cases which have thrown my income up, and in a few years—I couldn't actually—I'd have to qualify that.

Mr. TUNNEY. So, in those years, it would be less than 75 percent of your income?

Mr. HOLLOWELL. Yes.

Mr. TUNNEY. Mr. Hollowell, when it became necessary to appoint a guardian for Joseph Patencio's son because of his inheritance, the family retained Ray Simpson for this purpose. You had previously been released as attorney for Mr. Patencio's estate and yet, did you file a petition for the Patencio boy before Mr. Simpson did, and without talking, apparently, to Mr. and Mrs. Patencio which resulted in an order to pay you as well as retain counsel to defend them against your action? This is contained in the summary, as you know, of the report. It is stated that you disregarded the rights of the parents, disregarding the feelings and the rights of the parents. Do you believe that they had the right to be consulted in this regard, or do you think the allegations that were made in the report were unfair to you?

Mr. HOLLOWELL. I would like to say that I feel I had exercised poor judgment in that particular matter. I represented the whole family, and am still the attorney of record. In that particular—the father, although Ray Simpson had come into the estate because the father did not like me, and there was ill feelings, I represented the remainder of the family and I was faced with a situation where the executor and the executor's attorney were working actions so they could make a partial distribution, and looking back on it, gentlemen, I think I made a mistake. It caused increased animosity, and I am anything but perfect, and that's something I wish I hadn't done.

Mr. TUNNEY. Thank you for your frankness. In the estate of Eugene Segundo, he petitioned for your removal as conservator. You charged a fee of $6,000 covering, among other things, according to the Department of the Interior report, for services rendered as an attorney. Since California law, according to the report now, does not provide for fees for a conservator I wonder if you could explain this attorney's fees for a conservator. I wonder if you could explain the charge? I know in your statment you said that it was wrong, that it was a misstatement of law. Would this be your answer to the question that I have addressed to you, as the reason you charged the $6,000?

Mr. HOLLOWELL. Yes, sir. I believe Mr. Cox in the report is completely wrong. I unfortunately, got involved in that long litigation. The reason I spent so much time in court was that, as an attorney, I invoked the attorney-client relation; and the wife's attorney, doing a good job, kept me baited and kept going after me for days, and days, and days, and I felt that even though Eugene was dissatisfied with me, and I was willing to step aside, I wasn't about to break that attorney-client privilege. Now, strictly, I don't think I was entitled to that privilege. I think what the attorney was after was, "How did he look? How did he act?" and, coming down to specifics, "Was he intoxicated"; but I managed to hold my own on the stand, and refused to testify because I could not distinguish between his actions and his conversations, and gosh knows, I forget how many days now I spent in court on that matter.

Mr. TUNNEY. I'm sorry to take so much time of the committee, and you, Mr. Hollowell, but I have one last question, and that is, we have

heard from Mr. Schlesinger, another attorney, that he felt that the system as it operated here in Palm Springs for the administration of the Indian estates was not working adequately. Do you feel that the administration of these estates is inadequate; and, if so, what changes would you recommend?

Mr. HOLLOWELL. Sir, I do not believe that we need both the systems. There is a useless overlapping. My thought is, let the Government handle it all, or have the guardian-conservator system, or something like it. I agree completely with Mr. Schlesinger regarding the conservator system, that it is imperfect like any other; but it works, and it's more of a better tuned-in system to allow our Indian clients to get into society and fit in rather than holding him as a ward of the Government forever; but the two systems side by side are horrendous, because you have a double take imposed upon a double take. I can summate a lease deal in 2 weeks, even if it's a 30-page lease, by working hard; and compound that with the Bureau and send it, it would take me 6 months. I'm prejudiced, I'm partial. I feel that a somewhat selfish self-motivated businessman or attorney trying to make a fee for himself and make money for his client will do the job faster and better than the Government as it is set up now. The two systems overlapping on each other is hard.

Mr. TUNNEY. I yield to the chairman.

Mr. EDMONDSON. You have so testified, I think, that in one instance, and I would assume this would apply to your feelings across the board in similar cases, that you did not feel a particular problem about checking out the value of a piece of land for purchase purposes because the Bureau of Indian Affairs is going to be checking it, and they would make the determination on that, and you have no hesitancy in submitting a proposal for a deal to go through involving a client because you felt the Bureau of Indian Affairs would protect the client in terms of the value that you had included in this particular transaction. Now, could it be that a good part of the reason for the time consumed at the Bureau end of it is that is the feeling that you have expressed is widely held and everybody is expecting the Bureau to protect the Indian in terms of his rights and his getting a fair value for his money?

Mr. HOLLOWELL. No, sir. I hate to criticize the Government that bad, but they aren't set up to go into competitive business. It's just too slow and there's too much redtape.

Mr. EDMONDSON. And, the question of the value of the deal that is proposed to the Indian and the value of the property that it is proposed he acquire, is not basic and fundamental to a determination of whether it is a good proposition?

Mr. HOLLOWELL. Are you referring to generalities, now?

Mr. EDMONDSON. I'm referring to generalities, and to specifics, both.

Mr. HOLLOWELL. In general——

Mr. EDMONDSON. In general, how can you make a judgment as to whether things are a good investment or a good deal if you ignore the matter of value on a particular land and leave that judgment to be made by somebody else?

Mr. HOLLOWELL. We had no choice, and this is one of our problems. The Bureau has the last say. We must use their appraisal.

Mr. EDMONDSON. So, you don't have to make any check of the value of the land because they make it down there?

Mr. HOLLOWELL. They make the appraisal, whether we agree with it or not.

Mr. EDMONDSON. Thank you.

Mr. TUNNEY. I just checked with the chairman, and he's going to let me continue for a few more minutes. I'd like to ask you just a few more questions on points that are appearing here in the report, things which, I think in all fairness, we should have some testimony from you on.

Mr. HOLLOWELL. All right.

Mr. TUNNEY. What do you consider an extraordinary service, and an ordinary service when you are acting as a conservator?

Mr. HOLLOWELL. An ordinary service would be collection of income, payment of normal routine monthly bills, a certain amount of conference time with your Indian client; although my thinking used to be to the contrary, I think possibly now, purchasing an automobile would be routine, minor traffic tickets, that sort of thing. I would classify as extraordinary, a long-term lease, hiring an attorney for some sort of criminal problem or domestic relations problem. I do better being shot specific questions and being asked to which is it.

Mr. TUNNEY. How do you, for instance, arrive at your fee schedule for extraordinary expenses?

Mr. HOLLOWELL. For the attorney, in a sense——

Mr. TUNNEY. Let's say, as a conservator.

Mr. HOLLOWELL. OK, as a conservator. When I first came into the picture, I merely asked for a reasonable fee and left it up to the discretion of the court, and later on, after our policy memorandum say, in 1964, I started breaking it down and taking three-quarters of 1 percent, which seemed to be the new guidelines; and then asked for another sum for the extraordinary, and that's been pretty much the custom in my office since 1964. I think the banks all along, have used three-quarters of 1 percent as their guidepost.

Mr. TUNNEY. Well, when you would fix a fee for extraordinary services, would you take into consideration the time involved, or would you set as a percentage of the service performed, a percentage of the amount of money involved for services performed?

Mr. HOLLOWELL. Most of our conservator clients, it was a matter of time and effort and ability.

Mr. TUNNEY. Then, it was not a percentage?

Mr. HOLLOWELL. No, sir; because I—this is not to volunteer, but I've seen tickets and other things disappear and I have seen some conservators really go out and go-for-broke for their Indian clients, and I've never questioned how they accomplished it, or how they did it. I do know that we never charge on a percentage.

Mr. TUNNEY. How does the judge question fees for extraordinary services?

Mr. HOLLOWELL. Judge McCabe had a prehearing conference on my estates up until the time he went on the appellate bench, and he would have the attorney regarding, and where we had a person capable of understanding, he would have the Indian client, too, and in those years my petitions were somewhat sketchy because we'd gone over them; the whole thing in chamber. Judge McCabe wouldn't set the fee always.

He'd hear what we had to say, it'd be said in an informal-type conference, and when he left and Judge Brown took over, we were then in the McCabe-established policy of setting everything out in the petition. I don't think I've ever had any of those preconference-type things with Judge Brown, but I did with McCabe.

Mr. TUNNEY. And, how does Judge Brown decide the fees, the approval of the fees?

Mr. HOLLOWELL. I think—wait a minute, I can throw some light. I remember just several years ago I—one of the task force exhibits there, attributing an ulterior motive to it, I had an accounting and then I had to amend it later, and I had forgotten to set out item-for-item what I was charging for each piece of work, and Judge Brown is a reader and I got down in court and he told me I'd have to file an amendment to it, and then I filed the amendment and set out each piece of work separate and the amount to be attributed to that, so I think Judge Brown's attitude was, he had to be satisfied in writing. We've been mad at him, too, in giving us less than we asked for.

Mr. TUNNEY. Has he ever disallowed your fee?

Mr. HOLLOWELL. Yes.

Mr. TUNNEY. You have a question at this point?

Mr. EDMONDSON. Yes.

Mr. TUNNEY. All right, Mr. Chairman.

Mr. EDMONDSON. Would you say that the general guidelines that were used with reference to charging for fees by a conservator and charging for fees by an attorney for a conservator are the same?

Mr. HOLLOWELL. The attorney is to only be paid for the work he does, and I do have estates where nothing is done for an entire year, and my only fee is for the preparation of the accounting.

Mr. EDMONDSON. Is it just a coincidence, or a remarkable and unique situation that in this exhibit which is in the file as part of exhibit No. 26 in the matter of the conservatorship of Anthony Joseph Andreas, Jr., that the fee which is claimed by Mr. Spiegelman as conservator is $4,000 which is identical to the fee which is claimed by you as attorney for the conservator in the same estate?

Mr. HOLLOWELL. I would say so, because in most cases my fee is different.

Mr. EDMONDSON. Wouldn't that be a rather remarkable coincidence when you are figuring out the amount of time and energy and effort and so on, that's been put in, and the factor of the value of the estate entering into it, that the figures would come out to be identical in this particular pleading that was filed in the Superior Court of the State of California in and for the county of Riverside on July 6, 1966?

Mr. HOLLWELL. In 33 estates, as Secretary Udall set as an average rate, that is a coincidence, because in most cases—I can't think of any other, and I wasn't even aware of that one, the fees are different.

Mr. EDMONDSON. Thank you.

Mr. TUNNEY. Thank you, Mr. Chairman. As an attorney, you only should be paid for services performed, while as a conservator, he is paid a percentage if there were no services performed. I understand this is discretionary with the courts; is it not?

Mr. HOLLOWELL. No, sir. As a conservator, I was paying bills, taking in rent, and performing services maybe not on a daily basis, but

continually. As an attorney, you only perform services when something comes up and you are asked to do something, and a conservator, I rightfully believe, should spend a certain amount of time with his work. He is responsible for the estate, and for the investment and decisions. I've been in situations with Eugene where it started out $100,000 in treasury bills and I followed the practice of my predecessor and left them in treasury bills. That is my responsibility. As an attorney, I'm not concerned with it. I'm a mechanic that is called in to find out the divorce, get the court petition, and that line.

Mr. TUNNEY. As a fiduciary and a conservatorship, relationship with an Indian ward, do you feel that this should be taken into consideration in fixing a fee, or do you think that it should be a straight arms-length transaction? Do you think a fiduciary relationship should enter into the fee of a conservator, or do you think it should be an arms-length transaction?

Mr. HOLLOWELL. I don't really understand the question.

Mr. TUNNEY. Well, assuming now that you have extraordinary services performed for one of your wards as conservator, there is a fiduciary relationship that exists between you as conservator, and your ward. Do you feel that that fiduciary relationship should enter into your determination of what your fee should be, or do you feel that you should fix your fee as though you were dealing with another party, a third party, and it was an arms-length transaction?

Mr. HOLLOWELL. It feel it's arms-length in the sense that the judge actually sets here the fee.

Mr. TUNNEY. But, you make a recommendation, don't you?

Mr. HOLLOWELL. Yes, sir.

Mr. TUNNEY. So, as a technical matter in these cases, the fee is really fixed by the attorney in his request, isn't this the case?

Mr. HOLLOWELL. I would say that's a fair statement. Most of my lay clients ask my opinion.

Mr. TUNNEY. Do you think the fiduciary relationship plays a part in your decision as to what fee you should charge for extraordinary services just as—not you personally—just as a general matter, in the management of these Indian estates?

Mr. HOLLOWELL. Oh, I think so, because you have the burden upon you to try to be fair, try to to be reasonable.

Mr. TUNNEY. And, did you take into consideration personally now, when you were making your decisions as to what was fair to charge for the extraordinary services?

Mr. HOLLOWELL. Yes, sir. In the Segundo matter, I stated I felt I was entitled to more, but I had made a representation to Mr. Segundo that acting in pro per, I can do it cheaper than if he had a conservator and an attorney, so I set forth all of my services and I said I would like so much. I think my services actually were worth a lot more than what I asked for.

Mr. TUNNEY. Do you believe it is the duty of the conservators to try to educate the Indian so they will be able to take over their own estates?

Mr. HOLLOWELL. Good question. Legally, no, but I think most of them try. I know I've tried with some of my younger people, to encourage them. Ray Leonard Patencio and I have talked many times about his going to law school when he was younger. I think that is

a duty not imposed by law, but I think it's something that Judge McCabe and Judge Brown expected us to do.

Mr. TUNNEY. Were there any Indian wards, to your knowledge, released from the conservator relationship as a result of a petition by the conservator of the Indian estates?

Mr. HOLLOWELL. There were.

Mr. TUNNEY. How many?

Mr. HOLLOWELL. There'd be Pete Siva.

Mr. TUNNEY. Was that at his request or the request of the conservator?

Mr. HOLLOWELL. I don't honestly know. May have been at Pete's request. Another termination was Virginia Sanchez. That has been quite a while ago, but I—Virginia hired me to prepare the petition for her termination. I believe that was—I believe that it was at both the request of the conservator and she. I had two petitions filed just recently which haven't come up yet, where I, the attorney for the conservator—I'm trying to think of ones in the past. Leroy, there was a petition filed on his behalf, or by him, for the termination of his conservatorship some time ago.

Mr. TUNNEY. I'm thinking of before the investigation had started.

Mr. HOLLOWELL. No, there were very few, very few.

Mr. TUNNEY. Well, one of the things which has come to my attention as a problem with this arrangement in existence in Palm Springs was that the Indians, once they became 21, and once they automatically had a conservator appointed for them, had little or no opportunity ever to void this onus for having a conservator to be able to get out from under the conservator relationship, and apparently, from your testimony you know the system, or you feel that the system as far as the law itself is concerned sanctions this, because under the law there is no requirement to educate the ward to enable the ward to get out from under the conservator relationship.

Mr. HOLLOWELL. I think there's a moral to this. I have one lady I am conservator for who I tried to include in all my negotiations, encouraged to go to the College of the Desert and I'm pretty sure she's going. I helped her with the application forms. I think the vast majority of people have done everything they could to encourage and teach. I've been in an unhappy situation of having the Bureau of Indian Affairs come in and object to my fees, because I have several Indians who are very curious about legalities and they want to know everything that's going on. I have two little girls that come in and we spend quite a little time together. My petition for fees under submission last week, Judge Marsh's big objection to my fees were that I spent this time with the girls, as new tenants answering questions that the bank wasn't qualified to answer. They were insisting and they were questioning everything, which I think is beautiful, and they wanted to know why.

Mr. TUNNEY. But, as I understand your testimony, the law does not provide that a conservator has to make an accounting to any higher authority, judge or anyone else, that he is actually trying to educate his ward so that that ward will be in a position to terminate the conservator relationship and be able to manage his own affair?

Mr. HOLLOWELL. No, the law does not provide that.

Mr. TUNNEY. There's no requirement under the law?

Mr. HOLLOWELL. Judge McCabe did it. It's in his policy memorandum, but I'd say the law as enacted by the State of California does not make you guardian of the person, place that responsibility on you. The court in Indio has said that if you are going to take on an Indian guardianship, they expect you to do that, but you're entirely correct, Congressman.

Mr. TUNNEY. So that an Indian could conceivably spend his entire life as a ward without getting any instructions whatsoever from his conservators in how to handle his affairs and so far as the law is concerned, this would be a perfectly proper course of conduct for the conservator?

Mr. HOLLOWELL. Legally, yes.

Mr. TUNNEY. Thank you very much.

Mr. HOLLOWELL. Can I tell you something else?

Mr. TUNNEY. Certainly, please.

Mr. HOLLOWELL. This is the attitude of the Bureau up to date. They have felt no compulsion to educate them, and legally, I don't think they have a duty to, but I think we all have a moral duty to do everything we can to get the Indian educated.

Mr. TUNNEY. Thank you very much.

Mr. EDMONDSON. On that particular point, I have some difficulty reading this, because these copies are a little weak in reproduction. The task force report states "* * * California law does not require 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," and there is an exhibit which sets forth the conditions that apply with regard to that, to conservatorships.

Mr. HOLLOWELL. Congressman, that is Judge McCabe's policy memorandum and, as I volunteered before, he made this a policy.

Mr. EDMONDSON. Was this an accurate statement, that the Indians were given to understand that the conservators were going to educate them to handle their own affairs, but the conservators were not under any direction or obligation to do it?

Mr. HOLLOWELL. They are not under an obligation to do it, but I think the vast majority are trying. Now, Judge McCabe——

Mr. EDMONDSON. Now, the court that appoints the conservator issues the policy memorandum, and the conservator operates under the authority of that court. Wouldn't he be under a positive direction to do it?

Mr. HOLLOWELL. That's what I was explaining to Congressman Tunney. The judge, Judge McCabe, imposed additional requirements that had not been imposed by the legislature.

Mr. EDMONDSON. But, whether it is required by the legislature or by the court that is appointing the conservator, it would seem to me to be a positive duty upon the conservator in any case, wouldn't it?

Mr. HOLLOWELL. I feel a duty; yes, sir.

Mr. EDMONDSON. It would go beyond moral, wouldn't it? It would actually be an obligation, if you assume a conservatorship under the direction of the court in Indio with the policy memorandum in effect, wouldn't you be under an obligation to the court to carry out its policy?

Mr. HOLLOWELL. Yes, sir. I feel that obligation as an individual.

Mr. EDMONDSON. It's beyond moral obligation, very clearly by your own testimony, isn't it?

Mr. HOLLOWELL. Yes, sir.

Mr. TUNNEY. To your knowledge, was there ever a conservator terminated because he did not educate or instruct his Indian wards?

Mr. HOLLOWELL. Not that I know of, Congressman. We had some terminations because of ill feelings that came about because the Indian disagreed with the policy or something the conservator was doing, and the conservators have quit, feeling that they didn't have a happy client to work for, and it was not a happy circumstance, but I don't think there's ever been any such situation arise because anyone refused to help educate. I know some of my people spent a great amount of time——

Mr. TUNNEY. I'm aware of that fact, and I know some of the conservators, too. The question really though is, was the policy guideline abided by, and who was checking to determine whether or not the policy guidelines were abided by. This is the thought that I had, and my question simply was to whether or not the court had made a determination in any particular instance that the policy guidelines had not been adhered to.

Mr. HOLLOWELL. I don't believe they did.

Mr. EDMONDSON. Mr. Sigler, any questions?

Mr. SIGLER. No questions, Mr. Chairman.

Mr. BURTON. No questions, Mr. Chairman.

Mr. EDMONDSON. Mr. Hollowell, thank you very much for your testimony, and thank you for a very excellent documentation that you supplied as part of your position, and thank you for your patience with us in answering our questions.

Mr. HOLLOWELL. I thank you for your patience, and I again thank our Congressman for getting you here. I appreciate it.

Mr. EDMONDSON. Our next witness is Mr. Henry V. Cleary.

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. Mr. Cleary, you have a very lengthy statement also, and I will offer the same to you as was afforded to Mr. Hollowell, that if you get too tired of standing there in the course of your presentation, I will appreciate it if you will let us know, and we will try to get one of these other microphones over there and let you sit in a chair and testify.

Mr. CLEARY. Thank you, Mr. Chairman, and in the interest of time, I request Mr. Sigler that so much of my report would be duplicated, so I will not read it verbatim.

Mr. EDMONDSON. Even so, would you like to have your entire statement put in the record as though you read it in full and then comment on the highlights? Is that your feeling, and not duplicate it?

Mr. CLEARY. Yes, sir; I'd appreciate it.

Mr. EDMONDSON. If there is no objection from the committee, the statement of Mr. Cleary consisting of 41 pages will be made a part of the record at this point.

(The document referred to follows:)

TESTIMONY OF HENRY V. CLEARY

My name is Henry V. Cleary, I am an attorney at law and licensed to practice in the State of California. I am a member of the Desert Bar Association, the Riverside Bar Association, the Orange County Bar Association and the State

Bar of California. I am also a member of the American Board of Arbitrators, I am past President of the Desert Bar Association and served for seven years on its Board of Trustees. Currently I am the attorney for the Association of Conservators, Guardians and Allottees of the Agua Caliente Indian Lands and Estates.

In order for this Committee to fully comprehend the factual and legal conditions that exist at the present time, which conditions will be affected by any future legislation, it is necessary, initially, to review the history of the Agua Calientes and the Congressional enactments and Department of Interior policies which have effected them.

Congress by the Act of March 2, 1917 (*39 Stat 969, 976*) "authorized and directed" the Secretary of the Interior to proceed to cause allotments in severalty to be made to members of the Agua Caliente Reservation. Approximately twenty-eight (28) years later the Interior Department had no membership roll of the Agua Caliente Band of Mission Indians, although it had been the Trustee of approximately thirty thousand (30,000) acres for over fifty (50) years. Following one of the severest chastisements ever handed down by the Supreme Court of the United States in *Arenas vs The United States 137 F 2d 199 Reversed and* ***Remanded 322 US 419; United States vs Arenas, 158 F 2d 730 Certiorari denied 331 US 842*** **the Interior Department still did not carry out the full mandate,** for it allotted only forty-seven (47) acres of land to some Indians thus leaving **thousands upon thousands of acres unallotted but nevertheless in Trust.**

As a grand gesture to recover some prestige with its Indians and the public, the Interior Department in 1949 requested and received consent of Congress to lease land on a five (5) year basis. What thoughtlessness and lack of planning went into this request is unknown. It was a definite lack of planning and thought for the Trust land was surrounded by improved non-Indian land. If *any* inquiry had been made as to whether any substantial improvement would or could be practical for residential or commercial purposes on a five (5) year basis, without option, any person with normal intelligence would have answered in the negative. Yet the Interior Department proudly declared this is progress, but nevertheless continued its practice of granting thirty (30) day permits thus encouraging and increasing the slum area theretofore developed by the Bureau on Section 14 in the heart of the City of Palm Springs.

By this proud act of allowing five (3) year leases, the Interior Department gave birth to other evils which later became a problem for itself, the Indians, and all other persons connected with Indian lands. One of these evils was the so-called "outside agreements." Who conceived them is unknown but the result of them is known. The Interior Department and the Bureau can explain them more readily than the presenter of this explanation, for the Interior Department, through its Probate Section approved such "outside agreements" but later withdrew its approval.

Because of the schedule and method used by the Interior Department to allot the forty-seven (47) acres, gross inequities occurred. Again, at a great cost for the individual Indian, it was necessary for the Courts in the case of the *United States vs Pierce, 235 F 2d 885*, to declare the Bureau had been unequitable and mandated the Interior Department to equalize the allotments, not on an acreage basis but on a dollar basis. The Interior Department did not know how to so equalize and was incapable of following the mandate or desired that someone else carry the burden for eventually, and in 1959, Congress passed the Equalization Act.

Having discovered belatedly the five (5) year leasing plan was completely ineffectual, the Interior Department blundered again. It proposed to Congress that authorization be granted to lease the Indian lands in the Palm Springs area for twenty-five (25) years with an option to renew for twenty-five (25) years. The Interior Department, through the Bureau, then promulgated a policy that the leases could not be given on a twenty-five (25) year basis with rights, rents and privileges consistent with the twenty-five (25) years, but the leases had to be re-negotiated as to rent each five (5) years. Commercially and practically, this was not feasible for anyone placing improvements on the leased land could be displaced at the end of any five (5) year period by the Interior Department demanding too high lease rental. Again the plan of a twenty-five (25) year lease with an Option of twenty-five (25) years went to naught by the lack of due study or any study and consideration by the Interior Department. By this time some officials should have understood that 3,000 miles away from an active real estate area is too far to know the commercial pulse of the area. Again, the Indians

suffered. The Interior Department could not explain it to them for had it done so it would have committed the unforgiveable bureaucratic sin of confessing it did not know what to do or how to handle the Indian land Problem in Palm Springs.

Under the twenty-five (25) year lease with Option of twenty-five (25) years, the Interior Department was faced with another practical problem which had not been know to it or evaluated by it when it obtained the passage of the twenty-five (25) Year Lease Act in 1955. To develop land costs money. Large tracts are developed by large sums of money. Most developers do not have the large sums, accordingly they borrow the money from financial institutions. One of the laws imposed upon many financial institutions prior to 1955 and up until 1959 was a provision that a leasehold was not bankable unless there was a full fifty (50) year unexpired term of the lease. The twenty-five (25) year lease with an Option of twenty-five (25) years did not qualify on three grounds:

1. The day after the lease was executed there was not a full unexpired fifty (50) year term.

2. The option would have to be exercised the moment the lease was executed in order to have a full fifty (50) year period. And, looking at it practically,

3. The reason for giving an option is to give the Lessee an opportunity during the basic period to know whether he desired to exercise the option.

The Interior Department, not having studied matters and having always to learn the hard way, again had to acknowledge another grave error which again delayed the Indian from receiving his just due from his allotted land.

At the same time during the 1950's the Interior Department was beset by another problem. Not knowing what to do or how to cope with the land problem in Palm Springs, the Secretary appointed a committee of business men from throughout the United States to study and make recommendations to him. This committee's report became known as the "Odlum Report". It was and is not a secret or confidential document. The recommendations made by that Committee are available but no provision or recommendation was ever carried to fruition.

A Joint Resolution of Congress adopted in the early 1950's required the Secretary of Interior to present plans to Congress to terminate the Indian Land Trust in California, Arizona and other States. Thereafter the Secretary proposed a Bill to create a corporation, transfer the Trust Title of the land to the corporation, secure the tax exemption and preserve the management in the Secretary and the Indian's hands. This Bill died for it was so ineptly drawn it could never have been given statutory life. It did however provide for the Conservatorship Program and it was recommended by both the Bureau and the Tribal Council.

During this same period of uncertainty, confusion, ineptitude and inactivity on the Indian land, the Interior Department, through an emissary of the Bureau, Mr. James Low, made another approach to try to relieve itself of its responsibilities. The Emissary in 1956 had a series of meetings with the Superior Judge of this County in Indio, California. The Emissary refused the idea that the Court should handle the Guardians of the Estates in the usual and formal manner and suggested that there should be a complete involvement by the Guardians of Estates because the Bureau personnel in neither temperament, training or policy could be of the proper aid in proper development of Indian land. The title was to remain in Trust with the Federal Government and all transactions involving the title would have to be processed through the Bureau and Interior Department. No such involved, complex or concentrated and unique problem had ever been known to be taken by a Court in California. After a few weeks Petitions to have Guardians appointed were filed in the Court. All of this was done without apparent Congressional approval. From that beginning came the program, instigated and fostered by the Interior Department, the task of trying to make Congressional Enactments, laws, Interior Department Regulations, Rules. Policies operate with the California laws, and Judicial limitations and operate with the Tribal customs and practices with the Indians. Some of the difficulties encountered are clearly and distinctly outlined in the transcript of a meeting held in February 1958 with many persons present, including Mr. H. Rex Lee representing the Commissioner of the Bureau of Indian Affairs, the Area Director, the Local Agent, representatives from the Phoenix office of the Bureau. A copy of that transcript is offered as an Exhibit at this time.

Congress formalized the Guardianship and Conservatorship program by a paragraph inserted in the 1959 Equalization Act. The Secretary of Interior then had to determine who among the adults was subject to artful and designing

persons and file or obtain the filing of Petitions of Conservatorships on them and Petitions for Guardians for all minors. Apparently he made such a determination by having the then Director, R. W. Jackson interview each of the adult Indians to determine if they were competent. If as a result of that conference it was determined that they were not competent the Indian was requested to file a Petition for the appointment of a Conservator and if he did not do so then the Bureau would initiate such proceedings. The proceedings were a condition of precedent to the Indian receiving his Equalization Allotment. An example of a form letter sent to the Indians at that time is the one sent to Mr. Anthony J. Andreas, Jr., a copy of which I now offer in evidence.

Since the title to the land was in Trust because the Indians were incompetent, it was and is not understandable how an Indian determined to be competent and not subject to artful and designing persons and not in need of a Conservator, still has his allotment in Trust for protection. Protection against what, since the Secretary has found him to be competent?

By the Congressional Equalization Bill of 1959, Congress created the Guardianships and Conservatorships as previously stated. It was the obvious intent of Congress that the mere creation of a Guardianship was not intended but that funds from the allotted lands should flow into the Guardianship in order to support, maintain, and otherwise care for the Ward, or in the case of a Conservatorship, the Conservatee. If this was not the intention of Congress what good would be accomplished by the creation of a dry guardianship of an estate? Before the 1959 Equalization Act, the Secretary had authorized the turning over of rent money to the Guardians and Conservators. However, after Mr. Cox and his "Task Force" arrived the Secretary dried up the Guardianships and Conservatorships. These Guardians and Conservators have Court Orders to pay sums of money to the Ward or Conservatee and make payments upon obligations. They must obey the Court Orders by using what money or assets they may have, even using capital. Thus, by obeying, which they must, the Court Orders and not receiving any further funds the Estates will be exhausted and several have been exhausted of funds.

From 1956, to and including 1967, there have been the following agents in the Palm Springs Bureau office: Mr. Mitchell, Mr. German, Mr. Jackson, Mr. Lewis, Mr. Harris, Mr. Hand and Mr. Jenkins.

With each new agent a new policy or procedure or attitude was introduced. There was no consistency. Seven agents in eleven (11) years caused the constant readjustment of thinking, procedures and policies which was confusing and upsetting to all concerned with Indian land.

Turning now to the so-called "Report" prepared by Mr. Cox, it is a real tragedy that in this day and age when Federal Funds are being looked to for the support of a war effort, the creation and continuance of a war on poverty, slum clearance, education and other fields of Federal activity, that so great amount of money as has been spent in preparing this Report should result in nothing more than the mis-statements, conclusions and inaccuracies upon which this Report is based.

One of the oldest, least admired. but effective tactic which man has used since communal society began is that of asserting an offense when he is in an indefensible position or a weak one. Since we have read so much and heard so much about the attack upon the Bureau of Indian Affairs, in its operations throughout the United States, it is obvious that the Bureau has found itself without a defensible position or at best a weak one. It is equally clear that the Bureau could use the offensive tactic with impunity because of its position in the Government and anything said by or done by anyone within the Bureau carries with it a legal immunity. Thus positioned, Robert Cox, head of the Palm Springs Task Force, could, with immunity, say or do anything against anyone or any institution without regard to the truth or falsity of his statement or conduct. He could and has tried to do this regarding the lands of the Agua Calientes in Palm Springs. His report dated March, 1968 and his conduct will be outlined as best it can be done.

The Report took ten (10) months in the making. It is the result of the efforts of attorneys, auditors, investigators and other general Governmental employees. The letter to your Committee Chairman dated April 2, 1968 from the Secretary of the Interior is tantamount to an indictment of the entire Conservatorship program and the Equalization Act of 1959 and of every individual mentioned therein, however, the validity of that indictment must stand or fall upon the integrity of the Report which is the basis of the forwarding letter. We must, therefore, look to the Report in detail in order to quash the indictment.

The forwarding letter of the Report of investigation signed by Robert Cox and Barry Berkson gives a clue to that which follows. In one of the greatest misstatements of the decade these gentlemen state:

"Due to the volume of the material reviewed and information received, the Exhibit or Exhibits used in support of a given finding may not necessarily be exhausted."

Not only are the Exhibits and Schedules not exhaustive, they are inaccurate, misleading, and in some instances, as will be pointed out later, libelous, were it not for the immunity granted to Mr. Cox. The Report itself, in the section headed "Background", sets forth the inability of the Bureau to follow the direction of Congress as set forth in the Equalization Act.

After initiating the Conservatorship and Guardianship Program in the California Courts the Bureau has abandoned its responsibilities and has left the appointment of the Conservators and Guardians to the Courts. (last sentence, page 6).

In a letter dated September 17, 1963 a copy of which is now handed to you as a next Exhibit, the policy of the Bureau in regard to the establishment of Conservatorships was set forth. As pointed out in the Report of complaints to the Conservatorship commenced almost as soon as the Equalization Act had been adopted. In a mis-classification of the nature of the investigation, defined by Messrs. Cox and Berkson as "truncated", the Department of Interior, at the instigation of Congress, submitted a report on July 9, 1963, which was contained in Exhibit 2 to the Report of March, 1968 wherein the nature of the investigation was certainly not defined as "truncated". Mr. John A. Carver, Jr., then Assistant Secretary of the Interior states:

"In this interchange of correspondence we agree that in making use of existing administrative facilities offered by the California Courts, we have the responsibility of ascertaining that the fees and other expenses charged against Indian Estates were not excessive or unreasonable. To that end, respresentatives of the Department were instructed to conduct the necessary studies which would enable us to make an enlightened review of the matters outlined as items 4, 6, 7, 8 and 9 of your letter of July 5th 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. . . ."

At that time and following the "enlightened" review of matters the Department of the Interior specifically found "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, 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 incomes 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, that he may be called upon anytime 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 re-instatements, seeking proper occupational training facilities for wards, providing psychiatric care for wards, and involvements with the Selective Service. None of these responsibilities is a part of the management of Trust property and yet innumerable hours of the Guardians or Conservator's time is spent on such matters."

The report then continues: "Finally, the fees in Indian Conservatorships and Guardianships are 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."

The report of March, 1968 then continues and refers to the appointment of a "Resources Trust Officer" in the Palm Springs office, in 1965, to work informally with the Court in its administration of the program. This Resources Trust Officer was the same Robert Cox who authored the report of 1968. This same Trust Officer was one who while attending conferences regarding the placement of some Indian children in foster homes, upon question put to him as a solution, stated he had none and did not believe he or the Bureau should enter in this affair.

This same Mr. Cox reported in 1965 that approximately 37% of ordinary income was consumed by fees and other administrative expenses. Why Mr. Cox arbitrarily selected the ordinary income as a yard-stick against which to measure fees when the Assistant Secretary of the Interior had in fact two years earlier described the services upon which those fees were based as totally inconsistent with those ordinarily performed by fiduciaries, is unknown to me or to anyone, other than Mr. Cox apparently. Instead of suggesting to the complaining Indians that the services being performed for them by their fiduciaries were far afield from those normally attendant upon a fiduciary, the Bureau took the attitude of placating the complaints and protecting them from the realities of their everyday life and the realities of existance in this society around them, all to the detriment of the fiduciaries who have unstintingly devoted their time and service to the betterment of the Agua Calientes and to the detriment of the Agua Calientes themselves.

Mr. Cox, in order to enhance the position maintained by him makes reference in his Exhibit 3 to a letter from Mr. Homer Jenkins then Director of the Palm Springs Office of the Bureau of Indian Affiairs. He neglects to state that Mr. Hollowell was specifically requested by the wards or the parents of the wards and he neglects to state that the objection to the appointment was based solely upon the fact that Mr. Hollowell was in a fiduciary capacity for other Indian Estates.

This information is set forth in a letter from Mr. Jenkins under date of June 5, 1967, a copy of which is now offered as our next Exhibit. The report of March, 1968 paraphrases a letter from Judge Brown to Mr. Jenkins under date of April 11, 1967 and while including that letter in his report neglects to state that Judge Brown invited Mr. Jenkins and the Bureau or whatever other Governmental Agency was involved to formally appear in the Indian Proceedings. The formal intervention mentioned by Judge Brown refers to the fact that under California law whenever anyone has an interest in an Estate which is active in Courts, he may file a Request for Special Notice after which the person receives copies of all Petitions and papers filed. As indicated in Judge Brown's letter, the Bureau had therefor so been informed. In many Indian Estates the Bureau chose not to formally intervene and file objections, but as stated by Judge Brown took the opportunity of writing to the Judge directly, without notifying the person involved, setting forth objections to various transactions then going on before the Court. As indicated by the letter, in some instances the Judge followed the recommendations and objections of the Bureau. The only purpose of Judge Brown's letter, as is set forth therein, is to notify the Bureau that in the future had they had any objections they would have to voice them formally and thus let the persons to whom objections were being voiced have their day in Court. Although requested to appear in Court and voice its objections, if any, to any proceedings involving Indian Estates, the Bureau refused to do so stating that only the Justice Department could appear or give a consent to appear. Apparently this was true although at least one of the agents in Palm Springs was an attorney in the Area Office of the Bureau was a Regional Solicitor. *

Based upon this apparently intentional mis-interpretation of Judge Brown's letter, the Report boosts itself by its own boot straps by including as Exhibits 5 through 9 a continuation of this mis-interpretation.

It is interesting to note that the complaints received by the Commissioner of Indian Affairs which precipitated the sending of Mr. Cox to Palm Springs in 1965 are fifteen (15) in number and not one of them relate to excessive charges by Conservators, Guardians or their attorneys but for the most part constitute

*It is interesting to note that this alleged conflict of interest in Mr. Hollowell exists because he represents other Indians. The Bureau would have you solve the possibility of conflict of interest by having the Bureau, representing the entire Tribal Membership assuming the responsibility of representing each one of them individually and without in any way acting in derogation of the rights or privileges of any of the other members of the Tribe while acting for any given one.

complaints against the Bureau of Indian Affairs and the enactment of Public Law 86–339, Section 4.

Turning now to the so-called "Findings of Task Force" I would like to leave the dollar figures to the end of this testimony and turn to the remaining alleged Findings.

Under Paragraph B of the Findings the Cox Report of 1968 suggests:

That the amount of fees awarded to Judge Eugene E. Therieau in seven (7) years is excessive as it infers, were the fees awarded to Mr. Hollowell during the term of his service as attorney. These two individuals represented approximately 33% of the total estates involved and were awarded approximately the same percentage of fees.

By the inclusion of this separate heading for principal recipients apparently it is inferred that something is wrong. What, I cannot imagine.

It is interesting to note, however, that of the 36 Audits included by Mr. Cox in schedule 5 to the Report, none of the estates for which Mr. Hollowell is fiduciary are included for the period of his stewardship. Even though each of these estates has been audited.

It would appear then, that Mr. Cox in including 36 estates did so rather selectively for had he wanted to include therein the total estates audited, the 43 that he refers to in Paragraph 1 on page 9, that the 7 estates handled by Mr. Hollowell would have been given a clean bill of health.

An Ex-Parte Order, used by way of example in the Report, defines an Order signed by a Judge, without Notice or Hearing, generally in Chambers. The classification of all Ex-Parte Orders as being the same is like comparing Niagara Falls to Tahquitz Falls. They are both water falls. There the similarity stops.

Some securities are volatile in their selling price and the Ex-Parte Order authorizing the sale thereof must be obtained immediately in order to protect the Estate from suffering any severe financial loss. Other stocks are more stable and fluctuate slightly, therefore, the obtaining of an Ex-Parte Order can be done at leisure. In the former instance the obtaining of an Ex-Parte Order necessitates the cessation of all other work to prepare the necessary papers, delivering the proposed Order to the Bureau and obtaining its approval and the signature of the Judge on the Order sometimes within a matter of hours, whereas other Ex-Parte Orders can be done in the usual course of business and involve no interruption of normal office practice.

Not only are the exigencies of each particular situation to be taken into account, the experience of the attorney, the time it takes him to complete his task must also be taken into account. In the Report's last paragraph the Report's classification of the practice relating to the allowance of fiduciary and attorney fees as being wholly inadequate indicates that the authors of the Report are wholly unconversant with the nature and value of professional and fiduciary services. They would relegate the fiduciary and the attorney to the status of an automaton, ignoring totally the individual's experience, intelligence, business accumen and every other quality the presence or absence of which determines the value of the services.

The Report criticizes the California Probate Code for the establishment of "reasonable" fees, and inaccurately compares such reasonable fees with the fees allowed in decedent's estates. In the event of extra-ordinary service performed in decedent's estates those performing the services are, too, allowed reasonable fees for extra-ordinary services. Again the Report mis-quotes applicable facts and law.

The practice of allowing reasonable fees for extra-ordinary services is followed uniformly throughout the United States. Were the services to be performed by an automaton or by a machine then the establishment of a uniform fee regardless of importance of the work performed would be possible.

Human endeavor being individual in nature and as differing from one case to the next as they are, the suggestion of the Report is totally impractical.

On Page 14 of the Report the authors suggest that consulting with Wards or Conservatees should not be classified as "extra-ordinary". Your attention is drawn to the language used by the Assistant Secretary of the Interior Carver when he stated: "The services the fiduciaries and their attorneys are called upon to perform are, on the whole, far from routine. They involve . . . and in many cases, almost daily consultations with beneficiaries and members of their families." Naturally the Conservators and attorneys do not uniformly treat consultation with their client as ordinary or extra-ordinary. The classification would naturally depend upon the applicable facts.

The Report alleges that fees have been allowed to attorneys and fiduciaries based upon fees normally charged by licensed real estate brokers. Such is not the case. Again the Report mis-quotes in para-phrasing an Exhibit. (See Exhibit 11.)

The letter referred to states that if the attorney is the "catalyst" in a real estate lease he should clearly reveal in writing his position to the Bureau and the Court. The award will not be on a basis of dollars per hour, but according to a determination of value and worth to the Estate made by the Court but never exceeding the schedule for realtors. In other words, the Court has stated that it would determine the value of the services by the attorney but never would the attorney receive more money than a real estate broker would have had the real estate broker been the catalyst. This indicates that the estate will never be charged more for services by an attorney than it would have been charged had the attorney called in the services of a real estate broker and allowed him to put together any transaction.

On this question, however, of determination of fees in accordance with schedules, the Bureau itself has promulgated a Directive wherein fees are to be determined by income which is the same standard followed by real estate brokers, but the fees to be recognized by the Bureau were less than those charged by realtors.

This Directive is in the form of a letter dated Sept. 9, 1966, a copy of which is offered herewith.

While the Report criticizes the insertion of the practices of the market-place into fiduciary relationships, it is apparent that such is not the case in Court administered estates, yet such is the case when the Bureau's determination of value of services is involved.

On the question of duplication of services, the Report criticizes the fact that a layman, the fiduciary, attends business meetings for which he charges fees. At least the Report criticizes this conduct when the layman asks to be represented in business meetings by his attorney. Apparently the authors of the report feel that every layman should be well enough versed in legal matters to be able to negotiate on all forms of legal problems without the effective assistance of counsel, or if he needs effective assistance of counsel, either he or the attorney should go un-recompensed for the services performed by them.

The Report implies that the layman fiduciary and the attorney duplicate services. Such obviously is not the case. It is the universal, commercial practice throughout the United States for businessmen to be represented at business councils and conferences by their attorney or with their attorney.

In several instances where the attorney has been himself qualified to act as business advisor he has been appointed as Fiduciary and serves as his own attorney. Such practice has resulted in a savings to the Estate, not only in money but in time. Such practice obviously cannot be followed universally because not all attorneys are qualified businessmen.

The authors of the Report again exhibit their ignorance of legal services by classifying the obtaining of Ex-Parte Orders as being universally "purely routine".

The authors criticize alleged extra-ordinary fees by attorneys for services normally performable by a fiduciary but fail to give any assistance in which this situation has occurred.

If an attorney is representing three clients each of whom are involved in a transaction, the attorney will represent each of the three clients to the best of his ability. For each of the three clients he must perform some services. If the three clients happen to be estates and the transaction necessitates the obtaining of a Court Order for the completion of the transaction the attorney must perform services in connection with the obtaining of Court Orders for each of the three estates.

The example used in the Report, i.e. Exhibit 15, is a classic example. Each of the four estates referred to therein necessitated work by the fiduciary and the attorney. The time devoted to all of the problems involved was divided by the number of estates involved and each estate was charged for its aliquot proportion of the total services. There was no duplication of fees.

There does in fact appear to be a duplication of functions of the Bureau and of the Superior Court for each must approve a lease or a sale of land by an estate.

When the Superior Court functions as the reviewing authority the approval or disapproval is forth-coming within a matter of weeks. When the Bureau is

the reviewing authority the delay is sometimes as much as nine months. Examples of this are: PSL 16. The original lease was submitted on May 19, 1959 for Bureau approval and was finally approved on September 11, 1950. The first Supplement to that lease was submitted July 11, 1960 and approved December 29, 1960. The second Supplement was submitted February 11, 1963 and was finally approved December 17th of the same year.

PSL 104 was submitted for approval on April 21, 1967 and finally approved on September 7th of that year.

PSL 105 was submitted on ———————— and has not yet been returned, approved or dis-approved by the Bureau.

On the question of inadequacy of records the conclusions of the Report are just that. The Audit Reports themselves would reflect whether or not any of the estates had inadequate records.

These Audit Reports were not available to me, therefore, I can make no specific comment relative to the conclusions made by the Report except that in the 25 cases where there were allegedly inadequate supporting documentation, 13 of these estates involved deceased or resigned fiduciaries whose records over the past years have probably been handled by his widow, his executor, his successor fiduciary, the attorney for his executor and may very well have been intentionally destroyed by the fiduciary after holding the same for years and after having had his accounts approved.

It is common business and fiduciary practice to submit an Accounting based upon all of the Receipts and Expenditures made during the preceding accounting period. Once the Accounting has been submitted to the Court for its approval and to the Bureau, the records substantiating that Accounting are generally held for a period of three or four years and then destroyed. To do otherwise would necessitate the hiring of vast storage areas.

Of those cases in which the assets were allegedly overstated or under-stated, it was the practice of the Bureau in conducting these Audits to take an asset at its original cost and to continue it throughout all subsequent accounting periods at its original cost, whereas in practice, assets in some cases depreciate and others appreciate and the depreciation and appreciation are reflected in subsequent accountings. Accordingly, if an automobile was originally purchased for $5,000.00 the fifth Accounting thereafter would indicate its depreciated value whereas the Bureau's Auditor maintains that it should be listed at $5,000.00.

Other conclusions set forth under this heading cannot be commented upon other than the fact that three of the cases involving cash shortages involved an Indian Conservator whose shortages were brought to the attention of the Court by her attorney and through the Conservatorship Program reimbursed the Estate of the children involved.

Schedule 5 appended to the Report not only is a composite of conclusions it is factually incorrect because the Audits were for each estate by individual fiduciaries.

For example, Numbers 13 and 14 in Schedule 5 each had two fiduciaries die in office before the present fiduciary assumed his position of trust. The records of the current fiduciary were not only adequate but were commended, however. Schedule 5 indicates that the records were inadequate, supporting documentation was missing and there was a cash overage, none of which comments apply to the present fiduciary.

An examination by this Committee of each Audit is the only way in which these individual comments can be refuted.

Development of Indian Estates. No comment is required on the land status portion of this Report.

In reference to the impediments to development there should be additionally set forth the fact that Riverside County, as other Counties charge a Possessory Interest Tax which in Indian Leases is always passed on to the Lessee.

Additionally the fact that the minimum rental of 8% of the appraised valuation plus a rental bond plus payment of Possessory Interest Taxes and all taxes assessed against the property plus the deposit of one year's rent in advance, are factors which are non-negotiable concerning Indian Leases. In these days of tight money most landlords are willing to make concessions in order to obtain tenants. Such concessions are refused by the Bureau whose approach to the development of Indian Land is inflexible and impractical.

Many Indians insist that all costs of leasing their property be borne by the Lessee and despite the conclusion of the Report that this necessarily involves

a conflict of interest, such is not the case as will be obvious later in my testimony.

Decline in estate values: The statistics set forth therein are totally meaningless unless the financial condition and the need of each Indian, the market conditions prevailing at the time of the sale, the general financial conditions which prevail at the time of each particular transaction are taken into account. It is and was the Fiduciary's responsibility to see that the estate had enough funds with which to support the ward. A number of the sales of Trust Land occurred the beginning of this program, for the very simple reason that the Ward had no money upon which to live and the only means by which he could obtain money was the selling of his property. When property was sold the proceeds thereof were generally invested with the income therefrom providing the means of support for the Ward.

Concerning the involvement of individuals. In a Report of this nature it is apparently the intent of the authors to vilify individuals in order to protect the inadequacies, improprieties and lack of concern on behalf of the Bureau.

The conclusion set forth that Judge McCabe did not set precedents and guidelines is not only a conclusion it is at complete variance with the facts. *See note.

In 1961 after the Guardian and Conservatorship program had been in effect for some short period of time still other problems raised themselves and on November 3rd the Judge was instrumental in holding a meeting of the Guardians and Conservators and other interested persons in which such things as monthly **allowances, rights-of-way, real estate commission, no fixed fee, investment of** money, stabilization of the economy, obtaining utilities on Section 14, zoning, flood control problems, insurance and organization of a co-ordinated body to represent the Indians, were discussed.

How the Report concludes that Judge McCabe did not set precedents and guide-lines is something only Mr. Cox can answer and I doubt that he can then with a straight face. One man sitting on the Superior Court in Indio, California cannot control the Federal Government.

Additionally you have before you as Exhibit T in response to the Report by the Conservators and Guardians, a letter dated July 21, 1965 in which Judge McCabe invited the Bureau of Indian Affairs to investigate the possibilities of **establishing a course in common commercial practices for the benefit of the Members of this Tribe. You have also included in that Exhibit the Bureau's response that such an affirmative step for the betterment of the members of this Tribe by the Bureau is beyond their ability or interest.**

The Bureau's policy now and in the past has been to submit a Will drawn by an Indian in Triplicate for approval by the Phoenix Area Office. If the Area Office approves the Will the copies of the Will are then filed with the local Office of the Bureau and with the Sacramento Office. In the ten instances in which attorney James Hollowell prepared the Will for the Indian, not only were the Wills forwarded to Phoenix for their approval but Secretary of the Interior Udall has been advised of this fact and has been supplied with copies of the letters forwarding the Wills for their approval.

The remaining comments on Judge McCabe are conclusions drawn by the authors of the Report, and this Committee as well as I, can draw its own conclusion by an examination of the documentation purporting to support the Report.

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*Beginning as early as 1956 or earlier, Judge McCabe became concerned, aware and interested with the problems confronting the Agua Caliente Indians. He had meeting upon meeting with members of the Tribal Council, members of the local Bureau, members of the area office. He actively participated in the formulation of the legislation which is now affecting the lives of not only this Tribe but all of Palm Springs. In 1958 after the Guardianship Program had been commenced as is reflected in the first Exhibit offered by me today. Judge McCabe received a letter from the Commissioner of Indian Affairs, Mr. Emmons, stating that the Bureau intended to recognize the action of the Guardians in negotiating leases and in collecting the rentals and stating that the Bureau intended to approve no lease unless they had been considered by the Fiduciary.

After the Guardianship Program had been commenced certain problems arose and Judge McCabe invited and received the attendance of Mr. Rex Lee, Mr. Robert Cole of the Area Credit Office, Mr. Leonard Hill, the Area Director from Sacramento, Mr. Charles German of the Bureau office in Palm Springs, representatives of Title Companies, Banks and Guardians and Conservators at a general conference. At this time Judge McCabe brought to the attention of these Gentlemen certain problems facing the members of the Tribe.

Some of the Wards have no income. Some of the Wards had parents who had income. The possibility of obtaining financing to produce income on allotments. The possibility of moving the Bureau's Palm Springs Office from land owned by white men to land owned by the Tribe. The possibility of obtaining a Policy of Title Insurance on property legal title to which was in the Federal Government. These are only some of the few items mentioned and brought to the attention of the Government by the Judge.

In reference to the charges levelled against Judge Merrill Brown, these, I feel are adequately covered by Exhibits J. K. L and U. V. attached to the response made by the Conservators and heretofore provided to Congressman Tunney.

With reference to the first charge against Judge Brown, however, the report is silent as to the fact that when the negotiations first started Judge Brown called Mr. Jenkins head of the local office of the Bureau and advised Mr. Jenkins of his ownership of the property and requested the appointment of a Bureau of Indian Affairs appraiser. The notations of the conference between the appraiser and Judge Brown, which notations were made by the appraiser, are contained in a memorandum signed by Cyril B. Swanson appraiser, Sacramento area office in which he acknowledges that Judge Brown disclosed ownership. The fact that the conservator for the Indian, the Bureau, and the Bureau's appraiser knew that Judge Brown owned the land certainly dispells any inference contained in the Report that something improper was being attempted. A reading of the Petition itself indicates that the purported statement by Mr. Levy could not be an accurate report of the conversation, because the Petition merely requested authorization to purchase but in no way binds the Conservatorship to proceed with the purchase. Mr. Levy has been involved in real estate sales for at least fifteen years and well knows that no one is obligated to conclude the purchase until they have affixed their name to a contract.

The second alleged charge against Judge Brown is amply covered in Exhibit L to the reply of the Association of Conservators and Guardians.

The third charge infers that because the Judge has been reversed on Appeal that the Judge is suspect of foul play. If such were the case virtually every Judge of every Court of record in the United States would at one time or another have charges of misconduct levelled at him.

Concerning the charges against attorneys, one very significant charge that the Report seems to reiterate is that of conflict of interest in a situation where the attorney representing the Conservator presents Petitions to the Court for Ex-parte Orders and receives payment therefor from the Lessee or a Public Utility for obtaining the Ex-Parte Order. This charge has been levelled onerous than the attorney for a wife in a divorce action receiving fees for his services, by Order of Court, from the husband, which practice is specifically called for under appropriate circumstances by California law. It certainly can't be argued that the wife's attorney has a conflict of interest.

Some of the specific charges against certain individuals must be answered, although briefly, because of their far reaching and slanderous nature and effect.

Mr. Hollowell has been accused of charging both Mr. Fey and the Patencio estate for the same work. This accusation is made on page 28 and refers to Exhibits 23 and 24 of the Report as authority for the accusation. The accusation is a lie.

Mr. Hollowell has adequately answered that charge.

What is unconceivable to me is that this charge of double payment should be contained in the Final Report when, following its inclusion in the Interim Report true facts were brought to the personal attention of Secretary Udall.

The other charges allegedly made against Mr. Hollowell were adequately answered by him, and the time of this Committee will not be consumed in refuting allegations which the Task Force in their year of investigation, could find no substantiation for by way of documentation.

The recitation concerning the Association of Conservators and Guardians and Allottees is factual except for the concluding half-paragraph on Page 34 wherein the Task Force assumes, with no substantiation, the purpose for which the assessment was to have been used.

The criticisms against Eugene E. Therieau can simply be answered by stating that the first criticism is now in the hands of the Courts and the second criticism is based upon the conclusions of the Task Force, which conclusions have already been amply demonstrated to be without foundation in most instances. It is indeed noteworthy that a few names appear repeatedly in connection with transactions involving Indian property. As should be readily apparent to all concerned Indian property involves specialty of the law. Any specialty in the law attracts a few people who are qualified to practice it.

The alleged mis-use of Conservatorship proceedings are totally without merit.

The conclusion reached by the Task Force in connection with one incident is based upon a newspaper article and the conclusion reached in the other instance is based upon a false assumption of California law. It also mis-states the fact that it was only the Department's Amicus who objected. Mr. Segundo himself objected to the payment of fees to his wife's attorney.

We now come to the cause for the Report, the Indian dissatisfaction.

The first four objections mentioned in the Report are the direct result of the Bureau's abrogation of their responsibility.

In the 1950's the Secretary was directed to get out of the Indian business. In order to enhance his opportunity of doing this the Equalization Act was adopted. The Bureau since that time and until the present Task Force intrusion refused to take any active steps to carry out the mandate of Congress.

Obviously one of the most important steps which could have been taken, and should have been taken and which was well within the province of the Bureau, was the education of its Wards toward the proper handling of their estates. In connection with this Judge McCabe not only suggested an education program but virtually detailed the manner in which it could be established at little or no cost to the Bureau. The Bureau's response has already been noted where they suggested that the Sherman Institute was available but the Tribal Members of the Agua Caliente Band would not attend.

When Mr. Robert Cox first came to the desert in 1965, 1966, I am advised that he proposed a departmental educational program to which all adult members of the Tribe were invited. Due to lack of participation by the members of the Tribe the program was cancelled.

It is obvious that neither a businessman, an attorney nor a corporate fiduciary can undertake in each individual estate the training and education of the Ward, in commercial, legal or practical matters in sufficient depth to enable the Indian who had theretofore been inexperienced and impoverished, to properly handle a $500,000.00 estate.

In the instances when the daily conferences which are required for such training were attempted the Bureau ultimately voiced strenuous objection to compensation for these services.

Therefore, it must be concluded that the education of the Indian Ward in commercial and legal matters cannot be effected through Conservatorship and Guardianship program, without cost to the Indian and thus the resultant objection from the Bureau.

As a matter of fact the Bureau has voiced objections in virtually every estate in which the attorney or the Fiduciary have spent time in attempting to eduacte the Indian claiming that this is non-income producing time and therefore is not recompensable. Such an agrument was most recently voiced last week in the estates of Nancy and Clarice Bow.

As the standard of living of the respective Ward is raised and as he becomes assimilated in the society around him it is hoped that the normal educational processes afforded by the Palm Springs Unified School District and by the College of the Desert will enable these Wards to ultimately attain complete independence.

If any greater program of education is needed than as was suggested by Judge McCabe the present courses available can be implemented.

It is interesting to note that the original complaints of the Indians as heretofore offered by me, in no way express concern about excessive fees or exploitation. The Report prepared by Mr. Cox does, and this Report attributes to the Indians these complaints and I am sure that following the year of publication following the initial announcement of these changes some Indians may believe that these conditions do exist. However, let us look at the facts:

Turning now to the so-called Findings of Task Force contained in the Report commencing on Page 9 and more particularly the general statistics portion thereof, I concur in the dollar amounts quoted, the percentage amounts quoted and commend the Task Force for its ability to add figures accurately.

Other than as stated, however, the Findings of the Task Force bear no more relationship to the true financial, legal or commercial picture confronting the Indians, their fiduciaries and attorneys than does the fact that one candidate for President receives two-percent of the write-in vote in a State in which he was not running bears to the true picture of who is going to be nominated or elected to the office of President.

The initial arbitrary and unwarranted position of the Task Force is a comparison of fees to ordinary income.

Why ordinary income was chosen as a standard against which fees should be compared is unknown. The income of an Indian does not determine his legal or personal needs. It has some bearing unquestionably, however, when an Indian is charged with murder whether his income be $50,000.00 a year or $2,000.00 he still needs legal representation. The same is true when an Indian or any other person, has the same problems as those set forth in Assistant Secretary Carver's

letter of 1963. The individual needs the assistance, if he has money with which to pay for it he will be charged accordingly, if he does not have money with which to pay for it, he may not be charged, or the charges may be referred. Unfortunately, in the case of an Indian when the only money he has is income it is illegal for the payments to be deferred because without the approval of the Bureau of Indian Affairs future income cannot be encumbered for present services. In virtually every instance when the Bureau has been requested to permit payment of fees from future income the Bureau has refused to give this permission thus resulting in a present award of fees immediately payable which, had the Bureau given consent would have been spread over a period of years.

The Bureau's attitude, therefore, has resulted in what is known as "front-loading". If a sixty-five (65) year lease is negotiated the fees attributal to that lease and the legal and other services attendant upon it would normally be payable out of income when, as and if it is received. The Bureau's refusal to permit this spreading of awarding of fees results in an Order for the immediate payment of fees which when compared to immediate income compares very unfavorably.

The Conservatorship Program is a Fiduciary one. A Fiduciary appointed under the laws of this State, or virtually any other State in the Union has the responsibility for managing the total assets of his Ward. This is true whether under the Conservatorship Program or under the Guardianship Program.

See Probate Code, Sections 1500 and 1852 of the California Probate Code.

An ordinary fee for a fiduciary is based upon the amount of assets for which the fiduciary is responsible during the Accounting Period in which the fees are awarded. If, for instance, an estate fiduciary is chargeable in one year with a $100,000.00 estate and the next year that estate remains of the same size his fee for the succeeding year will be dependent upon the amount of money for which he is responsible, to-wit: $100,000.00.

Based upon a public statement made by Secretary Udall on March 7th of this year the Audit covered by this Report averages eight (8) Accountings for each estate.

Looking then only to the funds upon which ordinary fees for fiduciaries are to be based, we find the following factual and monetary situations.

It is customary to base fiduciary fees of an ordinary nature on the total assets of the estate to be managed or developed during every Accounting Period. In order to arrive at accurate percentages for the eight Accounting periods now covered it is therefore necessary to take the total non-Trust estate of each Indian estate for every Accounting, add this sum and we arrive at the figure of $35,747,486.94 being the total non-Trust estates administered by these fiduciaries over the entire period.

The *total* expenses, including attorney's fees, conservator's fees, guardian's fees, miscellaneous charges such as accounting fees, real estate broker's fees, fiduciary bonds and including extra-ordinary services of every kind and nature whatsoever, for the period of this fiduciary program has been $1,018,660.93. The percentage of total expenses to total non-Trust estates is thus not 44% as suggested by the Report but is 5.20% for the entire period.

The fiduciaries of the Agua Caliente Band of Mission Indians are chargeable with the management and development of the Inidan's Trust as well as non-Trust Estates. In a non-Indian Conservatorship or Guardianship the Ward would hold legal title to the real property but the fiduciary would be responsible for its management and control. The fiduciary would be compensated by way of ordinary fees, for the value of the estates thus held by the Ward. In these Indiana Conservatorships the United States Government holds title to the Trust property. The fiduciaries do not use the value of the Trust properties in computation of their ordinary fees but list as value of each parcel held by the Government but managed and developed by them at $1.00 a parcel.

If the Indians had been treated on the same basis as non-Indians in these fiduciary matters of computation of ordinary fees, we would find that the total fees, not just ordinary fees, but all fees, would bear a relationship of not 44%, but .0653% of the total responsibility of the fiduciary.

This computation is supported by the figures already before this Committee on page 2 of the Reply of the Guardians and Conservator's Association, which Reply was forwarded to Congressman Tunney on April 17, 1968.

It is interesting to note in passing, that the dollar per parcel value listed by fiduciadies, rather than full market value, was a practice instituted by Judge

McCabe who was so severely vilified in the Report for not having established precedents beneficial to the Indians.

The one figure not set forth in either the Report or the Reply to the Report is that of $35,747,486.94 representing the total non-Trust assets which were the responsibility of the fiduciaries over the entire period covered by the Report. This compilation I now offer in evidence. These compilations were prepared under my supervision by my secretary and reflect every financial transaction for every Indian estate from the beginning of this program through June 30th, 1967.

It is interesting to note that the total fees charged represent 5.20% of the total responsibility for non-trust estate and .0653% of total Trust estate for which the fiduciaries have been responsible. The fees, however, represent services far beyond those classified as ordinary.

Had the fiduciaries charged the full maximum percentage allowed by law for ordinary services for non-Trust assets they would have been entitled to three-quarters of one percent (¾ths of 1%) thereof or $2,655,035.88. It is quite obvious that instead of exploitation the members of the Agua Caliente Tribe have been treated more favorably than would the same number of people possessing the same number of assets who were non-Indians.

Also ignored by the Report of March, 1968 in "presenting the general statistics" relative to fees, is a standard adopted by the American Bar Association and the California Bar Association for the computation of reasonable fees by attorneys. Such things as amount and extent of responsibility by attorneys, services rendered, time consumed, benefit to the estate, uniqueness of problems, fees generally charged in the community, loss of other business, and financial ability of the client are totally ignored by the authors of this Report who limit their comments on reasonableness of fees by comparing the same to income.

The ridiculousness of this approach is readily seen by the fact that in 1967 the Agua Caliente Tribal Council in a publication entitled "All that Glitters is not Gold", published a statement appearing on the Bureau of Indian Affairs Palm Springs Office letterhead dated September 19, 1967 indicating that the total annual income to the members of the Tribe as of June 30, 1967 was the sum of $1,018,660.93.

The Report of Mr. Cox states that the total income since the beginning of the Program from ordinary sources for all estates and not only those audited, is $4,174,140.64. The Bureau's own figures indicate that approximately one-quarter of that amount was being earned annually as of June 30th, 1967. There is no reason to believe that the future income to the Indians will be any amount appreciably different from that enjoyed last year.

Assuming, arguendo, that comparison of fees to ordinary income is the proper approach, it would appear that since 25% of all of the income was enjoyed within the past fiscal year that the time for a fair analysis has not yet occurred.

By way of example, assume that a job applicant goes to an employment agency and is told that the total fee to be charged by the employment agency is one month's salary. A job is then found for the applicant. If the fees paid were compared to income from the job during the first month of the job, the fees paid would equal 100%. If the fees paid were compared to the total income at the end of the second month, they would equal 50% of total income. If the fees paid were compared to the total income at the end of the fifth year they would equal 1.66% of total income, ad infinitum.

It is apparent that the Task Force started out from a false premise that fees should be charged to income but not only that they should compute the costs to the total income to be earned during the life of the leases so that the true costs of the development of the Ward's property can be ascertained.

The alleged corrective actions being taken by the Task Force do not solve any problems but raise some.

On Page 46 it appears to be the recommendation of the Task Force that eight (8) additional estates be terminated, since the Task Force and the Bureau feel that the Indians are able to handle their own affairs. The question then arises, are they really able to handle all of their affairs or, as stated on Page 5 of the Report, are they to be classified as persons who might reasonably be expected to do a credible job of handling income, but not necessarily capable of managing the corpus. If these persons are of this category then, when will the Directive of Congress to terminate the Government's intervention in Indian Affairs be carried out?

Prior to the creation of the Task Force the Bureau of Indian Affairs had not formally participated in Court proceedings. It is false that for the first time was the Bureau enabled to participate only after the appointment of an Amicus. At all times during the Conservatorship Program the Bureau, because it was an interested party, could have received Special Notice and could have participated. The Bureau at all times refused.

Since their participation, the Government has virtually contributed nothing to the betterment of the situation.

If anything, because of the frequently fruitless grounds of objection, the activities of the Amicus have resulted in increased costs to the estates involved, and a complete discouragement of individuals and institutions from participation in Guardianship and Conservatorship programs involving Indian Estates.

While the control of Trust Funds by the Secretary made headlines in some newspapers, the Audit Reports indicate that such an action on his part was totally unnecessary.

If a change in fiduciary or attorney in any instance is desired, the complaining Ward need only Petition the Court for such a change and, providing that the substituted or replacement fiduciary is qualified, the change will undoubtedly occur, since, with no exceptions, there have been no contests by a fiduciary when his Ward has requested a change.

In the Segundo matter the objection came, not from the Conservatee, but from the then wife of Mr. Segundo, who objected to the competency of his proposed successor fiduciary.

Litigation now pending or to be commenced needs no comment since the final decision of the Courts will prevail.

The Association has expended no funds in an attempt to vindicate itself or its members. All funds have been directly for the benefit of the Indian in connection with the zoning matters heretofore mentioned or in connection with a review of the facts so that a true picture of the financial condition of the Tribe and the charges made against the individual estates could be brought to the attention of this Committee and of the members of the Tribe.

In conclusion I must disagree with the conclusion of the Task Force. In economic terms the Conservatorship Program has not been intolerably costly. It has been costly, but the product of the program has more than justified the costs and as the leases now in existence and which *may* come into existence season, the rateable cost to the Indian will be reduced proportionately.

The program has not been intolerably costly to the Indian in acumen terms.

Before the program commenced the vast majority of this Tribe were living on the economic edges of society. In some instances members were living in houses not equipped with running water, others were living in station wagons. In some instances members of the Tribe were classified as competent by the Bureau only to have fee patent given to them and have them sell it the following day for a fraction of its value.

Now, with the exception of some children who are living in foster homes, each member of the Tribe resides in a residence possessing at least minimal standards and some members of the Tribe reside in residences and areas equal to the finest within the City of Palm Springs.

In some instances real property has been developed by the fiduciary working with the Indian involved, thus enabling the Indian to find through first hand experience the problems attendant upon property development.

I offer this Committee for its study photographs of some of the improvements made during this Program by the fiduciaries.

The Bureau is not presently designed to scout tenants for the remaining 28,000 acres of undeveloped land. The Bureau is not now designed to provide direct educational courses to the members of this Tribe for the development of their commercial and business astuteness. The Bureau is not now planned to provide daily conferences with members of the Tribe who find themselves in personal, legal or economic difficulties. The Bureau is not now designed to provide the means by which leases and sales of Indian lands can be effectively and promptly concluded. The Bureau is not now designed nor is any Governmental Agency designed to effectively acquaint itself with economic variables within the City of Palm Springs and adjust its requirements from time to time to meet these variables, yet with the inception of the Task Force and the addition of Mr. Robert Cox, who has been appointed to the local Bureau as Resources Trust Officer and the addition of one attorney, it is proposed that these two men perform all of the above tasks, something that the Bureau has been incapable of

doing in all of the years since location of the Bureau in Palm Springs. Presumably these two men would add to the administrative staff of the local office and this would result practically in an increase in red tape, costs to the tax-payers, confusion and frustration to the Indian and not result in a solution in accordance with the Directive of Congress.

The situation which is now confronting all members of the Tribe and all Conservators, Fiduciaries, their attorneys, the Courts and the Bureau is one of utter chaos and confusion since the announcements by Secretary Udall that Mr. Cox's initial investigation in 1965 indicated wrong-doing and since the appointment of an Amicus to appear in cases, virtually every proceeding is contested, virtually every Guardian, Conservator or attorney has been vilified, the Indians have been beset by intrusion into their privacy, by fears that their Courts, their attorneys and fiduciaries are dishonest, the Courts have been harrassed, the Government has refused steadfastly to permit any of their employees to testify on any matter whatsoever although much of the alleged misconduct of the Court Officers are supposedly within the personal knowledge of those employees who are located in the Palm Springs area; responsible business men and corporate fiduciaries would have resigned months ago were it not for the fact that they would have been resigning under fire; few, if any, will continue to serve in their fiduciary capacity if the current state of affairs continues; the Secretary of the Interior by drying up the Indian funds and releasing income to those Conservators only in estates that the Secretary has not singled out for vilification, is an effective and complete thwarting of the intent of Congress since we have Guardians, Conservators and attorneys at this time who cannot be paid because their estates have no funds with which to pay them and this even in view of the fact that they have been Ordered paid and the Orders were based on Petitions, full knowledge of which were given to the Bureau before presentation to the Court. In other words, the Conservatorship Program as it now exists is, for all intents and purposes dead. No legislation that Congress can enact can revive the existing Conservatorship as long as the Secretary of Interior continues his unilateral efforts to destroy the system. Therefore, my conclusions and recommendations are given to you, not in an attempt to protect and promulgate the existing system because I believe this system to have been killed by the Secretary of Interior last year. Assuming, for the moment and perhaps I am incorrect in this assumption, that Congress still intends for the Bureau of Indian Affairs to get out of the Indian business, this mean that the Bureau must either get in or get out and if it is going to get out it must get out 100% even though such withdrawal may take a number of years, they can't let go of part of the responsibility, keep part of the responsibility and keep the Indian separated and isolated from assuming responsibility for his own property when he is qualfied so to do.

History has indicated that the Bureau of Indian Affairs has been a total failure in helping the members of the local Tribe. The only concrete benefit the Bureau offers to the Tribe is that of holding title to real property so that local property taxes do not attach to the property and so that income derived from the property will not be taxable.

The solution of the problem boils down to that simple question: Are the Indians to be forever protected from the local and Federal taxes. If the answer to that question is Yes, then the Federal Government can solve the problem now facing it by continuing in perpetuity the Wardship of the Tribe. Establish an Area Director for the Area of Palm Springs. Eliminate the necessity for outside approval for his activities. Staff the local office with sufficient trained personnel to enable it to advise all members of the Tribe in every aspect of either personal, commerical or legal activity. Give the staff of the local office complete autonomy so that local, immediate problems may be dealt with and solved locally and immediately.

If it is not the intent of Congress to forever protect the members of this Tribe from payment of local and Federal taxes then I believe the problem can be solved as follows:

First, direct the Bureau of Indian Affairs either through its own attorney or through the office of the Solicitor to appear in all current Guardianship or Conservatorship proceedings. By so doing the Government will be bound by determinations made in the Hearings in which they have actively participated and thus will not be able to come back in five or ten years later and claim fraud as they are doing at the present time.

Thus in the Guardianship proceedings for all minors the minor will be protected by the Court, its Guardian and the Federal Government.

As the minor's attain age twenty-one, if they are determined to be competent, the Secretary of Interior should be directed to deliver fee patent to all of that Indian's property to the Indian. Thus terminating Federal Wardship over that Indian.

If the Indian is suspected by the Government of being not competent, the Guardian or a friend of the Indian can advise the Court, under existing State law, of the need for a Guardianship for that Indian State law now provides that if a jury of twelve peers determines that the Indian (or non-Indian) is not competent, a Guardian can be appointed for the Indian. When a Guardian is appointed for an adult Indian, title to that property could remain in the Federal Government as now.

If the Bureau finds the Indian to be competent the Bureau can oppose any Guardianship and the Bureau should be directed to deliver fee title to the land to the adult Indian.

If such a program is followed, all Indians, as they attain majority and competency will receive fee title to their land and will put on an equal basis with non-Indians in the community in which they live.

If the Indian, after having received fee patent feels he is not capable of handling his property he may Petition the Superior Court for the appointment of a Conservator to help him protect himself from artful and designing persons.

By following the suggestions now made, the Government position will be made clear, they will not be able to say on the one hand that the Indian is incompetent therefore cannot receive his fee patent yet is competent and therefore should have no Conservator or Guardian to help him manage his estate.

By being made to face the realities of living in the United States of America in the year 1968 with a half million dollars worth of property, the Indians will quickly assimilate themselves into the society around them and yet be able to retain, through the retention of the Tribal Council and Tribal Lands all of the heritage of the Tribe.

An alternative suggestion to this is for the Government to award a fee patent to the Indian after the Indian's property has been leased for a period of years. The number of years to be sufficiently long to prove that the lease will be a continuing one and yet not so long as to continue the Government's intervention in the affairs of the Indian. If, for example, a lease has been in existence long enough for it to be producing the maximum rental available under that lease then the Indian will be assured of a steady income probably for the rest of his natural life and there is no reason whatsoever for the Government to continue the Wardship of that Indian. The properties of the Indian which are not leased could be deeded to competent Indians in accordance with the existing Directives of Congress at the end of twenty-five years from the date of allotment.

Nothing that I have said now indicates a desire or recommendation that the Trust status should be terminated carte blanche or that it should be terminated immediately. It would be disastrous not only to the Tribe to be confronted with the payment of local taxes and income taxes on 29,000 acres but it would also be disastrous to the entire desert community and such a solution is totally out of the question.

The Bill presently pending and suggested by Congressman Tunney is in my opinion no solution to the problem.

My only knowledge of the Bill is a synopsis of it which appeared in a local newspaper. The five points mentioned by the newspaper, and assuming these five points to be correct, are as follows:

1. The Secretary of Interior may request Guardians over the non-Trust estate of any minor Indian or for any adult Indian who is adjudged "in need of assistance in handling his affairs". By elimination from the Directive of Trust property that portion of the proposed Bill, in effect says that management, development of trust property shall, even in the case of a competent Indian remain in the Bureau of Indian Affairs. The Bureau is not now, nor has it ever been equipped to develop or manage the trust property on an economically feasible basis. Management and development could be accomplished, possibly, with sufficiently trained personnel, at an exceedingly high cost to the United States taxpayer.

2. States that the adult Indian shall not be denied due process of law. Neither the adult Indian nor any other person appearing before the State of California in relationship to Guardian or Conservator programs are denied due process of law.

3. By giving ultimate control of fees for management of Trust property to those Guardians who are entrusted with the management by the Secretary capable and competent business advisors would be subjecting themselves to the whim of the Secretary of Interior and I doubt that many persons of competency would be willing to submit to the arbitrary establishment of fees by the Secretary of Interior. Witness the chaotic state of affairs which has resulted since the Secretary's intervention in the current proceedings.

Point 4 requires an accounting by any Guardian and the return of any Trust property. The Secretary now has the right, by intervention in any Court proceeding to receive copies of any Accountings. By authorizing the Secretary to undertake Court action to require return of Indian property and not directing the Secretary to intervene in any Guardian proceedings, the legislation would promulgate the confusion that now reigns supreme. No act of a Conservator even if approved by Court after notification to the Secretary would ever become a final act. The Secretary could, by the proposed legislation, at any time, as much as fifty years later, move to set aside some Court approved transaction.

Point 5 allows the Secretary to use his discretion in suspending direct rental payments and to initiate Court action to recover funds used in an unauthorized manner. This is what the Secretary has unilaterally commenced to do. It solves none of the problems now in existence, it continues the uncertainty of the validity of any transaction and merely adds another reason to have competent fiduciaries refuse to engage in the business of assisting the Indians.

Mr. EDMONDSON. Mr. Cleary, you may proceed to comment on highlights or points you feel should be underscored, and we appreciate very much your cooperation on that.

Mr. CLEARY. Thank you, Mr. Chairman.

STATEMENT OF HENRY V. CLEARY, ATTORNEY FOR THE ASSOCIATION OF CONSERVATORS, GUARDIANS, AND ALLOTTEES OF THE AGUA CALIENTE INDIAN LANDS AND ESTATES

Mr. CLEARY. Mr. Chairman, Congressmen of the committee, briefly, as you know, the history of this band for a little over 50 years, the Bureau of Indian Affairs has held their land in trust. Up until the Equalization Act, or shortly before that, virtually nothing had resulted in substantial benefits to the members of these bands, this band of Indians.

In the late 1950's, Mr. Emmons of the Bureau contacted Judge McCabe with a request that he commence utilization of the guardianship and conservatorship laws of the State of California, only not on a strictly impartial or extended practice that would be applied to non-Indians. It was Mr. Emmons' request that these programs be applied to the members of this band on the basis of total employment. The letter so requesting Judge McCabe to initiate that practice is before you by way of transcript.

Mr. EDMONDSON. You speak of Mr. Emmons; you're talking about the former Commissioner of Indian Affairs?

Mr. CLEARY. Yes, sir. At the time Judge McCabe had this request presented to him, and at the time the program was commenced, there was no similar program anywhere in the United States. For that reason, among other practical reasons, there were no guidelines. There were no established policies. It was a question of "Let's try this and see if it works." The program has been in operation now for approximately 10 years.

You have heard from Mr. Kettmann the practical changes in the human situation of the tribe now, instead of living in slums. I know

of one case where one of my clients in this case was living in a house one time that had no indoor plumbing. In other instances, I know members of the band who were living in backs of automobiles. Now, almost without exception, they live in houses. Some of them live in the finest sections of Palm Springs. Virtually all of them have a substantial income, and this all in 10 years.

The program itself is not perfect. I don't think anybody connected with that will claim that it's perfect. It certainly has produced, as Mr. Kettmann said, a miraculous change in the conditions of the tribe, and I say you gentlemen are not here to argue personalities, and not necessarily to argue whether Mr. Cox was good, bad, or indifferent in his preparation and presentation of his report, but you are here to determine as best you can what recommendations to make to the full committee by future legislation.

However, in my opinion, this report of Mr. Cox's is one of the grossest distortions of facts that it has been my mispleasure to encounter in a governmental publication. In the interest and protection of the many people whose reputations have been vilified by it, I am going to be compelled to direct some remarks to it.

You asked, Mr. Edmondson, where the report was faulty. If you will turn to page 6, the last sentence, "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."

Now, if Mr. Cox means literally that the Department has not filed an appearance in that action, and literally that the Department has not specifically requested the appointment of a conservator or a guardian, then that literal interpretation is accurate. The implication, however, is that the Bureau has not participated in any way, and in virtually every instance, the Bureau has been aware of the filing of the petition, has been aware of the person who has been required to have been appointed, and has been notified in advance of the request, and has, at most times, conferred with the petitioner. Therefore, their participation has, at least, been unofficial.

The second place in which the report is false, in my opinion is——

Mr. EDMONDSON. Let's get that one in focus before we go on to the next one.

Mr. CLEARY. All right; OK.

Mr. EDMONDSON. You say this is false, and yet you say it is literally true. Do I follow you right on that?

Mr. CLEARY. Yes, sir; literally, they have not filed an active—no; literally, it is false, because they have participated.

Mr. EDMONDSON. Had they appeared in court?

Mr. CLEARY. No, sir; they have not.

Mr. EDMONDSON. Have they filed any pleading?

Mr. CLEARY. No, sir, they have not; but one does not have to file a petition to participate in the filing of a petition, at least, as far as I know.

Mr. EDMONDSON. The statement that "* * * the Department has in no case participated in such actions" refers back to petitions to appoint conservators.

Mr. CLEARY. Then, let me say, sir, with that clarification I present this question. If the Bureau knows about the filing of the petition,

confers with the petitioner, tacitly approves the filing of the petition, confers with the court on the filing of the petition and yet does not affix its name to the petition, I leave then the question of their participating to the committee. In my opinion, they have participated.

Mr. EDMONDSON. You say you feel this is false because it conceals the fact that of involvement in the discussions of the action to be taken and knowledge of it?

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. I see. Go ahead, sir. I just wanted to get your statement clear on that point.

Mr. CLEARY. Fine. The second point—these first two are relatively minor, but the second point appears on page 7 of the report wherein Mr. Cox, or the report, refers to the Department conducting a truncated investigation of certain activities.

My classification of falsehood is in reference to the word "truncated." Undersecretary of the Interior Carver stated that—in a letter dated July 9, 1963 just what kind of investigation the Department of the Interior did conduct when it was asked by Congress to conduct an exhaustive investigation so that they could come forth with an "enlightened opinion," and it was after one year of investigation that Undersecretary of the Interior Carver came forth with his recommendations.

The next point that I believe to be false appears on page 8.

Mr. EDMONDSON. Then, the word you object to in there is "truncated"?

Mr. CLEARY. Instead of exhaustive.

Mr. EDMONDSON. How do you define "truncated"?

Mr. CLEARY. Short, abbreviated.

Mr. EDMONDSON. And, you feel that they did not conduct a short abbreviated hearing, but conducted a rather extensive or exhaustive investigation?

Mr. CLEARY. Undersecretary of the Interior Carver, if he is to be believed in his letter of July 9, 1963, yes, sir. Do you care to have me read that portion of the letter, or the report? I refer to it on my page 9.

Mr. TUNNEY. Your page 9?

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. Do you have the full text of Mr. Carver's letter? If so, we can place it in the record, if we do.

Mr. CLEARY. I believe it is part of the exhibit of the task force, Your Honor.

Mr. EDMONDSON. I don't know if I can read this copy of Mr. Udall's letter that responded to Mr. Dawson's original request in 1962; it's illegible in the copy that has been supplied to me, and if you gentlemen have been supplied copies that are also illegible, you have my sympathy.

Mr. CLEARY. The copy I have is legible.

Mr. EDMONDSON. The one dated July 9, 1963, which has been supplied to us looks even less legible than the previous one.

Mr. CLEARY. May I supply that to the committee?

Mr. EDMONDSON. If you have a copy, we'd like to look at it.

Mr. CLEARY. Yes, sir. Would you like to look at it at this time?

Mr. EDMONDSON. Yes, we'd like to look at it.

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. Mr. Cleary, I want to say on my own, having read and examined the Carver letter, that you are certainly justified in objecting to the word "truncated" being used. If Mr. Carver was accurately stating what the Department had done in this letter of 1962, I don't blame you in the least for objecting to that little bit of editorial license that has been taken in this language here.

Mr. CLEARY. Thank you, sir. The next apparent misleading statement, although I can't call it directly false, appears on page 8, wherein the report paraphrases a letter from Judge Brown under date of April 11, 1967. On that date, Judge Brown wrote to the hearing officer in charge of Palm Springs, stating that he was no longer following the practice that had theretofore been followed in allowing the Bureau to voice extrajudicial objections in Indian matters. It did, in that letter, however, state or point out that the Bureau at all times had the right to formally appear in any and all Indian matters. That bit of information was left out of your report.

An examination of Judge Brown's letter would indicate that he did so advise the Bureau. The Bureau then promulgated what is in their report as exhibits 5 through 9, and in each one of them stated that "Judge Brown has refused us permission to object." Now, this is a misstatement of facts and therefore, I ask this committee to make as part of the record Judge Brown's letter which is exhibit 4 of the report.

Mr. EDMONDSON. I have the letter before me here, and I think it would be useful to have it in the record, and if there is no objection it will be made part of the record, however, I think that you would have to agree that the letter very clearly rules out any advising the court informally——

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. In the future.

Mr. CLEARY. That's right.

Mr. EDMONDSON. So, the statement that he's no longer going to allow them to advise the court informally is certainly an accurate statement, is it not?

Mr. CLEARY. It is an accurate statement, sir, but it's only——

Mr. EDMONDSON. But, the statement with regard to appearance contains a very definite proviso for such appearance, with the assistance of an attorney admitted to practice in California.

Mr. CLEARY. That's correct, sir. That's a California State law.

Mr. EDMONDSON. So, in that instance, unless they were admitted to practice in the State of California, their chance to approach the court in any way, informally or formally, would be precluded by the Brown letter, would it not?

Mr. CLEARY. No.

Mr. EDMONDSON. Let me read you what it says here.

> Last week I was told in a diplomatic way from a representative of the California State Bar that my said practice (which was the practice of being informed informally—being advised informally by local court people) that my said practice was illegal and suggested that the Bureau should intervene in State proceedings if they wished to be heard on matters pending in the Superior Court—such appearance be with the assistance from an attorney admitted to practice in California.

Now, can you tell me how an attorney from the Bureau of Indian Affairs who was not admitted to practice in the State of California

could approach the court either formally or informally under those circumstances unless he found a lawyer who was admitted to the bar in the State of California to come in with him?

Mr. CLEARY. If you read the letter literally, you're right. If, under California law, you are an out-of-State attorney, making a special appearance in the California courts, Mr. Brown—Judge Brown did not spell out the complete California law. However, I'm sure he had that in mind, and I'm sure also that the Bureau was very aware of it.

Mr. EDMONDSON. Well, the final paragraph goes on to state:

It is obvious my intention to be helpful has failed, and my procedure of encouraging the unlawful practice of law, regardless of good motive, must cease, and it has as of April 7, 1967.

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. So, I don't think they mislead anybody very much with this particular statement. Proceed.

Mr. CLEARY. I'm not accusing the report of being misleading in that which they said, but only misleading in the fact that they did not point out that Judge Brown in that letter invited informal participation.

Mr. EDMONDSON. Well, can you get around the fact that the exhibit 4 is cited, and that they include exhibit 4 as a part of the report readily available to anybody who wants to see what Judge Brown said?

Mr. CLEARY. That's true, sir, but you have to take into consideration exhibit 5, which ignores that invitation for informal participation. In other words, exhibit 5 says "We have been refused the right to participate" and my point is that exhibit 5 is a statement based upon this statement that appears in the report and not on the exhibit that appears in the report.

Mr. EDMONDSON. You're talking about the memorandum, "For Solicitor's Use Only?"

Mr. CLEARY. Yes, sir; particularly—

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.

Now, Judge Brown's letter does not bar the Bureau from taking active part. It invites it.

Mr. TUNNEY. Will you yield, Mr. Chairman?

Mr. EDMONDSON. Yes.

Mr. TUNNEY. Has any member of the Bureau office in Palm Springs been admitted to practice law in the California courts for the——

Mr. CLEARY. I can't honestly say that. I really don't know.

Mr. TUNNEY. That's a pretty pertinent point though, isn't it?

Mr. CLEARY. Yes, sir; and some of the men who deal with the Bureau more frequently than I possibly could answer that. Could I confer with them and ask them?

Mr. TUNNEY. Yes, I'd like to have you ask them.

Mr. CLEARY. The answer is "No."

Mr. TUNNEY. Well then, as a practical matter, the local office is barred from the court?

Mr. CLEARY. No, sir, as a practical matter, the local office could call upon the solicitor's office.

Mr. TUNNEY. Where is that located?

Mr. CLEARY. Sacramento office where the Bureau of Indian Affairs did have an attorney.

Mr. TUNNEY. You mean the Sacramento office would have to send an attorney down here every week to help in the hearing?

Mr. CLEARY. No, sir, because one need not appear every week. One need appear only when one has objections, and therefore, very easily, as is frequently done with out-of-town counsel, all matters in which objections would be voiced could be set upon one date per month.

Mr. TUNNEY. I believe your testimony here today that there was a duality to this system, that the Bureau had a very major responsibility, and if everybody in the office of the Bureau at the local level is cut off from speaking to the court, I don't see how they could exercise responsibilities, do you?

Mr. CLEARY. The responsibilities about which we are talking in the duality, I don't think, necessarily involve conferences with the judge. They were not cut off from talking to the judge by this letter. They were cut off from voicing objections, and when I say that, the objections that they were cut off from voicing, were primarily related to fees. As far as objections to execution of a lease, as far as the objections to entering into any contract which was under the responsibility of the Bureau, the fact of conferring with the judge on any of these matters, they were not cut off, they were merely cutoff from voicing their objection.

Mr. EDMONDSON. Judge Cleary, could I point out to you that Mr. Renda in this same exhibit 5 that you say makes it clear that they don't have any way to get into court, has a specific recommendation that should 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, making it very, very clear that this memorandum presents the total picture and makes it clear that attorneys for the Bureau can appear and plead in the courts and that they are not bared by his order?

Mr. CLEARY. I see his recommendation, yes, but I still go back to my original that the body of the task force report was only a portion of Judge Brown's letter, and by quoting only a portion of the letter, is misrepresenting the context of the letter. It's a minor point, but I wanted to make it.

Mr. EDMONDSON. I'd have to say there is plenty of room for two opinions about it, and when they cite and include in their report the full text of his letter and then follow it with a memorandum recommending the very course of action that his letter had suggested to them, which was to have an attorney down there to appear in court representing the Indians, I find it rather difficult to reach the conclusion that you have reached, that the judge has been badly misrepresented in this report.

Mr. CLEARY. I'll go on to the next point. The next falsity appears on page 12. In the middle of the last paragraph, Mr. Cox states "Unlike the specific formulas and limitation set forth in the statutes for analogous fees in the administration of decedents' estates in Cali-

fornia, the code provisions dealing with guardianships and conservatorships merely provide for 'reasonable' fees." Then, he goes on and states that the "reasonable" fees is left up to the discretion of the court. In fact, if any extraordinary services are performed in decedents' estates, the person performing those services are entitled to extraordinary reasonable fees which is left to the determination of the court and therefore, in that aspect, the two programs, the conservators and guardians are identical.

Mr. EDMONDSON. Let me say in commenting upon your notation on that, that counsel for our committee had noted this particular language in the report, and indicated that he felt evidence was needed to support the very paragraph to which you made reference.

Mr. CLEARY. Fine.

Mr. EDMONDSON. The paragraph including the language, "In the Indio court this means practically automatic approval of fees requested by fiduciaries and their attorneys in Indian estates unless objections are made."

Mr. CLEARY. That's the next point I was going to.

Mr. EDMONDSON. It's the feeling of our counsel that evidence should have been supplied to document this point. It was not supplied, and on this one, I think, you have some concurrence, at least, by the man who's supposed to give us legal advice.

Mr. CLEARY. Thank you, Mr. Sigler. The next appears on page 14. My objection is to the language appearing in the first paragraph, fourth line:

> Accounting reflect, however, that clearly routine services such as purchasing cars or securities, preparing income tax returns, attending meetings, or consulting—

and this is where I object

> consulting with wards or conservatees are frequently classified as extraordinary.

I cannot object necessarily to that first blush ordinary nature of the services. Certainly, the purchase of an automobile should be classified as an ordinary service by a fiduciary, but it has been pointed out today by testimony that some of the conservators kept their accounting in their hip pocket and the attorney had the problem of income tax returns from slips of paper. If the books were kept by a certified public accountant, there would have been no problem and it would have been very easy to prepare income tax returns, and that would have been an ordinary service. However, when you have to spend, as some of these people did, 2, 3, 4 days just deciphering figures then it changes in that particular instance from an ordinary to an extraordinary service.

Similar with conversing with the wards or conservatees. Conference once, or maybe three times a week for brief periods of time, this cannot be classified as extraordinary, but again, I'll draw your attention to a letter written in 1963 by Under Secretary of the Interior Carver when he classified the types of consultation, and I'm quoting from that letter:

> 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, that he may be called upon anytime 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 involvements 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.

Mr. EDMONDSON. Let me interrupt and make it clear regarding this paragraph and the conclusions contained in it, that our counsel had noted in our copy the facts that were needed to document these statements with regard to handling of the so-called extraordinary fees, and we were not supplied these, at least readily identified by exhibit number, for our purposes.

Mr. CLEARY. All right, sir. The next paragraph on page 14 "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." This is not a fact. I don't know if your counsel says it should be supported by fact, but I believe in exhibit—or, the exhibit 11, which is cited by the task force officer does anything but support that position. There is a policy memorandum in existence, and this is it, which says "There will be no payment of fees on the basis of payments to realtors." The exhibit included contradicts the statement of the report. Going one step further, and offered as an exhibit at the time I submitted my testimony, is a letter from the Bureau which sets forth a very specific formula that should be followed as the maximum payment of fees somewhat based on that allowed, or claimed by the board of realtors and yet it follows basically the same pattern, so it is the Bureau that establishes this policy rather than the courts. The courts felt the same, that the attorney's fees and conservator's fees are to be based not on some predetermined formula.

Mr. EDMONDSON. I think, commenting in response to that, that it does raise questions of professional practice. I don't know what the custom is in California on that subject, but I think two things should be said. In the first place, the letter does very clearly state that "If the Bureau and the court determine from the petition filed or the testimony taken thereon that the attorney has been producing agent and would therefore be entitled to compensation commensurate with that to be awarded to a realtor or broker, et cetera, had one been involved, he may be awarded fees," and I think there is very clearly an assumption that he is to be awarded fees for his broker services, in this particular statement. Now, it does go ahead and provide a different standard very clearly in the following senses from that normally applied to brokers' fees, so I would say in that sense, there is some gray area in the language that has been used here, but they do supply the exhibit in its entirety so I would say that you have a borderline case on that one, and that's it.

Mr. CLEARY. It may very well be that it's a borderline case, sir, but the report itself says that fees are based upon fees normally charged by real estate brokers and the exhibit is contradictory to that, and exhibit 12 is included the report as an exhibit, and therefore before the Board, or the committee, but exhibit 12 does not bear out the statement immediately preceding it.

Now, on page 15 under——

Mr. EDMONDSON. Would you detail in what respect it does not?

Mr. CLEARY. Yes, sir. Following exhibit 11, which is the policy memorandum, the report states: "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." There is nothing in exhibit 12 which would indicate any basis for Judge Brown's determination of this size of the fee.

Mr. EDMONDSON. I haven't located in exhibit 12, the $28,000 allowance.

Mr. CLEARY. I don't have a copy of that. My copy does not include court files.

Mr. EDMONDSON. I don't see a $28,000 item myself.

Mr. CLEARY. It's appearing on page—it would be the third page, $26,000 item page 3, the item immediately above the $2,000 for modern land lease.

Mr. EDMONDSON. For what?

Mr. CLEARY. Modern land lease. Approximately half way down, the first asterisk. Total attorney fees $2,800, $2,000 of which was for modern land lease. The next item was $26,000 for the same lease, thus making a total of $28,000.

Mr. TUNNEY. You say, on its face, it does not appear to substantiate this charge made?

Mr. CLEARY. Right.

Mr. TUNNEY. The charge in the report.

Mr. CLEARY. It doesn't show how it was computed, and yet the report attributed it to having been concluded on the basis of a comparable real estate broker's fee.

Mr. EDMONDSON. May I ask what the standard is that is recited here, "$6,000 from 2d yr. rent, $10,000 from 3rd yr., $10,000 from 4th?" Is that something that is standard for the attorneys to charge on that basis?

Mr. CLEARY. No, sir; it isn't, and I have to explain, this is one of the areas where down by the trial-and-error method. When we started out, the Indian in nearly every case, had no funds or had very, very few. If an attorney or conservator effected a lease wherein he earned a rather large amount of fee, it would obviously be impossible for the Indian to pay that fee, or rather, for the estate to pay the fee, because the estate didn't have any money.

Mr. EDMONDSON. Was this a case in which Mr. Hollowell was acting as conservator or as attorney?

Mr. CLEARY. I don't know that. You'd have to ask him, but the answer——

Mr. EDMONDSON. It says: "Allowed a $28,000 fee to attorney Hollowell."

Mr. CLEARY. Must have been acting as attorney.

Mr. EDMONDSON. It does not identify him as a conservator in that case, and it's not very easy to tell from this document, but he has claimed specifically, attorney's fees at various points in this same item.

Mr. CLEARY. The guardian was apparently claimed by somebody else, therefore, Mr. Hollowell was acting as an attorney.

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

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

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

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

Mr. TUNNEY. Will the chairman yield?

Mr. EDMONDSON. Congressman Tunney.

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

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

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

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

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

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

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

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

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

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

rately recompensed for services purportedly rendered in connection with the same matters." The exhibits are not supportive of that statement.

Most of your fiduciaries or conservators are laymen. Many of them carry on their own negotiations. As a matter of fact, most of them do. Some of them employ the services of counsel in negotiations. The barefaced statement of the report that there is duplication of services is an inaccurate statement. I don't know of too many businessmen here or elsewhere who would enter into negotiations for the acquisition of $100,000, or alternatively, $8 million, or whatever sum is involved, without the advice of counsel. Most often, if a businessman is engaging in some kind of negotiation issues involving substantial sums of money, he will either confer with his counsel before going, or he will send his counsel in his stead, or he will bring his counsel with him. The fact that the fiduciary negotiates with the advice of a counsel sitting on his right hand does not mean that the two men are doing the same services, and there is nothing in the task force report or anywhere else in anybody's records that indicates the businessman negotiating with the advice of counsel is charging duplicate fees when they both charge for services rendered in connection with their services.

Mr. EDMONDSON. We have a notation from our counsel that this matter has not been documented, and that the two services could be employed, and I think your point is well taken, Mr. Cleary.

Mr. CLEARY. The next is not documented. Page 16, the last sentence of the first paragraph says, "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." Now, the members of the committee will note this infers that it does happen, but there is no supporting documents for it, and on that basis, I will offer this by way of explanation, that if an attorney is involved in two estates, involving the same transactions, each of those two estates necessitates work, otherwise the estates wouldn't be involved, and the estate, or each charged. Now, whether the services are identical, I—factually, they can't be identical, because it involves two estates.

Mr. EDMONDSON. Let me ask you to comment on the preceding sentence that appears in this same paragraph. You yourself just testified that conservator, or the businessman, frequently sends his attorney to do the business for him and to take care of the details. The statement immediately prior to the one that you have objected to says, "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." Do you think this is something that should take place?

Mr. CLEARY. Yes, for one very simple reason. The fiduciary is paid an ordinary fee, not only for the devotion, let's say, to his ward, not only for the negotiation of a lease, but he's paid primarily, and he's in office primarily, for the assumption of responsibility of conservation of the estate. Now, that responsibility and how he goes about it is his.

Mr. EDMONDSON. If he elects to delegate his normal duties to the attorney, and have the attorney perform his duties, you think that a double fee is in order?

Mr. CLEARY. I think this, that each individual situation must be examined, because it's very easy to say the conservator should have

done that. If the particular terms which is delegated to the conservator could best be handled by an attorney, then I think the conservator would be remiss if he attempted to do it himself.

Mr. EDMONDSON. Well, this allegation says ". . . normally performed by the fiduciary."

Mr. CLEARY. I'm sorry, sir, but what Mr. Cox classifies as normal is so far from my definition of it that that statement means very little to me, and we'll go to the sentence preceding that one, "In many instances, the attorney's services are purely routine, such as obtaining ex parte orders." I find it difficult to believe that an attorney wrote that sentence. Ex parte orders are frequently routine, but many times they are not. As Mr. Hollowell pointed out to you in the case of Mr. Fey, they are anything but routine and involve complete separation. I know from discussing matters with the trust officers at one of the local banks that quite frequently they, as fiduciary, have to keep an eye on the stock market and when it looks like the stock is going one way or other, they need that order now, not 2 weeks from now, not 10 days from now, or they would lose the estate—half the estate, or lose the advantage of making a considerable amount of money so the obtaining of an ex parte order is not a routine matter. Sometimes it is, but not every time, therefore, Mr. Cox doesn't know what he's talking about.

Mr. TUNNEY. Did he ever indicate what his classification of normal services were? You said that you have a different understanding of normal services from Mr. Cox. What is his classification of normal services? Did it, or does it appear anywhere?

Mr. CLEARY. Well, specifically, I think he somewhere let it escape that all conferences with a ward are ordinary, regardless of how many and how much. Specifically, he states that obtaining of routine ex parte—not routine, but ex parte orders, the obtaining of ex parte orders because they are routine, which is not true, or normal, and I disagree with him. I don't know if he spells out any place an exhaustive list of what he considers to be ordinary, but that is a matter of disagreement that's been going on for some time down in Indio in the courts.

Mr. EDMONDSON. You may find some comfort in the fact that once again our counsel has indicated that the key question is, the fee reasonable with the job in connection with the job performed.

Mr. CLEARY. On that question, I'd like again to refer to Under Secretary Carver's letter wherein he concludes——

Mr. EDMONDSON. Do you know that Mr. Carver is not with them any more?

Mr. CLEARY. No, sir, I don't; but he was at the time and I believe he was acting in his official capacity when he says, "From all of this, it is our conclusion that a charge that the fees are unreasonable or excessive cannot be supported." I don't believe the program has changed that much in the last 5 years.

Mr. EDMONDSON. I think that it is a very large part of the charge in the task force report that it has changed considerably in the later years of the operation. If I read correctly, the general conclusions are that there had to have been a worsening of the situation from a standpoint of the charges against the Indians and the percentage of their income that was being put into charges.

Mr. CLEARY. Could I reserve my comments on the charge until the conclusion of my testimony? I go into that in a little bit of detail.

Mr. EDMONDSON. Right. You will not, I think, disagree with the statement that they are contending that the situation became worse as you moved along into the sixties.

Mr. CLEARY. Yeah, it had to become worse because there was on money at all available in the fifties, so of necessity, it became worse as money became available and started coming in, worse from one point of view. I don't agree with the classification.

Mr. EDMONDSON. Mr. Carver's judgment in 1963 would not necessarily be controlling as to what the facts were in 1967 when the task force made its studies.

Mr. CLEARY. I think you will find many substantial fees had been awarded prior to Mr. Carver's letter. I think you will find the nature of the services rendered both before and after are substantially similar. There have been more charges in the, say, 2 years after 1963 and in the most recent 3 years been very few negotiations. I'd like to offer into evidence Mr. Cox's exhibit 15.

Mr. EDMONDSON. If there is no objection to each of the exhibits which have been specifically referenced by Mr. Cleary in his statement, they will be made a part of the record at the appropriate point. Hearing no objection, it is so ordered.

All right, Mr. Cleary.

Mr. CLEARY. I had a specific point on that if I can find it in my notes.

Mr. EDMONDSON. It appears on page 18 of your statement, Mr. Cleary, with reference to exhibit 15.

Mr. CLEARY. Yes, sir. I state:

> The authors criticize alleged extraordinary fees by attorneys for services normally performed by a fiduciary but fail to give any instances in which this situation has occurred.

Then I go on—

> If an attorney is representing three clients each of whom are involved in a transaction, the attorney will represent each of the three clients to the best of his ability. For each of the three clients he must perform some services. If the three clients happen to be estates and the transaction necessitates the obtaining of a Court Order for the completion of the transaction the attorney must perform services in connection with the obtaining of court orders for each of the three estates.
>
> The example used in the report, i.e., exhibit 15, is a classic example. Each of the four estates referred to therein necessitated work by the fiduciary and the attorney. The time devoted to all of the problems involved was divided by the number of estates involved and each estate was charged for its aliquot proportion of the total services. There was no duplication of fees.

In exhibit 15, it has been brought out, I believe, rather consistent. An examination by the audit team of the exhibit would indicate that each estate was charged for a certain number of hours. The examiners have said, "Well, because there's 20 hours in each"—now, I'm pulling the figure out of the air. I don't know how many hours they charged the estate, but because 20 hours was charged to one estate, and 20 hours charged to the other, obviously was spent and there's a duplication of fees. Now, had they gone back to check that statement, behind that statement, they would have found that there were 40 hours spent, and the time was evenly divided between the first two. Not having gone

behind it, you can't very well accept my word for it, but at least you can see that there's room for doubt, that exhibit supporting the point that I make.

Mr. EDMONDSON. Would you care to comment on exhibit 15, the final paragraph that appears in the judge's order? It says:

> It is further ordered, adjudged and decreed that the duties of the Guardian are not delegable. The relationship of the Guardian with his Attorney is that of attorney-client. And work done by the attorney must have been ordered done by the Guardian for legal work.

Mr. CLEARY. I think that's a fine statement of law.

Mr. EDMONDSON. You see any inconsistency in that statement with regard to the guardian delegating his duties and the conservator delegating his duties to the attorney?

Mr. CLEARY. No, sir; I don't. I think it'd be applicable in either case. I think that statement would be applicable to either conservator or guardian.

Mr. EDMONDSON. On the other hand, I understood you to say a little bit earlier that if the conservator has an attorney go out and do the job that he should be doing it is proper for the attorney to collect for this service, even though he's doing the delegated responsibilities of the conservator.

Mr. CLEARY. I believe I said that, and I believe I made an error when I said the delegated duties. The word that is of importance there is the word "delegated."

Mr. EDMONDSON. You may not have used the word "delegate" but——

Mr. CLEARY. I think I did, but I may be wrong.

Mr. EDMONDSON. But, I understood it in that sense. You said it was a proper thing for an attorney to handle various jobs for the conservator and that in those instances, it would be proper for him to collect a fee as attorney.

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. And, this is clearly contradictory to the language of this order with regard to what a guardian can do about his duties.

Mr. CLEARY. Well, sir, I don't think it is contradictory to that order because that order uses the word "delegated" and delegate means abbrogation, abbrogation of responsibility, and I don't think the—when you delegate to someone else to do this, "I don't want any part of it."

Mr. EDMONDSON. You kind of escape the responsibility of a guardian or conservator, but you are still going to be held accountable to court?

Mr. CLEARY. That's right.

Mr. EDMONDSON. When you ask somebody else to do your work for you, whether you call it delegate or whether you call it just a request for a petition, the same principle with regard to the charging of the fees for what work should apply, it seems to me.

Mr. CLEARY. Well, I can't disagree with you. The only thing I can say is that you are reading a minute order. The minute orders are the notations made by the court clerk. They are not to be taken necessarily as the language used by the judge in issuing the order. Most frequently, minute orders are simple notations which are ultimately reduced to a formal order I do not know the specific circumstances of the issuance of that particular minute order. However, because it is a minute order, I can probably say it wasn't the verbatim language of

the judge, and I don't know what he intended or to what he was referring when he made it.

Mr. TUNNEY. You stated previously that it was a good statement of law.

Mr. EDMONDSON. Yes, a good statement of law, and also it appears on the letterhead of James Hollowell, attorney at law, indicating that it was probably drawn by Mr. Hollowell for the court to sign.

Mr. CLEARY. It would appear so.

Mr. EDMONDSON. Something picked up from the judge's extemporaneous statements on the bench and reported by the reporter.

Mr. CLEARY. Seeing the paper you held up, it is obvious—I was under the impresssion it was a minute order. The document you have isn't a minute order. It is a prepared order, so my remarks on that are out of order. However, it does appear to be a good statement of law, and I can't argue with it.

Mr. EDMONDSON. I agree that it has validity as far as I am concerned. I just can't understand why it wouldn't apply in the case of conservators the same as with guardians.

Mr. CLEARY. I don't see why it shouldn't apply either. The only thing I can say is, you have to look at the specific case that is being assigned to the attorney in the specific instance to ascertain whether it is one that can best be served by the fiduciary or best performed by the attorney. I don't think that at this time or at any time, we can formulate rigid rules for the application of this principle. It is a good principle, but it's application must depend upon the circumstances.

Turning now to the inadequacy of records, which appears on page 17, as Mr. Hollowell has pointed out, 23 or 25 of the 47 audited reports, only 36 of which are included here—43 audited reports rather, bear the notation "Inadequate supporting documentation." Having seen only one audit, and I didn't see that completely, the conservatorship made a portion which related to his records and it indicates that his estate was classified as one having inadequate supporting documentation, and in his statement there were two prior fiduciaries, one of whom died in 1961 and one of whom died in 1962. This particular conservator was complimented or, if those are the words, commended, let's say, in the audit report. His records were complete and exhaustive, he had documentation for everything; unfortunately some of the—either one or both of the two decedents' records couldn't be found and therefore, his estate—the living conservator of his estate was classified as having inadequate records. In essence they did, but the records go back 10 years and nobody that I know of keeps records for 10 years, even though the Internal Revenue only asks you to keep records for 4 or 5. So, why, after the court has approved the accounting after the conservator or fiduciary has died and some—what is it?—7 years after, should the estate be classified as one having inadequate records. It would be certainly unusual under those circumstances for the estate to have all of the adequate records of two previously deceased fiduciaries, and in that classification, in 13 of the estates the prior fiduciaries had passed away.

Mr. TUNNEY. You say you only saw one accounting?

Mr. CLEARY. Yes. The Bureau wrote me a letter—as attorney for the association, I asked permission to examine the accounting of the audits, and I was told they were personal in nature and that only the

conservator could see them. In this one case, the conservator showed me his and these notations that appear, his records were beautiful but that the previously deceased fiduciaries' records were not, and that's why the estate is included in one of these 25 as having inadequate records, and my position is that——

Mr. EDMONDSON. How long have you been conservator?

Mr. CLEARY. Beginning 1965; 1965, 1966, and 1967.

Mr. EDMONDSON. So, you had a situation where records were inadequate, and this task force made its study in 1967, I believe?

Mr. CLEARY. Yes.

Mr. EDMONDSON. So, they were looking for records prior to 1965?

Mr. CLEARY. Yes.

Mr. EDMONDSON. And, they were unable to find them?

Mr. CLEARY. They went back to the very beginning of the accounting when the Indian had the estate created for him in the superior court, and that's where all this commenced. A few records were missing in the Indian fiduciaries since the beginning of the Indian estate and that estate was classified as having inadequate records. Now, I think that's a misleading classification.

Mr. EDMONDSON. Your impression of that is based on the conclusion that they were objecting to the absence of old records and not to the absence of recent records?

Mr. CLEARY. Yes, sir.

Mr. EDMONDSON. 1964, 1963, for example, it would be reasonable to expect to find in 1967, I think you will agree, even for tax purposes?

Mr. CLEARY. Yes, sir; I think it would be. Because I did not see the audit, I can make no further comments on the alleged categories that Mr. Cox has placed estates in, however, I will make one comment and that is, assets understated and the assets overstated. The auditing team picked up an item at its initial cost, for instance, an automobile costing $5,000 in the year 1961, would be carried on the books of the auditing team as being $5,000 in 1967, whereas the fiduciary depreciated the property—appreciated and depreciated the property that he was accounting for, so if the auditing team saw that the car costs $5,000 at its inception and the fiduciary later indicates it to be worth only $500, then he was understating assets, and if he had a piece of property or stock in 1963 and in 1964 that stock was raised in value, it would be classified as overstated.

Mr. EDMONDSON. What point are you documenting on that, that 10 cases were understated?

Mr. CLEARY. Ten understated and then on page 17, seven overstated.

Mr. EDMONDSON. You base that again, on your examination of one accounting?

Mr. CLEARY. Yes, sir. I see it once, I therefore applied it that they must have carried it throughout.

Mr. EDMONDSON. Is it possible that in that instance, the examiner felt that the depreciation from $5,000 to $500 in that time period might be overdepreciation?

Mr. CLEARY. It's quite possible, but the point I'm making is the audit—this doesn't appear to be an overdepreciation. In other words, I'm not saying that in one estate there was an overdepreciation of this

thing, because he couldn't carry it at the original cost, it's an understatement. Now, the true facts are——

Mr. EDMONDSON. I can't imagine any auditor neglecting the fact of depreciation of an automobile. To me, it's inconceivable.

Mr. CLEARY. I agree with you.

Mr. EDMONDSON. Unless it's an antique that might have appreciated in value.

Mr. CLEARY. I agree with you emphatically.

Mr. EDMONDSON. Do you know whether or not it was an antique automobile?

Mr. CLEARY. I don't think it was.

Mr. EDMONDSON. You're not sure?

Mr. CLEARY. No, but if it was bought new 5 years ago, I don't think it is antique yet. It may look like it, but——

Mr. EDMONDSON. Let's get a time estimate here to determine if we want to take a break or not. What is your time estimate for completion?

Mr. CLEARY. I suggest a break.

Mr. EDMONDSON. Can you give a time estimate at the same time?

Mr. CLEARY. Can I give a time estimate when I come back from the break? I will see what I have to say and what I can eliminate. I would say probably 30 minutes.

Mr. EDMONDSON. Let's take a time break then, and recess for 5 minutes.

(A 5-minute recess was taken.)

Mr. EDMONDSON. The subcommittee will come to order. Mr. Cleary, although I am not going to interrupt you as frequently as I have been, I want the record to show that my silence will not necessarily indicate agreement on the points you make. I think that goes for the full committee, but on the other hand, we may be on agreement on some of them, as we have been on some of them.

Mr. CLEARY. All right, sir; thank you. I have already in my written report which is part of the record, indicated a majority of the statements of the task force report which I feel to be false, therefore in my oral presentation I will attempt to eliminate as many of those as I feel can justifiably be done, but one that I cannot is the false statement appearing on page 20 under paragraph (d) at the top of the page, wherein the task force concludes that the receipt of fees from a lessee necessarily involves conflict of interest. I draw this committees' attention to canon No. 6 of the rules on ethics or professional conduct for the State bar. Parenthetically, this charge is made by Mr. Cox's report against many individuals: Mr. Hollowell, Mr. Arnold, Mr. Carroll, the firm of Schlesinger, Schlecht & McCullough, Mr. Ruskin, Mr. Simpson, and Judge Therieau. The rules of professional conduct state:

Rule 6. *Disclosure of Relationship with Adverse Party and of Interest in Subject Matter.* A member of the State Bar 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 employment."

Rule 7. *Representation of Conflicting Interests.* A member of the State Bar shall not represent conflicting interests, except with the consent of all parties concerned.

Now, not only do the canons of California cover this situation, but the canons of professional ethics of the American Bar Association

covers it also, this point. Now, rule 6 says, in part, it's unprofessional to represent conflicting interests except by express consent of all concerned given after a full disclosure of the facts. In every one of the instances cited by Mr. Cox as apparent conflict of interest, or necessarily involving a conflict of interest, he has stated and on the exhibits he has used supportative of his conclusion, indicates full disclosure, indicate full knowledge by everybody concerned, and in every instance that I know of that he cites, he indicates that the receipt of money from the lessee benefited the client that the attorney was serving.

A perfect example is the Wind Free Country Club. The situation cited by Mr. Cox on page 20, the Palm Canyon Country Club and the Tahquitz Trailer Park, in that situation, the lessee didn't have enough money to continue making payment and needed a moratorium. The lessee consulted with each of the individual guardians and conservators and Indians involved if there were no fiduciaries, with the express negotiation between the lessee and the representatives of all the lessors, and I believe, the negotiations at least, if not appearing in the Bureau offices were done with the express prior consent of the Bureau, resulted in agreement that there would be a moratorium in the payment of rent. The negotiations were completed without the involvement of any attorneys. The respective fiduciaries, after they had concluded the agreement, executed the agreement, or at least agreed upon it, then went to their respective attorneys, and they said, "Get court approval, and don't bill us, the lessee's going to pay." The individual attorney then prepared the petitions for court approval of the moratorium agreement, obtained the approval, and then obtained his fee from the lessee. This was not only a conflict of interest because obviously the attorney in that situation was representing his client in getting court approval upon an agreement that his client had already reached, so there was, first, no conflict of interest, but even assuming there was conflict of interest, there was certainly full knowledge, because the client brought the deal to the attorney, and said, "Here's something I have agreed upon, now you go get it done," so if the client was the one who initiated the contract, the attorney certainly can't be classified as not disclosing to the client what the client had already done. It's ridiculous, and yet Mr. Cox, in every situation, said there was a conflict of interest here, and I don't understand how he could have come up with that conclusion. Now, do you have any questions on that?

Mr. EDMONDSON. Yes. Not with the cases you have cited, but if everything was by agreement with the parties and with the full disclosure and agreed to on all sides, do you think that the record in this KDES item, for which a bill was submitted for $3,500 and then reduced to $500, bears that out?

Mr. CLEARY. Mr. Hollowell, like many clients, sometimes does not express the true picture. When I was sitting back there, I was dissatisfied with his explanation of the events that transpired. Could I explain it as I understand it, and as I understood it by examining his records?

Mr. EDMONDSON. If you would, and reconcile it with your statement that all of the situations that are cited in this report are instantive of harmonious agreements between all the parties on what the fees were going to be and——

Mr. CLEARY. Well, the matter of portion, the matter of harmonious agreement on the amount of the fee, I don't think I can comment, because obviously, on the $3,500, there was some disharmony, but on full disclosure, let's assume we have three parcels of land, each land adjacent to the other. On parcel A was to be situated the radio tower. In connection with the lease of parcel A, a portion of parcel A, the lessor agreed to pay the cost of obtaining rights-of-way across parcel A, the remaining portion of parcel A; therefore, Mr. Hollowell obtained rights-of-way, general rights-of-way for use by the radio station across the remaining portion of parcel A. That was part of the lessor's responsibility. The lessor paid Mr. Hollowell for the obtaining of the rights-of-way, or the establishment of them, and going to court and getting court approval. Mr. Hollowell charged his landlord, or his client, for the KDES rights-of-way. That appears in his accounting.

Right next to parcel A is parcel B, across which radio station KDES needed a right-of-way. There was no obligation on the part of the lessor to acquire that right-of-way. Some other person owned it, but the right-of-way still had to be obtained in order for KDES to operate. Their attorney then asked Mr. Hollowell to assist in obtaining that right-of-way across parcel B, and the same situation applies to parcel C, and parcel C, then lies on Vista Chino. Therefore, Mr. Hollowell charged his client for obtaining KDES rights-of-way, obtaining approval of right-of-way across parcel A; Mr. Hollowell charged KDES for obtaining rights-of-way across parcels B and C. There was no duplication of work, there was no duplication of fees.

Mr. EDMONDSON. No conflict of interest?

Mr. CLEARY. No conflict of interest for the simple reason that in obtaining the rights-of-way across parcels B and C for KDES, Mr. Hollowell was serving the interest of his client for the simple reason that every time a tenant goes down or goes under, the landlord suffers, and therefore, by working for KDES in getting the right-of-way across parcels B and C, he was assisting KDES to put into effective use the lease that they had with Mr. Hollowell's client.

Mr. EDMONDSON. The thing that really bugs me about this situation is, how can you negotiate for both sides in a transaction when you are trying to acquire something that is held by one side for the benefit of the other side, and how can you represent both of them and collect from both of them when it is a question as to how much is going to be paid for that right-of-way?

Mr. CLEARY. I'm sorry, sir; there is no negotiation involving Mr. Hollowell's client. You see, the owner of parcel A had to give the right-of-way to KDES. Now, there was no negotiation involved there. It's part of the lease. At this point, Mr. Hollowell was not charging KDES anything, was not representing KDES, had not involved KDES in any way, because KDES was represented by their own attorney. Presumably, the conservator negotiated with KDES on terms of the lease, and as far as the right-of-way across parcel A, Mr. Hollowell was still representing exclusively his Indian client, his conservator client.

Then, after the lease had been executed, and before the next accounting period, KDES then in a position of being a lessee, then said, "We need rights-of-way across parcels B and C." Mr. Hollowell did not represent the owners of parcels B and C. Mr. Hollowell then—if

negotiated is the right word, I don't know—I presume the negotiation was effected by KDES attorneys, but the only work that Mr. Hollowell does is obtaining of the rights-of-way through court approval, through Bureau approval. At this time, he was not representing any interest conflicting with those of the particular Indian that he represented.

Mr. EDMONDSON. Mr. Hollowell still in the hall?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. Is this an accurate statement, a more accurate statement in terms of the transaction than the one you gave the committee?

Mr. HOLLOWELL. Yes, sir. Mr. Cleary told me that I had not made it very clear.

Mr. EDMONDSON. Thank you.

Mr. TUNNEY. May I ask a question?

Mr. EDMONDSON. Yes.

Mr. TUNNEY. Were the owners of parcel B and parcel C the same person? Was it the same person or a different person?

Mr. HOLLOWELL. Different persons. There were three estates involved.

Mr. TUNNEY. Two different estates involved?

Mr. HOLLOWELL. Three different estates involved.

Mr. TUNNEY. Three different estates involved. All of them Indians?

Mr. HOLLOWELL. Yes, sir.

Mr. TUNNEY. And, were you representing B and C at other times? Representing them for other work?

Mr. HOLLOWELL. I represented, I believe, whichever you call it, B, as attorney.

Mr. TUNNEY. Represented B as attorney at other times on other matters?

Mr. HOLLOWELL. Yes.

Mr. TUNNEY. But, at the time that you obtained a fee from KDES for acquiring the right-of-way across B, you weren't representing the owner of B, you were representing KDES, correct?

Mr. HOLLOWELL. I was directed by the conservator of B that they felt the right-of-way was all right, to go ahead and do the work.

Mr. TUNNEY. And, who did you charge? Did you charge KDES or did you charge B, the owner of B?

Mr. HOLLOWELL. If I remember, I charged KDES because they were supposed to pick up the bill for all this work.

Mr. TUNNEY. But, you were representing B at other times on other matters?

Mr. HOLLOWELL. Yes.

Mr. TUNNEY. Now, who established what was the fair price for the right-of-way? Did you establish that, or did the conservator of the property that was owned by B set the price?

Mr. HOLLOWELL. I did not set the price. I consider myself the mechanic in obtaining the court orders and drawing the documents. If I remember right, the conservators involved were Walter Melrose, now deceased, and gosh, I can't remember who the other one was, but I was not a negotiator. I was a mechanic.

Mr. TUNNEY. Did they tell you, in effect, "We will give you"—this is the conservator now—"We will"——

Mr. EDMONDSON. Let me read the task force finding on this and see if we can't refresh several memories. "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." So, you represented two Indian estates, Mr. Hollowell? Did you have representation of one or two estates?

Mr. HOLLOWELL. To the best of my memory, I only represented one of those intervening Indian estates. Mr. Cleary and I did not go into this in great length, because of the time factor and this is one charge that was not documented.

Mr. TUNNEY. The question, of course, that I have, and possibly I can get an answer to it, if you establish the price for the right-of-way over that land B, or C, and it had an Indian owner who you were representing at other times, in other capacities——

Mr. HOLLOWELL. The owner would, the guardian-conservator would, not myself.

Mr. TUNNEY. The guardian-conservator.

Mr. HOLLOWELL. Yes.

Mr. TUNNEY. And, they told you what the price was?

Mr. HOLLOWELL. No. In all fairness to you gentlemen, in this particular instance, and remembering the documents, the right-of-way was given first with an agreement of whatever damage they were assessed would be paid later, and to the best of my memory, these damages haven't been paid. In other words, this was an emergency situation and I don't believe there was an agreed price for the rights-of-way. It was sort of a carte blanche with the utility company that they would pay whatever the appraisal was and later.

Mr. TUNNEY. And, you didn't feel at that time that there was a conflict of interest, or would be a conflict of interest even though you were representing the owner of the estate in other capacities, to charge a fee to KDES——

Mr. HOLLOWELL. No, sir.

Mr. TUNNEY (continuing). When in a sense, I suppose, they have been dealing, at least hopefully, dealing at arm's-length basis to be receiving a fee from KDES for a right-of-way when you are representing the owner of the land on which the right-of-way was going to be granted at other times?

Mr. HOLLOWELL. If I grasp what you're saying, the attitude on many other rights-of-way, and the attitude in this particular right-of-way, it didn't particularly benefit the intermediate estate, and the guardian-conservator says, "All right, the right-of-way is all right with me so long as the other people pay for it. We don't want our Indians or our Indian estate to be paying for it." Of necessity, this includes going over legal documents and getting court orders.

Mr. TUNNEY. Yes; but a payment had to be made to the Indian's estate, didn't it?

Mr. HOLLOWELL. Yes; and that was up to the conservator. I can say in the case of Walter Melrose, he was far less a stupid man than myself, and he never used me in that function. He made up his own mind and what he wanted to do and did it.

Mr. EDMONDSON. Will the gentleman yield to bring up a point?

Mr. TUNNEY. Yes.

Mr. EDMONDSON. Were you attorney for Mr. Melrose for his estates when he was conservator?

Mr. HOLLOWELL. Yes, sir; I was.

Mr. EDMONDSON. And, do you recall if Mr. Melrose had some hand in KDES?

Mr. HOLLOWELL. Yes; I believe so.

Mr. EDMONDSON. To clear the record in two estates rather than one, if the record is clear on that, the exhibits contain an exhibit which shows that you operated as attorney for Mr. Spiegelman in the Andreas estate——

Mr. HOLLOWELL. That's right, sir.

Mr. EDMONDSON (continuing). Which also was involved in the KDES right-of-way.

Mr. HOLLOWELL. That is the lease portion. There are two other parcels of Indian land between that and Vista Chino Street. Yes; I drew that lease, every page of it.

Mr. EDMONDSON. So, there is both a lease and also a nonexclusive easement for the purpose of ingress and egress to KDES across the premises of Andreas' estate?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. So, there were two other Indian estates from which something of value was obtained for KDES?

Mr. HOLLOWELL. Yes, sir.

Mr. EDMONDSON. I must say, Mr. Cleary, that kind of clouds up a little bit your explanation of the situation.

Mr. CLEARY. I did not intend to mislead, but I do wish to draw the court's attention to the fact that parcel B, according to Mr. Hollowell, the negotiations therefor were carried on by the conservator and not Mr. Hollowell.

Mr. EDMONDSON. I understand that.

Mr. CLEARY. And, in response to the report's comments on the individuals involved, the report says that, and I quote the report referring to Judge Hilton H. McCabe, page 22, "He not only appointed the original groups of fiduciaries but sat in judgment on their requests for fees." This is an inaccurate statement. "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." That is a totally unwarranted conclusion, and the most vilifying statement of a man who devoted such a great deal of attention, time, and energy to the establishment of this program.

If any one individual in the desert is to be credited for the establishment of this program and for the conversion of this band of Indians from a destitute group of individuals into the wealthy individuals that they are today, that credit should be given to Judge McCabe.

You have in front of you a transcript of the conference that was held in 1958 in which the problems facing the Indians were presented to the public at large, and the Bureau, many of whom were in attendance, as we were prospective conservators, conservatees, and guardians. He had meeting upon meeting with members of the tribal council and members of the local Bureau, as well as members of the various businesses trying to get them interested in helping the Indian out of his very sad plight in which he found himself.

Judge McCabe, as a superior court judge, could not set a precedent that would be followed in Washington. The only thing a local superior court judge can do is the best he can under the law that is applicable to him. As I stated earlier, this program was one of trial and error, and he tried more than anyone else to do what he thought was best for the ultimate benefit of the Indians.

It is interesting to note that one of the charges that he imposed upon the conservators was that of educating their wards. In many cases, and believe me, this is not attributable to every member of this band because it would be unfair to say all, that in many instances the education of the ward was like leading a horse to water, you can't make him drink, and you cannot criticize the conservator or the fiduciary for not educating someone who didn't want to be educated, and this is true in quite a few instances, but on the question of education, Judge McCabe very early realized that the Indian had to be educated.

Education was the only answer to this mess that we are all in today, and only when the Indian became fully aware of its commercial and legal appropriate use could he then assume responsibility for control of his property, and in this connection, Judge McCabe wrote a letter to the Bureau and suggested that the Bureau contact the local colleges asking them to set up a special course for the education of the local Indians in commercial practices.

Judge McCabe spelled out in detail the nature of the course that should be established, and how it could best reach the individuals to be educated, and the Bureau answered, "We're not set for that, and we're not interested." And this, I believe, we already have in evidence before you.

There were charges made against Judge Brown, and the exhibits J, K, L, and U, which are attached to the reply of the association to this task force report, I think, aptly demonstrate the refutation of those charges against Judge Brown.

Mr. EDMONDSON. On that point, Mr. Cleary, would you comment on the transactions reported in the task force report in which Judge Brown is reported to have telephoned Mr. Hollowell and asked him if he would find someone to purchase a plot of land in which Judge Brown had the major interest, as I understand the thing. You said something earlier about that matter to me during recess, and I think that it would be useful to the record if you brought out the point that you called to my attention during the recess.

Mr. CLEARY. Yes, sir; I'll be happy to do so. Judge Brown owns this property that he decided to sell. He contacted Mr. Hollowell, and Mr. Hollowell transmitted the judge's desire to Mr. Levy.

Mr. EDMONDSON. Do you see any problem in the propriety in contacting an officer of the court, this court who was acting in a fiduciary capacity for some Indian estates with regard to a sale through him of land belonging to the judge?

Mr. CLEARY. I think it was an ill-chosen means of selling property, and yet, from my personal acquaintance and friendship with Judge Brown, and from my knowledge of the facts, I think that everything was done with the most sincere and complete integrity, because after the contact with Mr. Levy, the judge, as I understand, made it known that he wanted a certain price for the land. At that time, it was the universal practice that the Bureau would necessarily appraise

the land before it was acquired, and Judge Brown made it very clear that he would sell it at no price other than his own asking price. As soon as Mr. Levy indicated that he had a willingness, at least an open-mindedness about the acquisition of the property, the judge contacted the Bureau and said he had some land he wanted to sell and asked for the Bureau to appoint an appraiser. The Bureau did appoint an appraiser, the appraiser did confer with Judge Brown, and the appraiser's statement is in the file presented by the association in which he specified that in a meeting with Judge Brown, Judge Brown very definitely told him he owned the property, the appraiser must have known Judge Brown owned the property otherwise the appraiser wouldn't have gone to Judge Brown.

Mr. EDMONDSON. That same piece of evidence contains the allegation—I don't know whether it's so or not—that Judge Brown handed a proposed report to him that included a dollar figure for a per-acre value to be found by the Bureau.

Mr. CLEARY. I didn't notice that in the report, sir.

Mr. EDMONDSON. You did not notice it?

Mr. CLEARY. No. If you will direct my attention to it, sir——

Mr. EDMONDSON. I'll see if I can find it. Page 25.

Mr. CLEARY. Pages 25 and 26.

Mr. EDMONDSON. On page 26:

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.

Mr. CLEARY. Two things I don't—one, I don't know how Mr. Jenkins could have been shocked at any purported attempt to conceal ownership, because Mr. Jenkins must have been the man who called upon the appraiser to talk to Mr.—Judge Brown, so somewhere in here, there is something missing. If Mr. Jenkins didn't get the appraiser down here from Washington, who did? And, how did he know to go see Judge Brown?

Mr. TUNNEY. Wasn't this the land that was described by boundaries and not by owner?

Mr. CLEARY. Yes, sir; the petition to the court did not set forth that Judge Brown was the owner, but——

Mr. TUNNEY. So that, if the Bureau, for instance, had contacted the Washington office and asked them to send down an appraiser, if that had not appeared in the court record, he would be unaware of it, is that right?

Mr. CLEARY. No, sir; it would appear in the Bureau's records.

Mr. TUNNEY. It did appear in the Bureau's records?

Mr. CLEARY. Yes. The Bureau knew that Judge Brown owned the property, the prospective principal——

Mr. TUNNEY. When did they find out?

Mr. CLEARY. Before the appraiser came to talk to Judge Brown.

Mr. TUNNEY. Does that appear in the records?

Mr. CLEARY. In the record it appears that the appraiser talked with Judge Brown on March 17. This was before the—any court hearing was scheduled, as I recall the facts.

Mr. TUNNEY. Well, the facts stated in here are that——

Mr. EDMONDSON. Excuse me, Mr. Tunney. Mr. Cleary, the report says that:

Mr. Jenkins stated upon interview that he was disturbed by the apparent attempt by Judge Brown to conceal ownership of the land.

It does not state at what point in time he was disturbed by this situation, but I'm concerned more about the statement that Judge Brown had 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 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.

Mr. CLEARY. I am uninformed, sir, and unfortunately, I am at a disadvantage because I don't know what Mr. Jenkins told the person who wrote this report. I would like, and I think it proper that Mr. Jenkins be queried concerning the fact that this letter he received from Judge Brown, handwritten or not, is a form letter that was required by the title company. I believe that the evidence will indicate that it was. I am sure under the circumstances, that if this letter was given by Judge Brown to Mr. Jenkins, I have no reason to doubt the $1,800 figure was stated therein, but I'm sure that it was an understanding if not a direct statement that—

This is what I'm going to sell it for. If your appraiser doesn't come up to that price, then don't bother sending him in, because I'm not going to sell it.

Mr. EDMONDSON. Well, the contradiction at this point is, it says that Judge Brown handed a handwritten draft of a proposed letter from the Bureau of Indian Affairs to the title company, which is a little bit in conflict, and we will ask for comment on that question as to whether it was handwritten or not.

Mr. CLEARY. I'm sure it was, I have no reason to disagree with that. I don't know what it was, but when I say form letter, I do not mean that it was a printed form letter. It was a standard type of letter and that's what I meant when I made reference to a form letter. That's one problem with trying to not quote people, but attributing statements to them, and this is something that I think a direct statement from Mr. Jenkins and the judge would be the only way that this particular problem could be solved.

Mr. EDMONDSON. This committee is not trying to judge the fact of the situation that prevails as far as this, but where there is a clear-cut clash in the task force report and the testimony that is given to us, and we would welcome supplemental opinions on that subject.

Mr. CLEARY. I can give you an affidavit by Judge Brown as to——

Mr. EDMONDSON. We shall be pleased to have it.

DECLARATION OF MERRILL BROWN

I declare under penalty of perjury the following to be true and correct:

My name is Merrill Brown; I am a Judge of the Superior Court of the State of California in and for the County of Riverside.

After I undertook the administration of the Indian Affairs of the Agua Caliente Band I contacted the Tribal Council and the Tribal attorney with respect to their wishes in any matters which might come before me in connection with the

Conservatorship program; in this connection I received a letter from the Tribal attorney, a copy of which is attached hereto and incorporated herein as if specifically set forth; the letter states in part that the Tribal Council wanted its Guardians and Conservators to buy additional land rather than sell additional land; several years later I telephoned Mr. Hollowell who represents approximately one-third of the Guardians and Conservators and advised him I was interested in selling land and inquired of him if he knew of anyone of his clients who would be interested in acquiring land for their wards.

Thereafter Mr. Hollowell telephoned me that Mr. Levy, Conservator for the Estate of Shirley Kitchen, might be interested. I thereafter talked to Mr. Levy and showed him my land and he expressed an interest but made no commitment for the acquiring thereof. I told him my desired selling price would be $1,800.00 per acre.

Thereafter I spoke with Mr. Homer Jenkins and advised him that I had the land in question which might be purchased by the Estate of Shirley Kitchen from non-trust money and requested Mr. Jenkins to cause the Bureau to appraise the property. Mr. Jenkins stated to me that he would request an appraisal.

Thereafter I was contacted by a Mr. Swanson an appraiser of the Bureau of Indian Affairs who came to my office in Indio and with whom I discussed my ownership of the land, my desired selling price, the price I paid for the land, the offers I had received therefor. Mr. Swanson stated to me he would appraise it.

Shortly thereafter I caused my Secretary to prepare a letter to a Title company and forwarded the same to Mr. Jenkins.

Title companies in California are naturally interested in any matters which relate to land, title to which they are to insure. The land offered by me was to have been acquired by an Estate pending in the Superior Court subject to approval of the Court. The land was being offered to the Estate of an Indian and I knew that a title company would not insure title thereto unless the acquisition of said land was approved by the Bureau and it was for the purpose of assuring a title company that the acquisition had the Bureau approval that I sent the proposed letter to Mr. Jenkins.

Thereafter I received, on the Bureau stationery, the form that I had caused my Secretary to forward to Mr. Jenkins with the sellnig price of $1,500.00 included thereon.

I presumed the $1,500.00 figure was inserted by Mr. Jenkins as a result of the appraisal of my land by Mr. Swanson. A copy of the letter received by me from Mr. Jenkins is attached hereto and incorporated herein.

The appraisal of $1,500.00 was not acceptable to me and I accordingly wrote to the Bureau advising them I did not desire to sell. A copy of that letter is attached hereto and incorporated herein.

At no time did I initiate the proposal of the Conservators generally buying non-trust land but to the contrary upon being advised by the Tribal attorney that such was the recommendation of the Tribal Council I thereafter, making full disclosure of my ownership and desired selling price contacted one person whom I thought to best be in a position to know of any Indian Estates which desired to buy non-Indian land and requested of him the name of any Conservator or Guardian who would be so interested.

At no time was Mr. Levy committed to buy my land.

At no time did I fail to reveal to either Mr. Levy or the Bureau that I personally owned the land.

At no time did I attempt to negotiate with the Bureau to raise the appraisal figure, but to the contrary, when the appraisal did not meet my desired selling price I ceased all negotiations.

Executed at Indio, California this 25th day of June 1968.

MERRILL BROWN.

SIMPSON, REHKOP & WATSON,
Long Beach, Calif., March 16, 1966.

Re Guardians and Conservators Association.

Hon. MERRILL BROWN,
Judge of the Superior Court,
County of Riverside,
Department "B", Indio, Calif.

DEAR JUDGE BROWN: At the outset let me say on behalf of the members of the Tribal Council and myself that we were distressed and deeply concerned over

the news of your recent illness. It was first reported as a heart attack and we were relieved thereafter to learn that it was identified with the Asian flu.

During the last tribal meeting I promised that I would look into my records for the purpose of finding a copy of a letter of complaints, sometimes referred to as the 'petition of grievance' which the Tribe had delivered to Commissioner Nash during the latter part of 1964. Enclosed herewith is that copy. From reading it you will see specific claims and facts respecting the Guardians and Conservators Association and which I know will be of interest to you.

Following your departure from the tribal meeting, the members presented certain suggestions which they asked me to submit to you regarding the obligations and duties they feel every guardian or conservator should consider. These include the following:

(1) They should have their wards attend tribal meetings, and if the ward is too young, should on occasion attend the tribal meeting themselves so that they will acquire an understanding of tribal motivations and thinking.

(2) They should encourage their wards to take educational courses so that their comprehension respecting the extent, nature and potential of their estate would be enhanced.

(3) They should seriously consider a policy of buying additional land instead of selling.

(4) They should have their wards participate in lease negotiations.

(5) In their annual accountings, they should set forth more than monetary figures, i.e. they should provide the Court with an account respecting any progress or advancement the ward has made.

(6) They should always supply copies of all papers pertaining to the ward's estate and take the time to explain whatever questions might arise.

(7) They should diligently endeavor to work with the Tribe in formulating programs pertaining to the general welfare so that there will be a unified representation.

Thanking you again for your consideration and courtesy.

Very truly yours,

RAYMOND C. SIMPSON, *Tribal Attorney.*

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Palm Springs, Calif., March 27, 1967.

Subject: Estate of Shirley Ann Kitchen—PS–56 Indio P–1511.

SECURITY TITLE INSURANCE CO.,
Riverside, Calif.
(Attention Gerald A. Mercer, vice president and chief title officer).

GENTLEMEN: This is to inform you and others to whom a copy of this letter is being sent as designated below that the Bureau of Indian Affairs received a copy of the Petition for Instructions in the Estate of Kitchen, Indio P–1511, now pending in the Superior Court of the County of Riverside, State of California, on or about the date the original was filed; that the Bureau also received notice of the time and place of the hearing of the petition; that the Bureau caused contents of the petition to be examined and the land appraised by its own appraiser and as a result of such examination and appraisal, the Bureau will not appear at the time of the hearing of said petition nor object to the granting of said petition, provided that the purchase price does not exceed the sum of $1,500.00 per acre.

Sincerely yours,

HOMER B. JENKINS, *Director.*

MARCH 29, 1967.

Re estate of Kitchen.

BUREAU OF INDIAN AFFAIRS,
Palm Springs, Calif.
(Attention Homer Jenkins).

DEAR MR. JENKINS: I received a copy of your letter to the Security Title Company and I want to thank you and the Bureau, including of course, Mr. Swanson, for the attention you have given this matter. Under the circumstances there will be no sale to this estate.

In closing, I wish to thank you again for all the things you have done.

Sincerely,

Mr. EDMONDSON. May I say, in all fairness to Mr. Hollowell over here who, a minute ago, was testifying from memory about the conservators several times of several tracts. If a careful search of his records discloses that there was only one tract, and not two, then a letter on that subject would be welcomed by the committee. We're interested in getting the truth on it, and if you have that inaccurate a memory, we don't want to see people penalized by testimony from memory.

Mr. CLEARY. Going back a moment to page 25 where Mr. Levy said he felt some shock when Homer Jenkins of the Palm Springs office advised him on or about March 23, that the Bureau had appraised the land at $1,500 per acre and that if the court approved the 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. If such a statement were made to Mr. Levy, I'm sure that he would be shocked, because up to the time of that conversation, Mr. Levy had signed no contract to purchase a piece of property and to have somebody tell him that if the court approved the purchase that that was tantamount to a contract to buy, or a contract to sell. The information is certainly misleading. Had that information been related to me, and were I in Mr. Levy's shoes, I, too, would have been shocked.

On exhibit 23 and 24, again Mr. Hollowell I don't believe, made his point correctly. Exhibit 24 is an accounting for the year 1963, something that did not—this is on page 28, the first paragraph.

Mr. TUNNEY. Page 28?

Mr. CLEARY. Yes, 28. The part that did not appear as part of exhibit 24 was the letter to the court which is in the court's files indicating that Mr. Hollowell's fees were charged to the estate on an hourly basis. Mr. Hollowell has introduced into evidence as one of those documents the accountings for the years 1964 and 1966. The accusation has the years 1963, 1964, and 1966, that Mr. Hollowell duplicated his charges. The alleged proof of that is exhibit 23 wherein Mr. Fey indicates that he paid money to Mr. Hollowell during those years. From the fact that Mr. Fey paid Mr. Hollowell during the years involved, the task force concludes that Mr. Hollowell double charged. The task force did not, but should have, referred and included as part of exhibit 24, the accountings filed for the years 1964 and 1966 which accountings specifically spell out that Mr. Hollowell did some work for Mr. Fey, was paid by Mr. Fey, and is not charging the estate for that same work. The task force, even though they had these files for 155 days, neglected to read these accountings or advise anybody who was reading this report that those accountings were in existence. That he spelled out to the court he wasn't charging and why. Now, I feel that those two accountings for 1964 and 1966 should be made part of the record.

Mr. TUNNEY. Mr. Chairman, I would recommend that we make part of our file those accountings which the witness has just referred to.

Mr. CLEARY. You have them.

Mr. TUNNEY. Are they part of our files, or a part of Mr. Hollowell's?

Mr. CLEARY. Yes, Mr. Hollowell's.

Mr. EDMONDSON. Without objection, they will be made a part of the committee files.

Mr. CLEARY. I think I have covered the other situations involving Mr. Hollowell and the other attorneys on the conflict of interest situation. The statement appearing on page 34 as to what the association's funds were to have been used for is a simple conclusion of the task force, which is not borne out by the association's bylaws, constitution, or minutes. Mr. Hollowell has testified as to what they had hoped to do and what they actually did do. There is a question of misuse of conservatorship proceedings, if I can find that, and two instances I cited; that of Mr. Siva which, as Mr. Hollowell has pointed out is still before the courts and it's an interesting situation that Mr. Cox, since the lease relies upon the decision of the appellate court, but in the case of the petition for conservatorship for Mr. Siva, relies upon the trial court. Apparently, one court has more authority in one situation than it does in another, depending on the point of view that Mr. Cox wants to take.

The matter of Segundo, there is a—well, as Mr. Hollowell pointed out, there is a misstatement of California law on page 44 where it says "It is not permissible under California law, for a conservator to charge fees for legal work," and I say it's a misstatement of California law because there has been no decision on it, so how Mr. Cox can—how he can imply that's going to be the law when some appellate court decides that it will rule on it, is interesting and I wish I had that foresight, but until some appellate court does rule on it, there is no California law on that point.

Mr. EDMONDSON. Would you say that it is possible that the statement was an outgrowth of the final paragraph that occurred in that judge's order on the subject of attorneys' services having to be specifically contracted for as attorney services?

Mr. CLEARY. Anything's possible, sir, and so it could be a possibility, and yet, in this particular instance, I think it is a very poor conclusion, because in this particular instance, the attorney and the conservator were one and the same; and how do you specifically hire yourself to act as an attorney? I don't know. Lot's of people are schizophrenic, but—another misstatement in there is the objection to the fees charged by Mr. Segundo's attorney, and that the objections were raised by the amicus. That's true, but Mr. Segundo through his then attorney, objected to the fees also; and I might add, parenthetically, that there is a statement in the report that says "There is an undue concentration of individual activity in this whole program." Mr. Hollowell was the attorney for the conservator of Mr. Segundo; Mr. Segundo wanted to change—Mr. Hollowell was the conservator, rather; Mr. Segundo wanted to change conservators. He sought the appointment of an individual attorney; his wife from whom he was divorced—obtaining a divorce—objected to the appointed fiduciary. That objection was ultimately recognized by the court; and Mr. Pierce, who is one of the members of the tribal council, was appointed as co-conservator for Mr. Segundo. In the course of getting a change in conservators, Mr. Segundo also wanted a change in attorneys for his divorce action. I represented Mr. Segundo in his divorce action. Mr. Pierce is, in effect, one of my clients, although he's not really, because I don't represent the conservatorship, and you get a

lot of people involved in a lot of things, because there are very few people involved in a lot of things, because there are very few people who engaged in this type of law and that makes another point, that when you do have a specialty, the people who practice this specialty are generally few and the work involved in the specialty generally migrates to those individuals who know what they're talking about, and that's why we have so few people involved in so many cases, because Indian law does involve specialties.

Mr. TUNNEY. Can I just ask a question here? Is it the custom in California for a conservator of an estate to represent that estate also as an attorney?

Mr. CLEARY. When you say "customary," I'd have to say "No," because there are so few attorneys who are capable of acting in the fiduciary capacities, so few attorneys have the business acumen which would warrant their being appointed a fiduciary, and it's not a practice.

Mr. TUNNEY. I was thinking in reference to your term of Mr. Hollowell representing this particular Indian both as a conservator and his attorney, and the question was whether he was charging him as the conservator or the attorney: you don't know if it's schizophrenia. The only thought that I have there is, I think it is important to know for which service he was charging, either conservator or as attorney; don't you agree?

Mr. CLEARY. Yes; but I should think his petition for fees would show what he was asking for.

Mr. TUNNEY. I'm sorry if I misunderstood your schizophrenia remark.

Mr. CLEARY. I was making reference to the order that the conservator must specifically order the attorney's work done, and I was being facetious as to how Mr. Hollowell, as conservator, could order himself, as attorney, to do certain work.

Mr. TUNNEY. But, in effect, he had to do it?

Mr. CLEARY. In effect he had to do it, yes; but I don't think he did it by changing hats. I think it was that when a problem came up that involved the services as a conservator, for instance——

Mr. TUNNEY. You don't think there's a problem?

Mr. CLEARY. I don't see it, no; because quite frequently you have not inconsolables, but quite frequently you do have other instances where people represent themselves, and I don't think it's necessarily a problem specifically involved in this area.

Now, we come to the meat of the matter. The report says that the conservatorship program has been——

Mr. EDMONDSON. How much time are you going to spend on the meat of the matter? We've been listening to you for about 2 hours now on what I thought was some of the meat.

Mr. CLEARY. I'll be brief because it's in the report, in my testimony. The report says that "This program has been costly to the Indian in economic terms and in human terms." As I've indicated, certainly anything is subject to interpretation, but the Indian a decade ago was a lot worse off in terms of his assimilation into society, to command the respect from society, the respect that he was entitled to from society. Today, he's an incomed individual, doing, acting, living as any other human being, and this, I think, is the minimum that he can expect, and

I'm sure, as times goes on, his position in society will be increased as much as financial affluence can increase it.

In terms of economic cost to the Indian, I must respectfully disagree with the task force conclusion because they make a comparison of the cost to income. Certainly, income must be considered, and yet the idea of comparing cost to income at the beginning of a program gives no true picture any more than a comparison of how a candidate in one State getting 2 percent is going to end up getting elected to a particular job. The whole picture must be taken into account. To say this rounded out to 200,000, this is an overstatement, because the task force report indicates $1.9 million has been paid, but actually, $1.8 million has been paid, but the picture of costs includes several factors. One, what was the $1.8 million paid for? Was it paid for ordinary services, or was it paid for total services? Now, it was, as a matter of fact, paid for total services. That includes—the letter of 1963 points out, it includes felony defenses, it includes matrimonial problems, it includes juvenile problems, it includes advising on how to buy an automobile, it includes building a building, it includes virtually every type of problem known to man because these people are just like everybody else and have the same kind of problems, and so these total charges go far—or, relate to services which go far beyond the normal services performed by a conservator of an estate. That's one point that Mr. Cox ignores.

Another point he wishes to make is that $1.9 million bears a relationship to the income of 44 percent. Now, why he's making this charge I'm not sure; but I do know this, that the leases that produced the income are still producing the income. Many of them have about 60 more years to go and for him to say that the amount of 44 percent of the income is comparable to a situation where a prospective employee goes to an employment office and says, "How much will you charge when you get a job," and the employment office says, "Our charge is one month's rent." Well, if you analyze it—let's say he goes out and gets a job, and if you analyze the cost of getting the job with the income from the job at the end of the first month, you are going to find you have paid 100 percent income to get the job, and that's ridiculous; but if you wait until that job has been underway for about 5 years, you find that you're paying actually 1.66 percent so the comparison of costs to income would be a fair comparison, if the income has been allowed to season so you can see how much the work has produced; and I think Mr. Cox, at this time, is very premature in making that comparison, particularly since he claims that there has been $4 million plus or minus income over the whole program, yet the fiscal year 1967 on June 30, the tribe was earning $1,018,000.

Now, if that's true, by this year, the cost that had been paid out should be compared against $5 million income; next year, they should be compared against $6 million income, and the year after that it should go up, if nothing else is done.

Mr. EDMONDSON. Can you document, in support of your thesis, that the fees paid of all kinds are a diminishing percentage of total income for the tribe?

Mr. CLEARY. Well, I've given Mr. Sigler——

Mr. EDMONDSON. Because carrying your theory on to its logical conclusion, you should have a situation where your fees are a steadily

diminishing percentage of the total income, even though they might increase in dollar amount.

Mr. CLEARY. I have given to Mr. Sigler a compilation of every accounting filed in every Indian estate from the very first estate, and that's a total compilation of income, nontrust estate, and when a sale of a trust asset occurs, that's noted, too. The ordinary fees paid to attorneys, and the conservators, the ordinary fees paid—the extraordinary fees paid to them, and compilation of every other fee, and a percentage analysis of the fees paid to the various columns is in there.

Mr. EDMONDSON. You have them broken down year by year to show what's happening to fees as a percent of total income, year by year?

Mr. CLEARY. No, sir; I have not; I'm sorry. I did not break it down by the year, but I do know——

Mr. EDMONDSON. Would you agree with me that if they are any kind of implemental benefication here in which the income is increased rapidly as a result of successful management, and those management fees are just tied to the immediate benefits conferred and do not continue on through the time of the lease, that they are pretty well terminated within the year or maybe 3 or 4 years, but not more than 4, that you should have a picture of how your total number of fees, the total amount of fees is going up, and the total amount of income should go that much more rapidly so that your fees as a percentage of income should be going down?

Mr. CLEARY. I agree with you that that figure would be excellent and would present an excellent——

Mr. EDMONDSON. I think it would make a case for you, if it's available, and with the talents you demonstrated in this case, I'm surprised you haven't presented it.

Mr. CLEARY. I'm not sure they are of account, sir, because of the fact that, as I said earlier, the early petitions don't show in each instance the particular service for which a charge was made. In all instances, since, I believe, mid-1964, this figure could be arrived at or could be gathered, but to go back before 1964 would be hard to say that $10,000 was paid for a lease whereas, it might have been paid for a divorce, but from 1964 on, I think we can get this information.

Mr. TUNNEY. Wouldn't services related, or not related to income protection or Indians entering the picture fuzz up your results?

Mr. CLEARY. That's right.

Mr. TUNNEY. And, wouldn't that solve your problem of getting these figures of some of the leases that collapsed after a period of 2 or 3 years, to have the lessee or lessor—excuse me, lessee, if the lessee was not able to make a financial go of it and at that particular time made a few installment payments and they just went bankrupt or signed over the property?

Mr. CLEARY. But, I think that would not necessarily impede the picture, because it has to be taken into account in arriving at a cost per income, and also the sale leases must necessarily be included because if there are too many of them, obviously the cost is going to be higher, so I think the information wanted by Mr. Edmondson could be obtained for the later years, even though there were leases that failed.

Mr. EDMONDSON. Fine. We'll attempt to get the documents into

evidence. Now, I'll ask you, would it be possible for you to conclude here in a period of about 3 or 4 minutes?

Mr. CLEARY. Yes, sir. Not only can be, but will be.

Mr. EDMONDSON. It would be deeply appreciated by the staff and the subcommittee.

Mr. CLEARY. The last point I have to make is that the actual cost should not in any event, be compared to income. This is a probate matter, this is a conservation of assets. Each accounting period, the conservator or fiduciary is charged with the responsibility of conserving a certain quantity of money or assets. The true cost or analysis should not be made to income, but should be made to amount of responsibility. In other words, every conservator—if a conservator can save or conserve $100,000 1 year, he should be entitled to whatever it is, three-quarters of 1 percent of that $100,000 for that particular year. If you take the average cost—if you take the total expenses to the Indian of $1.9 million and compare it to the total responsibility for the conservators over the 8 years that the term covers, you will find that the actual cost is 5.2 percent, not 44 percent as Mr. Cox would have us believe.

Finally, the recommendation that I have is that this committee or Congress decide whether or not the tax shelter is going to be continued ad infinitum, and if it is, that the Palm Springs area should be established, that the Palm Springs representatives of the Bureau should be given virtually complete autonomy so that they can deal with these local and immediate problems, locally and immediately, and if you do that, you could do away with the entire conservatorship program, and you'd have the Indians the wards of the Government forever. If this is what you want to do, fine. I don't think that's the answer. I think the answer is the ultimate termination, and it would be my suggestion, as contained on page 38, the Government direct the Bureau to appear at all minors and guardians, and I ask that because right now we're having objections that go back 5, 6, 7, 8, 9 years, to things that happened that early, and the Governments just now coming in, and even though the Bureau has had full knowledge of what's going on, about 6 years later, they say, "You shouldn't have been there," so I'd like the Government to be ordered to participate in guardians for minors. That way, once the matter has been successfully determined, it can't be reopened other than as any other non-Indian guardianship could be reopened.

Second, when the Indian attains the age of 21, the Secretary determines if the Indian is competent. If the Government decides the Indian is competent, then I would distribute property to the Indian and the distribution should—not as I state here, I've given more thought to it—should not be effective 100 percent at the time of the Indian's attaining majority, but it should be determined by the question of, "Can the Indian afford to have this property." If he has at least 10 percent of his property leased and producing, then I think he should have the property distributed to him, if he's competent. If he doesn't have that 10 percent, but is competent, then it should be distributed to him when he has 10 percent of his property under lease. If the Indian is suspected by the Government of not being competent, then regular guardianship proceedings should be initiated. The Indian will then have a chance for a trial by jury of 12 peers to determine if he is competent. If he is competent, then the distribution of his property

should take place as above; if he is not, then the Government should retain legal title to his property until such time as either he is competent or until such time as the property is distributed to his heirs.

Are there any questions?

Mr. EDMONDSON. Just one question. Your statement regarding the Tunney bill, and your evaluation of it. Are you speaking of the bill most recently introduced, or are you speaking of the earlier bill?

Mr. CLEARY. The one introduced in May between writing that report now, I haven't had a chance to read it. I have had a chance to read it, and my comments are the same.

Mr. EDMONDSON. Thank you very much, Mr. Cleary. You're a very good advocate.

Mr. CLEARY. Thank you, sir.

Mr. EDMONDSON. At this stage of the hearing, we are going to endeavor to request the remaining witnesses to stay with a 5-minute time limit. I know it may put a burden on several of them, but I think the time is such that it is a reasonable request from the subcommittee, with the understanding that if any witness appears and is unable to present his points in 5 minutes time, he will have permission to submit for the record a supplementary statement. The first witness I want to call upon is the vice chairman of the tribal council, Mr. Pierce, who has asked for permission to comment.

Mr. PIERCE. Mr. Chairman, what I have to say will take just a second. From our impression this morning, the hearings will be held open so that we will be allowed to testify in Washington. Due to the lateness of the hour, the fatigue of the reporter, we will reserve our testimony until that time, and we want to thank you very much for coming out and looking into our problems.

Mr. EDMONDSON. Are you speaking as a member of the tribal council on that?

Mr. PIERCE. Yes, sir.

Mr. EDMONDSON. All right, sir, we appreciate your thoughtfulness on that subject. There will be subsequent hearings in Washington on the tribe's position with regard to the departmental substitute which has been proposed, and that hearing, of course, will be open to testimony to any citizen who is interested in being heard on that subject, whether a member of the tribal council, or member of the tribe, or an individual in the State of California who has reason for wanting to testify on this subject.

I have a statement here which has been filed by Mr. Ray Hiller. Mr. Hiller, if you will come forward, I'll be glad to hear from you at this time.

Mr. HILLER. Mr. Chairman, this is Mrs. Hiller.

Mr. EDMONDSON. We're happy to have you, sir.

Mr. HILLER. The tribal council has asked you if you have time—if you don't have time to hear us—you haven't heard from any of the tenants who have been on section 14, which I have since the forties, may we come back to Washington, also, Mrs. Hiller and I, when you have your subsequent hearings? I would like to take my 5 minutes now, and then finish back there.

Mr. EDMONDSON. Yes, sir; if you can afford the airplane ticket, yes, you'll be welcome. I don't think the Government is going to be paying the transportation of any witnesses back there. That's a decision for you to make.

Mr. HILLER. Mr. Chairman, we've waited all these years for our day in court; and I am sure we'll be able to save up enough money to come back there.

Mr. EDMONDSON. All right, you may proceed at this time.

Mr. HILLER. I'd like to make my first statement—is my 5 minutes beginning now?

Mr. EDMONDSON. Yes, sir.

STATEMENT OF RAY HILLER, ACCOMPANIED BY MRS. HILLER

Mr. HILLER. Now, I don't want to defend members of this tribe and also the tenants of many years in section 14 from one of the conservators who gave the impression that we don't want you to carry back to Washington that all of the Indians are drunk, or all of the tenants were prostitutes, and the wrong kind of people.

Mrs. Hiller and I are graduates of the University of California. We are both licensed real estate brokers. I served in World War I, came out with a disability. While her father paid her way through college, the U.S. Government came to the hospital where I was recuperating and told me I was discharged; so that's when I got my degree and we taught school many years. I think Mrs. Hiller did 38 years and I did 20. Now, the only reason she did 38 is, we lost our property here in 1960 under the Saund Act. Before that, we had very pleasant relations with the members of the tribe. In fact, I'm still on section 14 with one of the members of the committee, one of the committee and paying my rent every month.

Mr. EDMONDSON. You mean, one of the members of the council?

Mr. HILLER. One of the members of the council; yes. We still have two houses there, but the hotel we built was taken away from us in 1960. Now, it's rather peculiar that the only one member of the tribe that was criticized today happened to be the one Indian we met and worked with all these years, and the only legal firm that I heard criticized here was the firm of Schlesinger & Schlecht, and they are the ones that represented this same Indian when we went to court, and unfortunately, we went before the only judge criticized here, so we didn't get our day in court; we were just thrown out of court.

Mr. EDMONDSON. Mr. Hiller, if you just heard criticism of one judge and one attorney, I don't believe you've been here all day.

Mr. HILLER. The one that testified here, I mean. As far as the appellate court is concerned, we don't have much luck. We got up to the appellate court and there was the other judge. Now, when these doctors ordered me to the desert with my lung condition, they said go to the desert, but I should have gone to Las Vegas. We do very well in the nickel machines over there; we've never had any luck here.

I do want to say that the tenants that we found, our neighbors in all those years are fine people. They were retired people. A lot of them were very nice neighbors and I didn't see any prostitutes and drunks among the tenants. We paid our rent very clearly all the time. In fact, I think I paid the Gloria Gillette rent $100,000 in 18 years, and I think the—gosh, if you're using the figures I have heard here today, it must have brought the value up nearly a quarter of a million with the property being taken away from us overnight.

Now, there are other people the same way. I just want to say this,

and you have the statement, in 1960 when I sent in my ground rent as usual, it was sent back to me with the statement I was no longer their tenant as the land had been sold or leased to others. This, despite a written agreement that should they sell, I would be given first chance to buy this land, on which agreement Mrs. Hiller and I relied for justice and fair treatment.

Since 1960, and we organized in 1960, the people that were put out and their homes were burned, I don't believe it was the neighbors did any burning, and maybe the word got all over the country. Since 1960, I have witnessed many other ground rent tenants, Negroes, Mexicans, poor whites and Indians of other tribes who had all been induced to build homes and churches on section 14, have them burned down, many of which were new and my property was new. I don't know where this conservator gets the idea that there was nothing but shacks. We built our pool, we built 20 new units, we built seven duplexes, and I don't see—that was all under city inspection so where they try to give the facts—your committee—the facts that all the tenants of section 14 were the wrong type of people, we were getting along fine with the Indians on this, but these conservators come in here and with their lawyers and conservators, and your committee has heard how they have been charged all that money.

This one Indian lady this morning had her own guardianship and she made her own deal, and I'm sure that a lot of these people are qualified to do that themselves. Certainly, had they been left alone, and had Mrs. Hiller and I been left alone, we could have paid our rent as we paid all the 18 years before, so I believe your committee should look into this. There's a lot of people with—there is a lot of dissatisfaction in this country the way poor people are being treated, and certainly they were in this section here.

Mr. EDMONDSON. May I ask you a question regarding your statement, Mr. Hiller. You said that they informed you that they had sold your property. Are you speaking of the Bureau of Indian Affairs, or are you speaking of the tribal council?

Mr. HILLER. No, I'm speaking of Mrs. Gillette and her mother. The mother was the guardian when she was the minor.

Mr. EDMONDSON. You have a complaint against two individuals rather than——

Mr. HILLER. No, I don't have a complaint against the mother. The mother had seen the sense and said I should have been given the opportunity to buy the——

Mr. EDMONDSON. If you had a valid agreement with them, would you have a lawsuit against them for breach of contract?

Mr. HILLER. A valid contract is legal, and as far as the court was concerned, it wasn't valid. We were told by the Indian office back in the early forties to make our deal with the Indian, and the same Indian got that piece of land, but even though she signed the agreement in 1950, she signed it again in 1955, when the Indian Bureau give us another lease, told us to go ahead and build all these extra things on, it come up to 1960, we was just told to get off.

Mr. EDMONDSON. You were told to get off by——

Mr. HILLER. Mrs. Gillette.

Mr. EDMONDSON. The contracting party that——

Mr. HILLER. Mrs. Gillette told us to.

Mr. EDMONDSON. And, you had——

Mr. HILLER. She told us she had sold it to——

Mr. EDMONDSON. Commenced a lawsuit to reinstate your claim?

Mr. HILLER. Judge Brown threw it right out of court, and Judge McCabe, appellate—by the way, Judge McCabe did disqualify himself and only two judges heard it instead of three.

Mr. EDMONDSON. Any questions on this? On the left? On the right? No questions. Thank you, Mr. Hiller, we appreciate your staying within the time limit, and of course, if you want to come to Washington to be heard by our larger contingent of colleagues, we will certainly be pleased to hear you, sir. Would you like this letter to the committee with your signature made a part of the record?

Mr. HILLER. Yes, sir.

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

(The document referred to follows:)

From: Ray Hiller, World War II service-connected disabled veteran.
To: Congressional committee investigating Agua Caliente conservatorship program in Palm Springs, Calif.
Subject: Confiscation of the property that I built on section 14 after paying ground rent for 18 years.
Conservators: Gloria Welmas Gillette and Lena Welmas McGlamery.

Early in the '40's during World War II, when Los Angeles became "Smogville", doctors ordered me to leave, due to my lung condition and move to the desert. A soldier living on Section 14, ordered overseas, had a small home which these conservators agreed I could buy from him and occupy. Later as my health improved in this climate, they urged me to rent 7 vacant lots adjoining this house and construct 7 duplexes, which were built under city building laws and city building inspection.

In 1950 I was given an Indian Bureau 5 year lease and they approved my adding 10 rental units.

In 1955 another 5 year lease was given me and they approved another 10 units, a pool, a social hall and a new office fronting on Indian Ave.

In 1960 when I sent in my ground rent as usual, it was sent back to me with the statement I was no longer their tenant as the land had been sold or leased to others. This despite a written agreement they gave me that should they sell, I would be given first chance to buy this land, and on which agreement I relied for justice and fair treatment.

Since 1960 I have witnessed many other ground rent tenants, Negroes, Mexicans, poor whites and Indians of other tribes who had all been induced to build homes and churches on Section 14, have them burned down, many of which were new and built under city codes and inspection.

All these people look to your committee for a complete hearing and ultimate justice.

Respectfully submitted.

RAY HILLER.

Mr. EDMONDSON. We have one further witness, and I have examined the statement that he has——

Mr. BURKMAN. May I ask a question? Will the interested parties receive copies of the testimony?

Mr. EDMONDSON. Would you identify yourself?

Mr. BURKMAN. Yes. I'm Clarence Burkman (phonetic), and I am one of the interested parties, and my question is, Will the interested parties receive copies of the testimony because most of us aren't going to Washington?

Mr. EDMONDSON. You mean testimony of the hearing here or in Washington?

Mr. BURKMAN. The ones that will be taking place in Washington.

Mr. EDMONDSON. I think that will be dependent upon whether or not there is a bill reported as a result of these hearings in which event there will be a printed report of the testimony that is heard. I think it will be dependent upon whether legislation moves from these hearings. As a general rule, there have been cases where they were printed without a bill being moved, but I would say it'd probably depend in this instance on whether or not there is a bill moved out of the committee.

Mr. BURKMAN. Thank you.

Mr. EDMONDSON. We have a statement here which I have examined from a witness who wanted to be heard, but because of the nature of some of the statements contained in here, and the personalities that are involved in it, I will inform the gentleman who has submitted it, that we will either have to receive this for the file, or we will have to go into executive session to hear this testimony. Is Mr. Maddox here?

Mr. MADDOX. Yes, sir.

Mr. EDMONDSON. Mr. Maddox, let me—before you begin your testimony now, would you prefer to file this for the file, or would you prefer to be heard in executive session, because you are making a number of very strong accusations identifying individuals——

Mr. MADDOX. Yes.

Mr. EDMONDSON (continuing). And I think as a matter of procedure in a case of this kind, it would be our rule to take this in executive session and not to take it in open session.

Mr. MADDOX. That's a good idea.

Mr. EDMONDSON. That would be acceptable to you to do that?

Mr. MADDOX. Yes.

Mr. EDMONDSON. And, if the subcommittee is agreeable, we will ask our spectators who are here, all of them, with the exception of the reporter for the committee to excuse themselves from the room, and we will go into executive session.

Mr. MADDOX. I just want to make a general comment, though.

Mr. EDMONDSON. Mr. Maddox, I will say on this, that we have, all of us, read your statement and we are all familiar with what it contains.

Mr. MADDOX. I'm not going to refer to the statement. I just want to make a compliment on what I've heard here today, and in making that statement, I want to say that the Indians have been well represented, and I believe the committee has done a good job looking at the interest of the committee and——

Mr. EDMONDSON. I appreciate that very much.

Mr. MADDOX (continuing). I compliment them on the——

Mr. EDMONDSON. Before you go into the matter that's covered in your statement now, sir, let me allow time for the room to be cleared, please.

May I say before you begin, I also appreciate the patience and the courtesy and attentiveness we've had here in this hearing. It's been a pleasure to hold these hearings and we're very grateful to all of you who have submitted statements rather than be heard before the committee.

The committee stands adjourned.

(Thereupon, at 7:30 p.m., the hearing in the above matter was concluded.)

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