

MAY 18 1964

Before the
INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,
THE HOPI TRIBE, ET AL. ,
Petitioners,

v.

THE UNITED STATES OF AMERICA,
Defendant

]

Docket No. 229

Docket No. 196

PROPOSED FINDINGS OF FACT
IN BEHALF OF THE NAVAJO TRIBE OF INDIANS
IN AREA OF HOPI OVERLAP (DOCKET NO. 196)

(Volume II)

Norman M. Littell
1826 Jefferson Place, N. W.
Washington, D. C. 20036

Leland O. Graham
1826 Jefferson Place, N. W.
Washington, D. C. 20036

Attorneys of Record for Petitioner,
The Navajo Tribe of Indians

Before the
INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,
THE HOPI TRIBE, ET AL.,
Petitioners,

Docket No. 229

Docket No. 196

v.

THE UNITED STATES OF AMERICA,
Defendant

PROPOSED FINDINGS OF FACT
IN BEHALF OF THE NAVAJO TRIBE OF INDIANS
IN AREA OF HOPI OVERLAP (DOCKET NO. 196)

(Volume I)

PRINTER'S NOTE

WE EXCEEDINGLY REGRET THAT DUE TO A MECHANICAL ACCIDENT IN ASSEMBLY, PAGES v AND vi OF THE FOLLOWING CONTENTS WERE PHYSICALLY INSERTED OUT OF SEQUENCE. THE READER MAY ASCERTAIN THE CORRECT CONTINUITY OF CONTENT OF ALL PAGES, HOWEVER, BY OBSERVING THIS ERROR.

UNITED PRINTING SERVICES

Corrected

11/12/74

CONTENTS

VOLUME I

	Page
INTRODUCTION	1
FINDING 1 - Party	3
FINDING 2 - Identification of Navajos	5
FINDING 3 - Navajo Population	11
FINDING 4 - Resume of Hopi History and Navajo-Hopi Contacts	27
FINDING 5 - Navajo Use and Occupancy of Hopi Overhap Area	71
A. Prehistoric Period	71
B. Spanish Period: To 1821	72
C. Mexican Period: 1821 - 1846	105
D. American Period: 1846 - 1862	142
E. Pre-Fort Sumner Period	222
F. Fort Sumner Period: 1863 - 1868	244
G. Post-Fort Sumner Period	277

VOLUME II

FINDING 6 - The "San Juan Band"	293
FINDING 7 - Navajo Captives and Slaves	303
A. Prior to American Occupation	303
B. After American Occupation	306
C. Conclusion	312

	Page
FINDING 8 - Other Causes and Provocations by Non-Navajos . .	315
A. Trespass and Encroachment - Prior to American Occupation	315
B. Acts of Bad Faith by Non-Navajos - Prior to American Occupation	318
C. Trespass and Encroachment - After American Occupation	319
D. Acts of Bad Faith by Non-Navajos - After American Occupation	322
E. Restitution and Reparations - Inequalities . .	325
F. Conclusion	326
FINDING 9 - Navajo Treaties	329
A. With Spain and Mexico	329
B. With the United States	334
C. Conclusion	360
FINDING 10 - Navajo Archaeology	363
A. Ethnic Identification of Navajo vs. Hopi Sites	366
1. Dwellings	375
Conical Dwellings	376
Domed Wickiup or Domed Willow Dwellings	377
Cribbed-Log, Vertical-Pole, and Dug-Out Dwellings	378
Circular Stone-Walled Dwellings	378
Gabled Dwellings	379

	Page
Rock Shelters; Caves	380
Tipi	381
2. Other Structures	381
Sweathouses	381
Antelope Corrals	384
Lamb Pens and Sheep Corrals	385
Vertical Looms, Smithies	386
Eagle Craggs or Traps	386
Windbreaks, Shelters, Ramadas, Lean-tos	387
3. Summary	388
B. Tree-Ring Dates From Navajo Archaeological Sites	389
1. Interpretation	389
2. Length of Occupancy	398
3. Areal Interpretation of Tree-Ring Dates	415
4. Suffix Symbols Used With Tree-Ring Dates	419
Bark Dates	419
"C" Dates	419
Gallery Dates	420
Bare Dates	421
Small "c" and "inc"	421
The Plus Symbol	422

	Page
5. Acceptance and Interpretation of Tree-Ring Dates by Archaeologists and Others	422
6. Defendant's Interpretation of Tree-Ring Dates From Navajo Sites	428
7. Navajo Use of Metal Axes	429
C. Dating by Typology	436
1. Hogan Floor Diameters	442
2. Hogan Ash Dump Distances	451
3. Sheep Corrals Contiguous to Hogans	455
4. Modified Forked-Pole Hogans	458
5. Four-Sided Cribbed-Log Hogan Plus Entry	463
6. Timbers Felled by Burning or With a Stone Ax	465
7. Defensive Structures	467
8. Antelope Corrals	469
D. Dating By Pottery, Trade Material and Tradition	472
1. Pottery	472
2. Trade Material	479
3. Tradition	492
E. Conclusion	509

	Page
FINDING 11 - Navajo Settlement Patterns, Place Names, and the "Flight Period" Theory	511
A. Navajo Settlement Patterns	511
B. Navajo Place Names	525
C. The "Flight Period" Theory	527

VOLUME III

FINDING 12 - Navajo Economy	533
A. Agriculture	533
B. Herding	572
C. Hunting	634
D. Gathering of Plants	657
1. Navajo Practices	657
2. Comparison of Navajo and Hopi Practices	682
3. Mescal	685
E. Conclusion	689
FINDING 13 - Significance of Sacred Places	691
FINDING 14 - Dominion and Control - Nature of Navajo Land Tenure	697
FINDING 15 - Conclusion	707

A P P E N D I X E S

- APPENDIX A-1 - Alphabetical Index of Navajo Place Names Relative to the Navajo-Hopi Overlap
- APPENDIX A-2 - Alphabetical List of English and Spanish Place Names (including those ordinarily anglicized from Indian names) Appearing in This Set of Proposed Findings of Facts
- APPENDIX B - Correlations of Tree-Ring Dates Obtained From 406 Navajo Sites With Other Data From the Sites
- APPENDIX C - Tabulation of Navajo Sites From Which Tree-Ring Dates Were Obtained Showing Sites Utilized in the Preparation of Defendant's Exhibits S-802 and Those Excluded From Defendant's Exhibits S-802, S-803, S-804, and S-805, Which Purport to "Point to the Overall Picture"
- APPENDIX D - Inconsistent Interpretations in Dating of Navajo Sites by Dr. Ellis and Mr. Schroeder
- APPENDIX E - Inconsistent Interpretations in Dating Navajo Occupancy of Subareas by Dr. Ellis and Mr. Schroeder
- APPENDIX F - Tree-Ring Dates 1868 or Before From Metal Ax Cut Timbers
- APPENDIX G - Chronological Correlation of 280 B, C, and G Tree-Ring Dates With 223 Bare and Plus Dates From Navajo Structures Within and West of the Navajo-Hopi Overlap
- APPENDIX H - Sacred Places Recognized by More Than One Tribe
- APPENDIX I - Tabulation of Navajo Archaeological-Type Structures for Sectors and Areas
- APPENDIX J - Comparative Data on Structural Types and Features: Navajo Structures vs. Those of Adjacent or Neighboring Tribes

FINDING 6

The "San Juan Band"

While some confusion exists in the early sources as to the identity of the "Yutas," "Utes," and "Paiutes," ^{1923/} there is no doubt that a group known today as the "Southern Paiutes" did exist, ^{1929/} and the "San Juan Band" has been included by some ethnographers in the Southern Paiute Tribe, ^{1930/} the fact is that the so-called "San Juan Band," some of whom lived in the northwestern corner of the Navajo Land Claim area, were absorbed and assimilated into the Navajo Tribe.

1923/ Navajo Ex. 658, Stewart, Culture Element Distributions: XVIII, Ute-Southern Paiute, p. 235; Navajo Ex. 686, ibid.; Def. Ex. G-17, ibid.; Def. Ex. E-189, ibid.; Navajo Ex. 799, Brugge, Translations of Documents in Spanish Relied Upon by Acoma, Laguna, and Defendant's Expert Witnesses, p. 40; Hopi Ex. 23b, Adams & Chavez, The Missions of New Mexico, 1776, p. 10; Hopi Ex. 24, Bolton, Pageant in the Wilderness, pp. 120, 228; Havasupai Ex. 36, ibid.; Def. Ex. G-26, ibid.; Def. Ex. 13, Docket 91 (Havasupai), ibid.; Hopi Ex. 41, Powell, Journal of Walter Clement Powell; Def. Ex. G-167, Commissioner to Smooth, Oct. 12, 1931; Def. Ex. 1, Docket 91 (Havasupai), Manners, Ethnohistorical Report on the Havasupai Indians, p. 136; Goodman, Tr. 2863.

1929/ Stewart, Tr. 1100-01, Dockets 88 & 330 (Southern Paiute).

1930/ Def. Ex. G-16, Kelly, Southern Paiute Bands; Def. Ex. G-47, Cook, Map Depicting Southern Paiute Bands; Def. Ex. G-48, Stewart, Map Depicting Southern Paiute Bands; Def. Ex. G-49, Stewart, Map Depicting Southern Paiute Bands, 1938; Def. Ex. G-50, Stewart, Map Depicting Southern Paiute Bands, 1937; Def. Ex. G-51, Driver, Southern Paiute Bands.

For a long period of time they have intermarried with Navajos, and have spoken Navajo. 1931/ They have long been acculturated into the Navajo way of life, and dress like Navajos. 1932/ This complete absorption of the band into the Navajo Tribe is recognized by the Southern Paiute Tribe itself, which claimed no exclusive use and occupancy of any land south of the Colorado River at any time material to this case. Its claim is for the area north and west of the Colorado River. 1933/

Experts' opinions are divided with respect to the priority of Navajo or Paiute occupancy in the area, some believing that the Navajos settled the area first, 1934/ and others that the Paiutes arrived first. 1935/ There was, however, close interaction between the Paiutes and the Navajos within this area, the Paiutes serving the Navajos as scouts in time of war, 1936/ and there is a branch of a Navajo clan that claims descent from the Paiutes. 1937/ Assimilation by the Navajos could have

1931/ Kluckhohn, Tr. 1202-03.

1932/ Stewart, Tr. 1129, Dockets 88 & 330 (Southern Paiute).

1933/ Def. Ex. G-168, Transcript, Docket 351, Indian Claims Commission, pp. 4-5.

1934/ Kluckhohn, Tr. 1042-43.

1935/ Kelly, supra note 1930; Stewart, Tr. 1127, Dockets 88 & 330 (Southern Paiute).

1936/ Stewart, supra note 1923 at 346; Sampson, Tr. 5409-10.

1937/ Brugge, Tr. 9514.

been achieved only through a long period of peaceful, willing, and accepted integration, which already may have begun before 1776. 1938/

The earliest indication of travellers through the region, by Escalante in 1776, mentions only Paiutes in the area. 1939/

In 1810 a Spanish report written in Santa Fe referred to "other Indians of the concept of Paiutes" ("otros Indios de concepto delos Payuchis"), who were found dispersed through the environs of Navajo, Ojo del Espiritu Santo, and Cerro de San Antonio, and who had gone to the plains to hunt bison in company with the Utes and Jicarillas. 1940/

1938/ Stewart, Tr. 1130-31, Dockets 88 & 330 (Southern Paiute).

1939/ Havasupai Ex. 39, Miera y Pacheco, Plano Geographico, de la tierra descubierta, nuebamente, a los Rumbos Norta Noroeste y Oeste, del Nuevo Mexico de marcada por mi Don Bernardo de Miera y Pacheco a que entro a hacer su descubriniente, en compania de los BR^S PPS^S Fr. Francisco Atanasio Domino^S y Fr. Silbestro Veles, segun consta en el Diario y Derrotero que se hize y se remitio s S. M^d por mano de su Virrei con otro Plano a la letra: el que depica Al Sor Dⁿ Theodore dela Crois, del Insione Orden Teutonica Comandante General en Gefe de la Lines y Provincia de esta America Septentrional, por su Mac^d Hecho en Sⁿ Ph^e el Real de Chiquaqua Ano de 1778; Def. Ex. G-26, ibid.; Def. Ex. R-5, ibid.; Adams & Chavez, supra, note 1923, at 10; Bolton, supra note 1923, at 120, 228; Def. Ex. G-27, Alter, Father Escalante's Map.

1940/ Def. Ex. S-545, Letter to Salcedo, March 21, 1810, p. 1. There are no other references to Paiutes known this far to the east and the identity of these people and the explanation of their supposed presence in eastern Navajo country must remain a mystery, awaiting further research. The lack of other documents strongly suggests that if Paiutes actually were in this eastern area, as reported, their presence was of very short duration.

In 1823 a Mexican military campaign against the Navajos penetrated the country northwest of Hopi. The Mexicans twice attacked groups of Paiutes, once probably in the vicinity of White Mesa and once in Paiute Canyon, both times mistaking them for Navajos. The people attacked did not plead immunity on the basis of being Paiute until taken prisoner, an argument that was accepted by the Mexican officers, who then released them. These people possessed both horses and goats.^{1941/} During this campaign Navajos took their stock into this area to escape the Mexicans, one trail being followed as far as Paiute Canyon.^{1942/} The Southern Paiutes on the west side of the Colorado River did not raise livestock at even later dates.^{1944/}

In the fall of 1860 hostilities against the Navajos by the United States Army caused many Navajos to take their flocks to the Sierra

^{1941/} Brugge, supra note 1923, at 39-40, 44. The success of pleading "Paiuteness" to the Mexican officers may explain the origin of similar ruses practiced upon Utes and whites at a later date during wars against the Navajos.

^{1942/} Brugge, supra note 1923, at 43-44.

^{1944/} Stewart, Tr. 1186-95, Dockets 88 & 330 (Southern Paiute).

Lemita. ^{1956/} The Army hoped to trap the Navajos on the Sierra Lemita and in the Puerta Lemita in the mistaken belief that the Navajos could not go beyond that point by reason of hostile Paiutes. ^{1957/} The Navajos and the San Juan Band cooperated in this ruse to deceive both the Army ^{1958/} and the Utes. ^{1959/} Colonel Canby held this mistaken idea in October 1860. The troops found that the Paiutes and the Navajos were not at war and that there was no barrier to Navajo retreat beyond this point,

^{1956/} Navajo Ex. 246, Canby to Assistant Adjutant General, Oct. 4, 1860; Def. Ex. R-72, ibid. The Spanish term "lemita" refers to a shrub, the Three-leaved Sumac or Skunk Bush, Rhus trilobata or Schmaltzia bakeri, both of which were known by this name and were utilized by the Navajo in the manufacture of baskets (Navajo Ex. 575-A, Hill, Some Navaho Culture Changes During Two Centuries, p. 414; Def. Ex. G-110, ibid.; Def. Ex. E-29, ibid.; Def. Ex. S-616, ibid.; Def. Ex. S-621, ibid.; Def. Ex. S-643, ibid.). The spelling "limita" is an Anglo-American corruption of the Spanish. The Anglo-Americans supposed the Spanish name to be Puerta de las Limitas, referring to a boundary, (Navajo Ex. 251, Canby to Assistant Adjutant General, Nov. 8, 1860; Def. Ex. G-95, ibid.; Def. Ex. R-73, ibid.; Def. Ex. R-74, ibid.) when in reality it was Puerta de las Lemitas (Navajo Ex. 32, Hafen, Old Spanish Trail, p. 94; Def. Ex. S-605, ibid.; Def. Ex. S-639, ibid.) referring to the local vegetation (Walker, supra note 1950, at 4; Navajo Ex. 610, Robbins, Harrington & Marreco, Ethnobotany of the Tewa Indians).

^{1957/} Navajo Ex. 247, Canby to Assistant Adjutant General, Oct. 12, 1860; Navajo Ex. 249, Maury to Fauntleroy, Oct. 20, 1860; Def. Ex. G-94, Wagner to McLaws, Oct. 11, 1860; Def. Ex. R-73, Canby to Assistant Adjutant General, Oct. 19, 1860; Def. Ex. G-95, ibid.; Canby, Nov. 8, 1860, supra note 1956.

^{1958/} Navajo Ex. 528, Walker to Edson, Sept. 20, 1859; Def. Ex. G-56, ibid.; Def. Ex. G-61, ibid.; Def. Ex. G-56, Report of the Secretary of War.

^{1959/} Sampson, Tr. 5409-10.

the Navajos who were pursued having gone to the south and the west. ^{1960/}

In 1861 a group of Mormon travellers met Navajos and "Pah Utes" together at a point about 46 miles toward Hopi from the Crossing of the Fathers, ^{1961/} and in 1865 it was reported that the Navajos at "Mesas de Calabasas" were friendly with the "Pah-Utes." ^{1962/}

Descriptions of the Paiutes written in 1869 and in 1871, exclude the "San Juan Band," mentioning only those people living west of the Colorado River. ^{1970/} In 1872 a "Pah-Ute" had a cornfield some 23 to 25 miles north of Moencopi. ^{1971/} In 1873 it was reported that the "Paiutes" on the eastern side of the Colorado River, called the "Kwa-an'-ti-kwok-ets," were nearly isolated from the other tribes of Paiutes and were affiliated with the Navajos. The total population of this group was given as 62 persons. ^{1972/} In 1878 the population of the "Pah-utes" on

^{1960/} Canby, Nov. 8, 1860, *supra* note 1956; Navajo Ex. 530, Sibley to Rich, Nov. 12, 1860; Def. Ex. R-75, *ibid.*; Def. Ex. G-96, *ibid.*

^{1961/} Navajo Ex. 289, Steele to Smith, Jan. 8, 1863.

^{1962/} Navajo Ex. 357, Letter by Carleton, Mar. 21, 1865; Def. Ex. G-172, *ibid.*

^{1970/} Navajo Ex. 858, Snow to Powell, Oct. 2, 1871; Def. Ex. G-37, Report of the Commissioner of Indian Affairs, 1869, p. 92.

^{1971/} Powell, *supra* note 1923, at 8.

^{1972/} Navajo Ex. 679, Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior for the Year 1873; Def. Ex. S-692, *ibid.*

the east side of the Colorado River, again called the "Kwai-an-ti-kwok-ets," was given as 47 persons.^{1973/}

While descendants of the Paiutes continued to have recognizable features and characteristics, even after intermarriage and merger with the Navajos, they had long ago lost any identifiable status and relationship to lands east of the Colorado River. Thus, in 1882, farms above Moencopi and Tuba City, on the Moencopi wash, belonged to Oraibis, Navajos, and "Pah-Utes"^{1978/} and in 1883, an Army scouting party found both Navajos and Paiutes on the lower San Juan.^{1979/} A report on the Navajo population in 1882 included the "Pah-Utes," who were intermarried and affiliated with them,^{1980/} and an Executive Order of May 17, 1884, made the area from 110° longitude west to 111° 30' west, south of the San Juan and north of 36° 30' latitude north, a Navajo Reservation^{1981/} which included the upper part of Paiute Canyon, where the name survives to this day in an area long recognized as one of exclusive

^{1973/} Havasupai Ex. 42, Hinton, Hand-Book to Arizona; Def. Ex. G-117, ibid.

^{1978/} Def. Ex. G-245. Stephens to Howard, Dec. 13, 1882.

^{1979/} Def. Ex. S-693, Report of the Secretary of War, 1883.

^{1980/} Navajo Ex. 735, Inspector Howard's Report on the Navajo Agency, Oct. 25, 1882.

^{1981/} Hopi Ex. 2, Joseph F. Thoma Map Showing Extensions of the 1868 Navajo Reservation.

dominion and control by the Navajos and confirmed by an Executive Order of May 17, 1884. 1982/

In 1892 it was estimated that about 100 "Piutes" were in the Tuba City, Moencopi, and Moenave area. 1983/ An Executive Order of November 19, 1892, restored that portion of the Executive Order Reservation of 1884 west of 110° and north of the southern boundary of Utah to public domain but not to Paiutes. 1984/

There were, from time to time, reports about the dwindling population of Paiutes, and in 1907 an attempt was made to create a small reservation by administrative order within the Department, within what had already been treated as a Navajo Reservation 1991/ but by 1922, Byron A. Sharp, then Superintendent of the Western Navajo Indian School at Tuba City, made an investigation of the area and reported that there were no longer any Paiutes on the Paiute Reservation, all of them having either died, moved away, or been absorbed into the Navajo Tribe. Stock grazing on the reservation belonged to "Paiutes," Navajos, and Mormons. He recommended that the entire reservation be thrown open to settlements. 2000/ In July of 1922 the Paiute Reservation was restored to the

1982/ Ibid.

1983/ Navajo Ex. 593, Michie to Assistant Adjutant General, July 13, 1892.

1984/ Navajo Tribal Code, App., p. 340; Thoma, supra note 1981.

1991/ Navajo Ex. 612, Hauke to Sharp, Mar. 15, 1922.

2000/ Navajo Ex. 613, Sharpe to Commissioner, June 2, 1922.

public domain. 2001/

Dr. Clyde Kluckhohn visited Paiute Canyon in 1923 and found a few Paiutes living there. 2002/ In June 1929 members of the Navajo Tribal Council petitioned that the Paiute Strip area be made a part of the Navajo Reservation. 2004/

In December 1932 Deshna Clah Cheschillige, then Chairman of the Navajo Tribal Council, wrote regarding the Paiute Strip area:

Not only have the Navajos used this country but the Paiutes have long occupied it peacefully side by side with the Navajos long before the white settlers ever came into this country. While the Piautes [sic] were in this country they intermarried with the Navajos and when the Piautes moved north these mixed people became Navajos remained so even now several of the families in this section have Paiute blood. This fact seems to me a good argument that these Piautes and Navajos should continue to occupy the Paiute Strip. 2008/

It is thus apparent that a small number of people of Paiute ancestry have lived in the Navajo Mountain area, extending southward to about Tuba City and eastward to about Oljato, since very early times. It is also

2001/ Navajo Ex. 550, Hauke to Holiday, Dec. 23, 1922; Navajo Ex. 614, Commissioner to Secretary of Interior, July 10, 1922.

2002/ Kluckhohn, Tr. 1042-43.

2004/ Navajo Ex. 617, Statement of Navajo Councilmen, June 24, 1929.

2008/ Def. Ex. G-161, Cheschillige to Rhoads, Dec. 11, 1932.

apparent that their association with Navajos has been extremely close and intimate over such a long period of time^{2011/} that they were absorbed into, and became a part of, the Navajo Tribe even though they have remained a more or less distinguishable minority group through preservation of their original language, knowledge of their ancestry, and selected elements of Paiute culture. In much the same way, the Tewa or Tano Indians of the village of Hano on First Mesa became a part of the Hopi Tribe, although they also have maintained their language, their identity as a group, and selected portions of their old culture.^{2012/} In a somewhat similar manner, the Bannock Indians became a part of the Shoshone Tribe.^{2013/}

At all times material herein, the Paiutes were absorbed into and a part of the Navajo Tribe and ceased to be an identifiable band, having or claiming exclusive dominion or control of any area within the Navajo land claim.

^{2011/} For more complete documentation of Navajo occupancy within this area, see Finding 5, supra.

^{2012/} Def. Ex. E-563, Dozier, The Role of the Hopi-Tewa Migration Legend in Reinforcing Cultural Patterns and Prescribing Social Behavior.

^{2013/} Stewart, Tr. 1129, 1132-34, Dockets 88 & 330 (Southern Paiute). See also the Findings of Fact and Opinion of the Indian Claims Commission in Dockets 326 & 327 (Shoshone).

FINDING 7

Navajo Captives and Slaves

A. Prior to American Occupation

At least as early as 1659 the Spanish settlers in New Mexico raided the Navajos to obtain slaves. An expedition of 800 Indians and 40 Spaniards set out against the Navajos in 1659, specifically to obtain captives, and many were taken. 2019/ On another occasion, between 1659 and 1661, some Navajo warriors who had come in peace to Jemez were killed and an expedition was sent out to seize their women and children. 2020/ An expedition in 1678 brought back the "wives and children" of the Navajos attacked. 2021/ During this early period it was a common practice to seize Navajo children "in order to impress them into service on the ranches or as house servants, and to sell them as slaves in the labor markets of New Spain." 2022/ This practice

2019/ Def. Ex. G-237, Reeve, Seventeenth Century Navaho-Spanish Relations, pp. 46-47, and n. 34; Def. Ex. E-141, ibid.

2020/ Id. at 47, and n. 36; Def. Ex. S-626, Scholes, Troublous Times in New Mexico, 1659-1670, p. 69; Def. Ex. S-654, ibid.; Def. Ex. E-43, ibid.

2021/ Def. Ex. G-239, Royce, Indian Land Cessions in the United States, p. 50.

2022/ Reeve, supra note 2019, at 42; Scholes, supra note 2020, at 150.

gave the Navajo Tribe good reason to make war on Spanish settlers. ^{2023/}
Baptism, or involuntary "conversion," usually followed. In 1775, thirty
Navajo captives were baptized at Laguna. ^{2024/} In 1805 captives taken
during a war with the Navajo Tribe were given as slaves to private citi-
zens of New Mexico and Sonora. ^{2025/} The possession of Navajo captives
by Spaniards was a continuing obstacle to good relations and provocation
to counter-raids between the Navajo Tribe and Spain even after the con-
clusion of peace. ^{2026/}

This practice continued under Mexican rule. In 1823 captives
who were baptized were expected to remain with the Mexicans. ^{2027/}
Navajo slaves were being held by Mexicans in 1829. ^{2028/} In 1833 a

^{2023/} Ibid.; Reeve, supra note 2019, at 42, 51.

^{2024/} Acoma-Laguna Jt. Ex. 530, Jenkins & Minge, Record of Navajo Activities Affecting the Acoma-Laguna Area, 1746-1910, p. 9.

^{2025/} Navajo Ex. 799, Brugge, Translations of Documents in Spanish Relied Upon by Acoma, Laguna, and Defendant's Expert Witnesses, p. 5; Def. Ex. S-535, Letter, Narbona Defeated Navajos at Canyon de Chelly, p. 2.

^{2026/} Brugge, supra note 2025, at 7, 14; Navajos Ex. 784, Fr. Francisco de Hocio and Fr. Buenaventura Merino to Governor Don Joaquín del Real Alencaster, Aug. 23, 1805; Def. Ex. S-539, Letter, Gila Apaches Visit Canyon de Chelly.

^{2027/} Brugge, supra note 2025, at 54; Fr. Francisco. . . , supra note 2026; Jenkins & Minge, supra note 2024, at 45.

^{2028/} Id. at 54.

Navajo child only three years old was a servant in a Mexican household.^{2029/} In 1839 the possession of Navajo slaves by Mexicans was the cause of contention between the Navajo Tribe and Mexico.^{2030/} In 1840 a Navajo woman was the "maid servant" of Don José Visente Chavez, in Socorro, and in 1843 a Navajo woman was the servant of José Padilla, also in Socorro.^{2031/} In 1843 a Navajo girl baptized by the priest at Socorro was a servant of José Miguel Baca at La Parida.^{2032/} In 1844 a Navajo child only five years old was a servant in a Mexican household.^{2033/} In April of the same year Mexico was forced to purchase Navajo captives from the Mexican citizens who held them in order to avoid war with the Navajo Tribe.^{2034/} In October 1844 Francisco, a Navajo chieftain, found it necessary to give a Navajo woman to the Mexican citizen who held his daughter as a slave in order to obtain the return of his daughter.^{2035/} The fact that these transactions were approved by the Governor of New Mexico shows that Mexico made no effort to end the custom of slaveholding.

^{2029/} Navajo Ex. 715, Extracts from Records of Missions of San Esteban de Acoma and San José de la Laguna, p. 34.

^{2030/} Jenkins & Minge, supra note 2024, at 68.

^{2031/} Navajo Ex. 892-E1, Burial Record, Socorro Parish, pp. 9-10.

^{2032/} Navajo Ex. 892-B1, Baptismal Record, Socorro Parish.

^{2033/} Extracts from Records. . . , supra note 2029, at 37.

^{2034/} Jenkins & Minge, supra note 2024, at 86-87.

^{2035/} Navajo Ex. 789, Governor of New Mexico to Prefect of 3d District, Oct. 16, 1844.

B. After American Occupation

The institution of slavery and slave raids into Navajo territory continued into the period of rule by the United States. In 1846 a Spanish-American resident of New Mexico offered to sell a Navajo woman to an American army officer. 2036/ By 1850 Spanish-American slave raiders were attacking the Navajos as far west as Gray Mountain. 2037/ A Spanish-American foray against the Navajos captured 52 Navajos on Mesa de la Vaca in January 1851. 2038/ Living Navajos still tell of ancestors killed by Spanish or Mexican raiders in this area. 2039/ In June 1851 a Navajo child who was baptized at Cebolleta was described as a "servant." 2040/ In January 1852 the Navajos complained of the practice of Spanish-American residents of New Mexico in carrying off their children and livestock. They stated that more than 200 Navajo children had been taken and that they did not know where they were. Both the Indian agent and the Governor of New Mexico wrote that their

2036/ Acoma-Laguna Jt. Ex. 511, Report of Lieutenant J. W. Abert, of His Examination of New Mexico, pp. 47-48; Def. Ex. G-2, ibid.; Def. Ex. R-15, ibid.; Def. Ex. S-614, ibid.; Def. Ex. S-630, ibid.

2037/ Havasupai Ex. 173, Van Valkenburgh, Dine' Bikeyah, p. 42.

2038/ Def. Ex. G-29, Abel, The Official Correspondence of James S. Calhoun While Indian Agent at Santa Fe, pp. 284-86.

2039/ Talabah Cody, Tr. 5109-10, 5115.

2040/ Extracts from Records. . . , supra note 2029, at 40.

complaints were justified. 2041/

At least one United States Army Officer approved the holding of Navajo slaves. 2042/ Priests continued to baptize Navajo children held as servants in 1853. 2043/ In September 1853 the United States Indian Agent promised Sarcillos Largos, a Navajo chief, that he would return every Navajo prisoner then held in captivity. 2044/ However, in 1854 two Navajo children were baptized at Cebolleta, at least one of them being described as belonging to a Spanish-American household. 2045/ In August 1857 five Navajo captives were sold by the Utes to a citizen of New Mexico living near Taos. 2046/ A Navajo child held as a servant was baptized at Cebolleta in November of the same year. 2047/ In May 1858 the Utes again took two or three Navajo captives and sold them to Spanish-Americans. 2048/ Living Navajos still tell of ancestors

2041/ Navajo Ex. 81, Greiner to Calhoun, Jan. 31, 1852.

2042/ Navajo Ex. 99, Kendrick to Sturgis, June 14, 1853.

2043/ Extracts from Records. . . , supra note 2029, at 42.

2044/ Navajo Ex. 104, Meriwether to Manypenny, Sept. 19, 1853; Def. Ex. R-108, ibid.

2045/ Extracts from Records. . . , supra note 2029, at 43.

2046/ Def. Ex. R-135, Bonneville to Collins, Jan. 17, 1858.

2047/ Extracts from Records. . . , supra note 2029, at 45.

2048/ Navajo Ex. 167, Ward to Yost, April 9, 1858; Def. Ex. R-136 ibid.

who were captured by the Utes and who were sold to Spanish-Americans. 2049/ In the Treaty of December 25, 1858, the United States promised to return all Navajo prisoners to the Navajo Tribe. 2050/ The Navajo chief, Sarcillos Largos, complained in a speech to his people, in 1859, that women of his family were being held as slaves by Spanish-Americans. 2051/

In April 1859 Second Lieutenant H. W. Freedley, of the United States Army, wrote that Navajo attacks were "committed through motives and in a spirit of retaliation and revenge" for stealing done by Spanish-Americans from the Navajos. 2052/ In August 1859 it was reported that "the Mexicans hold numbers of their women and children in bondage" and the Secretary of War ordered that they be restored "whenever they can be discovered." 2053/ In spite of this, two Navajo children held in a Spanish-American household were baptized at Cebolleta

2049/ Navajo Ex. 868, Judd, The Material Culture of Pueblo Bonito, p. 346; Def. Ex. E-30, ibid.; Nakai, Tr. 2464, 2466-67, 2469.

2050/ Navajo Ex. 207, Treaty, Dec. 25, 1858.

2051/ Navajo Ex. 669, Van Valkenburgh, Last Powwow of the Navajo, p. 6.

2052/ Navajo Ex. 212, Freedley to Sykes, April 30, 1859, p. 3; Def. Ex. R-69, ibid.

2053/ Navajo Ex. 231, Johnston to Acting Adjutant General, Aug. 27, 1859.

in January and June of 1860. 2054/ Later in the year Spanish-American and Ute raiders still were taking Navajo captives. 2055/

These expeditions and provocations were continued by Spanish-Americans in February 1861, with no more purpose than to take captives to sell, in spite of the recent conclusion of a peace treaty between the United States and the Navajo Tribe. 2056/ In March 1861 the people of 15 rancherias in the Tunicha Mountains were killed or carried off by Spanish-Americans while their chiefs were away for the purpose of recovering stolen property. 2057/ Another party left Cubero to raid the Navajos near Fort Defiance in May 1862. At the time that this raid was reported, it was reported also that parties of Spanish-Americans had been going out on such expeditions for more than two months and had been bringing back Indian children for the purpose of selling them. Several had been sold for prices ranging up to \$300. 2058/

2054/ Extracts from Records. . . , supra note 2029, at 48.

2055/ Def. Ex. E-129, Keleher, Turmoil in New Mexico, p. 107.

2056/ Navajo Ex. 270, Canby to Acting Adjutant General, Feb. 27, 1861, p. 1.

2057/ Navajo Ex. 275, Canby to Acting Adjutant General, March 18, 1861.

2058/ Navajo Ex. 282, Need to Commanding Officer, May 16, 1862, p. 1; Def. Ex. R-152, ibid.

In June 1862 two Navajo children were baptized by the priest at Laguna, one being specifically described as a servant in a Spanish-American household at Cebolleta. In September the same priest baptized two Navajo children held as servants. ^{2059/} A Navajo girl, five years old, was described as a servant of Desiderio Sanchez, of Los Chavez, in 1863. ^{2060/}

In December 1863 J. C. Knapp complained that hostility between whites and Indians "will continue to exist so long as Indian captives are bought and sold." ^{2061/} In January 1864 the Superintendent of Indian Affairs in New Mexico reported that about 2000 Indians were held as slaves in New Mexico and that they were principally Navajos. Referring specifically to the Navajos, he wrote that "no permanent peace can be had with them as long as this evil is permitted. . . . They will not, however, be controlled while their children are stolen, bought, and sold by our people." ^{2062/} In 1864 three Navajo children baptized by the priest at Belen were servants of Spanish-Americans. ^{2063/} In 1864,

^{2059/} Extracts from Records. . . . , supra note 2029, at 50.

^{2060/} Navajo Ex. 892-H1, Baptism Record, Belen Parish, p. 18.

^{2061/} Navajo Ex. 287, Knapp to Commissioner, Dec. 5, 1862, p. 4.

^{2062/} Navajo Ex. 316, Steck to Dole, Jan. 13, 1864, p. 1.

^{2063/} Baptism Record . . . , supra note 2060, at 18.

95 Navajos were held as peons in Pagate, Cebolleta, and Moquino. 2064/
They were collected by the United States Army to be sent to Fort
Sumner. 2065/

Navajos still were being held as slaves in 1865, in spite of the
conclusion of the Civil War, the abolition of slavery, and a Presidential
order prohibiting the practice. 2066/ In that year it was estimated that
between 5,000 and 6,000 Navajos were owned by New Mexicans. 2067/
The practice of making slave raids on Navajos was so deep-seated that
some Spanish-Americans objected to settling the Navajos at Fort Sumner
because they could not raid them there. 2068/ Navajos still were being
held as slaves in 1868. 2069/ As late as 1869 a Navajo girl was taken
captive by Spanish-Americans, and a number of murders and thefts were

2064/ Navajo Ex. 323, Campbell to Carleton, March 3, 1864.

2065/ Navajo Ex. 324, Stevens to Cutler, March 3, 1864.

2066/ Navajo Ex. 365, Questioning of Captive, July 9, 1865; Navajo
Ex. 370, Shaw to Cutler, Aug. 28, 1865; Def. Ex. G-125, Reeve,
The Federal Indian Policy in New Mexico 1858-80.

2067/ Def. Ex. G-206, Young, The Navajo Yearbook, 1958, p. 260.

2068/ Id. at 262.

2069/ Navajo Ex. 409, Proceedings of Council; Navajo Ex. 851, Ward
to Tappan, History of the Pueblo and Navajo Indians, Aug. 4,
1868; Acoma-Laquna Jt. Ex. 538, ibid.

committed against the Navajos. In 1870 the Government still was encountering resistance from Spanish-Americans in attempting to return Navajo children to their families. 2070/ By 1872 Navajo captives were being returned to the tribe. 2071/ The baptismal and burial records available for three parishes — Laguna, Belen, and Socorro, New Mexico — reflect the quantity of Navajo slaves held by whites in New Mexico. 2072/ The traditions of the Navajo people contain many references to the fact that their ancestors were taken captive by the white men, by their pueblo subjects, and by other tribes allied with the white men. 2073/

C. Conclusion

A primary cause and provocation which led to Navajo acts of warfare in self-defense, or to avenge the wrongs committed against the

2070/ Navajo Ex. 426, Clinton to Parker, March 31, 1870; Def. Ex. G-38, Report of the Commissioner of Indian Affairs to the Secretary of the Interior for 1870, pp. 151-52.

2071/ Navajo Ex. 844, Report of Commissioner of Indian Affairs, Nov. 1, 1872.

2072/ Extracts from Records. . . , supra note 2029; Navajo Ex. 778-A, Chavez, Archives of the Archdiocese of Santa Fe, 1678-1900; Navajo Ex. 892, Baptismal and Burial Records of Socorro and Belen (Extracts); Navajo Ex. 898-F, Index to Data on Map.

2073/ Navajo Ex. 520-T, Site Reports, W-LLC-MJ-TTT; Navajo Ex. 673, Sapir, Navajo Texts, pp. 335, 437-41; Def. Ex. E-42, ibid.; Navajo Ex. 680, Roberts, Three Navajo Households, p. 25; Def. Ex. E-146, ibid.; Judd, supra note 2049, at 346; E. Nakai, Tr. 2464, 2466, 2469; M. Toledo, Tr. 99, Sept. 6, 1954.

Navajos, 2074/ was the practice of slave raiding in Navajo territory, a practice originating in the period of Spanish and Mexican occupation, but which was carried on vigorously by the defendant United States after acquisition of the Territory of New Mexico by the United States in 1848. The failure of the United States to protect the Navajos from raids for these purposes as well as for other purposes 2074a/ constituted violations on the part of the defendant of treaties with the Navajo Tribe 2074b/ and were an almost continuous provocation or cause of counter-attacks by Navajos and a basic cause of the Navajo war which led to the military expedition of Colonel Christopher (Kit) Carson in 1863 and the captivity at Fort Sumner of a substantial portion of the Navajo Tribe from 1864 to 1868. Military actions by the Navajos were primarily by way of self-defense and retaliation.

2074/ Kluckhohn, Tr. 769-70.

2074a/ See Finding 8, infra.

2074b/ See Finding 9, B, infra.

FINDING 8

Other Causes and Provocations by Non-Navajos

A. Trespass and Encroachment — Prior to American Occupation

As early as 1630 Benavides wrote that the Navajos united in great numbers "in defense of their country."^{2075/} Following a long continued encroachment of Spanish settlers into Navajo country, beginning in the 1750's,^{2076/} treachery on the part of the Governor of New Mexico, who encouraged the Utes to declare war on the Navajos in 1773,^{2077/} set off a war in 1774, in which the Navajos forced the Spaniards to abandon the settlements they had established in the land grants in Navajo country.^{2078/} Spanish settlers who entered the Navajo country after this war ended were again driven from the area by Navajo attacks about 1785.^{2079/} Spanish ranchers were grazing their livestock

^{2075/} Navajo Ex. 523, Forrestall & Lynch, Benavides' Memorial.

^{2076/} Def. Ex. E-40, Reeve, Navaho-Spanish Diplomacy, 1770-1790, p. 200; Def. Ex. G-236, ibid.; Def. Ex. S-652, ibid.

^{2077/} Id. at 219.

^{2078/} Id. at 209, n. 25; Def. Ex. G-132, Reeve, The Navaho-Spanish Peace, 1720's-1770's, pp. 38-39; Def. Ex. E-39, ibid.; Def. Ex. S-651, ibid.; Reeve, Tr. 7786.

^{2079/} Acoma-Laguna Jt. Ex. 530, Jenkins & Minge, Record of Navajo Activities Affecting the Acoma-Laguna Area, 1746-1910, p. 4.

on Navajo land by 1793^{2080/} and by 1796 the Navajos again had declared war on Spain.^{2081/}

In 1800 a Spanish settlement was founded at Cebolleta. Within a few weeks, hostilities between the Navajo Tribe and Spain had broken out again.^{2082/} Cebolleta was temporarily abandoned by the settlers, but Spain asserted its claim to the land by a campaign.^{2083/} Following this defeat the Navajos attempted unsuccessfully to regain Cebolleta by diplomacy.^{2084/} In April 1804 negotiations broke down and the Navajos again declared war to drive the Spaniards from Cebolleta.^{2085/} The Navajo Tribe suffered a defeat in this war^{2086/} and finally relinquished its claim to Cebolleta,^{2087/} but retained its claim to adjoining lands.^{2088/}

^{2080/} Def. Ex. R-150, Reeve, The Navajo Indians, p. 5; Reeve, Tr. 7790-94.

^{2081/} Def. Ex. R-13, Twitchell, The Spanish Archives of New Mexico, p. 378.

^{2082/} Jenkins & Minge, supra note 2079, at 15.

^{2083/} Reeve, Tr. 7795-96.

^{2084/} Jenkins & Minge, supra note 2079, at 17-18.

^{2085/} Navajo Ex. 799, Brugge, Translations of Documents in Spanish Relied Upon by Acoma, Laguna, and Defendant's Expert Witnesses, pp. 1-3.

^{2086/} Id. at 5-6.

^{2087/} Id. at 7-9; Def. Ex. S-536, Letter — Navajos in Juan Tafoya Canyon, San Mateo, and Bear Creek, pp. 1-2.

^{2088/} Brugge, supra note 2085, at 18; Def. Ex. S-542, Report from Bertolome Balboa, pp. 2-4.

In 1816 Spanish ranchers were again invading Navajo lands with their livestock.^{2089/} In August 1816 the Navajos suspected the Spaniards of having aided the Comanches in attacks made during that year,^{2090/} and in September they requested assurances from the Spaniards that their lands would not be invaded by settlers while they were engaged in the Comanche war.^{2091/} But Spanish encroachments continued into 1818^{2092/} and in July of that year the Navajo Tribe again declared war on Spain.^{2093/}

^{2089/} Navajo Ex. 860, Letter from Sanchez Vergara, Aug. 10, 1816, and reply, Aug. 21, 1816 (translation): ". . . and the disturbance that they [the Navajos] complained of from the pasturing of animals of citizens of the Río Abajo, doing it by driving them [the Navajos] from their [the Navajos'] lands"; Twitchell, supra note 2081, at 597; Reeve, supra note 2080, at 8; Reeve, Tr. 7876.

^{2090/} Sanchez Vergara, supra note 2089 (translation): "Today at about eight in the morning I was called by the Navajo, Salvador, who with two others arrived at the Pueblo of Jemez as ambassador from his Nation, which is found sufficiently saddened by what was done to its people by the Comanches, persuaded that having entered through our neighborhood to raid them, we have a hand in their misfortune. . ."; Twitchell, supra note 2081, at 597.

^{2091/} Brugge, supra note 2085, at 49.

^{2092/} Jenkins & Minge, supra note 2079, at 30; Reeve, supra note 2080, at 8.

^{2093/} Jenkins & Minge, supra note 2079, at 31; Def. Ex. S-548, Letter — Utes with Navajos in Carrizos, July 21, 1818, p. 3.

White ranchers grazed their stock on Navajo land during the latter part of the period of Mexican rule. The Governor of New Mexico reported grazing in Navajo land by Mexican ranchers in 1841.^{2094/} By 1842 at least one Mexican had even built a house in Navajo country.^{2095/} In February 1842 the Navajos planned a war on Mexico^{2096/} and there were attacks by the fall of 1842.^{2097/}

B. Acts of Bad Faith by Non-Navajos — Prior to American Occupation

Navajo tribal leaders often attempted to settle disputes with white men by diplomacy, but treachery, acts of bad faith, and inability of the white leaders to control their people sometimes caused these negotiations to fail. Deteriorating relations between the Navajo Tribe and Spain were precipitated into war in 1774 after the Governor of New Mexico tried to solve the problem by encouraging the Utes to attack the Navajos while Spain remained neutral.^{2098/} In 1822 a war between the

^{2094/} Acoma-Laguna Jt. Ex. 505, Governor's Letter Book, May 8, 1841; Jenkins & Minge, *supra* note 2079, at 77; Def. Ex. R-187, Letter — Navajos-Río Puerco.

^{2095/} Reeve, *supra* note 2080, at 14.

^{2096/} Jenkins & Minge, *supra* note 2079, at 78.

^{2097/} *Id.* at 79.

^{2098/} Reeve, *supra* note 2076, at 219.

Navajo Tribe and Spain continued after a peace delegation of 13 Navajos was treacherously killed by Mexicans at Jemez. 2099/

C. Trespass and Encroachment — After American Occupation

White ranchers continued to trespass in Navajo country after the United States assumed control of New Mexico Territory. In May and June of 1850 the Navajos attacked herds of white-owned livestock on the Puerco River. 2100/ In 1853 Navajos again attacked white herders trespassing with livestock. 2101/ By this year, the United States Army also was grazing its livestock on Navajo land. 2102/ The United States disregarded totally its obligation to "designate, settle, and adjust their territorial boundaries" as provided by Article IX in the Treaty ratified by the Senate September 9, 1850. 2102a/

By 1854 the Army and the Superintendent of Indian Affairs in New Mexico were trying to convince white stock-owners to withdraw their

2099/ Navajo Ex. 690, Kluckhohn & Spencer, Bibliography of the Navajo Indians, p. 11; Jenkins & Minge, supra note 2079, at 44.

2100/ Navajo Ex. 814, Gordon to McLaws, May 27, 1850; Def. Ex. G-248, Buford to McLaws, June 25, 1850.

2101/ Navajo Ex. 95, Kendrick to Sturgis, May 25, 1853; Navajo Ex. 819, Ewell to Sturgis, May 29, 1853.

2102/ Navajo Ex. 106, Kendrick to Nichols, Nov. 6, 1853; Navajo Ex. 820, Kendrick to Nichols, Nov. 13, 1853.

2102a/ 9 Stat. 974, 2 Kappler 583 (1904). See also Finding 9, infra.

herds from an area extending from the Zuñi Mountains to the west of Zuñi, in an effort to preserve peace.^{2103/} In spite of Navajo complaints and official warnings against trespass, white ranchers continued to send their livestock into Navajo country.^{2104/} Robberies and incidents of violence finally resulted from the presence of this livestock and its herders in Navajo country, beginning toward the end of 1855^{2105/} and continuing into 1856,^{2106/} and soon raiding was carried beyond the limits of Navajo country.^{2107/} In June 1856 Manuelito, the head chief of the Navajo Tribe, complained that the United States Army was cutting hay on land that he used for grazing.^{2108/} In February 1857 the Army again

^{2103/} Navajo Ex. 109, Kendrick to Meriwether, Feb. 10, 1854; Def. Ex. R-41, *ibid.*; Navajo Ex. 110, Meriwether to Manypenny, Feb. 27, 1854; Navajo Ex. 121, Kendrick to Luna, Dec. 18, 1854; Def. Ex. R-122, *ibid.*; Navajo Ex. 122, Dodge to Meriwether, Feb. 13, 1855; Def. Ex. R-123, *ibid.*

^{2104/} Kendrick to Meriwether, *supra* note 2103; Kendrick to Luna, *supra* note 2103; Navajo Ex. 125, Kendrick to Meriwether, May 28, 1855.

^{2105/} Def. Ex. R-126, Dodge to Davis, Dec. 26, 1855.

^{2106/} Navajo Ex. 137, Carleton to Kendrick, Feb. 1, 1856; Def. Ex. R-127, *ibid.*; Navajo Ex. 141, Kendrick to Nichols, Feb. 15, 1856; Navajo Ex. 144, Davis to Dodge, April 8, 1856.

^{2107/} Kendrick, *supra* note 2106; Def. Ex. R-153, Meriwether to Dodge, June 17, 1856.

^{2108/} Navajo Ex. 149, Dodge to Meriwether, June 13, 1856; Def. Ex. R-113, *ibid.*; Def. Ex. R-128, *ibid.*

asked that livestock belonging to whites be kept out of Navajo country. 2109/
Herders of white-owned stock murdered a Navajo Indian in the same
month. 2110/

Disputes over Navajo grazing land used by the United States
Army for grazing and cutting hay continued in 1857 and 1858 and there
is nothing in the extensive documentation of this problem to show that
the Army compensated the Navajo Tribe for the use of the land. 2111/
By the end of August 1858 war had begun. 2112/ Following this war, and
by April 1859, stock was again taken into Navajo country. 2113/ By the
end of April the Navajos were taking some of this stock. 2114/ In spite

-
- 2109/ Def. Ex. R-51, Kendrick to Acting Adjutant General, Feb. 11, 1857; Def. Ex. R-52, Bonneville to Acting Adjutant General, Feb. 28, 1857.
- 2110/ Ibid.
- 2111/ Navajo Ex. 159, Gordon to Nichols, June 1, 1857; Navajo Ex. 160, Collins to Denver, June 29, 1857; Navajo Ex. 162, Loring to Nichols, Aug. 31, 1857; Navajo Ex. 163, Clitz to Nichols, Sept. 26, 1857; Navajo Ex. 169, Brooks to Assistant Adjutant General, May 30, 1858; Navajo Ex. 170, Brooks to Assistant Adjutant General, June 16, 1858; Def. Ex. R-56, Brooks to Assistant Adjutant General, April 4, 1858; Def. Ex. G-55, Brooks to Assistant Adjutant General, July 15, 1858.
- 2112/ Ibid.; Def. Ex. R-60, McLane to Miles, Sept. 2, 1858.
- 2113/ Navajo Ex. 212, Freedley to Sykes, April 30, 1859; Def. Ex. R-69, ibid.
- 2114/ Ibid.; Def. Ex. G-87, Sykes to Wilkins, May 6, 1859; Def. Ex. R-69, ibid.

of this, the stock continued to trespass.^{2115/} The Army was also cutting hay and grazing stock on Navajo land, without any compensation to the Tribe.^{2116/} In 1861 Spanish-Americans drove Navajos from fields they had planted in the San Jose Valley.^{2117/} Conflict over land was a basic reason for hostilities.^{2118/}

D. Acts of Bad Faith by Non-Navajos — After American Occupation

In 1849, during a parley with the Navajos, the United States Army fired upon them, killing seven, including Narbona, a leading chief.^{2119/} The killing of two Navajos by Spanish-Americans in 1856 was the cause of hostilities that year.^{2120/} A Navajo was "most wantonly murdered" by Spanish-American herders in February

^{2115/} Navajo Ex. 224, Shepherd to Edson, Aug. 7, 1859; Def. Ex. G-59, ibid.; Def. Ex. R-70, ibid.

^{2116/} Navajo Ex. 226, Simonson to Wilkins, Aug. 8, 1859; Def. Ex. G-57, ibid.; Def. Ex. R-70, ibid.

^{2117/} Navajo Ex. 281, Report of Julius Shaw, Dec. 14, 1861.

^{2118/} Def. Ex. E-62, Young & Morgan, The Ramah Navahos, p. 1.

^{2119/} Navajo Ex. 49, Calhoun to Commissioner, Oct. 1, 1849; Def. Ex. R-17, ibid.; Def. Ex. G-28, ibid.; Def. Ex. G-29, ibid.; Navajo Ex. 50, Report of Lieutenant Simpson of an Expedition into Navajo Country in 1849; Acoma-Laguna Jt. Ex. 512, ibid.; Def. Ex. G-4, ibid.; Def. Ex. R-182, ibid.; Def. Ex. G-39, Simpson, Annual Address to the Minnesota Historical Society, 1882.

^{2120/} Dodge, supra note 2108.

1857. 2121/ In February 1858 three Navajo travelers were waylaid and robbed, one being murdered and one injured. 2122/ During a critical period of negotiations in August 1858, between the United States and the Navajo Tribe, the Army attacked a Navajo settlement at Bear Springs, 2123/ preventing a final effort to settle differences prior to the opening of hostilities. 2124/ In November 1859 attacks by the Army on Navajos in the Tunicha Mountain area 2125/ resulted in plans by the Navajos for a war against the United States. 2126/

Mistreatment of friendly Navajos by the commanding officer at Fort Defiance led to complete loss of confidence in the United States Government by the Navajos. 2127/ During the war that followed, a Navajo chief, Agua Chiquita, was killed while attempting to talk with

2121/ Bonneville, supra note 2109.

2122/ Navajo Ex. 166, Bonneville to Nichols, Feb. 8, 1858.

2123/ Def. Ex. G-55, Yost to Collins, Sept. 3, 1858, p. 306; McLane, supra note 2112.

2124/ Yost, supra note 2123.

2125/ Navajo Ex. 833, Shepherd to Ruff & Rifleman, Nov. 13, 1850; Def. Ex. G-90, ibid.; Def. Ex. G-91, Whipple to Dickenson, Nov. 19, 1859.

2126/ Def. Ex. G-260, Shepherd to Wilkins, Jan. 17, 1860.

2127/ Navajo Ex. 242, Kendrick to Collins, Feb. 25, 1860.

officers of the Army. ^{2128/} Following this war, Navajos who were carrying out the conditions of the treaty in good faith were attacked by Spanish-Americans in March 1861, 40 or 50 of their horses being stolen. ^{2129/} In September 1861 the Army attacked a large number of Navajos assembled in the vicinity of Fort Wingate, the only provocation being a disagreement over private gambling losses. ^{2130/}

Private expeditions and raids continued against the Navajo Tribe in spite of the treaty. There were complaints from Navajo chiefs in May 1862, ^{2131/} and by September 1862 they were asking for another peace treaty although no war had been declared against them. Although the Governor of New Mexico had issued a proclamation on September 14th, to raise a company of volunteers to march on a campaign against the Navajos on October 15th, ^{2132/} he had not received any militia lists by October 25th, even though private raiders were requesting permission to

^{2128/} Navajo Ex. 245, Sibley to Maury, Sept. 29, 1860; Def. Ex. G-93, ibid.

^{2129/} Navajo Ex. 273, Canby to Assistant Adjutant General, March 11, 1861.

^{2130/} Navajo Ex. 372, Hodt to Cutler, Sept. 7, 1865.

^{2131/} Navajo Ex. 282, Need to Commanding Officer, May 16, 1862; Def. Ex. R-142, ibid.

^{2132/} Def. Ex. G-35, Proclamation to the People of New Mexico, pp. 396-97.

go against the Navajos. 2133/ Even after the Navajos returned from Fort Sumner private citizens again endangered the precarious peace by killing and robbing them. 2134/ The whites frequently failed to keep promises made to the Navajo Tribe. 2135/

E. Restitution and Reparations — Inequalities

The Government required the Navajo Tribe to make restitution of the total amount of all stock allegedly taken from whites by individual Navajos. 2136/ Many fraudulent claims against the Navajo Tribe were made and no adequate method for determining the justice of these claims

2133/ Def. Ex. G-35, Army to Johnson, Oct. 25, 1862.

2134/ Navajo Ex. 418, Evans to Acting Assistant Adjutant General, Aug. 8, 1869; Navajo Ex. 420, Bennett to Clinton, Sept. 9, 1869; Navajo Ex. 421, Bennett to Getty, Sept. 23, 1860; Navajo Ex. 423, Evans to Acting Assistant Adjutant General, Oct. 20, 1869; Navajo Ex. 449, Eastman to Bradley, Dec. 16, 1881; Navajo Ex. 463, Bowman to Commissioner, Nov. 10, 1885; Navajo Ex. 586, Petition to Superintendent, April 30, 1874; Navajo Ex. 587, Young, The Navajo and Moqui Mission, April 1874; Navajo Ex. 588, Young, The Navajo and Moqui Mission, April 1874; Def. Ex. G-37, Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1869.

2135/ Navajo Ex. 851, Ward to Tappan, History of the Pueblo & Navajo Indians, Aug. 4, 1868.

2136/ Navajo Ex. 225, Baker to Collins, Aug. 8, 1859; Def. Ex. R-144, ibid.; Navajo Ex. 822, Meriwether to Manypenny, Feb. 28, 1855; Def. Ex. R-113.

was established. 2137/ But the Navajos were not compensated for stock taken from them. 2138/

F. Conclusion

Primary causes and provocations which led to Navajo acts of warfare in self-defense, or to avenge the wrongs committed against the Navajos, were the innumerable acts of trespass and encroachment on Navajo lands by the United States Government, the seizure of Navajo livestock, the cutting of Navajo hay for Army livestock without compensation, and other acts of bad faith, some of which practices originated in the period of Spanish and Mexican occupation, but which were carried on vigorously by the defendant United States after the acquisition of the Territory of New Mexico. The failure of the United States to protect the Navajos from such acts and practices of the United States, as well as other depredations, 2138a/ constituted violations on the part of the

2137/ Navajo Ex. 145, Davis to Manypenny, April 9, 1856; Baker, *supra* note 2136; Navajo Ex. 236, Simonson to Wilkins, Sept. 9, 1859; Def. Ex. G-56, *ibid.*; Navajo Ex. 238, Kendrick to Greenwood, Oct. 4, 1859; Navajo Ex. 430, Miller to Pope, April 5, 1871; Meriwether, *supra* note 2136; Navajo Ex. 837, Sykes to Wilkins, Jan. 30, 1860; Def. Ex. R-132, Dodge to Meriwether, Aug. 2, 1855; Def. Ex. R-113.

2138/ Simonson, *supra* note 2137; Kendrick, *supra* note 2137; Def. Ex. R-70.

2138a/ See Finding 7, *supra*.

defendant United States of treaties with the Navajo Tribe^{2138b/} and were continuous provocations or causes of counter-attacks by Navajos and the basic causes of the Navajo war which led to the military expedition of Colonel Christopher (Kit) Carson in 1863 and the captivity at Fort Sumner of a substantial portion of the Navajo Tribe from 1864 to 1868. The military actions by the Navajos were primarily by way of self-defense and retaliation.

2138b/ See Finding 9, B, infra.