

Vol 15

Mr. Leland Copy

INDIAN CLAIMS COMMISSION

THE NAVAHO TRIBE,)

Petitioner,)

vs.)

UNITED STATE OF AMERICA,)

Defendant.)

DOCKET NO. 229

THE HOPI TRIBE,)

Petitioner,)

vs.)

UNITED STATES OF AMERICA,)

Defendant.)

DOCKET NO. 196

TRANSCRIPT OF PROCEEDINGS

Grand Canyon, Arizona

November 18, 1960

" 19, "

" 21, "

Friday
Sat.
Monday

FRED L. BAKER & ASSOCIATES

OFFICIAL COURT REPORTERS

P. O. BOX 948

TUCSON, ARIZONA

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FRED L. BAKER & ASSOCIATES
COURT REPORTERS

INDIAN CLAIMS COMMISSION

1 THE NAVAHO TRIBE,)

2)
3 Petitioner,)

4 vs.)

5 DOCKET NO. 229

6 UNITED STATES OF AMERICA,)

7 Defendant.)
8

9 THE HOPI TRIBE,)

10)
11 Petitioner,)

12 vs.)

13 DOCKET NO. 196

14 UNITED STATES OF AMERICA,)

15 Defendant.)
16

17 THE COMMISSION met, pursuant to notice, in Grand
 18 Canyon, Arizona, at 11:15 a.m., November 18, 1960,
 19 Commissioner Scott presiding.

20 APPEARANCES:

21 On behalf of the Petitioner in Docket No. 229,
 22 The Navaho Tribe, Mr. Norman Littell,
 23 Washington, D.C.

24 On behalf of the Hopi Tribe,
 25 Mr. John Boyden and Mr. Allen Tibbals,
 351 South State Street,
 Salt Lake City, Utah.

On behalf of the Defendants in Dockets 229 and 196,
 Mr. William H. Lundin, Esq., Attorney,
 Lands Division, Department of Justice,
 Washington D.C.

PROCEEDINGS

1
2
3 **COMMR. SCOTT:** The Commission will now be in session.
4 This is a proceeding in dockets 196, the Hopi Tribe; and 229,
5 the Navaho Tribe. This is a resumption from the session
6 which was held on May the 26th, 1960, and the reporter has
7 been sworn in. I'm going to request, however, that the oath
8 of the reporter appear at this point in the record.

9 **JAMES E. BOULEY:** I, the undersigned, having been
10 duly named as a reporter to take and transcribe the testimony
11 in the above entitled cause, upon my oath do say: that I
12 will well and truly take down and transcribe the questions
13 propounded to and the answers given by the witnesses at
14 the hearing of said cause, and that I will do all other
15 things required of me by said Commission, a Commissioner or
16 Examiner thereof.
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1 COMMR. SCOTT: First I would like to say I regret
2 that we are a little tardy, but of course those matters are
3 sometimes unavoidable. Let the record show that prior to
4 the resumption of proceedings counsel have had brief
5 conferences on certain points. It has been agreed that the
6 convenience of parties may be met, in view of the time of
7 year, the location, in view of the witnesses; and secondly,
8 it has been agreed that each of the counsel will, despite the
9 fact that we have some record and it may be duplicative, give
10 a brief opening statement before we proceed to the testimony.

11 First let me say that it's my understanding that the
12 witnesses, certain of the witnesses are similar in nature
13 as to this conflicting, overlapping portion of the claim for
14 the Navahos, and have already had their testimony taken.

15 Am I right, Mr. Littell?

16 MR. LITTELL: That is correct, your Honor, with this
17 qualification: At the last hearing counsel for the Govern-
18 ment served notice upon us, and it's in the record, not in
19 the form of any formal notice but orally, that the Government
20 would claim as an offset against the Navaho claim every
21 addition to the Navaho Reservation, to the Navaho land
22 holdings since 1868. Now, for your Honor's information,
23 the area of the 1868 Executive Order is shown on this map.

24 COMMR. SCOTT: When you say "this map," Mr. Littell,
25 please identify it.

1 MR. LITTELL: That's just what I'm seeking to do,
2 your Honor. You confirm it, Mr. Correll, that this was not
3 marked for identification, or do you think this was 240 in
4 the Hopi case?

5 MR. CORRELL: It was 440 in the Hopi case. I don't
6 know what number it was in the Claims case.

7 MR. BOYDEN: May we clarify this? It is our intention
8 to use the exhibit that was numbered 440 in the case of Healing
9 versus Jones before the three judge court, and I would like
10 to have that map marked as Hopi Exhibit Number 2. We have a
11 Number 1 that was given in Washington on cross examination.

12 COMMR. SCOTT: Very well, the reporter will mark the
13 exhibit for identification.

14 (Hopi Exhibit 2 marked for identification.)

15 MR. LITTELL: I understood that counsel was to offer
16 this map which was originally our preparation in this case,
17 your Honor, so it now has the number of Hopi Exhibit Number 2.

18 COMMR. SCOTT: The purpose of my question, Mr. Littell,
19 maybe to make it a little easier, is this: As I understand
20 it, it's Mr. Boyden's witnesses from the Hopi case docket
21 number 196 who will appear at this session, and since we have
22 come quite some way and the Navaho are out here, I wanted the
23 record to show why we were not putting on Navaho witnesses at
24 this time, and it's my understanding that they have already
25 appeared on this phase of the program, that's all I had in

1 mind at this time.

2 MR. LITTELL: Well, it raises a pretty fundamental
3 matter, your Honor, if I understand your Honor's question,
4 because this is new matter in the controversy. As a result
5 of counsel's oral notification to us in the last proceeding
6 that they, the Government, would claim as an offset to any-
7 thing which the Navahos might recover in the Claims area,
8 which is outside of the present reservation boundaries, we
9 are confronted with a new problem. We did not make any
10 claim in the Navaho claimed area for anything the Navahos
11 hold within the boundaries of the Navaho Reservation on the
12 theory that the Navahos have that land now. While the
13 Government was late in giving it to them in many respects,
14 we ignored the issues that might arise from that fact and
15 accepted the fact that the Navahos hold everything within the
16 Navaho Reservation.

17 Now what counsel has said in open hearing raises what
18 we regard as a brand new issue in this case, and therefore in
19 answer to your Honor's question I feel the necessity of
20 answering it in detail. This gray area on the Hopi Exhibit
21 Number 2 --

22 COMMR. SCOTT: Marked for identification.

23 MR. LITTELL: -- marked for identification Exhibit
24 Number 2 is the original 1868 Executive Order Treaty Reserva-
25 tion area, Treaty Reservation area when the Navahos were

1 returned, or a portion of the Navahos who were in captivity
2 in Fort Sumner in 1864 to 1868. This is the area on which
3 they were located when they came back.

4 Now Government counsel's rather startling announce-
5 ment says that for each of these additional colored areas
6 which are represented by Executive Order areas later given to
7 the Navahos by Executive Order area, and all the area within
8 the present boundaries of the Navaho Reservation fixed by the
9 Act of June 14, 1934, the Government will claim an offset
10 against anything which the Navahos claimed. Now, in answer
11 to your Honor's question as to Navaho witnesses, we have to
12 put on more Navaho witnesses.

13 COMMR. SCOTT: I understand.

14 MR. LITTELL: Because we will show, whereas we were
15 unprepared for this question, and did not prepare proof in
16 this area, we now will have to do so, and are in the process
17 of doing so.

18 COMMR. SCOTT: Well, now, in that connection, Mr.
19 Littell, the fact that they are not coming on at this session
20 will not -- that will not prejudice your -- we are coming
21 back in April, as I understand.

22 MR. LITTELL: That is what I wish to advise the
23 Court.

24 COMMR. SCOTT: Yes, coming back in April, so that the
25 mere fact that we are having only testimony from the Hopi

1 Tribe will not prejudice you at this time.

2 MR. LITTELL: No, your Honor, and I do wish to have
3 it in the record at this point that the Government had our
4 allegations for years without filing any answer to show that
5 they were going to make this contention, so we were caught
6 completely by surprise by it, by this oral announcement, and
7 at the same time we are impaled upon the preparation of the
8 three judge court case which we have just tried for one solid
9 month from September 26 to October 22 in Prescott, and we
10 could do nothing about it until now, and we are doing some-
11 thing about it and I will, in the proper time, make a motion
12 to the Court, probably for the holding of further hearings
13 out in this country to save the expense of the witnesses.
14 That's unfortunately an extended answer to your Honor's
15 question.

16 COMM. SCOTT: I understand. Well, I wanted to get
17 that on the record, if there was any reason for further
18 testimony which I had understood was fully completed.

19 MR. LITTELL: You had every reason to think so, your
20 Honor, until this issue arose.

21 MR. LUNDIN: In view of the statements made by
22 counsel for the Navaho Tribe, Mr. Littell, I think the record
23 should be clear that despite the fact that Mr. Littell claims
24 surprise, his petition claims compensation for the area
25 within the present-day Navaho Reservation, and it was not until

1 the hearings that were held that the announcement was made
2 that they did not seek a money judgment for the area in the
3 reservation, so that there can be no surprise on the part
4 of the Navaho Tribe in connection with the claim.

5 Furthermore, it is not the Government's contention
6 that the Government seeks an offset as to whatever areas
7 outside the Treaty Reservation, but it is the Government's
8 contention that since the Navahos do not claim compensation
9 for the area within the present-day Navaho Reservation, then
10 the Government seeks as an offset only those portions of the
11 present-day Navaho Reservation to which they did not have
12 aboriginal occupancy.

13 In other words, and purely for the purposes of
14 illustration, there may be an area outside the 1868 Treaty
15 Reservation in which the Navahos had aboriginal occupation.
16 As to those areas the Navahos do not seek compensation in this
17 proceeding, and the Government will not claim an offset in
18 proceeding. But as to those areas, for example, and purely
19 as an illustration on the San Juan River in Utah, if the
20 proof in the case should turn out that the Navahos never had
21 aboriginal use and title to such area, but it is now within
22 the present-day Navaho Reservation, there the Government would
23 seek to utilize that area as an offset to whatever amount the
24 Navahos would recover.

25 COMM. SCOTT: Well, now, Mr. Littell has been put

1 on notice on the record and may govern himself accordingly.
2 I know of no rule of the Commission which would preclude
3 additional testimony. Perhaps there may be something in
4 procedure on the Commission which would require a motion for
5 the extra testimony, I don't know.

6 MR. LITTELL: I believe not, your Honor.

7 COMMR. SCOTT: I would think that it could come on
8 in the regular course of the trial, and I did want the record
9 to show in view of the fact that we only have Hopis at this
10 session, why we don't also have the Navahos testifying.

11 Now, --

12 MR. LITTELL: Your Honor, this is an extremely
13 important point bearing upon the time to be consumed in these
14 Commission hearings, and may I make this clear: I have not
15 been aware, and associate counsel, Marvin Sonosky, who has
16 had charge of the trial of the case up to this point and
17 could not be here now, was not aware, to the best of my
18 knowledge, of this refinement of the Government's position.
19 In view of the fact that we are about to launch a thorough
20 preparation of this testimony, I would ask Government counsel
21 on the record to be as specific as he possibly can as to what
22 areas, he has already designated one, the San Juan area, as
23 to what areas he considers that the Navahos did not have
24 aboriginal occupancy so that we can prepare our proof and
25 narrow our proof to the areas actually in controversy. Is it

1 possible to do that, Mr. Lundin?

2 COMMR. SCOTT: Before you reply, let me say this:
3 That if it will conserve time and present a more accurate
4 picture, you might compose the answer during the lunch hour
5 and put it in --

6 MR. LUNDIN: No, I don't think it would.

7 COMMR. SCOTT: If you can give it now, that's fine.

8 MR. LUNDIN: The San Juan area was given purely for
9 illustrative purposes. The defendant will, through its
10 expert witnesses and exhibits, put in proof. The defendant
11 does not pretend to be able to foretell what the Commission
12 will determine was the aboriginal area occupied by the
13 Navahos, and in the absence of that the defendant can't say
14 specifically which areas it will claim ^{Final} an offset, because it
15 will claim an offset as to those areas within the present-
16 day Navaho Reservation which the Commission may find were not
17 aboriginally occupied by the Navahos. We may have opinions
18 as to what those areas are, but we do not feel that those
19 opinions would be binding on the Commission, and the state-
20 ment of those opinions might mislead the Navahos in their
21 preparation.

22 MR. LITTELL: Then, your Honor, I should give
23 counsel and the court some sense of proportion as to the
24 volume of work involved. I have just assembled a list of
25 100 witnesses ranging in age from 109 years old into the

1 80's who have material knowledge on this subject, and evidence
2 will be organized accordingly.

3 COMMR. SCOTT: Do you want to call any of them at
4 this session?

5 MR. LITTELL: No, impossible. I do not anticipate
6 calling all of that list of 100 witnesses, but I would be
7 surprised if it was less than 50. This is to give counsel and
8 the Court a sense of proportion of the time that will be
9 consumed and the volume of work that's involved, because that
10 preparation is being launched at the immediate time.

11 COMMR. SCOTT: Do you anticipate, Mr. Littell, that
12 that could be accomplished during the April proceedings?

13 MR. LITTELL: I think so, your Honor, but I think it
14 will extend the April proceedings considerably, and when I
15 referred to a motion, I meant to convey a motion to hold
16 further hearings out in this country to save taking these
17 witnesses -- in fact some of them would be quite incapable of
18 going that far. In fact I say now that some of them we will
19 find are not sufficiently able bodied to attend any hearing,
20 and we will have to take some depositions.

21 COMMR. SCOTT: Fine, I think it's well to have this
22 on the record.

23 We will be off the record. We will recess for five
24 minutes.

25 (Short recess.)

1 COMMR. SCOTT: The Commission will resume session.
2 I believe now we have concluded that matter on the record
3 concerning the aspect of these cases which involves the
4 extent of the testimony and probable location of witnesses
5 from the Navaho Tribe. So at this time we will ask counsel
6 to make a very brief opening statement for the record prior
7 to the taking of testimony of witnesses. I'd like to have
8 in that opening statement, if I may, keyed into the exhibits
9 marked for identification, the precise location of conflict,
10 overlapping claims as between the two tribes.

11 MR. BOYDEN: Now, may it please the Commission, I
12 have two maps and I hope that we can have Hopi Exhibit 2
13 introduced by stipulation. It has no testimony with respect
14 to it, but merely shows the various areas of land that are
15 involved in this case, and the time that they were annexed
16 to the Navaho Reservation. For example, the Treaty Reserva-
17 tion is this area in gray dotted, the 1868.

18 COMMR. SCOTT: When you say "this," hook it up with
19 the number for identification.

20 MR. BOYDEN: I'm now going to refer, and all of
21 these references at this moment, to Hopi Exhibit 2.

22 COMMR. SCOTT: Marked for identification.

23 MR. BOYDEN: Yes. Now each one of these areas to
24 which I refer has a letter on them, and it happens to be the
25 letter B which is the Treaty Reservation and so forth.

1 MR. LITTELL: Mr. Boyden, excuse me, may I ask a
2 question? Do you represent that this is a reproduction of
3 our Exhibit 440, the Tomar map, Executive Order map? If it
4 is I will stipulate it be admitted in evidence without ob-
5 jection.

6 MR. BOYDEN: It is the copy that you served upon me
7 in that case.

8 MR. LITTELL: Then I have no objection to its admis-
9 sion, your Honor. I have had no opportunity to examine it.
10 Accepting Mr. Boyden's statement on that, it may be admitted
11 as far as I am concerned.

12 COMMR. SCOTT: Very well, the reporter will note in
13 the record that this exhibit, which is a map with colored
14 portions thereon and has been marked for identification
15 Petitioner's Exhibit in docket number 196 for identification
16 will be received in evidence and will be placed in the
17 custody of the reporter and may be withdrawn by counsel for
18 the docket 196.

19 MR. BOYDEN: Yes.

20 MR. LUNDIN: Referring to that exhibit, the defendant
21 has no objection with the understanding that Mr. Boyden
22 stated in the record that this map is not intended to have
23 probative value, but is only used for illustrative purposes.

24 MR. BOYDEN: That's correct.

25 (Hopi Exhibit 2 received in evidence.)

1 COMMR. SCOTT: Mr. Lundin, you have my apologies.
2 I should have waited for you. And let the record show that
3 the reception of the exhibit into evidence followed Mr.
4 Lundin's remarks rather than before.

5 MR. BOYDEN: Now, may I explain to the Court briefly
6 the situation with respect to this map, because it will have
7 a great bearing upon the testimony of these witnesses that
8 can be produced at this late date.

9 As the Commission knows, this land was acquired by
10 the United States by ^{the} Treaty of Guadalupe Hidalgo in 1848.
11 We claim that the Government, prior to that, in driving the
12 Navahos into this area, had some bearing, just prior to it.
13 But it is in that vicinity of 1848 that is crucial in this
14 case. Now certain areas of this land which was claimed to
15 be Hopi territory have been annexed to the Navaho Reserva-
16 tion.

17 I would like also to show this one other map, it has
18 been marked in this case in Washington in the hearings, and
19 was the one which we used to pencil --

20 COMMR. SCOTT: Do you want the reporter to mark it
21 for identification at this time?

22 MR. BOYDEN: I was just going to make a statement
23 with respect to that. We penciled various things on it at
24 the request of the Commission, and it now appears in the
25 testimony, and I would like to just simply refer to this as

1 the Navaho map (Navaho Exhibit 510) and supply for the
2 record the number that was given to that. It is the wall
3 map that they have there at the Commission, it's a copy of
4 that.

5 COMMR. SCOTT: In other words, this is a duplicate of
6 a map which is already in evidence?

7 MR. BOYDEN: In evidence introduced by the Navahos.

8 COMMR. SCOTT: And do you know the number?

9 MR. BOYDEN: They don't, and I'd like to supply that
10 for the record at a later date.

11 COMMR. SCOTT: All right, if you will supply that
12 sometime before the session is over, and in the meantime
13 when you refer to it, refer to it in a particular way so that
14 it will be identifiable.

15 MR. BOYDEN: May we refer to it as the Navaho wall
16 map?

17 MR. LUNDIN: Navaho claim map.

18 MR. BOYDEN: Yes, Navaho claim wall map.

19 COMMR. SCOTT: Do you recall the number of it, since
20 he says it's in your docket?

21 MR. LITTELL: Unfortunately, your Honor, I did not
22 anticipate his using this map and was not prepared for that.
23 I thought he was presenting his own.

24 COMMR. SCOTT: That's all right.

25 MR. LITTELL: But I'm perfectly willing that Mr.

Nav. Ex. 510

1 Boyden refer to it as the Navaho claim map (Navaho Exhibit
2 510) and supply the number later.

3 COMMR. SCOTT: How about you?

4 MR. LUNDIN: No objection to that.

5 COMMR. SCOTT: You see no difficulty in the briefing
6 from that identification?

7 MR. LUNDIN: I will get the number if Mr. Boyden
8 doesn't by telegram so the reporter can put it in before the
9 transcript is written.

10 COMMR. SCOTT: Very well.

11 MR. BOYDEN: Now it has particular advantage, referring
12 to this map (Navaho Exhibit 510) because this is the one we
13 referred to at the other hearings, and it will tie these
14 hearings into the Washington hearing. That's my purpose in
15 using it.

16 COMMR. SCOTT: When you say "this map," be certain
17 that you identify it as the Navaho wall map, (Navaho Exhibit
18 510) or the exhibit number 2, because otherwise when we look
19 at the record we will have no way of knowing.

20 MR. BOYDEN: I will do that. Now I wish to make
21 reference now to the Navaho claims wall map (Navaho Exhibit
22 510). This part that is shown in a large black line with
23 the various numbers commencing with 1, 2, 3, 5, and so forth,
24 all numerically going around, is the claim of the Navaho
25

[Later in Sept. 1961 moved to the intersection line some distance west.]

?

1 Indians. The Hopi Indian claim goes along the San Juan River
2 and over to the New Mexico-Arizona border at the four corners,
3 and then goes south down to where the Zuni River intersects
4 the two state lines, then down the Zuni River to the Little
5 Colorado River, then down the Little Colorado to the Colorado
6 River, and then back up to the San Juan River.

7 Now the Hopi Executive Order Reservation is shown in
8 the center of this map, and that is the subject of the litiga-
9 tion in the case of Healing versus Jones which is now before
10 a three judge federal court pursuant to a special statutory
11 court creation, and decision has not yet been reached.

12 **COMMR. SCOTT:** And probably will be appealed?

13 **MR. BOYDEN:** Probably will be appealed, whichever
14 side should win.

15 **COMMR. SCOTT:** As I understand it, am I correct in
16 my understanding that by having a three judge court it will
17 be unnecessary to have an intervening court of appeals?

18 **MR. BOYDEN:** Correct.

19 **MR. LITTELL:** Direct appeal.

20 **MR. BOYDEN:** Direct appeal to the Supreme Court of
21 the United States. Now, the area outside of the reservation
22 that we have in conflict in the hatched area on this line
23 that I'm pointing to now, still pointing to the Navaho
24 claims wall map (Navaho Exhibit 510), down the Zuni River,
25 up the Little Colorado River and then to the bottom of the

1 Navaho Reservation, following along the bottom of the Navaho
 2 Reservation back over to the New Mexico-Arizona line. That
 3 is the portion we shall refer to as the southern area.

4 COMMR. SCOTT: That's the portion that's in conflict
 5 insofar as this testimony that we are to receive today and
 6 tomorrow as between yourself, the Hopis in 196, and the
 7 Navahos in 229? Am I right? We will have other conflicts
 8 in the reservation, is --

9 MR. LITTELL: Yes, your Honor, except in my opening
 10 statement I will have a comment to make on that.

11 MR. BOYDEN: This is our conflict outside the Navaho
 12 Reservation, and which the Commission first directed us to
 13 issue testimony, pursuant to a stipulation.

14 Now I wish to refer to the Hopi number 2 map intro-
 15 duced by stipulation in this case. This map shows the source
 16 of the original withdrawing of the areas that are given the
 17 various colors on this map. C, for example, is withdrawn by
 18 an Executive Order dated October 29, 1878, from President
 19 R. B. Hayes. I wish now to explain to the Commission that
 20 we will have very little testimony, perhaps just incidental
 21 in this territory that is that old. In other words, that
 22 has been taken by Executive Order of 1878, or 1880 on the
 23 point D just below it, by the Hayes Executive Order in
 24 January 6, 1880. And by the area that is immediately north
 25 of the Executive Order Reservation ^{EF} known as the Executive

1 Order Area of May 17, 1884. Our testimony in this case will
2 be largely confined to the other colored areas that surround
3 the Executive Order Reservation. Immediately to the west it
4 is largely covered by the Executive Order Reservation of "F"
5 January 8th, 1900, by President McKinley. One small portion
6 will be of a later addition of May the 23rd, 1930, will also
7 be included in that west portion.

8 We will then also take into consideration the area
9 marked G, which is colored in green, covered by the Executive
10 Order of November the 14th, 1901; then the area in gray
11 marked O covered by the Executive Order Reservation Area of
12 June 14, 1934. That is not the Executive Order, that one
13 is the Act of Congress of 1934 which re-defined the boundaries
14 of the Navaho Reservation, took into consideration not only
15 that piece but two other small pieces here that are marked
16 O. Then we will also have testimony with respect to the
17 area covered by the Executive Order Reservation of November 9,
18 1907. Then our testimony will also extend to the south area
19 that I have described and pointed out on the Navaho claims
20 wall map (Navaho Exhibit 510), and referred to as the south
21 area. Now those are the particular areas, because they are
22 of a later date and we can have some probative value of
23 witnesses who are alive today. Now that is the area in which
24 I intend to show use and occupancy by the Hopi Tribe of these
25 areas prior to the time that they were withdrawn by Executive

1 Order for the purposes for which they were withdrawn.

2 COMMR. SCOTT: Thank you, sir. Mr. Littell?

3 MR. LITTELL: If the Court please, the Navaho
4 testimony will show, and the proof will show, that in all
5 the areas which Mr. Boyden has described, Navaho use and
6 occupancy prevailed.

7 Aboriginally and up to the dates of material import-
8 ance to the United States Government, which of course is
9 subsequent to the Treaty of Guadalupe ^{Feb. 2 or July 4} Hidalgo ^{on June 2nd,}
10 1848, we will show as we have shown in the Hopi case, the
11 three judge court case, that the Hopis occupied the Mesa
12 tops of the three principal mesas for two or three hundred
13 years for that matter, and nowhere else of any appreciable
14 proportions or weight, amounting to nothing as far as use
15 and occupancy was concerned outside of the mesa tops. We
16 are not concerned with the early period of Spanish explora-
17 tion and Spanish occupancy, we are concerned, as I'm sure
18 Government counsel will make clear to you, as we are together
19 on this point -- however rare that may be -- that the material
20 period of occupancy is modern history. Now as far as this
21 testimony is concerned this morning, or today and tomorrow,
22 Mr. Boyden has already stated that it goes -- it is limited
23 by the testimony and knowledge of living witnesses, and I
24 merely point out the fact that, in anticipation of what his
25 witnesses will say as they tried to say in the three judge

1 court case, that we will completely disprove any Hopi
2 occupancy in all of that area which Mr. Boyden has designated
3 except the mesa tops, from which the Government has, ever
4 since its dealings with the Hopis, vainly endeavored to have
5 them move down into the valleys, and to attain to a better
6 degree and quality of civilization than they had attained to
7 on the mesa tops. And they were unsuccessful in the modern
8 period up until the relatively recent history, say the late
9 twenties and thirties. This, however, is a very general
10 statement and quite sufficient to show the conflict and is
11 sufficient, I think, for an opening statement.

12 COMM. SCOTT: Mr. Lundin?

13 MR. LUNDIN: If your Honor please, it is the under-
14 standing of the defendant that the first stage of the
15 consolidated Navaho-Hopi hearings, including the hearings in
16 Washington, related to the question of aboriginal title.
17 Aboriginal title is basically a question as to where these
18 various Indian groups were and what areas they occupied in
19 or around the year 1848. Insofar as testimony is offered
20 concerning the areas that Mr. Boyden illustrated on Hopi
21 Exhibit Number 2, such testimony will only go, if at all, to
22 the date of taking based upon the assumption that those
23 areas were occupied aboriginally by the Hopi Indians.

24 Secondly, the date of taking would only be of
25 importance if it is also shown that thereafter the Hopis

1 were excluded from such areas. The Government is not
2 prepared at present to either cross examine intelligently
3 or to produce any witnesses concerning a date of taking.
4 It was the Government's understanding that this hearing was
5 concerned with the question of aboriginal title. The
6 Government, however, does not wish to prevent, even if it
7 had the right to object, to the Hopis presenting such
8 testimony, but wishes the record to be clear that at this
9 time the Government is in no position to either cross examine
10 intelligently or to make any comment with respect to the date
11 of taking of the areas marked on Hopi Exhibit Number 2.

12 COMMR. SCOTT: In other words, as I understand it,
13 Mr. Lundin, the Government's interest, of course, is as
14 between both of the parties, that there is no case. I have
15 read over the answer, and of course there is no case at all,
16 that's the Government's position. And your statement now,
17 of course, is helpful to me because I will know in what
18 respect the testimony we are about to take will come in so
19 far as that answer, the answers which I have read. On the
20 other hand, I gather that, although you do have more or less
21 a general denial in your answers, that there is not quite
22 so much question in your mind about the mesa tops there.
23 But we won't go into that because we want to get right into
24 the testimony now, and unless there is something additional
25 that you'd like to say?

1 MR. LITTELL: Your Honor, may I make this supplement
2 to my statement?

3 At the suggestion of my very able partner and legal
4 associate, Mrs. Littell, who is very deep in the facts and
5 history of this case, that my statement was deficient in
6 pointing solely to the mesa tops. There were, of course,
7 abutting farm lands at the foot of the mesas, and Hopis
8 traveled as far as ten miles on foot to cultivate their
9 farms and returned to the villages in the evening. I did not
10 mean to preclude in my statement the fact that the Hopis
11 rightfully owned those abutting farm lands down from the
12 mesa tops.

13 COMMR. SCOTT: Very well.

14 MR. BOYDEN: Of course we will have no objection to
15 such an extension, and further extensions as the trial
16 proceeds.

17 COMMR. SCOTT: Very well. Now do we have a problem
18 of an interpreter to be sworn in at this time?

19 MR. BOYDEN: Yes. May I, for the sake of clarity,
20 say one other thing in view of what has been said, however?
21 It hasn't been my purpose to state to your Honor our case,
22 nor what we intend to prove in toto. I'm just saying the
23 scope of the testimony that we intend to introduce by these
24 particular witnesses. Nor am I endeavoring to select the
25 dates of taking at this hour, I'm saying that we have decided

1 with this testimony to produce the Indians who can testify
2 prior to the date of those Executive Order areas, and that's
3 just the scope of the testimony and I don't intend to be
4 limited to that in the trial of our case as it proceeds,
5 of course.

6 COMMR. SCOTT: Well, let me just say this, and I
7 think I speak for all three Commissioners, I certainly speak
8 for myself, and that is that although we want to expedite
9 the cases and complete them as soon as possible, we don't
10 want to expedite them to the point that testimony is pre-
11 cluded which might be construed, at least by the Indians,
12 to be a basis for returning to Congress after we have sent
13 the final report to the archives. So I don't think you need
14 to worry about having testimony precluded at a later date
15 if it's necessary, Mr. Boyden. Now as to the interpreters,
16 we have one, one to be sworn in at this time?

17 MR. BOYDEN: Albert Yava, will you come forth,
18 please, and be sworn.

19 COMMR. SCOTT: Would you come forward, Mr. Yava,
20 and read this statement first in order to save time? It's
21 very brief.

22 MR. YAVA: You want me to read it aloud, your Honor?

23 COMMR. SCOTT: Yes, please read it aloud. Let the
24 record show that Mr. Yava now is reading his oath as
25 interpreter for the record.

1 MR. YAVA: I, the undersigned, having been duly
2 named as an interpreter in the above entitled cause, upon
3 my oath do say that I will well and truly interpret and
4 translate the questions propounded to and the answers given
5 by the witnesses of the hearing of said cause, and that I
6 will do all of the things required of me by said Commission,
7 a Commissioner or examiner thereof.

8 COMMR. SCOTT: Thank you, Mr. Yava. Will you please
9 now just sign this at this point. Now, as you read that you
10 did not have your right hand ^{up} out, but you would have been
11 willing to read the same with your right hand up, am I
12 right?

13 MR. YAVA: Yes, sir.

14 COMMR. SCOTT: Thank you, sir.

15 MR. BOYDEN: Just sit here then, Mr. Yava.

16 MR. LUNDIN: If your Honor please, may I ask some
17 questions on the competence of the interpreter?

18 COMMR. SCOTT: You may. That was merely the oath
19 that the interpreter was taking, and if you desire, either
20 party desires to at this time ask questions, either
21 question the qualifications, of course, nothing has been
22 offered as to the qualifications yet.

23 MR. LUNDIN: I'm sorry, go ahead. I thought by
24 swearing him in he was officially the interpreter.

25 COMMR. SCOTT: That's merely the requirement of

1 the Indian Claims Commission that his integrity is established
2 in the record and it has nothing to do with his qualifications,
3 however, and I'm assuming that Mr. Boyden will lay that
4 foundation on the record.

5
6 ALBERT YAVA,

7 sworn as the interpreter, was examined on his qualifications
8 as follows:

9
10 DIRECT EXAMINATION

11 BY MR. BOYDEN:

12 Q Will you state your name, please?

13 A Albert Yava.

14 Q Where do you reside, Mr. Yava?

15 A I'm residing Parker, Arizona, now.

16 Q Where were you born?

17 A Polacca, Arizona.

18 Q Are you a Hopi Indian?

19 A Yes, sir.

20 Q I will ask you if you are acquainted with the Hopi
21 language?

22 A I am.

23 Q And I assume from your reading and what you are
24 saying to me that you are also acquainted with the English
25 language?

1 A To some extent, yes.

2 Q And are you able to interpret from the English to
3 the Hopi and from the Hopi to the English?

4 A I am.

5 Q And are you more or less acquainted with the various
6 dialects and different words that are used by the various
7 mesas?

8 A Yes, sir.

9 Q Of the Hopi Tribe or of the Hopi Villages?

10 A Yes, sir.

11 Q Now, Mr. Yava, have you acted as an interpreter
12 before?

13 A Yes, sir.

14 Q Have you acted for governmental officials on many
15 occasions?

16 A Yes, sir, I was official interpreter for the
17 government since 1914 until I moved to Parker with a
18 relocation bunch in 1945.

19 Q Now, have you testified or have you acted as
20 interpreter at Congressional hearings?

21 A Two times, I believe, I have.

22 Q Where were they?

23 A In Washington.

24 Q Now, have you also acted as an interpreter in the
25 court proceedings?

1 A Yes, sir.

2 Q And what court?

3 A At the grand jury at Prescott and also in Phoenix
4 and Tucson.

5 Q And you have been interpreting for how many years?

6 A I stated since 1914 to 1945.

7 MR. BOYDEN: I think that's all.

8

9 CROSS EXAMINATION

10 BY MR. LUNDIN:

11 Q Mr. Yava, when you interpreted before a court was
12 that in the situation where individual Hopi Indians were
13 involved?

14 A Speak a little louder, please?

15 Q When you interpreted as an interpreter before a
16 court of law, did such cases involve individual Hopi Indians?

17 A It does at times.

18 Q Did you ever interpret before a court of law where
19 the case involved the Hopi Tribe as a whole?

20 A I have not.

21 Q You are a member of the Hopi Tribe presently, are
22 you not?

23 A Yes, sir.

24 Q And if the Hopi Tribe should recover in their law-
25 suit before the Indian Claims Commission, you, as a member

1 of the Tribe, would share in such recovery, is that true?

2 A That is true.

3 MR. LUNDIN: If your Honor please, I object to the
4 qualification of Mr. Yava as the interpreter on the ground
5 that he is a person who is financially interested in the
6 outcome of this lawsuit, and that he would be essentially
7 interpreting matters, the answers of which might affect his
8 own financial benefit or detriment.

9 COMM. SCOTT: Now let Mr. Littell make his objec-
10 tions first and then you can reply, and I will make a
11 ruling. Do you have any objection, Mr. Littell, or any
12 questions that you'd like to ask?

13
14 CROSS EXAMINATION

15 BY MR. LITTELL:

16 Q Mr. Yava, do you think there is any living man who
17 knows every language spoken among the Hopi villages?

18 A I don't -- there is a man living that can speak
19 Hopi languages, is that what you have reference to, or
20 any language?

21 MR. LITTELL: Will you repeat my question?

22 (Whereupon, the pending question was read by the
23 reporter.)

24 A I say yes to that.

25 Q (By Mr. Littell) Can you speak and understand

1 every dialect or every language that is spoken among the
2 Hopis in the different clans and different villages?

3 A I claim myself to speak the dialects of all those
4 villages.

5 Q Have you spoken with every one of them?

6 A I have in my meetings with them for years.

7 Q Isn't it true, Mr. Yava, that they can't speak
8 among themselves, that there are many Hopis who cannot talk
9 and understand each other?

10 A The later generation don't readily speak very well
11 enough Hopi, that's true in that respect.

12 Q I mean even in the older generation isn't it true
13 that from one village to another they could not understand
14 each other?

15 A That's not true.

16 Q It's not true?

A No.

Q And that has not been one of the problems --

19 A No.

20 Q -- of the historic background of the Hopis.

21 MR. LITTELL: Well, frankly I do not wish to make
22 it difficult for counsel, and I will state the stipulation
23 which we more or less agreed upon in conference with your
24 Honor before the opening of this session.

25 Mr. Boyden has a tape recording being made of all

1 of this testimony and of the interpreter's statements, and
2 has agreed to lend us, make available this tape recording.
3 This is quite necessary because we do not have anybody
4 available who understands the Hopi language, and aside from
5 that objection to the -- which is not really an objection,
6 I will admit the qualifications of this interpreter subject
7 to our being able to check, through listening to the tape
8 recorder, with those who understand the Hopi language who
9 are not available to us for this hearing, and thereafter
10 making any objections which we see fit to make, if any.
11 And I understood this was agreeable to counsel.

12 MR. LUNDIN: The record may show that insofar as the
13 defendant is concerned, if the tape upon which is recorded
14 the questions and answers of the Hopi witnesses and the
15 interpreter is made available to the Government so that it
16 may check with its own sources the questions and answers,
17 to that extent its objection will be satisfied. But this
18 does not go to the basic point that an interpreter who is
19 interested in the results is not a proper interpreter
20 before a court of law.

21 MR. BOYDEN: May I say that we will make available
22 the tape to each party interested for their inspection, and
23 so if there are any mistakes with respect to interpretation,
24 that they can be later corrected. We also say this: That
25 if either counsel have any suggestions for a more competent

1 interpreter we would readily accede and be willing to
2 stipulate.

3 MR. LUNDIN: If your Honor please, I think one
4 thing should be made clear. If there is an isolated mis-
5 take, such mistake may be corrected. But if, in the
6 opinion of the defendant, the mistakes indicate a pattern,
7 then it isn't a question of simply correcting mistakes.

8 COMMR. SCOTT: Very well. The objection will be
9 overruled and I, at this time, with the authority which is
10 vested in me, will name Mr. Yava as an interpreter. And
11 we have already saved some time by receiving his oath, and
12 I will ask that that be copied in the record at this point.

13 (Oath of Albert Yava: I, the undersigned, having
14 been duly named as an interpreter in the above entitled
15 cause, upon my oath do say that I will well and truly
16 interpret and translate the questions propounded to and
17 the answers given by the witnesses of the hearing of said
18 cause, and that I will do all of the things required of me
19 by said Commission, a Commissioner or examiner thereof.)

20 COMMR. SCOTT: It's understood, of course, that the
21 stipulation which has been placed on the record, as I
22 understand it, makes available to the defendant and to the
23 Navaho Tribe, as nearly as can humanly be done, a protection
24 insofar as accuracy is concerned. Now insofar as the more
25 fundamental objection of the defendant is concerned, of

1 course the defendant has his right, at the proper time
2 under the rules, to make motion to strike any portion of
3 any testimony given. So that with that, we will proceed.

4 MR. BOYDEN: We will ask that K. T. Johnson be
5 sworn.

6 (Discussion off the record.)

7 COMMR. SCOTT: Let the record show that we will now
8 recess until 1:30 p.m.

9 (Whereupon, a recess was taken from approximately
10 12:15 o'clock p.m. until 1:30 o'clock p.m.)

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1 NOVEMBER 18, 1960, AFTERNOON SESSION, 1:30 P.M.

2
3 COMM. SCOTT: The Commission will resume session,
4 Mr. Boyden.

5 MR. BOYDEN: Will you state your name, please,
6 Mr. Johnson?

7 COMM. SCOTT: Oh, just a moment, we must swear
8 this witness. You may keep your seat if you want. Raise
9 your right hand.

10
11 K. T. JOHNSON,
12 called as a witness herein, after having been first duly
13 sworn, testified as follows:

14
15 MR. BOYDEN: You understand that oath, do you,
16 Mr. Johnson?

17 THE WITNESS: Yes.

18 COMM. SCOTT: Let the record show that the
19 witness said yes.

20
21 DIRECT EXAMINATION

22 BY MR. BOYDEN:

23 Q Now will you speak as loud as you can so that we
24 can all hear you, Mr. Johnson. Will you state your name,
25 please?

1	A I was born in --	1960 1876 84
2	Q Your name, just your name first.	
3	A My name is K. T. Johnson.	
4	Q Now you can tell us where you were born.	
5	A <u>I was born in Old Oraibi in 1876.</u>	
6	Q Now Old Oraibi is on Third Mesa, Hopi country, is	
7	it not?	
8	A Yes.	
9	Q Do you know where your parents were born?	
10	A <u>My parents were born right there.</u>	
11	Q <u>Right at Oraibi?</u>	
12	A <u>At Oraibi.</u>	
13	Q Was that in Old Oraibi or Kokotsmovi?	
14	A Old Oraibi.	
15	MR. BOYDEN: Kokotsmovi is New Oraibi.	
16	Q (By Mr. Boyden) Now I will ask you, Mr. Johnson,	
17	if you are acquainted with the area on this map shown as	
18	G, and I refer to Hopi Exhibit 2, which is green? And I'm	
19	referring to the part that is bounded on the southwest	
20	by the Little Colorado River. Are you acquainted with	
21	that area?	
22	A Yes.	
23	Q I will ask you if you were acquainted up as far	
24	as Grand Falls in the northwest corner of this area?	
25	A Yes.	

1 Q And were you acquainted down past Leupp and past
2 Corn Creek?

3 A Yes.

4 Q Now, Mr. Johnson, how far does your memory go back
5 to that area, your personal memory of that area? How long
6 have you known that, since when?

7 A Since I got married.

8 Q All right. Now when did you get married?

9 A I don't know the --

10 Q You have children?

11 A Yes, I have children.

12 Q How old is your oldest child?

13 A Forty-six.

14 Q Do you remember how long you were married before
15 this child was born?

16 A That child was born in 1907.

17 Q 1907?

18 A Yes.

19 Q So that you remember this area before 1907, do you?

20 A Yes.

21 Q Do you know how long before 1907?

22 A Well, I never keep track of those dates, you know,
23 because I never thought that we were going to talk these
24 things later on.

25 Q I understand that. But was it quite a little while

1 before or --

2 A Yes, quite a little while before.

3 Q Quite a little while before 1907?

4 A Yes.

5 Q Now did the Hopi people use that area for anything

6 at that time when you first remember?

7 A Yes.

8 Q Will you tell us what they used it for?

9 A When I was about fifteen the Hopis used to, the

10 olden Hopis used to bring some logs from that Little

11 Colorado River for the beams for their houses to use in

12 the roof.

13 Q Would they use the logs that would float down the

14 river?

15 A Yes, some dead logs and some that they can cut

16 when they were green.

17 Q I see. There were green logs to cut there too,

18 were there, then?

19 A Yes.

20 Q Now have you talked about this area with the members

21 of your family?

22 A No, they -- my family used to tell us that that

23 Little Colorado River, from that Colorado River up to the

24 Hopi Land, they used to tell us that that has been put

25 aside for the hunting areas.

1 MR. LITTELL: I object to the question. Would
2 you mind restating that question and see if I can -- or
3 do you wish to reframe it?

4 MR. BOYDEN: I was going to try to clarify what
5 he was talking about. I don't think he understood my
6 question.

7 MR. LITTELL: Then the answer given is stricken, is
8 it, until you reframe the question?

9 COMMR. SCOTT: Suppose we let Mr. Boyden rephrase
10 the question and then I will consider whether I will strike
11 that answer.

12 Q (By Mr. Boyden) Now, Mr. Johnson, have you talked
13 with the members of your family when you were a boy about
14 the use of this area of the Little Colorado River and the
15 Colorado River?

16 A Yes, I sometimes asking them --

17 Q Now let me ask you this: Did you and other
18 members of your family discuss those things?

19 A Yes.

20 Q So that in your family circles you knew what use
21 was made of this area at that time?

22 A Yes.

23 Q All right. Now, then, will you just tell us what
24 it was that became a custom to discuss at these family
25 discussions?

1 COMMR. SCOTT: Before he does that, Mr. Boyden, I
2 will appreciate very much if he remembers if he can tell us
3 about how old he was when his family, his father and mother
4 passed away. Will you ask him that question?

5 Q (By Mr. Boyden) How old were you when your mother
6 passed away?

7 A Well, when I was about seventy.

8 Q About seventy?

9 A Yes.

10 Q How old was she when she died?

11 A She was -- my mother was about, I think about ninety.
12 She was very old. A little over ninety.

13 Q How old were you when your father passed away?

14 A Well, I don't know how old I am because I told you
15 that I never kept track of these things, you know.

16 Q Do you know about how old your father was, though,
17 when he died?

18 A I think he was about ninety too.

19 Q And when did he die, before or after your mother?

20 A My mother passed away first and then he died second.

21 Q And about how long after?

22 A About ten years after.

23 COMMR. SCOTT: When you were about eighty years
24 old then?

25 THE WITNESS: Yes.

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COMM. SCOTT: About six years ago?

THE WITNESS: Yes, that's right, about six years ago.

Q (By Mr. Boyden) Now will you tell us what was known to the members of your family about the use of this area by your father and your mother and other Hopis that was discussed in your family circles when you were a boy?

A Well, I'm going to tell you that I have no education, just myself education. I just picked up word by word these English words, you know. So sometimes I don't understand even one word to make me puzzle.

Q I see. Now if at any time you don't understand you can ask the interpreter, that's why he's sitting there. We want to help you, but we'd like you to talk English so there will be no difficulty with interpreting if we don't have to use an interpreter. So you just feel free to have Albert tell you anything you don't understand.

Now do you understand the question I asked you?

A I think so.

Q All right, then you tell us what you understood as a boy was the use of this area by your parents and Hopi people?

A Well, as I said, they looked for some dead logs there for their houses, and also for the big bunch of old, dead logs to use drums, and some dead roots for to make

1 dolls out of.

2 Q Now to the making of dolls, what kind of dolls do
3 the Hopi people make?

4 A Well, the dolls were like those Kachinas, you
5 know, all different kinds of Kachinas they are making.

6 Q Now, what are the Kachina ^{dolls} gods, will you explain
7 that so we will know what these dolls are about?

8 A Well, they believe that Kachinas are long time ago
9 was visible, but since then, since these Hopis don't obey
10 the certain laws for the Kachinas, and then they become
11 invisible.

12 Q I see. Now are these dolls made to represent the
13 same things as the Kachina gods did?

14 A Yes.

15 Q And do the Hopis make a lot of those even today?

16 A Yes, they are making lot of those dolls today.

17 Q And did they make a lot of them when you were just
18 a little boy?

19 A Yes, but those dolls at that time have to be
20 present, children's present, not for to make money out of.

21 Q They didn't sell them then?

22 A They didn't sell them.

23 Q They made them as presents for their children?

24 A Yes, just like Christmas presents.

25 Q Now what area of the Little Colorado did they

1 collect this wood to make these Kashina dolls?

2 A All the way through from Leupp down to Grand Falls.

3 Q From Leupp down to Grand Falls?

4 A Yes.

5 Q And where did they collect the wood for the drums?

6 A Right there, right along that river.

7 Q In the same area?

8 A The same area.

9 Q Now, where was the live wood that they used for
10 building purposes that they got in this area?

11 A Right along that river there, a lot of cottonwoods.

12 MR. LITTELL: If the Court please, I wish to be
13 as lenient as possible because we are all trying to
14 expedite this hearing. But Mr. Boyden is speaking in the
15 tense as if the witness himself knew this happened. Is
16 it understood that he is talking about what the parents
17 told him, what was the tradition in the family?

18 MR. BOYDEN: I'm going to clarify that. It's both
19 of them.

20 MR. LITTELL: Well, the witness has already said
21 otherwise on the record. I would like to have it clarified,
22 Mr. Boyden.

23 COMMR. SCOTT: He said his memory, his personal
24 memory goes back to about when he was married, and that
25 his oldest child was born in 1907, but he didn't say when

1 he was married.

2 MR. BOYDEN: He doesn't know, so we will do the
3 best we can to clarify that.

4 COMMR. SCOTT: Can he tell us how long it was after
5 he was married that he had his child? Because he would
6 have been ---

7 MR. BOYDEN: I think we can get at that another
8 way.

9 Q (By Mr. Boyden) Didn't you say that you went down
10 there when you were fifteen? What did you say about being
11 fifteen?

12 A I believe I was twenty-one when I got married.

13 COMMR. SCOTT: That would be 1897.

14 MR. BOYDEN: Yes.

15 Q (By Mr. Boyden) Now this information you have
16 been giving us about the dolls and about the drums being
17 collected, the wood for that being collected in this area,
18 was that collected during the time that you remember
19 yourself?

20 A Yes. Beyond that.

21 Q Beyond that. Now by "beyond that" do you mean that
22 you talked to your family about collecting it before that
23 time?

24 A I understand the question quite well. There is
25 so many things that we gather from along the river that we

1 make use of, but it's too many mention just what we bring
2 to ourselves that is along the river.

3 COMMR. SCOTT: That's not responsive, Mr. Boyden.

4 MR. BOYDEN: That's correct.

5 COMMR. SCOTT: Perhaps the interpreter can put
6 your question to him.

7 MR. BOYDEN: Let me rephrase the question.

8 Q (By Mr. Boyden) Now, Mr. Johnson, when you remem-
9 ber this area of your own knowledge were you and other
10 Hopis gathering materials in this area?

11 A Yes.

12 Q Now tell us what you gathered then?

13 A As I said, some of those things, you know, that
14 they use for their houses.

15 Q Anything else besides building material and wood
16 for drums and wood for Kachina dolls that you can mention
17 now?

18 A Yes.

19 Q What?

20 A And some other gravels, you know, to use for
21 potteries, to use on the pottery.

22 Q Oh, gravel to use for pottery?

23 A Yes, to make them smooth, you know.

24 Q That was gathered on the Colorado?

25 A That's from that area.

1 Q From that area, from the Little Colorado.

2 COMMR. SCOTT: Can you find out whether that was
3 before he was married or after he was married?

4 Q (By Mr. Boyden) Now this material that you were
5 gathering there of your own knowledge, was that gathered
6 before you were married?

7 A A long time ago.

8 Q To your own knowledge?

9 A Yes, these first mesa people gather those gravel
10 stones from that area.

11 Q And you remember that before you were married?

12 A Yes.

13 Q Now, then, let me ask you this: Did you talk to
14 your parents about this area as to things that happened
15 before you were born?

16 A No, I never talked to them like that.

17 Q This information you are giving us now then is what
18 you have observed yourself?

19 A Yes.

20 Q All right. Now did you do any hunting in that area?

21 A Yes. There is our hunting area right there, and
22 also beyond that Little Colorado River.

23 Q Now when you say beyond, you mean you crossed the
24 Little Colorado?

25 A Crossed, yes, crossed. When you go out hunting

1 rabbits, you know, we have to cross that Little Colorado
2 River about a mile or two and then right there we hunt some
3 rabbits.

Since
1875

4 MR. LITTELL: Mr. Boyden, did I understand your
5 question to go across the river?

6 MR. BOYDEN: He said that.

7 MR. LITTELL: You are going out beyond your own claim?

8 MR. BOYDEN: Yes, that's correct, but that's all right.
9 We have to make a claim, your Honor, at a particular place,
10 but my proof will go in and off the line along this.

11 COMMR. SCOTT: I understand. But you didn't establish
12 the time that he went hunting.

13 MR. BOYDEN: I am just doing that now, your Honor.
14 I haven't come to that yet.

15 Q (By Mr. Boyden) Now, did you do any hunting before
16 you crossed the Colorado River?

17 A Yes.

18 Q In this area that's marked green on this map?

19 A Yes.

20 Q Now who did that besides you?

21 A That was not I myself hunting in that area.

22 Q Oh, who was doing the hunting?

23 A Those older people that used to have a hunt for
24 antelopes.

25 COMMR. SCOTT: Do you want to ask a voir dire question.

1 how he knows?

2 MR. LITTELL: Yes, I certainly do.

3 MR. BOYDEN: I was just going to ask him that myself,
4 but if you want to --

5 COMMR. SCOTT: That's all right, that's all right.

6 MR. LITTELL: Very well, to save time, Mr. Boyden,
7 I will let you ask my question. Go ahead.

8 Q (By Mr. Boyden) Where did you get this information
9 with respect to the antelope hunting in this area?

10 A Well, because our fathers have been hunting there when
11 I was a boy.

12 MR. LITTELL: Object to the question as unresponsive
13 and objectionable on hearsay evidence.

14 COMMR. SCOTT: Well, I do find this, Mr. Boyden:
15 Of course I want to state this for counsel, the Government
16 and both of the Tribes, that much of this testimony will be
17 received for what it is worth, and it will be weighed in the
18 light of all of the circumstances that would naturally be
19 inferred. So that I do want you to know that we are going
20 to be liberal in receiving it. Make your objections. We
21 may overrule them. Make your objections to save them for
22 appeal or on the record, but keep in mind that simply because
23 we permit the testimony to go in the record does not mean
24 that it will be given full weight, half weight, quarter
25 weight or any weight at all. But we do -- we want to

1 facilitate the proceedings in the first place; in the
2 second place, we don't want any of these good people to feel
3 that they have been cut off from their testimony. One of
4 the things that I may say to counsel, however, is that if
5 you will avoid any necessity of voir dire by opposing
6 counsel by laying proper foundations in this type of testi-
7 mony it will save a lot of time. That is, how did he know,
8 when did he know, under what circumstances.

9 MR. BOYDEN: Some of those I can't get in advance
10 because I'm not quite sure what he is going to say, but I
11 will try that as near as I can, your Honor.

12 Q (By Mr. Boyden) Now where did you get this informa-
13 tion about the hunting of antelope?

14 A When I was a boy, I said.

15 Q Now, --

16 A Because there was not no Navaho around that area.
17 If there were Navahos they will not come up to those areas,
18 those antelopes. So at that time there is no Navaho there
19 and that's the reason that we used to hunt animals.

20 COMMR. SCOTT: That's not responsive, Mr. Boyden.

21 MR. BOYDEN: Your Honor, I believe this one is.
22 I know what's in the back of this and I'd like to develop
23 this just a little bit further.

24 COMMR. SCOTT: That's perfectly all right. I'm
25 not trying to cut off, but you didn't get the answer to your
^

1 question.

2 MR. BOYDEN: I know I haven't and I will pursue it.

3 MR. LITTELL: I hope my failure to object does not
4 reflect upon my legal capacity, your Honor.

5 COMMR. SCOTT: Let me say this: That if there is a
6 fundamental type of thing that comes up as we develop it,
7 please make your objection. I'm not certain that I will over-
8 rule it, but let's assume that I overrule it. At the time I
9 do, I will give you a continuing objection as to that sort
10 of thing throughout the record, preserved for any points that
11 you might want to argue to the Commission or take on appeal.

12 Q (By Mr. Boyden) Now did you talk to your parents,
13 mother and father, about hunting in this area?

14 A No, they are talking to us, we are their children.

15 Q They talked to you, you didn't talk to them about it?

16 A No, I didn't talk to them.

17 Q And did you talk about these early times when there
18 were antelope there to your parents?

19 A No.

20 Q They just talked to you?

21 A They just talk to me, and I have seen, I have tasted
22 that antelopes soup, you know.

23 Q I see.

24 A Yes.

25 Q Now do you know where the antelope came from when

1 you tasted the soup?

2 A Well, I don't know where they came from, but we
3 think that they came from beyond the Colorado River, Little
4 Colorado River.

5 Q Now when your parents were talking to you --

6 MR. LITTELL: I must object.

7 COMMR. SCOTT: He is going to try to clear it up.

8 MR. LITTELL: I didn't know that the antelope soup
9 from the other side of the Colorado River had a particular
10 flavor, your Honor.

11 Q (By Mr. Boyden) Now when you talked to your
12 parents about the antelope being in this area, when they
13 talked to you, did they tell you where they got them?

14 A No, they never tell me where they got them, but you
15 mean where they got the antelope?

16 Q Yes.

17 A Killed them?

18 Q Yes.

19 A All right there. At Red Lake.

20 Q At Red Lake?

21 A Yes, down below Oraibi.

22 COMMR. SCOTT: See, now that's the sort of thing
23 that helps us, Mr. Boyden, if you can get pinned down.

24 MR. BOYDEN: Except there are three Red Lakes,
25 your Honor.

1 Q (By Mr. Boyden) Now are you speaking of the Red
2 Lake that is just below the Navaho Reservation where it is
3 now down in this south area?

4 A I don't know where Navaho Reservation is.

5 Q Well, is this the Red Lake that's down below Leupp,
6 down towards the Little Colorado, is that the Red Lake you
7 mean?

8 A Yes, this side of Little Colorado River.

9 Q Now, how far this side of the Little Colorado?

10 A I think it's about ten or fifteen miles from Little
11 Colorado River up to Red Lake.

12 Q All right, that's --

13 MR. LUNDIN: Will the witness identify whether he
14 means west of the Little Colorado or --

15 MR. BOYDEN: I will soon find that out here.

16 Q (By Mr. Boyden) Do you know where the boundary of
17 the Hopi Executive Order Reservation is, the south boundary?

18 A Well, as I was told ^[by] one of the Tawa men long ago,
19 he was telling me that that point was down below Ganado
20 Canyon.

21 MR. LITTELL: I have to object to that.

22 COMMR. SCOTT: I think we'd have to, on that sort
23 of thing, since it still exists, Mr. Boyden, find out
24 whether it's yes or no.

25 MR. BOYDEN: Let me lead him a little bit on this.

1 Q (By Mr. Boyden) Mr. Johnson, there is a Red Lake
2 that's situated on Polacca Wash, or it's really on Oraibi
3 Wash as it enters into Polacca Wash?

4 A Yes.

5 Q Is that the Red Lake to which you refer?

6 A Yes, that's the one.

7 MR. BOYDEN: That, on the Navaho claims wall map
8 (Navaho Exhibit 510), appears to be just below the Executive
9 Order Reservation and is north, or is across the river.
10 That's across the Little Colorado River.

11 MR. LUNDIN: By "across," Mr. Boyden, you mean
12 within the Hopi claim area or outside?

13 MR. BOYDEN: Just outside the Hopi claim area. [See next page.]

14 COMMR. SCOTT: Can you pinpoint it on the map by
15 indicating it?

16 MR. BOYDEN: Yes, it's marked right here, it's marked
17 right on it.

18 MR. LITTELL: Use your quad.

19 MR. BOYDEN: It's in quad G-6 on Navaho claims wall
20 map (Navaho Exhibit 510).

21 Q (By Mr. Boyden) Now, Mr. Johnson, to your knowledge
22 did other Hopis hunt antelope when the antelope were there
23 in addition to your family?

24 A Yes, maybe every year. The way I understand my
25 parents, every year in about November they always go out

1 to hunt some antelopes, down that area.

2 Q Now was there a ceremony connected with the hunt-
3 ing of antelope with the Hopi people?

4 A I think so, but I don't know how this thing
5 connected with the ceremony.

6 Q I see.

7 A But I think they use it some way on ceremony.

8 Q Now, from your discussion with your parents do you
9 know where else they hunted antelope?

10 A Well, they said that sometimes they go out hunting
11 antelopes this side, south side of Tuba City, right along
12 that valley, I mean flat places.

13 Q Tuba City, where Tuba City is now?

14 A Yes.

15 Q And south of that?

16 A South of that.

17 MR. BOYDEN: In transposing from one map to the
18 other, Mr. Tibbals draws to my attention that the Red Lake
19 area is within the claimed area of the Hopis and it is on
20 the north, generally north of the Little Colorado River,
21 and it is south of the Executive Order Reservation.

22 ✓ MR. LUNDIN: Would you state for the record where
23 Tuba City is located with respect to the quads there?

24 MR. BOYDEN: That's just exactly what I was going
25 to do. Tuba City, your Honor, is located in quad F-3, that

1 is on the Navaho claims wall map (Navaho Exhibit 510),
2 and is within Area F of the Hopi map number 2. The Red Lake
3 area is within Area G, or the green on the Hopi wall map,
4 number 2.

5 COMMR. SCOTT: Before we proceed further, and some-
6 times I will ask a question or two by reason of the fact
7 that I'm a little new on the Commission. But I think perhaps
8 it may save time in briefing on the record, too, will it be
9 your contention, do you propose to contend that hunting and
10 gathering of wood on an area without occupation is an
11 ingredient which would tend to establish aboriginal title?

12 MR. BOYDEN: Yes, I think the cases have so held,
13 both for the Court of Claims and the Indian Claims Commission.
14 However, I do want to say this: That as we will develop, the
15 Hopis lived differently than some of the Indians who were
16 sort of itinerant. The Hopis lived in settlements and then
17 extended their activities out from the settlement, and this
18 testimony is to show the nature of the Hopis extending their
19 activities out from those settlements. We all know they
20 don't just go in those little stone houses and stay, they
21 have to make a living and they go out in those various
22 directions.

23 COMMR. SCOTT: Thank you very much.

24 Q (By Mr. Boyden) Do you have information, Mr. Johnson,
25 as to when the antelope disappeared from this area?

1 A When the Navahos came.

2 Q And do you know about when that was from the
3 information you have?

4 A Yes, when I was about 14 or 13.

5 Q Now did your father have cattle?

6 A He used to have cattle.

7 Q Did he still have cattle when you were a boy?

8 A He had some cattles when I was a boy.

9 Q Do you know where he ran them when you were a boy?

10 A They grazed down Dinnebito.

11 Q Down Dinnebito. Now you mean the town of Dinnebito
12 or the village of Dinnebito?

13 A No.

14 Q Or do you mean Dinnebito Wash?

15 A Right along that valley, all clear down to an open
16 place down below, and up.

17 Q Now, Dinnebito Wash extends out of the Executive
18 Order Reservation over into the area that is in brown on
19 Hopi map, Exhibit Number 2, over to the Little Colorado
20 River. I will ask you if -- which portion of Dinnebito Wash
21 did he run his cattle?

22 MR. LUNDIN: I object to it, the witness has already
23 stated he ran it up and down the valley, and that's --

24 COMMR. SCOTT: Well, the objection will be overruled.
25 If the witness knows personally where this was in relation to

1 the valley, he certainly is entitled to know and in the
2 second place, we are given a lot of latitude and we will
3 see how much weight we can give to the answer after it's
4 given.

5 Q (By Mr. Boyden) Do you remember any specific places
6 where your father's cattle ran, where they got their water
7 and so forth?

8 A Yes, when I was about 15 or 16, strong enough to go
9 after myself, my father's cattle, I go out on foot because
10 my father had no horses at that time. So they send me out
11 to look for our cattle. I went up those valleys clear down
12 to that open place down below.

13 Q All right. Now will you tell us where this open
14 place down below is?

15 A West side of Kachina Point.

16 Q Now Kachina Point is in the Executive Order Reserva-
17 tion, is it not?

18 A I guess so, yes.

19 COMMR. SCOTT: Have you established, Mr. Boyden,
20 whether this witness knows what you mean when you say the
21 Executive Order Reservation? Have you established that?

22 Q (By Mr. Boyden) You understand what I mean when I
23 say the Executive Order Reservation, do you, Mr. Johnson?

24 A Yes.

25 COMMR. SCOTT: What does he mean, Mr. Johnson, can

1 you tell us? What is the Executive Order Reservation, can
2 you tell us?

3 A Well, the Executive Order Reservation is established
4 years ago when I was in school, and that was -- that line was
5 beyond Dinnebito, just a little -- maybe five miles west of
6 Dinnebito, that line clears up to Coal Canyon, Moencopi-Coal
7 Canyon and then down to Red Lake just a little ways west of
8 Red Lake.

9 Q (By Mr. Boyden) Now, did your father's cattle go
10 outside of the Executive Order Reservation?

11 A Yes.

12 Q Did they go over towards the Little Colorado River?

13 A Yes, sometimes they went clear down there to get
14 their water when -- in summer times, summer times that
15 Dinnebito Wash almost dry up, it was not like this, you
16 know. Today it's big stream running, but that time it was
17 just small. So sometimes they went clear down to the Little
18 Colorado River for water.

19 Q Now, where did they go on the Colorado River with
20 relation to Leupp?

21 A They don't go as far as to Leupp.

22 Q They didn't go up that far?

23 A Just down to Grand Falls.

24 Q Just to Grand Falls?

25 A Yes.

1 **COMMR. SCOTT:** Mr. Boyden, are you talking about
2 the Colorado or Little Colorado?

3 **MR. BOYDEN:** Little Colorado. I'm sorry if I said
4 Colorado.

5 **MR. LITTELL:** Can't you put those in quads?

6 **MR. BOYDEN:** Grand Falls and Leupp are on H-2, but
7 also on the Navaho wall map they are in quad -- Leupp is
8 in quad 6G, and Grand Falls is in 6F. No, I'm mistaken.
9 It's 5F. It's up a little further.

10 **COMMR. SCOTT:** Thank you very much. It's helpful,
11 because when we are looking through this then we can look
12 to the map.

13 **MR. LUNDIN:** Mr. Boyden, have you asked what sort
14 of cattle his father had? It might save time, whether it
15 was sheep or cattle?

16 **MR. BOYDEN:** Well, I'm sure we refer to cattle
17 differently than sheep.

18 **Q (By Mr. Boyden)** What kind of cattle did your father
19 run?

20 **A** The old horned cattle.

21 **Q** Did he have any sheep?

22 **A** No, he didn't have any sheep at that time.

23 **Q** Now, were there other Hopi people running cattle in
24 that area?

25 **A** As I counted those men that have cattles and put

1 them all together down that way for their grazing. They
2 put all together their cattles and graze them right along
3 that valley clear up to the valley of Hotevilla. It must
4 be thousands of those cattles, because 19 men that was
5 their cattles and put them together and have their grazing
6 down that way. And one I don't remember, and Poly
7 told me that his father had cattle too.

8 MR. LITTELL: I object.

9 MR. BOYDEN: That may go out.

10 COMMR. SCOTT: We will have to strike the portion
11 on what --

12 MR. BOYDEN: Yes, we have Poly here.

13 COMMR. SCOTT: Just take so far as the tradition
14 is concerned to his own family.

15 MR. LITTELL: Do I understand your Honor that the
16 part is stricken to which I was about to object that there
17 must have been thousands of cattle as a conclusion of the
18 witness and unsupported by facts?

19 COMMR. SCOTT: That portion we can weigh, leave it
20 in and weigh it. But the other portion on which he
21 testified as to what somebody told him about their family
22 will be stricken.

23 MR. BOYDEN: That's all right.

24 Q (By Mr. Boyden) Now, were these cattle running still
25 while you were a boy?

1	A Yes.
2	Q And you remember that of your own knowledge?
3	A Yes.
4	Q Going out --
5	A Yes.
6	Q -- among those cattle, do you not?
7	A Yes.
8	Q And how old were you about then?
9	A As I say, I was about 15 or 16.
10	Q Now, how many Hopi people were running their cattle
11	in that area when you were a boy about 15 or 16?
12	A 19, 19 men.
13	Q Do you remember who some of those were?
14	A Yes.
15	Q Name them for us.
16	A I have their names here.
17	Q Where did you get those names from?
18	A I had a knowledge of them, you know.
19	Q And you wrote this yourself?
20	A Yes, I typed this myself.
21	Q Just so you could remember it?
22	A Yes.
23	Q All right then.
24	A The first man --
25	MR. LITTELL: May I have a question on voir dire?

1 You copied it yourself from where? You said you copied
2 it yourself, where did you copy it from?

3 THE WITNESS: I had a typewriter, I copied myself.

4 MR. LITTELL: But where did you copy it from is
5 my question.

6 MR. BOYDEN: Let's use an interpreter here.

7 A From my knowledge.

8 MR. BOYDEN: Now, Albert, you tell us what you
9 said before he answers.

10 THE INTERPRETER: In order to make it plain you
11 have been saying that you copied it. Copied it from who?
12 But the question is did you copy it? If you did from who
13 is what they are asking. If you wrote it from your own
14 knowledge, that's another thing. According to your knowledge
15 is why you wrote it. Which is it is what I said.

16 A I have knowledge of the names of these men. So
17 because I remembered their names is the reason why I
18 wrote it down according to my knowledge of these men.

19 COMMR. SCOTT: Well, now, before we proceed on the
20 basis of the names, in view of the fact that we are being
21 very liberal here in admitting testimony, and because I
22 believe that it will be very helpful to the Commission, I
23 would like to have the witness give the answer to an addi-
24 tional foundation question, and that is whether or not any
25 of the persons whose names are on the list are now living

1 and available for testimony.

2 Q (By Mr. Boyden) Mr. Johnson, I will ask you if any
3 of these people whose names you have written down are still
4 alive?

5 A No, my father is not living and the others are not
6 living.

7 Q But you know of your own knowledge that they had
8 cattle there when you were a boy?

9 A Yes, I do.

10 Q All right, then you tell us the names of those
11 people that you have written down from your own memory on
12 that list.

13 A Now the first man's name, at that time they have no
14 English names, so I just put their Hopi names down. The
15 first man's name was Nayuwsini'ma; the second man's name
16 was Dalaskwapdiwa; the third man's name was Hommoyniwa.

17 MR. LITTELL: Your Honor, if it's satisfactory,
18 would you hand the list to the reporter?

19 COMMR. SCOTT: That will be satisfactory, it will
20 be satisfactory. It may be copied as though he had read it.

21 MR. LITTELL: Correct.

22 "THE WITNESS: Nayuwsini'ma, Dalaskwapdiwa, Hommoyniwa,
23 Sakwhoniwma, Susa'yah, Sakwmasa'ma, Duwamoyniwa, Danaqysdiwa,
24 Sikaletsdiwa, Sakwkuyvaya, Qotsvuyawma, Duwewuhiwma, Siyawma,
25 Dawshoyiwma, Dawaletsdiwa, Nawini'ma, Nakwahepdiwa, Nakwsu,

1 Lomalewdiwa, Ku-wan-hoynius."

2 MR. BOYDEN: Then we will just hand these to the
3 reporter and he will put that right in the record without
4 you having to read them.

5 MR. LUNDIN: He may want to hold on if you are
6 going to ask him questions about it and give it to him later.

7 COMMR. SCOTT: I would like to ask one additional
8 question which will help me in the weight I would give to
9 his testimony to know whether these nineteen men were about
10 the same age as his father at the time, and whether or not
11 the time he is speaking of is along about 1890 when he was
12 fifteen years old. You may want to ask him questions to
13 bring that out.

14 MR. BOYDEN: I will.

15 COMMR. SCOTT: But those elements would help me in
16 assaying the weight that I can give to the answer.

17 Q (By Mr. Boyden) Will you look at that list and
18 tell me if those people on your list are about the same
19 age as your father -- were about the same age as your
20 father?

21 A Not the same age he is, but some are just a little
22 younger than others, but they are old people.

23 Q They are old people?

24 A Yes.

25 Q But some a little younger than others?

1 A Yes.

2 Q Was your father one of the older ones?

3 A Yes.

4 Q Or younger ones?

5 A Older ones.

6 Q He was one of the older ones. Now was this about
7 what year, do you remember about what year that would be?

8 A It must be before I was appeared in Oraibi, before
9 I was born.

10 Q Now I'm not asking you about when they first had
11 cattle there, I'm asking you about the period when you
12 knew the cattle were there and you went there yourself.
13 About what time was that?

14 A It was about 1893.

15 Q That was about the time you went there?

16 A Yes.

17 Q Now we will go to the next question. Did you talk
18 to your father about how long these men had been running
19 cattle there?

20 A No, no.

21 Q Did he talk to you about it?

22 A He talked to me something a little about it.

23 Q And did he tell you how long they had been running
24 cattle in that area?

25 A No, they don't mention how long they are running

1 these cattles, but they used to travel in New Mexico among
2 the Pueblos and bought cattles there and brought them home.
3 That's the way they told me.

4 Q And was that before you were born?

5 A It must be because I don't know. But he says that
6 he was trading with those Pueblo people. That's the way he
7 get these cattle.

8 Q Now when you were gathering your father's cattle
9 did you see these other men that had cattle in the area?

10 A Yes.

11 Q Talked with them about their cattle?

12 A Oh, yes.

13 Q Now, what became of those cattle?

14 A Well, I guess we all know that the Oraibi people
15 have divisions, hostiles have -- don't want their children
16 to go to school, and some of ^{them} wanted to go along with the
17 white man's way. And the soldiers came for that purpose,
18 to send their children to go to school. The troops came
19 and besieged the village early in the mornings, I don't
20 know how many times they have done this. And that's the
21 time the news around Keams Canyon, maybe from Ganado or
22 somewhere, the Navahos bring the news, goes around those
23 Navahos above Oraibi when the village was besieged, that's
24 the day they come and drive some cattles out of those areas.

25 Q All right. Now let's be a little more specific if

1 we can. What army was this?
2 A What?
3 Q Was it the United States Army?
4 A Yes, yes.
5 Q And they were besieging the village to put the
6 children in school at Oraibi?
7 A Yes.
8 Q Do you know about when that was?
9 A When I was just quit schooling, at that time.
10 Q Do you know about what your age was when you quit
11 school?
12 A It must be 13 or 14 of my age by that time.
13 Q 13 or 14?
14 A Yes.
15 Q And then were the owners of the cattle held in the
16 village, is that what you want to tell us?
17 MR. LITTELL: I object to it, it's a leading question.
18 MR. BOYDEN: I think he said that.--
19 COMMR. SCOTT: Just don't lead him.
20 MR. LITTELL: Do try to explore a little bit of the
21 witness's knowledge.
22 MR. BOYDEN: I think he has testified to that, I'm
23 trying to understand him.
24 MR. LITTELL: He hasn't testified to that at all.
25 COMMR. SCOTT: Let's don't lead the witness, Mr.

1 Boyden.

2 MR. BOYDEN: All right, I will try not.

3 Q (By Mr. Boyden) All right, Mr. Johnson, tell us
4 then in your own language how these cattle were lost then
5 during this period?

6 MR. LITTELL: Hold the witness's answer just a
7 moment, Mr. Reporter, will you tell me what his answer
8 to Boyden's question was as to when it took place? He
9 said when he quit school, is that it?

10 MR. BOYDEN: Yes, when he was 13 or 14.

11 MR. LITTELL: He gave no year other than that?

12 MR. BOYDEN: That's what he said.

13 A I want to explain myself what I'm trying to do --
14 to say -- to do or to say. The Hotevillas, as we call
15 them today, were the objectors in placing their children
16 in Government schools. That's why the friction lie at
17 that time. So the superintendent who was in charge at
18 Keams Canyon made connections with the army that were
19 stationed somewhere near. They came three, four times and
20 surrounded the village.

21 MR. LITTELL: Did he say Hotevilla, Mr. Interpreter?

22 THE INTERPRETER: Yes.

23 MR. LITTELL: The first time he said Oraibi.

24 THE INTERPRETER: Oraibi and Hotevilla. Hotevilla
25 is what they call him now. Knowing that the soldiers were

1 asked to come and place the children in school the Navahos
2 happened to know about it that the soldiers were coming
3 to surround that village. When the people waked up, they
4 usually find out that they were surrounded by soldiers,
5 they wouldn't allow anybody at all to leave the villages
6 to tend to their stock. The only people that they would
7 release from the village was those that owned sheep, they
8 were allowed to go sometimes at noon. And because of this
9 knowledge the Navahos, after being released from captivity,
10 preyed on the stock that these people had at that time.
11 That's how their cattle disappeared, because we were held
12 in the village by the soldiers.

13 THE COMMISSIONER: We will recess for ten minutes.

14 (Short recess.)

15 COMMR. SCOTT: The Commission will resume session.

16 Mr. Boyden, you may resume your examination.

17 Q (By Mr. Boyden) Now, Mr. Johnson, how far was it
18 from your home down to the Dinnabito area where the cattle
19 grazed?

20 A It must be 20 miles.

21 Q And then how much further did the cattle go from
22 that area down?

23 A Down to --

24 Q Or up it would be, up the river, the Colorado River
25 -- I'm sorry -- toward Laupp? How far would they go up

1 toward Leupp?

2 A It must be just a little over 10 miles from Dinnebito
3 down to Little Colorado River.

4 Q I see. And now then, how near did the cattle go to
5 Leupp going up the river, up the Colorado River, Little
6 Colorado?

7 A They would not go as far as to Leupp.

8 Q They didn't go as far as Leupp?

9 A No.

10 Q Now about how near did they get to Leupp?

11 A About ten miles from Leupp down below.

12 Q So in going up the Little Colorado they'd go to
13 about within ten miles of Leupp, is that correct?

14 A Yes.

15 Q Now, when you would go down to those cattle on
16 foot, would it take you more than a day as a rule to go
17 down there?

18 A Yes, I have to camp overnight somewhere, any place.

19 Q Did you build any shelter or anything when you were
20 out with the cattle?

21 A Oh, no, nothing. I have done that three times
22 because I was not strong enough to go back to my home at
23 one day, I have to stay somewhere.

24 Q And how would you arrange to stay at the night,
25 what would you do?

1 A I'd just gather up the sticks and wood and build a
2 fire in a hole, about so deep hole, and when the fire was
3 gone and then I fill up with the dirt and lay down on
4 that. And from underneath I can make warm myself, just
5 like bury myself.

6 Q And that's the way you did when you were out longer
7 than a day?

8 A Yes, yes, I have done it three times.

9 COMMR. SCOTT: How did he build a fire? I mean did
10 he have matches?

11 A Yes, we used to have California matches at that
12 time, small matches.

13 Q (By Mr. Boyden) California matches?

14 A Yes.

15 Q Where did you get those?

16 A I don't know where my father used to take that,
17 from one of the stores near Tuba City.

18 Q All right. Now, did you sometimes go from your
19 home out to the cattle and back the same day?

20 A Yes, when I just go down as far as the Dinnebito
21 in one day I can come back.

22 Q That's 20 miles?

23 A That's 20 miles.

24 Q And you could do that in one day?

25 A Yes.

1 Q Now, how many cattle did your father run in this
2 herd with these 19 people?

3 A 36 cattle.

4 Q Did he lose these cattle or did he keep them?

5 A We lose everything, everything. We lose all of
6 them, 36 cattle, nothing left.

7 Q And was that lost, as you have told us, during a
8 time the troops were around Oraibi?

9 A Yes, that's the time.

10 Q Now, did the people -- are the people who live at
11 Hotevilla people who did formerly live at Oraibi?

12 A Yes.

13 Q Do you know when they left Oraibi and settled
14 Hotevilla?

15 A Yes.

16 Q When?

17 A In the year of 1905.

18 Q Now were there any Navahos in this area in this
19 period of time along that you are talking about when the
20 cattle were running in this area?

21 A No, no.

22 Q Where were the Navahos that you knew?

23 A They must be living down below somewhere along that
24 river, Little Colorado River. But not near as Dinnebito.
25 Therefore lot of our cattles were grazing there. But after

T5fls

1 these cattles were disappeared, and then they come to that
2 area and build their hogans there.

3 Q Now where were the Navahos when you were a boy,
4 the nearest Navahos to you that you knew about?

5 A I never go down that way, down below Tuba, but some
6 living down below Tuba City, Moencopi, and some out another
7 direction of Moencopi at that time.

8 Q Do you know how many?

9 A No, I don't know how many.

10 Q Were there just a few or quite a few?

11 A It must be not many as it is now.

12 MR. LITTELL: A question on voir dire.

13 Does he mean north, south, east or west of
14 Moencopi, or at Moencopi?

15 A North, north of Moencopi.

16 MR. LITTELL: Would you locate Moencopi on the
17 quad reference for the Commissioner, Mr. Boyden?

18 MR. TIBBALS: Moencopi and Tuba City both appear
19 in F-4.

20 MR. LUNDIN: Of the Navaho claim wall map
21 (Navaho Exhibit 510).

22 Q (By Mr. Boyden) Now where is Gray Mountain? The
23 Gray Mountain that you talk about, where is Gray Mountain?

24 A This side, west side of Cameron.

25 Q West side of Cameron?

1 A Yes.

2 Q Is that near the Little Colorado River?

3 A Yes.

4 Q Is it across the Little Colorado from your home?

5 A Across.

6 Q Were there Navahos in that area when you were a
7 boy?

8 A It must be at that time some living down that way.

9 MR. LITTELL: Would you identify that by quads too?

10 A I never go out to look around for Navahos.

11 MR. BOYDEN: I see.

12 COMMR. SCOTT: What quad is that on there?

13 MR. BOYDEN: That quad is in 5-E of the Navaho
14 Claims wall map (Navaho Exhibit 510). The quads are all on
15 the Navaho Claims wall map, there are no quads on the other
16 map.

17 COMMR. SCOTT: Thank you.

18 MR. LITTELL: What was the witness's answer to that
19 question?

20 MR. BOYDEN: He said that he didn't go out looking
21 for them and he wasn't sure that they were out there, but
22 he thought there must be some there. So I didn't pursue it
23 any further.

24 A It must be because there was no Navaho at Dinnebito
25 at that time.

1 MR. LITTELL: I suggest you strike the answer,
2 move to strike it --

3 MR. BOYDEN: I think it's an amplification.

4 MR. LUNDIN: I think the answer was completing the
5 balance of the question, and so long as the balance of the
6 answer was proper this should be proper too.

7 COMMR. SCOTT: I will overrule the objection. Of
8 course you understand that this testimony will be carefully
9 weighed for what it may be worth.

10 MR. LITTELL: I understand, your Honor.

11 A Well, the cattles were witnesses themselves, see?
12 If the Navahcs were living down Dinnebito, there would be
13 no cattles around that area. But the cattles are witnesses
14 themselves, lot of cattles used to be there when I was a boy.

15 Q (By Mr. Boyden) Now why do you say that if there
16 were Navahos there wouldn't be any cattle?

17 A They would sell them out different long ways off.
18 That's the way the Navaho is doing. When they steal some-
19 thing from the Hopis they sell way off there somewhere among
20 the Navahos.

21 MR. LITTELL: A question on voir dire.

22 What do the Hopis do when they stole from the
23 Navahos?

24 MR. LUNDIN: I object.

25 COMMR. SCOTT: No.

1 MR. BOYDEN: That's not voir dire.

2 MR. TIBBALS: Just a minute, Mr. Johnson.

3 A As you said that we are living on the mesas, we
4 can't keep any Navaho horse or cattle in our yard, they
5 will come and find them.

6 COMMR. SCOTT: We will weigh the testimony. Proceed.

7 A There is no place to hide them. But around Navaho
8 countries there are deep canyons, canyons there they hide
9 in there what they steal.

10 Q (By Mr. Boyden) Now were there any of these 19
11 people who ran the cattle in this area at this time who kept
12 their cattle after the siege of Oraibi and Hotevilla?

13 A Nobody except one, I said.

14 Q And who was that?

15 A Rogers's father.

16 Q Roger who?

17 A Cochatillo.

18 Q And he is here?

19 A He is not here.

20 Q But he is still available to talk as a witness, is
21 he not? Roger is still alive?

22 A Yes.

23 Q And it was his father that saved cattle and that
24 was the only one?

25 A The only one man that saved his cattles at that time.

1 COMMR. SCOTT: Again since we are being very lenient
2 here, may I ask or ask you to develop how he knows that?

3 Q (By Mr. Boyden) Yes. Will you tell us how you know
4 that?

5 A Know what?

6 Q That Roger's father was the only one who saved his
7 cattle?

8 A Because I have seen him with my own eye. I herd
9 his cattle around Oraibi, around those little valleys. I
10 herd three times for him, those cattles.

11 Q So you know those were saved?

12 A I know it.

13 Q Because you have herded them?

14 A I herded.

15 MR. BOYDEN: That's all.

16 Q (By Mr. Boyden) If there is something that you want
17 to say in answer to my questions, why, you go ahead and say
18 it. We don't want to shut you off.

19 A I was not going to ask on you, I was going to ask
20 Littell.

21 Q Oh, you were going to ask a question?

22 A He said that we are living on the top of mesas.
23 Is he a roaming man like Navahos, moves another place and
24 another place and another place with his cattles or sheep?
25 Are you doing that like Navahos?

1 MR. BOYDEN: I see what you mean.

2 MR. LITTELL: Your Honor, I claim the protection of
3 the court from this merciless cross examination.

4 COMMR. SCOTT: In view of the nature of the pro-
5 ceedings we will let the record stand as it is. However,
6 Mr. Johnson, if you have anything to add that is, in your
7 opinion, related to the use and occupancy by your people,
8 of which you have personal knowledge, or of which you have
9 been told by your father or your mother, you are free at
10 this time to add it to the record.

11 THE WITNESS: All right, the reason why --

12 COMMR. SCOTT: First let me say, do not repeat any-
13 thing you have already said.

14 THE WITNESS: I have to, because I have a chance now.
15 I think he is living in a town. I think he is a town man.

16 COMMR. SCOTT: No.

17 THE WITNESS: And I am a villageman.

18 COMMR. SCOTT: Mr. Johnson, I was not inviting you
19 to --

20 THE WITNESS: I have to finish.

21 COMMR. SCOTT: No, that is not relevant to this
22 case.

23 THE WITNESS: I know it.

24 COMMR. SCOTT: We merely want to give you an
25 opportunity at this time, if you have additional facts which

1 you have personal knowledge or --

2 MR. BOYDEN: I think, Commissioner, what he wants
3 to do is illustrate how they live, but just leave Mr.
4 Littell out of it. You just tell how the Hopis live.

5 MR. LITTELL: Yes, please, please.

6 THE WITNESS: What I wanted to bring out is this:
7 The mode of living with each group of people, how they
8 live, the reason why I want to make myself plain is to
9 bring this out. The way we live was brought out is the
10 reason I'm saying this.

11 Q (By Mr. Boyden) All right, then you just tell us
12 how the Hopis lived.

13 A We are told by the elders we must not retaliate
14 against people that are making our lives miserable by
15 stealing from us and keeping us, you might say, in grief.
16 We believed what the United States Government, Washington,
17 I should say, told us how to live, not to retaliate but
18 accept what might have been going on around us by keeping
19 us in our lives in misery. We are hoping since we were
20 told that things will be taken care of by Washington, mean-
21 ing the Government, that we had great hope that these
22 things would be remedied is the reason why I am stating
23 this, hoping that time will come where these things will
24 come to pass. We believe what was said to us in the former
25 days.

1 MR. LITTELL: Your Honor, may I interrupt a moment
2 to say that we, with the greatest of leniency on my part
3 as well as on the Court's part, counsel really must
4 instruct the witness to stick to material things and avoid
5 hearsay. The record is expensive and I don't like to
6 object, but this is going back to improper things.

7 COMMR. SCOTT: Of course perhaps I can be blamed
8 just a little bit for this, but I did want Mr. Johnson not
9 to leave the stand feeling that if he had something that
10 really relates to use and occupancy of his own personal
11 knowledge, or from family tradition, that he would have his
12 opportunity to place it on the record.

13 However, if you will kindly tell Mr. Johnson that
14 his last statement is not, in my opinion, related to use
15 and occupancy, and unless his present statement is or unless
16 he has some statement we would appreciate that we could get
17 on for cross examination.

18 MR. BOYDEN: Mr. Yava, was the last statement that
19 he gave pertaining to use and occupancy?

20 COMMR. SCOTT: Off the record.

21 (Discussion off the record.)

22 COMMR. SCOTT: Back on the record, and the interpreter
23 may proceed to give the answer.

24 Q (By Mr. Boyden) Give the statement you have already
25 given.

1 A It's just like an oncoming flood, coming on to a
2 community, our land, because of the increase simply just
3 flooded us out.

4 Q Increase of what?

5 A Population of the Navahos. Therefore with what
6 tradition says we are just in a state where eventually we
7 won't have any land, if this is being continued on from
8 every angle.

9 MR. BOYDEN: I think that's all.

10 COMMR. SCOTT: Mr. Boyden, I fail to see how any
11 testimony in the present tense is relevant. What we are
12 concerned about, of course, is to that extent any portion
13 of the answer, although it's in the record or not, will be
14 entirely disregarded and given no weight whatsoever.

15 Q (By Mr. Boyden) Now, Mr. Johnson, is this statement
16 that you have made about the increase in the Navahos based
17 upon your own experience and observations?

18 A Yes.

19 COMMR. SCOTT: At what?

20 Q (By Mr. Boyden) And over what period of time have
21 you observed the increase in the Navahos and the taking of
22 territory that you say was Hopis'?

23 THE INTERPRETER: He wanted an explanation.

24 A I am not dead, I am still alive. What I have seen
25 myself and the experience that I went through, and in going

1 about over the country I see with my own eyes the reason
2 why I am making this statement. Should this be kept up,
3 if it's not checked, this is my point I want to bring out:
4 It's just like that we are after two people, one is going
5 to be favored by giving them something to eat, the other
6 one is going to be favored by giving him only bread and
7 water. That's what our end is going to be as far as we
8 Hopis are concerned.

9 **COMMR. SCOTT:** Here again, Mr. Boyden, that is in
10 the present tense as the contemporary events, not the events
11 which are pleaded in your petition, and so we will have to
12 give it no weight whatsoever.

13 **MR. BOYDEN:** It's not responsive to the question
14 I asked. I asked, and I'd like to ask this one more: Is
15 his statement with respect to the increase in the Navahos
16 made from personal observation himself during his lifetime?

17 **COMMR. SCOTT:** And at what time.

18 **A** Can't you take it for granted and believe me accord-
19 ing to my statement? I said from my own observation I have
20 seen where there is polygamy being practiced, where the
21 increase has come to such large number.

22 **Q** (By Mr. Boyden) All right now --

23 **COMMR. SCOTT:** That statement is not relevant to the
24 issues, I think.

25 **MR. LITTELL:** I must move it be stricken, your Honor.

1 COMMR. SCOTT: It will be given no weight whatsoever.

2 MR. LUNDIN: Ask him about 1890 and then 1900.

3 MR. BOYDEN: I think our documents will sustain the
4 thing here and there is no use trying to prove it here,
5 because the answers are not responsive.

6 COMMR. SCOTT: Before we go to cross examination, there
7 was just one or two things for our own information. Can you
8 develop with this gentleman where his home was on the Navaho
9 wall claims map (Navaho Exhibit 510) at or about the time in
10 question, along about 1890?

11 MR. BOYDEN: May I say just from the testimony that's
12 already been given by the witness he has testified that his
13 home at Oraibi is -- is at Oraibi, and that that is in quad
14 G-5.

15 COMMR. SCOTT: Thank you, sir.

16 MR. BOYDEN: Hotevilla is just a short distance from
17 that.

18 MR. LITTELL: Does the record now show where his
19 home still is?

20 MR. BOYDEN: I think it does, but I will ask that
21 question.

22 Q (By Mr. Boyden) Are you still living at Oraibi,
23 Mr. Johnson?

24 A Not Old Oraibi; down the foot of that Old Oraibi.

25 Q You are living at New Oraibi now?

1 A Yes, I'm living at New Oraibi.

2 Q And that is at what is called Kokotsmovi?

3 A Yes.

4 MR. BOYDEN: And, your Honor, that's still in the
5 same quadrangle. Your Honor, that's all for me.

6 COMMR. SCOTT: Very well. Cross examination?
7 I assume that both counsel for defendant and counsel for
8 the Navaho Tribe will desire cross examination, am I right?
9 Well, then, you may proceed as you decide in the order that
10 you decide to it.

11

12

CROSS EXAMINATION

13 BY MR. LITTELL:

14 Q Mr. Johnson, when you refer to our lands, as you
15 did several times, what do you mean, "our lands"?

16 THE INTERPRETER: You are asking me?

17 MR. LITTELL: I'm asking the witness.

18 THE INTERPRETER: Speak a little louder, he's kind
19 of hard of hearing.

20 A That is your question that you ask of me, by me
21 saying my land. I am a Hopi, and in my status I might say
22 why I'm saying my land. If you will believe what I'm going
23 to say.

24 Q (By Mr. Littell) I would like the answer irrespective
25 of whether I believe it or not.

1 A I will state this again, whether you will believe
2 me or not, why I said my land.

3 Q "Our lands."

4 A Our land.

5 Q Is that what the witness said? That's what I said.

6 A Our land.

7 Q Yes.

8 A About 1800, year of 1800 the people, the Hopi people
9 have migrated in here. There was nobody else in this area.
10 And in order to claim this land we, as Hopis, had heard our
11 custom in a way where things that are sacred, we tied our
12 sacred feathers, made things that are sacred and used white
13 corn meal as you will probably admit to what I mean by
14 unleavened bread, white men's purity where harm may not
15 come. We used the white corn meal, the elders did, and
16 placed it in the out distant places like the San Francisco
17 Mountain, the Navaho Mountain, the Salt Lake towards the
18 east, all those outposts is where they placed these sacred
19 feathers, and in order to hold it for ourselves this
20 procedure was being done is why I say our land.

21 Q And what were the boundaries indicated, if you did
22 indicate them? Mr. Johnson, did you say San Francisco, you
23 mean the City or the peak of San Francisco, and what were
24 the outlines of this boundary? That's Salt Lake, Utah?

25 A No, Salt Lake towards the east.

1 Q That's the Zuni?

2 A It's the Zuni area. The north -- the eastern --
3 north boundary I'm not familiar with that. You First Mesa
4 Hopis have placed your sacred feathers there so I'm not
5 acquainted with that.

6 Q Am I to understand then that in claiming "our lands"
7 you mean these lands as you have indicated lacking the
8 northern boundary, which you say you do not know?

9 A Yes, I don't know. You First Mesa people are
10 supposed to know.

11 Q Will you repeat that?

12 A I said I don't know, you First Mesa people should
13 know.

14 Q Well, your territory as you define it then takes
15 in other pueblos like the Zunis, doesn't it? Didn't you
16 include the Zunis when you mentioned the Salt Lake as well
17 as the sacred places?

18 A Yes. No, I don't claim the land that the Zunis
19 claim, I only pointed out the Salt Lake as the other shrine
20 that we recognize and place our feathers.

21 Q Well, am I not correct that you made that the
22 boundary, one of the boundaries in defining "our lands"?

23 A Yes.

24 Q Very well. Then, Mr. Johnson, you said that the
25 Executive Order area of 1882, you said you knew where the

1 Executive Order area of 1882 is. Do you consider that then
2 only a small portion of the Hopi lands?

3 MR. LITTELL: Will the interpreter kindly interpret
4 his remarks and what the interpreter is saying?

5 THE INTERPRETER: I was trying to make it clear to
6 him.

7 MR. LITTELL: Thank you.

8 THE INTERPRETER: Just what he meant. You asked him
9 about the Executive Order. His claim is way beyond that.
10 "I recognize the Executive Order that was set aside for us.
11 All right, I understand that. But our land is beyond that."

12 Q (By Mr. Littell) He has answered --

13 A As I have said, that's where we place our sacred
14 things.

15 MR. LITTELL: He has answered my question.

16 Q (By Mr. Littell) Now, you say, Mr. Johnson, that
17 the Hopi Executive Order area -- strike "Hopi" -- that the
18 Executive Order area was set aside for the Hopis, is that
19 what I understand you to say?

20 A I recognize that, yes, because it means it's the
21 Hopi according to the Executive Order.

22 Q Mr. Johnson, are you aware that the Executive Order
23 itself of December 16, 1882, says: "For the use of the
24 Moqui Indians -- " which, your Honor, is the other word for
25 Hopis, in case you have not come across it to this point,

1 M-o-q-u-i-s -- "for the use of the Moqui Indians and such
2 other Indians as the Secretary of the Interior would see
3 fit to settle there"?

4 MR. LUNDIN: If your Honor please, may I object to
5 the question?

6 COMMR. SCOTT: Before you answer, Mr. Johnson, hold
7 your answer for just a moment. Do you have an objection?

8 MR. LITTELL: That's my last question on this point,
9 your Honor.

10 MR. LUNDIN: I will withdraw this. I don't mind the
11 question, but I feel this portion of it is irrelevant really.
12 If that's his last question --

13 MR. BOYDEN: Then let me make my objection. Your
14 Honor, we didn't go into what the Hopis claimed, we realize
15 that we must build our claim around the year 1848, and the
16 Hopi claims and the ancient hogans before that we are not
17 going to go into them. I didn't go into them on direct
18 examination. We are going far afield when we go into that,
19 and I therefore object to it as improper cross examination
20 because we didn't go into it on direct.

21 COMMR. SCOTT: Beyond the scope of the --

22 MR. BOYDEN: It's beyond the scope of our examination,
23 and we are only claiming what we have in our petition.

24 MR. LITTELL: Your Honor, he has mentioned, in answer
25 the witness has mentioned the Executive Order area several

1 times. I have no desire to go into it either except to
2 demonstrate to the Court the utterly unrealistic concept
3 of land ownership which this witness, and you will find
4 others also have. I'm leading on to a more material,
5 relevant matter.

6 COMMR. SCOTT: Well, of course on cross examination
7 counsel does have extreme latitude and I do recall that we
8 did ask the witness whether or not he knew where the lands
9 were involved in the Executive Order, and in view of the
10 fact that counsel has stated the purpose of his question
11 runs more to the credibility of the testimony of the witness
12 in general, that is as to his knowledge of territory and
13 that sort of thing, we will let the answer stand and the
14 objection will be overruled.

15 MR. LITTELL: He will answer, will he not, your
16 Honor?

17 COMMR. SCOTT: Oh, yes, I'm just overruling the
18 objection so he can answer it.

19 MR. LITTELL: Now, did you state the question to
20 him -- I think he understood my English in the question.
21 Would you kindly answer it now, Mr. Johnson?

22 A What was the question you asked?

23 Q (By Mr. Littell) I asked you, Mr. Johnson, if
24 you did not know that the Executive Order of December 16,
25 1882, set aside these lands for the use of the Moquis and

1 such other Indians as the Secretary of the Interior would
2 see fit to settle there?

3 MR. BOYDEN: Did you say "would"?

4 MR. LITTELL: I can't remember the word myself.

5 MR. BOYDEN: I object to the form of the question
6 because that isn't what the law says.

7 MR. LITTELL: You state it for me, Mr. Boyden. I
8 haven't got it before me. Sees fit to settle there?

9 MR. BOYDEN: May see fit to settle thereon.

10 MR. LITTELL: I should know it. Mr. Boyden's objection
11 is well taken.

12 COMM. SCOTT: You may answer the question as amended.
13 Now before you translate that, may I say that I have over-
14 ruled the objection because it's my understanding that the
15 principal purpose of the question is to test the credibility
16 of this witness's testimony in general, particularly as to
17 questions on land boundaries and that sort of thing. I
18 wanted to make that statement because, of course, the
19 Executive Order will speak for itself and it won't make any
20 difference whether or not this witness understands it or not.
21 You may proceed with the answer.

22 A I understand your question all right. Here is what
23 I'm going to point out again: It surely does mention the
24 Hopis, and such other Indians as the Secretary of the
25 Interior may see fit to place thereon. That, to my under-

1 standing, is this: That if the Secretary was to place
2 someone else on the land, that it should be his duty to
3 find out whether those people that he might place on are
4 fit to be placed on this land. People that are of not
5 aggressive nature at all, those that may have a close, docile
6 life.

7 Q (By Mr. Littell) I think it would be well to go on
8 to the next question, Mr. Johnson.

9 Now, going back, when you said a little while ago
10 that you went down to the Colorado River and gathered wood
11 for beams in your houses and drums and Kachina dolls, where
12 did you mean to say that you used that wood? Did you use
13 them in the houses on the mesas?

14 A I wanted to make it plain --

15 THE INTERPRETER: He's asking about whether they use
16 it in their houses. He says yes.

17 Q On the mesas?

18 A On the mesas.

19 Q And in his home in Oraibi and later in Hotevilla
20 after Hotevilla was established?

21 A I have already stated before that we Hopis used the
22 timber from down along the river. All of the people in the
23 different villages do use it. I already made that state-
24 ment. We people are very poor, and the only way that we
25 can have these beams available to build our homes is to

1 haul them from down along the river by either having the
2 burros to pull them --

3 Q What kind of wood was it?

4 A Cottonwood.

5 Q Did you find --

6 A You white people know there is cottonwood growing
7 along there.

8 Q Did you find cottonwood floating along the river or
9 did you cut it?

10 A The wood is being in the river. Of course it flows
11 on down, but the wood is being thrown up on the side of the
12 bank is what we gather to use in our homes, and if that's
13 not available then we cut the green ones to use as timber.

14 Q Are you now talking about the green area G which
15 would be in what quad on the Navaho claims map (Navaho
16 Exhibit 510), Mr. Correll?

17 MR. CORRELL: That would be in 6-F and G.

18 Q (By Mr. Littell) 6-F and G? Is that the area you
19 are talking about?

20 A Yes, I have made that statement before.

21 Q Did you ever build a house down there, Mr. Johnson,
22 or did any Hopi ever build a house out of this cottonwood?

23 A Nobody ever attempted to build a house down there.

24 Q Now, that's the way to answer the questions, Mr.
25 Johnson. We can get along faster if you just answer the

1 questions. When you say that your parents went out in the
2 Red Lake district every year hunting antelope, did they
3 build any houses there?

4 A It's not my parents that I was mentioning, it was
5 the people from Oraibi that go out there to hunt and there
6 never was any Hopi building a home there.

7 Q Were there in the Polacca Wash area outside of the
8 Executive Order area, any place outside of the Executive
9 Order area?

10 THE INTERPRETER: What was that question?

11 Q (By Mr. Littell) I said were there any Hopi homes
12 built outside of the Executive Order area that he talks
13 about, the Red Lake area and the Polacca Wash area, even
14 the Dinnebito Wash area, the last one is in the brown area?

15 A I don't know anybody ever built a home. We just
16 take that area for a hunting area.

17 Q I understand. Now when you described the grazing
18 of cattle when you were a boy, and you went on foot to look
19 after the cattle, sometimes the cattle strayed, didn't they?

20 A Yes.

21 Q And sometimes when you went down to the Dinnebito
22 Wash area or the Little Colorado area, you were after strays,
23 weren't you?

24 A Yes.

25 Q In other words, you did not herd those cattle as a

1 regular daily matter in the Dinnebito Wash and Little
2 Colorado River area to within ten miles of ^{Leupp} Loop, did you?

3 A No.

4 Q Does this reply also extend -- well, it does extend
5 to your reference to Grand Falls in F-5, does it not? For
6 the sake of identifying this area for the Court, I guess
7 we have said enough, but will you answer that question?
8 Does that extend to the Grand Falls area?

9 A I have said before that they water to go down to
10 that river adjacent to ^{Grand} Black Falls.

11 Q And cattle do drift to the water, don't they? Now
12 with respect to cattle drifting to the water, actually
13 they went to the Little Colorado when the Dinnebito Wash
14 was dry, didn't they?

15 A Yes.

16 Q And you said you slept out only three times?

17 A Yes.

18 Q Therefore you did not have a regular practice of
19 staying out overnight with your cattle, did you?

20 A No.

21 Q Now, you speak of the coming of the troops, and you
22 fixed it at the time when you quit school at 13 or 14,
23 which figures out approximately 1889, is that about right?

24 A (No answer.)

25 Q Actually the troops came to Oraibi in 1888, but

1 that's close enough.

2 A That was the first time the troops came, but they
3 came later.

4 Q Yes, they came six or eight times. But at this
5 time that you have testified about, when you say the cattle
6 were stolen, do you or do you not know that the Secretary of
7 the Interior, through the Secretary of War, sent troops
8 there to suppress the uprising at Oraibi, have the children
9 go to school, and that the troops arbitrated all these
10 difficulties between the Hopis and the Navahos and protected
11 the Hopis against any possible interference by the Navahos?

12 MR. BOYDEN: Now, we object to the form of that
13 question because it's not proper cross examination, it has
14 no basis in fact so we can't ask him if he understood that
15 was so.

16 MR. LITTELL: The witness testified at length to the
17 actions of the Navahos at this time. I want to test his
18 knowledge.

19 COMMR. SCOTT: The subject matter, of course, was
20 included on direct and the purpose of your question, Mr.
21 Littell, is that to test the credibility of the witness?

22 MR. LITTELL: Test his credibility, show the limita-
23 tion of his knowledge of the whole incident, highly
24 prejudiced character of the testimony.

25 COMMR. SCOTT: The objection will be overruled. Off

1 the record.

2 (Discussion off the record.)

3 (Whereupon, the pending question was read by
4 the reporter.)

5 MR. BOYDEN: I object to that again now, your
6 Honor, as unintelligible. It's too involved to possibly
7 understand.

8 COMMR. SCOTT: Well, perhaps it could be stated a
9 little more simply.

10 MR. LITTELL: Yes, counsel's point is well taken.

11 Q (By Mr. Littell) Mr. Johnson, do you or do you not
12 know that the troops were sent at the time you indicate to
13 suppress the uprising at Oraibi, get the children in school
14 from Oraibi and also to protect the Hopis from any possible
15 interference from the Navahos and arbitrate the differences
16 between them at that time?

17 A To my knowledge the troops only came to place the
18 children in school of the Hopis.

19 Q Mr. Johnson, you were 12 or 13 years old. Is that
20 why you remembered the single purpose of the troops, because
21 it involved children of your age to get them back in school,
22 or do you have any knowledge of your own or memory of your
23 own of what those troops did when they were there aside
24 from putting children in school, which is a most unusual
25 function for the United States Army?

1 A I only have knowledge that they only came to place
2 the children in school.

3 Q Then, Mr. Johnson, you don't have any knowledge of
4 the stealing of cattle except for what you heard from the
5 other Hopis, isn't that right? You don't know whether the
6 Army protected the Hopis and the Navahos in these disputes
7 with each other, you were just a child and what you have
8 told us was just memory from what you have heard from other
9 Hopis, isn't that true?

10 MR. BOYDEN: Well, now, there is about four questions.
11 Which one would you like answered? I don't think we can
12 proceed that way.

13 MR. LITTELL: The last one.

14 MR. BOYDEN: Read the last one singly.

15 Q (By Mr. Littell) The last one is what you have told
16 us about stealing cattle is just from memory of what Hopis
17 have told you as you were only a little child at that time,
18 isn't that correct?

19 A Did I say something to that effect? I stated that
20 I know from my own knowledge what took place in regards to
21 this stock. I, myself, was out in that area and I know from
22 my own knowledge that these things happened.

23 Q Did you see any of the Navahos?

24 A I said that I never saw a Navaho there before.

25 Q You also said that the Navahos hid them out in

1 canyons. Where were those canyons?

2 A I said they put them in deep canyons there by the
3 Gray Mountain.

4 THE INTERPRETER: My question was is there any
5 English name for the canyon referred to? He didn't answer.
6 But he answered, "There is two canyons where they have been
7 hiding those cattle."

8 Q Hiding the stolen cattle in 1888 or '89, is that
9 correct? Just answer the question, Mr. Johnson.

10 MR. BOYDEN: Isn't he?

11 A I can't give you a direct answer to that because
12 it's still going on.

13 Q (By Mr. Littell) Oh, they are still hiding them
14 in those canyons?

15 A No, the stealing.

16 Q Are they still hiding them in those canyons, Mr.
17 Johnson?

18 A Not now.

19 THE INTERPRETER: He answered to you in English,
20 "Not now." "But we know that there isn't much stock here
21 to be stealing. Whatever they steal is just kill it right
22 around where they use it for home consumption."

23 Q Well, pin your answer back to my question. Where
24 did they hide them in 1888 or 1889, you said the incident
25 occurred? Gray Mountain and what was the other canyon?

1 THE INTERPRETER: That canyon, he says, is located
2 on the east side of the Wapatki Ruins.

3 MR. LITTELL: Is that on your map there, Mr.
4 Correll?

5 MR. CORRELL: It would be in quad 5-F.

6 MR. LITTELL: Quad 5-F on the Navaho claims map
7 (Navaho Exhibit 510). And where is Gray Mountain?

8 MR. BOYDEN: It's either 5-F or 6-F, I'm not sure.
9 Gray Mountain is in 5-E.

10 Q (By Mr. Littell) Now, Mr. Johnson, where did those
11 Navahos come from? Did they suddenly appear out of the
12 ground or did they live there?

13 A That's a hard question.

14 Q I intended it to be.

15 A I don't know where they came from. Hopis don't
16 know where they came from.

17 Q In other words you never went looking for Navahos
18 as you testified, so you don't know whether they lived
19 there or not?

20 A My mind isn't functioning like it ought to. I
21 didn't understand that question well. I don't know. I
22 wouldn't know at all where they come from. But we know
23 as far as my knowledge is concerned that they come from the
24 northwest and would come towards the villages where the
25 fields are, and they'd even harvest our corn, take peach

1 crops and whatnot that we might have at that time.

2 Q From the northwest, do you mean Black Mountain or what
3 do you mean by the northwest?

4 A From towards Chinle.

5 MR. LITTELL: Will you indicate where Chinle is?

6 THE INTERPRETER: From that direction, he says.

7 MR. CORRELL: Chinle is 4-1.

8 Q (By Mr. Littell) In other words, Mr. Johnson, would
9 you have the Court believe that those Navahos who took this
10 cattle in 1889, as you alleged, ran around the Hopi country
11 when they heard the troops were there and way down there to
12 the southwest corner and hid them in Gray Mountain Canyon and
13 in that -- what's that other canyon name? Wapatki Canyon?
14 Is that what you want the Court to believe?

15 A I take it for granted that the Court would believe me.
16 I'm trying to tell my honest statement.

17 Q I know you are, Mr. Johnson, I just wanted to make
18 sure that I understood that's what you wanted the Court to
19 believe, and that is what you wanted the Court to believe?

20 A Yes.

21 Q Thank you. Now, did you ever know any Navahos living
22 outside there to the west and southwest of Hotevilla and
23 Oraibi in all your lifetime from those early days down to the
24 present time?

25 A I brought that out because when I mentioned the cattle,

1 the cattle were not molested in that area that you are asking
2 about. Like I said, the cattle you might say are witnesses
3 to that effect, there is no Navahos there at that time.

4 Q Mr. Johnson, I don't want to tire you, but may I ask
5 you a few names of Navahos and see if you know of them or
6 recognize them.

7 MR. LITTELL: And if the Court please, to get the
8 pronunciation with which the witness would be familiar, may I
9 ask Mr. Ned Hatatli, who would be our interpreter if we were
10 putting on witnesses, to just state these names for me? He
11 is right here by my hand.

12 COMMR. SCOTT: That will be all right. I understand
13 the difficulty.

14 MR. LITTELL: He might not recognize my pronunciation
15 no matter how excellent it will be, your Honor.

16 COMMR. SCOTT: I think it will save time.

17 MR. BOYDEN: May I ask a question which may help too?
18 Are these people that are living there now?

19 MR. LITTELL: They are witnesses who lived there dur-
20 ing this witness's lifetime.

21 MR. BOYDEN: Well, he hasn't said that there is none
22 now, you understand, or that there haven't been some there
23 after he is talking about finding the cattle.

24 MR. LITTELL: These are witnesses in the early days
25 he's talking about. Each one, I believe, was a witness in

1 the Hopi case that I think you will probably recall. I'm
2 not sure all of them were.

3 COMMR. SCOTT: Proceed.

4 MR. LITTELL: Will you give the names, Mr. Hatatli?

5 COMMR. SCOTT: First do we have the name of the
6 gentleman who is assisting you on the record?

7 MR. LITTELL: They all know him, he was interpreter
8 in the Hopi case, Ned Hatatli. Read them, Ned.

9 MR. HATATLI: Hastiin Naat'aanii.

10 Q (By Mr. Littell) Did you know him?

11 A I don't know the Navahos according to their Navaho
12 names. The only person that I have knowledge of is Dinehe
13 Tsosi, as far as the Navaho name is concerned. Eik'iji Hatatli,
14 that's another Navaho. Then there are others have come in as
15 far as I have mentioned these names, but those people I don't
16 know. I was building a house at that time there at Dinnebito,
17 and when I saw others coming I don't know who they are.

18 COMMR. SCOTT: At what time?

19 A 1911 is when I was building there. That's when these
20 people came in there.

21 Q (By Mr. Littell) Where did these Navahos live who
22 you have named, or where do they live if you are talking
23 about the present?

24 A I don't know where they live when they came.

25 MR. LITTELL: Will you read the rest of the names, Mr.

1 Hatatli, see if he knows any of them?

2 MR. HATATLI: Naalnishi.

3 Q (By Mr. Littell) Just say whether you did know them
4 or didn't know them when Mr. Hatatli names them.

5 A These men, their names being called, they came in
6 just recently. Now until he used to live around what they
7 call Crooked Cedar in Holbrook, I think the Navahos called it
8 Tsedilidoo'i, or Hardrock.

9 Q Hardrock?

10 A Yes, and then later on he moved away from there again.

11 MR. LITTELL: Read the rest of them, Mr. Hatatli, a
12 little louder.

13 MR. HATATLI: Tohaanii Sani.

14 A I said those men came late.

15 Q (By Mr. Littell) The same statement?

16 A Late years.

17 MR. LITTELL: Read the next one.

18 MR. HATATLI: Biliidoodijaadi.

19 A You might say he just came yesterday in that area.

20 MR. LITTELL: Read the next one, Mr. Hatatli.

21 MR. HATATLI: Daaghaa' Ts'osi.

22 A They came there recently when Homer H. had established
23 a trading post there, they used to work for him there and I
24 used to also clerk in there.

25 Q (By Mr. Littell) You are now talking about Slow

1 Horse. Can you just answer the question? Are you talking
2 about Slow Horse? You have given the Hopi name, I believe,
3 but are you talking about Slow Horse? Isn't that what you
4 said?

5 A He didn't recognize me down at this hearing in
6 Prescott. He used to come and trade with me. He don't know
7 who I was down there.

8 Q Well, let's forgive him for that and just identify
9 the witness. You do know Slow Horse?

10 A Good, I forgive.

11 Q Then, Mr. Johnson, how long have you known him?

12 A Since then.

13 COMMR. SCOTT: By "then," what do you mean, Mr.
14 Johnson?

15 A Since then when I started working for Homer.

16 Q (By Mr. Littell) For Homer who? When?

17 A 2-H trading post, 2H, Homer.

18 Q About how long ago was that, when? How old were you?

19 A It's about 1947.

20 Q Well, do you or do you not know whether Slow Horse
21 was born at Burro Springs 84 years ago, and will you identify
22 Burro Springs by quads, Mr. Correll?

23 A I never asked him such a question like that, where
24 they were born, so I don't know.

25 Q Well, you seem to know some are born in Hardrock or

1 elsewhere, I'm asking you if you know this old friend of
2 yours and where he was born?

3 A I'm not talking about the birthdays, I'm talking
4 about those that were living over there.

5 Q Well, let's just stick to this one there. Do you know
6 that this man lived at Burro Springs and was born there 84
7 years ago?

8 MR. CORRELL: That's quad 5-G.

9 MR. LITTELL: Quad 5-G, and it's in the Executive Order
10 area, isn't it, Mr. Correll?

11 MR. CORRELL: Yes.

12 A I never ask such questions like that.

13 Q (By Mr. Littell) I didn't ask you whether you asked
14 such a question, I asked you whether you knew he lived at
15 Burro Springs?

16 A I don't know if he live in Burro Springs or not.

17 COMMR. SCOTT: That's the answer to the question, he
18 doesn't know.

19 MR. LITTELL: Very well. Next name?

20 A I heard that he was living down --

21 MR. LITTELL: Never mind what you heard.

22 COMMR. SCOTT: No, just what you know, Mr. Johnson.

23 MR. LITTELL: You have answered the question.

24 MR. HATATLI: Daaghaa' Ts'osi.

25 A I know him.

1 Q (By Mr. Littell) Do you know where he lives?

2 A No, I don't know.

3 Q Very well, next one?

4 A I don't know where they live.

5 Q You don't know that he lives at Dinnebito?

6 A I don't know, because I was staying in the trading
7 post, I never go out.

8 MR. HATATLI: Tl'izi hani.

9 A That I know, that old man.

10 Q (By Mr. Littell) Translation of that would be Many
11 Goats, which is much easier for your Honor to write down.
12 Do you know Many Goats?

13 A Yes.

14 Q Do you know where he lives?

15 A I don't know where he lives.

16 Q You don't know that he lives at Dinnebito?

17 A I guess so. I never know about it.

18 MR. HATATLI: Chishi Nez.

19 MR. LITTELL: Which is translated Tall Apache Clansman.

20 A I guess I don't know him. I never heard that name.

21 MR. HATATLI: Hastiin Doonsaghali.

22 A Oh, yes, I know him.

23 Q (By Mr. Littell) How long have you known him?

24 A A long time.

25 Q Where does he live?

1 A Shonto.

2 Q Shonto Springs?

3 A Yes.

4 MR. LITTELL: Will you indicate where Shonto Springs
5 is, Mr. Correll?

6 MR. CORRELL: That would be on quad 5-G.

7 MR. LITTELL: 5-G in the Executive Order area.

8 COMMR. SCOTT: What's the translation of that one?

9 MR. HATATLI: Crippled Man.

10 MR. LITTELL: The next one is Big Eyes, I can read
11 that one.

12 MR. HATATLI: Ashihii Binaa Ntsaa'igii.

13 A I know him.

14 Q (By Mr. Littell) Known him a long time?

15 A Yes.

16 Q Where does he live?

17 A Down below Homer's trading post.

18 Q And where is Homer's trading post?

19 A Below Shonto.

20 Q Below Shonto in 5-G within the Executive Order area.

21 A About a mile down below Shonto.

22 Q Now, having refreshed your memory on only a few
23 Navaho names in that community, do you know any more?

24 A I never thought this would come about or else I'd make
25 a practice of remembering names, writing down some dates to

1 that effect.

2 Q One more question, Mr. Johnson. Do you know that the
3 name Dinnebito is a Navaho word standing in Navaho for "The
4 People, their water"?

5 A It's just a name that I know, only I take it for
6 granted that the Navahos call it by that name.

7 Q Well, you called it by that name, Mr. Johnson?

8 A Yes, I know it.

9 Q That is the common, accepted name, is it not? Every-
10 body calls it by that name?

11 A Because that name was on the map, that's the reason
12 I called that.

13 Q It is the commonly accepted name, is it not, Mr.
14 Johnson?

15 A Yes, that's what it's called.

16 MR. LITTELL: Thank you, that's all.

17 COMMR. SCOTT: Before we leave this cross, may we go
18 off the record just a moment?

19 (Discussion off the record.)

20 COMMR. SCOTT: Back on the record. Mr. Littell, on
21 the questions which have been propounded concerning the
22 names, will you please state for the record whether or not you
23 had in mind any particular date as to this witness's knowledge,
24 and whether or not your questions were primarily directed to
25 test the witness's credibility or to firmly establish one way

1 or another the time at which the Navahos used and occupied
2 this particular section of land?

3 MR. LITTELL: If your Honor please, I could not ask
4 a question beyond the reach of this witness's testimonial
5 knowledge, and the intent was to show what he meant by the
6 use of the Dinnebito Wash name, and to establish, as he did
7 establish, that this was the commonly accepted name during the
8 period of his testimonial knowledge. We will establish the
9 Navaho occupancy by more definitive proof than this witness
10 could possibly offer.

11 COMMR. SCOTT: Thank you. Mr. Boyden, would you
12 kindly make a statement?

13 MR. BOYDEN: Well, my statement was with respect to
14 your Honor's statement concerning the joint use of this area.
15 Our position is that in 1848 and thereabouts, that the territory
16 we are claiming was exclusively Hopi territory. Now we know
17 that the Navaho Indians occupy a good portion of it at this
18 time, and that they commenced by trespass and encroachment,
19 and that continued and increased and grew. The question to
20 be decided in this case is when does Hopi territory become
21 Navaho territory in that fashion, and so that's the question
22 that we have to determine here, and this later testimony
23 about people that were known here, we think, doesn't establish
24 at all that they were there in 1848.

25 COMMR. SCOTT: What you have just said, Mr. Boyden, is

1 in the nature of what you will contend?

2 MR. BOYDEN: That's just the nature of what we will
3 contend, that's correct.

4 MR. LITTELL: I'm glad your Honor made the supplemental
5 statement.

6 COMMR. SCOTT: Yes, I understood it -- I merely wanted
7 the record to be clear.

8 MR. BOYDEN: I'm sure that that's what your Honor
9 was asking me, wasn't it?

10 COMMR. SCOTT: Yes, but as it appeared it might have
11 been in the nature of testimony.

12 MR. LITTELL: Because, of course, these provocative
13 adjectives are purely argumentative about Navaho encroachment.
14 The Navahos lived there all the time as the proof will show.

15 COMMR. SCOTT: Mr. Lundin?

16

17 CROSS EXAMINATION

18 BY MR. LUNDIN:

19 Q Mr. Johnson, when you testified about various places
20 such as the canyon and the various washes and the Little
21 Colorado River, do those place all have Hopi names?

22 A Yes.

23 Q Did you adopt the use of the non-Hopi names so that
24 we might understand the places you were referring to?

25 A From the Hopis we call it River, just River, Bai,

1 place of flowing water.

2 Q No, my question is did you, in your testimony here
3 in referring to these places by non -- not the Hopi names,
4 do that so that we, the non-Hopis, could understand the places
5 you are talking about? Is that correct?

6 A I thought you had completed those names by having
7 this map here with the names written on them.

8 Q Does that mean that you use those names to help us
9 instead of using the Hopi names?

10 THE INTERPRETER: What was the question?

11 Q (By Mr. Lundin) Do you use the English name, like
12 Little Colorado River, do you use a name like Tuba City and
13 other names which you have used which are not Hopi names, do
14 you use those names so that we can understand the places you
15 are talking about?

16 A I have already said that what names they are known
17 by is already on the map. I couldn't say anything else, but
18 that's the way it's known.

19 COMMR. SCOTT: Perhaps I can help. Mr. Johnson, do
20 you know any other names for those places than the names you
21 have used, that is Little Colorado River, Tuba City and the
22 others that you used? Do you know any other names for them?

23 A I didn't arrive at giving these places the names, I
24 wouldn't say that I can commit myself to say that that's the
25 way it's known. You people have gotten these names on the

1 map for your convenience, so that's the way it's known now.

2 Q (By Mr. Lundin) Okay. Mr. Johnson, do you know of
3 your own knowledge whether, when the people of your village,
4 when you were a boy or when you were a man of 30 or 40, when
5 they went away for several days for hunting or herding would
6 they build shelters away from the village?

7 A What was the question?

8 MR. LUNDIN: Off the record.

9 COMMR. SCOTT: At this time we will take a 15-minute
10 recess.

11 (Short recess.)

12 COMMR. SCOTT: The Commission will be in session. Mr.
13 Lundin, you may resume.

14 MR. LUNDIN: No further questions, your Honor.

15 COMMR. SCOTT: Redirect?

16

17 REDIRECT EXAMINATION

18 BY MR. BOYDEN:

19 Q Mr. Johnson, when you put cattle out on the cattle
20 range, do you attempt to drive them to the different places
21 to eat or do you just let them drift naturally on the range?

22 A Repeat the question? And I will have to rely on you
23 from now on.

24 (Whereupon, the pending question was read by
25 the reporter.)

1 A When we work with our cattle we don't make the
2 practice of placing them at one certain spot, because there
3 wasn't anybody at that time molesting our stock. So we made
4 it a practice of taking them to the spring, and then turn
5 them loose. We know that they have access to the water then.

6 MR. BOYDEN: That's all.

7 MR. LITTELL: That's all.

8 MR. LUNDIN: That's all:

9 COMMR. SCOTT: Is there any reason to believe that
10 this witness may need to be recalled at all for any reason?

11 MR. BOYDEN: I don't think so.

12 MR. LITTELL: No.

13 COMMR. SCOTT: Is there any reason why he should not
14 be excused at this time?

15 MR. LITTELL: Not on our part.

16 MR. LUNDIN: No, sir.

17 COMMR. SCOTT: You are excused. You may go home.

18 MR. BOYDEN: Your Honor, this man's name is Poly,
19 P-o-l-y, Payestewa, P-a-y-e-s-t-e-w-a.

20

21

22

23

24

25

1 POLY PAYESTEWA,
 2 called as a witness herein, having been first duly sworn to
 3 state the truth, the whole truth and nothing but the truth,
 4 testified on his oath as follows:

5
 6 MR. BOYDEN: What did he say, Albert, so the record
 7 will show it? I know what he said.

8 THE INTERPRETER: Yes.

9
 10 DIRECT EXAMINATION

11 BY MR. BOYDEN:

12 Q Poly, what is your name?

13 A Poly Payestewa.

14 Q And how old are you?

15 A Ninety-four.

16 Q Where were you born?

17 A At Old Oraibi.

18 Q And do you know where your parents were born?

19 A What?

20 Q Where were your parents born, your father and mother?

21 A Same place, I guess, only one village one time, that
 22 big village.

23 Q Well, you knew that in your family, didn't you?

24 A Yes.

25 Q Now, did your father have cattle?

1960
 94

 1866

22 u

1 A Yes.

2 Q And did he run them with K. T. Johnson's father?

3 A Same time, yes.

4 Q Do you know where he ran them?

5 A Well, they just turn them out, nobody bother them,
6 just turn them out.

7 Q Do you know where they turned them out to?

8 A Turn them out west of Oraibi.

9 Q Do you know where they went when you were a boy?

10 A What?

11 Q When you were a boy do you know where they went?

12 A When I was a boy, yes.

13 Q All right, tell us where the cattle went when you
14 turned them out?

15 A They turned them out what they call Dinnebito, it's
16 west from Oraibi.

17 Q Now, how far down Dinnebito would they go?

18 A Well, they goes down clear to the river, that's
19 Little Colorado River, they goes there, they water there
20 some place, kind of a little fall. They call the fall Black
21 Fall, they call it, Hopis.

22 Q That's down at the river?

23 A It's down in the river, yes, as far as they go from
24 that far. Nobody be bothering, just turn them out and when
25 they go they want some up from there, they stay overnight,

*When?
Late 1870's?*

1 the next day they brought them in. That's the way they does
2 when I was a boy.

3 Q I see. Now do you know how far they went up the
4 Little Colorado?

5 A No.

6 Q Towards Leupp?

7 A No, I guess it's about right along down in Loop on
8 this side of Canyon Diablo is what I know.

9 Q Now you know --

10 A All along in that valley.

11 MR. BOYDEN: The record shows Canyon Diablo runs into
12 the Little Colorado at about the center of the piece that's
13 green that's marked G on Hopi 2.

14 MR. LITTELL: Which would be what quad?

15 MR. BOYDEN: It will be in quad F -- it just runs over
16 into F-6 on the Navaho's wall map (Navaho Exhibit 510).

17 Q (By Mr. Boyden) Do you know who else ran the cattle
18 with your father when you were a boy?

19 A Yes, quite a few of them that I know.

20 Q Can you name just a few of them?

21 A Yes, I can, yes. That one guy called Nayawsini'ma,
22 and one man is Laidakikaya.

23 Q Now how old were you when you first started to go out
24 with the cattle?

25 A Gosh, like I say, I don't know how old I am.

1 Q Well, were you a man or were you just a boy?

2 A I'm a boy when they had those lot of cattle at one
3 time, when I was a boy.

4 Q Would it be before you were 20 years old?

5 A Before I was 20 years old, yes.

6 COMMR. SCOTT: He's 94 years old?

7 MR. BOYDEN: Yes.

8 Q (By Mr. Boyden) How many cattle did your father have?

9 A Quite a few. I wouldn't say, I couldn't remember,
10 but about over, oh, 25 I think it was. That I don't remember.

11 Q You don't remember but you know it's over 25?

12 A Yes, might be about 25.

13 Q Do you know how many were in the herd with all 19?

14 A No, I don't know that. Quite a bunch of them, lot of
15 them horses. Nothing but -- no Navahos, no Navahos that side
16 of Oraibi, nothing when I was a boy.

17 Q Now, you are talking about what time? What year when
18 you are saying that the Navahos were not on the west side of
19 Oraibi?

20 A Like I say, I don't know what time of the year, what
21 day of the year. We are not in school yet, you know, we are
22 not in school yet. We were boys, you know. We are little
23 fellows. They had lot of cattle.

24 Q And that's the time that you say the Navahos weren't
25 west of you?

1 A Yes.

2 Q All right. Now, did the Navahos come in there later
3 on to your knowledge?

4 A Why, yes, they came in, quite a lot of them coming
5 in from the east, always come from the east. They go back
6 the same way, never goes to the west. They don't living
7 there in them early days.

8 Q Poly, did any of the Hopis have sheep at that time?

9 A Oh, yes, they had sheep all right.

10 Q Do you know where they ran them?

11 A They'd get the corral right around close to the mesa.

12 Q The sheep will run closer to the mesa?

13 A Yes, they got corrals there, right around close to
14 the villages too, you know.

15 Q And then the cattle went further out?

16 A Cattle went far down, yes.

17 Q Now I will ask you if you have testified about the
18 area that's in green, G, I will ask you if you know or were
19 familiar when you were a boy with the territory that's brown
20 here marked F around Tuba City and Moencopi and that country?
21 Are you familiar with that and were you when you were a boy?

22 A Yes, when I was a boy I had a grandfather, he was
23 the one that lived there in those early days, you know, bring
24 the Mormons in there and settle in with the Mormons at the
25 first places is why I remember.

1 Q He's the one that brought the Mormons in and settled
2 with them, you say?

3 A Yes, in Tuba.

4 Q What's his name?

5 A Tuba.

6 Q Tuba?

7 A That's after his name, Tuba City.

8 Q And he was your grandfather?

9 A He's my grandfather.

10 Q In your family did you talk about where the cattle
11 were run with your parents, your father and your mother?

12 A Yes.

13 Q And where did you understand that they ran their
14 cattle ahead of you?

15 A At Oraibi.

16 Q At Oraibi?

17 A Yes.

18 Q And I will ask you if other people were running cattle
19 around Oraibi --

20 A There was a bunch of them, quite a number of Hopis
21 there had cattle, just turn them out, just loose them out and
22 they would mix them up, you know? They don't herd, you know,
23 never been herding the cattle, just turn them out.

24 Q Just mix them up with everybody's?

25 A Just mix them up, there's cattle, yes.

1 Q Now, then were there any of those that grazed over
2 west towards Tuba City, Moencopi?

3 A No, not that I know.

4 Q The Oraibi cattle went down where you have already
5 described?

6 A Went down to Burro Springs and went down to what they
7 call Red Lake, and on the other side of what they call
8 Dinnebito. That's what they had herds, you know, the cattle,
9 the west side of Oraibi. They don't turn them out east side.

10 Q They turned them on the west side of Oraibi?

11 A It was just the west side they turned them off of
12 so they wind them up around in there.

13 Q Now, do you know what happened to your father's
14 cattle?

15 A No. Well, only I know the Navahos, they stole them
16 all, you know, drove them away.

17 Q Well, do you know when they were lost?

18 A They lost from the place where they turn them out,
19 you know, in the west side of Oraibi.

20 Q Now I will ask you if you remember the time they
21 rounded up the people of Oraibi and put their children in
22 school, do you remember that personally?

23 A Yes.

24 Q Now, when was the time that the cattle were stolen
25 with relation to that incident?

1 A It's about before we were in school.

2 Q Before you were in school?

3 A Before I was in school, yes.

4 Q Do you know when you went to school?

5 A Yes.

6 Q Will you tell us?

7 A Keams Canyon.

8 Q And do you know when you went there?

9 A When, when I went there? No, no. I think it was
10 about along 1890, along in there. That's the time I think
11 we went.

12 Q Now, Poly, did you know about whether the Hopis used
13 the lands around Moencopi or Tuba City when you were just a
14 boy?

15 A Yes, in the early days I have known and I have heard
16 it. I did not see it. When they were having that farming
17 at Moyavi beyond Moencopi, west of Moencopi. And that has
18 been some ways back, you know, they just plant cotton over
19 there, nothing that pays to plant, and at Moencopi, at the
20 same time, you see, people talking about it, old people talk
21 about it when we were boys, little fellows.

22 Q Did your grandfather talk about it and your family?

23 A Yes, yes.

24 Q Do you remember your grandfather?

25 A I remember my grandfather.

1 Q What did he talk about? What did he say?

2 A He was trying to save that land for us, he said, that's
3 why he was settling there. If he is gone, you must stay right
4 in there where there is a good place, everything could ^{grow} go
5 there in Tuba City, he said, when I was a little fellow. But
6 I wouldn't mind that time, I don't care much about what he
7 is talking about, you know. But after when I grow up, a man,
8 I know what he was coming to me, you know, the words what he
9 told me. So finally I move over there from Oraibi to stay
10 right there, settle there. And when I was in school they going
11 to allot the land there, and we three of us went there, three
12 boys with the superintendent and one -- what's his name, it's
13 awful old -- I can't remember his name, I forgot his name.

14 Those two guys there tried to survey that land there
15 and they changed it there at Moencopi. And we three of us
16 there with them from Keams Canyon, and we surveyed that land
17 there. And after about three, four years, five years -- after
18 five years I think, it was that I remember, and then they going
19 to allot it up among the -- giving out among the Hopis there.

20 And there about two, three -- three, four Navahos
21 there at the same time when we get that allotment and that
22 land.

23 Q Do you remember who those Navahos were?

24 A What?

25 Q Do you remember who those Navahos were?

1 A Yes.

2 Q What were their names?

3 A They called one Charley, one is Charley name that I
4 know, but they are all -- they are all gone, those old people
5 are all cleaned out, you know.

6 Q They are all dead now?

7 A They are all dead now, yes. Their children taking
8 care of now, the Navahos there, their grandsons and daughters
9 there. They are taking care of now.

10 Q Now, did your grandfather run cattle?

11 A No.

12 Q He was just a farmer?

13 A Yes, just a farmer.

14 Q And raised mostly cotton?

15 A Yes.

16 Q Now, did the Hopis hunt when you were a young boy?

17 A Yes.

18 Q Where did they hunt?

19 A You mean deer hunting?

20 Q Any kind of hunting.

21 A Any kind of hunting? Well, we just go around any
22 place wherever they want to go to hunt. There is all over,
23 lot of jackrabbits and cottontail rabbits and they hunt right
24 around.

25 Q How far west did they go out from Oraibi?

1 A From Oraibi?

2 Q Yes.

3 A As far as I know they go down to what they called
4 Red Lake, right there that I was -- I think I was two times
5 with a lot of people goes there to hunt, and they were camp-
6 ing there two or three days, you know, hunting and come home.
7 I was there with them there. But there was a store now east
8 of that, you know, at what they called Red Lake from Oraibi
9 down below Burro Springs.

10 Q Yes.

11 A That's where we were hunting, way down that way.

12 Q Did you hunt below Red Lake or just above it?

13 A Just above this way.

14 Q Now what did you hunt there besides deer, you said?

15 A Or antelope.

16 Q There were antelope?

17 A Antelope and deers and rabbits.

18 Q Now when did that hunting stop for the antelope and
19 deer?

20 MR. LITTELL: Would you put that in a quad, Mr.
21 Boyden?

22 MR. BOYDEN: We have done it once, but if it will
23 help I'll do it again.

24 MR. LITTELL: We have had several Red Lakes too,
25 but I think it would be well to pin it down.

1 MR. BOYDEN: The Red Lake we are talking about again
2 is located in quad G-6 below the Executive Order Reservation
3 and inside the Navaho Reservation.

4 Q (By Mr. Boyden) Now, will you tell us, Poly, when
5 they stopped hunting deer and antelope down in that district
6 around Red Lake?

7 A Well, I guess they cleaned out when the Navahos came
8 in and scared them all off, you know, and that's the time
9 they no more hunting for deers and antelopes.

10 Q Now, when was that?

11 A That was when I was a boy.

12 Q You were still a boy?

13 A Yes, I was a boy then.

14 Q Do you have any way of fixing it a little more
15 definitely than that?

16 A No, no.

17 Q Now, did you have any occasion when you were a boy
18 to go down in the Colorado River area, Little Colorado?

19 A Yes.

20 Q What did you go down there for?

21 A We was three of us from Oraibi and two from Shipalovi,
22 those fellows there were good friends with each other, you
23 know, from Oraibi and Shipalovi guys, and we went down there
24 to cut logs for the house, they says, and we had the ax
25 along and taking our lunch along with the burros, and we way

1 down to the Little Colorado River. And when we came over
2 there those boys says they want to go to Flagstaff. And we
3 went. We didn't do anything for the logs, you know, and we
4 went on to Flagstaff. We had pieces with pack on our burros
5 and we'd sell those pieces over there in Flagstaff. And I
6 sold mine for all the calico that I could buy, you know, a
7 bunch of calico and bring home with me. And when we come
8 back, coming back to the Little Colorado River up to the west
9 side somebody had a ranch there and nobody there. And we
10 took some of those boards there to bring home. They got a
11 big shade there and we tear those up, and took some pack on
12 our burros. I took about two, three pieces, four pieces of
13 the short ones, you know, on my burro.

14 Q Short pieces of what?

15 A Short pieces of those board.

16 Q Board?

17 A Yes.

18 Q To build with?

19 A To build with, yes, to use for little covers when I
20 get home.

21 Q Now, when you were a boy did other Hopis go to the
22 Colorado area to get --

23 A Yes.

24 Q Little Colorado area?

25 A Yes, they used to hunt over there, lot of people goes

1 to hunt over there, got a lot of rabbits around on the other
2 side, you know. And there is a lot that goes in to hunt on
3 the east of Tabor Canyon, right along in those little places,
4 you know, rocks, east side to catch those rabbits there.

5 Q Do Hopis use turtles for any purpose?

6 A Oh, yes.

7 Q Tell us what they use turtles for?

8 A Turtle? Well, they are used for dancing with. They
9 used to hunt those too, you know, to beyond Winslow. I never
10 been there, but they goes to hunt for those turtles, those
11 Hopis. They get it from there, no other place they get it,
12 just from that place.

13 Q And that was beyond Winslow?

14 A Yes, beyond Winslow. These Hopis know where they get
15 those turtles from.

16 Q All right. Now, when you were out on these trips did
17 you gather any plants?

18 A Well, they used some plants, but if they had in summer
19 time they goes, gets some of those different kinds of green
20 stuff that the Indians eat, you know, to use.

21 Q Now, do you know what kind of green stuff it was that
22 they gathered to eat?

23 A Yes.

24 Q Do you know what they were called?

25 A Yes, one of them is called homema.

1 Q Do you know any other name for it?

2 A One of them is kuivi.

3 Q Do the non-Indians have a name for it that you know?

4 A No -- yes, they know it.

5 Q Do you know what they call it?

6 A No, no, I guess the same name.

7 MR. BOYDEN: Maybe we can get a little clue here and
8 save time. Do you know, Albert, the proper name of either of
9 those?

10 THE INTERPRETER: I don't know the names at all.

11 MR. BOYDEN: We will pursue that with another witness.

12 MR. LITTELL: Sounds like hominy, but it couldn't be.

13 Q (By Mr. Boyden) Now, did they gather plants for
14 purposes besides eating?

15 A Yes.

16 Q What else?

17 A Asha is one of these, and Eshu.

18 Q And what did they do with those plants?

19 A They eat it, they boil it and eat it.

20 Q Well, now I want to know if they used plants for any
21 other purpose besides boiling it and eating it?

22 A Yes.

23 Q What other purpose?

24 A Those little potatoes, they had little ones that they
25 use that too, you know, they took it, you know, they boil it.

1 They are little, small ones, small ones.

2 Q That was for eating too, wasn't it?

3 A Yes.

4 Q Now, did they get any for medicine?

5 A Yes, there's lots of weeds that they use for medicine.

6 Q Lots of weeds?

7 A Yes, lot of things that they use for medicine.

8 Q And where would they gather those?

9 A Any place where they could find it, on that reserva-
10 tion.

11 Q Now, when they went out on their hunting trips and to
12 get --

13 A Sometimes their hunting trips they get some, you know.

14 Q And would they do it when they go out to get poles for
15 building or wood for Kachina dolls?

16 A Yes, they just bring it home.

17 Q They bring it home?

18 A Yes.

19 Q Do you know where they went for their wood for Kachina
20 dolls and drums?

21 A They get it from that Little Colorado River where those
22 cottonwood roots, those dried ones.

23 Q And where on the Little Colorado did they go for those?

24 A Oh, from Oraibi west, same place, east of Canyon Diablo,
25 and so they get it for those.

1 Q How near to Leupp?

2 A Down below Leupp.

3 Q Below Leupp?

4 A Yes.

5 Q How far below Leupp?

6 A Just about along in there, about maybe about a mile
7 down. They go up above there too, you know, they go to Winslow.

8 Q Where did the Hopis get their salt?

9 A Salt?

10 Q Yes.

11 A They get it west of us, you know, in that canyon there,
12 down way down in the canyon.

13 Q Would they go through this country we are talking
14 about now to go to their salt?

15 A Yes.

16 Q And they get that -- do you know where it was? You
17 have been for salt yourself, have you?

18 A I was -- I went down there from the east side of that
19 canyon there, down in that east side right across over here
20 in Grandview, right east of that point there they came down
21 in that trailer that goes over to get salt.

22 Q Would that be down in the Colorado River or the Little
23 Colorado?

24 A Yes, just this here, this canyon here down in there,
25 that's where they get it.

1 MR. LITTELL: Now, Mr. Boyden, I'm no further along
2 on where they got it except for your testimony on the
3 Colorado, unless I missed --

4 MR. BOYDEN: I'm just trying to find out, because I
5 want to show the trail goes through this.

6 MR. LITTELL: Just ask the witness where the salt
7 came from.

8 MR. BOYDEN: Well, I'm trying to help him a little bit.

9 MR. LITTELL: Yes, I know you are.

10 COMMR. SCOTT: We will be very lenient in view of the
11 age --

12 MR. LITTELL: I'm sure he knows, Mr. Boyden.

13 MR. BOYDEN: Let's do it this way in view of your
14 objection.

15 Q (By Mr. Boyden) Will you tell us just where you went
16 when you got the salt, telling us the places you go until you
17 get the salt?

18 A Me?

19 Q Yes.

20 A Well, I go down that, they go from Moencopi they go
21 down west, you know.

22 Q West of Moencopi?

23 A West of Moencopi, yes.

24 Q How far west of Moencopi?

25 A You could pass the -- what they call Moyavi, and went

1 on to the west to just about -- there was a big Colorado River
2 and this little river here, Little Colorado River join together,
3 right on the east side of that point there is the trading post
4 down there where they go, and they get salt, and from there
5 down here some place up above here is where they get the
6 salt. I never been there, I never been -- I came down that
7 road there, though. It's just a little ways to this canyon
8 here from this -- from the Leupp, and they join together, and
9 I came in at that east side of it to go down in the trail.
10 But I didn't go down very far. There was a place in a big
11 cave, somebody put up a store there one time early days when
12 nobody knows who's who to trade with. Everything is in there
13 that they, old people went down there when I was a boy, they
14 get -- see that store, there is no stores around here yet in
15 this area in Arizona, nothing, no white people. And when they
16 saw that and came home and tell the people about it, one guy
17 brought a knife and as soon as he gave him, he died. He came
18 home and died. And the others, they took some out, shirts
19 and shoes and stockings, handkerchiefs. When they took that
20 out, they in with salt in the pack, and they give out, they
21 are too heavy after that, they throw those out before they go
22 up and take him home.

23 They throw those out from the canyon before they go
24 up our place, that's what I know.

25 Q Now, when was that?

1 A That was been some years ago when I was a small boy.

2 Q Now, when you say you are describing the place where
3 the Little Colorado joins into the Colorado River?

4 A Yes, I was been asking a lot of white people who put
5 it there, that store, who is going to trade with them. No
6 people, no Indians there.

7 MR. BOYDEN: Now the Little Colorado joins the
8 Colorado in quad 4-E west of Tuba City and Moencopi.

9 Q (By Mr. Boyden) Now, during this time were there
10 many Hopis that came out in that territory for these purposes?

11 A You mean the salt?

12 Q Yes.

13 A Yes, they got no salt, just at that place they get
14 salt and then way over in Zuni, they goes there to Zuni salt
15 too, early days.

16 Q That's clear over in the Zuni country?

17 A There's only two places they can get salt, you know, in
18 the early days.

19 Q And did you know that they went over this other country
20 to the Zuni country for their salt too in the early days?

21 A Yes, yes.

22 Q Now, did you make any trips over to the Zuni country?

23 A No, I never been to it, but I see these Zuni nowadays.
24 But I never been at that salt, never goes there.

25 COMMR. SCOTT: Mr. Boyden, it's almost 5:30. What is

1 the pleasure of you gentlemen? You obviously have many more
2 questions.

3 MR. BOYDEN: Let me identify a couple more plants
4 here. May I say for the record that we have a complete list
5 of the actual plants here, each one with a number, so that
6 we will have a supporting exhibit for each of these that will
7 connect with the record to be later introduced.

8 COMMR. SCOTT: Very well. Would you like those marked
9 for identification?

10 MR. BOYDEN: No, I would like to just have him identify
11 them as to number and then we will put the descriptions and
12 so forth in as I will explain later to the Commission.

13 COMMR. SCOTT: It may be done. You intend to intro-
14 duce these into evidence?

15 MR. BOYDEN: No, what I intend to do later on, just
16 use these for purposes of illustration and then we will intro-
17 duce a supporting exhibit which will show exactly what 14-A is,
18 for example. That is the one I have in my hand. And then that
19 will connect the testimony of the individual witnesses with the
20 actual plants as we will have them properly classified and
21 introduced in evidence.

22 COMMR. SCOTT: Well, now, when you say 14-A, that's
23 the exhibit number?

24 MR. BOYDEN: That's the one I happen to have in my
25 hand. It isn't an exhibit number but it is a number, a plant

1 number, and then we will have one exhibit that will have a
2 compiled list of all of these, so if this witness testifies
3 about Exhibit 14-A you can simply turn to the exhibit that we
4 will have to page 14-A and tell what plant it is.

5 MR. LUNDIN: Well, I don't see there is any point in
6 putting all this on the record for the moment.

7 COMMR. SCOTT: Off the record.

8 (Discussion off the record.)

9 COMMR. SCOTT: Back on the record.

10 MR. BOYDEN: It's been agreed between counsel that we
11 will produce a classification of plants which will be known
12 as the Hopi Exhibit Number 3. In that classification we will
13 have various pages starting with one and going on in some
14 cases using A and B and so forth on some of the plants. But I
15 will produce those plants here, and when I'm producing those
16 plants and referring to them as numbers they will be a part of
17 the Exhibit Number 3.

18 COMMR. SCOTT: And as I understand it, Mr. Boyden, the
19 background material which will be reflected in the petitioner's
20 exhibit number 3 will be available to the defendant and to the
21 counsel for the Navaho Tribe for comparison with the exhibit
22 prior to the entry of that exhibit into evidence, am I right
23 on that?

24 MR. BOYDEN: That is correct, and I will also give
25 the complete Exhibit 3 that we propose to use with all the

1 supporting data without going into that in detail now,
2 before I actually offer it in evidence.

3 COMMR. SCOTT: I think that would be fine. Then
4 prior to the actual receipt in evidence, counsel for the
5 defendant and for the Navaho Tribe will have an opportunity
6 to make a comparison of the background material, and then of
7 course to offer any objections prior to the receipt into
8 evidence based on those comparisons.

9 MR. LITTELL: If the Court please, I suggest this is
10 an area in which great time can be saved. We would be willing
11 to accept written statements of what the witnesses would
12 testify as to these plants on the assumption that Mr. Boyden
13 would also accept the written statement from our Navahos as
14 to the same thing, because both tribes, as shown in the other
15 case, gathered practically the same plants, used them for
16 medicinal purposes, eating purposes and so forth, and this is
17 an area which will take a great deal of testimony if it's done
18 in the manner in which we are now proceeding.

19 COMMR. SCOTT: Well, now, in view of that fact, and
20 in view of the fact that it's 5:30, suppose we leave it
21 this way: That when we come back in the morning counsel for
22 defendant and counsel for the Navahos and for the Hopi Tribe
23 may have had an opportunity to explore the possibility of using
24 stipulations in lieu of testimony, and if you can't, of course,
25 we will go forward with testimony. If you can, and during your

1 conferences are able to secure the services of a typist, and
2 have written stipulations ready to spread upon the record,
3 that will be perfectly satisfactory to me.

4 MR. BOYDEN: I might say that Mr. Littell and I have
5 very satisfactorily worked this out in the other case, and
6 I believe if we could talk with Mr. Lundin as to how we may
7 reach an agreement and we will do that in the evening --

8 MR. LUNDIN: May I simply say that at this point I
9 don't know as we can reach an agreement on what I consider as
10 canned identification of these plants, whereas possibly the
11 way Mr. Boyden is proceeding now with the witness seeing a
12 particular plant and identifying it might be perhaps a better
13 way, but I'm perfectly open to listen to reason on the subject.

14 COMMR. SCOTT: Very well, I suggest then that counsel,
15 if it is convenient and possible, will confer during the
16 recess and report the results of your conference in the
17 morning. Is that satisfactory?

18 MR. BOYDEN: That's satisfactory.

19 MR. LITTELL: That's satisfactory.

20 MR. LUNDIN: Yes.

21 COMMR. SCOTT: Very well. With that understanding, we
22 will now recess until 9:00 o'clock tomorrow morning and the
23 witness now on the stand will be available, as I understand,
24 for further testimony?

25 MR. BOYDEN: Yes.

1 (Whereupon, a recess was taken from approximately
2 5:30 o'clock p.m. on Friday, November 18, 1960,
3 until approximately 10:15 o'clock a.m. on
4 Saturday, November 19, 1960.)
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1 NOVEMBER 19, 1960, 10:15 O'CLOCK A.M.

2
3 COMM. SCOTT: The Commission will be in session.

4 Let the record show that prior to the session today
5 we have had a brief conference with the attorneys and that
6 they at this time are prepared to make brief statements to
7 the record of the progress which they made in constructive
8 efforts to shorten the record, save time and expense without
9 sacrificing any interests of their clients, the Hopis and the
10 Navahos and the Government. Mr. Boyden?

11 MR. LITTELL: I think the first statement probably
12 from Mr. Lundin.

13 COMM. SCOTT: Mr. Lundin?

14 MR. LUNDIN: Both the plaintiffs, the Navaho Tribe
15 and the Hopi Tribe, and the defendant, stipulate to the ad-
16 mission into evidence of what is known as Plaintiff's Exhibit
17 245-A in Healing against Jones as Hopi Exhibit 3 subject to ^{Ex. Dockets 176 & 229}
18 correction of page 7A to conform to the Whiting's "Ethnobotany
19 of the Hopi." Copies will be furnished to all counsel and
20 the Commission within 60 days after the conclusion of the
21 present hearing. It is further stipulated as follows:

22 One. The Hopi Indians used the plants described in Hopi
23 Exhibit 3 for various purposes, but they were not gathered
24 solely in the places specified in said Hopi Exhibit 3.

25 Two. The defendant does not concede the relevancy of Hopi

1 Exhibit 3 to the issues in this case.

2 Three. The Hopi witnesses would testify, if asked, that they
3 gathered and used the aforesaid plants and that wherever the
4 Hopi Indians traveled to, they gathered said plants wherever
5 they found them inside or outside of the claimed area.

6 MR. BOYDEN: Mr. Lundin, just one matter there.
7 I regard it as unnecessary for us to furnish copies of our
8 exhibit to anybody except the defendant, the Navaho Tribe, and
9 the Commission.

10 MR. LUNDIN: That is correct.

11 MR. BOYDEN: Since we do not conflict with claims with
12 any other group. This means a lot to us in cost of prepara-
13 tion and so I wouldn't want the record to show that --

14 MR. LITTELL: But as usual we may ~~at least two~~ copies,
15 Mr. Boyden, may we not?

16 MR. BOYDEN: I think we can do that.

17 COMMR. SCOTT: I, of course, Mr. Boyden, have read the
18 transcript of the pre-trial conference held in Washington on
19 May 26, 1960, and from that it is my understanding, without
20 having examined in detail all of the petitions involving the
21 Havasupai and all the rest, the Yavapai, but it is my under-
22 standing that the hearing which we have today is concerned
23 solely, insofar as overlaps are concerned, with those that
24 are concerned between the Navahos and the Hopis. I'm somewhat
25 in the position of having to take your word for it, however,

1 because as I say, I haven't checked.

2 MR. LUNDIN: The defendant will confirm that the Hopi
3 claim does not overlap any of the other consolidated parties
4 except the Navaho Tribe in docket 229.

5 COMMR. SCOTT: Well, assuming, of course, that that
6 is correct -- and I have no doubt that it is [not] correct --
7 that, of course, copies would need not be furnished to any
8 other parties.

9 MR. BOYDEN: It is further stipulated by plaintiff,
10 the Hopi Tribe; the plaintiff, the Navaho Tribe; and the
11 defendant, the United States Government; that Dr. Harold F.
12 Colton, if called and sworn, would testify as stated in
13 Exhibit Number 4, which will be the same as Plaintiff's
14 Exhibit Number 254-D in Healing versus Jones, and that he
15 would further testify to and explain the information as con-
16 tained in the supporting exhibits 4-A, which will be simply
17 the qualifications of Dr. Colton; 4-B, which will be identical
18 with Plaintiff's Exhibit 254-E; 4-C, which will be identical
19 with Plaintiff's 254-B in Healing versus Jones; and 4-D, which
20 will be identical with Plaintiff's Exhibit 254-C in Healing
21 versus Jones.

22 It is further stipulated that the Hopi village of
23 Moencopi was abandoned as a permanent dwelling by the Hopis
24 prior to the year 1800 and was re-established by the Hopis as
25 a permanent dwelling subsequent to the year 1848.

1 Defendant, United States Government, and the plaintiff,
2 the Navaho Tribe, do not concede the accuracy or relevancy
3 of Hopi Exhibit Number 4. The plaintiff, the Hopi Tribe, will
4 furnish copies of Exhibits 4, 4-A, 4-B, 4-C and 4-D to the
5 defendant, the United States Government, and the plaintiff, the
6 Navaho Tribe, within 60 days from the date of this stipulation.

7 COMMR. SCOTT: And the Commission?

8 MR. BOYDEN: And to the Commission.

9 COMMR. SCOTT: Now, there is one question that does
10 come to my mind in connection with Dr. Colton. Is it C-o-l-t-
11 o-n?

12 MR. BOYDEN: C-o-l-t-o-n.

13 COMMR. SCOTT: Dr. Colton's testimony. He is here?

14 MR. BOYDEN: Yes.

15 COMMR. SCOTT: And the question that comes to my mind
16 is whether or not, in your opinion, the interests of your
17 clients are as well served by having the Commission -- of
18 course I'm only one of the Commissioners, but I'm here -- by
19 having me read this material than by, in addition, having the
20 benefit of Dr. Colton on the stand with an opportunity to ask
21 questions. Now, I bring that up only because we have come
22 a long ways and while we want to save time, I want to do every-
23 thing I can, I have found in the brief period in which I have
24 been associated as a Commissioner on the Indian Claims Commis-
25 sion that it is extremely helpful in this type of thing to have

1 the expert on the stand.

2 Now, however, I only bring up the point so that if
3 you feel that the interests of your client are as well
4 served through stipulation of this kind, we may let it rest
5 at that point.

6 MR. LUNDIN: If your Honor please, Dr. Colton's
7 testimony would relate solely and does relate in his written
8 statement to a period many hundreds of years before the acquisi-
9 tion of sovereignty by the United States Government. In view
10 of the fact that apparently, in the view of the plaintiff Hopi
11 Tribe as well as the defendant, is really initial supporting
12 evidence from which other witnesses can carry on to a later
13 date which is more vital to the issues of the case, we felt
14 that that would be the reason why Dr. Colton's testimony need
15 not be offered. If, however, the Commission wishes it anyway--

16 COMMR. SCOTT: Now in that respect, then I understand
17 from what Mr. Lundin has said that the basic evidence will
18 be here in the form of a document and that from that basic
19 evidence then the Commission, either sitting en banc or by
20 one or two commissioners at a later date, will have the benefit
21 of the actual testimony of experts of the contemporary period.

22 Am I right, that's involved?

23 MR. BOYDEN: May I say just by way of explanation, and
24 not by way of argument or proof, that this period is before
25 the period that the United States acquired this territory, but

1 the connection that we will attempt to prove later on by
2 two anthropologists will be that the Hopis returned to these
3 sites for specific purposes and made specific uses of them,
4 so that this part is not in the controversial area.

5 The next two witnesses we will produce, Dr. Danson,
6 who will make the modern application, and also Dr. Fred Eggan
7 of the University of Chicago, Dr. Danson is present in the
8 court today but it wasn't our understanding that he would
9 testify today and we are not prepared. So that we will have
10 two that bring it ^{up} ~~out~~ to date and the Commission will have
11 the benefit of that, and it's my considered opinion that the
12 information that's here furnished by Dr. Colton is sufficient
13 for the best interests of my client.

14 COMMR. SCOTT: Well, that's fine. Mr. Littell?

15 MR. LITTELL: No statement. That covers the point,
16 Mr. Commissioner.

17 COMMR. SCOTT: Fine. You may proceed then.

18 Oh, there is one additional thought that I have. Now
19 we have here two exhibits to be marked for identification at
20 a proper time, numbers 3 and 4. It's physically impossible,
21 as I understand today, to have them marked for identification,
22 am I right?

23 MR. BOYDEN: That's right.

24 COMMR. SCOTT: Then the modus operandi, as I under-
25 stand, would be to, in the interim period, to have them marked

1 after this supporting testimony has been given and to offer
2 them for evidence at the next session, am I right?

3 MR. BOYDEN: That's correct. Now, may I also make
4 this statement: Would it be satisfactory with counsel for
5 the other side if we furnished copies of the map, Exhibit 2,
6 within 60 days also?

7 MR. LUNDIN: Oh, yes.

8 MR. LITTELL: Satisfactory.

9 COMMR. SCOTT: That should be hooked up in your state-
10 ment to the docket number, it's docket number 196.

11 MR. BOYDEN: Yes, docket 196, and we are all familiar
12 with the contents of that and if anyone has any objection to
13 these exhibits that we furnish, I, of course, will be very
14 happy to confer with them.

15 COMMR. SCOTT: Well, since, of course, this number 2
16 has been received in evidence, it's in evidence, and the other
17 two will not be received until the next session, and at that
18 time the parties will have their full opportunity for objection.

19 MR. BOYDEN: We have made our objections here.

20 MR. LUNDIN: Yes.

21 MR. BOYDEN: Already, but the only point that I raise
22 is if they had any objection that this was not a true copy of
23 what we have agreed upon or anything of that kind, it could
24 be drawn to my attention.

25 COMMR. SCOTT: That's what I had in mind, as to the

1 authenticity or genuineness or any errors in the preparation
2 of the exhibit. I understand that you have no objection to
3 the exhibit as you understand it was prepared?

4 MR. LITTELL: If there is any departure from that,
5 of course we would have the right. Furthermore, I was unable,
6 if the Court please, on this short notice to get this exhibit
7 number on the plaintiff's wall map, what's been called the
8 Navaho claims wall map (Navaho Exhibit 510). I said I would
9 get it by telegram, and if agreeable I will have a telegram
10 sent to the reporter, so that before he writes this transcript
11 up he will have that number, and it just may be inserted.

12 COMMR. SCOTT: That would be fine. Now I want to
13 understand clearly now as to that exhibit, we have it physical-
14 ly here on the board, it's referred to, and the exhibit number
15 which you are to supply is an exhibit number in another case.
16 It's in the Navaho case.

17 MR. LUNDIN: No, it's the exhibit number that was
18 given to it at the first hearing in this very same case.

19 MR. LITTELL: In this same claims case.

20 MR. LUNDIN: That is the map that's on the right
21 there, your Honor.

22 MR. LITTELL: So I'm accepting Mr. Boyden's statement,
23 which I'm sure is correct, that this is physically a copy of
24 a map which was already an exhibit. In fact, some of the
25 markings on it were put on in the course of taking the testimony.

1 **COMMR. SCOTT:** That's very true, but that would be
2 in docket 229, am I right?

3 **MR. LUNDIN:** No, docket 229 was consolidated with 196
4 before the first hearing, and this is a continuation of the
5 consolidated case.

6 **COMMR. SCOTT:** I understand that, and you will have
7 to forgive me since I am new.

8 **MR. LITTELL:** Not at all. These are good questions,
9 Mr. Commissioner.

10 **COMMR. SCOTT:** And I know that there are two docket
11 numbers. Let me inquire then as to the practice from you
12 gentlemen of using one set of numbers for the consolidation?

13 **MR. LITTELL:** No, we will each have our separate set
14 of numbers, but Mr. Boyden, in this instance, has chosen to
15 adopt one of our maps, and this was unexpected to me. There-
16 fore I don't happen to have that number. Also I have not
17 been back to Washington where these files are.

18 **COMMR. SCOTT:** Well, now, here is the thought that I
19 had: Since you do have separate exhibit numbers for each
20 docket number, regardless of the fact that the two dockets are
21 consolidated for the purpose of determining the conflict, and
22 since this map is physically on the wall, why do we need to
23 worry about the other exhibit number. Can not we give it,
24 say for example Petitioner's Exhibit Number 5, have it marked
25 for identification and put it in evidence at this time?

1 MR. BOYDEN: May I say this: There isn't any use in
2 having it in twice to encumber the record.

3 COMMR. SCOTT: It might help us.

4 MR. BOYDEN: I'm just simply referring to their
5 exhibit, and I'm not introducing it at all, their map that we
6 are talking about.

7 COMMR. SCOTT: I'm inclined to believe that, regardless
8 of the convenience of counsel, that it would be greatly helpful
9 to the Commission to have it in evidence. The only reason I
10 say that is because, as I understand it, you have two separate
11 files here, one for 196 and one for 229, and the transcript,
12 of course, is being prepared today by the court reporter, is
13 equally the one and the other. But all of the exhibits that
14 are being numbered are the Hopi exhibits. To me it would be
15 helpful. It wouldn't be inconvenient to have that map there
16 marked for identification as Hopi Exhibit Number 5 and have it
17 go in evidence, then we don't have to worry about it.

18 MR. LITTELL: I think your Honor is quite correct,
19 because you are going to have to have findings in this 196.

20 MR. LUNDIN: If I may be heard on that point, that map
21 was originally offered in evidence and was accepted temporarily
22 and the Navaho plaintiffs in docket 229 were thereafter going
23 to bring to the hearing the person who had constructed the
24 map, because there may be some objections to the map. Now if
25 Mr. Boyden, in Hopi 196, wishes to offer the map, then I have

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22 and the Navaho plaintiffs in docket 229 were thereafter going
23 to bring to the hearing the person who had constructed the
24 map, because there may be some objections to the map. Now if
25 Mr. Boyden, in Hopi 196, wishes to offer the map, then I have

1 to state my objections to its receipt as an exhibit at this
2 time.

3 **COMMR. SCOTT:** Well, of course we have received evidence
4 and testimony as to particular portions on that map, and so
5 that I would think that the defendant is entitled to have the
6 same objections in docket 196 as it had in 229. However, to
7 save the cost of the record I would be glad to receive it or
8 to have it marked for identification, have it marked for
9 identification subject to being offered at a later date, with
10 your objections to be considered before it is received. Then,
11 of course, we would have, I think, a little better record.

12 Now may we be off the record for just a moment.

13 (Discussion off the record.)

14 **COMMR. SCOTT:** Well, back on the record. Mr. Boyden,
15 do you wish to make a statement?

16 **MR. BOYDEN:** We have discussed this matter, and for
17 several reasons, including the vigorous objection of the
18 Government to the introduction of this map, we have decided
19 that our purposes can be accomplished in the following manner:
20 If the reporter could be instructed, after each reference in
21 the transcript in preparing it, where we have referred to the
22 Navaho wall map (Navaho Exhibit 510), to put in parenthesis
23 after that the number of the exhibit as introduced by the
24 Navaho Tribe at the Washington Hearing. Then Mr. Lundin has
25 agreed to furnish a copy of this map for file number 196 so

1 that the Commission could easily refer to it. And under those
2 circumstances we felt that it would be unnecessary to have a
3 separate Hopi number and get away from the necessity for me
4 introducing a map that I can't vouch for and it gets away from
5 the necessity for the Government to restate its objections.

6 COMMR. SCOTT: Well, now, that map has not yet been
7 received in evidence, has it?

8 MR. LUNDIN: Well, it has been received in evidence
9 subject to the testimony of the man who actually drew the map
10 which was to be reduced at the subsequent hearing.

11 COMMR. SCOTT: In other words, there is no question
12 about the fact that the map physically will be a part of the
13 record?

14 MR. LITTELL: There is no question whatever, your
15 Honor. I go farther and say there will be no question about
16 it being admitted, but anyway it's already marked for identi-
17 fication and I'm wiring for the identification number to be
18 sent to the court reporter.

19 COMMR. SCOTT: In other words, it still has the
20 status, however, of an exhibit only marked for identification
21 because it has not actually been received in evidence?

22 MR. LUNDIN: Well, I cannot honestly state from my
23 memory of the record whether it was only marked for identifica-
24 tion, but I can state that the record does show that that map
25 is subject to the testimony of the individuals who drew it and

1 marked thereon the various geographical localities.

2 **COMMR. SCOTT:** And the Commission reserved its ruling
3 as to the reception pending that testimony?

4 **MR. LUNDIN:** I believe so, yes, sir. In other words,
5 the Government has a great many objections to the physical
6 localities marked on the map, not the printed localities on
7 the original base map but statements added thereon by the
8 draftsmen or under -- or the man who directed the draftsmen
9 to draw the map, and that is the reason why the reception
10 was objected to at the time it was offered.

11 **MR. LITTELL:** For the Court's information, the man who
12 prepared the map is sitting right here at my left, Lee Correll.
13 But we did not call him within the limits of the testimony
14 put on in Washington in January, that's to come later with
15 other testimony of his. He is, however, here and available if
16 the Court has any questions they wanted to ask about this map
17 for informative purposes.

18 **COMMR. SCOTT:** The only question that comes to my
19 mind is this: Is that for an entirely different purpose than
20 the map was marked for identification, and discussed, and
21 objected to in docket 229, it has been used in docket 196 tying
22 it in to specific testimony so that if there is any danger at
23 all that the map should not be received in 229, we then would
24 be left without something to tie our testimony in in 196.

25 **MR. BOYDEN:** May I say this, your Honor: I will watch

1 this very closely, and should the Commission reject it for all
2 purposes so that the reference can't be made I will cross that
3 one when I come to it to be sure that it illustrates our
4 testimony.

5 COMMR. SCOTT: You then could offer it for limited
6 purposes.

7 MR. BOYDEN: That's right.

8 COMMR. SCOTT: As Hopi Exhibit 5, or whatever number it
9 may be that you could give it.

10 MR. BOYDEN: And I shall do that if it's not accepted.

11 COMMR. SCOTT: I think then with that understanding and
12 that safeguard, that we may accept the statement of counsel and
13 proceed.

14 MR. BOYDEN: Poly, will you come forward, please?
15 While he is coming to the witness stand, may I say to the
16 Commission that our stipulation with respect to plants has done
17 away with any further -- the necessity for any further examina-
18 tion by the plaintiff, the Hopi Tribe, in this case, and he is
19 now prepared to be cross examined.

20 COMMR. SCOTT: Yes. While he is taking the stand,
21 just for my understanding of the stipulation which has been
22 entered into between the attorneys and counsel, and spread upon
23 the record, it's my understanding that you have certain basic
24 material such as the plant which lies on the table in front of
25 you, which is now being assembled and prepared to be illustrated

1 in Exhibit Number 3, is that right?

2 MR. BOYDEN: Yes. May I say this: That the plants
3 that we have here present in the courtroom were used as means
4 of identification. We would have the witnesses pick out the
5 plants and then, by the numbers we were able to tie them
6 back to the exhibit. But under the stipulation it will be
7 unnecessary for us now to produce the plants, because that
8 was merely a way of tying it in to the exhibit that we already
9 have. So the exhibit that we now will get in by stipulation
10 will give the scientific name, the common name and the Hopi
11 uses of that plant.

12 COMMR. SCOTT: Very well, I think that is very good.
13 Now before we have the witness resume his testimony, I want
14 to make certain that I understand about Exhibit Number 4. I
15 heard the stipulation which has been agreed to, and as
16 spread on the record. But I want to make certain that I
17 understand. Now, the Exhibit Number 4 will actually be a
18 physical exhibit entered in the record in its subdivisions A,
19 B, C, and D?

20 MR. BOYDEN: Correct.

21 COMMR. SCOTT: And will be identical to the cross-
22 reference exhibits to the private suit, am I right on that?

23 MR. BOYDEN: That's correct.

24 COMMR. SCOTT: Now I just temporarily forgot what the
25 nature of that exhibit is?

1 MR. BOYDEN: That is the article that has been written
2 by Dr. Colton on this very subject and the supporting data
3 with relation thereto including tables and charts and photo-
4 graphs.

5 COMMR. SCOTT: Yes, I recall. Fine, we may proceed
6 then. I believe when we recessed yesterday, Mr. Boyden, that
7 you still had this gentleman for direct examination, am I
8 right?

9 MR. BOYDEN: That's correct, and I have just stated
10 that since we have stipulated with respect to plants, I don't
11 need to pursue that any further and he can now be cross
12 examined.

13 COMMR. SCOTT: That's fine to have that on the record
14 then, it will show that as to this gentleman, the stipulation
15 obviates the necessity of further direct examination, and
16 that cross examination may now be taken by counsel for the
17 defendant and the Navaho Tribe on the points which were pro-
18 pounded on direct at yesterday's session.

19 MR. LITTELL: I will let Mr. Lundin cross examine
20 first if he will, please.

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1 POLY PAYESTEWA,
2 recalled as a witness herein, having been previously duly
3 sworn, resumed the stand and testified further as follows:

4
5 CROSS EXAMINATION

6 BY MR. LUNDIN:

7 Q Poly, you said yesterday that the Hopi Indians went
8 to the Canyon Diablo?

9 A Yes.

10 Q When they went to the Canyon Diablo, was it on the
11 other or the southern side of the Little Colorado River?

12 A West side.

13 Q Canyon Diablo appears on the map which is called the
14 Navaho claims wall map (Navaho Exhibit 510), and the canyon
15 itself, on the apparently southern side or outside the Hopi
16 claim area. And I'm asking whether Poly and his friends,
17 when they went to the Canyon Diablo, crossed over the river?

18 A Yes.

19 MR. LUNDIN: That's all.

20
21 CROSS EXAMINATION

22 BY MR. LITTELL:

23 Q Poly, you said yesterday that you were 94 years old
24 and you also said that you started to school in about 1890.
25 If you are 94 years old and you started in 1890, if you are

1 94 years old you would have been born in 1866. Is that
2 correct? Can you remember if you were born in 1866?

3 A I don't know when I was born I guess that's what the
4 way they put down.

5 Q Well, I realize you wouldn't remember yourself.

6 A No.

7 Q But this is what the records show, is that what you
8 wanted to say?

9 A That's what I was asked, you know, when I was in
10 school, send me to school, you know. That's from the time when
11 they asked my father about it, how old I am, and that's the
12 time that I told them I must be a little over pretty near 20,
13 about 15 is about close, he said. That's what I was under-
14 stand.

15 Q It came from your father's information, is that right?

16 A Yes, my father's information.

17 Q Well, can you -- I'm not trying to confuse you, Poly.

18 I want you to unconfuse me, because if you were 94 years old
19 and you started school in 1890, you started school when you
20 were 24 years old. Now that's a little bit late to go to
21 school, I know you started much earlier. Can you clarify that?
22 When did you start to school? Do you wish to correct your
23 statement?

24 A We were the first ones, whenever they had opened. They
25 have the record there in Keams Canyon supposed to be, we are

1 the first ones in before Hopi children were in school, you
2 know. We were the first ones in, you know, that time.

3 Q Were you a part of the Friendlies Party?

4 A Yes.

5 Q And were you one of the children that was sent to
6 school when the troops came in 1888?

7 A Supposed to be.

8 Q Do you remember the instance of all of the people at
9 Oraibi gathering in the village when the troops came in?

10 A Yes.

11 Q Do you remember that?

12 A Yes.

13 Q And how old do you think you were then, or how big
14 were you? Just about how big a child were you at that time,
15 if you can't remember the exact years?

16 A Well, I don't know. I guess I don't know how old I
17 am by that time.

18 COMM. SCOTT: Were you grown by that time? Had you
19 grown up pretty well by that time?

20 A Yes, yes.

21 Q (By Mr. Littell) Well, you stood there with the
22 villagers. Can you remember how tall you were?

23 A (No answer.)

24 Q Were you as high as that desk there or were you higher
25 than that desk?

1 A Well, I wouldn't know it. I wouldn't know those
2 things, how high I am at that time. But I was a boy then,
3 you know. That's all I know more than any other way that I
4 know.

5 Q Well, Poly, when the children were offered to the
6 school, as I remember the documents some 36 of them, there
7 certainly were no children at the age of 24 years that were
8 taken over to Keams Canyon School, were they?

9 MR. BOYDEN: Now may I say this for information:
10 There were. The next witness that went on went to school first
11 when he was 30 years of age. I just say that for information,
12 not to testify. They sent a bunch of these fellows to school
13 when they were fully grown.

14 Q (By Mr. Littell) Well, Poly, do you think you were
15 as old as 24 years when you were lined up with those children
16 at Oraibi and sent to school?

17 A Not quite, I don't think.

18 Q You certainly were not a full grown man, were you?

19 A Yes.

20 Q You say you were a full grown man when you were sent to
21 school?

22 A No.

23 Q Can't you remember how big you were when you stood
24 there in the village when the troops came?

25 A Yes.

1 THE INTERPRETER: He says, "I was about that tall."

2 A I have not grown fast. I have always been looks like
3 the same age every year is what I understand too, my father
4 told the agent at Keams Canyon I don't grow fast, he said.
5 To make it plain I was told that I'm always small in stature,
6 and seems like I don't grow very fast.

7 MR. LITTELL: Well, from the motion he made he was
8 about four and a half feet, is that correct? Would you say,
9 Mr. Interpreter?

10 THE INTERPRETER: About that tall.

11 MR. LITTELL: Would we agree that that's approximate-
12 ly four and a half feet? Would you agree, Mr. Boyden? I
13 want to know whether this man was a boy, whether he was ²⁴₉₄
14 years old or whether he was a boy when he went to school,
15 one aspect of his testimony is wrong. I don't know which
16 one it is and I'm not trying to confuse him, I don't want to
17 oppress him, I want to find out the truth.

18 MR. BOYDEN: That's what I'd like to know, I'm a little
19 confused.

20 MR. LITTELL: You can see the conflict. Now he
21 certainly was not 24 years old and four and a half feet tall.

22 MR. BOYDEN: That's right, if he's only four and a
23 half feet tall he's --

24 COMMR. SCOTT: Do you remember whether you were larger
25 than the other children?

1 A No.

2 COMMR. SCOTT: Or about the same size?

3 A I'm always small, I'm always little.

4 COMMR. SCOTT: No, but the other children in school,
5 were you larger than them or were you --

6 A No, they are big boys. Those others are big boys,
7 I'm a small boy.

8 MR. LITTELL: You see this is important, Mr. Commis-
9 sioner, because if he is not 94, then his memory does not go
10 back that far and he only heard that he is 94 from his father,
11 he doesn't know. So if he was a boy when they first went to
12 school in 1888, it's one of the factors is wrong, either he is
13 not 94 years old -- and I suspect that's the one that's wrong.
14 He is very clear minded and very healthy, and that would seem
15 to be the one that's wrong.

16 COMMR. SCOTT: Mr. Littell, however he has testified
17 to certain things that he did as a boy. Would that make any
18 difference now whether he was, say 15, 20 or 24?

19 MR. LITTELL: Well, let's say he was 14 instead of
20 24, then he's not 94, he's 84 years old.

21 COMMR. SCOTT: That's true. But of course the thing
22 that I'm trying to get now is the relevancy, that is why it
23 would make a difference since he has testified that he recalls
24 that he did certain things at certain times. Would it be
25 your contention or do you propose to contend that if you could

1 show that he is 84 instead of 94, that the things he has
2 testified to happened at a later date?

3 MR. LITTELL: That's all.

4 COMMR. SCOTT: I see.

5 MR. LITTELL: The movement of cattle and all of the
6 other things he testified to are later than he said.

7 COMMR. SCOTT: I see.

8 MR. LITTELL: We leave it at this because I do not
9 wish to tire the witness.

10 Q (By Mr. Littell) I believe you said, Poly, that the
11 cattle went down the Dinnebito Wash on the west side and not
12 on the east side, am I correct in this? Will you interpret
13 that for me, Mr. Interpreter?

14 MR. BOYDEN: Now, your Honor, I'm going to object
15 to this question because we are going to get a half a turn
16 off on this. Hopi west isn't the same as our west.

17 MR. LITTELL: Well, for heaven's sake, let's get this
18 straight right now.

19 MR. BOYDEN: Let's see if we can't be sure that he
20 gets the question correct.

21 MR. LITTELL: Mr. Boyden, let's straighten it out with
22 the witness. Now answer my question first. Did he say this?

23 A I say that they grazed west of this Dinnebito clear
24 on down to the river, back and forth. I said that they don't
25 graze up the northern or eastern part, above.

683-10

1 MR. LITTELL: Thank you.

2 COMMR. SCOTT: Do, as Mr. Boyden says, develop that.

3 MR. LITTELL: I'm going to.

4 Q (By Mr. Littell) Now, Poly, in Hopi land as with the
5 rest of us, the west is the direction in which the sun sets
6 and the east is the direction in which the sun rises, is it
7 not?

8 A Yes.

9 Q That's correct?

10 A Yes.

11 Q Thank you. Is the reason that the Hopis didn't graze
12 on the east side the fact that the Navahos were there? Inter-
13 pret that, please.

14 A The reason why they don't graze their cattle east is
15 because that's the direction where the Navahos are coming from.
16 And as I stated again, most of our stock, they graze down
17 towards the river, back and forth, clear into Red Lake.

18 Q All stock graze toward the water when they get a
19 chance, don't they, Poly?

20 A Yes.

21 Q Navaho stock or Hopi stock do the same thing? They
22 don't know who they belong to.

23 His answer was yes, they both graze toward the water?

24 A Yes.

25 Q Then there were Navahos on the east side grazing?

1 A Yes.

2 Q Thank you. Now you said, Poly -- and correct me if
3 I'm wrong because I do not have the transcript before me --
4 that when you were in school at Oraibi the Government started
5 to allot lands. Do you remember whether this was the 1894
6 allotment program or the 1911 allotment program?

7 A Yes.

8 Q Maybe you'd better ask the question, Mr. Interpreter?

9 A Yes, it started in 1894. I was at Moencopi when they
10 started it there.

11 Q But I understood you to say you were at Oraibi. Is
12 that wrong? You have said yesterday you were at Oraibi.

13 A We were at Oraibi that time.

14 Q When the allotment program started in 1894?

15 A I was one of them that surveyed that too with the other
16 two or three boys, they send us over there.

17 Q Where, at Oraibi?

18 A We were living in Oraibi.

19 Q And where were these allotments surveyed that you
20 talked about?

21 A At Tuba City, Moencopi.

22 Q They were not at or near Oraibi? Were not there also
23 allotments near Oraibi?

24 A No, just at that little place at Moencopi, that's only
25 the place that they surveyed and allotted.

1 Q In 1894?

2 A Yes.

3 Q Do you remember the later allotment program in 1911?

4 A No.

5 Q You said that there were two or three Navahos there in
6 that allotment program. Did you mean at Moencopi?

7 A At Moencopi, yes.

8 Q You mean two or three Navahos who had lands surveyed
9 for allotments?

10 A Yes, they allotted for them too.

11 Q Can you name any of them?

12 A (No answer.)

13 Q You named Charley, I think.

14 A They call one of them Charley is only I know.

15 Q That's the only one you know?

16 A Yes, I don't know what the other man is. There were
17 two or three others. And one of them they call, he was a
18 little boy that time, I don't know how he get that land there
19 too. There was a little boy then. I forgot his name.

20 Q Well, that's all right. Thank you very much for trying.
21 You also said that your grandfather was a farmer?

22 A Yes.

23 Q Isn't it true that farming is the main occupation of
24 the Hopis?

25 A (No answer.)

1 Q They have always been farmers, haven't they?

2 A Yes.

3 Q And they did more farming than cattle running when you
4 were a child, didn't they?

5 A Yes, they do both things, they do, had cattle and
6 farming.

7 Q But primarily their occupation was as farmers, was it
8 not? I'm speaking of the villages now, not Moencopi.

9 A Yes.

10 Q And didn't they travel, and even to this day don't
11 they travel quite far to get to the farms? Didn't some of the
12 Hopis run as much as ten miles from the village?

13 A Oh, yes.

14 Q To farm their little farming areas and then run home
15 again in the evening to the village?

16 A Yes.

17 Q The raising of stock was really secondary to farming,
18 wasn't it?

19 A Yes.

20 Q I'm speaking particularly of the early days?

21 A Yes.

22 MR. BOYDEN: Interpret that for him so he knows what
23 it means.

24 A Yes, that's the way they did.

25 Q (By Mr. Littell) And could you fix a time when the

1 stock raising became more important, when it increased among
2 the Hopis? Would you say in the 1930's that it grew in
3 proportion, they began to get more stock, or when would you
4 fix it? When would you fix the time when the Hopis began to
5 get increased cattle and some sheep?

6 THE INTERPRETER: I asked him if he understood your
7 question.

8 MR. LITTELL: Yes.

9 THE INTERPRETER: He said yes, I did. I asked him
10 about what year would he state, he said he has answered the
11 Hopis dealt in stock quite in the early times also. Where
12 they acquired their stock is from these Franciscan fathers
13 that came into the country and introduced stock.

14 Q (By Mr. Littell) By the early days I presume you
15 mean when you were a boy, is that what you mean?

16 A Yes.

17 Q Thank you. You testified that you hunt in the Red
18 Lake area, that's G-6 (Navaho Exhibit 510), antelope and deer.
19 At what age did you begin to hunt? Or am I wrong? Were you
20 talking about your parents? Ask him that, Mr. Interpreter.

21 A I was about 8 years old when these hunting trips were
22 being made after antelopes, but where they go for them is
23 around ^{the} [you] First Mesas area, which is the butte country. That's
24 where the antelope used to roam, and there wasn't any inhabit-
25 ants in the way of Navahos so the antelope roamed in that

1 area.

2 Q Now during these hunting expeditions did you ever build
3 any hogans or shelters or just go out and hunt and come back to
4 the village at night?

5 A No, they camp out.

6 COMMR. SCOTT: What was the answer to that?

7 (Whereupon, the last answer was read by the reporter.)

8 Q (By Mr. Littell) Did you build a shelter and did you
9 build any antelope traps?

10 A Not that I know of.

11 Q When did you move to Moencopi?

12 A Moencopi? After I got married is when I made my home
13 there.

14 Q I believe you said yesterday you couldn't remember just
15 when you got married, is that correct? Perhaps you have thought
16 on it overnight. Could you tell us now?

17 A I can't make a correct statement to my age because we
18 don't keep track of our age, even our parents don't keep an
19 account of how many years old we are.

20 Q Do you remember when the troops came in 1888 that they
21 also took a census of everybody at every village, or at Oraibi,
22 I mean?

23 A Yes.

24 Q I should say, to correct that statement, they took the
25 census with the help of the Bureau of Indian Affairs officials.

1 Isn't that correct? They were there too?

2 A I can't say yes, that they attempt to take census,
3 because I don't know whether they did or not.

4 Q Well, now, let's get this straight. I thought you
5 said first they did take the census, and then I asked you
6 if the Bureau didn't help the Army?

7 A Well, I can't recall it.

8 Q You do not know, do not recall. Well, do you recall
9 at any one of a number of times when a census of the Hopis
10 was taken by the Government, as the records show in this
11 case?

12 A I can't say that I can recall any time when they
13 attempt to take the number of people that are residing there.
14 They come in several times, but for what purpose I couldn't
15 say.

16 Q How many Hopis were at Moencopi when you moved there
17 right after you got married?

18 A I can't say the exact number, but I can only say
19 that there were quite a number there.

20 Q Well, by "quite a number," do you mean 25 or 100?

21 A Yes, about.

22 Q About 25?

23 A Yes, that's about it, yes, real close.

24 Q Now when you spoke of getting salt, you yourself did
25 not go down to the salt deposit at the junction of the Little

1 Colorado and the Colorado River, as I understood it, nor did
2 you go to Zuni, is this correct? Interpret that.

3 A I did go down but I didn't get any salt, down where
4 the Little Colorado and Big Colorado meets. The location of
5 the salt is a little bit further down in the canyon there.

6 Q Well, you didn't go to the Zuni Salt Lake either, did
7 you?

8 A No.

9 Q Do you know that Navahos also went to both those
10 places for their salt?

11 A No, I don't know anything about it.

12 Q Well, you know that the Zunis went to the Zuni Salt
13 Lake for their salt, don't you?

14 A I just heard the Zunis do go over there, but I never
15 saw them myself.

16 Q Now do you know any of these Navahos whose names I'm
17 going to list, and with the Court's permission Mr. Ned
18 Hatatli not being here today, I would like to ask Mr. Maxwell
19 Yazzie, a Navaho interpreter who is with us --

20 MR. BOYDEN: Ask him if he'd like to be excused from
21 the stand for a minute, please.

22 THE INTERPRETER: He's not tired.

23 MR. BOYDEN: I was just worried about him. He says
24 he's not tired, that's all right.

25 MR. LITTELL: This will be my last question.

1 THE INTERPRETER: I told him to pay attention to the
2 names that might be called.

3 MR. LITTELL: Thank you.

4 COMMR. SCOTT: Mr. Boyden, do you have any objection,
5 or Mr. Lundin any objection to the substitution of this
6 gentleman for the one who acted yesterday?

7 MR. BOYDEN: No.

8 MR. LITTELL: He was also at the other trial.

9 COMMR. SCOTT: Very well, then we may proceed with
10 that understanding. And do we have his name in the record?

11 MR. LITTELL: Yes. The reporter knows his name well,
12 Maxwell Yazzie, Y-a-z-z-i-e.

13 MR. YAZZIE: Bili Doodijaadi.

14 MR. LITTELL: Or Slow Horse.

15 A I don't know him.

16 MR. YAZZIE: Hastin Doonaghai.

17 MR. LITTELL: Or Crippled Man in the English name.

18 A Him I know.

19 Q (By Mr. Littell) How long have you known him and
20 where does he live?

21 A Where he lives I couldn't designate the place where
22 he lives or say where he lives.

23 Q You can answer the other part of the question. How
24 long have you known him?

25 A I know him quite a long time.

1 Q Since you were a boy?

2 A Yes, when I was a boy.

3 MR. LITTELL: Thank you.

4 MR. YAZZIE: Ashihii Binaa Ntsaii.

5 A That Navaho, no, sir, I don't know him.

6 MR. YAZZIE: Nat'aanii Sani.

7 A I don't know him either.

8 COMMR. SCOTT: What's the English for that?

9 MR. YAZZIE: Old Head Man.

10 MR. LITTELL: Nat'sanii is the word for Chief or Head
11 Man in Navaho.

12 MR. YAZZIE: Tohaani Sani, near water.

13 A No, I don't.

14 MR. YAZZIE: Dzilkije Hataki, Mountain Chant Singer.

15 A No, I don't.

16 MR. YAZZIE: Hastiin Daazi.

17 A I know Hastiin Daazi.

18 Q (By Mr. Littell) How long have you known him and
19 where does he live?

20 A He comes from or lives at Blue Canyon.

21 Q Blue Canyon?

22 A Yes. He will roam around west of Hotevilla there in
23 that plateau above Blue Canyon.

24 MR. LITTELL: Blue Canyon is in quad H-G in the
25 Executive Order area; and put your pencil, Mr. Correll, on

1 Hotevilla for the Commissioner. And the witness said he
2 roamed around the territory west of Hotevilla, which is in
3 G-5 (Navaho Exhibit 510).

4 Q (By Mr. Littell) By roaming around I presume you
5 must mean he grazed his cattle, is that right, in that area
6 west of Hotevilla?

7 A Yes.

8 COMMR. SCOTT: Let the record show that G-4 and the
9 G-5 referred to by counsel appears on the Navaho wall map
10 for claims (Navaho Exhibit 510), which has been marked for
11 identification on the Navaho case, number to be supplied.

12 Q (By Mr. Littell) Now, do you know any other Navahos
13 in that area like the ones you have just named?

14 A I know by acquaintances, but what their names are I
15 couldn't tell you.

16 Q The men whom you have recognized, these two Navahos
17 who you do know, well you already said in respect to the first
18 one that you knew him when you were very young, in respect to
19 the second one --

20 COMMR. SCOTT: Before you proceed, Mr. Littell, does
21 the record show that these Indians whose names have been called
22 are Navahos?

23 MR. LITTELL: Yes, I have identified them as Navahos
24 in every case.

25 COMMR. SCOTT: Has this witness agreed that they are

1 Navahos?

2 MR. LITTELL: Oh, yes, I have asked him does he know
3 this Navaho and that Navaho. If he doesn't, let's clarify it.

4 COMMR. SCOTT: Let's ask him now whether or not the
5 men whom he recognized are Hopis or Navahos, that should be on
6 the record.

7 MR. LITTELL: I thought it was, your Honor.

8 COMMR. SCOTT: I didn't recall that there was anything
9 he said which would confirm your statement, so that if you
10 will please get that on the record now through the interpreter.

11 Q (By Mr. Littell) These men whom you recalled, whose
12 names you recalled which I read to you, you know to be Navahos,
13 don't you? Interpret that.

14 A They are Navahos.

15 Q Now, Old Sam Bagodi, the last one named, have you known
16 him since you were a boy?

17 A Sam Bagodi, yes.

18 Q The answer is yes?

19 A Yes.

20 Q Now, the other Navahos you know, but you now cannot
21 recall their names, do they live in this same area? Where do
22 they live and where do they graze their stock?

23 A I can't tell you where they live because they roam
24 around so much. Wherever they really live, I couldn't say.
25 How they are roaming.

1 Q Tell me where they roam around, and do you mean they
2 are grazing their stock when they are roaming?

3 A Yes.

4 Q And where did they graze their stock, these other
5 Navahos that you know, west of Hotevilla?

6 A West of Hotevilla.

7 Q And north?

8 A North.

9 Q Blue Canyon?

10 A Yes.

11 Q And south?

12 A Yes.

13 Q To Dinnebito Wash area?

14 A Yes.

15 Q Where else, any place else that you know where they
16 roam around with their stock?

17 A No.

18 Q And this has been true since you were a boy and you
19 can remember, is that true?

20 A Yes.

21 MR. LITTELL: That's all.

22 COMMR. SCOTT: Redirect?

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REDIRECT EXAMINATION

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BY MR. BOYDEN:

Q Poly, when did these Navahos that you know first start to graze livestock out west of Hotevilla?

A I can't answer that exactly when because we don't keep track of the time and when, so I couldn't say when.

MR. LITTELL: I call the Court's attention to the fact that he has already answered it by saying that this is true ever since he is a boy.

COMMR. SCOTT: It's all right, but counsel has a right to his redirect to test the accuracy of his first statement.

Q (By Mr. Boyden) Now, when you were young, how old was a man before he was considered not to be a boy?

A A Hopi is considered a man is when he gets married. Sometimes a boy is reaching the age of 16 or 20 would marry, then they are classed as men.

Q Suppose they didn't marry until they were 30?

A He would, even reaching the age of 30 would be still considered in the term of boy.

Q Now, Poly, do you remember when there were no Navahos out west of Hotevilla?

A Yes, when I was young and go hunting west of Hotevilla, out in that country, there was hardly any Navahos. There wasn't any Navahos. The only Navahos that we know of when we go on these hunts is a man with a crippled arm. We nicknamed

1 him Straight Arm, because he can't bend it. That's the only
2 Navaho that lives at Awatobi, what they call Sena Mesa.

3 MR. BOYDEN: That's all.

4 COMMR. SCOTT: Any recross?

5 MR. LITTELL: I'm afraid so, your Honor.
6

7 RE CROSS EXAMINATION

8 BY MR. LITTELL:

9 Q Now, do you remember when the colored troops drew a
10 line around the Hopi villages, actually 16 miles in radius
11 from Mishongnovi on the Second Mesa? Do you remember those
12 colored troops drawing that line called the Parker-Keams
13 line? I said '94, I believe it was '92, '91 or '92. Do
14 you remember those colored troops and the line?

15 A Yes, I remember. I was already at Keams Canyon at
16 the school when the colored troops came. They were placing
17 Hopi children in school then.

18 Q Now, did you know a Navaho woman and her family still
19 living and about your age by the English name of Wife Old Box
20 Canyon, and Mr. Yazzie will give the Navaho name.

21 MR. YAZZIE: Tseyi'nii Sani Be'aszaa Sani.

22 MR. LITTELL: A woman who lived at Beautiful Mountain
23 just west of Hotevilla before the colored troops came?

24 A I know the -- I know them folks all right, I know the
25 old man but I don't know the woman.

1 Q That's all right then, he must have known her son.

2 A I'm sorry, I can make the statement that I do know
3 that they lived there.

4 Q He can make the statement?

5 A I say I can make a statement that they do live there.

6 Q Yes. And you probably knew the son who was a police-
7 man at Keams Canyon, did you not, a son of this family, this
8 woman and her husband?

9 A I don't know anything about him being a policeman at
10 Keams Canyon.

11 Q But you knew the son, you remember the name?

12 MR. BOYDEN: He didn't say so.

13 MR. LITTELL: That's what I'm asking.

14 A Yes, I know the son.

15 COMMR. SCOTT: Can you develop how long he has known
16 him?

17 Q (By Mr. Littell) How long have you known this family,
18 either the son or the husband or the mother? I don't care, the
19 family itself. How long have you known them?

20 A I can't say the exact number of years, but I have
21 known them quite a while. And because they claim that we are
22 in the same ^{land} land.

23 MR. LITTELL: I see. For your Honor's information
24 Beautiful Mountain which I mentioned, and I forgot to name the
25 quad, is in the northwest one quarter of 5-G on the Navaho

1 claims map (Navaho Exhibit 510), the number which is to be
2 inserted in the record at this point. Will you motion to
3 where that is, Mr. Correll? That is in the Executive Order
4 area close to Hotevilla, the westernmost of the Hopi villages.

5 **COMMR. SCOTT:** Thank you. In view of the last answer
6 I would like to know, if you can develop it, what he means
7 by being members of the same clan.

8 **MR. TIBBALS:** Ask him, what does he mean by that?

9 A They claim that we belong to the same clan is why I
10 said that.

11 **MR. LITTELL:** Your Honor, by way of explanation, if
12 counsel will permit it, I understand from Mr. Yazzie that
13 there were a few instances in which Navahos and Hopis belong
14 to the same clan. It's actually a new point to me. Did you
15 know it, Mr. Boyden?

16 **MR. BOYDEN:** I don't know any such thing.

17 **COMMR. SCOTT:** Of course it might make some difference
18 as to whether or not the word "clan" means intermarriage.

19 **MR. LITTELL:** No, it does not.

20 **MR. BOYDEN:** Well, I don't want to agree to what Mr.
21 Littell says, I don't know whether what he says is right or
22 not.

23 **MR. LITTELL:** It's of no material importance, your
24 Honor. But since you have asked about it and it naturally
25 arouses one's interest, may I ask the witness what clan he is

1 referring to?

2 A It's a reed clan.

3 Q (By Mr. Littell) The reed clan?

4 A Reed clan.

5 Q R-e-e-d?

6 A Yes.

7 COMMR. SCOTT: May we be off the record for just a
8 moment?

9 (Discussion off the record.)

10 MR. LITTELL: May I just put one more thing on? I'm
11 sorry Mr. Hatatli is not here today, because the Navaho woman
12 I'm asking about is his grandmother, and he would know all
13 about this subject, in which, incidentally, I have a great
14 personal interest because she adopted me as her son. I want
15 to know what clan I belong to.

16 MR. BOYDEN: I wish you wouldn't do it at my expense
17 on this record.

18 MR. LITTELL: But I don't know how to clarify it in
19 the absence of the mother or Mr. Hatatli.

20 COMMR. SCOTT: Yes, if we may be off the record for
21 just a moment.

22 (Discussion off the record.)

23 COMMR. SCOTT: We can be back on the record now.

24 MR. LITTELL: That's all.

25 MR. BOYDEN: That's all.

1 **COMMR. SCOTT:** That's all you have? Now before we
2 excuse this witness, in view of his age and since it's
3 probable that he will have no other opportunity to offer
4 information, I'm going to give him an opportunity at this
5 time, without any specific question, to add anything that he
6 may want to say concerning what happened while he was a boy
7 concerning the movements of the Hopis if, in his opinion, this
8 has not been developed by specific questions of counsel. So,
9 Interpreter, will you please get that to him and we will give
10 him an opportunity if he wants to make a little statement?

11 **A** The only thing I will say is that I have said that
12 there wasn't any Navahos in the west of the country where we
13 lived. They only come from east now and then, that's when
14 they make their appearance.

15 **COMMR. SCOTT:** Very well, the witness --

16 **MR. LITTELL:** May I ask one more question?

17 **COMMR. SCOTT:** Yes, you may. We are here, we have
18 come a long way and this witness will never have an opportunity,
19 as I see it, to reappear, and we want to develop all the facts
20 from any of the counsel.

21 **Q** (By Mr. Littell) I failed to perhaps complete my
22 question about the wife of Old Box Canyon. You do recall that
23 that family lived west of Hotevilla even before the colored
24 troops made the boundary line, don't you, at a place called
25 Beautiful Mountain? May we have some of this interpreted,

1 Mr. Interpreter, to see what's going on here?

2 THE INTERPRETER: I want him to be more specific
3 in giving you the answer.

4 MR. LITTELL: Thank you.

5 THE INTERPRETER: So he said there wasn't anybody until
6 in recent years when that family that is being spoken of were
7 there across the wash. I says, "Be more specific. How many
8 years ago?" That's what I was trying to get him to say.

9 Q (By Mr. Littell) Well, then try to get him --

10 THE INTERPRETER: And he says it's before -- "I think
11 it's before we had this separation of the people at Oraibi,
12 that was in 1906." I said, "Now when?"

13 Q (By Mr. Littell) Well, let's get at it this way:
14 How long do you remember this family? Obviously you knew the
15 father and you knew the son. How long have you known this
16 family, since you were a boy?

17 A Fifty years.

18 Q You have known them for fifty years?

19 A I make my trips back and forth from Moencopi ^[to] ~~the~~
20 Oraibi. Before this was happened at Oraibi when they put
21 those Hotevilla, they were there before that was happened at
22 Oraibi.

23 Q They were there before the division of Oraibi in 1906?

24 A Yes.

25 Q So do you know how many years before the division of

1 Oraibi in 1906 they were there west of Hotevilla, just
2 roughly? I mean I can't ask you to give the precise number
3 of years, but would you say it was fifty years?

4 A About.

5 Q About fifty years?

6 A Yes.

7 MR. LITTELL: That's all.

8 COMMR. SCOTT: Mr. Boyden, do you have anything
9 further?

10 MR. BOYDEN: I think not.

11 COMMR. SCOTT: Mr. Lundin?

12 MR. LUNDIN: Your Honor, I desire to make a very
13 vigorous objection on the record. I have sat here patiently,
14 the Government has sat here patiently and listened to a lot
15 of testimony concerning Navaho living in certain areas and
16 Hopis living in certain areas in the 1890's and the 1900's,
17 and possibly the 1880's. All of those periods are well
18 beyond the year 1848, which is the date of sovereignty, and
19 under the decisions the date which the Commission must find
20 the aboriginal area occupied by the various tribes claiming.
21 I fail to see how the relevancy or the materiality of testimony
22 concerning people living in these various areas in 1880 and
23 1890 and 1900 or 1906, or when troops surrounded a ^[place] period in
24 1889, has to do, the relevancy and materiality, with the
25 issues in this case. And I feel most strongly that, while I'm

1 prepared to sit here and listen and aid in the Commission in
2 arriving at material which will aid them in its decision, I
3 feel that none of this material can possibly be of benefit
4 to the Commission or to any party in connection with where
5 these Indians were and what area they used in 1848, and it well
6 may be that certain portions of the testimony can be related
7 back. But so far the testimony is not of a type that can
8 or will be related back, and for these reasons I object to
9 this line of testimony, I object to these questions and I move
10 that such questions as relate to a much later period be
11 stricken and answers be stricken from the record.

12 COMMR. SCOTT: Mr. Boyden, would you like to reply?

13 MR. BOYDEN: As far as our position is concerned, we
14 can't prove our whole case at once. We are starting long
15 before 1848 and showing the Hopi residence in this area. We
16 are trying to preserve here the oldest testimony that we have
17 going back as far as we can, which we will connect with the
18 documents to show that we have had a continuous Hopi use of
19 this area that we claim for a period prior to 1848, and since
20 1848.

21 Now it's true that we get a little far afield, I'm
22 sure, on some of these questions; and I shall try to keep it
23 down as much as I can. Now concerning this later period, we
24 are attempting to work from this point back to connect up the
25 other testimony that will be offered at a later date.

1 **COMMR. SCOTT:** Since the answers to your questions
2 are on the record, what do you have to say, Mr. Littell?

3 **MR. LITTELL:** I would agree with most of what Mr.
4 Boyden says as far as answering the objection of counsel of
5 the Government is concerned. If what he said is literally
6 true there would be no testimony and no evidence in any
7 Indian case, and the Indian Claims Commission would be out
8 of business. We will link the testimony back, even beyond
9 the precise knowledge of any living man to the location of
10 their fathers and grandfathers, and this is simply basic
11 testimony in which I have established by cross examination as
12 far as my phase of the case is concerned certain areas of
13 agreement between the Hopi and the Navaho witnesses.

14 This witness, for example, has just confirmed the
15 living of the wife of Old Box Canyon's family at Beautiful
16 Mountain west of Hotevilla for approximately 50 years beyond
17 1906. We will pick it up from there with other witnesses and
18 go back.

19 **COMMR. SCOTT:** Mr. Lundin, do you want to make another
20 statement?

21 **MR. LUNDIN:** I just wish the record to show the state-
22 ment of Mr. Littell is not left unchallenged. This witness
23 did not say that the wife of Box Canyon lived west of Hotevilla
24 50 years prior to 1906.

25 **COMMR. SCOTT:** What he said will be in the record.

1 MR. LITTELL: I refer, of course, to her family, not
2 just the --

3 COMMR. SCOTT: We will have the witness's statements
4 and consider it only, and of course we will be glad to hear
5 at the proper time the contentions of the parties.

6 Now, I will rule on the motion and the objections of
7 the counsel for the defendant; the objections and the motion
8 are denied at this time without prejudice, however, to the
9 right of counsel for the defendant to renew the motion to
10 strike at the proper time. He, of course, has that right
11 under our rules at the closing, after the closing of the
12 record, and the ruling is made, of course, without prejudice
13 and subject to the connecting up of the evidence adduced
14 today by counsel as they have made their statements.

15 MR. BOYDEN: I might say just for the purpose of the
16 record, repeat what I said in my opening statement, that in
17 the event that we do show aboriginal possession, that's the
18 one thing. Then we have to show a taking, and we have to show
19 a taking as of the time, so we have got to show that our
20 people still lived there at the time it was taken away from
21 us, that's necessary.

22 COMMR. SCOTT: That is understood, and we also under-
23 stand that if the knowledge of the present, living Indians
24 of advanced age is to be had we must take all precautions to
25 have it on the record preserved.

1 MR. LUNDIN: You understand, of course, your Honor,
2 that my objection is directed to the relevancy of the present
3 living witnesses, that regardless of what they say and assum-
4 ing all the things they say are true, it does not affect in
5 any way the issues in this case.

6 COMMR. SCOTT: That is understood, of course, and I
7 understand your contention, and I think we are clear. We will
8 recess at this time then until 1:30, and you are excused.

9 Is there any reason why this witness should not be
10 excused?

11 MR. BOYDEN: No.

12 COMMR. SCOTT: You are excused, and thank you very
13 much for coming.

14 (Whereupon, a recess was taken from approximately
15 12:00 o'clock noon until 1:30 o'clock p.m.)

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1 NOVEMBER 19, 1960, 1:30 O'CLOCK P.M.

2
3 COMMR. SCOTT: The Commission will be in session.
4 Mr. Boyden, you may resume.

5 First I would like to state that it's the desire of
6 the Commission to assist in any way possible in facilitating
7 the proceedings, and to help in the shortening of the pro-
8 ceedings. But in view of the fact we have had only two
9 witnesses, we feel at least for a brief period we should
10 continue in the regular way.

11
12 GEORGE LOMAYESVA,
13 called as a witness herein, after having been first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BOYDEN:

17 Q What is your name?

18 A George Lomayasva.

19 Q What is your age?

20 A After the month of December I will be 100 years old.

21 Q Where were you born?

22 A I was born at the old Keams Canyon school site at the
23 point there. Not in the place you would see a house, but just
24 at the point.
25

1 **COMMR. SCOTT:** Mr. Boyden, I think if you have any
2 preliminary questions you may read them into the record.

3 **MR. LITTELL:** State them, certainly.

4 **COMMR. SCOTT:** State fundamental questions and then
5 come into your principal questions without having to question
6 the witness. Would that be all right, Mr. Lundin, Mr. Littell?

7 **MR. LITTELL:** Yes.

8 **MR. LUNDIN:** Certainly.

9 **MR. BOYDEN:** I will lead just a little on this then.

10 **Q (By Mr. Boyden)** Were your parents born on the First
11 Mesa?

12 **A** Yes.

13 **Q** Which village?

14 **A** My father, I understand, was born in Walpi Village and
15 my mother was born in Kokotsmovi Village according to the
16 story given me.

17 **Q** Now, when you were a boy, were you raised by your
18 mother and father or, by your uncle?

19 **A** When I was an infant I understand my mother didn't
20 have much supply of milk from her breasts, so I was nursed by
21 a woman named Shewekwavi.

22 **Q** Now did you live with your uncle?

23 **A** Yes, he usually take me around while I was still small.
24 We would be riding, he'd place me in the back of him and we'd
25 go around together.

1 Q On a horse?

2 A Yes.

3 Q What was your uncle's name?

4 A Naha.

5 Q That's N-a-h-a, Naha?

6 A Yes.

7 Q Now when you were just very young, did your uncle have
8 cattle?

9 A Yes, about 15 head.

10 Q Did he have horses?

11 A He had about 50.

12 Q Do you know where he ran them when you were just a
13 little boy riding on the horse with him?

14 A They were in that Keams Canyon Valley where the wind-
15 mill is located now, that's below Keams Canyon.

16 Q Now how far up Keams Canyon Valley did they run?

17 A They ran eastward from the Keams Canyon area to a
18 place they call Tiowa, that's the highest mesa there east of
19 Keams Canyon. They call it Tse Chizzi in Navaho.

20 MR. BOYDEN: Will you help me locate that, Mr.
21 Correll, in Navaho? May the record show that that's in
22 quad 5-I of Navaho claims wall map (Navaho Exhibit 510).

23 Q (By Mr. Boyden) Does this mountain that you have
24 just described include what the Hopis call Onion Point?

25 A No, this area that I spoke of is above what they call

1 Cow Springs, Onion Point is beyond.

2 Q Now did your uncle run his cattle as far as Onion
3 Point?

4 A They drift as far as the Onion Point.

5 Q All right. Now did they drift to the Salina Mesa
6 area?

7 A No.

8 Q Now did he run them the same place in the summer as
9 he did in the winter?

10 A No, we usually drive them down away from that brush
11 country, but they usually drift back in there on account of
12 the shade that it furnishes in that area.

13 Q Where would they be kept in the winter time?

14 A He has them down south towards Burro Springs and
15 Shonto, that's what they call it, and then down to the Little
16 Colorado River.

17 MR. LITTELL: You'd better put those in quads.

18 MR. BOYDEN: That's just exactly what I'm doing.

19 Let the record show that that is in G-5 and 6.

20 MR. LITTELL: You mean Shonto Springs?

21 MR. BOYDEN: Shonto Springs and the Little Colorado.

22 Q (By Mr. Boyden) Now, did your uncle, in the family
23 to which you belonged, tell you how long he had been running
24 cattle?

25 A He told me that where he acquired the cattle was from

1 the Spanish about three years before.

2 Q Before what?

3 THE INTERPRETER: I misunderstood him.

4 A He had the cattle three years before I was born.

5 THE INTERPRETER: But I want him to make it clear.

6 Q (By Mr. Boyden) Now, did you go to school?

7 A Yes.

8 Q How old were you when you went to school?

9 A I can't say exactly how old I am, but I might be around
10 7 or 8 years old.

11 Q When you first went to school?

12 A Because at that age I was able to go around with the
13 stock.

14 Q Now did you go to school after you were older too?

15 A I started to school, like I say, about at that age.
16 But the shoes injured my foot so I didn't attend school after-
17 wards and I had to stay home.

18 Q Now when you were a grown man did you go to school?

19 A I didn't attend school for one year, but I started to
20 attend school when a man named Mr. Collins came, I started
21 then again?

22 Q Again?

23 A Yes.

24 Q Do you know how old you were then?

25 A I was old enough to say that I was reaching manhood,

1 because when you reach that age you usually have a girlfriend,
2 and I had one.

3 Q Was Mr. Collins the superintendent of schools then?

4 A Yes, he was very interested in the Hopi people by
5 trying to keep the Navahos away, and wherever there is
6 springs he has erected some troughs for the Hopis to use, the
7 Navahos come and use those troughs too, there is water.

8 Q Now do you remember who was the superintendent after
9 Mr. Collins?

10 A Mr. Goodman.

11 Q Do you know who was the next superintendent after Mr.
12 Goodman?

13 A I don't know. I didn't go to school then, that's
14 when I got married.

15 Q Now did Mr. Collins encourage you to get cattle of
16 your own?

17 A No, Mr. Collins never encouraged me, but my uncle
18 did by earmarking the calves that were born for me, and ad-
19 vised me that if I'm not lazy, that I might increase from
20 what he has earmarked for me after they are grown.

21 Q When did you first start to get cattle of your own?

22 A Right after when I got married is when I started out
23 to get cattle.

24 Q Do you know about how old you were then?

25 A I don't know. I was a man, though.

1 Q How soon after you were married did you have a
2 child?

3 A Two years.

4 Q Is that child still alive?

5 A No, he was the one that the Navahos fought. Fred
6 was his name.

7 Q Now do you have living children now?

8 A Yes.

9 Q How old is the oldest one?

10 A Elsie, Starlie Polacca's wife. I don't know how old
11 she is.

12 Q Did your brother start to build a cattle herd too?

13 A Yes, while we were attending school we started out
14 together.

15 Q What is his name?

16 A Albert Naha.

17 Q Is he older or younger than you, was he?

18 A He is my older brother.

19 Q Is he alive now?

20 A No, I don't know what happened to him. He shot himself.

21 Q Now did you and your brother build up a herd of cattle?

22 A Yes.

23 Q How many did you have at the peak, I mean the most
24 that you had?

25 THE INTERPRETER: I'm asking how many.

1 A I had 320 of my own and my older brother had 860.

2 Q Now do you know when that was when you had that many?

3 A I don't remember just when it was.

4 Q Do you know how many years you ran cattle?

5 A Quite a number of years until I asked when was it that
6 they made reduction of the stock, up until then, when John
7 Collier's program was going through.

8 Q Now when you ran your cattle did you run them with
9 your brothers?

10 A We were running them together, but after they increased
11 we separated our stock.

12 Q Were there any others running with you?

13 A We had an older brother named Tiwaka'ka, he was older
14 than both of us. He had about 30 running cattle with us too.

15 Q Any others besides the three of you?

16 A Nobody.

17 Q Did Robert Adams have cattle?

18 A Robert Adams ran his cattle with him after I gave him
19 some cattle. He was working with those that were working for
20 me. Afterwards Robert started to run cattle.

21 Q Now where did you run your cattle?

22 A In the wintertime they drift down south towards Shonco,
23 then in the summertime they run north of the Keams Canyon
24 Valley and up in those wooded areas there where it's cool.

25 Q Did you run about the same place as your uncle?

1 A Yes.

2 Q Will you tell us some of the places your cattle drifted
3 to as you put them out to feed?

4 A When we were running our cattle they drift as far as
5 Jeddito and then beyond what we call it Rainbow Springs, and
6 then from there some of them would drift down to Comar Springs,
7 and then some go clear down to the Little Colorado River.

8 MR. BOYDEN: This is in quad G-5 and 6.

9 MR. LUNDIN: What is, Mr. Boyden, Jeddito?

10 MR. BOYDEN: The area that he is describing to us now.
11 (Whereupon, the last answer was read by the reporter.)

12 MR. LITTELL: Let's put the quads in behind Rainbow
13 Springs.

14 MR. BOYDEN: All right, Jeddito Springs and Comar
15 Springs are right on the border between H-5 and 6, and where
16 did they go from there?

17 MR. TIBBALS: Down to the Little Colorado.

18 MR. BOYDEN: Well, that would be in 6-G. Those are
19 all of the Navaho wall map (Navaho Exhibit 510) in the
20 claims case.

21 COMMR. SCOTT: Mr. Boyden, in view of the fact that
22 we refer quite often to the quads, let the record show that
23 each time reference is made to a quad it will automatically
24 also refer to a quad location on the Navaho wall claims map
25 (Navaho Exhibit 510), which is to be identified by a number,

1 without the necessity of repeating that each time. That will
2 save time in the record.

3 Q (By Mr. Boyden) Now, at the time you had the greatest
4 number of cattle do you remember who was superintendent?

5 A Mr. Crane. Every time I have a scrap they usually
6 take me to Mr. Leo Crane.

7 MR. BOYDEN: All right, may the record also show that
8 Leo Crane was superintendent from 1911 to 1918.

9 COMMR. SCOTT: Superintendent of --

10 MR. BOYDEN: Of the Hopi Reservation.

11 Q (By Mr. Boyden) Do you remember when the railroad
12 came into Holbrook?

13 A No, I don't remember.

14 Q Do you remember when Tom Keams established his trading
15 post at Keams Canyon?

16 A He came before I was born. After when he came is when
17 I was born at that point like I said. He heard about it so he
18 came up to where my mother was and wanted to see me, he wanted
19 to take me out in the sunlight but my mother objected, says,
20 "We Hopis don't expose our infants to the sunlight until 20
21 days is over with." But he insisted on taking me out to the
22 sunlight.

23 Q Where did you learn this?

24 A My mother told me.

25 Q Did you ever hunt antelope?

1 A I have, I went twice. When I went the first time
2 I didn't kill anything, but the second time when I went out
3 I was lucky, I killed one.

4 Q Where did you hunt them?

5 A It's this side of Winslow, the place is called Eagle
6 Springs. South of Cedar Springs is the area is where we hunt
7 right in that country is where we hunt.

8 At that time there wasn't hardly any Navahos.

9 Q Where is Cedar Springs? May the record show that
10 Cedar Springs is in H-6 (Navaho Exhibit 510).

11 MR. LITTELL: As shown by Mr. Correll?

12 MR. BOYDEN: As shown by Mr. Correll.

13 Q (By Mr. Boyden) You hunted the antelope south of that
14 point, Cedar Springs, did you?

15 A Yes, in that area then south of there is where we
16 call it Green Valley, that's where we hunt.

17 MR. BOYDEN: Can anyone help us on the quad on Green
18 Valley?

19 MR. CORRELL: I don't know that place.

20 THE INTERPRETER: South of Chandler Springs there in
21 that long draw just above the badlands, what they call it
22 Green Valley.

23 MR. LUNDIN: Can he identify it for you, Mr. Boyden,
24 and you could work it out on the map from what the interpreter
25 calls Green Valley?

1 MR. BOYDEN: As long as the interpreter is telling us
2 he could show us where it is. The interpreter locates the
3 land described by the witness as being just between -- well,
4 in both areas, G and H-6.

5 MR. LITTELL: I hate to be so technical, but nobody
6 on our side heard of this before, and I think the interpreter
7 will have to testify if he knows where it is.

8 MR. BOYDEN: All right, we'll develop it.

9 COMMR. SCOTT: We will give the counsel opportunity
10 to develop that.

11 MR. LITTELL: If he can otherwise demonstrate it to
12 me it will be satisfactory.

13 COMMR. SCOTT: We will receive the statement, which
14 is on the record, subject to verification, proper verification.

15 MR. LITTELL: And that makes it in the western
16 corner, western corner of the controverted area, Mr. Boyden,
17 below the Navaho Reservation.

18 MR. BOYDEN: It's in what we call the south area, below
19 the Navaho Reservation and above the Colorado River.

20 MR. LITTELL: Very well.

21 MR. BOYDEN: That is, the Little Colorado.

22 Q (By Mr. Boyden) Now when you hunted antelope were
23 there other Hopis with you?

24 A There is quite a number that participate in this
25 hunt from all the villages. They don't go out to shoot them,

1 they run them down.

2 Q How do they run them down?

3 A We usually make a ring, go around the herd and then
4 a bunch would drive up as you would say driving the herd up
5 into a ring, inside the ring we chased them with our ponies.

6 Q And how did you make the ring, with horses?

7 A Yes.

8 Q Did you use antelope corrals in that area?

9 A No, I never participate in any corrals to corral the
10 antelope.

11 Q Do you remember when the last antelope hunt was that
12 you attended?

13 A I was already a man with children, I had quite a
14 number of children.

15 Q Were they young children then?

16 A Yes, the oldest one, Elsie, was attending school at
17 Keams Canyon.

18 Q Now were there Navahos in that area at that time, the
19 last hunt?

20 A No, there wasn't any Navahos.

21 Q Now did Navahos later come into that area?

22 A Yes.

23 Q Do you remember any of them so you can name who they
24 were?

25 A I didn't say that there was Navahos, I didn't say that.

1 THE INTERPRETER: I asked him what were their names,
2 that was your question.

3 MR. LITTELL: Excuse me just a minute, would you
4 read that?

5 (Whereupon, the last answer was read by the reporter.)

6 Q (By Mr. Boyden) Well, now, let me ask you this: Were
7 there Navahos after the last antelope hunt?

8 A The only Navahos that I know of are located below
9 Little Burro Springs that these Chimopovi Hopis allowed to
10 settle there who participated with us at that time.

11 Q Did you know --

12 COMMR. SCOTT: Below which springs?

13 THE INTERPRETER: Little Burro Springs.

14 COMMR. SCOTT: Where would that be?

15 MR. BOYDEN: That's in the Executive Order Reservation.

16 MR. LUNDIN: What quad?

17 MR. TIBBALS: Little Burro Springs would be found in
18 G-5 (Navaho Exhibit 510).

19 A They didn't make their home there altogether, they
20 just were allowed to plant corn there.

21 Q (By Mr. Boyden) Now did you know of any Navahos
22 after this last antelope hunt over at Red Lake?

23 A No, there wasn't anyone, there wasn't any Navahos
24 there.

25 Q Well, do you remember any people who had a -- a Hopi

1 woman who had married a Navaho and had children that called
2 themselves Navahos?

3 A Yes, Homer.

4 Q Where did he live?

5 A I don't know where he lives, but I heard that he was
6 in Winslow where his wife died.

7 MR. BOYDEN: That's all.

8 COMMR. SCOTT: I believe it would be well to have a
9 five-minute recess and give the witness a little rest before
10 we start the cross examination, so we will recess at this
11 time for five minutes.

12 (Short recess.)

13 COMMR. SCOTT: The Commission will be in session.
14 Mr. Boyden, you may resume; or if you have no more questions
15 we will go to the cross examination.

16 MR. TIBBALS: With the Court's permission may we
17 make it clear that the Winslow that had been referred to is
18 in quad 6-G on the Navaho wall map (Navaho Exhibit 510) in
19 the claims case.

20 COMMR. SCOTT: Thank you.

21
22 **CROSS EXAMINATION**

23 **BY MR. LITTELL:**

24 Q If the witness will permit me, I will take the
25 liberty of calling him by his first name as his last name is

1 difficult for me to pronounce.

2 George, you said that you started to school when you
3 were 7 or 8 years old. Where was that school?

4 A Keams Canyon, Keams Canyon, at the old place, old
5 plant.

6 Q Now when was the Keams Canyon School established?

7 A I don't know when it was established, what year. I
8 only remembered that there was a large building being erected
9 that they said was going to be a school, but for some reason
10 they stopped it because of some difficulties that had arisen.

11 Q Do you remember the petition signed by many of the so-
12 called Friendlies at Oraibi and other Hopis to establish this
13 school?

14 A I don't know.

15 THE INTERPRETER: I was just trying to make him under-
16 stand what your question was, either yes or no.

17 MR. LITTELL: Thank you, Mr. Interpreter.

18 Q (By Mr. Littell) Would it help you if I told you that
19 the documents in this case establish that the Keams Canyon
20 School was first opened and established in 1887?

21 MR. BOYDEN: It wouldn't help him because it isn't a
22 fact.

23 MR. LITTELL: What is the fact, Mr. Boyden?

24 MR. BOYDEN: In 1874 and 1875 is the first.

25 COMMR. SCOTT: Well, that, of course, gentlemen, may be

1 established by official records independent of the testimony.
2 Of course I understand Mr. Littell's question is directed for
3 the purpose of testing the memory and challenging, perhaps,
4 the credibility of the testimony.

5 MR. BOYDEN: I would object to using dates that are
6 not correct. Now Valvi Jones and Harrold S. Colton in their
7 Hopi chronology, that was established.

8 MR. LITTELL: We can set that up separately, I didn't
9 realize there was a difference between us, Mr. Boyden. In
10 any event the witness went to school in 1867 and 1868, accord-
11 ing to his testimony, is that correct? Six or seven years
12 old?

13 COMMR. SCOTT: His testimony, as I understand, is that
14 he will be 100 years old after the first of the year, and that
15 he attended school for the first time when he was 7 or 8 years
16 old, which would bring it to about that time.

17 (Questions and answers physically stricken from the
18 record.)

19 Q (By Mr. Littell) Now, George, when you say that in
20 the winter the cattle drifted down in your uncle's herd to
21 Shonto, and in the summer up beyond Keams Canyon, to the shaded
22 area where it was cool, do you mean that they went as far as
23 Low Mountain or how far did they go above Keams Canyon?

24 A They don't go down to the Low Mountain, but they
25 usually are above eastward from there.

1 Q Cienega Canyon?

2 MR. BOYDEN: Now just before he leaves that, may the
3 record show that Low Mountain is in the northeast corner of
4 quad 5-H (Navaho Exhibit 510).

5 MR. LITTELL: And Keams Canyon is --

6 MR. BOYDEN: In the same quad, about the center.

7 MR. LITTELL: Mr. Correll, will you put your pencil
8 on so the Commissioner can see from the desk?

9 MR. BOYDEN: That's Low Mountain, this is Keams Canyon.

10 COMMR. SCOTT: Thank you.

11 Q (By Mr. Littell) And how far did they go? I asked you
12 if they went into Cienega Canyon when you said to the east?

13 A They graze in right through there, that's where the
14 cattle were and he came in there and put in a small farm there
15 in the valley.

16 Q I asked where, in that canyon that you named?

17 MR. CORRELL: That's quad 5-H (Navaho Exhibit 510),
18 the northeast quarter.

19 Q (By Mr. Littell) Now what time was this?

20 MR. BOYDEN: Cienega Canyon apparently runs over into
21 I too, it's a long canyon. 5-I and 5-H.

22 Q (By Mr. Littell) Then what portion of Cienega Canyon
23 did you drive these cattle into?

24 A They graze right in that canyon, I erected a fence
25 where the old windmill used to be.

1 Q You don't get the point. It's a long canyon, Mr.
2 Boyden pointed out, the windmill doesn't occupy the whole
3 canyon. Where is it?

4 A The wire drift fence is about two miles above the old
5 windmill.

6 Q Well, then will you locate the windmill? How far
7 away from Keams Canyon was the windmill, one mile, two miles,
8 three miles? Is it east into the canyon, north or where?

9 A It's quite a distance. It's about seven or eight
10 miles from Keams.

11 Q Now is that as far as you drove the cattle, you herded
12 the cattle, seven or eight miles from Keams Canyon to this
13 windmill in Cienega Canyon?

14 A Yes, from there on they grazed.

15 Q Well, now, what do you mean by that, from there on
16 they grazed? How far from there did they graze?

17 A They graze right in that area during the summer.

18 Q Right around the windmill?

19 A Yes, they are grazing that canyon too.

20 Q Isn't that a box canyon, closed in?

21 A There is a kind of trail in that box canyon.

22 Q George, it would help us all if you'd tell me how far
23 they grazed beyond the windmill, that's what I'm trying to
24 get at. I think they grazed near the water, didn't they, and
25 radiated out of there a short distance from the windmill and

13
1 the water supply?

2 MR. BOYDEN: Now there is no evidence of any kind with
3 respect to that, I object to this form of the question because
4 ^{the} it hasn't said anything about a short distance from there.
5 He says they grazed here too, when he asked him about Cienega
6 Canyon.

7 MR. LITTELL: All right, we will develop it. I was
8 trying to save a little time.

9 COMMR. SCOTT: He has testified already that they
10 grazed quite a distance from the windmill, as I remember.

11 MR. BOYDEN: That's right.

12 COMMR. SCOTT: And of course counsel has a lot of
13 latitude in his cross examination, so long as he doesn't argue
14 with the witness.

15 MR. LITTELL: Well, I didn't attempt to. We have
16 suggested the windmill, and the windmill means water in this
17 country.

18 Q (By Mr. Littell) Tell us what you did mean, George.
19 Did the cattle stay near the windmill and the water supply or
20 did they range far away?

21 A They grazed right in that area all around.

22 Q That's what I thought.

23 MR. BOYDEN: Now wait just a minute, let's not argue.

24 COMMR. SCOTT: You can get it on redirect if you want
25 to.

1 MR. BOYDEN: Just objecting to the comment.

2 COMMR. SCOTT: We have one answer quite a distance,
3 and another answer right around, so you will have an
4 opportunity.

5 MR. BOYDEN: He didn't say only, though, and that's
6 the point I wanted to make. It's the interpretation of Mr.
7 Littell.

8 COMMR. SCOTT: Well, of course I'm going to give him
9 considerable latitude. Of course I would like Mr. Littell to
10 keep in mind that this witness is an old man.

11 MR. LITTELL: I am, I'm torn between the desire not
12 to examine him at all and the necessity of doing so.

13 Q (By Mr. Littell) How often did you go with the
14 cattle? Did you go up with them there every day?

15 A I don't go to see every day, but sometimes within two
16 days I go look them up again.

17 Q And then would you go back to your home in the village?

18 A Yes, I go home.

19 Q And at what age were you and how many years did you
20 follow these cattle?

21 A I don't know, because I wouldn't determine my age then.
22 Only thing I can say, I had quite a number of children.

23 Q Did you know Tom Pavatea?

24 A Yes.

25 Q Did he not graze his cattle in this area or did he?

1 A He did. He grazed his cattle below where I spoke of
2 my drift fence down the southern part of the canyon.

3 Q Down in the southern part of the canyon?

4 A Yes.

5 Q And not to the north and not to the east?

6 A No, Tom's cattle ranged around the Keams Canyon proper,
7 up in that area.

8 Q Now you said, George, that you ran your cattle, when
9 you ran your cattle they drifted as far south as Jeddito in
10 G-5 and 6. Point that out, Mr. Correll, please?

11 MR. CORRELL: The Jeddito would be in H-5 and G-6.
12 (Navaho Exhibit 510).

13 MR. LITTELL: Your Honor, it will help you, if I may
14 take the liberty of suggesting this, to remember that there
15 are these washes washing in a generally southwesterly direction
16 across the Hopi Executive Order Area, which is the central
17 area where the villages are located, as Mr. Correll will point
18 to them, there is the Jeddito Wash, the first one ~~one~~ comes to
19 on the ^{east} ~~west~~; the Polacca Wash, the second one; the Oraibi Wash,
20 the third one; the Dinnebito Wash is the fourth one, and that
21 one becomes Blue Canyon, doesn't it?

22 MR. CORRELL: This one. Blue Canyon-Moencopi Wash.

23 COMMR. SCOTT: Mr. Boyden, would you stipulate that--

24 MR. BOYDEN: Yes, all starting at the higher elevations
25 and running into the Little Colorado River.

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2 my drift fence down the southern part of the canyon.

3 Q Down in the southern part of the canyon?

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23 COMMR. SCOTT: Mr. Boyden, would you stipulate that--

24 MR. BOYDEN: Yes, all starting at the higher elevations
25 and running into the Little Colorado River.

1 **COMMR. SCOTT:** Let the record show that the lines
2 indicated by counsel appear on the Navaho wall claims map
3 (Navaho Exhibit 510) within the shaded area. Very well, ?
4 thank you very much.

5 **MR. LITTELL:** Named from east to west.

6 **COMMR. SCOTT:** Thank you.

7 **Q (By Mr. Littell)** When you say they drifted to Jeddito
8 Wash and then beyond to Rainbow Springs, and as far south as
9 Comar Springs, those last two being in H-5 and 6 (Navaho
10 Exhibit 510), down to the Little Colorado G-6 (Navaho Exhibit
11 510), how many miles is involved in that?

12 **A** I wouldn't have any knowledge what the miles are,
13 I'm not familiar with miles.

14 **Q** Well, would it be in the nature from Shonto Springs to
15 Little Colorado near Leupp of around -- just a minute -- would
16 it be, could I help you by suggesting it might be in the
17 neighborhood of 30 miles at least?

18 **A** It's much further, I think.

19 **Q** That's quite possible. And from Keams Canyon down to
20 Rainbow Springs and Comar Springs, would you have any idea
21 if that was 25, 30 miles or so?

22 **A** I don't know anything about miles, I wouldn't say how
23 many miles definitely. It's quite a ways.

24 **Q** Well, George, you were herding cattle and there is a
25 limit to how far you can herd cattle, isn't there, without

1 losing an awful lot of weight?

2 A Probably you might cover the most by driving 20 miles
3 a day.

4 Q Did you do that every day?

5 A No.

6 Q How often and -- how often did you return home from
7 those herding expeditions in this country you have just
8 described?

9 A Whenever I'm making these trips like that I usually
10 camp overnight, next day I'd return home.

11 Q And leave the cattle where they are?

12 A I helped them up towards Shonto, Little Burro Springs,
13 right in there.

14 Q In all of these areas that you have described as
15 being covered by your herding operations how many cattle were
16 you herding?

17 A About 300, like I said before.

18 Q In all of this territory did you ever build a house
19 or ever see a Hopi house built?

20 A The only place I know there is some Hopi buildings
21 are at Little Burro Springs.

22 Q Will you indicate, Mr. Correll, where Little Burro
23 Springs is?

24 A And Coyote Springs.

25 MR. CORRELL: That would be in H-5 (Navaho Exhibit 510).

1 the southwest quarter.

2 MR. LITTELL: On Polacca Wash?

3 MR. CORRELL: On Polacca Wash, yes. It might be on
4 the line between G and H-5 (Navaho Exhibit 510).

5 MR. LITTELL: What was the other one? He mentioned
6 one other.

7 MR. CORRELL: They are both right together.

8 Q (By Mr. Littell) That's the only place you saw Hopi
9 houses built?

10 A Yes.

11 Q Now will you tell me if you knew any of these Navahos,
12 I will again ask Mr. Maxwell Yazzie to pronounce the name so
13 it will be easier for you to recognize.

14 MR. YAZZIE: Jack Todichini. Navaho name is Todichini.

15 A No.

16 Q (By Mr. Littell) Never heard of such a Navaho living
17 at Indian Wells?

18 A No.

19 MR. YAZZIE: Abraham Many Goats, Tlizi Tiani.

20 A Oh, a man is pretty much up in years, is much older
21 than I am.

22 Q (By Mr. Littell) The answer is you do know him and he
23 is an older man, is that it?

24 A Yes.

25 Q Do you know where he lives?

1 A Yes, he is located below Indian Wells.

2 MR. LITTELL: Would you indicate where Indian Wells
3 is on the map, Mr. Correll?

4 MR. CORRELL: That's in quad H-6, northeast corner
5 (Navaho Exhibit 510).

6 MR. LITTELL: Just below the Executive Order Area.

7 MR. YAZZIE: Billy A.

8 Q (By Mr. Littell) How many years have you known
9 Abraham Many Goats?

10 A Quite a long time. He was a Christian man and I
11 usually meet him at some church.

12 Q George, have you known him since you were a boy? Did
13 you meet him in Christian endeavor?

14 A Yes, I knew him when I was a young boy of school age
15 and he used to bring out mail from the railroad on horseback.

16 Q Now the next one.

17 MR. YAZZIE: Billy A.

18 A No.

19 MR. LITTELL: The next one.

20 MR. YAZZIE: Hosteen Bichidi.

21 THE INTERPRETER: I was trying to make him understand
22 that it wasn't Chidi, but Bichidi is the way he is pronouncing.

23 A I know a man named Chidi. That is --

24 Q (By Mr. Littell) A Navaho?

25 A A Navaho, but not Bichidi.

1 Q Well, where does Chidi live?

2 A He is dead, a train ran over him.

3 Q Well, where did he live before he had this great mis-
4 fortune?

5 A He lived on the east side of Star Butte.

6 MR. LITTELL: Will you locate that, please, Mr.
7 Correll?

8 MR. CORRELL: That would be in the southwest corner
9 of H-5.

10 Q (By Mr. Littell) How long did you know him, back to
11 when you were a boy?

12 A I knew him when he was a small boy.

13 MR. LITTELL: Next one.

14 MR. YAZZIE: Goma'a.

15 A I don't know him.

16 Q (By Mr. Littell) One more question on Bidahochee.
17 Since you knew him when he was a small boy, has he lived there
18 at Star Butte all that time?

19 THE INTERPRETER: What was that question?

20 Q (By Mr. Littell) Did he live there all that time
21 since you knew him?

22 A Yes, when he got married he lived there.

23 COMMR. SCOTT: Does he know who he married? Was it a
24 Hopi?

25 A No, he married Navaho. He used to have two wives.

1 MR. YAZZIE: Biliin Tlan Biye.

2 A No, I don't know who he is.

3 MR. YAZZIE: Hosteen Aitso'sigi.

4 A A man named Hosteen Nez, his boy used to be named
5 that.

6 Q Well, how long have you known him?

7 A I knew him quite a number of years. I bought some
8 mules off of him.

9 Q Did you know him since you were a boy?

10 A After when I became a man.

11 THE INTERPRETER: Meaning married.

12 Q (By Mr. Littell) Where does he live?

13 A On the north side of Rainbow Springs.

14 MR. LITTELL: Locate it again, please?

15 MR. CORRELL: That would be in the southeast corner
16 of H-5 (Navaho Exhibit 510).

17 MR. LITTELL: Within the Executive Order Area?

18 MR. CORRELL: Yes.

19 Q (By Mr. Littell) Are there other Navahos living there
20 that you know?

21 A This Bichidi's mother and father.

22 Q They live there too or did live there, or they do live
23 there now? What are you saying?

24 A I don't know. I wouldn't say whether they are there
25 or not. They used to.

1 Q And how about Hosteen Nez?

2 A Yes.

3 Q And where does he live?

4 A He lives there, used to live at the Rainbow Springs.

5 MR. CORRELL: That's 5-H, southeast corner (Navaho
6 Exhibit 510).

7 MR. YAZZIE: Hosteen Litsui.

8 A Yes, am I not mistaken, he used to be the policeman.

9 Q (By Mr. Littell) At Keams Canyon, correct.

10 A Yes, I know him.

11 Q Well, then, in addition to those Navahos who you said
12 you knew this morning, you said you knew two at Burro Springs.
13 The only Navahos you knew were two at Burro Springs. You do
14 know these others. Are there now some more? Have I refreshed
15 your memory on other Navahos you know who live in this
16 territory?

17 A I knew quite a number but I don't know where they
18 live.

19 Q Do all these whom you have recognized in this list I
20 have given you graze sheep or cattle, and have they done so
21 during all the years you know them except the policeman?

22 THE INTERPRETER: I didn't quite understand, he says.

23 A Yes, I know they had sheep, it's usually their staple
24 source of making their living. It's a staple food they have.

25 MR. LITTELL: Off the record a minute.

1 (Discussion off the record.)

2 MR. LITTELL: Let the record show in answer to my
3 questions that counsel agreed that the dates for Superintendent
4 Collins, meaning superintendent of schools at the school at
5 Keams Canyon, was 1890 to 1893, and of Superintendent Goodman,
6 who succeeded him, 1893 to 1894. I think that's all.

7 COMMR. SCOTT: Mr. Lundin?

8 MR. LUNDIN: No questions, your Honor.

9 MR. BOYDEN: I want to ask two questions.

10
11 REDIRECT EXAMINATION

12 BY MR. BOYDEN:

13 Q You said that your uncle ran his cattle out east of
14 Low Mountain. How far did they go out east?

15 MR. LITTELL: Check the record. That's exactly what
16 he said they didn't do.

17 MR. BOYDEN: No, he didn't, he said that and I want
18 him to tell us how far they went.

19 MR. LITTELL: Let's go back and look at the record.
20 I object to the question as asked because it's leading and is
21 not consistent with what the witness has said. He is attempt-
22 ing to lead him to say something different.

23 COMMR. SCOTT: It isn't leading because that's some-
24 thing he already said. We are coming back to a point raised
25 both on direct and cross, and in view of the age of the witness

1 I will give a little more leeway on redirect than otherwise.
2 Off the record just a moment.

3 (Discussion off the record.)

4 **COMMR. SCOTT:** Back on the record.

5 **Q (By Mr. Boyden)** Do you know where the Executive Order
6 Reservation line is?

7 **A** Yes, I was employed by a man named Murphy that was
8 surveying. He took me all over the boundary part of the
9 way, or he designated the Black Mountain, Cow Springs, and
10 then a White Cone boundary.

11 **Q** Now in the summer time did your uncle run his cattle
12 outside of the Executive Order Reservation east?

13 **A** He didn't have very many, but mine drifted that way.

14 **Q** Well, where did yours drift to?

15 **A** Above Tse Chizzi, there's a place there that has
16 usually a water hole, from there on up.

17 **Q** Didn't he say Bigham Dam?

18 **THE INTERPRETER:** He said Bigham Dam is another place
19 where they roamed.

20 **MR. LITTELL:** Bigham Dam is at what point?

21 **MR. BOYDEN:** Now I'm not sure -- well, as long as
22 it's on Polacca Canyon -- is it on Polacca Canyon?

23 **MR. TIBBALS:** In quad H5 (Navaho Exhibit 510).

24 **MR. BOYDEN:** It's in the northeast corner of H-5
25 (Navaho Exhibit 510).

1 MR. LITTELL: Inside the Executive Order?

2 MR. BOYDEN: Inside the Executive Order.

3 Q (By Mr. Boyden) Now where else did you run in the
4 summer time besides here at Bigham Dam, and where did you
5 run, I should say?

6 A There is quite a distance from Bigham Dam up eastward,
7 again beyond quite a ways where they call it Tse Chizzi Bay in
8 the Navaho.

9 MR. BOYDEN: Now can we tell where that is?

10 MR. LITTELL: Mr. Correll, will you show Mr. Boyden
11 where it is? Further inside the Executive Order.

12 Q (By Mr. Boyden) When you said they went east of
13 Bigham Lake, did they go up the wash or did they go to Tse
14 Chizzi Spring?

15 A They have gone as far as the Tse Chizzi Springs and
16 sometimes they drift beyond, below that, beyond.

17 Q All right. Now you mentioned Cow Springs. Did they
18 go there?

19 A That's almost, you might say, within a short distance.
20 They go beyond that.

21 Q Further east you mean?

22 A Yes, beyond that, on up.

23 Q Did they go to Lohani Point?

24 A No.

25 Q Well, now, what was the furthest point east that they

1 went?

2 A There is a kind of a canyon way beyond that where
3 there is some fir trees or pine trees, that's as far as I
4 have gone to gather them. It's quite a distance yet from
5 where I have mentioned.

6 Q Well, is that towards the way the sun comes up?

7 A When I went north like, northerly direction, north-
8 east, you might say.

9 Q All right. Now how far did they go east towards the
10 way the sun comes up?

11 A They come to the edge of the mesa, the furthest east
12 that they go.

13 COMMR. SCOTT: Can that be located on the map?

14 MR. BOYDEN: I don't know where he is talking about.
15 It shows elevations.

16 Q (By Mr. Boyden) What mesa are you talking about, do
17 you know?

18 A I don't know the name of it.

19 COMMR. SCOTT: Do you know from your experience in
20 surveying the Executive Order tract whether that edge of the
21 mesa is within the tract?

22 A I think it's beyond the Executive Order, way beyond.

23 COMMR. SCOTT: You think that. Do you know?

24 A I don't know. I'm not sure just where the exact line
25 would be, boundary line.

1 MR. BOYDEN: Do you know where Aspen Tree Canyon is?

2 MR. CORRELL: No, I don't, never heard of it.

3 MR. LITTELL: The witness has said he doesn't know,
4 your Honor.

5 COMMR. SCOTT: I realize that, but this witness is
6 very old and we want to give Mr. Boyden every chance to
7 develop it if he can.

8 MR. LITTELL: I think the witness is being very
9 honest with him, he just doesn't know.

10 MR. TIBBALS: Of course he doesn't know, nobody else
11 knows where the boundary of that reservation is. It's never
12 been surveyed.

13 MR. BOYDEN: Let's go on with the questioning.

14 MR. LITTELL: Mr. Boyden had him testify he doesn't
15 know.

16 MR. BOYDEN: What's that?

17 MR. LITTELL: I said you had him testify he did know
18 where it was.

19 MR. BOYDEN: He did until he got confused, and I was
20 trying to straighten it out.

21 Q (By Mr. Boyden) Now I want to know if you said to
22 Albert that Chidi was part Hopi, is that right?

23 A Yes, I claim him as my grandchild because the Hopi way,
24 if you have a grandfather that's a grandchild, and if he is
25 your great uncle you take him also as a grandchild. He was my

1 uncle's grandchild.

2 MR. BOYDEN: Now, Albert, will you be careful to tell
3 us everything that he tells you? I think that's all.

4 MR. LITTELL: That's all.

5 COMMR. SCOTT: Well, now, in view of the fact, Mr.
6 Boyden, that this gentleman is aged and this would be his
7 last chance, would you please ask him whether or not there is
8 anything that you missed, either on cross or direct, that he
9 feels he could tell about this area when he was a boy? .

10 Q (By Mr. Boyden) Is there anything that you know
11 about this area and the use of this area by the Hopis when
12 you were a boy that we have not given you a chance to say?

13 A I want to say this and point this out as far as land
14 is concerned: You see the picture of Washington here in this
15 room, who was the President. There are others that followed
16 him as presidents. When they determined this land into
17 different states, make the boundaries which are intact, no one
18 has attempted to change it. We Hopis feel that when the area
19 was designated to us, we took it in that light that nobody is
20 to molest it. But let it be as it is fixed. But today you
21 are doing everything you can to complicate things instead of
22 making it stand like it was before. In our custom, as far
23 as land is concerned, there are boundsries that are fixed.
24 You can't go even beyond, say two feet but what you are
25 violating, you might say, as far as ownership of land is

1 concerned. The punishment is death, we know that. Why
2 should you be still keeping this up complicating things
3 where we are in a turmoil? That's what I want to say.

4 **COMMR. SCOTT:** Very well.

5 **A** Let it be fixed the way it is, the way it has been.

6 **COMMR. SCOTT:** Very well. Now do any of the counsel
7 know of any reason why this witness should not be excused
8 at this time?

9 **MR. BOYDEN:** No.

10 **MR. LITTELL:** No.

11 **MR. LUNDIN:** No, sir.

12 **COMMR. SCOTT:** Very well, you are excused. We thank
13 you for coming.

14 (Short recess.)

15 **COMMR. SCOTT:** Very well, you may proceed.

16 **MR. BOYDEN:** Hale Adams.

17
18 **HALE ADAMS,**

19 called as a witness herein, after having been first duly
20 sworn, testified as follows:

21
22 **DIRECT EXAMINATION**

23 **BY MR. BOYDEN:**

24 **Q** Your name is Hale Adams?

25 **A** Yes, sir.

1 Q How old are you, Hale?

2 A I'm 72 years old, according to the census I'm 72.

3 Q Where were you born?

4 A I was born in Awapovai. ^{[Awakobi]?}

5 Q Were your parents born at the same place?

6 A Yes.

7 COMMR. SCOTT: You can lead him all you want to, Mr.
8 Boyden.

9 MR. BOYDEN: Well, with him it isn't necessary, he
10 speaks good English.

11 Q (By Mr. Boyden) Did you have an uncle whose name was
12 Snowed?

13 A Yes, sir.

14 Q What is the Hopi name?

15 A Navati, meaning snows.

16 Q Were you well acquainted with him?

17 A Yes, he used to live with us, I mean my father and
18 mother.

19 Q So he was a part of your family?

20 A A part of my family, yes, sir.

21 Q And did you, while you were a young man, talk with him
22 about his activities?

23 A Yes, he did talk about his activities while I was a
24 boy about, oh, say about 12 or 13.

25 Q And was he much older than you?

1 A He was very much older than I am at the time.

2 Q Now did he ever tell you about the famine of 1832?

3 A Yes, sir, he did.

4 Q What did he say about that?

5 A Well, he told me that there was a big famine some
6 time way back, he said, and that the people from the villages
7 up at Walpi and those other two villages, and those other
8 villages further on out, they left the village in search of
9 food, to find what they could to eat such as seeds and those
10 wild little potatoes that they try to hunt in digging ground
11 around places where they think they can find something.
12 Finally they drifted off from the mesas until they are pretty
13 well off, some of them. And that uncle of mine, old man
14 Navati, and family, they happened to drift upwards towards the
15 Polacca Canyon in search of seeds and wild potatoes, and going
16 around looking for things like that. And finally they went
17 clear up, and in their search for something to eat such as
18 seeds or, like I mentioned, they finally reached over that
19 ridge down into that Chinle area there. And coming into that
20 Chinle area as he told me they searched around, and finally
21 they found that canyon, Canyon DeChelly. They went that canyon
22 and found that there were -- that ground there was moist, and
23 having nobody living there at that time the grass was up that
24 high.

25 Q Now about three feet?

1 A About three feet high. And some of those -- some of
2 that dry grass they found seeds in it, so they settled there
3 and had more luck, I'd say, in hunting for seeds like that.
4 And they found more than they did some other place else,
5 you see? Well, they worked around there and got a little to
6 eat out of it and hunt around for potatoes and such things as
7 that. And finally they went through Shonto Spring, and he
8 told me that one of the men that went out with them -- I forget
9 his name, I'm sorry I did forget it -- went back to Polacca.
10 And as I said, all the people from the mesas drifted out. Some
11 went up towards the Travers, New Mexico there and they happened
12 to find some corn there and brought it back. And finally after
13 this old man Navati went back to Polacca and found a little bit
14 of corn.

15 Q A little bit of what?

16 A Corn, and finally he get it somehow, somehow he got a
17 little corn from this man and from that man and some beans
18 that they brought in -- everything in from New Mexico back to
19 Walpi, that is the other folks that went up that way they
20 brought some back home. And he'd gather a little seed and
21 happened to get some peach seeds too. While he took some of
22 that and what little he could get and took them out into
23 Canyon DeChelly there where the other folks were staying yet.

24 Well, they began to, after they brought some seeds in,
25 divided up so much, I guess, give this fellow a little and this

1 fellow a little and so they planted that seeds, what he
2 brought. That's what the man brought back from Polacca.

3 Then they cultivated and grew up, they had some
4 corn, they had quite a bit. And of course they ate some of
5 it, but saved some for seed. Of course they couldn't have
6 very much corn in case they didn't plant very much corn, that
7 dig out the little they got, they planted, but anyhow they
8 saved. And after that they began to get more and more of
9 this and that and more of things to eat and pretty soon they
10 settle there.

11 And he didn't say how many years they settle there,
12 but he says they settled there for quite a while. And
13 finally when things begin to get better, some years later at
14 Polacca, some of them drifted back. And all those things
15 that, all those potatoes that they planted there and trans-
16 planted in different places there, he helped, old man Navati
17 happened to have some trees there. And this I got from him
18 the time when I was 12 or 13 years old when he went back to
19 Canyon DeChelly and brought in some peaches on burros, He
20 had about three burros there, and two of them were loaded
21 with peaches and one loaded with mutton when he came back to
22 Polacca.

23 Q When was that, you say?

24 A What?

25 Q When was that?

1 A After they had everything started there at Canyon
2 DeChelly, that's after they settled there for some time and
3 had things get to growing, you see? And some of them, after
4 that some of them drifted back to Polacca from Canyon
5 DeChelly, and it was later when I was a boy when he told me
6 this after he brought those peaches from Canyon DeChelly to
7 Polacca. That was the time he was telling me to keep grow-
8 ing some peaches. And as a little boy like me I just go for
9 peaches and just eating them like that, and that was the time
10 he told me this story.

11 And the next year, I think that was -- that must be
12 somewhere in the -- towards the last of August when he brought
13 those peaches, because I was in school when I was 12 and 13
14 and we used to, way back when I was going to school we used
15 to start our schooling the first of September. So it must
16 be in the later part of August when he brought those things,
17 because I saw it there, I saw it with my own eyes, and ate
18 some of the peaches, and also the mutton he brought. I ate
19 some of that before I went to school, and that was the time he
20 told me this story. And I remembered this ever since then,
21 I told it to my children what stories I told, my uncle told
22 me.

23 Q Did he say where he got the mutton from?

24 A Yes, he told me after picking his peach orchard if
25 he can pick some that he couldn't take and some he hadn't

1 taken off the trees yet he would sell it, it was -- it was
2 after when the Navahos, some of them had drifted in, see?
3 And he would sell the peaches to the Navahos for mutton, and
4 in sometimes he would sell the branches of the trees that
5 are bearing fruit. He would sell just the fruit on the
6 branches, one branch would go that way and another way, and
7 he would sell them by the branches and let them pick them
8 themselves, see? That's how he got his mutton, that's how he
9 always brought in mutton with peaches. That's the way he
10 does, the way he told me.

11 Q All right. Now did you run cattle?

12 A I did.

13 Q How early?

14 A Let's see, since 1915.

15 Q You started in 1915?

16 A Yes, sir.

17 Q Where did you run them?

18 A Up the Polacca Canyon, a place where they called
19 Todiitsaii where that Todiitsaii is up the canyon, further
20 up where Fred now is having his ranch, and that canyon runs
21 on toward the Polacca Canyon at the most of that canyon.

22 Q Did you work for someone else before you had your
23 own cattle?

24 A I did.

25 Q Do you remember for whom you worked?

1 A It was for Albert Naha, I did work for him about two
2 years.

3 Q And do you remember what years those were?

4 A Must be in 1912, before I was married.

5 Q Now I will ask you if you ever went south with his
6 cattle, south of the Executive Order Reservation?

7 A I think I did once, yes, just once.

8 Q Where to?

9 A Up to -- I got those cattle from a little ways beyond
10 at the store where Red -- what they called Saddle Mountain,
11 just below on the south side of it. They were grazing there
12 when they went up there.

13 Q Saddle Mountain near T'iis Ts'oz?

14 A Near T'iis Ts'oz.

15 MR. BOYDEN: Where is T'iis Ts'oz?

16 MR. LITTELL: Apparently just south of Comar Springs
17 right on the Executive Order line, I think.

18 Q (By Mr. Boyden) Mr. Adams, how far is T'iis Ts'oz
19 from Comar Springs or Cedar Springs, either one?

20 A Comar Springs might be something like a mile and
21 a half below T'iis Ts'oz.

22 MR. TIBBALS: So that T'iis Ts'oz, then would be,
23 your Honor, in quad H-6 (Navaho Exhibit 510), is that as you
24 read it, Mr. Correll?

25 MR. CORRELL: H-6.

1 MR. TIBBALS: It's just outside of the Executive
2 Order area.

3 Q (By Mr. Boyden) Now how far south of T'iis Ts'oz
4 did you go to Saddle Mountain, how far is that?

5 A Oh, Saddle Mountain is right close. I'd say it's
6 about a mile from T'iis Ts'oz, south, right there.

7 Q A mile south from T'iis Ts'oz?

8 A Just about, I think.

9 Q And you got cattle for Albert Naha there in what
10 year?

11 A I said it must be in 1913.

12 Q Now was he running his cattle there at that time?

13 A Yes, at that time he had a lot of cattle there, they
14 stray off, and if we -- I and one other man were rounding
15 them up. We rounded them up around Finger Point there and
16 up towards those hills around there and a little over those
17 hills there, around Comar Springs, this side of Comar
18 Springs, and drove them up, on up towards Awapovai. But we
19 didn't reach Awapovai, we just drifted them up on this side
20 of Awapovai, that big wash, Jedito Wash. We left them
21 there and went up to the ranch, Awatobi. That was a ranch
22 during that time at Awatobi that was built and we slept there.
23 Next morning we thought we didn't quite get all of those
24 others, we saddled up a fresh horse and started off again.
25 We didn't went up to those that we drove up to that side of

1 the hill that day, but went right on to see if we could find
2 some more strays on the other side of those mountains, you
3 see, that's why we just took those horses and went until
4 we --

5 Q Now do you herd cattle like you herd sheep?

6 A Not always.

7 Q Now, isn't this so, that when cattle are taken out
8 they are taken to the cattle range and allowed to drift?
9 Is that right?

10 A That's it, yes, that's right.

11 Q And then when some of them break away from the main
12 herd you call those strays?

13 A That's what I call them, strays.

14 Q And you try to bring the strays back to the main
15 herd to keep them bunched as much as possible?

16 A That's right.

17 Q And that's the way cattle are herded?

18 A That's the way they are herded.

19 Q Now when you were out working with the cattle, did
20 the Hopi people build shelters?

21 A Well, as I say, yes, because when we go out and have
22 -- and don't see that we could make it back to the ranch,
23 we all sleep out, camp out at night, or what shelter we
24 could make, of course, if we are out in the open where there
25 is no trees, there was those bushes, what they call it. I

1 think they call them Saris, Saris bushes there. Well, we
2 would get some of that Saris and just build a protection,
3 just like a protection around there and throw off our saddle
4 and put in there, and for our covers we would use our saddle
5 blankets and camp right there.

6 Q All right. Now, did you ever build shelters for use
7 out on the range out of poles or trees?

8 A I did, but that is on this reservation. I did build
9 a shelter out of trees when I went out hunting, that's the
10 only time I built it out of trees.

11 Q Where did you go hunting to build shelters out of
12 trees?

13 A Up in -- up around in -- up here. I don't know,
14 that was on the Polacca -- it's right here at Bill Williams
15 Mountain, on the other side of Bill Williams Mountain.

16 MR. LITTELL: The Bill Williams Mountains are where?

17 A Oh, Bill Williams.

18 Q (By Mr. Boyden) Well, what kind of shelters did you
19 build?

20 A Well, we'd just -- and another man, my son-in-law.

21 Q Is he a Hopi too?

22 A He is a Hopi too. We just broke off the branches
23 from those, what they call Alligator trees. They get the
24 bark like the alligators in the wood there, the bark they
25 call them alligators I think, if I'm right. We broke some

1 limbs out of it and just put it around a tree like that to
2 shelter us from the cold during the night and camp right in
3 that place there.

4 Q Now do the Hopis, when they are out, other Hopis
5 besides yourself, build shelters, temporary shelters for
6 their use?

7 A I think they do. I wouldn't have done it because I
8 learned it from other Hopis.

9 Q That's what I wanted to know.

10 A I learned it from other Hopis, the old people used
11 to say they'd build a shelter like that and I learn it from
12 them, and so I built it myself when I was out hunting.

13 Q Now what clan do you belong to?

14 A I belong to the Mustard Clan.

15 Q Mustard?

16 A Mustard, yes.

17 COMM. SCOTT: What is a clan?

18 A Clan is a group of people who, oh, you might say
19 people using the same tradition or some things like that.
20 We call them clans, different clans.

21 Q (By Mr. Boyden) Are they social organizations where
22 men work together for religious purposes?

23 A That's right.

24 Q And you belong to little groups, and those groups
25 are called clans?

1 A They are called clans, women and all. The clans
2 come out of women. When a woman bears a child it's her
3 clan, not the man's, father's clan.

4 Q That's how you get into a clan?

5 A Yes.

6 Q Is by birth, depending on what clan your mother had?

7 A That's it, that's right.

8 Q Now did your clan have a shrine in what we have
9 called the South Area, in below the -- just below the Navaho
10 Reservation?

11 A Yes, sir, the way I was told from my ancestors.

12 Q All right. Now, where is that shrine, that clan
13 shrine?

14 A It's a little above the Chambers there and a little
15 hill or a mountain there, you might call it.

16 Q Now a little above Chambers?

17 A Yes.

18 Q So that would be just a little below the Navaho
19 Reservation in quad ^{I-6} I6 (Navaho Exhibit 510). Now is that
20 on the Painted Desert?

21 A Painted -- might be in that area. If the Chambers
22 is in that area it might be in that area too.

23 Q I see. Well, that isn't important. Is your shrine
24 north of Chambers?

25 A North of Chambers that way.

1 Q Is that right?

2 A That's right.

3 Q So it would be between Chambers and where the
4 Navaho Reservation is now?

5 A Right.

6 Q Now you have talked with your uncles and those close
7 to your family about visiting this shrine?

8 A Yes.

9 Q And what have they told you with respect to it?

10 A Well, in coming into Hopi Land way back, I don't
11 know how many years it might be, that clan of mine, they
12 were staying up in New Mexico. They stopped there coming
13 into Chikopi, stopped there for quite a number of years,
14 settled there, a place where my ancestors told me was Hano,
15 Hano. Well, after some years they began drifting again
16 towards this way, up towards Polacca, down towards --

17 Q Well, now, this is a little bit further back than
18 I want to go. I want to know if, after or about the year
19 1848, what does your tradition say, where were they then?

20 A After 1848?

21 Q About that time.

22 A About that time they must be in Polacca.

23 Q All right. Now, then, did they have a shrine in
24 this area at that time?

25 A It was there because they made that shrine and made

1 their homes there for some years, and now it's ruins there.

2 Q Now is this ruins the shrine, the shrine is at the
3 point of the ruins, is it?

4 A Well, it's about -- yes, just a little to the hill
5 on this side of Chambers.

6 Q Now is that called Chalk White?

7 A Chalk White, the shrine is Chaquina.

8 Q How do you spell that?

9 A I wouldn't know how to spell it.

10 Q Do you know what that means?

11 A It means one of those Kachinas, Chaquina.

12 Q Just one word?

13 A Just one word.

14 Q So the word is Chaquina?

15 A Yes.

16 Q And that's the name of a Kachina?

17 A Yes, sir.

18 Q And that is also the name of this particular shrine
19 near Chambers?

20 A Yes, sir, that's right.

21 Q Now does your shrine have a tradition about visit-
22 ing, or your clan have a tradition about visiting that
23 shrine?

24 A Yes, we visited it sometime way back in about three
25 times, I think, I went there to visit.

1 Q Now when did you go there to visit?

2 A First time I went I was with my father going up into
3 Zuni salt lake for salt. We followed a trail up there and
4 that's the time he showed me that that was -- that was my --
5 that was our shrine, my clan's shrine named Chaquina. He
6 showed me the place, and the next time I went again and that
7 time I know where it is so I went over there.

8 Q Do you know about what year that was when you went
9 the first time?

10 A The first time I went might be -- let's see. It
11 must be 19 -- in the 1912's or somewhere along there.

12 Q That's the first time you went there?

13 A Yes.

14 Q And your father pointed it out to you?

15 A Yes, sir.

16 Q And then you have gone a couple of times since?

17 A Yes, sir.

18 Q Now did your uncle in your family circles tell you
19 whether he had visited that shrine during his lifetime?

20 A Like I did in going to the salt lake of Zuni he
21 visited. I don't know how many times, but he told me he
22 knew where the place is, because he visited in going to Zuni
23 salt lake for salt.

24 MR. BOYDEN: That's all.

25 COMMR. SCOTT: We'll take a five-minute recess.

T15f1s

1 (Short recess.)

2 **COMMR. SCOTT:** The Commission will be in session.

3
4 **CROSS EXAMINATION**

5 **BY MR. LITTELL:**

6 Q Mr. Adams, when your uncle told you this long story
7 did he tell you what century it was in when the Hopis went
8 to the Canyon DeChelly? Are you sure you have it -- you
9 sure you have got the right century on this?

10 A (No answer.)

11 Q Now you yourself didn't give any date, did you?

12 A What is century?

13 **MR. BOYDEN:** Use some other word besides century.

14 Q (By Mr. Littell) You did not give any date as to the
15 time when your uncle told you as a little boy that the Hopis
16 had gone to the Canyon DeChelly?

17 A Of course back in those old days those old people
18 don't know nothing about what month or what day or even the
19 week, they don't --

20 Q Exactly, I understand that, Mr. Adams. So when he
21 was telling you the story and you remember it as a little boy
22 it might have been in the 1700's rather than in the 1800's as
23 Mr. Boyden indicated in his question, mightn't it?

24 A (No answer.)

25 Q Do you know whether it was in the 1700's or the 1800's?

1 It was just a story to you as a little boy, wasn't it?

2 A Yes, but then thinking back to it now it might be
3 the 1800's, because 1700 would be too old for my old uncle.

4 COMM. SCOTT: Did your old uncle tell you this as
5 something that happened during his lifetime?

6 A That's it.

7 COMM. SCOTT: And how old was he, approximately,
8 when he told you, if you remember?

9 A I think we could determine that by -- he died around
10 -- when he was pretty old, and I was, as I say, about 12 or
11 13 years old when he told me this story.

12 Q (By Mr. Littell) Do you know when Polacca was
13 established?

14 A No, I wouldn't know that.

15 Q You wouldn't know when the first house was built at
16 Polacca?

17 A No, sir, I'm too young to know that.

18 Q No, you're not. But if you don't know I won't ask
19 any more questions about that.

20 A I see.

21 Q You said that he went to the Canyon DeChelly, went
22 back to the Canyon DeChelly when you were 12 years old.

23 A Right.

24 Q Well, if you are 72 then that would be 60 years ago,
25 or 1900, is that about right?

1 A About right.

2 Q And then is when he brought back the peaches and
3 the mutton?

4 A Yes.

5 Q Now you didn't mean to imply, did you, Mr. Adams,
6 that those peaches and that mutton were raised by Hopis in
7 the Canyon DeChelly in 1900, or did he buy them from Navahos?

8 A I told you they were about that time when they
9 settled, and when they got to be -- got to get more things
10 like that, they'd been there several years when they finally
11 found some corn that they could spare and other things that
12 they could store away, and that's about the time when they --
13 the Navahos drifted in, and that's the time some of them
14 drifted back to Polacca. That's the way my story goes.

15 Q Well, now, did your uncle tell you that he brought
16 that fruit and that mutton from Hopis in the Canyon DeChelly
17 in the year 1900 or he just brought peaches and mutton from
18 the Canyon DeChelly?

19 A My story says he bought them from the Navahos.

20 Q That's it, that's it, that's all I wanted to make
21 clear from you. As to when the Hopis went to the Canyon
22 DeChelly, which is a historic fact, we will establish by
23 other evidence.

24 MR. BOYDEN: Is that the question?

25 MR. LITTELL: No, I'm just -- for the Commissioner

1 I'm saying that I won't ask this witness any further questions
2 about that.

3 Q (By Mr. Littell) How many Navahos do you know who
4 are living, who have been living during the period of your
5 lifetime from the time you were a boy up to now? How many
6 can you name?

7 A Well, there is only one fellow that I always see when
8 -- he is always with me, it's --

9 MR. BOYDEN: Well, may it please the Court, I'm sure
10 that that question is altogether too broad to be of any
11 probative value in this case.

12 MR. LITTELL: I will confine it for the purposes of
13 shortening the questioning, the point is well taken.

14 COMMR. SCOTT: It would be appreciated if you could.

15 MR. LITTELL: I will confine it to the territory in
16 which he has grazed cattle and he has testified in chief
17 here.

18 MR. BOYDEN: And what period?

19 MR. LITTELL: Since he was a boy.

20 MR. BOYDEN: Well, everybody since he was a boy?

21 MR. LITTELL: I said every Navaho in the territory
22 where he was grazing cattle that he knows since he was a boy.

23 COMMR. SCOTT: Well, would it help perhaps to shorten
24 it to first ask him whether he did know any, and then if he
25 says yes, how many, and then ask him to --

1 MR. LITTELL: Very well, your Honor. I felt it safe
2 because of the testimony of the other witnesses given, they
3 were so limited in number I thought it was very easy.

4 Q (By Mr. Littell) Do you know any Navahos who live
5 or graze cattle in the territory which you have described
6 in your testimony here this afternoon?

7 A Well, I wouldn't go about the Navahos very much, I
8 tend to my own business. I had sheep and cattle that time
9 before the reduction and I don't have much time to go around
10 to Navaho camps. I just tend to my own business and there is
11 only one man that usually comes to my ranch, that's Joe
12 Kabinto, that's all.

13 Q You know Joe Kabinto then?

14 A That's all, yes.

15 Q And where did Joe Kabinto live?

16 A Well, he lived up, up somewhere around, I guess, the
17 way he told me he lives up around somewhere -- let's see,
18 what was the name -- the Whippoorwill Springs.

19 Q Whippoorwill Springs?

20 A Whippoorwill Springs. That's where he told me he
21 lived.

22 MR. LITTELL: Locate that, Mr. Correll.

23 MR. CORRELL: It's in quad 4-H (Navaho Exhibit 510),
24 the southeast corner.

25 MR. LITTELL: Up at the upper reaches of the Polacca

1 Wash?

2 MR. CORRELL: Yes, sir.

3 Q (By Mr. Littell) And he is quite an old man too,
4 isn't he, Mr. Adams?

5 A Yes, he was about my age or about -- he was a little
6 younger than me, of course.

7 Q He is a young man then?

8 A Yes, we got to know each other around 1916, I think,
9 when I started that ranch up there.

10 Q When you started what?

11 A The ranch.

12 Q Where did you start a ranch?

13 A Up the way I testified, up at the mouth of Echo
14 Canyon.

15 Q And he had been living there all that time?

16 A No, he lived up above there somewhere in -- since
17 he began working for Tom there, he lived -- worked for Tom
18 on the other side.

19 Q Tom Pavatea?

20 A Yes, somewhere around Bird Springs, on the other
21 side of Keams Canyon.

22 Q I will read you now these names, Mr. Maxwell Yazzie
23 will give you the Navaho pronunciation and ask if you knew
24 any of these men.

25 COMMR. SCOTT: Do these purport to be Navahos?

1 MR. LITTELL: I should have said that, your Honor.

2 Yes, these are all Navahos.

3 MR. YAZZIE: Jack Todichini.

4 Q (By Mr. Littell) Do you remember him?

5 A No, I don't remember.

6 MR. YAZZIE: Abraham Many Goats.

7 A Don't know him.

8 MR. YAZZIE: Tiizi Tiani.

9 A Which Tiizi, whereabouts?

10 Q (By Mr. Littell) I beg your pardon, what did you
11 say, Mr. Adams?

12 A What Tiizi Tiani, I asked. Tiizi Tiani I don't know.

13 Well, in my testimony I told you that I don't go around the
14 Navahos very much, because I tend to my own business mostly.

15 Q I understand, Mr. Adams, I just thought mentioning
16 these names might refresh your memory, and I'm asking you if
17 you know of these men.

18 MR. YAZZIE: Billy A.

19 A Don't know him.

20 MR. YAZZIE: Naa'ashoo'ii Biye'.

21 A Don't know him.

22 MR. YAZZIE: Hesteen Bichidi.

23 A I don't know -- think I know him either.

24 MR. YAZZIE: Goma'a.

25 A No, I don't know Goma'a.

1 MR. YAZZIE: Bliin Tlan Biye, Many Horses' son.

2 A Many Horses' son, no.

3 MR. YAZZIE: Hosteen Aitso aigi.

4 A Oh, they are all names that I don't know.

5 Q (By Mr. Littell) That's all right, I just thought
6 maybe it would strike a chord in your memory, Mr. Adams.

7 MR. YAZZIE: Hosteen Nez.

8 A Hosteen Nez, I have heard of him but I have never
9 seen him personally.

10 Q (By Mr. Littell) You don't know where he lives?

11 A Don't know where he lives either.

12 MR. YAZZIE: Daagaa Tsosi?

13 A No, never heard of this.

14 MR. YAZZIE: Hosteen Litsui?

15 A Litsui? No, I don't know him, I guess. I don't know
16 of any sound of any names like that don't come to my memory.

17 Q (By Mr. Littell) What did you mean, Mr. Adams, when
18 you said that, if I remember your answer correctly, when Mr.
19 Boyden asked about your running cattle for Albert Naha, as I
20 understood it you said just once, something that you did just
21 once and I didn't get it.

22 A I went up to the strays just once.

23 Q That's what you meant?

24 A Yes.

25 Q Thank you. And you got them -- and then you got the

1 strays up at Saddle?

2 A Saddle Mountain, yes.

3 Q Saddle Mountain?

4 A Yes.

5 Q You didn't ordinarily herd the cattle up to Saddle
6 Mountain, you just went after strays?

7 A After strays. See, sometimes they drift way up
8 that way.

9 MR. LUNDIN: Where is Saddle Mountain?

10 MR. CORRELL: It is in the northwest quarter of 6-H
11 (Navaho Exhibit 510) just below the reservation boundary.

12 MR. BOYDEN: In what we call the Southern Area.

13 MR. CORRELL: No, it's not that far south.

14 MR. BOYDEN: This isn't below the reservation?

15 MR. CORRELL: This is below the Executive Order
16 Reservation.

17 MR. BOYDEN: This is the part that was annexed in
18 1934.

19 Q (By Mr. Littell) And then would you take them back
20 up to where?

21 A Up towards Talahogan where we have a corral there.

22 Q Which is where?

23 A Up around Awatobi.

24 Q What's that word?

25 A Awatobi.

1 Q Now will you point out Awatobi? This is the Awatobi
2 ruins you are referring to, is it not?

3 A Yes, sir.

4 MR. CORRELL: That would be southwest of Jeddito
5 Springs in quad 5-H.

6 Q (By Mr. Littell) And on the west side of Jeddito
7 Springs, is it not?

8 A Yes.

9 MR. CORRELL: On the west side of the Jeddito Wash.

10 A Yes, yes, that's where I would take by.

11 Q And that's where your corral was?

12 A And that's where the corral was, in the Awatobi Springs,
13 below Awatobi Springs used to be a corral, but I don't know
14 whether it's still there or not.

15 Q But I'm trying to make this short for all of us. In
16 all the herding that you described, that was your headquarters
17 and you brought the strays back to that corral?

18 A Right.

19 Q And that was all the years of your experience in
20 herding that you testified in your original statement?

21 A Right.

22 Q As a matter of fact when they got down as far as
23 T'is Ts'oz, which you said was about a mile and a half above
24 Conar Springs in H-6 (Navaho Exhibit 510) they were straying
25 then, too, weren't they?

1 A They were straying beyond there, yes.

2 Q And you'd bring them back up to that vicinity on
3 the west side of Jeddito Wash?

4 A Yes, sir.

5 Q And you did not range on the east side of Jeddito
6 Wash, did you?

7 A I think -- I never went up there, but then other
8 boys used to go up to Jeddito Wash to see if they couldn't
9 find something going up that way, you see?

10 Q Yes, they'd look for strays up that way?

11 A Yes, strays on beyond -- way up the canyon there,
12 sometimes they'd go up that way.

13 Q Clear up to the Keams Canyon?

14 A Yes, up the Jeddito Wash. I mean not Keams Canyon
15 but Jeddito Canyon.

16 Q Up Jeddito Canyon up in the direction of Keams
17 Canyon? I didn't mean Keams Canyon, I meant in the direc-
18 tion of Jeddito Trading Post, is that what you meant?

19 A That's right, yes.

20 Q My mistake, I beg your pardon.

21 A Sometimes they camp right way beyond that and then
22 come down the canyon that way too.

23 Q How far up would they go?

24 A Well, as far as --

25 Q Above Maha Well?

1 A Maha?

2 Q Do you know Maha Well?

3 A No, I don't know Maha Well.

4 Q Well, it's on this map, I thought you might know it
5 as a point, above Jeddito Springs.

6 A Above Jeddito Springs clear up to those -- where
7 the highway crosses the draw there to Gallup.

8 Q I understand between Steamboat and Keams Canyon?

9 A That's it, yes.

10 Q And that's just a little -- that's pretty close to
11 Jeddito Trading Post, isn't it?

12 A Yes, sir.

13 Q But that's as far as you'd ever chase them?

14 A That's as far as we'd ever chase them, yes, sir.

15 MR. LITTELL: That's all.

16 COMMR. SCOTT: Any redirect?

17 MR. BOYDEN: Yes.

18

19

REDIRECT EXAMINATION

20 BY MR. BOYDEN:

21 Q When the cattle are put out to graze they don't just
22 stand there and eat, do they?

23 A No, sir.

24 Q They go over a whole territory, do they not?

25 A They go over the whole territory, because at that

1 time he had just like George Lomayesva stated he had 800
2 head, you see.

3 COMMR. SCOTT: And Mr. Boyden, just a moment. I
4 forgot to ask Mr. --

5 MR. LUNDIN: That's all right, I have no questions,
6 your Honor.

7 COMMR. SCOTT: That's all right then, go right
8 ahead.

9 Q (By Mr. Boyden) And if the whole herd goes then you
10 don't have any strays, do you?

11 A No, sir.

12 Q But if some get separated from the herd no matter
13 where they are, they are strays, aren't they?

14 A That's right.

15 Q And so you bring them back to the herd, wherever it is?

16 A Yes, sir.

17 Q Now I want to show you a picture, and if you can
18 identify it I will have it marked. Can you tell what that is?

19 A Oh, yes, now I can see.

20 Q Do you know what it is?

21 A Yes, sir.

22 (Hopi Exhibit 5 marked for identification.)

23 Q (By Mr. Boyden) I will show you what's been marked
24 Exhibit Hopi 5. Will you tell us what that is?

25 A This is where my shrine is at Chaquina.

1 Q And --

2 A Showing the things here down below there, a bird like,
3 that's a roadrunner. And up above here, these two, they are
4 the guards, magpies.

5 Q That's where it looks like --

6 A They are flying.

7 Q -- two forks there just above it?

8 MR. LITTELL: Is he referring to the markings on the
9 rock?

10 MR. BOYDEN: Yes.

11 MR. LITTELL: Now what are those two that look like
12 a fork there, these two you pointed out?

13 A They are magpies.

14 Q Magpies?

15 A They are the guides, they say. They guide them which
16 way to go.

17 Q And that is the shrine that you have talked about?

18 A Yes, sir, and this here is the oak tree which is from
19 my clan too.

20 Q Now which is the oak tree? That's between the
21 magpies?

22 A Between the magpies right here.

23 Q Just to the right of the bottom magpie?

24 A Yes, sir.

25 MR. BOYDEN: All right, I offer that in evidence.

1 **COMMR. SCOTT:** Well, before I rule on it and before
2 the gentlemen have an opportunity to question, I'd like to
3 know just the words "branch of land operations, BIA."

4 **MR. BOYDEN:** I can say that that's the branch of land
5 operations of the Bureau of Indian Affairs that's taken the
6 picture. I assume that in view of our previous experience
7 that the matter of taking the picture will not be objected
8 to?

9 **MR. LITTELL:** I will raise no objection.

10 **MR. BOYDEN:** If it is we can produce the photographer.

11 **MR. LITTELL:** That's too much trouble, we'll waive it.

12 **COMMR. SCOTT:** Any objection?

13 **MR. LITTELL:** No, sir, no objection.

14 **COMMR. SCOTT:** Very well then, the picture will be
15 received in evidence and the reporter will have the responsi-
16 bility for the custody of the picture and transmit same with
17 the transcript to the Commission.

18 (Hopi Exhibit 5 received in evidence.)

19 **MR. BOYDEN:** That's all.

20 **COMMR. SCOTT:** Well, now, in view of the youth of
21 this witness, unless counsel wants to ask him the catch-all
22 question I will pass that.

23 **MR. BOYDEN:** I don't.

24 **MR. LITTELL:** I do not.

25 **MR. LUNDIN:** I do not.

1 **COMMR. SCOTT:** Since this witness is only 72, and
2 therefore would apparently be available for a number of years,
3 quite a number, unless the attorneys have any objection to
4 it, I will now excuse him.

5 **MR. BOYDEN:** All right.

6 **MR. LITTELL:** No objection.

7 **MR. LUNDIN:** No objection.

8 **COMMR. SCOTT:** You may be excused. Off the record.
9 (Discussion off the record.)

10 **COMMR. SCOTT:** Very well, we will recess until 9:00
11 o'clock on Monday morning.

12 (Whereupon, a recess was taken from approximately
13 5:15 o'clock p.m. on November 19th, 1960, until
14 approximately 9:00 o'clock a.m. on November 21,
15 1960.)

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1 A Yes, sir.

2 Q Now you have had experience as an interpreter, have
3 you?

4 A Yes, at present I'm an official interpreter for the
5 Hopi Tribe.

6 Q And how long have you served in that capacity?

7 A Four years.

8 Q Have you been used as an interpreter in any hearings
9 for the Government?

10 A As one hearing that I appeared but I didn't interpret
11 for any particular Hopi group.

12 Q You just appeared as a witness?

13 A That's right.

14 Q You didn't interpret for them?

15 A That's right.

16 Q Has the superintendent and other Government officials
17 frequently used you over a good many years as an official
18 interpreter?

19 A That's right.

20 MR. BOYDEN: I think that's all.

21 MR. LUNDIN: If your Honor please, may I have the same
22 objection to this interpreter as I had to the other one, namely
23 that because of his interest in the matter as a member of the
24 Hopi Tribe he is not qualified to interpret?

25 COMMR. SCOTT: Now will we have the same precautions

1 here this morning?

2 MR. BOYDEN: Unfortunately we don't, I don't know
3 what happened to our tape recorder.

4 COMMR. SCOTT: You expect it to be here?

5 MR. BOYDEN: Yes, I do.

6 MR. LITTELL: That's precisely the basis of the objec-
7 tion I was about to make. We had this protection before,
8 but I'm willing to proceed without it being here on the
9 assumption it's arriving any moment. Is that right, Mr.
10 Boyden?

11 MR. BOYDEN: Well, yes. Of course this is a big
12 country and I can't vouch that they will be, but we certain-
13 ly expect them to be here.

14 MR. TIBBALS: Except for one witness I think we can
15 pretty well go along in English. I don't think Choyo can
16 handle it in English, but both Ned and Earl and Mr. Adams have
17 agreed they will, due to the situation, do their best. They
18 may get stuck, your Honor, and have to have help, but they
19 will try very hard to speak in English and answer the
20 questions.

21 COMMR. SCOTT: Now as I recall at the last session
22 the interpreter which we used was brought in to use in this
23 matter with an understanding between parties that a tape
24 recorder could be used which would be supplied, the tape
25 would be supplied and be checked. And I believe if I

15

1 remember right that, on the basis of that understanding,
2 objections were withdrawn, am I right?

3 MR. LUNDIN: No, they were overruled.

4 COMM. SCOTT: Then the objections will be over-
5 ruled on the basis of the same arrangement entered into at
6 the previous session with the other interpreter, being under-
7 stood that the first witness will need no interpreter and
8 that the tape recorder will be received in time for use.

9 MR. BOYDEN: I believe, your Honor, that I will with-
10 draw the interpreter at this time and commence with the others
11 with the hope that the tape recorder will be here before we
12 commence.

13 COMM. SCOTT: Before that I will ask the interpreter
14 to, this gentleman to read the oath of interpreter at this
15 time.

16 MR. KOOPEE: I, the undersigned, having been duly
17 named as an interpreter in the above entitled cause, upon my
18 oath do say: that I will well and truly interpret and trans-
19 late the questions propounded to and the answers given by the
20 witnesses at the hearing of said cause, and that I will do
21 all other things required of me by said Commission, a Commis-
22 sioner or Examiner thereof.

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copy
oath

1 **COMMR. SCOTT:** Will you please sign that now? This
2 will be placed in the custody of the reporter for transmittal
3 to the Commission with the transcript.

4 **MR. LUNDIN:** If your Honor please, may I at this time
5 have a continuing objection to the testimony of all of the
6 witnesses on the grounds that their testimony is immaterial
7 and irrelevant to the issues in this case?

8 **COMMR. SCOTT:** You may have continuing objection,
9 which of course is overruled, but saved for your objections
10 and for the purpose of briefing, appeal and otherwise.

11 **MR. BOYDEN:** We will call Robert Adams.

12 **COMMR. SCOTT:** Do you want to have a continuing ob-
13 jection too, Mr. Littell?

14 **MR. LITTELL:** The same as yesterday, but it's
15 acceptable to me as they proceed in English, of course,

16 **COMMR. SCOTT:** To save time, I mean --

17 **MR. LUNDIN:** No, I have a different objection.

18 **MR. LITTELL:** No, I do not object because of self
19 interest, we have the same problem with the Navahos.
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1 please?

2 A Yes, I will try.

3 MR. LITTELL: We didn't get his age, for example.

4 COMMR. SCOTT: How old are you? We didn't get that.

5 MR. BOYDEN: I haven't come to that yet.

6 A Sixty-four.

7 MR. LITTELL: Did he say he was born at Polacca?

8 MR. TIBBALS: Yes, and his parents likewise.

9 Q (By Mr. Boyden) Now you ran cattle for Albert Naha?

10 A Yes, sir.

11 Q Do you remember when?

12 A 1917 to 1918.

13 Q Just one year?

14 A One year, yes.

15 Q Now when you say that you are 64 years of age, is
16 that what you believe your age to be?

17 A Yes, I'm not definite because I don't know myself,
18 and the agency has got it wrong too over there on the census.

19 Q What does the agency have?

20 A The agency got me on for 64, that's what I told the
21 court here, 64, and from my parents they told me I was 69
22 years old now.

23 Q So that there is a difference --

24 A So I don't -- yes.

25 Q -- between what your parents say and what's on the

1 census?

2 A Yes, yes, sir.

3 Q Now when you ran cattle for Albert Naha in 1917 and
4 1918 --

5 A Yes, sir.

6 Q -- where did you run them?

7 A Well, they ran north of Polacca towards Winslow,
8 around -- [south?]

9 Q Now wait a minute, let's not talk about the directions
10 at this moment for fear we get mixed on that. Tell us where
11 they ran from Polacca?

12 MR. BOYDEN: Polacca, may it please the Court, is
13 in quad 5-H (Navaho Exhibit 510).

14 MR. LITTELL: If I may make a belated suggestion I
15 think if we move that small table and move this map up close
16 to your bench that you could see many of these places.

17 COMMR. SCOTT: That's possible. I would appreciate
18 it.

19 (Discussion off the record.)

20 COMMR. SCOTT: Back on the record.

21 Q (By Mr. Boyden) Now will you tell us where you went
22 from Polacca?

23 A (No answer.)

24 Q I point Polacca out here on the map for you, Polacca
25 Wash here, there is Polacca there.

1 MR. LUNDIN: It's on Hopi Exhibit 2 that you are
2 pointing?

3 MR. BOYDEN: I'm now pointing on Hopi Exhibit 2.

4 A Right up towards the green mark.

5 Q (By Mr. Boyden) Up towards the green, the part that's
6 marked in green on Hopi Exhibit 2?

7 A Yes, sir.

8 Q All right. Now that direction is south.

9 COMMR. SCOTT: South and west.

10 MR. BOYDEN: Yes, south and west.

11 Q (By Mr. Boyden) Now tell us of the names of the
12 places where you herded these cattle, names of places, country?

13 A Dilkon, Coyote Springs.

14 Q Dilkon is in the gray on Hopi Exhibit 2, directly
15 south of Polacca, and Dilkon on the Navaho wall map (Navaho
16 Exhibit 510) is in H-6.

17 Q (By Mr. Boyden) Now where else did you say? How
18 far down south did you go?

19 A Clear down to Eagle Springs.

20 MR. LITTELL: Excuse me just a minute, what was that
21 second point?

22 MR. TIBBALS: Coyote Springs would be up in H-5
23 (Navaho Exhibit 510).

24 MR. LITTELL: Coyote Springs?

25 MR. TIBBALS: Yes. It's really right on the boundary,

1 if I may make a statement to Mr. Littell, right on the boundary
2 between H-5 and G-5 (Navaho Exhibit 510). It's so close there
3 it's just hard to tell where it is.

4 Q (By Mr. Boyden) All right. Now the last place you
5 named?

6 A Eagle Spring, that's as far as we went.

7 Q Is that south of Chandler Springs?

8 A Yes, south. It's right on the rim that old road to
9 Winslow, right on the rim there, that Eagle Springs.

10 MR. BOYDEN: That would be in quad 6 very near the
11 line between G and H (Navaho Exhibit 510).

12 MR. LITTELL: Mr. Boyden, could I ask that you step
13 back when you point so that I can see? I see. G-6 did you
14 say?

15 MR. BOYDEN: It's about on the line G and H (Navaho
16 Exhibit 510). It isn't on the map so it's difficult to tell
17 which.

18 MR. LITTELL: South line of the Executive Order?

19 MR. BOYDEN: Below the Executive Order quite a ways.

20 COMMR. SCOTT: G and H-6 (Navaho Exhibit 510)?

21 MR. BOYDEN: Yes.

22 Q (By Mr. Boyden) Now did you get over as far as Leupp
23 with your cattle?

24 A No, I didn't went that far, that far and on below
25 there to east of Bird Spring.

1 Q East of Bird Springs?

2 A Yes.

3 Q Now where is Bird Springs?

4 A East of Leupp.

5 MR. LITTELL: Does he mean west?

6 MR. BOYDEN: No, he means east. East of Leupp
7 beneath the ring there. That would be in quad G-6 (Navaho
8 Exhibit 510).

9 Q (By Mr. Boyden) Were you running those cattle alone
10 or with someone else?

11 A Yes, I run not alone.

12 Q What other Hopi Indians ran cattle in that area?

13 A George Lomayesva.

14 Q He ran them there in 1917 and '18 while you were
15 there?

16 A '18, '19, yes.

17 Q Did you change that to '19?

18 A I was with George Lomayesva in '19. I ran Albert
19 Naha's cattle '17 and '18, and then I switched to George
20 Lomayesva.

21 Q Now that was in '19 then?

22 A '19 and '20.

23 Q So when you were with Albert Naha it was between '17
24 and '18?

25 A Yes, sir, one year.

1 Q Just one year however?

2 A Yes, sir.

3 Q And then you ran for George Lomayesva in '19 and '20?

4 A I started with Lomayesva from '19 up to when I was
5 older to run my own. I stayed with him quite a while.

6 Q Now when did you start to run your own?

7 A In 1921.

8 Q And you stayed with George until '21?

9 A Yes.

10 Q Now where did you run for George, in what territory?

11 A Down around in Red Lake.

12 MR. BOYDEN: Now let's see, Red Lake is in G-6 (Navaho
13 Exhibit 510).

14 A And then up to Muencovi, that's -- Muencovi is --

15 Q That's up in the Executive Order Reservation in
16 5-G (Navaho Exhibit 510).

17 MR. LITTELL: That's just off the Dinnebito Wash,
18 isn't it?

19 A Right in that wash.

20 MR. LITTELL: Right in Dinnebito Wash?

21 A Yes.

22 Q (By Mr. Boyden) Then how far south did you go with
23 this cattle?

24 A Well, chase some of them clear down to that Grand
25 Falls, about a mile east of Grand Falls.

1 Q Just a mile east of Grand Falls. That is in the green
2 area G on Hopi 2, and is in 6-F on the Navaho wall map (Navaho
3 Exhibit 510).

4 Now in herding these cattle did you drive them to the
5 places you wanted or did you put them out and allow them to
6 drift?

7 A They drift away for water.

8 Q And then you would follow them?

9 A I follow them and kept track of them.

10 Q And does that pretty well cover the territory that
11 George's cattle covered?

12 A Yes, sir.

13 Q How far out east did they go?

14 A They went as far as Low Mountain.

15 Q As far as Low Mountain?

16 A Yes, and up on.

17 MR. BOYDEN: That's in the northeast corner of H-5
18 (Navaho Exhibit 510).

19 MR. LITTELL: Sorry, I will have to stop, I didn't get
20 that last answer.

21 (Whereupon, the last question and answer were read
22 by the reporter.)

23 Q (By Mr. Boyden) Did they water at Channel Springs?

24 A Yes, sir.

25 Q Is it Channel or Chandler?

1 A Channel.

2 MR. BOYDEN: That's in G-6 (Navaho Exhibit 510).

3 Q (By Mr. Boyden) When you ran cattle for George, was
4 it just his cattle or were there other Hopi cattle run with
5 them?

6 A Later we had just his cattle with them -- his, I
7 married his daughter out there.

8 Q But when you first started with George it was his
9 cattle alone?

10 A Yes.

11 Q All right. Now when you started to run your cattle,
12 where did you run them?

13 A Above Echo Canyon.

14 MR. BOYDEN: That's in H-4, is it not, Echo Canyon?
15 No, H-5 (Navaho Exhibit 510).

16 Q (By Mr. Boyden) All right, how far out did you get
17 with your cattle?

18 A We didn't let them go down south of that, we hold
19 them there.

20 Q I see. Did you run them out east from Echo Canyon?

21 A We didn't run them up there but they stray up towards
22 above Cow Springs.

23 Q Up above Cow Springs?

24 A Yes, they stray up there.

25

1 MR. BOYDEN: That's in G-4 (Navaho Exhibit 510).

2 Q (By Mr. Boyden) Now during the time that you were
3 herding the cattle for Albert and George, in the areas marked
4 O and G in gray and green on Hopi map 2, did you encounter
5 Navaho sheep or cattle in that area?

6 A Just up south of ^{I Dilkon} Delcon. I didn't went over there
7 to see quite a distance, there was a hogan there and sheep
8 there. I don't know how many sheep there.

9 Q And is that all the Navaho sheep that you saw there
10 during that time?

11 A No, there was one hogan at Channel Springs, that's all
12 I see up that area during that time.

13 Q Now I will ask you, Mr. Adams, whether you --

14 COMMR. SCOTT: Where would that Channel Springs be?

15 MR. BOYDEN: We have located that once here.

16 COMMR. SCOTT: Yes, that's in G-6 (Navaho Exhibit 510),
17 I have it.

18 Q (By Mr. Boyden) Did you talk with your father about
19 hunting antelope?

20 A No, we went to Winslow, I took him to Winslow with me
21 on the wagon and on the way we were having our dinner and he
22 was telling me about the place where they hunt antelopes.

23 Q Did you say where?

24 A Right in that Sinoivi, they call it, the Hopis --
25 I don't know what the white man calls it.

1 MR. TIBBALS: Ask him where it is, he can tell you.

2 Q (By Mr. Boyden) Can you tell us exactly where that
3 is?

4 A That's east of what they call that store over there,
5 east of -- I forget that store, what the name of it is.

6 Q Well, maybe we can help you here.

7 A It used to be Styles' Store, Judge Styles.

8 COMMR. SCOTT: I'd like to know whether or not his
9 father is still alive.

10 A No.

11 MR. LUNDIN: I object to the question unless he
12 states when his father -- what period his father hunted
13 antelope.

14 COMMR. SCOTT: I think it would be well.

15 MR. BOYDEN: Well, I was going to get the location
16 and the period. Does it make any difference which I do first?

17 MR. LUNDIN: Then I don't care, withdraw my objection.

18 Q (By Mr. Boyden) Let's get the location where you were.

19 A Now the first store that you come up from the badlands
20 and go around towards Dilkon, the first store you get to.

21 Q It's in the area of Dilkon then, is it? How far
22 from Dilkon?

23 A Dilkon is -- it's about 15 miles below Dilkon on that
24 wash.

25 Q Now below or above? Would it be south or north?

1 A West, west south.

2 Q West and south?

3 A Yes, and it's --

4 MR. LITTELL: Mr. Boyden, do not lead the witness
5 with your finger, let him tell you.

6 MR. BOYDEN: I'm not leading, I'm following.

7 MR. LITTELL: I want to see him tell you. He is just
8 agreeing with you right away.

9 COMMR. SCOTT: See if the witness can tell you.

10 A What's that store, name of it, Castle Buttes. East
11 of Castle Buttes.

12 Q (By Mr. Boyden) East of Castle Butte now, do you
13 mind if I point to Castle Butte?

14 COMMR. SCOTT: That's all right, he has already
15 named it.

16 MR. BOYDEN: Well, he had already named Dilkon.

17 MR. LITTELL: Now very well, I don't mind. I say
18 don't do it first, let him tell you.

19 MR. BOYDEN: I didn't do it first, that's what I
20 want to establish.

21 MR. LITTELL: I refrain from answering.

22 MR. BOYDEN: There is Castle Butte that is in the
23 area O, is it not, on the Hopi map?

24 A It's about 8 miles west of that where that mountain
25 is called Sinoivi.

1 MR. BOYDEN: All right, then that is in H-6 (Navaho
2 Exhibit 510).

3 A That's the last tall mountain that they call that
4 Sinoivi.

5 Q (By Mr. Boyden) The last tall mountain in the area
6 that you have described?

7 A Yes.

8 Q Now did your father, while you were on this trip in
9 this area, tell you where in that area he hunted?

10 A Just right north of there, right in that -- underneath
11 that mountain they used to get little antelopes, he said. I
12 wasn't a very good rider so I just go over there and get
13 those little ones, that's what he was telling me. But these
14 other people that can ride, they go in the flat and chase
15 them.

16 Q Now did he tell you when they did that?

17 A Well, he didn't say just the exact date or something
18 like that, he just say long time, not very long ago, he said.

19 Q Now did he say whether he was a boy or a man?

20 A He was a man, that's what he was, my father.

21 Q And all he said was that it was a long time ago?

22 A Not very long ago.

23 Q Not very long ago?

24 A Yes.

25 Q From the time that he talked with you?

1 A Yes.

2 Q Now when was it that you were there with him?

3 A That I can't say just exact date.

4 Q Well, just as near the year as you can tell us?

5 A 1922, I think. Yes, that's right there somewhere.

6 Q Now did you talk to him about Navahos being in the
7 area at the time they were hunting antelopes?

8 A No, I didn't say nothing about the Navahos, but he
9 told me that was before the Navahos came out here so there
10 was lot of antelopes in this area, that's what he said.

11 Q Did he tell you that he knew where the antelopes
12 watered?

13 A No.

14 Q When did your father die?

15 A He died about eleven years ago.

16 Q And how old was he when he died?

17 A I don't really know how old he was, but I think that
18 he was about 80 years old, I think. That's my guess, that's
19 what I think.

20 Q Is Byron Adams, your brother, older than you?

21 A Yes, sir.

22 Q How old is Byron now?

23 A He must be about 80 years, I don't know, but I think
24 he is about 80 years old.

25 Q Byron is about 80, and Byron is your father's son also,

1 is he not?

2 A Yes, sir.

3 MR. BOYDEN: That's all.

4 COMMR. SCOTT: Are you a brother of the Mr. Adams
5 that was here the other day?

6 MR. TIBBALS: Hale Adams?

7 A He is also my -- he is my cousin.

8 COMMR. SCOTT: He is your cousin, thank you. You may
9 cross examine.

10
11 CROSS EXAMINATION

12 BY MR. LITTELL:

13 Q Mr. Adams?

14 A Yes, sir.

15 Q How many cattle did you herd in 1917 to '18 for Albert
16 Naha?

17 A I think there were about over 600 during that time.

18 Q And did you personally have charge of 600 or was
19 Albert Naha with you or somebody else?

20 A Yes, sir.

21 Q And you had 600 --

22 COMMR. SCOTT: Was that responsive? Your question
23 was in the alternative and he said yes, sir.

24 MR. LITTELL: I beg your pardon, I was going on.

25 Q (By Mr. Littell) Did you personally herd 600?

1 That's what you meant to say, isn't it?

2 A No, not all the cattle that he owned, the cattles
3 that -- 600 of them run south of Polacca.

4 Q Did you herd them?

5 A We didn't herd them, they stray up that way.

6 Q I understand, but did you personally follow them?

7 A Yes, sir.

8 Q How often, every week?

9 A Oh, not every week. About every two weeks, I think.

10 Q And did any other Hopis go with you?

11 A Yes, sir.

12 Q Did that herd belong to several Hopis rather than
13 just Albert Naha?

14 A No, just himself, Albert.

15 Q Who were the other Hopis who went with you?

16 A Albert Baker and Preston Masa.

17 Q And did you three just go out roughly every two weeks
18 to see where they were?

19 A Yes.

20 Q And how did you find them and where did you find
21 them, pretty widely scattered?

22 A Yes, sir, pretty wide scattered right on that draw
23 from Dilkon, west from Dilkon to west.

24 Q Any other Hopis in there with cattle?

25 A Not on that area.

1 Q Did you ever bring those cattle back into the Hopi
2 villages, to your village, Polacca?

3 A Yes, we did.

4 Q When?

5 A That was in 1917 we brought them two times to Polacca,
6 but 1918 we round up 70 head down there by Judge Styles ranch.

7 Q Whose ranch?

8 A Judge Styles. He run in to -- him and Albert Naha
9 was behind his freight going after some groceries to Winslow
10 and Old Man Styles met Albert Naha on the road and he went to
11 buy those cattles off of him, 70 head we round up right in
12 there. So they talked and talked and he did sell his cattles
13 to Judge Styles. That was the time we did draw them back so
14 he sold 70 head down there.

15 Q Where is the judge's ranch, do you know roughly in
16 the area you have described?

17 A Yes, just below, west of that Coyote Springs. It's
18 between Coyote Springs and Eagle Spring, right in that draw
19 there.

20 MR. BOYDEN: Coyote Springs is H-5 and Eagle Springs
21 is G-H-6 (Navaho Exhibit 510).

22 Q (By Mr. Littell) How far scattered would you find
23 these cattle?

24 A Well, during my time when I was working for him they
25 run down to Eagle Spring and down to Bird Spring.

1 Q Yes, you said that. And you would -- you three would
2 ride around all over the range to find out where they were?

3 A Yes, we followed their tracks, of course, to find
4 them.

5 Q Yes. And you only returned them once in 1917?

6 A Two times in 1917.

7 Q Two times in 1917?

8 A Yes.

9 Q And how many in 1918?

10 A We never returned them, we sold them. Albert Naha
11 sold them down there, 70 head what we rounded up in that area.

12 Q But you only accounted for 70 to Judge Styles, what
13 did you do with the rest of the 600?

14 A They don't all go down, the rest of them were at
15 Polacca, around Talahogan.

16 Q Well, then it was only the strays that went down
17 there?

18 A Yes, the strays ^[ones] once that I'm talking about.

19 Q I see. And then it was 70 strays that you rounded
20 up and sold to Judge Styles?

21 A Yes, yes, sir.

22 Q And the main body of the herd remained at Polacca?

23 A Yes, most of them.

24 Q And at Polacca did you have a corral or a canyon
25 or something where you kept them?

1 A Yes, there is a corral at Talahogan.

2 Q A corral at Talahogan?

3 A Yes.

4 MR. LITTELL: Mr. Correll, would you put your finger
5 on Talahogan?

6 MR. CORRELL: That would be in 5-H (Navaho Exhibit
7 510).

8 MR. LITTELL: 5-H (Navaho Exhibit 510) in the
9 Executive Order area. That is on Jeddito Wash. I can't see
10 from here. Is it --

11 MR. CORRELL: Just a little west of Jeddito Wash.

12 Q (By Mr. Littell) How far would you say Talahogan
13 is from Polacca?

14 A Nine miles. *[that]*

15 Q Nine miles, and there is where Albert Naha's corral
16 was located?

17 A Yes.

18 Q And that's where the herd was centered and corraled?
19 Strike that question.

20 How often did you corral them there, or was that a
21 daily matter?

22 A They don't corral them very often, just they corral
23 them, the only time they are going to brand.

24 Q Yes.

25 A And there were so many that they wouldn't corral -- the

1 corral wouldn't hold all of them.

2 Q I understand. Now, Mr. Adams, when you go on to
3 1919 and 1921 and you describe the area over which you ran
4 cattle of George Lomayesva, is the same thing true that the
5 areas you described, namely Red Lake in G-6 (Navaho Exhibit
6 510) and Monocovi, 5-G (Navaho Exhibit 510), and the green
7 area on the map there, G (Hopi Exhibit 2) and the gray in
8 6-F (Navaho Exhibit 510), you again were gathering up strays,
9 were you not?

10 A Yes.

11 Q And where was his main herd centered?

12 A Down Cheenagahe Canyon and above Echo Canyon.

13 MR. TIBBALS: Is that Cienega Canyon, Mr. Adams?

14 MR. LITTELL: What is the name of that canyon?

15 A It's Cheenagahe what they call it.

16 Q (By Mr. Littell) Is that Navaho or Hopi name?

17 A It's a Hopi name, Looghtaga.

18 MR. TIBBALS: What is Cheenagahe?

19 A That's a Navaho name, I think.

20 Q (By Mr. Littell) Cheenagahe Canyon is a Navaho name?

21 A But Looghtaga is the name of that canyon for the
22 Hopis.

23 MR. LITTELL: Where is that, Mr. Correll, can you
24 locate it?

25 MR. CORRELL: I believe that's the same as Kesenega

1 Canyon.

2 MR. LITTELL: Does the interpreter know where it is?

3 THE INTERPRETER: That's the same canyon he's talking
4 about.

5 Q (By Mr. Littell) Would you describe the location of
6 this canyon, Mr. Adams? If you can read it on the map that
7 will be fine, otherwise just tell us what it's near. Is it
8 near Polacca?

9 A No, near Keams Canyon. It's about five miles west.

10 Q About five miles west of Keams Canyon?

11 A From the mouth of that canyon.

12 MR. CORRELL: That would be Cienega Canyon then, 5-H.

13 A It's -- the mouth is west of Keams Canyon.

14 Q (By Mr. Littell) And did he have a corral there much
15 the same as you described for Albert Naha at the other place?

16 A He never had his corral. We just round them up and
17 branding them, we just round them up and hold them some place
18 and they will stay in there, brand them that way.

19 Q And how many did he have, Mr. Adams?

20 A At the time when we separated our cattle he had 400.

21 Q He had 400, and the main part of that herd of 400 was
22 continuously around this canyon that you have described?

23 A Yes, sir.

24 Q Is that right?

25 A Yes, sir.

1 Q And when you mentioned these other territories you
2 meant that you were rounding up strays?

3 A Yes, sir.

4 Q And how many of you went out to round
5 you go alone or did you have somebody with you?

6 A I go alone most of the time.

7 Q And what would be a typical number of strays, would you
8 find 20, 30, 50, 10?

9 A Well, the farthest that I got them from, I got 18 head.

10 Q And where was that?

11 A That's near Grand Falls.

12 Q Near Grand Falls?

13 A But going on --

14 Q That's in the green area G on Hopi Exhibit 2. 6-F on
15 the wall map (Navaho Exhibit 510).

16 That's as far as you ever went to pick up strays?

17 A Yes, sir.

18 Q What would be the average number of strays you would
19 find when you went out to look?

20 A Well, we'd find more, up to 75 or 80 head.

21 Q Would you always find that many or would you sometimes
22 find only 10?

23 A Coming back on the way found most of them.

24 Q I see.

25 A But the rest of them just run up in Echo Canyon.

1 Q Yes. And sometimes when you went up for strays would
2 you find maybe 25? Did you always find 80 or 75?

3 A No, 30 or 40, just around that.

4 Q That's what I'm getting at. Would you say the average
5 number of strays that you'd gather in would be about 30 or 40,
6 would they be more nearly 25 or 50? What would you think?

7 A The average number would be about 50.

8 Q Would be about 50?

9 A Yes.

10 Q That would be your average number?

11 A Yes.

12 Q Thank you, Mr. Adams. In your testimony about the
13 hunting, did I understand you to say that you were a good
14 rider or it was your father who was a good rider?

15 A I said that my father wasn't a good rider so he usually
16 pick up the little antelopes.

17 Q Oh, I didn't --

18 A But the other people that were good riders, they
19 chased those antelopes to kill.

20 Q But that was before your day and you never participated
21 in an antelope hunt?

22 A No, sir, no, sir.

23 Q Did I understand you to say that your father had
24 hunted as late as 1922 or did he just tell you the story in
25 about 1922?

1 A He was just telling me the story.

2 Q And you personally have ridden this territory which
3 you describe for antelope hunting, have you not, in your herd-
4 ing days?

5 A No, I never went out antelope hunting.

6 Q Well, have you ridden the territory anyway in herding
7 cattle?

8 A Yes, sir, yes.

9 Q Did you ever see any antelope traps?

10 A No.

11 Q The Hopis did not use antelope traps, did they, they
12 rode them down?

13 A Yes.

14 Q They rode them down, didn't they?

15 A Yes, they have antelope traps too.

16 Q What is a Hopi antelope trap like?

17 A Just the same as Navahos.

18 Q Sir?

19 A Same as the Navahos build it.

20 Q Well, now I would like you to tell me what the Hopi
21 trap looks like?

22 A Well, if there is a low place somewhere, low place
23 like this, well, they will set the stumps or dead trees to
24 run them in, then they will have a circle made down below in
25 that lower place.

1 Q A circle of what, men driving the antelopes?

2 A No, dead trees like a corral.

3 Q I see.

4 A And then they drive them in there and that would
5 be the people that go to kill the antelopes that got in that
6 trap, they will be in there when the others drove them in.
7 That's the way they make them.

8 Q I see. Well, have you seen any of these antelope
9 traps in these areas that you have described?

10 A That's what I'm talking about, I seen it.

11 Q How many have you seen and when?

12 A Well, just the other day I see one again, last week.

13 Q Can you tell me where that one is?

14 A Right over above Echo Canyon, right in that Echo
15 Canyon and Lonely Pines, right in between there.

16 Q Will you tell us where Echo Canyon and Lonely Pines
17 are? The Navaho wall claims map, I think, would be more
18 useful to you.

19 A Right up here in here somewhere.

20 Q Is that near Polacca Wash?

21 MR. BOYDEN: 5-H (Navaho Exhibit 510).

22 A Below Keams Canyon, that would be north of Keams
23 Canyon.

24 Q (By Mr. Littell) That's just north of Keams Canyon,
25 is it in 5-H (Navaho Exhibit 510)?

1 MR. CORRELL: 5-H (Navaho Exhibit 510).

2 Q (By Mr. Littell) And did that corral look like the
3 one that you just described?

4 A Yes.

5 Q But you described a different territory when you drove
6 to Flagstaff with your father, didn't you? You described an
7 area around Dilkon about 15 miles south of Dilkon, as a matter
8 of fact?

9 A No, I didn't describe nothing of that, no antelope
10 traps.

11 Q I just misunderstood. Thank you, Mr. Adams. No
12 antelope traps down there?

13 A There is antelope there before.

14 MR. BOYDEN: He said there was no antelope traps.

15 A But I didn't describe no antelope trap down there.

16 Q (By Mr. Littell) I didn't mean to imply that you did,
17 Mr. Adams, I mean but this was the territory where you
18 described antelope hunting?

19 A Yes, sir, that's right.

20 Q Did you ever see an antelope trap down there?

21 A No.

22 Q Did your father ever tell you about an antelope trap
23 down there?

24 A No, sir.

25 Q Wasn't it true that the Hopis hunted down there on

1 horseback and ran them down?

2 A Yes, sir, by his story, according to his story.

3 Q And that was according to his story in 1922?

4 A Yes.

5 Q And according to what I understood you said this was
6 before the Navahos came. Did he ever indicate to you when
7 the Navahos were supposed to have come in his opinion into
8 that territory?

9 A No, sir; no, sir.

10 Q Did he ever tell you that he saw Navahos hunting
11 antelope?

12 A No, sir.

13 Q How do you know if you saw no traps down there that
14 the Navaho antelope traps were the same as the Hopi? The only
15 one you have seen is the one right close to Keams Canyon in
16 the -- close, relatively close to your Hopi villages. Is that
17 a Hopi trap there?

18 A Yes, one man told me that it was a Hopi trap.

19 Q But you wouldn't know yourself, would you, whether
20 that was Navaho or Hopi?

21 A Well, I didn't say that I know myself, but I said that
22 he told me that it was -- this man that I mentioned told me
23 that there was a trap there, and he said that it was a Hopi
24 trap.

25 Q And as far as you are concerned, that's what you base

1 your knowledge on?

2 A Yes.

3 Q Have you ever seen a Navaho trap?

4 A No, sir.

5 Q Then you really don't know whether Navaho antelope
6 trap is the same as the Hopi, do you?

7 A Well, I never seen it.

8 Q Very well. Is there any Hopi ceremonial practices
9 in connection with antelope hunting?

10 A Yes, sir.

11 Q Would you tell me what it is?

12 A I'm not supposed to tell, that's secret.

13 Q Well, will you tell me only the part that is not
14 secret that ceremonials are held and when they are held,
15 before the hunt or after the hunt or during the hunt, or
16 what part of it is it that you can tell which is not secret?

17 A Well, they usually hunt in October, to use their
18 ceremonies. That's what they go out and hunt for, for the
19 ceremonies.

20 Q They hunt in October or they hold the ceremonies in
21 October?

22 A You are asking me about the hunting, didn't you?

23 Q No, sir, I was asking you if there was anything
24 about the ceremonials that was not secret that you would be
25 kind enough to tell us.

1 A That's what I did. That's not secret, when they are
2 going to go out hunting. That part there is not secret, the
3 rest of it is secret.

4 Q And can you also tell me if the ceremony -- when the
5 ceremonials are held without disclosing any secret matters?

6 A In that same month.

7 Q Have you ever attended any?

8 A The ceremony?

9 Q Yes.

10 A Yes.

11 Q Antelope hunting ceremony?

12 A No, but I attend the ceremonies.

13 Q Of course. But antelope hunting ceremonies?

14 A No, sir.

15 Q Because there has been no antelope hunting in your
16 day, has there?

17 A No.

18 Q Then what you have said about it is a matter of your
19 having heard this from your father or other older people about
20 the antelope hunting days?

21 A (No answer.)

22 Q How did you get the information about ceremonials?

23 A Well, during the time when they used the antelope for
24 their ceremony they go out, but now they got sheep and cattles,
25 they use that now since there is no antelopes.

1 Q And they hold the ceremonials for the sheep and the
2 cattle then, do they?

3 A Yes, they usually, ceremony.

4 MR. LITTELL: I would like to ask this witness, with
5 counsel's permission, one general question which I think would
6 be helpful to the Court, because he is very clear minded and
7 his English is good. I'd like to ask this witness if he would
8 describe a typical day in a Hopi life, and what a Hopi like
9 himself and others does during that day.

10 COMM. SCOTT: Do you have any objection?

11 MR. BOYDEN: Yes.

12 MR. LUNDIN: Yes, sir, if your Honor please.

13 MR. BOYDEN: You go ahead.

14 MR. LUNDIN: The description of the Hopi life, while
15 no doubt very interesting, has no bearing whatsoever on the
16 issues as to where either the Hopi or the Navaho were in the
17 year 1848. I would like further to renew my objections to
18 this entire line of questions, both direct and cross, because
19 whatever the Hopis or the Navahos did in the year 1920 or
20 1918 can have no possible effect on the year 1848. In the
21 year 1868 the Navahos ceded by treaty their claims to any
22 lands outside of a reservation granted to them by that treaty
23 so that if the Navahos after that date lived or didn't live
24 in any of these areas it could have no bearing on the Navaho
25 claim, and I feel that unless counsel will indicate the bearing

1 of all these matters on the question of aboriginal title,
2 that this is so far afield, it is so stratospheric that we
3 are just sitting here and just listening to interesting
4 stories, but are not accomplishing anything with respect to
5 what the issues of the case call for.

6 **COMMR. SCOTT:** Mr. Lundin, your objections are over-
7 ruled without prejudice to your right at an appropriate time
8 to move to strike in the event counsel does not connect the
9 present testimony with the period in question, that is 1848.
10 As I understand, counsel's purpose is to develop a pattern
11 of conduct, life, the location, et cetera, which he proposes
12 to connect a trend of historical events, and therefore your
13 objection is denied. You have your right to move to strike
14 at the proper time.

15 **MR. LUNDIN:** May I ask the Court to direct counsel
16 for both the Hopi and the Navaho to indicate how it is even
17 theoretically possible to connect this type of testimony with
18 the period of approximately 1848?

19 **COMMR. SCOTT:** Well, as I understood counsel to say
20 the other day, and if my understanding is not correct, of
21 course, he can correct me. But as I understood it, it was
22 his intention, following up the exhibit which has been
23 received, of the very early period, prepared by Dr. Colton,
24 to carry on from there with historians and anthropologists
25 and archaeologists to bring in a thread of chronological

1 events which he proposes to pattern into the present
2 testimony. Now am I correct?

3 MR. LITTELL: Precisely correct.

4 MR. BOYDEN: That is correct. Now we are not in the
5 same position as the Navaho Tribe is with respect to this,
6 we have not ceded our lands and we wanted to show that the
7 relevancy of being necessary for us to continue with our use
8 of this land so long as we were not prevented, and the area
9 that we are talking about now was made a part of the Navaho
10 Reservation in 1934, so it may very well be this testimony
11 will be very important up to 1934 as far as we are concerned.

12 COMMR. SCOTT: Well, of course that's all the more
13 reason, Mr. Lundin, that your objection should be overruled
14 at this time, because counsel, of course, have a right to
15 their own contentions, so long as they are based upon their
16 petitions and do not go beyond the four corners of the
17 petitions. Now as to whether they can prove them or not, that's
18 another thing, but they have every right to their contentions,
19 and their efforts to establish those contentions through the
20 record.

21 MR. BOYDEN: I do want to interpose two objections to
22 the last question as propounded to this witness. First of
23 all it is improper cross examination. Second, it is immaterial
24 and irrelevant to the issues of this case. And third, it's
25 creating an unnecessary expense on the part of the Hopi Tribe

1 to have such general questions as to how they spend their
2 days.

3 MR. LITTELL: If the Court please, I certainly do not
4 wish to commit the latter offense. This question is
5 appropriate at least for one intelligent English speaking
6 witness, as Mr. Adams clearly is. It does connect with
7 exactly what has been testified to here, and the answer will
8 make clear the Hopi Tribe occupational practices, bearing in
9 mind the essential issue before this Court is the establish-
10 ment of exclusive dominion and control, and I think the
11 question is perfectly pertinent in view of the answers which
12 I know you will receive to the general questions on direct
13 examination.

14 MR. LUNDIN: May I enter a further objection.

15 MR. BOYDEN: I have a further one too. I would like
16 to say that this general question, is it implied that ever,
17 Hopi acts the same way every day? It's impossible to answer
18 this kind of a question, it's so general in its terms. It
19 couldn't possibly be any assistance to us.

20 MR. LUNDIN: My objection is on a different grounds.
21 Regardless, and assuming for the purposes of this discussion
22 only, that the present witness can tell about how the Hopi
23 spends his day to day, the only point at issue is how the
24 Hopi spent his day back in 1848, and until this witness is
25 qualified to testify as to how the Hopi spent his day in

1 aboriginal times it makes absolutely no difference at all as
2 to how the Hopi spends his day to day, in 1900 or 1929 or
3 any other time quite remote and quite beyond the date of
4 aboriginal title.

5 MR. LITTELL: I'm a little surprised at counsel mak-
6 ing that argument again when the Court has already answered
7 it again, and I refrain from a comment because my answer is
8 exactly the same as the Court has made.

9 MR. LUNDIN: My objection was on the basis of his
10 being an expert as to what the Hopi day is like in 1848
11 which I hadn't made before.

12 COMMR. SCOTT: May we be off the record for a moment?
13 (Discussion off the record.)

14 COMMR. SCOTT: Back on the record now. Let the
15 record show that a brief conference has been held, and in
16 view of certain statements by the witness off the record
17 counsel for the Navaho Tribe has withdrawn his question.

18 Q (By Mr. Littell) Mr. Adams, let me ask you this in
19 lieu of the withdrawn question: What did you do in between
20 the times when you were gathering up these strays over the
21 years when you herded for your first employer, Albert Naha;
22 your second employer; and then you herded for yourself. What
23 did you do in between time when you were not out on horseback
24 gathering those strays, did you go down to your farm?

25 A That's all I did, farm.

1 Q That's what you did. And isn't it true that every
2 witness that you have heard on this stand went to his farm
3 at one time or another when he wasn't involved in any kind
4 of grazing activity?

5 MR. BOYDEN: I object to that question, he obviously
6 can't answer it. How would he know what every witness did?

7 MR. LITTELL: I will reframe the question. Withdraw
8 the question.

9 COMMR. SCOTT: That will be helpful, I think, Mr.
10 Littell, if you could narrow the question.

11 Q (By Mr. Littell) Mr. Adams, are all the Hopis whom
12 you know engaged in farming?

13 MR. BOYDEN: Object to that as immaterial and not
14 proper cross examination. What difference does it make?

15 MR. LITTELL: It makes a great deal of difference.

16 COMMR. SCOTT: Well, if the witness has personal
17 knowledge I think he can answer. It may be that --

18 MR. LITTELL: I'm referring to the Hopis who are
19 residents in the villages, in any of the villages with which
20 you are acquainted.

21 COMMR. SCOTT: If he has personal knowledge it seems
22 to me that that is -- it is relevant. Now the only question
23 I had in my mind is whether or not it comes within the scope
24 of the direct examination since the direct examination was
25 confined generally to his own activities. However, this is

1 an unusual type of proceeding and I'm going to let the
2 witness answer for what it may be worth. The answer will be
3 weighed and it may have very little weight. But we are
4 going to permit him to answer that.

5 Q (By Mr. Littell) Now do you understand the question,
6 Mr. Adams? Would you like the reporter to repeat it or do
7 you understand it?

8 A Yes, I know some people during my times farm.

9 Q Now that isn't the answer to my question. I said do
10 all the Hopis that you know who reside in the villages carry
11 on farming operations? I mean, of course, the adults who are
12 of age to farm?

13 A Yes, sir.

14 Q Isn't it true that farming is the primary occupation
15 of the Hopis?

16 MR. BOYDEN: Now --

17 COMMR. SCOTT: I think that this witness has not been
18 qualified, Mr. --

19 MR. BOYDEN: This is getting so far we should have
20 been through with our witnesses long ago. This is getting
21 economic pressure that's bothering me.

22 MR. LITTELL: Well, there are a lot of things that are
23 bothering me, Mr. Boyden, with this question. I will withdraw
24 that question and ask this one:

25 Where are the farms located that the --

1 **COMMR. SCOTT:** Mr. Littell, first ask him if he has
2 any personal knowledge, and then if he says he has, ask him
3 where they are.

4 **MR. LITTELL:** Very well. I thought that was covered
5 in his answer to the last question, but I will now ask --

6 **COMMR. SCOTT:** He described in his answer there, as
7 I understood, that -- and I may be wrong -- but he said that
8 he knew of a number of Hopis who had farms. Now that was my
9 understanding of the question.

10 **MR. LITTELL:** He said all that he knew in the villages
11 farmed. That was his answer, all that he knew in any of the
12 villages farmed.

13 **Q (By Mr. Littell)** Now, Mr. Adams, where are the farms
14 of the villages of Polacca located?

15 **MR. BOYDEN:** Now I want to object again.

16 **COMMR. SCOTT:** Ask him whether he personally knows
17 where the farms are first.

18 **Q (By Mr. Littell)** Do you personally know where the
19 farms are of the Hopis residing in Polacca, in the village of
20 Polacca, for example?

21 **MR. BOYDEN:** And I'm going to object to that question
22 as immaterial and not proper cross examination. It's outside
23 of the scope. I asked him about cattle and hunting, and as
24 I say, we are taking three or four times as much time with
25 these witnesses as necessary, so that I'm going to have to

1 suspend with necessary testimony for economic reasons if we
2 don't limit it to the issues.

3 COMMR. SCOTT: Off the record just a moment.

4 (Discussion off the record.)

5 MR. LITTELL: May I answer that on the record, your
6 Honor?

7 COMMR. SCOTT: Yes, you may.

8 MR. LITTELL: May I please have your indulgence on
9 this. I will tell you why this is an essential -- these are
10 essential questions and I have confined them to one witness
11 to save time and help Mr. Boyden close testimony. The Court
12 has now seen in only five witnesses an attempt to spread this
13 grazing-herding operation over a vast territory, and I have
14 punctured that bubble with my questions --

15 MR. BOYDEN: Now may we have this argument reserved
16 for the period of argument whether he has punctured this or
17 not?

18 COMMR. SCOTT: Let's make it just as short as possible,
19 Mr. Littell.

20 MR. LITTELL: Very well. I have shown the Court to
21 eliminate all illustrative matters, illustrations such as I
22 have just stated. I have shown the Court that in each case
23 these men gathered strays, that their center of operations
24 was in the village and it's proper examination to show in
25 further refutation and rebuttal to this extended effort to

1 spread this grazing as far as he could, no matter how thinly,
2 that their center of operation is in the villages, that they
3 are farmers and that they operated these farms regularly and
4 systematically, and that the stock, even the stock was
5 centered near there without reference to straying to water
6 supplies elsewhere, so that the farming operation is at the
7 core of the whole thing and is a proper subject of cross
8 examination.

9 MR. BOYDEN: I submit that the argument that is given
10 is purely argumentative showing Mr. Littell's lack of under-
11 standing of how you herd cattle, and that's all it does.
12 Now we are perfectly willing to go into anything that's
13 legitimate, and we know that we are very broad in the accept-
14 ance of evidence in this case, but this is now a filibuster,
15 that's what it's amounting to, so that I cannot put on my
16 testimony. In these days I should have had everything on.

17 MR. LITTELL: That's an unconscioning charge in view
18 of my questioning.

19 MR. LUNDIN: Before your Honor rules on these matters
20 I respectfully urge and suggest that parties who are pursuing
21 these explain to the Commission how, assuming that their
22 contentions are to be true, how it can possibly affect the
23 issues of this case. In other words, how can the fact that
24 they herd, that the Hopis in 1920 or 1915 or 1900 herd over
25 a large or small area affect the Navaho occupancy or the Hopi

1 occupancy as of 1848.

2 **COMMR. SCOTT:** That goes to your prior objection,
3 I think.

4 **MR. LUNDIN:** Well, I think this brings it out very
5 clearly, that what they are doing, if you ask how it can --
6 if it could theoretically affect it I'd say then perhaps they
7 have something, but in no possible fashion can anything or
8 any place where the Navahos lived after 1868 when they ceded
9 their lands affect their aboriginal title.

10 **COMMR. SCOTT:** That goes, I think, to the other
11 objection, and the ruling which I made on that one will stand.
12 I think we ought to go off the record here now just for a
13 moment.

14 (Discussion off the record.)

15 **MR. LITTELL:** Back on the record. May I --

16 **COMMR. SCOTT:** Let the record first show that during
17 an off-the-record discussion counsel for the Navaho Tribe has
18 not conceded that his question is not valid, but in view of
19 the proffered testimony of certain witnesses, and in view of
20 the time element, the cost of the record, the Commission
21 believes that it would be best to pass the point at the time,
22 and that counsel for the Navaho Tribe, while not conceding
23 anything, has merely, to save time and court costs, agreed to
24 proceed to another point at this time.

25 **MR. LITTELL:** Thank you, your Honor. And may I, before

1 passing to the next question, make this brief comment in
2 reply to the Government's argument to alert the court to
3 an issue here which was never to escape our attention: He
4 says it makes no difference, this extended testimony about
5 grazing. It makes a great difference. Exclusive dominion
6 and control is the central issue of the case, and we will
7 show that in these areas over which the Hopi cattle have sought
8 to be spread, there was no --

9 MR. BOYDEN: Now, your Honor, this is no time for an
10 opening statement.

11 COMMR. SCOTT: I know Mr. Boyden is very concerned
12 about the time, but we will give him just a minute or two to
13 state it.

14 MR. LITTELL: If your Honor please, it certainly is
15 improper reply to counsel of the Government. I wish Govern-
16 ment counsel wouldn't make these objections.

17 MR. BOYDEN: May it please the Court, I am perfectly
18 willing to suspend at this time any further taking of
19 testimony of any of these witnesses and I will so suspend,
20 and I also serve notice upon counsel for the Navahos that I
21 shall move to strike all of the testimony that was taken by
22 their Indian witnesses unless they are submitted to me for
23 cross examination.

24 COMMR. SCOTT: Now may we be off the record. We will
25 have a five-minute recess at this time.

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(Short recess.)

COMR. SCOTT: We are back on the record at this time,
and let the record show that the session has recessed until
1:00 o'clock.

(Whereupon, a recess was taken from approximately
11:30 o'clock a.m. until 1:00 o'clock p.m.)

1 NOVEMBER 21, 1960, 1:00 O'CLOCK P.M.

2
3 **COMMR. SCOTT:** The Commission will be in session.
4 **Mr. Adams,** will you resume the stand.

5 **MR. LITTELL:** No further questions on cross examina-
6 tion.

7 **MR. LUNDIN:** No questions.

8 **COMMR. SCOTT:** Any redirect, Mr. Boyden?

9 **MR. BOYDEN:** No redirect.

10 **COMMR. SCOTT:** Well, is there any reason now that any
11 of you gentlemen know that this witness should not be excused
12 at this time?

13 **MR. BOYDEN:** None whatever that I know.

14 **MR. LUNDIN:** None, your Honor.

15 **MR. LITTELL:** No.

16 **COMMR. SCOTT:** You are excused, Mr. Adams. Anything
17 further, Mr. Boyden?

18 **MR. BOYDEN:** No, your Honor, we have conferred with
19 our witnesses that are present and we have determined that it
20 was not to the best interest of our case to proceed at the
21 expense that is being incurred here, and we believe that we
22 can proceed in a better fashion, and therefore don't desire
23 to put any more witnesses on at this time.

24 **COMMR. SCOTT:** Very well. I understand from what
25 you have just said then, Mr. Boyden, that you have had a

1 conference with these good people in the Hopi Tribe who are
2 present in the room, and perhaps others that are not present,
3 and they fully understand the situation and it's your desire
4 and your judgment at this time that the matter should be
5 recessed until the April 3rd session, am I right on that?

6 MR. BOYDEN: I haven't conferred with those that are
7 not present, you are not right on that part.

8 COMMR. SCOTT: I don't know whether they were all
9 here this afternoon that were here this morning.

10 MR. BOYDEN: I think they are all here, and a few
11 that weren't here this morning are here.

12 COMMR. SCOTT: Fine.

13 MR. BOYDEN: And we have nothing further that we care
14 to present by way of witnesses at this time.

15 COMMR. SCOTT: All right, now may we be off the
16 record just a moment, please.

17 (Discussion off the record.)

18 MR. BOYDEN: You, Mr. Littell, stated that of the five
19 statements that I have submitted to ^[you] him this morning, that
20 three of them were satisfactory. And that being so I would
21 like to give them numbers and arrange for their introduction.

22 MR. LITTELL: Well, we shall discuss this privately,
23 this was in expectation of your putting on 19 witnesses which
24 you told me you were going to put on, and I was trying to
25 pare them down. From the seven statements that you gave me

1 plus one draft you showed me made eight the other day.

2 MR. BOYDEN: That's correct.

3 MR. LITTELL: Which has been displaced by oral
4 testimony.

5 MR. BOYDEN: That's right.

6 MR. LITTELL: So there are now seven tendered of
7 witnesses not present in this room, and this was in the light
8 of your putting on 19, and I understand you would supply the
9 remaining eleven to see if I could accept any more of those.
10 Now in view of the fact that you are adjourning the proceed-
11 ings and are not putting on the 19, I suggest that we take
12 the whole question of a stipulation as to any statements up
13 as a separate matter.

14 MR. BOYDEN: In other words, the statement that you
15 previously made on the record that you had three that you were
16 willing to admit you are now withdrawing?

17 MR. LITTELL: I am withdrawing it for the moment.
18 You will still have my offer to accept those three when we
19 consider the balance of the testimony and what you expect to
20 do. If I may say this, your Honor, I understood Mr. Boyden's
21 statement to be that the witnesses would not be called at
22 another time except for the possibility of rebuttal of any
23 Navaho testimony. In other words, our position is that this
24 time was set aside for this hearing at very great inconvenience
25 and at very substantial cost in order that we could comply with

1 Mr. Boyden's wishes and his convenience and the convenience
2 of the Hopis, and be present at a spot convenient to him and
3 his witnesses, and this has been done. I want the record
4 to show that we stand ready to go right forward now with all
5 the testimony that should be offered, that he had expected
6 to offer, and I hope we will not be confronted, and I do not
7 expect that we will be confronted, in view of his statement,
8 with the expense of again repeating this expense in order to
9 examine these same witnesses. Is that understood or am I
10 lost now?

11 COMMR. SCOTT: I think that my understanding, having
12 conferred with my colleagues, with your knowledge and also
13 your joint participation, that in view of the physical situa-
14 tion that the Indian Claims Commission, at least during the
15 present fiscal year which ends June 30, 1961, there is little
16 possibility that we could return to this part of the country.

17 However, speaking only for myself ^[ag] and one Commissioner,
18 I would say that it would hinge, as far as my one vote would be
19 concerned, the question of whether or not these witnesses could
20 be called would hinge entirely upon whether or not at some
21 time in some fiscal year before the record is closed, the
22 Commission had occasion to come to this part of the country
23 anyway. Now in that event, so that there would be no question
24 of coming here at an expense just to receive the testimony of
25 these particular witnesses, in that event the problem would

1 not exist. But we certainly, as I understand, and I'm certain
2 that Mr. Boyden has that in mind and that it's his full under-
3 standing, that he would never ask us to come to this part of
4 the country again just for that purpose of calling these
5 particular witnesses. Am I right on that, Mr. Boyden?

6 MR. BOYDEN: You are correct, and I don't think that
7 there has been anything said from which a contrary implica-
8 tion could even be made.

9 COMMR. SCOTT: We want to make it plain, because I
10 want to make it plain that if we have to come to this part of
11 the country anyway, and if in the meantime Mr. Boyden finds
12 that it would be desirable to have these witnesses, personally
13 it would be all right with me, but I wouldn't want to come
14 back here just for that purpose.

15 MR. LUNDIN: If your Honor please, the defendant
16 wishes to express his views on the record concerning this
17 problem. The defendant joins with Mr. Littell and Mr. Boyden
18 with respect to a special trip of the Commission to hear Hopi
19 witnesses, but the defendant feels in its own interest that
20 nothing should be stated in the record which would preclude
21 Hopi witnesses being called in the event the Commission is
22 in this part of the country for other purposes, and the
23 Commission or any of the parties to this proceeding feels
24 their presence and testimony might be necessary, or in the
25 event depositions are taken in this part of the country without

1 the presence of the Commission and the Hopi witnesses might
2 add something to the case at the time those depositions are
3 taken.

4 **COMMR. SCOTT:** Yes, Mr. Lundin, I thank you for mak-
5 ing a very clear statement of my feeling, which is yours,
6 and I might also add that in the event Mr. Boyden thinks it's
7 possible to bring any of these witnesses to Washington during
8 the April 3rd hearing, personally I would be glad to hear
9 them.

10 In other words, I want the record to show, at least
11 as far as the Commission is concerned, it's a physical
12 matter, and that we would want at any time to make it certain
13 that these Indians would have their day in court.

14 Now I think unless there is something further at this
15 time -- is there anything further now that should be off the
16 record?

17 **MR. LITTELL:** I'd only like to clarify this point,
18 your Honor. It has been stated here by Mr. Boyden before
19 it adjourned, and again over the phone of the other two
20 Commissioners, that in view of the way things were going he
21 wished to abandon or not put on, abandon this group that he
22 expected to put on. And some very critical statements were
23 made about my cross examination extending the hearing. I
24 wish to make it quite clear that five witnesses in two and
25 a half days of time in court with cross examination on all

1 subjects is excellent time in Indian Affairs.

2 MR. BOYDEN: Could this be off the record?

3 MR. LITTELL: No, just a minute, no, yours was on
4 the record. I'm sorry yours was on the record.

5 MR. BOYDEN: This is nothing but argument.

6 MR. LITTELL: This will just take a minute, I'm
7 through. I want it on the record. These critical statements
8 were made on the record as well as on the phone. I say that
9 five witnesses in two and a half days is excellent travel
10 time with interpretation and cross examination, and there is
11 no responsibility on my part for Mr. Boyden's decision to
12 abandon the offer of proof.

13 MR. BOYDEN: Now I want the record also to show that
14 I certainly do not agree with the statement as to what has
15 happened as Mr. Littell has put it in the record. The record
16 will show what it shows, and the Commission knows what was
17 said on the telephone call, all three of the Commissioners
18 do, and therefore I just want this record not to be changed
19 in any way.

20 COMMR. SCOTT: Thank you. May we be off the record
21 just a moment.

22 (Discussion off the record.)

23 COMMR. SCOTT: Back on the record. Let the record
24 show that counsel and myself have briefly conferred, and that
25 the matter may now be adjourned or recessed until the next

1 session of April the 3rd, 1961.

2 Let the record also show that all counsel present
3 have indicated that this date will be held, but that if for
4 some unforeseen physical reason any one of them finds it
5 impossible, they will notify the Commission promptly, in
6 view of the fact that they understand that the Commission
7 has held a conference with attorneys in Indian claims
8 cases and has set up rather firm dates for a three year
9 trial date schedule. We therefore will at this time be
10 recessed until April 3rd, 1961, and unless otherwise in the
11 meantime specified, in the hearing room of the Indian Claims
12 Commission in Washington in dockets 196 and 229 indicated
13 by the calendar that this will take approximately three weeks,
14 and that it will be followed by the trial of docket 91 of the
15 Havasupai Tribe on April 17th.

16 The hearing is now recessed.

17
18 (Whereupon, the hearing came to a close at
19 approximately 1:30 o'clock p.m.)
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