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Barry Jackson

Jeff Kennedy, moderator

Fairbanks, Alaska

Series: Potlatch series

Mossy Davidson song

Jeff Kennedy said Barry Jackson said the 1.9 million dollars that Congress arbitrarily assigned has short changed the forty or so lawyers who worked on the Land Claims Bill. He charged that Congress made no effort to evaluate the lawyer's services. He doubts it would be practical to solve the problem with new legislation or adding another amendment to the Land Claims Act. Tlingit lawyer Fred Paul who first filed the claim is now representing Jackson. Under the Tucker Act attorneys had to file within six years of the passage of the Land Claims Act to receive any right to sue. Jackson believes no other lawyers will file. He received 115,000 dollars, but said his services were worth up to half a million dollars. He is not asking for any specific amount in his lawsuit. Jackson will talk about his involvement in the Land Claims Settlement.

Jackson said he became involved in the Settlement Act in 1965. He was practicing law in Fairbanks as a solo practitioner. He had been the city attorney for about three and a half years. One day several Natives from the village of Minto came into his office with William Byler. Byler was the executive officer for the Association on American Indian Affairs. They do lobbying. They asked him to represent the village of Minto. Minto had been faced with the fact that the state was selecting land from Minto Flats. A protest to the state selections had been filed by Ted Stevens when he had been in private practice, but Stevens was no longer available. Jackson told him he would take it on after some discussion. The Association agreed to pay his fees at that time. He then picked up the Nenana Native Council as a client and other villages. He began getting involved with the Tanana Chiefs and Tom Fenton joined as his partner. By 1967 the work started to get heavy and the Association was no longer able to cover all of his fees. He decided to get into normal contracts which required approval by the Secretary of the Interior by law. They had to revise the contract because they were thinking in terms of trying to keep the land for the people. There was some question as to what form that would be in. Possibly in a Court of Claims which would award land as well as money. They were looking possibly at action against the state of Alaska and possibly relief from the state legislature and possibly relief from Congress. They revised the contracts and after some difficulty they did get three approved contracts with Minto, Nenana and Tanacross. About this time he began working with Tanana Chiefs Conference but the secretary ruled that a regional association was not a tribe and therefore a contract with regional associations did not require the approval of the secretary. Fred Paul had secured such a contract from the Arctic Slope Association and it had been approved by the secretary. The secretary subsequently rescinded approval of the contract because it was not necessary. They picked up additional village clients and admitted contracts that were identical to the approved contracts and they were disapproved. They were advised that a change would be

necessary. They submitted an additional form of contract to them. The first contract they had called for an equitable fee for the work performed. An equitable fee, but not to exceed ten percent of what was awarded. The equitable fee would be set by the Secretary of the Interior after it was all over. Jackson asked exactly what is an equitable fee? He said in terms of law it is what is fair. Matters to be taken in consideration in determining an equitable fee include the time, the degree of expertise required, the benefits received by the client, the ability of the attorney to take on other cases and whether he is prevented from taking on other case because of the particular case in question. He said there are many factors in determining what an equitable fee is. When they were turned down on the next three cases on the basis of equitable fee it was suggested that an appropriate formula would be quantum meruit. Quantum meruit means the value of what the service rendered is without any ten percent limit. He thought the quantum meruit basis was the same as an equitable fee. He was willing to have ten percent limit. He was surprised that the secretary thought that would be appropriate. They began running into a concept that they were not acting as attorneys. They were acting as lobbyists. As lobbyists they should not be have an attorney's fee on an equitable basis. The Secretary's office was saying in effect what they were doing as the Interior office was doing was a duty to do anyway. It was the Interior offices job to represent the Natives before Congress. The Interior office had a trust relationship with the Natives and they were going to see that they were properly taking care of and what they were doing wasn't going to amount to all that much. Jackson said the Secretary's office was thinking in terms of a million acres of land and perhaps seven million dollars for all the Natives of Alaska. By late 1967 Jackson said they were thinking in terms of 60 million acres and hundreds of millions of dollars as being appropriate. It was a conflict of interest because they were suing in effect the United States to seek title to land or acquire title to land and quite of bit of money and yet that was in control of the Secretary. They were then prepared to enter into the three contracts on quantum meruit. Within a week of two of receiving those contracts they received a wire from the Secretary. The Secretary said the whole subject of attorney's fee contracts was under review in the Secretary's office and all of the contracts they might have are disapproved and they would be advised in the future what would be an appropriate form of contract. Jackson said they were never advised. They continued to work trusting in Congress to provide for an adequate and reasonable and equitable fee for the attorneys involved. He was also representing the Alaska Federation of Natives for about a year. He continued to invest money, time and talent in the effort. He was fortunate to have inherited funds at that time in 1968-69. They invested those funds in the effort. By the time they were through he had been loaned about 90,000 dollars from the inherited funds. That enabled them to continue to work. They had a heavy level of effort from 1967-1971 without any assurance that they would be paid except for the three pre-approved contracts. It came down to the final days and there had been no testimony in the proceedings before the Senate or the House on the work that had been done by the attorneys and the value of the work. The Senate and the House arbitrarily established figures for payment to all of the attorneys involved which involved something over forty attorneys. It involved approximately thirty law firms and something on the order of 40,000 hours of work. He said an attorney can't charge for an eight hour day. They have to charge for the time actually worked. That probably represents forty man years of effort. The bill also provided that the existing contracts including his approved contract would not be enforceable. They could not enforce them. They would be relegated to a fund which turned out to be 1.9 million dollars for compensation of all counsel. That presented a serious problem. Some attorneys had come in fairly late in the game when it was clear there was going to be a bill. Their responsibilities and

their efforts were fairly narrow specifically for their particular clients in some cases. The attorneys who had been involved from the very beginning had contributed a tremendous amount of talent and ability. Jackson said it wasn't just himself, there were other attorneys involved. Each of them among the Alaska attorneys had their own special field of competence and expertise and they contributed a team effort. He said Cliff Groh was very influential in the Republican Party. Groh had close ties to Hickel. Those ties also reached into the Anchorage Chamber of Commerce and the Republican Party statewide. His influence in those areas was very helpful to the Native movement. His partner, Stan McCutcheon also had similar ties in the Democratic Party. They had some funds made available to them through the Native village of Tyonek which they had represented. They had a major role in the organizational effort among the Native people. They were influential in getting the regional associations started. The Arctic Slope Native Association was started by the Association of American Indian Affairs. The Association also got the Tanana Chiefs Conference started in 1964. The other regional associations were started effectively by McCutcheon and Groh. Fred Paul from Seattle was a Tlingit Indian and represented the Arctic Slope Association. He had certain special talents especially talking with Congress. His father William Paul, Sr. had been involved in the Native land claims movement from about 1919. He was also an attorney and had a background in the law of Native claims. The Pauls were influential in convincing other attorneys that there was a valid claim and it had to be faced up to. Jackson said his own field of contribution was in a sense being an architect. He conceived of the idea that the Indians should be able to select the land that would be retained and not having the Secretary of the Interior saying this is going to be your reservation. He thought of the idea of regional corporations that would be a business, village corporations, the enrollment process, stock, tax exemption system and many of the features like this. This was a very innovative settlement. Every architect has to have a client and their clients were the Native leaders. They took his ideas and ideas of some other attorneys and put them together. They accepted some and rejected others. The Native leadership with his assistance and some other attorneys developed the basic pattern of the land claims settlement and then then proceeded to sell it to Congress and the administration. Jackson said the attorneys who had been in from the beginning deserved more compensation for what they had done. Those that came in at the tail end deserved fair compensation, too. The difficulty was there was only 1.9 million dollars available and if the total of the amount of fees exceeded 1.9 million dollars then they would be reduced pro rata across the board. They were put in the unfortunate circumstance to fight each other. The attorneys recognized this from the beginning as they put in their claims and with some exceptions did not fight among themselves. They did file some oppositions to attorney fee claims. They were faced with years of litigation coming up which would have eaten up the fees. The attorneys got together and agreed how to split the costs. They agreed to accept 130,000 dollars which is not what could be considered salary. They had costs to pay. He felt it wasn't adequate compensation. It was recognized by Congress when they passed the bill. He discussed reasons the Congress awarded what they did.

Song by Charlie Kanagoeak

Jeff Kennedy said Barry Jackson believes that the Treasury Department should be the agency to reimburse him. He does not believe that the funds should come out of the Settlement Act or any particular Native association represented. Kennedy asked Jackson how Native leaders reacted to his lawsuits. Jackson said he has been encouraged. He has spoken with a number of Native

leaders especially those who were deeply involved with him at the time such as Emil Notti and Don Wright. Don Wright was the decision maker. They both advised that they would testify about the value of his work. He is on the chairman of the board of the Tundra times. He offered to resign and they do not want him to resign. Initially he has not been verbally attacked. He said it is possible that the courts will hold that he has some right to get compensation from the Alaska Native funds. He said it would reduce by a minute amount the assets received by each Alaska Native.

Song by the Barrow Dancers