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DEPARTMENT OF
ANTHROPOLOGY AND SOCIOLOGY

SENATE INTERIOR COMMITTEE
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February 26, 1973.

Senator Henry M. Jackson,
Chairman,
Committee on Interior and Insular Affairs,
U. S. Senate,
Senate Office Building,
Washington, DC, 20510,
U.S.A.

Dear Senator Jackson:

The following information is supplied in answer to your inquiry of January 29th to assist your Committee in considering the present Navajo-Hopi crisis. It begins with a statement of my qualifications and background and goes on to respond to the questions you posed in eight numbered paragraphs that correspond with the communication you addressed to me. In a ninth section are some comments on the 1972 Hearings on H.R. 11128 (hereafter 1972 Hearings or Hearings 1972). I have not yet decided whether I would be willing to testify before the Committee. If I did so, I should prefer to appear in the Southwest rather than in Washington.

Background, experience and qualifications:

David F. Aberle, born November 23, 1918, St. Paul, Minnesota; U.S. Citizen; Professor of Anthropology, Department of Anthropology and Sociology, University of British Columbia, Vancouver 8, B. C., Canada; Office phone 604-228-2837, Home phone 604-922-0459.

Ph.D. degree in Anthropology, Columbia University, 1950. From 1947 to present, academic employment except for leaves and summers.

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I have done field work among the Navajo Indians during the summers of 1940, 1941, 1949-53, 1965-66, and 1968, with additional brief visits to the Navajo country in the summers of 1954, 1964 and 1971. My principle topics of research have been the Navajo economy from the 1930's to the present, Navajo kinship, the relationship between economic factors and kinship organization and change, and the Peyote Religion among the Navajo, the appeal of which I have attempted to relate to Navajo economic and other deprivations. My two most substantial publications on the Navajo are a chapter, "Navaho" in "Matrilineal Kinship" edited by David M. Schneider and Kathleen Gough, Berkeley, University of California Press, 1961, and "The Peyote Religion among the Navaho", Chicago, Aldine Publishing Company, 2d printing, 1967. I am presently engaged in preparing two articles for the "Handbook of North American Indians", to be published by the Smithsonian Institution, one on the Peyote Religion among the Navajo and the other on economic development in the Navajo country.

I have done short periods of field work in Lower Greasewood near Ganado, Teec Nos Pas and environs, Shiprock, Aneth, Lukachukai, and Crown Point, with briefer reconnaissance trips to Bluff, Mexican Hat, Dinnehotso, Kayenta, and Tohatchi. One summer was spent at Mexican Springs. My most extensive experience is within the disputed territory. In 1950 I spent two weeks in District 4, in Pinon and north of there on Black Mesa, and during most of the summers of 1965, 1966 and 1968 I worked in the same region. The first trip was concerned with the Peyote Religion; the other visits were taken up with research on kinship and the contemporary economy.

My comments will deal principally with the last 150 years, with emphasis on the period from 1933 to the present.

As to the Hopi, my Ph.D. dissertation was written on them (Aberle 1951). It was based entirely on published materials. I have never done field work among the Hopi. I have visited the mesas briefly on several occasions and I have a few Hopi acquaintances, but I lack the familiarity with their situation that results from the kind of long-continued field work I have carried on among Navajos.

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1. Navajo-Hopi Relations. Broadly speaking, these relationships are conditioned by the situations in which the tribes find themselves. In the past, when they confronted a common threat from the Spanish, the Mexicans or the U.S., they tended to be cooperative and friendly. Mutual interest in trade also heightened friendly relationships. Competition for resources however, creates hostile reactions. Hence, one would expect that the present serious opposition of the tribes over land claims would result in unfriendly feelings between the two groups.

The situation, however, is not that simple. Individual relationships of intermarriage, friendly trade, or cooperation may exist even in generally unfriendly situations, and individual conflicts in generally friendly ones. At times Hopi villages have divided in their attitudes toward Navajos, but nothing indicates that these attitudes are permanent.

By selecting appropriately from historical documents, one could demonstrate, often for the same period, that relationships were friendly or that they were hostile, and indeed that Navajos dominated Hopis or the reverse.

During my field work I have seen Navajo visitors at Hopi rituals and heard of Hopi visitors at Navajo ceremonies. Intermarriage occurs and must have gone on for centuries, but I do not know rates of intermarriage or whether there are differential rates for various Hopi villages. Navajos have high respect for Hopi curers, whom they utilize. In the 1960's most comments about Hopis made by Navajos had to do with the Navajos' concern about the effect of the Healing v. Jones case on their lives. They said that they and their ancestors had lived on the land they now occupied, and that they did not see why they should have to move.

I have discussed the general question of Navajo-Hopi relations with Dr. Jerrold Levy of the Department of Anthropology, University of Arizona. His information from the Hopi is that overt conflict does not occur between Hopis and Navajos living immediately adjacent to them.

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Rather, Hopis assert that it is families from further away who disturb Hopi farming operations and allow Navajo livestock to graze on Hopi land. My own greatest familiarity is with families living in an area that reaches from about 10 miles south of Pinon on up north about 20 miles on the east side of the Dinnebito wash. I have no information that indicates that any of the families known to me have carried on any such activities against Hopis. I do not know which Navajos have been involved in such activities. In the 1972 Hearings and in Healing v. Jones, critical comments are made about Navajo harassment of Hopis. It should be remembered that it is unreasonable to adopt a punitive attitude toward Navajos in the disputed territory on this account. The vast bulk of the population has not taken action of any sort against Hopis; most Navajos in the area have done no more nor less than live where their parents and grandparents resided.

I have no information except from documentary materials on Hopi attitudes toward the Navajo, Hopi success in Navajo courts, or Hopi feelings of being dominated by Navajos.

2. Joint versus Separate Use. It seems doubtful that the disputed territory can be occupied jointly. I shall return to this issue at numerous points in the discussion below. I do not know how a separate BIA agency will work, because I have too little information about its plans and powers.

3. Overgrazing and Livestock Dependency in the Executive Order Territory. I should like to begin with some general comments on Navajo management of livestock and continue with some specifics about District 4, the area that I know best.

a. The economic value of sheep and goats to the Navajo. Navajos are not in the livestock business in the same sense as a commercial rancher. Their economic pattern is best described as that of a "householding economy": they keep sheep and goats to eat and to get cash with which to buy goods for their families, rather than to make a profit, thus expand their flock,

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make additional profit, and so on. Almost no Navajo families can make a sufficient living from livestock alone, so that the profit, if any, is used for consumer goods. Livestock control was not a dead letter in the Navajo country when I last did field research (1968), and the permit system put a ceiling on the acquisitions of most people, another factor that prevents their being commercial ranchers in the proper sense. In addition, inability to acquire enough pasture because of crowding puts definite limits on livestock acquisition.

Sheep and goats are eaten, providing a quality and quantity of meat not available if one must purchase meat in a trading post -- especially in District 4, where refrigeration is not only lacking in all homes outside Pinon, but is minimally available in the trading posts. The stock also provide food for hosting people who come to a healing ceremony. They are used as gifts to Singers (ceremonial practitioners) for performing these ceremonies. They are given by one family to another if the latter has a large ceremony to support. Wool, hides, and lambs are sold, normally through the trader. These sales mainly pay off credit already advanced by the trader to permit the family to buy food, clothing and other necessities. A herd on the hoof is the family's long-range resource. Prudently managed, it can provide at least some meat and credit every year. There is no way that a Navajo could use the total cash value of his herd, if it were confiscated and he were paid off, to supply his needs year after year. Even when the value of wool and lambs is so low that they must be purchased by the Tribal Council, the food value remains important.

I turn now to the specifics of livestock in Grazing District 4 which lies just north of Hopi District 6, and which comprises some 878,000 acres, about 4/5 of which, or about 702,000 acres I estimate to lie within the 1882 Executive Order territory. This District makes up perhaps 35 to 40 per cent of the 1,822,000 acres of disputed territory presently occupied by Navajos. Some of my comments apply to Navajos in general; some are specific to the Executive Order territory; and some apply particularly to District 4 itself.

Livestock have special importance in District 4 for two reasons. First, the growing season in the northern part of that District is short, because of high altitude, so that farming is less important than

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it is for Navajos living in many lower altitude areas. This enhances dependency on livestock. Second, because this is disputed territory, it has been, and is deprived of many kinds of developments. Consequently, Navajos in District 4 cannot depend as much on employment as do Navajos in many other areas. To begin with, an older generation of Navajos had less opportunity to go to school if they resided in the Executive Order territory than did other Navajos. For decades there was only the Keams Canyon school, which for some time did not accept Navajo pupils, and which later took relatively few. To go to school meant going far from home. The first school in the area other than Keams Canyon was built in the 1930's. In recent years, when school building has gone on apace elsewhere, the moratorium on construction in the disputed territory has prevented more schools from being built there, so that Navajo children beyond third grade must leave their home area to be educated. Certainly among the older generation in District 4, and probably among the younger, the general level of education is below that for Navajos elsewhere and the median education for all Navajos is not more than five years (Navajo Manpower:6). This reduces the employability of the people of District 4 and other portions of the disputed territory even below that of Navajos in other areas where the level of education is higher.

Because of the moratorium on road-building in the area, there are fewer all-weather roads than elsewhere. Hence commuting to jobs is more difficult for people in this region. Finally, the moratorium on the building of roads, schools, clinics, hospitals, and commercial establishments results in far fewer jobs in the region than is characteristic in other areas where so many Navajos find employment in construction work and in staffing public and private facilities when they have been built. Less easily employed, with less jobs available nearby, and located relatively far from border towns in which some Navajos find employment, the people of District 4 necessarily depend more upon livestock than do Navajos in many other areas. Nevertheless, many people do seek and find jobs under arduous conditions: non-English speaking Navajos work on the railroad in the summer as far away as Oregon; winter and summer people work as migrant agricultural laborers; and men take jobs in Gallup, Winslow, and Flagstaff, travelling home as many weekends as possible. Many have left the district to take jobs in such cities as Phoenix, Los Angeles, San Francisco, Denver, Chicago and Dallas.

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The normal situation for a Navajo kin-group in District 4 is that a set of two or more related nuclear families (a nuclear family consists of a married couple or a once-married parent, and unmarried children if any) must stay together to survive. I will call such a unit of two or more nuclear families a cluster. It might contain an older couple or a widow or widower, and one or more married children, more often daughters than sons. One or more other children may have moved to a BIA center on the reservation or to an off-reservation city to take a job. During the year, one or more men normally resident in the cluster may work seasonally off-reservation. But there must be some men at home to haul water in barrels from wells and to cut and bring home firewood, and there must be some people to herd sheep. There may be welfare clients in the unit -- divorced or widowed women with dependent children, or intact families whose male heads are physically incapable of heavy labour, but who lack sufficient education to find other employment -- and it may be that one or more of the elderly people is entitled to Social Security. It takes a cluster to manage to make a living. Only thus can some people seek jobs, while others do the work at home, and only by pooling several sources of income-- livestock, wages, and welfare--can a bare sufficiency be achieved. Indeed, in 1969 median Navajo per capita income was $831.00 and median family income was $3,700.00. This compares with U.S. figures of $3,700.00 per capita and $9,794.00 per family for the same year. Furthermore, 27 per cent of consumption units (families or individuals living alone) received less than $1,000.00 per annum, and 41 per cent received less than $2,000.00 per annum (all figures based on unpublished preliminary analysis of 1970 census data by Gerald J. Boyle, Department of Economics, University of New Mexico). No family dares abandon any given source of income, since its total income from all sources is so low. Probably District 4 median income falls below the Navajo median.

A herd is usually maintained under the livestock permit of one member of the cluster, with the sheep and goats earmarked for the various family members, including those who are living in towns. These migrants forego the income from wool and lamb sales, and of course the meat from the herd, in exchange for the care it receives from their kinsmen. But for them, these

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earmarked sheep are their insurance, their minimal support if they become ill or lose their jobs and must return to the reservation. With children in school, some young people off the reservation for years, and many able-bodied on-reservation Navajos taking seasonal employment as they can find it, or Tribal works programs when these are available, herding falls especially into the hands of the elderly and those incapable of heavy work.

Some people have converted from sheep and goats to cattle; some have a few head of cattle, but mainly sheep and goats; and some hope to convert to cattle. The advantages of cattle over sheep are principally in labour costs. They are left to roam much of the time, whereas sheep require daily attention. The disadvantages are in terms of available meat. A family can kill and consume a sheep, goat, lamb or kid for day-to-day eating. Twenty such animals might be consumed by an average family during the year. To kill a calf or a cow, in the absence of refrigeration, is impossible for daily provender. I have known of almost no cases where cattle were slaughtered for consumption except for a large ceremony where many people had to be fed. (One cattle man has a freezer). Hence, for the elderly, cattle have few attractions. For young people with jobs in the area or elsewhere, cattle afford the promise of being able to manage some income from livestock while holding a job. In the absence of the present crisis, such conversions would undoubtedly have increased over time.

The Navajo habit of keeping goats, which have low market value except for mohair, is often regarding as uneconomical. It makes sense, however, in terms of Navajo use of herds for meat. By consuming young goats during the summer, at a time when the lambs are too small to kill or to sell, they manage both to eat meat and to keep the economically valuable lambs for fall sales.

The latest full figures I have for livestock holdings are for 1965. At that time, in District 4, there were 566 permittees among perhaps 9,000 or more people, or about 1 permit for every 15-16 people. In some clusters there was more than one permit, but whether there was one or several, each permit normally covered the livestock of several nuclear families. Thirty-eight per cent of permittees held 50 sheep units or less. (One sheep or goat equals 1 sheep unit; one cow equals 4 sheep units, one horse equals 5 sheep units). Sixty-eight per cent of permittees held less than 100 sheep units.

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Eighty-one per cent of permittees held less than 150 sheep units, and 88 per cent held less than 200. Yet in the 1950's it was commonly said that it took 275 head of sheep for a family (not a cluster) to make an adequate living from livestock. Only 7 per cent of permittees were operating at this level. Only 10 permittees held 400 units or more, the largest holder having between 750 - 800 units.. The median holding was between 51 and 100 units. At that time there were over 55,000 sheep units in District 4, although its 1943 estimated carrying capacity was a little under 24,000 sheep units. Thus it was more than 100 per cent overgrazed, if that estimate is used. Since then, one gathers from information supplied by Senator Jackson's office, overgrazing has increased. But it is impossible to compare his figures, which include all of the disputed territory, with mine, which include only District 4, a portion of which lies outside the territory. The rise in total stocking in the disputed territory may have pushed median holdings in 1972 up a notch, to 101-150, but that can be only a rough guess. I have no adequate data on income in the 1960's, so that I cannot estimate per centage dependency on income from livestock from my field data. In a personal communication, Dr. Jerrold Levy informs me that in comparable areas of the reservation, he estimated that perhaps 40 per cent of income (including the value of animals consumed) comes from livestock. It should be noted that fully adequate data on this score are extremely hard to come by, and that various published figures are open to question, first because of their use of mean rather than median data, and second because of their failure to specify whether the value of livestock consumed is included.

There is no doubt the district is overgrazed. Figures in The Navajo Yearbook for 1961 indicate that if the 1943 carrying capacity is used as a measure, District 4 was overstocked in all years from 1952 to 1959, the percentage ranging from a low of 37 per cent to a high of 85 per cent, and that in most years it was the most overstocked district on the reservation, although topped from time to time by District 9, which falls outside the Executive Order territory. The only other District partially within the disputed area that was overstocked was District 2 (1955-1959), but by smaller amounts, whereas Districts 3 and 7, partly in the territory, were consistently understocked.

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It should be noted that at least in the 1950's ceilings set by livestock permits did carry weight with Navajos. Most regions were under-stocked during the period 1952 - 1959. The evident overstocking in a few districts during those years seems to me to result from the lack of alternative opportunities for farming and employment in those regions. Even though, in the 1950's no penalties were being invoked against non-compliance with the grazing regulations, Navajos in District 4 appeared to regard their permits as limiting their herd size, even if the limit was somewhere above permit level. Only one man ever told me that he regarded permits as a dead letter. In all cases a person running stock did so by virtue of his own or a relative's permit. The apparent increase in stocking since 1965 may result from:

(1) the fact that whereas more and more jobs become available in other regions, this does not occur in the disputed territory, and

(2) the confusion and bitterness that results from anxiety over displacement from the area.

The range in District 4 has been affected in other ways by the conflict over the Executive Order area. In Districts 10, 11 and 14, funds have been made available for major range improvement. This includes chaining, reseeding, fencing, and the building of plastic catchment basins to provide stock water within the resulting improved pasture area. Within such a fenced area, livestock need not be moved so far to water; they tread out less forage; and they do not damage neighbours' forage en route to remote water sources when sources closer at hand fail. Yields can be raised three to 300 fold. When such an improvement has been undertaken, "conservation permits" are issued, permitting families to have livestock over and above their normal permits, given the better quality of the pasture, so long as they maintain the forage by appropriately conservative practices. Much of District 4 could be improved 300 fold, according to the range expert from the Chinle Agency whom I talked with in the 1960's.

I have pointed out in my "Plan for Navajo Economic Development" (Aberle 1969) that this program has hazards, in that a family with fenced pasture is likely to regard this as its own property, although the reservation is not allotted. Thus the program has implications for de facto allotment

and heirship that have not been discussed with the Navajos, and these implications will soon be evident when the time comes to divide such an improved pasture among the many heirs likely to arise, given present Navajo fecundity. Hence I cannot recommend this program without qualifications. The point is that in District 4 and other parts of the Executive Order territory, no such improvements have been undertaken because of the general moratorium on improvements in the area. Thus people distant from jobs, under-supplied with roads, and climatically handicapped in farming have pressed hard on the major asset obviously available to them, overgrazing their area, while in other areas the range has been improved by Government intervention and with Navajo cooperation.

In some ways the best statement of the vise in which the people are caught was provided to me in 1950 by an old leader from District 4. Asking me to express his objections to livestock reduction to the BIA and pleading for a return of unrestricted grazing, he said, "The Area Director tells us to forget about stock, to look ahead and not back, to plan for the future and not quarrel about the past" (i.e., the role of the BIA in reducing livestock). The time to look ahead was years ago. Before they took away the stock, why did they not educate us; why were no other ways of making a living created? Now the stock are gone. What are we to do?"

What they did was to nudge the herds up, little by little, over the past 24 years -- although the variability from year to year is high, depending on drought, wool prices, lamb prices, etc. But even so, except for a few large owners, livestock, although essential for livelihood, provides only a fraction of what the people need. Taken together with all other sources, it leaves most of them below the poverty line. Few people in this area can be regarded as prosperous stockmen by Navajo or other standards.

b. The non-economic significance of livestock. Navajos believe that sheep were a gift from the Holy People (Navajo supernaturals). Many believe that when they reduced their herds, the Holy People thought that they no longer cared about the gift, and so they took away the rain. Sheep, say the Navajo, are what we know, and we learned it from the sheep. For older

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people the idea of no longer herding, for example because of conversion to cattle, is unthinkable. It makes them useless, their knowledge and labour no longer needed. This is particularly true for older women, since men alone manage the cattle.

c. Strip-mining and range improvement. The situation in portions of District 4 and District 8 is complicated by the Peabody Coat strip-mining operation, one of the largest in the world, it is said. Peabody Coal has promised to restore the range. How rapidly they will act I do not know. My information is that it will take about 4 years to restore a given tract, once restoration efforts begin. This includes contouring, the planting of one type of cover for preliminary restoration, and the subsequent planting of forage crops for complete restoration. No grazing should occur while restoration is going on. As things stand, Navajos in the strip-mining area have had to remove their flocks; there will be additional removals as the mining continues; the result is crowding in the region; and restoration is some years ahead. Hence, in one of the most overgrazed areas of Navajoland, the available forage is reduced and will be further reduced for some years because of the mining operation.

d. Consequences of the court decision requiring more than 90 per cent reduction, and of the plan for management. It appears to me that the reduction and the plan for management proposed by the Federal Government must create hardship, confusion, and bitterness directed at both the Bureau and the Hopi. First, in some respects, the implications of the plan are not clear. Who will pay for the expenses of keeping sheep in dry feed lots? Will there be any income to accrue to the Navajos from the livestock in those lots? Will animals in the lots be bred, or only sold? Without clear explanation, the plan can only confuse and alarm Navajos in the region. Since I do not know the answers, I cannot tell what balance of damage and benefit to Navajos may result.

Second, the proposal for allotments raises problems. I have collected genealogies from several large kin-groups in District 4. My findings may not be universally applicable, but long-standing occupancy of present use areas is characteristic. There is a direct line from an early occupant of the area (usually female) to grandchildren or great-grandchildren (usually in the female line) now living in a portion of the same area. It would be terribly disturbing for those with long-established use-rights in an area to have to accept other occupants or to be relocated. They are familiar

with the area and its potentialities, they love their own area, and there is a religious element in their attachment. Where one's navel cord is buried, there one's mind always returns, and there one's good fortune is. Allotment that involves relocation or reduction of use area cannot but result in strongly negative reactions.

Third, fixed allotments that must be formally subdivided in future generations will create problems of viable holdings, a problem further discussed elsewhere.

Over a period of ten to twenty years, it might well be possible to plan, prepare for, educate for, and execute a range improvement program like that in Districts 11 and 14, but the one-year proposal for reduction, immediately followed by allotment, seems bound to create great resistance. A program of improvement and eventually larger holdings would have appeal if it had credibility. A program of reduction can only disturb these impoverished people.

4. Possible Conflict and its Forms. It seems to me that the quality of prediction in social science is insufficient to cope with these questions. If there is anything apparent from the past few years of American history, it is that people who say they will be violent sometimes are not, and that people whom we do not expect to be violent on a particular occasion sometimes are. The term itself invites vagueness and confusion. Does it apply to fistfights such as break out in bars, at rodeos, and when people provoke each other sufficiently, to physical attacks on police, to physical attacks of police, using either "necessary" or "unnecessary" force, to organized attacks, to spontaneous melees, to all of these? How can a prediction be made when one does not know how the police or other government agents may behave on a particular occasion? Furthermore, the answer to the question is subject to abuse. If someone with knowledge of Navajos says that there will be violence, he may be accused of blackmail by Hopi protagonists and of libel by Navajos. If he says there will not be violence, Navajos may say that he is providing encouragement for a plan that has serious defects, and Hopis may say that he is distorting the picture. During livestock reduction there were threats of violence but surprisingly few acts, if we consider that a population of 45-60,000 Navajos was suddenly deprived of much of its principal source of livelihood. Nevertheless, one District Supervisor was kidnapped and threatened with death. It seems unlikely that

during and after the execution of either the livestock reduction plan or the relocation plan or both, there will be no physical encounters whatsoever between Navajos and Hopis or agents of government, but the size, severity, and duration of encounters cannot be foreseen. A survey reported by Dr. Annie Wauneka is the only source of data on current attitudes. It reports that some Navajos in the Executive Order Territory are prepared to resist relocation physically. This does not seem to provide sufficient information for any specific predictions. There seems to be no particular reason to believe that under severe pressure Navajos will be more, or less, violent than the general U.S. population, or that law and order forces in charge of them will be more or less violent than the national average for police forces.

5. Hopi motives. My information on this score is second hand and inferential. It appears that a fair number of Hopis believe that, because they have been unable to use any portion of the Executive Order territory except District 6 since the 1930's and relatively little outside that area before then, they have been unable to expand their livestock holdings as much as they would like and have been forced into the job market more than they desire. (They were, however, in a better position than Navajos to seek employment by reason of a higher average level of education.) Their wish to expand is probably partly the result of their own increase in population, which, although slower than that of the Navajos, results in pressure on their resources by comparison with earlier decades. Hence, if the Executive Order of 1882 declared that certain lands were theirs, and if they were excluded from these lands, they attempted to regain them. What their interest is in the mineral wealth of the area I am unable to say.

As to whether "many Hopi would actually settle in the joint use area" given that most "good spots" are occupied by the Navajo, this question cannot be answered without knowing what is going to be done with the Navajo. Given existing technology, rainfall, groundwater, and forage, the area is more than fully occupied. It is difficult to imagine Hopi families moving on to half of a current Navajo kin-group's use area without problems.

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On such issues as Hopi desire for revenge or feelings of being hemmed in, I have no information save the testimony in the Senate Hearings of 1972. At points some Hopi comments seem to reflect a desire for revenge, and they express feelings of being hemmed in. How widespread or important such views may be, I do not know.

6. Navajo views. I know the views of some of the people in District 4. Most of my informants on the subject are from the northern part of District 4 -- 10 miles north of Pinon and beyond. Let me begin with Navajo views on property and on water. The Navajo view of land, range, and water is that they are divine gifts, which cannot be owned in the sense that we think of ownership. Navajos are amused by the term "range manager", which, translated into Navajo, would convey the idea of "the one in charge of the range". No human can properly be in charge of the range because it is a divine gift and not a humanly owned item. One can be in charge of one's own automobile, but not of the range. There is, however, such a thing as the right to use an area. If one were to abandon such an area, it would be available for use by some one else. In an earlier age, if a family were herding in a given area, and if another family came along and said it wanted to camp nearby, nothing could be done about it. But in those days, people could move on if they wished, and they did in response to crowding. Nevertheless, the word "nomadic" is not well-applied to the Navajo. For more than 400 years they have been building hogans (round or polygonal log or stone dwellings), and a hogan involves a considerable expenditure of time and effort. A family might have two or more hogan sites to use in different seasons, as well as use brush shelters or (more currently) tents during the summer, so as to circulate the sheep from one forage area to another, a practice still followed by many but becoming increasingly difficult as population grows. After Fort Sumner there was a good deal of movement, since some people had been expelled from territories to the east and had to find new locations, and since some were seeking relatives who had not gone into Fort Sumner.

Another factor leading to longer movements in earlier days was the shortage of water, which is now more plentiful as a result of Government and Tribal development of wells, wind mills and pumps. Some families

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moved as far as from Black Mountain to Tuba City in earlier times, principally as a result of water shortages, and then moved back at a later season. Some moves of this sort, of course, led to resettlement. (Downs 1971: esp. 42-94 and Downs 1964 are the best treatments of Navajo livestock and farming practices, although I disagree with his treatment of Navajos as "semi-nomadic".) In spacious times, crowding in one area undoubtedly led to movement of some family's to new areas. But more characteristic was a family's annual "beat". Many circumstances led to the building of new hogans and the abandonment of old ones, but this, too, does not fit the pattern of freely wandering nomads. Marriages, increased family size, the decision to add a spring or a fall camp to the annual cycle of moves, could all result in new dwellings. A death in a hogan resulted in its abandonment and the building of a new hogan at some distance from the old. Furthermore, every few years a hogan should be rebuilt, and often moved in the process, because its bottom beams have deteriorated, and because it may have become infested with insects.

These hogan sites are all over the area used by the kin-group, and are common near its borders. If a family's rights are questioned by a neighbour, the members point to the old hogans they once occupied. The resources as such are owned by no one, but use rights to portions of those resources exist and hogan sites, past and present, justify claims. Furthermore, these use rights are hereditary. Normally they pass in the female line, from mother to daughters, but sometimes they pass from mother's brother or mother's mother's brother to sister's son (both of which, like mother-daughter transmission, involve matrilineal inheritance) or even from father to son. The circumstances that lead to these diverse forms of inheritance are not yet fully understood (cf. Aberle 1961,1963).

I have already said that a person's navel cord is buried near where he is born and is believed to attach him mystically to that place. In the case of a son, he normally moves to live with his wife and her family, but he has rights to return home as a divorcé or widower, and then, if he remarries, may sometimes bring his wife to live on the land. Similarly, a widowed woman with no daughters to care for her may ask a son to move back to live with her, bringing his wife. Hence no neat picture of clan ownership of land emerges, yet people will say "This is Salt Clan" or "Bitter Water Clan" land. In the northern part of District 4, numerous families live where their grandparents lived immediately after the return from

Fort Sumner, and apparently before the establishment of the Executive Order territory. It is incomprehensible to them that this land is not theirs to use in perpetuity.

Water is precious. Sheep should be watered at least once a day, and they die when there is a water shortage. During the summer, wells, springs, and charcos may dry up. Traditionally, Navajos did not regard stock water sources as privately owned. The present situation is fairly complex, and I cannot provide a definitive statement (see Downs 1965 for a discussion of some of the complexities). Water sources developed or improved by the BIA or the Tribe are available to all. Unimproved water sources are also regarded as public. Water sources improved by a given kin group are regarded as controlled by that group. In theory, one should seek permission to use water that lies in another person's use right area. The land immediately around a water source developed or improved by the Government or the Tribe is not normally part of any kin group's use area. But if a kin group is in one part of its use area and there is water in another, it is sometimes used by neighbors without consultation -- although there might later be some objections. If one group is short of water and there is water in the territory of another, permission may be sought, and it is difficult to refuse it. Sometimes permission is not sought and trouble ensues. Outcomes are variable, depending on how great and how general the water shortage is. Movement of a herd into, or across another kin group's territory to seek water is not welcome because it will tread out forage and graze as it moves and use up forage, because it uses scarce water, and because sometimes the herds of host and guest become mixed, which means hours of hard work to separate them. Yet the host does not like to resist because he may later be short of water and have to seek favors from others. I do not know how Navajos regard water in the Hopi country, but it is conceivable that they regard developed water as they do Government and Tribal wells and windmills in their own territory: to be used as needed. How the Hopi feel about Navajo water or Navajo use of Hopi water I do not know. No family with which I have worked is immediately adjacent to District 6.

A customary use area of a single kin group normally includes herding territory, accessible firewood, and acess to sources for domestic

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and stock water, either on the territory or adjacent to it in an area not controlled by any single kin group -- as in the case of a government well. As kin groups grow, they divide, and the use area is gradually divided as well. In most cases, a customary use area is controlled by a unit larger than a nuclear family, whether by a cluster or by a set of related clusters (cf. Witherspoon 1970).

To summarize: the people of District 4 known to me believe that they have permanent use-rights, severable only by their own abandonment of the area, in the land they presently use, and right of access to water on the land of others (under some conditions) and to water developed by the BIA and Tribe, when their own local water resources are insufficient.

They know that Healing v. Jones resulted in a decision that the Hopi have claims in the area. I last discussed the matter in 1968, and much has happened since then to provide them with new information and new views. They did not regard the Hopi claim as legitimate, and they were disturbed by it. They were well aware of their own prolonged occupancy of the area. It was nevertheless the view of some that a solution to the problems posed by Healing v. Jones could be worked out by local Navajos and Hopis, in the absence of the attorneys and Tribal Councils of both tribes, but I do not know how widespread this sentiment was, nor whether it survives. They did not expect so drastic a solution as that proposed by H.R. 11128.

The entire disputed territory is entirely staked out in Navajo customary use areas, so far as I know. Perhaps this is the point at which the general question of length of Navajo occupancy should be discussed. The following figures for the Navajo population of the Executive Order territory are available to me.

Year	Number	Source
1882	300	1972 Hearings: 28; Healing v. Jones: 145
1888	5 - 600 +	1972 Hearings: 74
1900	1826	Healing v. Jones: 145
1911	2000	Healing v. Jones: 145

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Year	Number	Source
1920	25-2700	Healing v. Jones: 145
1930	3300	1972 Hearings: 28
1930	3319	Healing v. Jones: 145
1936	4000 ±	Healing v. Jones: 145
1940	4000 +	Healing v. Jones: 160
1951	6000	Healing v. Jones: 145,168
1958	8800 +	1972 Hearings: 28: Healing v. Jones: 145
1970	8743	1972 Hearings: 192

Almost all of these figures must be regarded as approximate. I have plotted them on a graph adjacent to the graph for total population growth found in Aberle (1967: 358; base data on 362), adding an estimate for total Navajo population in 1972. Between 1900 and 1951, the growth rate for the Navajos in the disputed territory is identical with that for the general Navajo population. (This statement rests on ignoring the 1936 figures of approximately 4000 in favor of the 1940 figure of 4000 or more. The 1936 figure introduces a slight acceleration in growth, but this is cancelled by the 1940 figure.) For the period after 1951, the figures contain major inconsistencies: 8800 for 1958, 8743 for 1970. If the former figure is used, the growth rate accelerated sharply after 1951; if the latter is used, the growth rate slowed down markedly after 1951 -- in both cases by comparison with the general Navajo rate. U.S. Census figures ordinarily fall below BIA counts. Hence the 1970 figure may be somewhat low, but the 1958 estimate would appear to be quite high. Given the conflict of estimates, it seems likely that between 1951 and 1970 the growth rate continued to be similar to that for the general Navajo population. By extrapolation, a figure for 1958 consonant with general growth rates would be 7500, rather than 8800, and a figure for 1970 would be 10,500 rather than 8800.

If we turn to the years prior to 1900, a rate of increase from 300 in 1882 to 5-600 in 1888 to 1826 in 1900 would be much more rapid than that for the total population. But if we extrapolate from 1900 to 1882, an original figure of only 1000 would supply a growth rate between those dates

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equivalent to that for the general Navajo population.

Given the uncertainties posed by some of these figures and the lack of an adequate count in the early years, they afford no basis for the assertion that large numbers of Navajos migrated into the disputed area after 1882. It is at least as likely that population increase in the area since 1882 is the result of normal reproduction, with immigration and emigration balancing out. My field work and the historical record support this view.

The families I know are almost all descendants in at least one line, and often in most or all lines of people who either lived in the area before the tribal captivity at Fort Sumner (1864-1868) and moved back immediately thereafter, or moved in immediately after Fort Sumner. People can trace themselves back at least as far as the grandparents of the oldest living generation. Indeed, nicknames of some of those grandparents are used to designate the places where the grandparents once lived and where some of their grandchildren still live. It is interesting to note that as early as 1863, Kit Carson referred to the Hopi as surrounded by Navajos (Kelly 1970:60). The evidence available does not point to large scale immigration into the disputed territory after 1882.

Incidentally, two informants spontaneously mentioned the allotments that occurred in 1909-1911 but were never brought to finality (cf. Healing v. Jones: 149-150). Unfortunately I did not understand the significance of these allotments and did not inquire further on a systematic basis. In Healing v. Jones (loc. cit.) it is stated that 300 Navajos were given preliminary approval for allotments in those years. When it is noted that the population estimate for 1911 was 2000 and that a Navajo family is usually estimated to consist of an average of 5.5 individuals, it seems likely that at least 1650 people in 1911 were covered by allotments, or more than 80 per cent of the estimated population, since family heads would normally apply on behalf of the entire family.

7. The Question of Partition. The present situation arises from defective decisions of the past, which make a satisfactory solution to the conflict difficult to find.

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1. When the Navajo reservation was initially established in 1868, it was too small for the tribe. Neither the Navajos nor their administrators knew precisely where the boundaries were. Furthermore, the Navajos were cut off by law and by settler pressure from territories to the east of the reservation that they had once occupied. They spilled over their boundaries from the beginning and were repeatedly confirmed in their holdings, until they encountered settler pressure in all directions. Along with the Pueblos, they were among the few tribes in all of the United States whose preconquest techniques of subsistence enabled them to wrest a living from the land and to support themselves after conquest. The Navajos should be seen by the Government as an outstanding success -- a people who managed to be fruitful and multiply with little recourse to Government rations, by means of farming and herding. It shows what other conquered tribes might have done with a sufficient land base to permit them to utilize their pre-conquest technology. Nevertheless, with an expanding population, with herding the obvious way to enhance livelihood, and with a reservation that could not keep pace with population growth, they began to crowd their resources. Warnings were issued to the BIA by its agents as early as the 1880's, but nothing was done about range control until the 1930's. Whether the Navajos occupied much of the present Executive Order territory prior to 1863, when Carson's campaign began, returning to it after 1868, or occupied much of it for the first time after 1868 and before 1882, or drifted in mostly after 1882, they were following a natural path: to expand herds by using as much land as was available to them. Only a program of range development, stock control, stock water development, and stock improvement could have kept them out of the area and averted their passing critical density and beginning a process of range degradation.

2. The actual boundaries of the Hopi reservation appear to have been established precipitately and without detailed reference to actual Hopi patterns of use of land within the area (cf. Healing v. Jones: 136-137, esp. those matters pertaining to the actions of Agent Fleming, the Commissioner of Indian Affairs, the Secretary of Interior and the President). The primary reason for the rush was non-Indian intruders and Fleming's threat of resignation. Prior recommendations of others had considered a reservation jointly available to Hopia and Navajos; yet the final decision plainly

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did not take the Navajos into account. That it did not is clear; why it did not, is not. The entire disregard of Navajos resident in the area at the time is open to criticism.

3. Once the reservation was established, the Government took no effective steps to protect Hopi rights, while consistently neglecting the resident Navajos, nor did it attempt to induce better range management by either group until, in the 1930's, under the administration of Commissioner John Collier, there was a de facto administrative exclusion of the Hopi from all of the Executive Order territory except District 6, whose boundaries varied somewhat over the years. This was as arbitrary as the prior acts. Livestock reduction followed for both tribes. It was sudden, badly planned, drastic, and in the early years relatively ineffective (see Aberle 1961: 52-90 for details on Navajo livestock reduction and control).

4. For reasons already discussed, both groups have pressed on their resources. The Hopi want more; the Navajo cannot see how to give up what they have, for lack of alternatives. Now a solution is sought, and one is hoped for that will not cause anguish to one or both groups.

As to the principles of partition, if there is to be partition, it is difficult to determine the equities. The following questions, which suggest different modes of partition, come to mind. (1) Should the division provide for a split of approximately equal area within the disputed territory, a split of approximately equal carrying capacity?
(2) Should the split be made with due regard for a line that would require movement of the fewest Navajos or irrespective of such considerations?
(3) Should the division include subsurface rights? If so, how can equality of subsurface potential be realized?

It is evident that if partition occurs, fencing is implied, since livestock do not recognize boundaries, so that straying stock would be a constant provocation. A fence implies an access road and continuous inspection by Hopi and Navajo agents, jointly or separately, since breaks in fences caused by human agents and natural forces are a general problem in ranching, whether among Indians or Whites.

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To go beyond that and to create two Berlin-walled communities seems unusual. So far as I am aware, reservations are ordinarily available for access to non-members of the tribe in question, except for cause, an issue that arose recently in the unsuccessful effort of the Navajo Tribal Council to exclude Theodore Mitchell from the Navajo Reservation. It is hard to see what legal process could be invoked to prevent Hopis from travelling across the Navajo Reservation, or vice-versa. It is possible that the ill-will engendered by recent events and the proposed partition might lead to harassment for members of either tribe on the lands of the other, but how severe, or how long-continued such reactions might be cannot be foretold. If indeed the two tribes are not to travel across one another's land, what is the status of the roads that form some of the boundaries of the proposed partition under the Steiger bill as now drawn? Are Hopis who want to go to Winslow or Holbrook, areas in which some town-dwelling Hopis live, in which many Hopis shop, and where Hopis seek employment, to travel there by way of Tuba City, Cameron and Flagstaff? Otherwise they must necessarily travel across Navajo country. Navajos from District 4 also travel to Winslow and Holbrook. In good weather they take the road from Pinon to Second Mesa or from Low Mountain south to the road that runs from Highway 264 via Indian Wells to US 40. Are they now to travel nearly to Chinle and then south to Highway 264? They also travel west to Tuba City, normally by going to Second Mesa and thence west on Highway 264. Must they now take the longer road via Kayenta, and if so, what happens when they come to the point at which the proposed Hopi domain crosses Highway 164? What road can Navajos on the northern edge of Black Mesa use to get to a highway? It would appear that for either Hopis or Navajos to have to forego travel across one another's territories would create hardships.

I turn now to the question of Indian participation in a solution to present problems. A review of the history of any American Indian tribe indicates that Federal authorities make decisions repeatedly without adequate information about the situation, without sufficient information about the views of those most affected, and without significant participation of those most affected. I favor a tribe's controlling its own economy and polity to the maximum possible degree (cf. Aberle 1969) and having a maximum role in decisions affecting it.

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In the present instance, there are at least 6 and possibly 7 parties to the dispute: (1) the Hopi Tribal Council; (2) the Navajo Tribal Council; (3) the Hopi attorney; (4) the Navajo attorneys; (5) the Hopi people; (6) the Navajos resident in the Executive Order territory; (7) possibly the rest of the Navajos. The interests of all parties on the Hopi side are not necessarily identical, nor the interests of all parties on the Navajo side, but it is difficult to disentangle them. Nevertheless, many Navajos in the disputed territory told me that if they could negotiate with the Hopis in the absence of both Tribal Councils and attorneys for both Tribes, they could arrive at an agreement. I do not know if this is true, not have they said what the nature of such an agreement would be. That was in the 1960's. Dr. Wauneka's survey suggests that positions have hardened since then. It would be well at this point for Congress to hear Hopi witnesses other than members of the Council and applicants for stock permits, and Navajo witnesses resident in the area. If indications of a willingness to make concessions on both sides emerge, one could urge a movement toward negotiations. During the Senate Hearing of 1972, a Hopi remarked that self-determination is a matter of the internal affairs of the tribes, not of their relations with other tribes (p. 150). He is correct. One may ask, however, whether the solution to the land dispute must be externally imposed on both groups, or might be negotiated between them within a framework set by Federal legislation. In the next section I suggest alternative solutions, but I wish here to emphasize that the draft bill submitted by Mr. Schifter, attorney to the Navajos, is a proposal for negotiation with one signal virtue. During the preliminary phases, those Navajos most affected by the present problem, on the one hand, and the Hopi on the other, would form two of three sections of a group charged with planning a solution or alternative solutions, with the third section comprising impartial individuals. This is the only proposal so far put forward that provides both a possibility of a solution not imposed externally, and a framework for Indian participation. To summarize: if there is to be partition, fencing and patrolling of the fences is required. A full segregation of the groups,

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with no access of either to the other's roads, seems unworkable and perhaps illegal. Indian participation in the final decision, and a solution negotiated rather than dictated, seem highly desirable.

8. What Should Congress Do?

a. Underlying Attitudes. It would seem essential for any solution to the present problem that Congress should accept the fact that the U.S. Government is to an important degree responsible for the tangle and hence has obligations to both parties to the dispute. In addition, it is vital that a generous, rather than a grudging attitude be taken toward both tribes. In 1973, as always in the past, American Indians are at the very bottom among U.S. ethnic groups as respects income, education, housing, and employment rate. It is understandable that the two Tribes would struggle over land given that their incomes are so low and are gained to a significant degree by farming and herding. It is understandable, too, that they are fighting over land, given that they prefer to remain in familiar areas, with familiar friends and kin, able to carry on their religious and social practices, but are being forced off the reservations by economic pressures.

The Steiger bill takes fully into account the Hopi perspective on the Executive Order territory. It is indeed excessively generous in the territory to the west, where such a large slice of land normally occupied by Navajos is attached to a division of territory involving two small Hopi communities. Both the bill and some of the comments in Healing v. Jones fail to show a similar generous outlook toward Navajos. Navajo resistance to the U.S. Government prior to Fort Sumner seems now to be used as a basis for a punitive attitude toward contemporary Navajos, as if to resist conquest is evil. It is often said that the Navajos were chastised by Kit Carson in 1863 because they raided Mexicans, yet the testimony at the time indicated that Navajos were at least as often raided as raiding, and that their children and they were enslaved in large numbers by the Mexicans, against whom the U.S. Government did not protect them (Lipps 1909: esp. 103, 105, 107-110, 115, 118). Defense of Navajo conduct in the mid-nineteenth century, however, should not be necessary in considering their plight in the third quarter of the twentieth century.

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Another basis for a punitive attitude found in the documents mentioned seems to involve the assumption that Navajos moved into the area in willful transgression of law, whereas most of them appear to be the descendants of people who moved in a hundred or more years ago.

The appropriate attitude toward Navajos in the disputed territory or west of there, where the issue of Moenkopi and Moenave must be settled, is one of concern to help them cope with their current problems.

b. Alternative Solutions. I shall address myself here primarily to the disputed territory. It is my present opinion that Navajos and Hopis cannot use it jointly, but this may be a bad prophecy. I see three equitable solutions. Both groups have rights to the land; there is not sufficient room for both to enjoy it. If a solution is to be imposed either (1) land must be purchased for Navajos who will be removed from a portion of the disputed territory, and Hopis must be permitted to use that portion of the territory, or (2) land must be purchased for the Hopis and they must be given access to it, while the Navajos presently in the disputed territory remain there.

The Steiger bill adopts the first solution, but its provisions are inadequate in several respects. The consensus of witnesses is that the funds to be allocated will not purchase an adequate amount of land. There is no specific plan as to whether the land will be bought in small or large packages, nor where it will be bought. Relocation of this group requires a large contiguous land area, so that kin and friends may remain together. No land will be purchased unless a majority of people in the area vote for purchase, yet many Navajos may feel that by not voting, or by voting against purchase, they may be able to remain where they are. There is thus a high risk that they will finish up being shoved on to existing reservation land, which would be a disaster. There is no provision for the development of all of the amenities now so sadly lacking in the disputed territory, the absence of which contributes to the economic problems of the local Navajos. Budget is needed for roads, schools, health services, electrification, gas lines, and range improvement, all of which are to be found in other parts of Navajo land. The relocation of Navajos cannot, in my opinion, be carried on either equitably or justly unless there is an extension to the reservation, the location of which is known to the local people (who should be consulted as to alternatives) and unless that extension is adequately and swiftly developed. The dis-

advantage of this plan, even under optimal conditions, is the misery that forced relocation will cause Navajos variously estimated at 6600 to 9000 individuals.

A second possibility does not seem to have been considered. It is to extinguish Hopi surface rights in the disputed territory, but to make available to them expension of their reservation elsewhere, provided with amenities like those proposed under the first solution. An area immediately south of the present Navajo reservation commends itself as a possibility. It is doubtful that Hopis would want to move on to this area in any numbers, but it is doubtful to me that they will want to move on to the disputed territory in any numbers. It would be available for development for cattle ranching or such other purposes as they now have in mind for the disputed territory. Subsurface rights to the disputed territory would remain divided equally between the two tribes, and the Hopi would have to be guaranteed rights of access to shrines and to fire wood in the disputed territory. The disadvantages of this plan are first that the area would be non-contiguous with District 6 and second that the Hopi would resent exclusion from an area awarded them by Executive Order and by the courts, even if equivalent territory were made available. The non-contiguity of the areas would be less significant, however, if Navajo discontent were minimized, and if, as I suspect, the Hopi want less to use the area residentially than to develop it for ranching or other purposes.

It is evident that the costs of the two plans are not equivalent, either in money or in misery. The development of a new reservation sector for the Hopi would cost less than to move Navajos out of the disputed territory, and it would not be attended by the psychological and social costs to Navajo relocatees.

It should be said that I do not consider myself totally unbiased as between the two tribes. Although I have tried to assess the situation as objectively as possible, my acquaintance with people in District 4 over a period of more than 20 years makes me keenly aware of the misery they are experiencing now because of stock reduction, and of the fresh misery that

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relocation would bring to them. It is only natural that those factors weigh more heavily on my mind than the undoubted blow it would cause the Hopi to receive some territory other than a sector of the disputed area. If I had spent nearly 25 years in close contact with the Hopi, perhaps I would see things differently. As it is, a plan that would provide each group with a somewhat better situation than either now has, but that would require no movement for either population, seems to me superior to a plan that requires one group to move in considerable numbers.

As for the western adjustment (with respect to Moenkopi and Moenave), I cannot be so explicit. There can be no thought of removing Hopi villagers from the area, but it is not clear to me why removal of Navajos should be regarded as so desirable a solution as it is in H.R. 11128. The size of the proposed Hopi section seems unduly large. Presumably it will afford them pasturage as well as a corridor. If an amicable solution can be reached, the corridor will become unimportant. The simplest solution in this region is to confirm the Hopi in their village sites and to fence these areas, to leave as many Navajos in situ as possible, and to provide for Hopi pasture needs in the proposed non-contiguous additional reservation proposed under alternative 2 above, with due allowance for the numbers involved.

If Navajos are to be relocated, in accordance with some modification of the Steiger bill, then the proposed addition to Navajo territory must be of a size to accommodate these relocatees as well.

Let me be clear: I am not recommending purchases of scattered lands for individual families, nor permanent allotments in the reservation expansions suggested. Until the future of Navajo and Hopi livestock management has been carefully considered, only "use right" assignments should occur in the new territories, lest future problems of fractional heirship and alienable Indian land arise.

A third solution is proposed, by the Navajos. More accurately, it is the framework for a solution. It has several advantages and only one defect. It appears on pp. 213-220 of the 1972 Hearings as a draft bill

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suggested by an attorney to the Navajo, Mr. Schifter. Its advantages are: (1) it proposes that the principal parties to negotiation be, in effect, Hopis and representatives of those Navajos immediately affected by the land problem, thus setting up a mechanism to reduce the parties to the conflict temporarily to two of the six or seven I mentioned; (2) it has a mechanism for avoiding deadlock; (3) the plans for arriving at a solution require an end to the process of deliberation within 2-1/2 years from the passage of the appropriate legislation; (4) its proposals for dealing with livestock problems seem sound. The disadvantages are that the sum proposed ($16,000,000.00) seems, for reasons already mentioned, to be insufficient, and that no plans or budget for the improvements necessary for new areas are provided. It affords the possibility of a solution that might, optimally, be jointly acceptable to many Navajos and Hopis, who would have had a share in working it out, and of a minimum of coercion.

In certain respects, it may be regarded as a compromise between the two plans I have proposed but one that might possibly be achieved with support from both groups. Hence, my ordered preference for solutions is: (1) the Navajo plan proposed by Mr. Schifter, on grounds that an agreed solution is better than an imposed solution (2) addition to Hopi territory outside the bounds of the present Navajo reservation and the disputed territory without removal of the Navajos, on grounds that it involves the least human misery of the possible imposed solutions; (3) Navajo removal, on grounds that although it hurts Navajos badly, it gives Hopis what the courts have awarded them.

All three plans have in common: (1) additions to the lands of at least one tribe; (2) a generous attitude toward acquisition of these lands on the part of Congress: (3) adequate development of new lands: (4) shared mineral rights in the disputed area for the two tribes.

No plan can be carried out properly unless something is done to ameliorate the effects of the sudden livestock reduction in the disputed territory. No plan should be featured by permanent allotments.

No plan should be carried out over a shorter span than ten years. Whoever remains in, or moves into the disputed territory, the moratorium on construction in the area must be lifted and it must "catch up" as respects schools, hospitals, roads, facilities, and range improvement.

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c. The question of allotments. Mention is made in the 1972 Hearings of allotments to Paiutes; I have mentioned fenced areas in connection with range improvement. With trivial exceptions, the Reservation is not allotted. The precedent of Paiute allotments and of fenced use areas may lead to pressure for allotment. But the effects of allotment are well-known, as a result of the implementation of the General Allotment Act of 1887 on other reservations. They are: fractionated heirship, the impossibility of Indians' working their own land and the necessity of leasing it to non-Indians, the transmission of land from trust-patent to fee-patent status and its subsequent loss to Indians, and a host of other ills. Hence allotment, de jure or de facto, is likely to create in less than a generation a new series of problems for Navajos and Hopis. The question therefore arises whether larger units of use could be developed within the disputed area, where the same range improvement plans I have described could be put into practice, but where herds would be managed in larger than familial units by stock cooperatives. Congress should encourage the systematic consideration of such plans by Indians.

d. Recapitulation. Any settlement that is to be effective must be based on acceptance by the U. S. Government of its responsibility for the present problem. It must also display generosity toward both sides and take into account the necessity to provide compensation for those Indians unable to use the Executive Order territory in the form of other, adequately developed and improved lands adjacent to the Navajo Reservation. The poverty to which both groups are reduced is sufficient warrant for this step, but given that the situation in which they find themselves is not of their making, due compensation for lands lost is essential. Regardless of the specific settlement, the disputed territory itself must now be freed for the building of roads, schools, hospitals, and commercial establishments, and must undergo range development. Additions to the reservation area of either or both groups should not be in the form of permanent allotments, which have proven such a disaster for other Indian groups. They should not, in any case, be individual purchases for individual Indian families, but should constitute additional reservation lands. The cost of the program suggested will undoubtedly exceed the $16,000,000.00 proposed in H.R. 11128.

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Three possible plans are put forward. One involves relocation for Navajos and additional lands for them. The second involves new lands for Hopis and no relocation of Navajos. Both are imposed solutions. The third involves negotiations primarily between representatives of the groups affected and might involve some new lands for both groups. From my perspective, the third plan is preferred above the second, and the second above the first. No solution can be effective that does not take into account the serious problems faced by Navajos now within the disputed territory.

The problem of settlement involving Moenkopi and Moenave is more difficult, and in the absence of more information, my comments are less specific. The third solution, however, is easily applicable to that region as well as to the disputed territory.

Finally, some action must be taken to alleviate the distress of Navajos in the disputed territory now subjected to a livestock reduction of more than 90 per cent.

9. Comments on the 1972 Hearings. I should like to comment on certain issues of fact and interpretation that were raised in the 1972 Hearings. Given the pressure of time, I shall take these issues up more or less in the order in which they are to be found in the Hearings. Some comments re-emphasize points made before.

pp. 38, 43, 49. It is assumed that new construction near the borders of District 6 represents movement into the area. Navajos in District 4, like Navajos elsewhere, now wish to upgrade their homes, usually through the Home Improvement Training Program: to substitute frame dwellings with concrete floors, or cinder block dwellings, for hogans. It is possible that the location of new construction is an effort to emphasize Navajo claims, but without inquiry as to the origins of the builders and their immediately preceding home sites, the assertions made have no clear basis in fact.

pp. 44, 62. The history of livestock reduction is not well presented. Probably the fullest history presently available is in Aberle 1967: 52 - 79. Three years of percentage reduction (1933-35 inclusive), which caused hardship to small holders without bringing about any significant over-all decrease in livestock, were followed by reduction and control from 1937 to 1948, at which point the Tribal attorney succeeded in making the Secretary of the Interior agree that the regulations in effect were

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actually illegal. Notwithstanding, the Tribe did not cancel the permit system or abandon efforts to control livestock, and the Tribe formulated its own grazing regulations by 1956. Livestock numbers declined from 1936 to 1952, rising gradually thereafter. In 1959, however, total mature sheep units stood at less than half the pre-reduction figures. Unfortunately I have no up-to-date livestock census. At any rate, it is not accurate to say that the "administration, after having tried for 4 years or thereabouts to reduce grazing... just simply gave up ..." (Hearings 1972: 44). Navajos never did all that the Bureau wanted, but they never did all that they wanted, either. By 1959, per capita mature livestock holdings were 20 per cent of 1930 figures, through reduction and control of livestock on the one hand, and population growth on the other. The sufferings of the Navajo were not confined to 4 years, nor were either Government or Tribal efforts at reduction and control limited to that period.

p. 46 - 47. It is pointed out as an instance of Bureau laxity that a permittee could graze anywhere in his district. The fact is that grazing was in general confined to customary use areas, but in the absence of stock water resources, confinement of a flock to one specific area was impossible, for reasons discussed elsewhere. It is not true to say that the Bureau made no efforts at control. Efforts were going on in District 4 in the mid-1960's, and with some success, but for reasons mentioned earlier, this was one of the most difficult areas to control because of the lack of economic alternatives in that region. I do not know what happened in 1969 and following.

p. 48. It is asked whether there is a high percentage of people on relief in the disputed territory. What is not made clear is that there is a high percentage of Navajos on relief everywhere on the Reservation. To speak of this as "BIA welfare" is inaccurate. Navajos draw on the same welfare funds available to other citizens, with small emergency funds available from the Tribe. It would be worth knowing whether there is a higher percentage of indigents in the disputed territory than elsewhere, but no firm data are presented. It is a shame to the U.S. Government that Indians are at the bottom of the scale by comparison with any other group of citizens as respects income, welfare dependency, housing, education, and rate of employment.

p. 49. It seems regrettable that at a point when the Steiger bill was apparently ready for enactment, no one knew how many Navajos would be relocated under its provisions.

p. 51. It is admitted that "We have no plan at this point as to where we would put the people ...." It is unconscionable to plan relocation under these circumstances. The provision to buy lands only if a majority of those to be moved opt for it means that if, in despair, the Navajos reject this proposal, thinking thereby to avoid relocation, they will lose their only possible recourse.

p. 52. As elsewhere in the 1972 Hearings, it is admitted that the funds are inadequate to purchase land for relocatees. On the same page, the question is raised as to why Navajos do not want to better their condition. It is disturbing to think of legislation enacted by people who do not understand the vise in which most Indians have been caught since conquest, a vise which has only tightened in recent years. See Jorgensen (1972:89-173) for a detailed explanation of the economic problem of Indians.

p. 57. An Interior witness lays Navajo overgrazing to "machismo". He does not understand how people with no reasonable alternative will crowd their resources. It was asserted in the 1930's that the Navajo resistance to livestock reduction centered on the status that accrued to a man with many horses -- many more than he needed. Yet it is notable that the only category of livestock that declined almost consistently from 1930 to 1959 was horses (Aberle 1967, loc. cit.). It is not machismo to want the better diet and higher income afforded by more livestock.

p. 74. It is asserted that only aged and handicapped Hopis are on relief. If that is true, it is good news. But if it is true, it should not be used to imply that Navajos are useless whereas Hopis are frugal and industrious. It would take too long to go into the history of Navajo education, but that history explains why the educational level of Navajos falls below that of Hopis, which makes them less employable. One salient fact is that between the end of World War II and about 1953, there were places for only 60 per cent of Navajo children in reservation schools. The Government neglected Navajo education, and the fruits are a high percentage of welfare clients.

p. 116. It is said that "Navajo tradition provides a very convenient way of acquiring property that does not belong to the Navajos. A person who establishes residence will raise a family, then each of his daughters at a very early age selects a mate bringing the man to the same area as her father and there raise their family. In this manner, all of the

new people who are brought in as husbands for the Navajo women and their children claim direct relationship to the original settler and assert the right to all the land they can use in the area." It is true that more Navajo men move to reside with their wives than women move to reside with their husbands. This is a common pattern in societies where descent is traced matrilineally (through the female line), as is characteristic for Navajos and Hopis. It is called matrilocal residence (residence of a couple with the wife's parents). A man who thus relocates does not claim relationship to the original settler, but not surprisingly his children, who are members of their mother's clan, claim rights in the territory she and her husband occupied. There is nothing more, or less convenient about this than the reverse -- where the women move in and their children claim land because it belongs to their fathers, as is characteristic in patrilineal, patrilocal societies. While some children of the original Navajo couple remain (ordinarily daughters) others move to their spouse's place (ordinarily sons). This provides no magic formula for claiming land. See Aberle 1961.

p. 239. It is stated that an interview with 184 families indicated that the average duration of occupancy by Navajos from the disputed area in the sample was 55-60 years. With every respect for Dr. Wauneka, who presented the data, and Mrs. DeGroat, who carried out the survey, it is impossible from the summary to be sure whether the question was asked in standardized form of each respondent. Some may have answered in terms of how long they had lived there (e.g., since birth), and others in terms of how long their ancestors had lived there. Furthermore, since some Navajos from the region have married out of the region and moved out, while others from outside have married in and moved in, it is possible that one member of a household would report recent occupancy, whereas another had resided in the area since birth and had ancestors living there. I would consequently regard the average years as a minimum figure until this issue was clarified.

Passim. It should be noted that among all the witnesses, exactly one (Donald Mose, Sr.) is a Navajo now residing in the disputed territory. It should also be noted that 73 out of 184 people queried in Dr. Wauneka's survey were in favor of negotiation of a settlement, or about

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40 per cent. This is something to work with.

This concludes my detailed comments on issues raised in the Hearings of 1972.

Respectfully yours,

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