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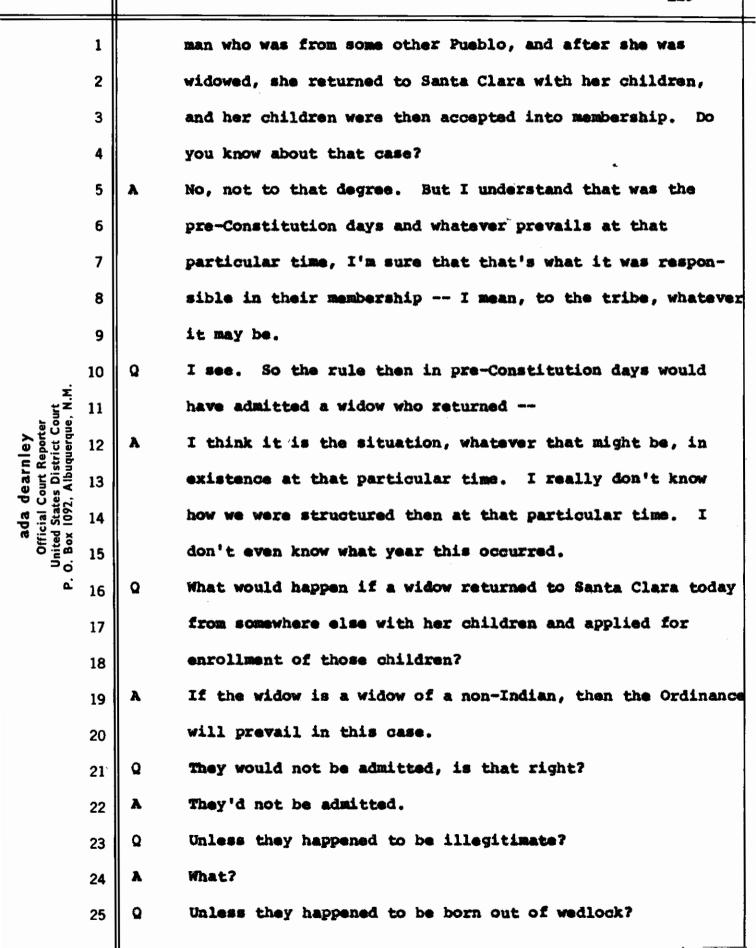
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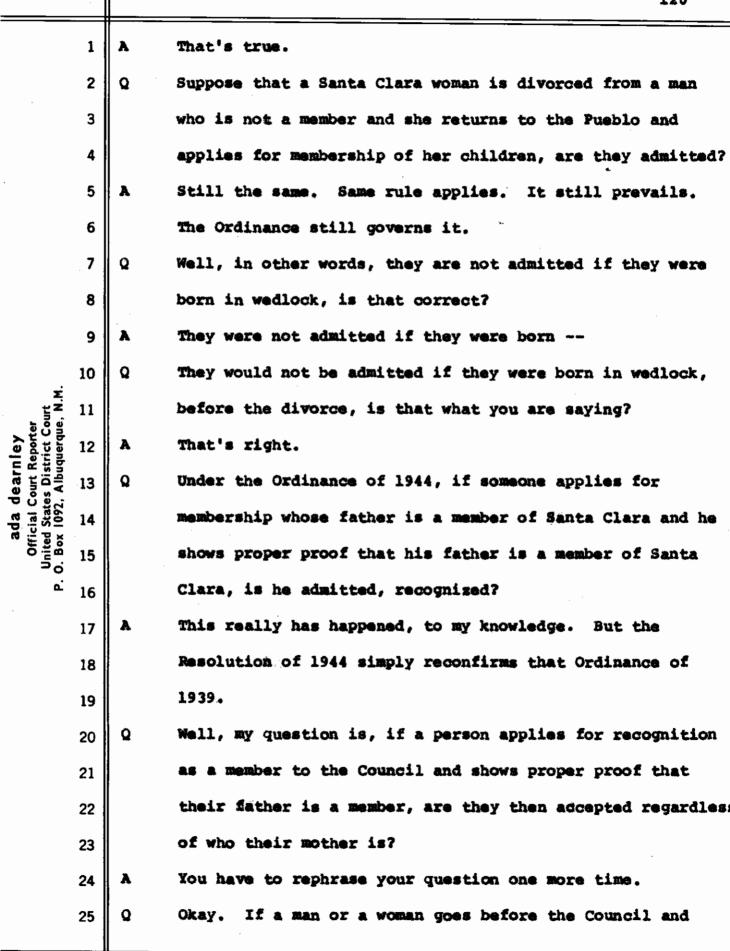
U.S. District Court Docket No. 9717 Civil; 436 U.S. 49 (1978)

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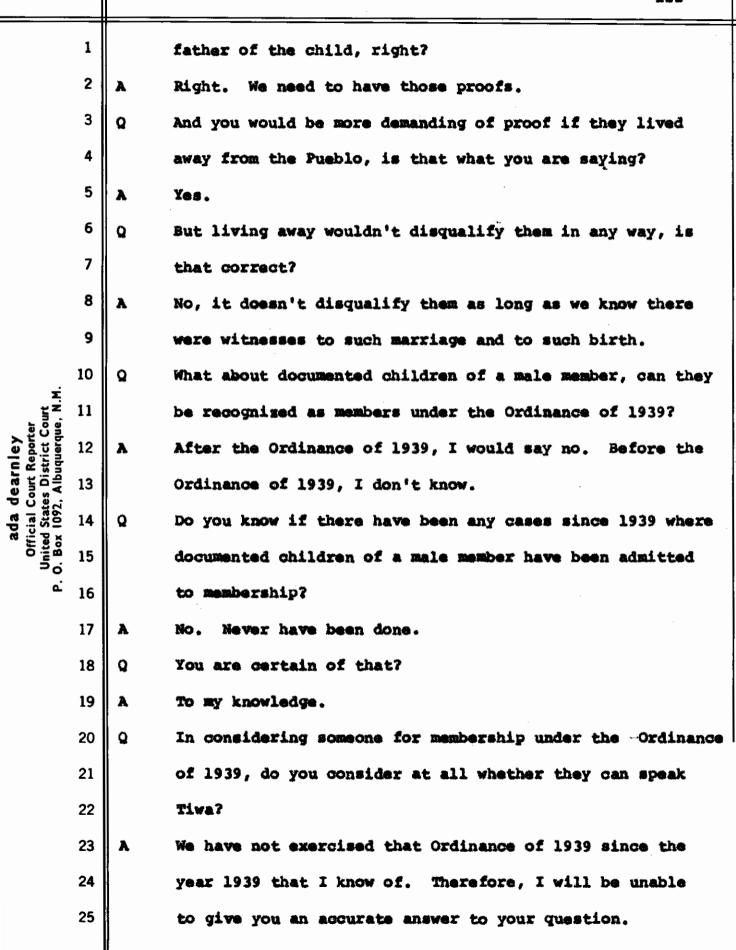


1	Have there been any exceptions to the Ordinance of
2	1939 that you know of?
3	A Not to my knowledge, no.
4	MR. PRELO: I pass the witness.
5	CROSS EXAMINATION
6	BY MR. COLLINS:
7	Q Governor, under the Ordinance of 1939, as you understand
8	it, is naturalization of non-members permitted?
9	A As far as the year from 1939 forward, we have exercised
10	no naturalization.
11	Q The Ordinance seems to say it is not allowed under the
12	Ordinance. Is that the way you read it, too?
13	A According to the Ordinance, that is the way it is written
14	Q Is that the way it is interpreted by you?
15	A This is the way I understand the Ordinance.
16	Q What happens, Governor, when a child is born to a Santa
17	Clara woman and there is no marriage?
18	A If a child was born out of wedlock, that child becomes a
19	member of the Santa Clara tribe.
20	Q I see. Would that same be true if the same woman had a
21	second child out of wedlock?
22	A If the child if the same woman had a second, third,
23	or if she had ten children, the policy is the same.
24	Q Governor, you heard the testimony this morning by Mrs.
25	Martinez, that an ancestor of hers became a widow from a
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24



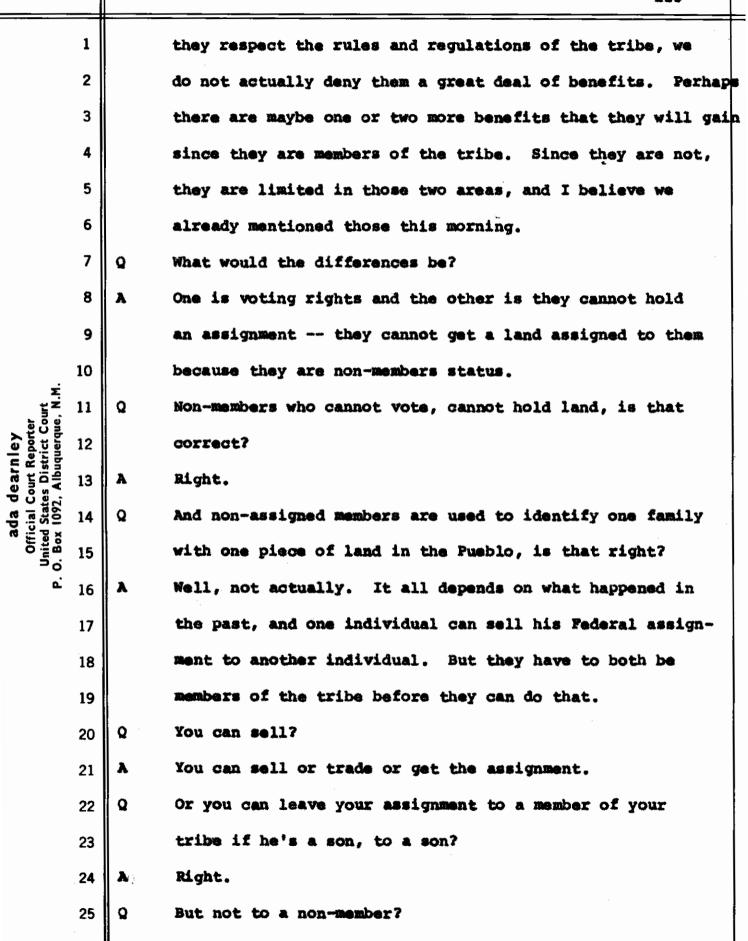


of the Pueblo and is still alive, " and shows adequate proof that that man is indeed their father, are they then I would assume that they may have to produce birth certificates, marriage certificates and other important documents that the Council will request it, to show proof. in that particular instance, they may be considered into But they would be recognized if they produced the proof Right, because we have questions today and I'll give you If a male or a female should leave the reservation for a period of time, say ten years, if this family comes back or this male or female comes back to the reservation, and this male should come before the Tribal Council and say that this is my family, again, at that point, the burden of proof would have to fall on the individual. You have to produce whatever evidence is required to recognize that family as being Santa Clara Indians because, not knowing that, the male member of Santa Clara could be married into a ready-made family. So there are So you want proof that the Santa Clara father is the true



	1	Q	You haven't recognized anyone as a member since 1939?
	2	A	Not that I know of. Not to my knowledge.
	3	Q	Well, have you had, personally, any children born in your
	4	į.	family since 1939?
	5	A	Do I have any children born in my family? Yes.
-	6	Ω	Since 1939.
	7	A	Yes.
	8	Q	Are they recognized as members?
	9	A	The Constitution recognizes it.
	10	Q	Well, when they are recognized as members, does anyone
r e, N.A	11		find out whether they can speak Tiwa or not?
earnley urt Reporter District Court Albuquerque, N.M.	12	A	As far as I know, they understand it and speak Tiwa.
dearnley Court Reportes District	13	Q	I'm asking you whether, when they are recognized as members,
da ial ( Stat	14		anyone is concerned about whether they can speak Tiwa?
Offic United O. Box	15		If they did not speak any Tiwa at all, would they not
ď.	16		then be recognized?
	17	A	I don't think the enrollment is actually based on whether
	18		or not what languages you speak. I don't think that has
•	19		anything to do with it.
	20	Q	Now, I am sure you heard, this morning, the testimony of
	21		Mrs. Martinez that before 1939, certain persons were
	22		naturalized into the Santa Clara Tribe. Did you hear
	23		that testimony?
	24	λ	I heard about that, yes.
	25	Q	Do you know whether what you said is correct, that that

	1	happened?
	2	I do know one thing, that there are certain ages that
	3	have been naturalized into the tribe. This much, I do
	4	know. As far as names were concerned, they were quite
	5	accurate.
	6	The list you heard this morning sounded right?
	7	Yes.
	8	You said you belonged to either the Winter or Summer
	9	People, and I'm sorry, I don't remember which.
	10	Well, I didn't say that. But I will say it now. As far
, Z.	11	as I know, that I am a Winter.
earnley ourt Reporter 5 District Court Albuquerque, N.M	12	And did you become a Winter at birth or did you become
dearnley Court Repor tes District 2, Albuquerq	13	a Winter at some later time upon initiation?
la ial ( Stat	14	A Again, this goes back into the religious practice of the
Offic United O. Box	15	society and these are some of the things that I'm restricted
ď	16	not to openly discuss.
	17	Do you know whether mixed marriages between members of
	18	Santa Clara and outsiders are more common now than they
	19	used to be?
	20	A I believe so, yes.
	21	Are they much more common or just a little bit?
	22	Well, I would say perhaps just a little bit more.
	23	Now, you stated that the Martinez children are accorded
	24	all the rights in the Pueblo, is that correct?
	25	A As long as they reside on the reservation and as long as



ada dearnley

	1	Q	Was your mother's father, Mr. Suazo, from Santa Clara?
	2	A	I never really discussed this matter so I can say that I
	3		assume that he is from my tribe.
	4	Q	Did he ever live at Tesuque?
	5	λ	I really don't know.
	6	Ω	Isn't it a fact that he grew up at Tesuque?
	7	λ	I really don't know.
	8	Q	You don't know?
	9	A	No.
	10	Q	Under the present Constitutional Government, can a woman
earniey surt Reporter S District Court Albuquerque, N.M	11		be elected to an office?
rnley Reporter strict Court uquerque, N	12	A	Yes.
	13	Ω	Was that true before the Constitution?
da ial ( Stat	14	A	I don't know.
a( Offic United O. Box	15	Q	Do you have a Tribal Court in Santa Clara?
مَ	16	A	Yes, we have.
	17	Ω	In general terms, what kind of cases does it hear?
	18	λ	Misdemeanor cases.
	19	Q	Can it hear a case involving enrollment?
	20	A	No.
	21	Q	Who hears enrollment cases?
	22	A	The Tribal Council does that.
	23	Q	Is there any other body that can hear enrollment cases?
	24	A	No. Just the Tribal Council.
	25	Ω	You stated that the man is the head of the household in
		4	

name the informants.

THE WITNESS: These people that I pointed out to you are the traditional -- they usually are advisors to my office and by the Santa Clara Pueblo customs, traditions, it is my responsibility to protect their identity.

MR. COLLINS: We move to strike his testimony on -THE COURT: Mr. Prelo, do you have any position in
regard to the matter?

MR. PRELO: I'm sorry?

THE COURT: Do you have any position with regard to the matter?

MR. PRELO: If the Court please, we have alleged all along that there is a certain correlation, an interrelation between the religious and non-religious. I, certainly, as a non-Indian, am not in the position to state. I don't know, obviously, where exactly they correlate and where they don't, and where he would be within proper bounds to refuse.

We know we have a separation of church and state, and we don't want to interfere in religious issues. I don't know enough about the religious part and haven't tried to know whether he is in the state or not.

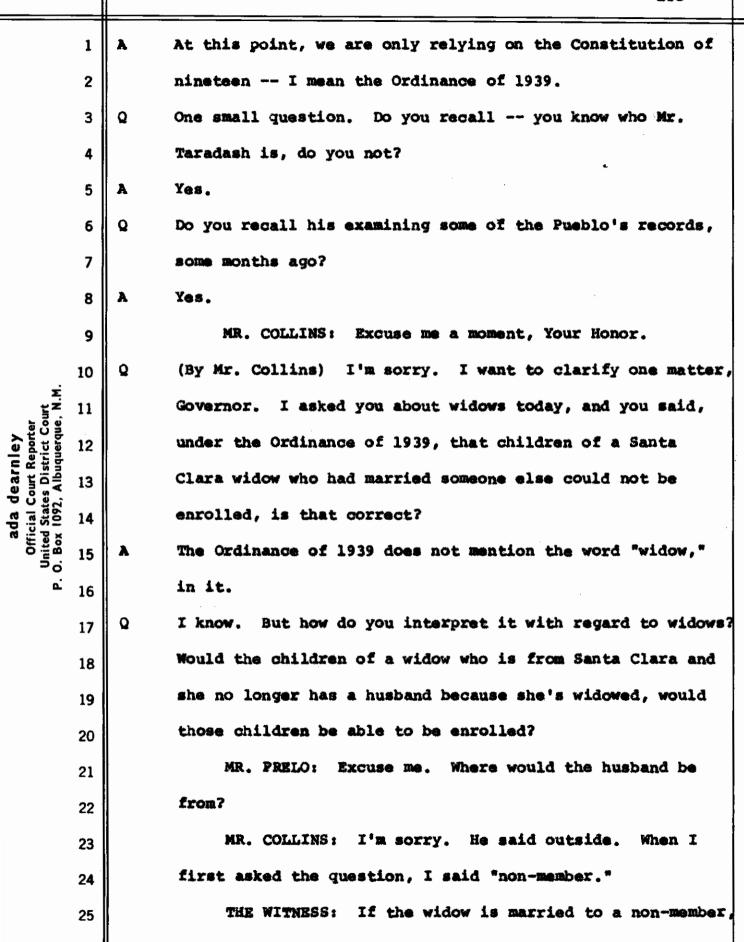
THE COURT: Mr. Collins, I think the best thing to do would be to reserve a ruling on your motion.

MR. COLLINS: If the motion is denied, we would like

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1
                  to recall the witness on this matter.
        2
                                           You will have that opportunity
                       THE COURT:
                                    Fine.
        3
                  after defense is finished.
        4
            Q
                  (By Mr. Collins) Do you know why, Governor Tafoya, your
        5
                  attorney in this matter did not expressly raise the
        6
                  question of religion in any of the pleadings he filed in
        7
                  this case?
        8
                       MR. PRELO: Objection, Your Honor.
                                                              That is not a
        9
                  true statement of the file.
       10
                       MR. COLLINS:
                                      I'm sorry.
                                                   It is.
       11
                        THE COURT:
                                    It was raised recently, I think probably
ada dearnley
       12
                  in the last pleading.
       13
                        MR. PRELO:
                                    Late.
       14
                        THE COURT:
                                    In the file.
       15
                                       It is not in the Pretrial Order or --
                                            It wasn't presented anyplace else.
       16
                                    Pine.
       17
                   If you want to inquire, Mr. Collins, you may.
                                     I will rephrase the question, Governor.
       18
            Q
                   (By Mr. Collins)
                        As the Court just said, the matter of religion was
       19
       20
                  raised only recently in this lawsuit.
       21
                        Do you know why the question of religion was raised
       22
                  only very recently?
       23
                   Why it was raised just recently?
            A
       24
            Q
                   Yes.
       25
                   I really don't know.
```

You

	1		we have these children, we want them enrolled. We are
	2		both members.
	3		Would that be a fair statement?
	4	A	That would be a fair statement. If they wanted to do it,
	5		it's fine.
	6	Q	And that would be a proper procedure
	7	A	Yes.
	8	Q	as far as the Council is concerned? Now, Governor, you
	9		have mentioned the Constitution of the Pueblo. Is that
	10		Constitution presently in force?
, E.A.	11	A	We try to live by the Constitution, yes.
earniey nut Reporter i District Court Albuquerque, N.M	12	Q	It is the law of the Pueblo, is that right?
dearnley Court Reporties Ses District	13	A	It is the law.
da iial ( Stat 1097	14	Q	And do you know of any part of the Constitution that's
Offic United O. Box	15		not enforced at this time?
<u>«</u>	16	A	That's if you have any question that I shouldn't know.
	17		But I must point out one other thing to you, that in the
	18		Constitution, it gives the Tribal Council the power to
	19		enforce common or unwritten laws of the tribe.
	20	Q	But my question is, again, Governor, do you know of any
	21		part of the Constitution that is not presently enforced
	22		for any reason?
	23	A	Not offhand.
	24	Q	Okay. Now, in addition to the Ordinance of 1939, are there
	25		any other rules followed in determining membership?



25

## that?

MR. PRELO: I think the proper way is to ask him if he was deposed and read the question and answer.

MR. COLLINS: It is not a deposition, it's an interrogatory. We are talking about interrogatories.

THE COURT: Just go ahead and read the interrogatory to him if you have it, Mr. Collins.

These are Mr. Tafoya's answers, or the answers of the Pueblo?

MR. COLLINS: These were interrogatories propounded by plaintiffs to defendant Pueblo in March of this year, and the answers are signed. I'll get him to identify his signature.

THE COURT: Fine. That's all right. I just want to be sure about the situation.

MR. COLLINS: The answers appear to be signed by Paul Tafoya.

(By Mr. Collins) Governor, you recall signing these written questions that were submitted to you?

There's so many interrogatories that I signed, I don't really recall which one you are referring to.

If you will read the question, then also read the answer, then perhaps I can answer your question.

Fine. The question is:

\*Does the Santa Clara Pueblo follow any unwritten

traditional practice with regard to the membership in the Pueblo of children born of a marriage between a member of the Pueblo and a non-member? If so, please describe the content of that tradition, the name and address of any person who is knowledgeable concerning that practice, and the means whereby the Pueblo Council is informed as to the content of that tradition."

"Answer: The enrollment practices are now written in the aforementioned Ordinance and Resolution, but prior to that time, the same scheme of enrollment was followed by unwritten traditional practice. The Pueblo Council is informed of that tradition solely by one generation verbally passing on to the next generation what the Tribal tradition is with respect to enrolling children of mixed marriages.

Persons knowledgeable of this unwritten traditional practice are: William Baca, Pat Gutierrez, Jose G. Naranjo, Juan Chavarria."

I don't recall one point, I mean, that specifically. I do know that they were -- I do know that they were deposed by the plaintiffs attorneys. I don't recall this one point, whether they are the authorities.

If you don't recall, can you tell us whether it is true

Do you recall signing that answer?

- or not?
- A That they know?

Q

1 The question didn't call for the degree of knowledge. 2 witness has stated they are knowledgeable. He never asked 3 ten percent, thirty percent. 4 Now, counsel is trying to force out an amount, a 5 percentage. 6 Your Honor, the answer to the question MR. COLLINS: 7 that I keep getting is, "They're more knowledgeable than 8 I am. " 9 A person can be more knowledgeable than I am and know 10 That is certainly the construction of very, very little. States District Court 1092, Albuquerque, N. 11 his answer and I don't think it is possible. Court Reporter dearnley 12 THE COURT: You may inquire, Mr. Collins. I think 13 there is an indication here in the answer to the interroga-14 tories and to the Governor's response that he would rely Вох 15 upon them for furnishing him such information. I get 16 that interpretation from the language that he has brought 17 out. 18 I might be incorrect about it but --19 That is a good way to ask him that, MR. COLLINS: 20 Your Honor. I will ask him that way now. 21 Q (By Mr. Collins) Are these people you'd rely upon to give 22 you this information about tradition, as the Court just 23 asked? 24 These people would be one set of people that I would 25 But they're not the full authority on that.

