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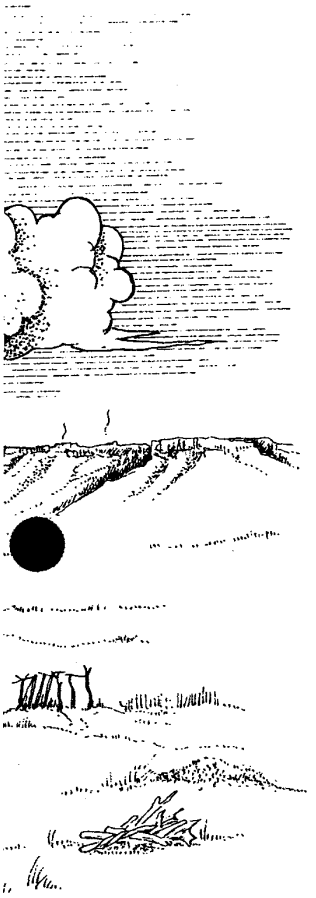

THE NAVAJO-HOPI LAND DISPUTE

An American Tragedy

DAVID M. BRUGGE

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PRESCOTT

The Hopi by reason of living within one of the most spectacular parts of the country, which is in the direct path of the tourist, and by reason of retaining sufficient of his ancient customs to vividly illustrate a bygone age; and by reason of his picturesque community life, has a tremendous appeal to the travelling public. He is approachable, and recognizes the possible advantages to result from enlisting a sympathetic intervention of outside influence. The traveler listens, is duly impressed, and accepts as conclusive the statements thus prepared for his consumption. He has neither time nor interest to investigate them, but acting upon his unchallenged information he enlists his activities on their behalf. The Navajo does not have those Hopi characteristics. He is somewhat nomadic, self-reliant, neither seeking nor desiring sympathy. He is somewhat unapproachable and quite unresponsive to the advance of the curious. Hence he is branded by the Hopi as an aggressor, seizing his every opportunity to encroach upon the Hopi, and true to his Navajo characteristics he makes no effort to deny or to counterbalance the outside bathos which is being cleverly capitalized by the Hopi.

SO WROTE BIA field representative H. H. Fiske in 1930.[1]

The romance of Hopi life is nowhere in the white world celebrated with greater fervor than in the town of Prescott, Arizona, where the renowned Smoki group until 1991 annually performed the Hopi snake dance with an attention to authentic representation that even some Hopis might envy. There can be no doubt as to which side had the sympathies of the local populace that September of 1960 when contingents from both sides in the land dispute arrived for a showdown in court. The Hopis were viewed as the home team.

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Our crew had reservations at the Hassayampa Hotel, an old but well-maintained inn near the center of town. In addition to the attorneys and researchers, we had interpreters, tribal and BIA officials, and some support staff coming and going as needed. The hearing began on Monday, September 26. The legal professionals were to be much the same as before. Judges Frederick G. Hamley, Leon R. Yankwich, and James A. Walsh presided. Attorney Mary Anne Reimann, seated off in a corner, was basically an observer for the Justice Department, seldom taking part in the hearings. John S. Boyden, Allan H. Tibbals, and Bryant H. Croft were again there to present the Hopi case. On the Navajo side, Norman M. Littell and Joseph F. McPherson were again present, and Walter F. Wolf, Jr., a young attorney from Window Rock, joined them.

Lee Correll, Dave De Harport, and I had our exhibits well organized. Dr. Hammond's final set of three volumes of documents, mostly from the National Archives, was being sent at the time. We had been working overtime to have all in readiness, but were filled with anticipation. The night before, I had found in my hotel room not only the *Gideon Bible*, but a *Book of Mormon*, as was usual in hotel and motel rooms throughout the Southwest at that time. As the Hopis' attorneys were known to be Mormons, I attempted the traditional practice of randomly opening the Mormon volume, out of curiosity. I was rewarded with a long text berating lawyers as avaricious hypocrites and fell asleep wondering how a Mormon attorney rationalized this passage in the sacred book of his religion.

The next morning Littell was the first to present his opening statement. He reviewed briefly the history of the dispute, using a map with transparent overlays which Lee had prepared to show each of the recommended boundaries that had appeared in the documents found by the historians. Lee assisted by pointing out map locations as Littell mentioned them. Not having been involved in the pretrial conferences, neither Lee nor I were alert to the significance of the comments by Judges Yankwich and Hamley regarding joint-interest situations. Littell, in fact, virtually ignored that possibility. Rather he described five possible solutions, each involving distinct boundaries separating Navajo and Hopi lands. The first of these was based on the history, archeology, and Navajo tradition that we would be presenting; the others were based on the legal construction that might be given to the Hopi

Constitution, the 1936 and 1943 District 6 boundaries, and the Page-Rachford proposal of 1939.[2]

Boyden followed with his opening statement. He was a tall man who looked somewhat like a minister. This resemblance was perhaps based as much on his manner of speaking as on his physical appearance, however. He relied heavily on oratorical ability and had a melodramatic style in court that made me think of an old-time preacher. He worked to make the Hopis appear as impoverished saints and the Navajos as nomadic aggressors. Boyden made repeated reference to Navajo "depredations," for example, expounding on Navajo "aggression and encroachment" upon the "quiet and peaceful" Hopis. His strong appeal to emotion rather than reason aroused in me an instant dislike for the man, as I had early in my childhood learned to favor logic over rhetoric.

He sometimes outdid himself. When he piously asserted that in choosing extracts from the documents used as exhibits the Hopi side had tried to be impartial, Judge Yankwich, who could never resist an opportunity to interrupt, asked whether or not he was an advocate. Boyden replied, "I appreciate that we may unconsciously do what your honor says, but . . . we had in our hearts the idea to put in everything that was pertinent. . . ."

Boyden's opening statement continued on the following morning, Wednesday, the twenty-eighth. As Littell had done, he listed the alternatives which he believed were open to the court in making its decision. His first proposed solution, as might be expected, was that the entire 1882 Reservation be awarded to the Hopi Tribe. His second possibility was that should any Navajos be found to have been settled on the 1882 Executive Order Reservation, they would individually share co-extensively in the settlement with the Hopi Tribe because the case was a quiet title suit. His final alternative (and one he was most reluctant to make) was that if it should be found that any individual Navajos had exclusive interest in any area, then that "might be converted to a tribal interest," but he believed that this was not the case.[3]

Following the opening statements, Lee led off as the first witness for the Navajos. In his direct testimony he presented his qualifications, outlined the field work we had done, and described our results. A portion of Boyden's cross-examination was aimed at elucidating in greater detail what we had

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done and how we had done it, but he also tried to nit-pick where he thought he could show bias. He objected to the word "Navajo" appearing on one of our maps within the 1882 reservation, for example. Lee pointed out that it was there as the county name, not the reservation name.

Boyden also asked questions designed to insinuate that the Navajos were an immoral people. He asked how the Navajos handled divorce, something that really had little to do with the issues before the court. Lee explained the traditional Navajo custom of the woman placing her husband's belongings outside the door while he was away, an indication that he was not welcome back inside the home. We had been so busy learning about Navajo culture and archeology that we had not done enough reading on the Hopis to know that their customary divorce method was the same. Judge Yankwich, at least, was quick to understand what Boyden was doing. When Boyden asked Lee about Navajo polygamy, the judge asked about Mormon polygamy.[4]

I knew Lee well and was uncomfortably aware of the stress he endured under the lengthy cross-examination. His slightest slip was painfully apparent to me, but he made very few, and these in inconsequential matters. A friend, another archeologist who was present as an advisor for the Hopis' attorneys, later told me how impressed he was with Lee's composure on the stand. There could be little doubt that Lee had succeeded in his explanation of what we had learned and what it meant in terms of early Navajo occupancy of the contested lands.

The second witness for the Navajos was Gordon B. Page, the man who had worked on so many surveys in the region in the 1930s for the Soil Conservation Service and who had made recommendations for a boundary between the two tribes in 1939. In 1940 he had entered the army as an officer and had eventually risen to the rank of colonel in the military's nuclear power program. He had retired from the service and continued to perform the same duties as a civilian employee of the army, living in Washington, D.C. Page was gruff and hearty, a living stereotype of a competent and no-nonsense military man. He described in a straightforward way the work that he had done before World War II and supported in personal testimony the reports that he had written. Boyden did not make a strong effort to discredit Page's testimony in cross-examination, apparently relying on the Hopi contention that use and occupation of the land were irrelevant in the case.[5]

Thursday's testimony began with Terah L. Smiley of the University of Arizona, whose supervision of the tree-ring dating made him the essential witness for gaining acceptance of the procedure in court. McPherson conducted the direct examination and it went very smoothly, being a lucid scientific explanation of the theory behind the work and the way in which it was done. Smiley's presentation provided an account of the biology of tree-ring growth and the techniques used to correlate tree-rings with calendar years. Boyden did not seriously challenge the validity of Smiley's conclusions, although he did cross-examine him.[6]

A large number of the elderly Navajos who had been interviewed in Window Rock came to Prescott to give testimony concerning their own lives in the Executive Order Reservation. A camp was set up for them at a Forest Service campground south of town, and Navajo women were hired to provide the elders with the foods to which they were accustomed. All the elders were very traditional in their outlook, and several were medicine men. On the trip to Prescott they had stopped at several places to pray, and they had held a special service at the point where Prescott first came into view. In camp one night they performed a divination ritual in which a spider was to entwine an object representing the enemy. The spider was reported to have performed as desired, a favorable omen. All in all it was a great reunion for the singers, who spent much of their free time discussing religion, illustrating their points by chanting bits of the sacred songs, much as a Christian might quote a passage of scripture to support an argument.

The elders' testimony followed Boyden's cross-examination of Smiley. Ned Hatathli, a young and very bright Navajo tribal administrator, was sworn in as interpreter. A Bureau of Indian Affairs interpreter had been scheduled to do the job, but had not yet arrived. Hatathli was a veteran of World War II, spoke excellent English as well as Navajo, and had himself been born in the 1882 Reservation, but on its western edge. Maxwell Yazzie helped locate places on the map when they were named in Navajo. I assisted by writing Navajo place names and personal names according to the Young and Morgan orthography for the court reporters.[7] This was not as easy a job as it seemed, for there was seldom a chance to have a name repeated. I also discovered later that the reporters had difficulty distinguishing my bar-l symbol (ɬ) from a "t". Consequently, there were a number of errors in the transcript. Nevertheless, this spelling of Navajo names made them far

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easier to identify than they would have been if someone unfamiliar with the language had tried to write the words as they thought they sounded. The method also provided greater consistency in spelling, so that a person named by one witness could be more reliably identified in the testimony of others.

James Cook, the first Navajo witness, was seventy-seven years old and had lived all his life on the Executive Order Reservation. In response to questions by Littell, he told of being born south of Keams Canyon about three miles from the school, and of living for the past fifty-eight years at Rat Springs, north of Low Mountain.[8]

The second Navajo witness was Joe Kabinto, one of the few Navajos still living inside District 6, the Hopi land management district. Then seventy-nine years old, he had a white mustache that drooped on the ends, which gave him a slightly Oriental appearance. Living as he did on land under Hopi jurisdiction, he was obviously risking possible retaliation for his testimony, but he felt that he had good relations with his Hopi neighbors and probably did not anticipate any repercussions. He had been born at Noisy Springs, outside of District 6, but at age fifteen had begun working for Tom Pavatea, a Hopi who owned considerable livestock. Kabinto had spent much of his adult life caring for Pavatea's sheep and cattle. He named the heads of thirteen Navajo families that had been driven out of District 6, as well as several early Navajo headmen who had lived within the Executive Order Reservation.[9]

Subsequent testimony by others on Friday elaborated on the travails of Navajos who had been forced to move when District 6 was first established in 1936–1937 and then expanded in 1943. David Bitsillie told of families that had been uprooted twice.[10] David Benally and his wife both testified. Mrs. Benally told of having to relinquish her grazing permit when she had been forced to move. She had not been issued a new permit after settling in District 7 and subsequently had been jailed for "trespass," the BIA euphemism for grazing without a permit.[11] John Reed and John Tsosie Nez, both of whom had worked with us as guides, also testified that day.[12]

Several newspapers carried stories on the hearing. The *Arizona Republic* in Phoenix provided the most detailed coverage, although it was also probably the most one-sided. In the story published on Thursday, September 29, Bill Nixon wrote, "Page's testimony was about as effective as a B-B gun. He admitted that he couldn't see what effect his testimony could have on the

trial."[13] Nixon was a bit more subtle in his story for Friday's paper. I took offense when I read his story for Saturday's paper, however, in which he called Nez a "skinny 82-year old" who "had to stretch his memory to recall that particular Navajo farming area near Jeddito Wash," for I had grown to like and respect the old man.[14] I hoped that Nixon's conclusions were not shared by the judges, for I recognized that my own reactions to the testimony were influenced by having worked with many of the witnesses and having come to know them on a personal level.

After the weekend recess, John Tsosie Nez's direct examination continued on Monday morning (October 3), but he had to sit waiting on the witness stand while Littell and Boyden thrashed out an agreement before the judges to omit expert testimony by historians on both sides. Dr. Hammond had been advised by his doctor not to travel to higher elevations because of a heart condition, which meant that the court would have had to convene in California close to sea level if it were to take his testimony. With Boyden's stipulation that he would not call Dr. Lyman Tyler, a historian at Brigham Young University, and that he would restrict the testimony of Dr. Harold S. Colton of the Museum of Northern Arizona to matters concerning archeology and ethnology relating to Anasazi sites, it was then possible to avoid a separate California session to accommodate Dr. Hammond.[15]

Following this, Nez testified concerning the eviction of Navajos from District 6. In view of his qualifications as a medicine man, he also testified about ceremonial use of Hopi pottery by the Navajos. Boyden, in cross-examination, dwelt on Hopi use of the Jeddito Valley and Navajo livestock trespass into District 6.[16]

Emil Kanuho of Comar Spring was the next witness. He brought the original of the 1890s document that I had copied in the field, and it was admitted as an exhibit. He was one of the younger Navajo witnesses, being only fifty-six, but as the current holder of the letter protecting his family's right to live at Comar Spring, he had solid documentation of their continuity at that place. He even brought a photograph of his father, who was mentioned in the letter.[17]

The order for the calling of Navajo witnesses, whether intentional or otherwise, followed the clockwise circuit of Navajo ritual. Comar Spring is due south of the Hopi villages. The next few witnesses were from the southwestern quarter of the disputed area. George Nells testified as to occupancy in

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the Tovar Mesa area.[18] He was followed by Slow Horse from Shonto Springs on the lower Oraibi Wash, who was still on the stand at the end of the day.[19] He returned to complete his testimony the next morning. On cross-examination Boyden quizzed him about a Hopi horse which Boyden was later to imply through Hopi testimony had been stolen by Slow Horse.

The next witness on Tuesday was Ashiihii Ts'osie, or Slim Salt, who had lived at Burro Spring until the 1943 expansion of District 6, when he settled at Kachina Point. He had lost a farm at Burro Spring because the new boundary cut right through it. Boyden, on cross-examination, asked how Kachina Point got its name. This, of course, was a puzzle to Slim Salt, who knew little if any English, but Judge Yankwich broke in to explain that *kachina* was the Spanish word for kitchen. Ned Hatathli was interpreting and gave the Navajo name as *Alchíndabaasnaatani*. The resulting trilingual confusion was never resolved.[20]

Boyden's sensitivity to linguistic complications was very limited despite his long service as counsel for the Hopi Tribe, perhaps because most Hopis already spoke passable English by the time he arrived on the scene. Dealing with the progressive pro-Council faction, he probably seldom had reason to converse with any Hopis who did not speak very good English. I suspect that he honestly believed that all of the old Navajos could have testified in English if they had wanted to do so. He had a Hopi who understood Navajo present to check on our interpreters. He eventually objected so strenuously to the quality of interpretation by the BIA interpreter that the Navajos' attorneys ceased using him. This actually solved a problem for us, since his interpreting was causing rampant misunderstandings, yet we had lacked firm grounds for dismissing him. On the other hand, Ned Hatathli was a superior interpreter who could bridge the great differences between English and Navajo with accuracy and artistry, often rendering complex Navajo phrases into eloquent English, and I have no doubt, turning abstruse English into good colloquial Navajo. Hatathli helped Judge Hamley as interpreter for local cases involving Navajos in the mornings before our sessions began, and the court reporters told me that he was the best interpreter from whom they had ever taken dictation.

Lester Benally followed Ashiihii Ts'osie. A mere fifty years old, he had been born on Padilla Mesa. Benally was barely into his testimony when Littell asked permission to excuse him temporarily so that a ninety-year-old

woman who could not stay long in Prescott could be put on the stand. Asdzaan Tsedeshkidni was introduced as Hatathli's grandmother, although in actuality she must have been his great-grandmother. She was born at Tonalea, but at the age of about twenty had moved to the Howell Mesa area. Her family had ranged their sheep eastward across the Dinnebito to a place called variously Beautiful Mountain or Beautiful Mesa until, as Hatathli translated it, they "heard the rumble of the Hopi hoes." When the Hopis began to farm around Beautiful Mesa, the Navajo family no longer grazed their sheep around the site and retired permanently to the west side of the Dinnebito.[21] Next, McPherson presented Asdzaan Tsedeshkidni's seventy-three-year-old daughter, Lillie Sonnie, whose testimony corroborated that of her mother.[22] Boyden declined to cross-examine either of these women.

Lester Benally then returned to the stand to complete his testimony. He described the expulsion of the Navajos from the expanded District 6 in 1943, noting that one Navajo whom he knew had been arrested for not moving on two-day's notice. A singer, he also told of shrines on Tovar Mesa, where prayers and offerings were made for building antelope traps, for disposing of old medicine bundles, and for making new ones.[23]

On Wednesday, October 5, Yellow Hair Bedoni, a brother of Lillie Sonnie, testified about early occupancy on Howell Mesa and conflicts with Hopis over a Navajo-built dam.[24] Scott Preston, vice-chairman of the Navajo Tribe, was the next witness. Littell conducted his examination. His testimony took up the rest of Wednesday and resumed Thursday morning. Preston's father had been a white trader who had apparently taken little interest in his son, for Preston had a strong distrust of whites, bordering on an active dislike. At age sixty-one he was a well-regarded medicine man who was extremely knowledgeable in Navajo traditional culture. He listed a great number of Navajos by name who had lived in the 1882 Reservation, described Navajo lifeways, eagle hunting, trade for Hopi pottery, and the gathering and use of herbs. Although he could speak and understand English, his skill with the language was distinctly that of a non-native speaker, and he preferred to testify in Navajo. Much of what he talked about required a good command of classical Navajo, in which he could express himself with confidence. Boyden, on cross-examination, challenged Preston's decision to speak through an interpreter. Preston replied that this would help them avoid arguing, but in that respect he was in error, for the two men were soon deep

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into extended quibbling over such semantic technicalities as the difference between a road and a trail. It is unfortunate that Preston allowed himself to be drawn into these petty disagreements. I do not believe that Boyden intended to undermine Preston's testimony in quite that way, but his condescending attitude, which Preston was too keen an observer to have missed, plus his lack of patience with the slow process of interpretation, led to a clash of personalities that did ultimately erode to some degree Preston's credibility.[25]

The next witness was Jacal Baadaanee, a portly and dignified medicine man, who testified in response to McPherson's questions about Navajo occupation in the Blue Canyon region.[26] He was followed by Oscar Yonnie from Hardrock, who told of having to move out of District 6 both in 1937 and 1943.[27] Hastiin Bedoni told of helping to build the Dinnebito Diversion Dam. He said that Paul Jones, then District 4 supervisor for the BIA, had told them that the dam was to be for Navajo use. He also reported that while he still planted a field inside District 6, he had to live outside.[28] The last witness of the day was Moses Dijoli from above Hardrock on the Oraibi Wash. His testimony suffered such confusion in translation that it was agreed the next day that a written statement would also be submitted.[29]

The story on Friday morning in the *Arizona Republic* emphasized the slow pace of the proceedings, observing that the "use of an interpreter has slowed the trial to a walk," and adding,

> During the trial, interpreters have been used in virtually all testimony, even from those Navajos who speak good English. The translations have consumed considerable time.[30]

At this time the attorneys for the two sides were exploring the possibility of a stipulation that would permit the introduction of written statements by other older Navajos waiting to testify. While this was being negotiated outside the courtroom, Littell began to call some of his other witnesses.

The first witness on Friday morning was Paul A. Krause, Navajo Agency range conservationist, who testified as to how the grazing regulations worked. He also qualified for admittance as exhibits copies of various grazing records, including lists of permittees and their livestock holdings, and a

map showing the areas of responsibility of the different grazing committees for each grazing district which overlapped a portion of the 1882 Reservation. The grazing districts had been laid out according to natural boundaries on the landscape rather than with regard to the arbitrary boundaries created by of the various executive orders. With the assistance of the grazing committee members, Krause was able to tell how many permittees ran livestock inside the disputed area, giving his totals as 991 Navajo permittees, who were allowed to graze 71,172 sheep units and who actually owned 78,285 sheep units as of the most recent count.[31] He also explained that the grazing permits merely specified the grazing district to which they applied. Each family controlled what was called a "traditional use area," and local recognition preserved these land-use rights. Unfortunately, neither the Navajos' nor the Hopis' attorneys brought out clearly the nature of these rights. The legal theory of the Navajos' attorneys that *tribal* use and occupancy was the relevant variable prevented them from seeing the importance of this information. Boyden, for his part, was more interested in showing the limits of Krause's information and in trying to show that the Navajos were villainous people.[32]

Krause was followed by Maurice McCabe, another of the up-and-coming, young, well-educated Navajos. He held the position of Navajo tribal executive secretary, a post that ranked second only to that of chairman in terms of political power. He had overseen the tribal emergency grain-feed distribution program in 1956. He had planned to show from the records of that program where Navajos had lived within the 1882 Executive Order Reservation at that time, but Boyden successfully objected to the exhibits he had prepared.[33]

Next came Clarence Ashby, assistant general superintendent in charge of community services for the BIA at Window Rock. He was well into explaining the BIA school census when the court recessed for the weekend. On Monday, October 10, morning he resumed his description. The school census mapped Navajo home locations hogan by hogan, making it possible to predict where new schools were needed, where school bus routes should be located, and the size of the coming year's enrollments in each school. The Indian Health Service (IHS), a branch of the U.S. Public Health Service, as well as the public school districts also relied on this census data. By projecting the 1882 Reservation boundaries on the census map, it was possible

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for Ashby to calculate that the Navajo population of the disputed area was about 8,252, including 2,928 school-age children.[34]

Robert W. Young, assistant to the general superintendent of the Navajo Agency and the leading authority on the Navajo language, was then called to testify on his population studies of the Navajo Tribe. Young's testimony was necessary primarily to provide two figures. The first, the percentage of the population that was of school-age, he estimated as between 34.74 and 35.5 percent. The second, the annual growth rate of the tribal population, he gave as 2.25 percent.[35] These helped to put the figures given by Ashby into better context.

Next came Remi Van Compernolle, director of the administration division of the Navajo Tribe, to identify the seven trading posts within the 1882 Reservation that were operating under Navajo leases. Boyden cross-examined as to whether the trading leases specified that the posts were inside the 1882 Reservation area, which, of course, they did not. Boyden also introduced into evidence a letter requiring that all rent moneys from the disputed lands be held in escrow. Van Compernolle stated that he had never seen the letter and said that all rents went into the tribal general fund.[36]

The last witness of the day was Edward O. Plummer, youthful head of the Navajo Tribe's Land Investigations Department. He was the son of Ned Plummer, one of the more influential members of the tribal council, and son-in-law of Annie Wauneka, long the only woman on the council. He had been educated at the Methodist mission school in Farmington and was another of the more promising young Navajo leaders of that time. His testimony was necessary in order to introduce into evidence a map of the locations of the trading posts listed by Van Compernolle. He was the last to testify on behalf of the Navajos before Littell rested the Tribe's initial presentation.[37]

Following this, Littell and Boyden agreed before the judges to the introduction of a number of written statements in lieu of testimony by several Navajo elders. The statements of Moses Dijoli, Tsinnajinni Nez, John Rockbridge, Bizaholoni Bikis, and Hastiin Keshgoli Begay Adikai were admitted at this time. All were concerned with further details of Navajo use and occupancy within the 1882 Reservation.

The Hopis began the presentation of their case on Tuesday morning. We then had to begin work on materials for rebuttal, and we were much busier than before.

The first witness for the Hopis was Charles Pitrat, land operations officer for the Hopi Agency. He began by presenting a vegetation map of the disputed lands, which he used to indicate the locations of Hopi farms and wood-gathering areas.

Pitrat followed this presentation with a map of places where Hopis collected plants. As an aid to his description of Hopi plant use, he brought into court more than ninety herbarium sheets on which were mounted wild plants said to be used by the Hopis for a variety of purposes. The plant specimens were from the BIA herbarium at Keams Canyon and were not intended to be exhibits, but merely to help illustrate Pitrat's method of acquiring data. He had earlier placed the sheets all around a room to which he had invited older Hopis. They had told him which plants they recognized, to what use these were put, and from which locations they were generally gathered. Pitrat had combined this information with that found in Alfred F. Whiting's 1939 work, *Ethnobotany of the Hopi*.[38] He had then drawn a map to depict the areas from which the plants came and had written up a one-page information sheet for each species, all of which were bound together as part of one of the plaintiff's exhibits. While the overall importance of the plants collected outside of District 6 was not great in comparison to the Navajos' dependence on the land, the elaborate display was quite impressive. It addressed a kind of use we had ignored in our efforts to cover the more basic kinds of land utilization, such as residence, farming, and livestock raising. Pitrat also testified to what he called Hopi eagle shrines and ceremonial shrines, fox trapping, and grazing permits outside District 6, including a list of 105 Hopis who had requested permits in the surrounding grazing districts and whose applications had been denied.

A good deal of Littell's cross-examination of Pitrat questioned his qualifications to deal with the kinds of information to which he had testified. He could claim expertise in botany, which meant that the vegetation map and the ethnobotanical exhibits would probably carry the greatest weight in the eyes of the court. While he had shown most Hopi plant gathering in terms of very specific locales, for a few species he had colored rather wide areas on his map, and Littell quizzed him on the manner in which these were determined. Despite the doubts which were raised as to the professionalism of his ethnography, the exhibits he had prepared were accepted. During Pitrat's testimony, which extended into Wednesday, the attorneys engaged

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in a vigorous debate as to whether the Hopis had to show occupancy to gain land beyond District 6.[39]

Pitrat was followed by a large number of Hopi witnesses. The first was Bennett Cooka, a man of mixed Hopi and Hopi-Tewa ancestry and a member of the Hopi Tribal Council. Among the matters to which he testified, he was asked to tell what he knew about Tom Pavetea's grazing areas in order to introduce possible discrepancies with Joe Kabinto's testimony. (Kabinto, the reader will recall, was the Navajo who had spent much time in Pavatea's employ, and who had testified about his knowledge of Navajo families who had been forced out of District 6.) He also told a rather patronizing story about the origin of Kabinto's name, saying it came from the Navajo word for moccasin and the Spanish word for spotted because Kabinto had been very poor in his youth and wore patched moccasins. His manner of relating the story indicated that its purpose was clearly to disparage Kabinto as a person.[40]

Edna Sequi, the next witness, was an eighty-eight-year-old woman who had lived outside District 6 in the Jeddito Valley since 1916. She told of being challenged by local Navajos as to her family's right to settle there and described in detail a fracas with Navajos when members of her family began to plant a cornfield. According to her story, the Navajos broke her husband's planting stick, beat him up, grabbed her by the hair, and began to beat her too until they realized that she was a woman. She also accused the Navajos of killing her calves. Littell objected to this sort of testimony, maintaining that he and Boyden had agreed not to bring in the violent confrontations that had inevitably taken place in the competition for land. Although Navajo witnesses had been instructed to avoid telling about such incidents, his objection was overruled.[41]

A Pima Indian, Justin Sanderson, who had married a member of the Sequi family, next testified that he had tried three times to build a home even more distant from District 6 than the Sequi farm, but each time the structure was destroyed. He too complained of losing livestock, although he had a grazing permit for District 7 in which he was located.[42] When George Lomayesva, Sanderson's Hopi father-in-law, also testified, it became apparent that the various grazing permits claimed were all obtained from Edna Sequi's husband's permit when it was divided.[43]

The last witness of the day was Irving Pabanale, a Hopi who had worked

as a surveyor's assistant during the second allotting program. He also claimed to have built a home outside District 6 only to have it destroyed.[44]

Not surprisingly, the *Arizona Republic* had a story the next day which focused on the ethnic conflict.[45]

I examined the ethnobotanical exhibits and the herbarium specimens during breaks in the hearings and felt that the impact of Pitrat's presentation had been greater than the subject deserved, but that part of this impact resulted from our failure to show that the Navajos made any use whatever of wild plants. I had also noted a number of discrepancies in the Hopis' identifications, and I felt that we could at least do as well as they did. I talked to some of the Navajos about trying to put together something of our own based on these same specimens. Both Vice Chairman Scott Preston and Clyde Peshlakai were willing to try to identify the plants in terms of their Navajo names and to tell uses that they knew for them. Max Yazzie volunteered to interpret for us. The court granted us permission to examine the specimens in a room across the hall from the courtroom after hours.

I had some concern as to how well Indians would be able to identify plants in the dried and pressed state of herbarium specimens. Ethnobotanists who had done research among the Navajos had emphasized the importance of accompanying informants into the field to identify plants in their natural habitats,[46] or at least while still "in a fresh condition."[47] Preston was a medicine man, however, and Clyde an herbalist and the son of a medicine man. I had hopes that their professional experience would give them a greater skill in recognizing dried specimens than would be the case with the average Navajo. Since the environment in which a plant was found was reported to be a factor in the recognition of species, I felt that they deserved that information from the herbarium labels as an aid in recognition, knowing that a modern scientist would take that into account in his or her own use of the collection. Moreover, the Hopis had undoubtedly been sufficiently literate to have been able to consult the labels when they did their identifications for Pitrat. As it turned out, in the few instances when Preston and Clyde did not immediately recognize a specimen and the description of the collection site was translated for them, they were sometimes able then to tell what the plant was.

I worked first with Preston. He was able to give names and uses for almost all of the plants. I got the impression that he knew more plant lore than he

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was willing to tell to a white man regarding some of the species, but I did not press him for information he believed improper to reveal. I was especially pleased when he correctly identified two plants that were in error in the Hopi identifications. One was a confusion between the Fremont barberry, a shrub or tree, and the holly grape, a perennial too small to produce usable wood. The Hopis had specified use of wood that could not possibly be obtained from the holly grape, to which they attributed that use—a clear sign that they had misjudged the plant. The similarity of the leaves of the two species could easily mislead, and I felt new confidence in Preston's botanical knowledge when his information correctly matched the specimen. The second error concerned a shrub that was misidentified on the herbarium label. I did not feel qualified to question the label, but Preston was adamant that he recognized the shrub even in its preserved state. I dutifully recorded his identification, as I knew that the prepared statement had to accurately present his observations, but did so with some misgivings.

Clyde was beginning to lose his eyesight and found the environmental data from the labels especially helpful. He eventually identified more of the specimens than did Preston. He did not always have the same names for the plants, however. In a few instances this was the result of a misidentification by one or the other man, but more often I could attribute the disagreement to different acceptable names for one species in Navajo, much as we use the terms "yucca" and "Spanish bayonet" interchangeably. In addition, Clyde's gentle sense of humor made the late hours more pleasant, as when he pronounced one edible plant to be "medicine for a hungry person." Clyde also corrected the Hopis' errors on his own. He recognized the holly grape for what it was and quite independently identified the misidentified shrub in the same terms as had Preston.

In the meantime, the Hopi testimony continued during the days. On Thursday, October 13, four Hopis took the stand—Preston Masha, Peter Nuvumsa, Lee Saknumptewa Thomas, and Donald Maho. Boyden, as usual, conducted the direct examination of each witness, and McPherson carried out the cross-examination. A Navajo who knew the Hopi language, Manuelito Lewis, was sworn as interpreter to check on the Hopi interpreter, much as a Hopi who understood Navajo had listened to the translations by the Navajo interpreters. Masha testified primarily regarding Hopi livestock raising.[48]

By far the most impressive of the Hopi witnesses was Nuvumsa, the village spokesman for Mishongnovi on Second Mesa. A seventy-two-year-old member of the Bear Clan, he testified in a quiet and dignified manner befitting his status in Hopi society. He seemed, in fact, somewhat out of place among the others who appeared—almost a token traditionalist for the council faction that controlled the Hopi case. He testified about wood gathering, use of shrines, plant use with reference to the herbarium specimens, alleged Navajo theft of Hopi horses, and Navajo occupation. He rather upset Boyden when the lawyer once again reiterated the assertion that Navajos were continually moving into the 1882 Reservation. Nuvumsa stated that the same Navajo families had lived within the area he knew from 1922 up to the present, and added, "I don't recall any other new ones come in since then." He also described the Hopi effort at expansion at the expense of the Navajos, mentioning a man from Bakavi who planted eight acres of corn down the Oraibi Wash near the Red Lake Store, but who after two years went "back home" due to Navajo opposition.[49]

McPherson's cross-examination soon brought out new information that disturbed Boyden even more. I had found in the published literature on the Hopis a reference to "substitute shrines" close to the villages for a few of the more distant shrines. McPherson chose Nuvumsa as the Hopi to ask about this matter, but his question caused me to hold my breath in shock; ". . . you people have substitute shrines near your villages for all of the outlying shrines that you have made mention of, is that true?" Nuvumsa not only agreed with that statement, but in reply to another question asserted that the distant shrine and its substitute had the same religious significance.

Nuvumsa had misidentified the herbarium specimen of pinyon pine as fir during direct examination by Boyden. McPherson cross-examined him at some length on this specimen and at the end of this questioning read into the record the botanical identification on the label, apparently to help in a later evaluation of the reliability of the ethnobotanical exhibit.[50] It should be noted here that McPherson did not conduct cross-examination in the aggressive and accusatory style frequently portrayed in the movies and on TV, but in a very low key manner that respected the integrity of the witness.

Lee Thomas, a Hopi who was also a Phoenix plumber, took the stand to characterize the Navajos as "renegades from the north," relating conflicts his

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famil[illegible]d as they tried to move out into territory already fully occupied by Navajos.[51]

Donald Maho's testimony was given, in part, to support an alleged Hopi farm on one of Boyden's maps. It turned out on cross-examination by McPherson that Maho was married to a Navajo woman, and there was doubt as to whether the farm was his or, in accord with the matrilineal customs of both tribes, really the property of his Navajo mother-in-law. While he also claimed that he ranged sheep outside District 6, it became clear on cross-examination that the sheep were grazed under his Navajo wife's permit and belonged to her. He also had stories to tell of Hopis who had tried to expand into traditionally Navajo territory and who had been rebuffed.[52]

Following Maho on Friday morning, T. K. Johnson took the stand. A small, thin, and lame eighty-four-year-old, he was well chosen for the role of eliciting sympathy as a Hopi David put upon by Navajo Goliaths. In 1910 Matthew Murphy, the second allotting agent, had surveyed an allotment for him well down the Dinnebito among the Navajos. With hired help, Johnson had completed a house and planted an orchard. He had then returned to his home at New Oraibi, and at the urging of an Oraibi "chief," he had taken the time to accompany a team of dancers to the Tewa village on First Mesa. On this trip his horse took a tumble in the dark, breaking Johnson's leg. He was absent from his house on the Dinnebito for over three months as a result of this injury. When he returned, the house and orchard had been destroyed. McPherson decided to forego cross-examination.[53]

Next came Earl Albert, a sixty-seven-year-old resident of Hotevila, who had attempted in the 1920s to settle at the place abandoned by Johnson. He had been a bit more fortunate than Johnson, for he had actually lived at the site for about three years, but he testified that his crops always disappeared while he went "home," so he eventually gave up. Albert tried to minimize the Navajo presence at the place, but in order to account for the loss of his corn and fruit, he was forced to acknowledge that there was nobody there except himself and the Navajos.[54]

Louis Nunkema, a Hopi from Moenkopi, also testified to resistance by Navajos when he and others had tried to establish farms at Red Lake.[55]

Kirkland Polacca, a forty-two-year-old man from First Mesa, testified that his father had built a house east of Pinon. When Kirkland had tried to expand from his father's place upon his return from the service following World War II, he found that the Navajos already there objected.[56]

The last witness for the day was Roger Quochytewa, who claimed to have grazed some 500 cattle in the vicinity of Tolani Lake. He accused several Navajos of stealing his stock.[57]

Most of these witnesses also testified regarding less intensive use of the disputed land, such as hauling firewood, gathering wild plants, religious use, and the like. The Phoenix newspaper continued to slant its stories in favor of the Hopis. This bothered me, for I was not sure whether the tone of the writing came from previous bias or from a failure on our part to adequately present the Navajo side of the story.

During the time that McPherson handled the cross-examination of Hopi witnesses, Littell and several of our crew were busy preparing for the Navajo rebuttal testimony. It had become clear that we would have to show the density and continuity of Navajo occupation and use of the land outside District 6. We worked through the weekend, for we expected Boyden to end his presentation early the next week.

On Monday, October 17, the lawyers arranged for the submission of additional exhibits that they would use during rebuttal, including a number of prepared statements by elderly Navajos that would shortcut the slow process of testimony through an interpreter.

Boyden then presented testimony by William H. Beck, a BIA range conservationist for the Hopi Agency, who told about trespass by Navajo livestock inside District 6.[58]

Dr. Fred Eggan, a professor in the Department of Anthropology at the University of Chicago, was the last witness for the Hopi Tribe. Eggan had been involved in Hopi studies since 1932. He was undoubtedly the foremost scholarly authority on the Hopis at the time, but confessed to having limited knowledge of Navajo ways. His views on Navajo-Hopi relations were of special interest, for he seemed to find them difficult to explain. He noted that the Hopis considered some Navajos to be friends and trading partners, but that they distrusted Navajos that they did not know.

He stated, "The attitude toward the stranger Navajo is pretty much one of fear and apprehension . . . he may fear for his own person; . . . he may fear for the loss of his sheep and cattle. And underlying that, I think, is a

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prevailing fear that somehow or other he is going to lose his whole reservation to the Navajo." Eggan continued: "I have been in the Hopi kiva when Navajos have been invited down, and they sit around and smoke with the Hopi. They are the ones that are known and are friendly . . ."

Eggan generalized about Hopi diet; "The Hopi conception of food, real foods are corn and beans and squash, the vegetable foods. Meat and some of these other things are thought of as sort of relishes, you add a little bit to give it taste, to give it flavor . . ."

Eggan also placed the Hopi shrines into a different context, testifying, "I think it has something of the same significance as, say, the Holy Land to Christians."

Because of Dr. Harold Colton's feeble health, Eggan also testified on the archeology of the 1882 Reservation. Littell's cross-examination brought out the fact that archeological sites postdating the Great Drought, which ended in A.D. 1299, are concentrated in the vicinity of the three Hopi mesas.[59]

The Navajos' rebuttal testimony began that afternoon with Lee describing how the maps used for the Navajo exhibits were made.[60] The next morning Dave De Harport began his testimony, explaining some basic archeological principles and helping to introduce the 1890 census map of the area, which showed the concentration of Hopi settlement at the mesas.[61]

De Harport was followed by Wilbur E. Morgan, supervisor of the Census Section of the Navajo Area and son of the late Jacob C. Morgan, who had been tribal chairman in the 1930s and one of the strongest opponents of government programs of that time. Morgan was short and a bit paunchy, an intense man in the office who somewhat intimidated clerical personnel, but a man whom Lee and I had always found to be very cooperative when we needed his assistance. He described in detail the census data maintained under his direction and showed how this information was used to plot on a map the homes of Navajos whose names appeared on the 1937 sheep dipping records and the 1957 school census. These maps helped to demonstrate the continuity of Navajo families within the Executive Order Reservation. The link back to 1937 was not an easy one to make, and Boyden cross-examined Morgan closely on the details. Boyden's preachy, self-righteous, and condescending approach antagonized Morgan, who replied with the unresponsive complexities of an experienced bureaucrat. Unfortunately, in the courtroom context, rather than frustrating an unwelcome interloper, his

tactic meshed with Boyden's real objective, which was to discredit the link. Morgan was still on the stand at the end of the afternoon and returned the next morning for redirect and recross. Boyden and Littell clashed strongly on the propriety of the Navajo evidence. Boyden asserted that the evidence being given had no bearing on the case, while Littell expounded on Boyden's refusal to acknowledge Navajo occupancy.[62]

Two witnesses followed Morgan on Wednesday. The first was Reino R. Sarlin, who oversaw forestry operations for the Navajo Area. He explained all the details of woodcutting permits and payments for timber cut.[63]

Clifford Beck, the Navajo tribal council delegate from Pinon, next took the stand. No sooner had he been sworn to tell the truth than Boyden and Littell were again arguing as to whether the Navajo evidence was proper and relevant. Beck, a tall and distinguished middle-aged man, had to sit waiting in the witness chair while the two attorneys disputed the issue. Littell's basic contention was best summed up in an explanation he gave early in the debate, that "the purpose of this testimony is, first, to supply the missing link in the information before you from the records, how long these people lived there. Because you don't have it until 1957 in these . . . school census exhibits. And I propose to relate by these witnesses the locations of these hogans and the people who lived in them or in those communities for a considerable period of time."

Beck was not the only witness who was forced to endure seemingly endless squabbling, but I frequently wondered at the time if either attorney was serving the interests of his client. Whether each was trying to convince the court of the correctness of his views, or hoping to undermine the composure of his opponent's next witness, or merely indulging in a display of machismo, their antics at the time seemed unproductive to me. Rereading the transcripts almost thirty years later, I find these portions of the proceedings of unusual interest, however, for they do offer insights into the thinking of the competing gladiators in the courtroom spectacle. I feel that I have long since come to understand the facts of the case, but I now find a need to comprehend the dynamics of a process that applied those facts in a particular way. After what at the time seemed an interminable interlude, Beck was allowed to present his testimony.

Beck told of his experiences as a young man in his twenties working for the government in his home community. From 1928 to 1932 he was an assis-

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tant to the Navajo range riders and a census taker, along with Manuelito Lewis and Jim Cook, for a BIA census. Using the lists from the census and the dipping records, he described the locations of the various Navajo families' hogans at that time, while Lee pointed them out on a map.[64]

Beck's testimony was interrupted by questioning of Littell by the judges. Judge Yankwich then tried to sum up the purpose of the testimony:

> In view of the statement just made by the Court I think we all agree that the only purpose for which this testimony is offered is merely for the purpose of tying certain testimony here to information given about the presence of Navahos at certain times, tying them to a particular occupancy. The Court made it very clear yesterday and previous to this that there are no individual Navahos or Hopis such as were postulated in the statute for adjudication of rights. Therefore the possibility of the Court requiring a list of individuals and their ancestry must be eliminated, because no one has appeared so far and no one has asked for a right to intervene, no individual. So as of now, unless something should develop later on and this Court is asked to allow individual Hopis or others to intervene, we are adjudicating the rights of the tribes against one another. So the possibility of the situation to which Mr. Boyden—the possibility of the Court needing that must be eliminated, because we are not adjudicating the rights of individual Hopis or individual Navahos in any of this territory.[65]

Littell agreed, saying that he thought that the issue of tribal versus individual rights had already been settled.[66]

Judge Hamley pursued the purpose of the Navajo testimony further, asking, "If you have a witness here that personally says that a certain man lived in a certain place, a certain Navaho, for 30 years, 'and I know him,' that he was there all that time, what does the census record add to that?"

Littell replied, ". . . the second point, that complete recognition of the Secretary of the Interior and the constant processing of the data in regard to these people."

Judge Hamley then asked, "Are you saying that the fact that this man was enumerated and put on the census is an administrative declaration by the Secretary of the Interior that he was settled thereon?"

Littell then asserted, "Indeed I do. It's one of a series. It doesn't stand alone, but it's one of a series."[67]

Following further discussion, Judge Hamley then inquired, "Do you mean that because it is in a census, this indicates the Secretary of the Interior knew they were there all this time, therefore he has acquiesced in their settlement?"

To this Littell responded with a more inclusive explanation: "Yes, I do, and he took cognizance of their stock problems and he took cognizance of their school problems and he was recognizing their existence and treating them as settled upon this land all that time."[68]

This exchange was followed by some more testimony by Morgan on the census records and the testimony of Donald Mose, a grazing committee member from Pinon, who extended Beck's testimony on Navajos living in the Pinon area. At the end of Mose's testimony, court was recessed early, at 11:45 A.M., to allow the attorneys time to try to reach agreement on a stipulation as to the admissability of statements by local Navajo officials as to Navajo residence.[69]

The final day of testimony was Friday, October 21. Only one witness, Annie Wauneka, appeared. The only woman then a member of the Navajo Tribal Council and very influential in tribal politics, not only because she was a daughter of the late Henry Chee Dodge, but also because of her own strong personality, she had played a major role in the success of programs to improve Navajo health. She had served on the council for about nine years and was not quite fifty years old at the time of her testimony. She described the religious and emotional ties of Navajos to their place of birth.[70]

Following Mrs. Wauneka's testimony, Littell and Boyden quibbled further over the exhibits and addressed other items of business that needed attention before final arguments were to be made on Saturday. Boyden then took the initiative to clear the way for possible mineral exploration within the boundaries of the Executive Order Reservation:

> Now the Court, by order of the 19th of September, 1960, approved this agreement that had been reached by us with respect to the stipulation: "The parties hereto will agree upon a joint form of geophysical permit which, when

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approve[illegible] the duly constituted authorities of each tribe, may be issued upon approva[illegible] pplications therefore for both tribes provided, however, that no geophysical work shall be done in the Executive Order area prior to the completion of the taking of testimony in this case and the submission thereof for decision."

In order to clear that, we would like it understood that it has now been submitted for decision insofar as this stipulation is concerned so that we can proceed with geophysical permits if we so desire, . . .[71]

The belief that mineral wealth might underlie the 1882 Reservation had been a behind-the-scenes motivation throughout the hearings. That possibility had been noted frequently in the newspaper reports during the four weeks of the trial, but it had not been dealt with in court. On October 18 *The Arizona Republic* claimed, "The land was recently evaluated as rich in oil and uranium deposits."[72] A story in the *Republic* on the twentieth quoted the Hopis as saying that "the Navajos have illegally settled on the potentially rich oil and uranium grounds,"[73] and in stories printed on both the twenty-second and the twenty-third, the country in dispute was described as "potentially oil-rich land."[74] The paper had also played up the allegations of Navajo misbehavior in their conflicts with Hopis that had been so much a part of Boyden's case, and followed this with such extraneous items as the fact that there was a Navajo named Jesse James then living near Pinon, a detail that formed the headline for their story on the 20th.[75]

On Friday night we worked late, helping the attorneys prepare for the final arguments the next day. I assisted McPherson in computing the number of Navajos who had been forced to move out of District 6 and was able to identify ninety-six or ninety-seven family heads by name. We were convinced that the actual figure must have been well over a hundred.

In the final arguments on Saturday, Littell tried to counter the repeated insinuations that the Navajos were an inherently evil people. He characterized them as "a peace loving people who would rather move and compromise than to stay and fight," but added that "they have tough fighters too, very aggressive men just like we do." He further accused the Hopis of continuing efforts to foment discord during the dispute, claiming that they "are stooping to do underhanded things against the Navahos."[76]

Littell summarized the history of the dispute and presented the fi[illegible]- tions which he believed were open to the court:

1. Division of the reservation on the basis of the "green line" on the Navajo map exhibits, which encompassed the area the Navajos asserted to be the limit of exclusive Hopi use and occupation.
2. Division on the basis of the area agreed to by the Hopi Constitution, which he construed as the 1936 District 6 boundary.
3. The District 6 line approved 16 March 1937.
4. The Page-Rachford line of 1939.
5. The 1943 District 6 boundary.[77]

The judges were interested primarily in Littell's views on legal questions. Judge Hamley asked, if the Court should find that the Navajos had been settled within the reservation, "would it be appropriate for us to consider whether or not he [the Secretary of the Interior] correctly interpreted the Law, or can we go behind his exercise of discretion for that purpose?" The judge repeated the question in another form: "Can we consider whether or not he exercised discretion under a misapprehension of the law?" To each of these questions Littell replied in the negative.[78]

Judge Yankwich phrased the issue in somewhat different terms: "In other words, it goes back to the fundamental proposition in jurisprudence that the power to make a decision includes the power to make a wrong decision provided it isn't arbitrary and capricious," to which Littell said only, "Possibly, your honor . . ."[79]

McPherson also contributed to the final arguments, emphasizing the importance of long Navajo occupation of the land and dealing with the hardships suffered by the Navajos who had been forced to move from their homes with the creation of successively larger boundaries for the Hopis. He contrasted this with the "insignificant and inconsequential" Hopi settlement and use of the land outside District 6.[80]

Boyden, of course, presented a very different history of the dispute. He contended that use and occupation were not legally decisive in the establishment of ownership. Judge Hamley had asked four questions that may have guided Boyden's thinking. These were:

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1. What is meant by "settlement" in the Executive Order of 16 December 1882?
2. Does the 1958 Act require use of the reservation on 22 July 1958?
3. What is the difference between "exclusive use and occupancy" and "exclusive interest" in the reservation?
4. Is there any exclusive interest held by individual Indians or by the Navajo Tribe and why?[81]

Boyden contended that Navajo occupation within the 1882 Reservation did not constitute settlement and characterized their presence as illegal, making reference to the implications of a Navajo being named Jesse James. He maintained that "the settlement of individual Indians upon the Hopi Reservation under Indian Law would confer no exclusive interest, but only a communal interest to share coextensively with the Hopi Indians—." He went on to assert that no Navajo had ever acquired such an interest.[82]

The possible fate of Navajo families long settled on the lands in question received only passing attention. The hearings ended with no real hint as to how the court regarded the matter.

We returned to Window Rock feeling that we had done an effective job of demonstrating the importance of the land to the Navajos who resided on it and believing that no United States court could make a decision that would displace so many people from their homes.

A final note: As the long legal proceeding drew to a close, the anti-Council, Hopi traditional leaders declared that the entire lawsuit was illegal.[83]

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Navajo Tribe was legally settled in the 1882 Reservation by virtue of the approval of grazing regulations.

At this point Frankie Howard asked if this included the area of expanded District 6, to which Littell replied in the affirmative.

Littell then brought up Section 2 of the Act of 1958, which provides that the two tribes might adjust their holdings by buying, selling or exchanging lands within their reservations with the approval of the Secretary of the Interior. He said that, at Prescott, Boyden had agreed that this provision was to adjust for people who found themselves on the wrong side of the line set by the court, but that now Boyden had changed his mind. Littell then went on to recount some of the history of the Moenkopi question. Both he and Lavell stressed that any disagreements within the tribe on the negotiations on Moenkopi should not be made public, but that the Navajos present a united front.

Lavell predicted that the Moenkopi question would end up in court. In the meantime, the tribe should establish a policy for all officials concerned. He suggested three points:

1. The tribe should do nothing in the area outside of District 6 in the 1882 Reservation.
2. The tribe should be willing to negotiate on lands in the area around Moenkopi, but not on all of the land in the Bennett freeze.
3. The people in the chapters should be told to ignore the freeze order, that they should continue to live as before, that the order was illegal in any case, that they should apply for any leases that they wanted and if the BIA held them up, they could collect damages later.[35]

Three days later the Supreme Court decided that Udall did have the authority to fire a tribal attorney. Littell soon resigned, leaving Lavell in charge of the legal department on an interim basis.[36]

Lee and I were soon deeply involved in researching the history of the Echo Canyon families. We obtained detailed genealogies and compared them with the Murphy 1911 allotment schedules. Unfortunately, the Echo Canyon area had never been surveyed during Murphy's time, and no allotments were laid out there. Aside from identifying an uncle and a second cousin of the Echo Canyon people among the allottees, we were at a dead

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