWELL. Definitely to the Indian estates. Now, I am in the same situation on those rights-of-way being paid by the gas company and the electric company.

Mr. EDMONDSON. Are you telling me that this is a general practice in this area, for lawyers to accept fees from both sides in matters that involve two parties?

Mr. HOLLOWELL. It's not always a general practice, but I certainly have run into it. I run into it in a divorce situation almost daily, and many times I have two parties in my office and only one party pays for it. The way I feel, the minute I got out of law school and the minute I went into practice of law, I faced a conflict of interest every day in the year, and I think you have to wrestle with each one as it comes up and decide whether there is a conflict, and I might go along with what Cox says in this instance, a possible conflict. What we are saying is, there was none.

Mr. EDMONDSON. Let me ask you—

Mr. HOLLOWELL. When I'm seeking a husband to pay attorney's fees, it's anything but a happy situation, and I have to do this almost daily. I shall furnish a supplemental statement giving the details about the KDES lease.

(The supplemental statement and information for the record follows:)

SUPPLEMENTAL STATEMENT OF JAMES HOLLOWELL

In the third and fourth paragraphs on page 28 of the Final Task Force Report, there are certain statements and allegations in regards to radio station K.D.E.S. and myself. In a telephone conversation with Mr. Lewis Sigler prior to the May 31 hearing in Palm Springs, attorney Henry Cleary was cautioned to not go into too great a detail in his and my statements at the May 31, 1968 hearing. Mr. Cleary and I interpreted this as a reasonable requirement to keep our testimony to the "meat of the matter" and leave our detail. Inasmuch as there were no exhibits in regards to the K.D.E.S. matters on page 28 of the Task Force Final Report, which indicated any misconduct whatsoever on my part, neither Mr. Cleary or myself prepared statements or were prepared to go into this matter. Page 28, as far as we were concerned, contained nothing but conclusions without evidentiary basis.

I am more than happy and pleased to submit the following detailed explanation; this opportunity having been given to me by the Chairman of the Palm Springs Committee on May 31, 1968, after the Committee went into this subject in detail, and I was not prepared with exhibits or a statement.

Attached hereto and incorporated herein as Exhibit "A", is a section map indicating three parcels of property owned by three different Indians: 33E . . . Guardian is Security First National Bank, attorney is Saul Ruskin; 32E . . .

Conservator was Walter Melrose, attorney was James Hollowell; 48E . . . Conservator is Stanley T. Spiegelman, attorney is James Hollowell. The K.D.E.S. lease involved only a small portion of the Andreas property, which has been outlined in the northeast corner of 48E.

Attached hereto and incorporated herein is Exhibit "B", which is the pertinent pages of the K.D.E.S. lease. Please note that article No. 34 is Easements and Rights of Way. The pertinent language there is "lessor hereby promises and agrees to grant to lessee whatever rights of way are reasonably required by lessee over lessor's real property."

Negotiations in regards to the K.D.E.S. lease were commenced by the conservator, Mr. Spiegelman, approximately in the summer of 1963. My first proposed draft of the lease was submitted to the Bureau of Indian Affairs on July 28, 1964. As you can see from Exhibit "B", it was finally approved on August 30, 1965. When negotiations commenced in 1963, the representatives of K.D.E.S., being unfamiliar with Indian matters, and realizing there were easement problems, stated to the conservator and myself that they would pay all legal expenses, except for the preparation of the lease, including rights of way over other Indian lands, and other help and assistance needed by them from attorney Hollowell.

Attached hereto and incorporated herein is Exhibit "C", which is the Fifth and Final Account Current of Walter Melrose in the estate of Eugene Segundo, which is parcel 32E, and for which I was the attorney of record. Mr. Melrose consented to the rights of way, which is shown by a red line coming from K.D.E.S. through the remaining portion of Andreas, through Segundo's property, and then through 33E down to the street known as Vista Chino. Commencing with item No. 6 on page 3 of this accounting for Segundo, it is set out clearly and plainly that my services in regards to the K.D.E.S. rights of way, in which there were three, were not being charged to Mr. Segundo, but were being charged to K.D.E.S. I point out that this accounting was not included as an exhibit in the Task Force Final Report. This was a deliberate omission.

In regards to my representation of the conservator for parcel 32E, as attorney, it is certainly understandable that the conservator, Mr. Melrose, would grant the easements over this property to aid the Andreas Indian property to the north, and it is further understandable that Mr. Melrose, after approving the documents, would require that this would be at no cost to the Indian estate, since the right of way was of no value to the 32E estate. This was Mr. Melrose's understanding and this was clearly set forth in Exhibit "C".

Attached hereto and incorporated herein is Exhibit "D", which is a small portion of pertinent correspondence in my K.D.E.S. lease file. I am not sending in the whole file, since it is so voluminous. Attorney Arnold's letter of January 16, 1964 and my letter to him of January 27, 1964, indicate some of the problems that presented themselves. My letter of May 6, 1965 to K.D.E.S. and Thurman Arnold, also signed by Stanley T. Spiegelman, spells out that whatever easements are required are to be at the expense of K.D.E.S.

The next copy of my letter of May 17, 1965, indicates one of the problems. K.D.E.S. had switched attorneys. The last paragraph in my letter indicates clearly that the K.D.E.S. attorneys would prepare the easement agreements, and that I was representing the Indian lessor.

My next letter of January 10, 1966, to K.D.E.S. clearly spells out my understanding that K.D.E.S. was to pay me for certain miscellaneous matters. The next letter of March 4, 1966, further illustrates how these problems arise. K.D.E.S. had again switched attorneys. This letter then brought up a newer interpretation, in regards as to who was to pay for what. I have underlined the pertinent portion.

The next letter of April 6, 1966 from the K.D.E.S. attorneys further indicates that they were having me take care of miscellaneous loose-end matters for everyone concerned. My next letter of April 7, 1966 shows me sending a copy of the easement agreement to my client, Walter Melrose, on behalf of the 32E parcel and my next letter of May 2, 1966 shows me sending it on to the Bureau.

The next letter of May 16, 1966 from the attorneys for K.D.E.S. indicates that problems had arisen, resulting in more legal work, and further indicates that they were depending on me to run liaison and help them out. My next letter of May 5, 1966 to City National Bank, the conservator of the 33E portion, further illustrates my understanding to help in all respects wherever possible, to expedite the matter. Please note that I was not the attorney on the 33E parcel.

My next letter of June 3, 1966 to the attorneys for K.D.E.S. is a transmittal letter wherein I sent my final billing. The next letter of December 9, 1966 from the attorneys for K.D.E.S. and my letter of December 28, 1966 to said attorneys, are supplied only for the sake of continuity.

The next letter of December 30, 1966 from the attorneys for K.D.E.S. clearly indicates that there was definitely then a disagreement or misunderstanding as to what K.D.E.S. was to pay for.

My next letter of March 13, 1967 to the attorneys for K.D.E.S. spells out in detail my contentions in regards to this matter. My letter of April 10, 1967 shows that I was still pursuing my original understanding of who was to pay for what fees. Please note that my last letter of April 10, 1967, which is the last correspondence in regards to fees, was just one month prior to the investigation instituted by the Secretary of Interior during the middle of May, 1967.

I can certainly understand why the attorney on the 33E parcel only charged \$250.00. As can be indicated from the correspondence, he was supplied with my petitions and documentation and was able to spend a minimum of time, and in essence was able to copy my work since his estate and that of 32E involved only different legal descriptions and the name of a different Indian owner.

There is no further correspondence in regards to these matters. During the first part of June, 1967, one of the attorneys for K.D.E.S. visited my office. This was approximately two weeks after the public announcement by the Secretary of the Interior in regards to the accusations against the guardianship/conservatorship program, and the full-scale investigation. Please refer to the publicity file for that several weeks, and you will be able to see the tremendous amount of publicity and notoriety given to this matter. When the K.D.E.S. attorney came to my office, he quite frankly stated to me that in view of what was happening, I could not afford a lawsuit with them, and that although he did not like having to approach me under the circumstances, it was his duty to have the matter resolved. The attorney then directed me to the language contained in the K.D.E.S. lease under "Easements and Rights of Way", which I have already hereinabove quoted, and stated that it was their contention that in regards to all of my work in regards to rights of way over the Andreas property, 48E, that this cost must be borne by Andreas. I pointed out that the provision contained in the lease did not spell out the matter of attorney's fees and incidental costs, but the attorney assured me that this was the stand that they were going to take even in view of the correspondence which is attached hereto as my exhibit. Reference was made several times by the attorney to the inadvisability of adverse publicity, which would result from a lawsuit in view of the Federal government's investigation. To put it simply, gentlemen, I got the message!!!

I then talked to the attorney about all the other miscellaneous services in expediting, even in the matter of the 33E property in which I was not the attorney, and I was again confronted with the same reply and insinuation.

The attorney did state, however, that K.D.E.S. would pay \$500.00 for the work done in the Eugene Segundo estate, 32E. In view of the earlier remarks made in reference to the Federal government's investigation, I again "got the message".

Again referring to page 28 of the Task Force Final Report, I do not see how the scrivener likens this \$500.00 to a similar \$500.00 charge in any other estate. I received no fees whatsoever from the Segundo estate in regards to 32E, and so stated in the petition. The only other estate involved was that of the landlord in the K.D.E.S. lease.

I should insert here that I received the \$500.00 from K.D.E.S. and deposited same on June 6, 1967.

I turn now to the Fourth accounting and the Supplemental Fourth Accounting and Order in the estate of Anthony Joseph Andreas, Jr., which is exhibit 26 in the Task Force Final Report, and which is referred to on page 28 of the Task Force Final Report. The last paragraph on said page 28 states a conclusion alone, without any basis in fact.

My Fourth Accounting in the Antony Joseph Andreas, Jr. estate had a cut-off date of March 31, 1966. Please note that it is dated June 30, 1966, and that the required copy was mailed on that date to the Bureau of Indian Affairs in Palm Springs. On both the correspondence side of my files and the legal document side, papers are filed on top on either side. In other words, in any file, the oldest filings are on the bottom, and the newer filings are on the top in reverse chronological order.

When I appeared on the Andreas accounting in April of 1966, the probate judge pointed out that I had failed to list or itemize each of my legal services.

and attribute a dollar amount to each. I was required to file a supplement to conform to this requirement. While preparing the supplement, I then discovered that I had included various items of service which had occurred since March 31, 1966, and also realized that many of these were K.D.E.S. items. Therefore, in the supplement, these items were eliminated.

The crux of the matter is simple. These events occurred almost a year prior to the government investigation and also about a year prior to my final dispute with K.D.E.S. The writers of the Task Force Report attribute to me a clairvoyance in regards to things that happened a year later.

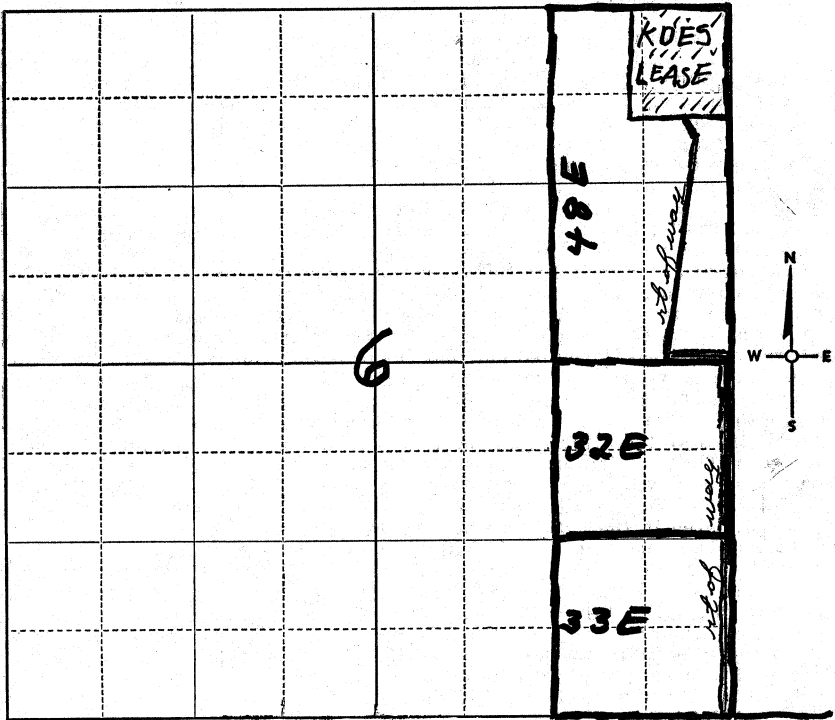
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of July, 1968, at Palm Springs, California.

JAMES HOLLOWELL.

EXHIBIT A

SECTION 6, T4S, R5E, SBB&M



Scale: 1 inch=800 feet. VISTA CHINO STREET

EXHIBIT B

34. Easements and Rights of Way

It is understood by the parties hereto that a portion of the leased premises will be used for flood control purposes. Lessor hereby promises and agrees to grant to Lessee whatever rights of way are reasonably required by Lessee over Lessor's real property.

EXHIBIT C

JAMES HOLLOWELL, ATTORNEY AT LAW, PALM SPRINGS, CALIF.,
ATTORNEY FOR PETITIONER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE COUNTY OF RIVERSIDE

In the matter of the conservatorship of the estate of Eugene Segundo, Conservatee

INDIO NO. 688

FIFTH AND FINAL ACCOUNT CURRENT AND REPORT OF CONSER-
VATOR UP TO AND INCLUDING JUNE 30, 1966

Comes now, WALTER MELROSE, Conservator of the Estate of EUGENE SEGUNDO, Conservatee, and renders and files this his Fifth and Final Account Current and Report of Conservator, for the period of July 1, 1965, through June 30, 1966.

The Conservator of the Estate of EUGENE SEGUNDO was duly appointed on the 29th day of May, 1961, and duly qualified on the 1st day of June, 1961, and ever since then was the duly appointed, qualified and acting Conservator of the Estate of EUGENE SEGUNDO, until the appointment of his successor on July 1, 1966.

Ward is the beneficial owner of various parcels of real property in and about the Palm Springs area, title to which is held by the UNITED STATES OF AMERICA, as Trustee, said trust property can neither be attached, liened nor otherwise reached by any processes of any Court, and is administered by the DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS. Pursuant to Probate Policy of the above entitled Court, an inventory has never been filed in this Conservatorship concerning said trust lands, and said real property is not carried as an asset, although the Conservator of this Estate is charged with the duty to deal with said lands in place and in stand of said Ward, subject to the supervision of the DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS.

Attached hereto and incorporated herein is Exhibit "D", which lists the trust properties of EUGENE SEGUNDO. Those parcels of real property in this Estate which have been leased for long terms are so indicated.

SUMMARY OF ACCOUNT

Fifth Annual Account

Your petitioner is chargeable, and is entitled to the credits, respectively, as set forth in this Fifth Annual Account. The attached supporting Schedules marked "A", "B", "C", and "D" are hereby incorporated herein by reference.

CHARGES

Cash chargeable from last accounting period.....	\$6, 682. 16
Total miscellaneous property chargeable last accounting period.....	176, 485. 76
Receipts during this accounting period, per Schedule "A".....	20, 514. 42
Increase in Miscellaneous Assets.....	1, 433. 25

205, 115. 59

Disbursements during this accounting period, per Schedule "B".....	20, 960. 52
Total Miscellaneous Assets chargeable, per Schedule "C".....	164, 326. 62
Cash chargeable and on hand.....	17, 077. 75
Decrease in Miscellaneous Assets.....	2, 750. 70

205, 115. 59

CONSERVATOR'S BOND: Conservator's bond was fixed and filed in the sum of \$150,000.00.

CONSERVATOR'S COMMISSION: Conservator feels a fair and reasonable commission for this final accounting period is \$2,400.00.

ATTORNEY'S FEES: Attorney performed the following services which he values as follows:

1. Prepared Ex-Parte Petition, Order and attended hearing concerning public utility right of way in Section 26 for Southern California Edison Co-----	150. 00
2. Prepared Petition, Order and attended hearing concerning telephone distribution line right of way in Section 6 to service K.D.E.S. Inc. transmitter tower site. No fees have been paid but K.D.E.S. Inc. has agreed to pay same-----	None
3. There was discovered that Conservator had only been appointed temporary Conservator, attorney prepared petition, order and gave the required notices and attended the hearing with Conservatee where Conservator was appointed regular conservator-----	200. 00
4. Prepared petition, Order and attended hearing concerning the fixing of various monthly allowances as a result of Conservatee and his family maintaining separate residences due to marital difficulties. Inasmuch as the separation of Conservatee from his family resulted in the payment of funds to other than conservatee, Conservator desired instructions from the Court-----	150. 00
5. The Court increased the bond of Conservator when he was appointed regular conservator. Attorney filed bond and transmitted the necessary papers to the bonding company-----	50. 00
6. In conjunction with the K.D.E.S. Inc. lease of neighboring Indian land, petition and order were prepared and attorney attended hearing concerning a non-exclusive easement allowing ingress and egress to the neighboring Indian land. This is to be paid by K.D.E.S. Inc.-----	None
7. It was then necessary to prepare ex-parte petition, order and attend hearing wherein certain amendments and corrections were required in the hereinabove described non-exclusive easement. This is to be paid for by K.D.E.S. Inc.-----	None
8. Several conferences were required when conservator decided to resign and conservatee decided on the successor conservator. Attorney expended five hours in conferences at a cost of \$40.00 per hour-----	200. 00
9. Attorney prepared resignation of conservator and petition for appointment of successor conservator, prepared and gave all notices, attended hearing and prepared Order appointing Conservator----	200. 00
10. Attorney prepared this Fifth Annual Account Current of Conservator, the Order Settling same and discharge of Conservator, will attend hearing concerning same, prepare and file receipts, final affidavit and final Order of Discharge-----	400. 00
Total -----	1, 350. 00

WHEREFORE, Conservator prays that this Fifth Annual Account Current and Report be approved and settled, that Conservator be discharged and relieved, that Conservator's bond be exonerated, that Conservator's final commission be fixed at \$2,400.00 and ordered paid forthwith; that attorney's fees be fixed in the sum of \$1,350.00 and ordered paid forthwith, and for such other and further instructions as the Court deems just and proper.

DATED: July 27, 1966.

JAMES HOLLOWELL,
Attorney for Petitioner.

(VERIFICATION—446, 2015.5 C. C. P.)

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE ss

I am the petitioner in the above entitled action; I have read the foregoing FIFTH ANNUAL ACCOUNT CURRENT AND REPORT OF CONSERVATOR UP TO AND INCLUDING JUNE 30, 1966 and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on July 27, 1966 at Palm Springs, California.

(S) Walter Melrose,
WALTER MELROSE.

(PROOF OF SERVICE BY MAIL—1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE ss

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 104 So. Indian Avenue, Palm Springs, California.

On July 27, 1966, I served the within FIFTH ANNUAL ACCOUNT CURRENT AND REPORT OF CONSERVATOR UP TO AND INCLUDING JUNE 30, 1966 on the _____ in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palm Springs, California, addressed as follows: Bureau of Indian Affairs, 509 Industrial Place, Palm Springs, California.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on July 27, 1966 at Palm Springs, California.

KARYL GOESKE.

EXHIBIT D

ARNOLD & ROSENBERG,
Palm Springs, Calif., January 16, 1964.

Re George E. Cameron, Jr., KDES lease of Indian land.

JIM HOLLOWELL, Esq.,
17 1/4 North Palm Canyon Dr.,
Palm Springs, Calif.

DEAR JIM: This is to confirm our telephone conversation in which we discussed the possibility of increasing the time within which KDES might cancel the proposed lease to a period of 9 months at possibly a lower monthly rental for that. Our present difficulty is that we anticipate approximately 2 months for FAA clearance, 2 months thereafter for our engineers to complete their work, and approximately 6 months to complete processing through the FCC. Thus, we will not know for certain that we can utilize the land for radio tower purposes until a later date than originally anticipated.

I would appreciate very much your views. As you know, KDES does wish to proceed with the lease, subject to necessary governmental approval for the erection of radio towers, and seeks only the best terms possible.

Personal regards.

Yours truly,

THURMAN ARNOLD, Jr.

JANUARY 27, 1964.

Re George E. Cameron, Jr., KDES lease of Indian land.

ARNOLD & ROSENBERG,
Palm Springs, Calif.
(Attention Thurman Arnold, Jr.).

DEAR THURM: This is in response to your letter of January 16, 1964. As you know, I proceeded with the lease post haste on the request of Bob McWhirter, and the lease has been prepared.

In all good faith we shall attempt to deal with you. However, if the land increases in value, this is something out of our control and of course if a better deal comes along, we will have to take it.

I think the best course to follow is to proceed with your end of it as fast as you can and we will have to take our chances on the value of the land increasing.

Sincerely yours,

JAMES HOLLOWELL.

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

JAMES HOLLOWELL,
ATTORNEY AT LAW,
Palm Springs, Calif., May 6, 1965.

Re estate of Anthony Joseph Andreas, Jr.
K.D.E.S., INC., AND MR. THURMAN ARNOLD, JR., ITS ATTORNEY,
Palm Springs, Calif.

GENTLEMEN: Pursuant to your request, this letter will serve as authority for you to obtain whatever easements are required in order to enable you to lease the hereinafter described real property from Stanley T. Spiegelman, Conservator of the Estate of Anthony Joseph Andreas, Jr., at your expense.

A portion of Allotment No. 48, ANTHONY JOSEPH ANDREAS, JR., described as North half (N $\frac{1}{2}$) of the East half (E $\frac{1}{2}$) of Lot 2 and the South half (S $\frac{1}{2}$) of the East half (E $\frac{1}{2}$) of the East half (E $\frac{1}{2}$) of Lot 2, Section 6, Township 4 South Range 5 East, 30 acres, more or less.

Sincerely yours,

STANLEY T. SPIEGELMAN,
Conservator of the Estate
of Anthony Joseph Andreas, Jr.
JAMES HOLLOWELL,
Attorney for Conservator.

MAY 17, 1965.

Re Geo. E. Cameron—K.D.E.S. lease.

O'MELVENY & MEYERS,
Beverly Hills, Calif.
(Attention: Richard St. Johns).

GENTLEMEN: At the request of Robert McWhirter, General Manager of Cameron Enterprises, I am sending you a carbon copy of the proposed lease. I would appreciate the return of same, inasmuch as we will need every copy we have.

The Bureau of Indian Affairs, Palm Springs office, already has a copy so that they could have a head start in going over it.

Also enclosed is a photographic copy of a legal description together with a rough map of the area showing the ingress and egress from Verona Road to the section line which your client desires. This description and map was handed to me by John Hollinger who has been acting as McWhirter's agent in this matter. It is my understanding that this legal description will afford adequate ingress and egress to the proposed leased premises and that the right of way must be obtained from the Water District. It is my further understanding that they cannot give a deed of easement but they are willing to prepare an agreement.

Inasmuch as the ingress and egress is a matter of prime concern to your client, Mr. McWhirter agreed that his attorneys should prepare this. I, of course, represent the Indian lessor.

Very truly yours,

JAMES HOLLOWELL.

JANUARY 10, 1966.

KDES CAMERON BROADCASTING Co.,
Palm Springs, Calif.
(Attention Robert B. McWhirter).

DEAR BOB: Enclosed please find the Order in the matter of the Estate of Eugene Segundo and Anthony Joseph Andreas, Jr., for the California Water and Telephone Company.

These enclosed orders do not have the plats attached as I ran short; however a copy of the order together with plat has been sent to the California Water and Telephone Company today, January 10, for each of the above mentioned parties.

We are happy to cooperate with you and hope that the project is proceeding. It is my understanding that your client has agreed to bear the costs for these miscellaneous matters; I shall not bill you until we are finished.

If you run into any more problems please call upon us.

Very truly yours,

JAMES HOLLOWELL.

BEST, BEST & KRIEGER,
ATTORNEYS AT LAW,
Riverside, Calif., March 4, 1966.

Re K.D.E.S., Inc.
JAMES HOLLOWELL,
Attorney at Law,
Palm Springs, Calif.

DEAR JIM: Bob McWhirter has forwarded to us your letter of January 10, 1966 with the enclosures showing that the easements to the Telephone Company serving the radio transmission towers have been formally approved.

You make reference in your letter to an understanding on your part that K.D.E.S. would be bearing the costs for the utility easements. My recollection is that the agreement by K.D.E.S. to bear costs was related to and limited to the easements to the radio station for ingress and egress which are now being processed. This agreement arose from a discussion with Walter Melrose, Al Tanz, Paul Hand, Bob McWhirter and myself in firming up the terms of these K.D.E.S. easements as an alternate route to that across the flood control channel. It has been my understanding and I have discussed this with Jerry Pope of the Telephone Company that the utilities would bear their own cost in obtaining their easements and access upon Indian lands.

If I may be of any further help, please do not hesitate to contact me.
Very truly yours,

BEST, BEST & KRIEGER,

By WILLIAM R. DEWOLFE.

BEST, BEST & KRIEGER,
Palm Springs, Calif., April 6, 1966.

Re KDES easements.
JAMES M. HOLLOWELL, Esq.,
Attorney at Law,
Palm Springs, Calif.

DEAR JIM: In accordance with our recent conversation, we have completed the two Easement Agreement documents concerning access to the KDES transmitter site in Section 6. All have now been signed on behalf of the radio station and I am enclosing all of the signed documents with this letter for signature by the Indian representatives which you have agreed to obtain, and for any necessary court proceedings.

When approved by the court, I would appreciate it if you would deliver the original and one copy of each of the Agreements to Paul Hand at the Bureau of Indian Affairs and two copies to us for our file and for the radio station. We will see that the Bureau receives the two \$50.00 rent payments as soon as we get word that Sacramento has approved the signed finished Agreements.

The Bureau has indicated that the fee for their processing of these Agreements will be \$10.00 each and I am sending a \$20.00 check to Paul Hand to cover this along with this copy of this letter.

If I can be of any help, please do not hesitate to call.

Best regards,

BEST, BEST & KRIEGER,
By WILLIAM R. DEWOLFE.

APRIL 7, 1966.

Mr. WALTER MELROSE,
Palm Springs, Calif.

DEAR WALTER: Enclosed please find copy of Easement Agreement. If satisfactory please return so that I can prepare the Petition and Order.

Very truly yours,

JAMES HOLLOWELL.

MAY 2, 1966.

Re nonexclusive easement agreement—Anthony Joseph Andreas, Jr., K.D.E.S., Inc.

DEPARTMENT OF THE INTERIOR,
Bureau of Indian Affairs,
Palm Springs, Calif.
(Attention Mr. Robert Cox).

GENTLEMEN: Enclosed please find original and one copy of the above referenced easement agreement executed and notarized.

Very truly yours,

JAMES HOLLOWELL.

BEST, BEST & KRIEGER,
Riverside, Calif., May 16, 1966.

Re nonexclusive easement agreement—Anthony Joseph Andreas, Jr., K.D.E.S., Inc.

JAMES HOLLOWELL,
Attorney at Law, Palm Springs, Calif.

DEAR JIM: In accordance with our telephone conversations on Friday, we have prepared and I am enclosing the original and six copies of the revised Non-Exclusive Easement Agreement between Radio Station K.D.E.S. and Stanley T. Spiegelman as Conservator of the Estate of Anthony Joseph Andreas, Jr. These documents incorporate all of the requirements which the Bureau recently forwarded to you.

It is my understanding that since you had already obtained Court approval of the original document, it will now be necessary for you to prepare a Supplemental Application and receive a Supplemental Order from the Court, and that you will proceed to do this right away.

As we discussed on the telephone, it will also be necessary for you to obtain a Supplemental Order with respect to the other Non-Exclusive Easement Agreement with the Conservator of the Estate of Eugene Segundo and the Guardian of the Estate of Juan Segundo, Jr., and that you will obtain a copy of that document from Saul Ruskin and proceed with that Supplemental Application this week.

I am sorry that these minor changes were necessary after you had obtained both of the Orders but it is our desire to make sure that these are properly approved all the way around.

Thanks very much again for all of your help.

Very truly yours,

BEST, BEST & KRIEGER,
By WILLIAM R. DEWOLFE.

MAY 5, 1966.

Mr. ALFRED L. TANZ,
Trust Department,
Palm Springs, Calif.

DEAR ALFRED: Enclosed please find original and seven (7) copies of Non-Exclusive Easement Agreement for K.D.E.S., which is a joint agreement with Eugene Segundo and Juan Segundo.

Walter Melrose, conservator for Eugene Segundo has already executed the original and all copies and I have notarized his signature.

Also enclosed please find a copy of the petition and order in Eugene Segundos estate which will make it simpler for your attorney to petition for authority.

K.D.E.S. has requested the return of 2 copies to it, the forwarding of the original and 1 copy to the Bureau, which will allow you and your attorney a copy each and my client and myself a copy each.

As soon as you have obtained your order and executed the documents please distribute as hereinabove set forth.

Very truly yours,

JAMES HOLLOWELL.

JUNE 3, 1966.

Re KDES Lease.

BEST, BEST & KRIEGER,
Attorneys at law,
Palm Springs, Calif.
 (Attention Mr. DeWolfe).

GENTLEMEN: It appears that I have done everything required with regard to the above matter and that my services are not required further, at least for the present.

In deciding upon billing I have run through my file, which to date is quite voluminous. Included in this billing are all service to date, including the Court Orders and non-exclusive easement agreement for both Stanley T. Spiegelman and Walter Melrose. I am not including anything with regarding to drafting of the original lease, that is a charge against the Indian estate. I am not including utility easements.

You will find enclosed by statement in the amount of \$3,500.00.

Very truly yours,

JAMES HOLLOWELL.

BEST, BEST & KRIEGER,
Riverside, Calif., December 9, 1966.

Re K.D.E.S.

JAMES HOLLOWELL,
Attorney at law,
Palm Springs, Calif.

DEAR JIM: Following your telephone call this morning, I pulled out our K.D.E.S. file because your call gave me some concern about which of the easements may not yet be complete.

It has been my understanding that this matter was fully completed on May 20, 1966 when Judge Brown signed ex parte orders in Indio cases #686 and #688 finally approving the non-exclusive Easement Agreements with K.D.E.S. concerning Allotment #P.S. 48 E and Allotment #P.S. 32 E, respectively.

From your telephone call, it is my understanding that these easements are complete, but that at a subsequent time, the processing of certain utility easements with which we were not concerned, could not be completed because of the resignation of Walter Melrose.

If my understandings as stated in this letter are not fully accurate, would you please advise me at once so that we may do whatever may be necessary to protect the easements by which K.D.E.S. claims access to its transmission towers in Section 6.

Best regards,

BEST, BEST & KRIEGER,
 By WILLIAM R. DEWOLFE.

DECEMBER 28, 1968.

Re. K.D.E.S.

BEST, BEST & KRIEGER,
Riverside, Calif.

(Attention Mr. William R. DeWolfe).

GENTLEMEN: This is in response to your letter of December 9, 1966.

Several years ago, Bob McWhirter told me to do whatever was required to expedite this matter and he would see that I was paid.

I remember having a conversation with Mr. DeWolfe concerning the non-exclusive easement agreements. Because of certain typographical errors, it was necessary to obtain a second set of Court orders and I vaguely remember Mr. DeWolfe requested that I bill through your firm on these matters rather than include them in my over-all billing of K.D.E.S. for services to date.

Very truly yours,

JAMES HOLLOWELL.

BEST, BEST & KRIEGER,
Riverside, Calif., December 30, 1966.

Re K.D.E.S.

JAMES HOLLOWELL,
Attorney at law,
Palm Springs, Calif.

DEAR JIM: Thank you for your letter of December 28th in response to mine of the 9th.

On reviewing my file, I find that I do not have fully signed copies of the Non-exclusive Easement Agreements which K.D.E.S. has concerning Allotment No. P.S. 48 E and Allotment No. P.S. 32 E.

I wonder if I could impose upon you to send me a fully signed copy of each of those agreements at your early convenience.

As I indicated previously, I am not personally familiar with any arrangements which you had directly with Bob McWhirter concerning fees for work which you might do on this transmitter site. In the course of negotiating with the Bureau of Indian Affairs and with the conservators for access rights of way, Bob did agree to pay the reasonable attorney's fees which would be involved in obtaining Court approval of the access right of way agreements. We requested that both Saul Ruskin and yourself forward your statements for the petitions involved to us directly. Saul sent his statement for \$250.00 on June 7th, but as yet we have not received your corresponding statement.

I hope that you have a Happy New Year.

Best regards,

BEST, BEST & KRIEGER,
By WILLIAM R. DEWOLFE.

MARCH 13, 1967.

Re K.D.E.S.

BEST, BEST & KRIEGER,
Riverside, Calif.
(Attention Mr. William DeWolfe).

GENTLEMEN: This is in response to your letter of December 30, 1966.

The delay has been caused by the extreme illness of Walter Melrose, his resignation as Conservator of the Estate of Eugene Segundo, and the difficulty of communication. I am now the Conservator of Eugene Segundo, having replaced Mr. Melrose.

I have reviewed my files extensively and find the following to be the course of events.

Your firm prepared a non-exclusive easement and right of way, which I helped negotiate and worked with you on. I prepared a regular petition, order, and attended a hearing in both the estate of Eugene Segundo, and Anthony Joseph Andreas. My billing from each of the estates, for the conferences, and the court appearances, would be \$300.00 each.

Then we found that there were some changes required in the non-exclusive agreement. After some hurried phone calls, the changes were made and because of the time factor, an ex parte petition, order and hearing was required. I helped your firm expedite the matter with the Bureau of Indian Affairs, and ran liaison. I would bill \$500.00 for the work in each estate.

I therefore feel that I have due me as a reasonable fee on account of the Estate of Eugene Segundo, the sum of \$800.00 and the Estate of Anthony Joseph Andreas, the sum of \$800.00, or a total of \$1,600.00.

Then, there were numerous conferences with various utilities, the Conservators of the various Indians involved, and documents drawn for utilities. I made several visits to the site with representatives from utility companies, and with representatives from K.D.E.S. and the Bureau of Indian Affairs.

When we first got into these matters, Bob McWhirter told Mr. Spiegelman and myself to do anything and everything required to expedite the matter, and all fees and costs would be borne by K.D.E.S. I feel that an additional fee of \$1,900.00 is due me from K.D.E.S. It was my understanding that none of my Indian estates would bear any of these miscellaneous expenses.

Please let me know which portions of these billings you want me to send through your office, and which portion I should send directly to Mr. McWhirter.

Please let me hear from you at your earliest convenience, inasmuch as there are more utility documents to be executed, and I want to make sure that my Indian estates will not bear the expense of the legal fees involved.

Very truly yours,

JAMES HOLLOWELL.

APRIL 10, 1967.

Re K.D.E.S.
BEST, BEST & KRIEGER,
Riverside, Calif.
(Attention Mr. William DeWolfe).

GENTLEMEN: I requested that the Bureau of Indian Affairs give me photo copies of both non-exclusive easement agreements so that I could forward same on to you. I did not have any executed copies either. I received my photo-copies today and cover letter from the Bureau indicated that they were furnishing photo-copies directly to your firm.

Could Mr. DeWolfe give his attention to my letter of March 13, 1967, concerning attorney's fees.

Very truly yours,

JAMES HOLLOWELL.

Mr. EDMONDSON. Let me ask you this question: If you are representing a number of different Indian estates, all of them in competition for development and for a lease and so on that would produce income to the individual Indians, how do you select the Indian client you will approach with an offer to lease his property or to buy someone else's property when you learn of a good opportunity?

Mr. HOLLOWELL. The way it happens, I have a map of that section 14 and county which is worn out from being opened up and closed. Normally, before this, potential lessees would come to me and they already have in mind the area where they want or the particular type of zoning they're looking to, and I have never had a situation where I have had to decide which Indian to send it to.

Mr. EDMONDSON. Suppose they wanted section 14.

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. How would you decide which of these different Indians that you represent, each one with an interest in development, you would go to with a proposal to develop his land and produce income for him?

Mr. HOLLOWELL. Very easily. Just the way the Bureau of Indian Affairs does it. First, I ask him what type of development and when I know what type of development, I know which type of zoning. We have commercial zoning to 300 feet, I believe, and from there to four, and after you've located the type of development then you take it from there.

Mr. EDMONDSON. Suppose you have two clients side by side with tracts that are suitable for development, both meet the requirements of the potential business. How would you make a decision, representing each of those clients, as to which one got the development and which one would not?

Mr. HOLLOWELL. I've never been faced with that choice. Developers usually pass up their own mind. I can see what you are driving at.

Mr. EDMONDSON. You represent about a third of the clients, all of them having competing interests in terms of development, and I'm quite sure that, with the knowledge that you do represent a large number of them, that you would be one of the first people to be approached on the subject of development. How would you decide this question

of who gets the opportunity, and who has to let opportunity go by this time?

Mr. HOLLOWELL. Would you believe—I know it's hard to believe, but it's something I've never been confronted with because in section 14 we have some of the most unique problems in the world. You're either on the street or on a lot and when promoters have come in to me and they have been interested in a piece of the parcel, specific parcels, out of all honesty to them and not wanting a bad lease, I've had to point out to them which areas were landlocked, how far they'd have to bring in utilities, what the offset improvements would be, and I am usually put in the position of discouraging that, but I've never had two side-by-side situations.

Mr. EDMONDSON. Let's move to another situation, where you learn of a good piece of property to acquire that is a good business investment and you represent a number of clients and all of them have some money in the bank and are in a position to invest it. How would you make the decision as to which one of those clients you would offer this attractive purchase opportunity?

Mr. HOLLOWELL. This, I face in general practice of law all the time. I try to figure out which client was available and which one wanted to move on it.

Mr. EDMONDSON. In the summary on page 24, comment is made of the proposed sale of a piece of property to the estate of Shirley Ann Kitchen. As I understand it, in that instance you selected Mr. Lew Levy—

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON (continuing). As the purchaser in his capacity as conservator of the estate of Shirley Ann Kitchen, an estate which you represented, and filed a petition for purchase which I believe you prepared.

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. And, in this petition for purchase the property is described in leaps and bounds, and the owner is unnamed and the purchase price is left to the discretion of the court. Did that situation present any problems to you, or any questions to you?

Mr. HOLLOWELL. As I said in my earlier long-winded presentation to the committee, of ethics, "No," because it was agreed that the appraisal would be obtained from the Bureau of Indian Affairs. As a practical matter, I had one problem since Judge Brown was a judge, and I had several estates of a substantial nature. There again, picking the individual, I picked Mr. Levy because of his vast experience in real estate and because he is one of the best men in town in that field, rather than a conservator who was less qualified in real estate. I had a couple of others with large estates but I didn't feel that they were as qualified as Levy. In other words, I wanted someone who had experience in sound business judgment and not just rely on my advice as an attorney.

Mr. EDMONDSON. Are you familiar with the statement on page 25 of the task force report that says, "Lew Levy stated upon interview that while he was in Hollowell's office in February 1967, Judge Brown telephoned Hollowell, who interrupted the telephone conversation to ask Levy whether he would be interested in handling a parcel of land Judge Brown wanted to sell." Is that a factual statement?

Mr. HOLLOWELL. No, sir; it isn't.

Mr. EDMONDSON. Mr. Levy did not learn about this proposition while sitting in your office?

Mr. HOLLOWELL. He did not. There are some portions of that statement attributed to Lew that I can't believe. It says that he was shocked at the appraisal. Lew has been in real estate too long to be shocked. The statement attributed to Jenkins—by Jenkins that he told Lew that if the court order went through, he'd be bound by it. I can't believe that either because it was merely a petition for instructions.

Mr. EDMONDSON. How did Mr. Levy first learn about this?

Mr. HOLLOWELL. I called him, but it was not in my office. I called him on the phone after I had talked to Judge Brown.

Mr. EDMONDSON. So, this statement in the task force report as to what Mr. Levy stated in that interview is either erroneous or Mr. Levy has forgotten how he first learned about it; is that your contention?

Mr. HOLLOWELL. Levy could have forgotten. He's a steady client and I see him an awful lot.

Mr. EDMONDSON. Are the facts that are set forth in the task force report with regard to the valuation of the property as regard to the price at which its appraisal was finalized, correct, to your knowledge?

Mr. HOLLOWELL. Basically, yes. I know the appraiser went in to see Judge Brown because we crossed tracks. I was going in and he was coming out. I did receive instructions from Lew Levy to call the deal off. The appraisal was lower than what the judge would sell for and that's what the judge said, he wouldn't sell for that sum.

Mr. EDMONDSON. Do you see any problems of propriety or ethics in this transaction?

Mr. HOLLOWELL. I can see where it could be suspected, but as I said in my earlier statement, the Bureau was there and it was agreed that the appraisal would be gotten through the Bureau, and in my earlier statement that I sent to you right after the task force report—I believe I said that—without the intervention of the Bureau; yes, sir.

Mr. EDMONDSON. Well then, you felt in this situation that the Bureau would protect the Indians' efforts on this subject of the appraisal value; is that correct?

Mr. HOLLOWELL. Yes, sir. We've been relying on their appraisals for years.

Mr. EDMONDSON. And you went ahead in reliance upon the Bureau doing the honest and correct thing for the Indian despite the fact that for some years you have been convinced that they were doing a lousy job, and that they were not protecting the Indian, and that they were not taking care of the Indians' interest and that the whole system was sorry because the Bureau of Indian Affairs was not performing its function properly?

Mr. HOLLOWELL. Sir, after 6 years dealing with the Bureau, I knew this before I went into it. When you're appraising Indian land for sale, you're appraising usually too high. I honestly felt in this situation that nothing was going to be done, because they would appraise the judge's property too low. It's like any other economic factor, it depends upon which side your appraiser's working for, what side of the transaction, and I really honestly felt that the Bureau would come up with a low appraisal and that'd be the end of it. They came in at \$1,500 and both parties pulled off and that was the end of it.

Mr. EDMONDSON. I have imposed on my colleagues on the committee, and I think also probably imposed upon the reporter. Do you have any questions?

Mr. TUNNEY. I have some.

Mr. BURTON. I have two or three.

Mr. EDMONDSON. Would it be agreeable to you—I think it would be in fairness to the witness to take about a 5-minute break here and let the reporter get a rest and everybody have a smoke.

The subcommittee will stand in recess for 5 minutes.

(The committee recessed for 5 minutes.)

Mr. EDMONDSON. The subcommittee will come to order. Mr. Hollowell, I think you had completed your answer to my last question.

Mr. HOLLOWELL. I believe so.

Mr. EDMONDSON. I will yield at this time to the gentleman from Utah, Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman. Mr. Hollowell, did Judge McCabe appoint you as conservator for these Indians you represent?

Mr. HOLLOWELL. No, sir. I can volunteer this. A number of years before he left to go on the appellate bench, I talked to him about it, and I thought I could and, as I say, we didn't always agree and at that time he said I didn't have enough experience in Indian affairs and he didn't think I was qualified, and all my appointments as fiduciary later on were by Judge Brown.

Mr. BURTON. The task force report on page 22 alleges that “* * * Judge McCabe apparently encouraged the attorneys for the estates to get the wards to make wills, letting it be known that he was available and willing to serve as executor.” Did he ever make that approach to you?

Mr. HOLLOWELL. No, sir. As God is my witness, no.

Mr. BURTON. The report alleges that a review of 27 wills of living Palm Springs Indians on file in the office of the examiner of inheritances at Phoenix revealed Judge McCabe is named as first executor in 10 of the wills and that you were the author of nine of them. You confirmed that, but it also says that in none of the wills in which Judge McCabe is named as executor contains a provision—all of the wills contains a provision that he serve without bond. Now, you wrote nine of the 10. Is it standard legal practice to make a person an executor of an estate without any bond?

Mr. HOLLOWELL. Yes, sir; in nine of 10 cases it's waived. I certainly wouldn't have recommended Judge McCabe if I thought a bond was required.

Mr. EDMONDSON. The gentleman from California.

Mr. TUNNEY. Thank you very much, Mr. Chairman.

Mr. Hollowell, I believe that you were in the room when I addressed a series of questions to Mr. Schlesinger, and I have these questions written down, and I would like to address the same questions to you.

Mr. HOLLOWELL. Fine.

Mr. TUNNEY. If you prepare a lease, should your fee depend on the complexity of the lease or on the amount of the money involved, in your opinion?

Mr. HOLLOWELL. I think both. Bob Schlesinger has a different practice than I do. He, I, and one other attorney were on a committee which

was trying at one time to formulate a minimum fee for Indian estates. I do not charge time for an unsuccessful lease, and I'd say for every successful one, I have two unsuccessful ones. I'm willing to speculate along with my Indian clients on that basis for him. I do not charge for all the fruitless lost time. When I do obtain a good lease, I would expect to obtain a larger fee. Bob and I use two different systems.

Mr. TUNNEY. Well, you indicated in your prepared statement on page 6, that—

It was my practice in the year 1963 to file an accounting specifying the number of hours I had devoted to the particular estate and to request compensation on an hourly basis.

I assume then, from your remarks that you changed your basis of fixing fees after 1963?

Mr. HOLLOWELL. Actually, no. The policy in regards to lease fees I acquired from Judge Therieau and it's always been the policy. I did, in those early years, keep track of the charged hours for miscellaneous work. Under the present system now, when I file my accountings with the court, I specify each item of work and either set a unit price, say \$150, or hours, depending on whether it was conferences, so basically, I have not changed. Always, on a lease, I've been speculating with my Indian clients on success.

Mr. TUNNEY. And are they aware of the fact that if the lease negotiations are unsuccessful, that they are not going to be charged a fee, and if the negotiations are successful, there's going to be a percentage?

Mr. HOLLOWELL. I believe so, because I've talked this over with everyone including brokers, complaining basically, that I put in so much work and so many leases have gone under. I believe they know that.

Mr. TUNNEY. Do you ever charge on an hourly basis if the lease is not negotiated?

Mr. HOLLOWELL. No, sir. I am strictly speculating on success.

Mr. TUNNEY. If the lease is similar to one prepared previously, should you receive less compensation since the work has already been done once before?

Mr. HOLLOWELL. There again, I'll have to give you a lawyer's-type answer. The Bureau has, I think, sincerely tried to come out, and they have over a period of years, with a form lease. About the time that form lease is prepared, we are throwing away half the pages and starting all over again, with the exception of the Sunquitz leases where the fee is put in it. In every instance, every promoter is different, every developer is different, and you actually are hammering out basically nine-tenths of the matters with a new individual and it's different, although—no, I can give a better illustration where there was no charge. The Seven Lakes lease which I drew up, took about a year of preparation. The promoter did not know exactly where he was going. He jumped from one piece of property to another. I drew the lease, it was approved, and the court awarded a fee. Along came Seven Lakes again, they wanted to pick up an extra adjacent piece of property. They did this because—by supplemental agreement which only took up a couple of pages, added the additional property and changed the amount of the minimum rent. No fee, because they didn't need my services. It was a very simple document, and the Bureau drew it up, if I remember right. This does happen.

Mr. TUNNEY. Well, what about the ex parte orders that you obtained, and I believe the investigation report, the task force report refers to these ex parte orders in an unfavorable light. What did you consider to be unique, for instance, about the services that you performed in getting ex parte orders for Mr. Fey, as he was subleasing a condominium that he had?

Mr. HOLLOWELL. That's a very fair question. My standard fee for a regular routine court order, appearance, and petition is \$150. Early in the game when Mr. Fey started coming to me, I discovered one of Roy's keys to success is he's a very aggressive man. Roy wanted everything yesterday, and he volunteered to pay my fees. He required that I drop everything and get his work out then, and there's been many a night and many a part of a Saturday or a Sunday that my secretary and I worked to get this work out. Therefore, I did charge an additional premium because of the rush order. I would have much preferred Roy to have thrown his work on the pile and grind it out in the regular course of business and charge my regular fee.

Mr. TUNNEY. Well, there are two aspects as I see it to the mention of the fees that you were charging Mr. Fey in the ex parte orders. In the investigation report, the one aspect is that you were not charging and the other aspect is that you were charging Mr. Fey while, in fact, you were representing your Indian client as well. Would you please address yourself first to the charge of \$3,500 that allegedly you billed Mr. Fey for, I believe it was, 24 hours work that you indicated you had spent working on documents and that you submitted a bill for \$3,500 and he wrote back to you and said that he thought there must have been some typographical error?

Mr. HOLLISTER. Yes, sir. The task force has an exhibit. I took no part in negotiations. Mr. Fey came to me, it was a last minute thing and he wanted the documents hammered out. Now, I have lived with the Bureau, you see, for quite a while. I know the wording, terminology the way the Bureau wants it. We talked over everything, we hammered it out; it was a major document for him, and I thought a reasonable value was what I billed him. I think if he had gone—well, No. 1, his own lawyers couldn't cope with it. He could have gone to Bob Schlesinger, Bob could do the work, he could have gone to Ray Simpson, Ray can do the work, and now in our area there's nobody else really qualified to do it, and I think to have any stranger do the transaction, they would have charged him more.

Mr. TUNNEY. Did you charge any fee for your services to Mr. Patencio, to the estate of Mr. Patencio?

Mr. HOLLOWELL. Never. There is one item which hasn't been mentioned by me, possibly I should. Those trustees when they are individually approved on each little lot or house, they come to my office but there I'm working for the conservator, and I have a practice of going over it, see whether it conforms with the court and I initial it's OK, and it goes to the conservator, but I've never double charged.

Mr. TUNNEY. Never charged for the same services, both lessor and lessee?

Mr. HOLLOWELL. Never, sir.

Mr. TUNNEY. All right.

Mr. HOLLOWELL. When this investigation broke open, we found Mr. Fey, I think, in a very unfortunate situation. He doesn't know the

Bureau, and he doesn't want me and I talked it over with Mr. Kettmann and Mr. Kettmann said, "From now on, don't bill Mr. Fey. Bring it up, your accounting, and we'll have the estate pay for it," and that's the procedure we're following now.

Mr. TUNNEY. With regard to the ex parte orders, how many did you have to obtain for Mr. Fey when he was subleasing the condominium?

Mr. HOLLOWELL. Mr. Sigler has a copy of every single one. There were more than subleasing, Congressman. They would develop a small parcel at a time, and this has been one of his keys to success. He didn't try to do it all at once, and he'd come in and obtain one court order which would possibly cover the 20 units and there would be a specimen made, a deed of trust, and sublease all covered by this one court order. Then I would never see Mr. Fey again except for his employees bringing the individuals in on each one where I would check to see whether it correlated with the court order and initial it for my conservators so he could sign it.

Mr. TUNNEY. I understood from your testimony, or from the testimony of Mr. Schlesinger, that it was not necessary to have an ex parte order for each sublease, that you could have a master lease which would provide for subleasing without going back to the court. Can you explain why, in the Fey matter, you felt that it was necessary for you to do it the way that you did it? That is, require ex parte orders.

Mr. HOLLOWELL. Yes, sir, that's a logical question. I did not require it. That's—the Indian Bureau required it and the title company required it. Bob Schlesinger is referring to a case where you have one lease and a developer develops the entire parcel, and we've had quite a few go under who have done it that way. In Mr. Fey's case, he developed tracts one at a time, with maybe 15, 20, or 30 units in it. Each tract or unit made, as he went along, Mr. Fey got a little more sophisticated and other things came up, so we were handling his on a tract basis. If he had wanted to, he could have done the whole matter at once, but we've had too many developments go under by putting too much on the market at once.

Mr. TUNNEY. Well, as I read from the files, and I'm not sure exactly where I read it, Mr. Fey thought that the excessive charge was for ex parte orders and was hindering the development of this estate, this real estate. Do you recall ever seeing that statement?

Mr. HOLLOWELL. I saw the statement, Congressman, but the man never once complained to me except when we had the dispute over the \$3,500 item, and then he said to me later, he paid it rather than go through a lot of litigation, but you must remember I was only the attorney for both Judge Therieau and for Gus Kettmann. If Mr. Fey ever had any complaints, he could have taken it to them. I was in an employee status. I don't believe that's what Roy said. This is an alleged statement, it's not a signed statement.

Mr. TUNNEY. On page 20 of your alleged statement, you mentioned that one of the possible motivations for Mr. Cox's singling you out is that you stood up to him back in 1965. Would you care to amplify that statement? What do you mean by "standing up" to Mr. Cox?

Mr. HOLLOWELL. When Bob Cox first came here, he was quite frank in stating that he was serving in two capacities, one as an investigator and one as a trust officer, more or less, for the Bureau. Bob, I had

nothing against personally, at that time. He had an attitude which I think is typical of those who are salaried. He felt that everything should have a set place, and everything should be fitted into its specific category, and we got into a dispute right away, and I'd say, "Bob, you can't come up with a minimum fee schedule; it doesn't fit, it doesn't work," and we went on from the very beginning. Bob would have liked to come up with a schedule and said a court petition is worth so much, accounting is so much, that sort of thing, and as lawyers, we didn't make it from the very beginning.

Mr. TUNNEY. What about the practice of charging for a full day in court when you perhaps have four or five matters on the docket of the court and charge each of the five or six for a full day in court, and—I'm picking figures out of the air, but there are allegations that this was happening, that this was a practice followed by you, that you would charge each of several Indians, when the time in court would actually, in fact, take not too much time. Is this common practice?

Mr. HOLLOWELL. I think Bob is—this is the only thing that keeps a lawyer from being a mechanic. If I have four, there's no necessity for me to have four if I'm going to get paid for one. This is where the success factor comes in, where one lawyer can be more successful than another. During recess and lunch I talked it over with several of the attorneys present, and I doubt if many lawyers charge on that basis, and when I have four divorces on 1 full day, boy, I charge the full fee for all four.

Mr. TUNNEY. What were the circumstances, to the best of your knowledge, of your taking over Judge Therieau's old caseload when he was appointed to the bench? Were you old friends or—what were the circumstances surrounding that?

Mr. HOLLOWELL. We weren't old friends. I believe that shortly after I had heard of the judge's nomination as a full time municipal court judge, I contacted him and said that I was very interested in taking over his practice. I understand other persons were interested, too. He and I did make an arrangement. As I told the task force investigators it was for a fixed lump sum which I paid. I did not particularly want to give it to the task force for the simple reason that I felt that the very next day it would be in the newspaper and everyone would know my business. The task force was asking me because they were talking about fee-splitting, and I think that fee-splitting would be on a percentage basis, or percentage arrangement, and the judge and I did not have a percentage arrangement. Part of the value that I purchased was his library, which I told him jokingly, the judge, that every book salesman in the world must have gotten to him. It was a tremendous library, and I purchased this at replacement value.

Mr. TUNNEY. What percentage of your time do you spend on Indian matters?

Mr. HOLLOWELL. I couldn't give you an estimate for this past year because I have, in a sense, not been constructively working. I've been on this project, but I would say three-quarters, at least.

Mr. TUNNEY. Does this practice represent three-quarters of your income?

Mr. HOLLOWELL. It would normally, except—darn it all, I've got to qualify this, Congressman. I have had a few estate matters and a few