

merely a formality. Then, on June 8, the government attorneys announced that Assistant Attorney General Clark was "on the fence" as far as approval of the settlement was concerned.

At this point the attorneys for the Tribe protested vigorously that this was a complete surprise and a direct contradiction of representations previously made to them and to the Indian Claims Commission. The validity of the protest was not questioned by the government attorneys, who stated the earlier representations had been "unfortunate" and that their "apologies" were in order, but that Assistant Attorney General Clark simply had not made up his mind whether to approve the settlement. The government attorneys then requested one more week, as a final period in which the Assistant Attorney General could consider the matter. This was granted until June 16, 1961. On June 14, the government attorney called to report that the proposed settlement was being rejected, and that a formal letter would follow immediately.

Such a letter was received for the Assistant Attorney General on June 16, 1961. A copy of that letter is attached to this report.

The letter of the Assistant Attorney General states that "this settlement is not in the best interest of the United States in the present posture of the case." He then gives what amounts to two reasons for his conclusion; in the first place, he makes reference to "the legal defenses to the claim which have not been fully or satisfactorily determined . . ." The only legal defense which has been relied upon by the government in this case has been an alleged defense based upon Article II of the Agreement of June 17, 1901, whereby the Klamath Tribe ceded to the United States the area which had been erroneously excluded from the reservation. The exact language of the tribe's agreement to accept that amount for the land, which is the language supposedly relied upon by the government as a "legal defense", is as follows:

"ARTICLE II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement, and in full of all claims and demands of said Klamath and other Indians arising or growing out of the erroneous survey of the outboundaries of their reservation in eighteen hundred and seventy-one, the United States stipulates an agrees to pay . . . (\$37,007,20)."

This "legal defense" was earlier raised by the attorneys for the

government by a special motion. This motion was argued and decided by the Indian Claims Commission in March, 1960. At that time the Commission decided that the above quoted language was not a defense to the claim, in view of the broad jurisdiction granted by the Indian Claims Commission Act, giving the Commission authority to go behind such cessions or "releases" in order to determine whether the amount paid by the United States was "unconscionable."

When the Klamath Tribe sued in the Court of Claims under the special jurisdictional Act of May 26, 1920, (41 Stat. 623) it sued for additional compensation for the 621,824 acres erroneously excluded, the same as the suit now in 100-A. At that time the government raised the same legal defense to the claim it raises now. And the Court of Claims agreed, at that time, that if the special jurisdictional act was not broad enough to allow the court to "go behind" the supposed "release" in Article II of the Agreement of 1901, then the Court had no jurisdiction to decide the claim. Here is the language of the Court's opinion when it decided the case in 1937:

"It is clear the claims falling under the first classification, viz, the alleged inadequacy of the compensation paid to (the Tribe) for the cession of 621,824 acres of their land erroneously excluded from their reservation by early surveys . . . is without the jurisdiction of the court unless the effect of the agreement of June 17, 1901, has been waived by the jurisdictional act . . . (the Tribe) contends that the jurisdictional act waives the (effect) of the agreement of 1901, approved by Congress June 21, 1906."

The Court examined the Jurisdictional Act very closely, and decided that it had **not** waived the effect of the Agreement of 1901. Here is what the Court said:

"(The Tribe's) claim for additional compensation for the 621,824 acres of land ceded to the defendant on the ground that the payment therefore was inadequate does not come within the jurisdictional act, the agreement of 1901 and the release executed thereunder having accomplished a complete settlement of all claims of (the Tribe) arising out of that transaction."

When this same defense was raised by the government in the present case, the tribal claims attorneys argued that the language of the Indian Claims Commission Act is broad enough to waive the effect of the 1901 agreement as a

release. The language of the Indian Claims Commission Act is:

" . . . the Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or any other identifiable group of American Indians . . . (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of . . . unconscionable consideration . . ."

The claim in No. 100-A is that the Agreement of 1901, should be "revised" because the consideration of \$537,007,20 was "unconscionable" when compared to the fair market value of the land ceded, as of 1901 (when Congress approved the Agreement).

Following argument of the government's special motion raising this defense in No. 100-A, by attorneys on both sides of the case, the Commission decided against the government, holding that the Commission has jurisdiction under the Indian Claims Commission Act to hear and decide the claim for additional compensation notwithstanding the language of Article II of the Agreement of 1901. The tribes' attorneys believe this decision was correct, and that there is no reasonable basis to think it would be upset on appeal. But apparently the government's lawyers hope otherwise.

As stated above, Assistant Attorney General Clark gave two reasons for rejecting the settlement. The first dealt with "legal defenses." The second was, as his letter stated, "my review of our evidence on valuation leads to the conclusion that this offer is higher than a reasonable compromise and not justified in view of the very extensive evidence of value." This statement is self-explanatory. Obviously the government has an appraisal which is much lower than the proposed settlement.

This full report is intended to give the members of the Klamath

Tribe as much information as the delegates or tribal attorneys have as to the reasons why the proposed settlement was rejected by the Assistant Attorney General, to the extent that those reasons are known to us.

The claim in No. 100-A will now go forward in the Indian Claims Commission as though no settlement was ever attempted. No compromise or concession has been made by the tribe or its attorneys, in any respect whatsoever. There has been a loss of almost a year because of the unsuccessful settlement negotiations (the case was set for trial as early as July 1960, in Portland, Oregon), and if the government intends to appeal its so-called "legal defense" the tribal attorneys estimate that no less than two to four years will be necessary before the case can be concluded. They estimate at least one to two years more in the Indian Claims Commission and another year, at least, for an appeal to the Court of Claims, following the decision of the Commission. Then, after decision by the Court of Claims, there is always the possibility of a request that the Supreme Court of the United States hear the case.

The Indian Claims Commission has already been consulted, since the rejection of the proposed settlement, with regard to setting the case down for hearing on the merits of the case, at the earliest possible time. When further information is available as to future proceedings in the case, it will be furnished by the attorneys to the members of the tribe.

The Tribal delegates and attorneys express their deep appreciation to all tribal members who attended the meetings of May 10, and May 15, 1961 and to the officials of the Portland Area Office, the Department of Interior—particularly to the Office of the Solicitor—who cooperated so well with the tribe and its attorneys in connection with the proposed settlement.



Frank Hall pins badge on Cub Steve Riddle.