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27: Paul Tafoya-Direct Exam.pdf (546.0Kb)

U.S. District Court for the District of New Mexico

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

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1 in the cultural and religious heritage that is so vital
2 to the tribe's very existence and that serves to hold this
3 tribe together through its surroundings and alienating
4 American society.

5 We intend to prove that the Pueblo has a compounding
6 interest in denying membership to children where the father
7 is not a member of the Santa Clara Pueblo and that this
8 interest is very existant in survival of the Pueblo.

9 THE COURT: All right.

10 MR. PRELO: We call Governor Paul Tafoya.

11 (Witness sworn by Court Clerk.)

12 PAUL TAFOYA,

13 having been first duly sworn according to law, upon his oath
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PRELO:

17 Q State your name, please.

18 A My name is Paul Tafoya.

19 Q What is your address?

20 A My Post Office number is Box 580, Espanola, New Mexico.

21 This is the Santa Clara Pueblo mailing address.

22 Q What is your present occupation?

23 A I'm the Governor of the Santa Clara Pueblo Tribe.

24 Q And have you previously held this office?

25 A Yes, I have.

1 Q Would you tell the Court briefly how many times you held
2 the office of Governor and the dates?

3 A I was first elected into office in the year 1964 and in
4 the year 1965, '66, in 1971, 1972, 1973, 1974.

5 Q Have you held other offices within the Pueblo?

6 A Yes, I have.

7 Q Would you tell the Court what these other offices have
8 been?

9 A I've served as a Lieutenant Governor, as a Secretary and
10 as an Interpreter.

11 Q How many years did you serve as Lieutenant Governor?

12 A I can't recall, but I believe at least three different
13 times.

14 Q What is your educational background?

15 A My education is basically the twelfth grade, high school.
16 No college.

17 Q I'm sorry?

18 A No college. I went through the Indian High School, through
19 the Albuquerque High School, and through the Santa Fe
20 Indian School.

21 Q Where were you born, Governor?

22 A I was born 1948, October 1st.

23 Q Where were you born? On the Santa Clara Pueblo?

24 A According to the certificate, that was supposed to be my
25 birthplace.

- 1 Q Are your parents living or dead?
- 2 A My mother is living with me today. She is living today.
- 3 Q Your father is deceased?
- 4 A Yes.
- 5 Q Was your father of the Santa Clara Pueblo?
- 6 A Yes, he is.
- 7 Q Do you have children, Governor?
- 8 A Yes, I have.
- 9 Q How many?
- 10 A I have four boys and three girls.
- 11 Q Is your wife also from Santa Clara?
- 12 A Yes, she is.
- 13 Q Where is Santa Clara Pueblo located, physically?
- 14 A Santa Clara Pueblo is located approximately 28 miles from
15 Santa Fe, north of Santa Fe.
- 16 Q In what counties?
- 17 A Rio Arriba County but we are also covered in Santa Fe and
18 Sandoval County, so we are actually covered under three
19 counties. The Pueblo itself is located more so in Rio
20 Arriba County.
- 21 Q What is the size, if you know, of the Pueblo?
- 22 A The size of the Pueblo?
- 23 Q Yes.
- 24 A It is approximately 48,000 acres.
- 25 Q 48,000 acres. How many people reside on the Pueblo?

- 1 A Approximately 1200.
- 2 Q Would you describe the 48,000 acres, as to the type of land?
- 3 A The land is composed of mountainous areas, agriculture
4 type of areas, residential, grazing areas, commercial;
5 could be developing into industrial.
- 6 Q Do you know how much is irrigable or that can be farmed?
- 7 A I cannot be too certain on that.
- 8 Q If you don't know at all, just state that you don't know.
9 But if you have a close idea, you may so state.
- 10 A I would much rather say I don't know.
- 11 Q Do you have any idea how much is pasture land?
- 12 A Again, I will say --
- 13 Q You don't know?
- 14 A -- I do not know.
- 15 Q Is some of the land that is pasture land leased to various
16 and sundry people?
- 17 A The land is leased out for grazing purposes in the past.
18 And it is possible that such properties can be leased.
- 19 Q Can a non-Indian lease it?
- 20 A There are designated areas that non-Indians can lease
21 such properties.
- 22 Q So that a non-enrolled Indian --
- 23 A Non-enrolled can lease.
- 24 Q -- could also lease?
- 25 A Yes.

1 Q Could Mr. and Mrs. Martinez, if they so desire, lease
2 grazing land?

3 A If Mr. and Mrs. Martinez would like to graze such, or lease
4 such grazing lands, they can do so. They have to come
5 before the Council.

6 Q Where does the income from the Pueblo -- where is it
7 derived from, primarily?

8 A From leases and also from the canyon fees and Puye Cliff
9 fees, other permits such as sand and gravel sales.

10 Q Would you describe the school facilities on the Pueblo?

11 A Would you repeat the question?

12 Q Would you describe the school facilities, what school
13 facilities are on the Pueblo proper?

14 A The school facilities we have, we have the Headstart School
15 and we also have the Santa Clara Day School, which is
16 actually an elementary type of school.

17 Q And these are on the Pueblo itself?

18 A These are located on the Pueblo, yes.

19 Q Are these open to any residents of the Pueblo, regardless
20 of membership?

21 A Any Indian that could be residing within the boundaries,
22 yes. And there are, I believe, I understand that we have
23 some non-Indians -- I'm not certain on this -- but I
24 think we have a few kids that are non-Indians going through
25 the Headstart Program, but they are neighbors.

1 Q I'm sorry?

2 A They are neighbors.

3 Q What age?

4 THE COURT: Mr. Prelo, we are going to have to take
5 a recess at this time. Let's come back at 1:15. Court
6 will be in recess.

7 (Whereupon, at 11:50 o'clock A.M., Court stood in
8 noon recess; and at 1:15 o'clock P.M., the following
9 proceedings were had.)

10 THE COURT: If you will, go ahead, Mr. Prelo.

11 (Witness Paul Tafoya resumes stand.)

12 DIRECT EXAMINATION (Continued)

13 BY MR. PRELO:

14 Q Immediately before the recess, I had been asking you about
15 the schools on the Pueblo. Are there any schools other
16 than the day school on the Pueblo, physically located
17 there?

18 A Not directly within the Pueblo proper limits. On the
19 school that we have, as I pointed out, it is the Headstart
20 School and the Day School.

21 Q And from there, your youngsters go to school in --

22 A From there, our kids go to the Espanola School District,
23 or they can go to any boarding school in the state.

24 Q Do you know, Governor, of your own knowledge, whether or
25 not Federal funds are made available to the Espanola School

1 District?

2 A Yes, funds has been made available to the school district.

3 Q Governor, does Santa Clara have any distinctive cultural
4 trademarks that have stayed with the Pueblo for years, such
5 as weaving or art or anything of this nature?

6 A Yes. I believe the Santa Clara Pueblo Tribe has maintained
7 their arts and crafts throughout the years and it hasn't
8 been lost. I know we have one of the finest potters right
9 there in the Pueblo.

10 Q Speaking of pottery, is Santa Clara pottery recognized
11 throughout the -- to your knowledge, is it recognized
12 all over the country?

13 A I believe it is, yes.

14 Q And is it distinctive, Governor, a few pieces of pottery,
15 do you know it?

16 A No, offhand, I have to look under the base to see if it
17 is Santa Clara pottery.

18 But I believe I can say this much about the black
19 and red pottery; of all the Indian potteries that I've
20 observed throughout the country, I found that this
21 particular red or black pottery was made in the Espanola
22 Valley. It might have been made in Santa Clara, San
23 Ildefonso or San Juan.

24 Q Governor, would you describe to the Court the duties of
25 a Governor of Santa Clara Pueblo?

1 A The duties of the Tribal Government, if a Tribal Governor,
2 as I see it, is responsible for the people of the Pueblo.
3 He is -- that is his primary responsibility.

4 Of course, he is governed by the Tribal Council.
5 The Tribal Council has a lot to say of what goes on,
6 practically everything.

7 The Governor plays the executive role insofar as
8 carrying out the decisions, the instructions of the Tribal
9 Council. But it is the primary responsibility of the
10 Governor to see to it that all the decisions made by the
11 Council are in such a way that it is not harmful to the
12 community, that it supports that community, it preserves
13 the culture, the culture, heritage, and it preserves the
14 whole well-being of the Indian people.

15 Q Governor, if I may, does the Governor of Santa Clara
16 Pueblo have authority of his own to act or not act on
17 any problem within the Pueblo?

18 A It all depends on what the issues may be. It works both
19 ways.

20 The Tribal Council may want to make certain
21 recommendations and it is the responsibility of the
22 Governor to look at that particular matter that might be
23 coming in and he will, more or less, make a determination
24 of that, or the Governor can introduce into the Council.
25 And, again, I said, it does work both ways.

1 Q Can the Governor, for example, make a ruling on enrollment,
2 by himself?

3 A The Governor cannot make a ruling on his own. He is
4 limited in that.

5 Any of the major policy questions that may be coming
6 out and whether it concerns a major decision, that is a
7 responsibility of the Tribal Council.

8 Q How many members are there on the Council?

9 A A total of 14, including the Governor.

10 Q Does the Governor have a right to vote?

11 A The Governor does not have the power to vote. The only
12 time he has a power to vote is to break a tie.

13 Q Is the Pueblo governed under the Constitution that they
14 govern?

15 A The Pueblo is run under the Constitution, yes.

16 Q Is the Pueblo Government still closely related to religious
17 Government?

18 A That is a question that we could probably get into quite
19 deep if we start discussion. This matter of what does
20 the religious part of it cover, it has very much to do
21 with it in so many areas. But it will be, as I said before,
22 that it has relations because we are responsible to the
23 people, the Council, as a whole, is responsible to the
24 people, and within the people itself, there's another set
25 of leadership that we are responsible to.

1 So in this respect, we are coordinated activities
2 within the Council and the type of leadership that I have
3 just mentioned.

4 Q Governor, without telling us, how are the candidates
5 for Governor chosen; by religious faction?

6 If you know, just a yes or no answer.

7 A If I know, they were -- would you repeat that question.

8 Q Yes. Let me repeat that.

9 Do you know whether the candidates for Governor are
10 chosen by religious factions or groups?

11 A That, I think, is a religious type of a question.

12 But I might say this much: That in all factions,
13 there is leadership other than the Governor, other than
14 the Tribal Councilmen.

15 Q And are these factions religious factions, per se?

16 A Per se. They have to be, in order to gain this respect.

17 Q Are these factions the ones that pick candidates for
18 office --

19 MR. COLLINS: Your Honor, I'm going to object. He
20 is testifying. I'd like the questions not to be leading
21 in this regard.

22 THE COURT: Yes.

23 MR. PRELO: I will rephrase the question.

24 Q (By Mr. Prelo) Are these factions that you have just
25 spoken of, the factions that pick candidates for office?

1 A They have the responsibility, whatever the rules are; we
2 follow them.

3 Q Are you acquainted, Governor, with the 1939 Ordinance
4 governing Tribal membership?

5 A I read the contents, yes.

6 Q And of your own knowledge, do you know whether that
7 Ordinance has been followed since 1939?

8 A Yes, it has been followed since 1939.

9 Q And what, basically, does that Ordinance provide?

10 A What does it provide for?

11 Q Let me strike that. The Ordinance pertaining to the
12 children of female Santa Clara women that marry outside
13 non-Santa Clara, that portion of the Ordinance, do you
14 know why that came about?

15 A In the Ordinance itself?

16 Q Yes.

17 A It was my understanding, in discussing these matters with
18 the old people, that this was a rule that was carried on
19 and it was my understanding that in the year 1939, it
20 surfaced and, at that time, it became a written guideline.

21 Q Was the rule, as far as you know, that way prior to
22 1939?

23 A It was my understanding that it was. It was my understandin
24 through the people that I discussed this matter with, it
25 was my understanding that's the way it was before the

1 Constitution was adopted.

2 Q Do you recall, Governor, with whom you discussed that
3 matter?

4 A A number of people from the Pueblo who are quite old and
5 there's quite a few of them that I had discussed this
6 matter with.

7 Q Did you discuss it with your parents?

8 A Yes, I discussed it with my parents.

9 Q Governor, would you explain to the Court the difference
10 in the status of a male in a Pueblo society as compared
11 to that of a female in the religious privileges?

12 A Well, I'm not really supposed to talk anything about
13 religious matters when it involves my tribe.

14 I've been restricted since the day I took office.
15 Matters of this nature, I'm not supposed to discuss in
16 the public.

17 But I can state one thing: That the male Santa Clara
18 Indian truly has that responsibility to teach and train
19 and expose his family to the way of the Indian people,
20 and this involves quite a bit within the Indian culture.

21 Now, I'm talking about the Santa Clara Indian culture
22 and it is his responsibility, much more than it is the
23 responsibility of a female member of the tribe.

24 Q Do the females have the same privileges, without telling
25 us what they are, do they have the same privileges or

- 1 more or less?
- 2 A They have less privileges than the males of the tribe.
- 3 Q Is it considerably more, almost the same?
- 4 A No.
- 5 Q Which is it, if you know? Let me rephrase that question.
- 6 You stated that the males have more privileges. Is
- 7 it almost the same or do the males have many, many more
- 8 privileges than the females?
- 9 A Well, I would say the male would have twice as much or
- 10 more privileges.
- 11 Q And you call these privileges. Are there also obligations
- 12 that go with this?
- 13 A Yes. They are obligated to some extent. Again, it all
- 14 depends on what the case may be at this particular time.
- 15 Q Who is considered the head of the household for Santa
- 16 Clara Pueblo Tribe?
- 17 A In the Santa Clara Pueblo, the male is always considered
- 18 the head of the house.
- 19 Q Governor, switching to another topic, who owns the real
- 20 estate or the real property?
- 21 A The property is owned by the Santa Clara Pueblo. It is
- 22 community property.
- 23 Q Do any of the individual members own a piece of real
- 24 estate outright?
- 25 A No. The Santa Clara land is now what they call the

1 allotted land. There is none that I know of.

2 Santa Clara land is strictly community property, but
3 it is assigned for an individual to use such property.

4 Q Are you aware of any membership roll or list that is
5 written out, a membership roll of the Santa Clara Pueblo,
6 an actual written list?

7 A The only thing that I really have this information on is
8 strictly on the census of the tribe, which is a BIA census.
9 I do know that attempts were made to update the membership.

10 Q But the census and membership in the tribe are not the
11 same thing, is that correct?

12 A No, no. It's not the same.

13 Q Do members of the Santa Clara Pueblo have to have your
14 permission to go off the Pueblo or to talk to other
15 Pueblos?

16 A At this time, it's not really that way now. It changed
17 a little there. But it is true, it is out of respect on
18 the basis that they respect the authority of the tribe
19 and they have the option and we appreciate the fact that
20 they come to the tribe or the Tribal office or Council
21 members to discuss matters that they may want to pursue
22 on the outside.

23 We like to be helpful and we appreciate the courtesy
24 that has been extended over the past.

25 Q Governor, a question was raised whether, in the event that

1 Mrs. Martinez might pass away, her children would be
2 forced off the Pueblo. Can you answer that question?

3 A No, I don't think her children would be forced off the
4 reservation.

5 As a matter of fact, I think the Tribal Council will
6 most likely come to their aid. I think this is very much
7 true because we like our people. We like to protect them
8 as much as possible, even though they might be true members
9 of the tribe.

10 As long as they reside on the reservation, we are
11 responsible and are concerned with their welfare. I'm
12 sure they would not be chased off the reservation.

13 Q Have you ever denied Julia Martinez any rights, privileges
14 on the Pueblo?

15 A No. No, I have not denied her or anybody on the reserva-
16 tion. As a matter of fact, wherever it is possible, I
17 like to be helpful and I think this has been the philosophy
18 of the Tribal Council.

19 They've been trying to come out and give help and
20 aid to whoever that might need assistance and I carry out
21 this type of responsibility.

22 Q Have you ever denied any of her children any rights or
23 privileges?

24 A No, we have not. As a matter of fact, we encourage all
25 residents, the entire community, to participate in whatever

1 activities they can.

2 I'd like to make a statement here that in terms of
3 employment, that we denied no one, as long as there's a
4 vacant spot we can -- we have the finances for. We provide
5 the employment opportunities for them, and the children
6 of Myles Martinez is not an exception. They, too, have
7 participated.

8 Q Governor, if you know, what are the requirements for an
9 Indian person to get a census card entitling them to
10 health, education and welfare?

11 A The health, education and welfare are all provided by the
12 Federal Government. The tribe does not provide these
13 services.

14 It is not much of a problem because the only thing
15 they should get from the Tribal Council is that they would
16 have had -- that they would get a verification that they
17 do possess one-fourth degree Indian blood.

18 I know I have done this in the past, where members
19 were in the business -- residing on the reservation within
20 the Pueblo, I have written letters to the effect that they
21 should have the census number because I do verify the
22 fact that they are Indian, that they do possess one-fourth
23 degree or more Indian blood.

24 Q Were you ever requested to do that for the Martinezes?

25 A I believe this was quite a few years ago, I believe it

1 was the year 1968 or '67, somewhere around there, we
2 discussed this matter in Albuquerque and we qualified the
3 fact that the BIA census provides Federal services and
4 all Indians should be listed in that Federal census, not
5 the Tribal membership. It has nothing to do with that.

6 Q And the tribe has nothing to do with getting them on the
7 census, is that correct?

8 A If a request is made by such individuals, then we give
9 them this assistance.

10 Q And do you know whether or not you gave that assistance
11 or whether or not you were asked for it?

12 A They have asked my participation in discussion with the
13 Superintendent, the Assistant Superintendent, I believe,
14 Bob Freeman was the Assistant Superintendent of the old
15 United Pueblos Agency.

16 I do remember two solicitors that came in to the
17 office and we discussed this subject at length. We were
18 trying to get this one point: The Federal BIA membership
19 is not the Tribal roll, and the Federal Government qualifies
20 all Indians to receive all kinds of benefits.

21 MR. PRELO: May I have a moment, Your Honor?

22 THE COURT: Yes, sir.

23 Q (By Mr. Prelo) Governor, would you describe the method
24 by which the traditions and culture is passed down in the
25 Santa Clara Pueblo?

1 A I believe there's many, many different ways that this is
2 passed down, but I do know that -- again, I repeat and
3 put the male on top, I think on the male side more of this
4 is passed through the family from generation to generation.

5 And if it is not, the husband of a family, it may
6 be the uncle, the cousins; but primarily they are the
7 ones. They are the ones that pass down such traditions,
8 customs from generation to generation.

9 Q Historically, to the best of your knowledge, when a Santa
10 Clara female married a non-Santa Clara male, where did they
11 live?

12 A They lived on the reservation, the Santa Clara male.

13 Q No. A Santa Clara female, a lady, marries a non-Santa
14 Clara male, historically, if you know, where did they
15 go live?

16 A Well, according to the older people on the reservation,
17 they usually travelled with their husbands. They go with
18 them, historically.

19 Q Do you consider yourself traditional? Have you talked
20 to people, understand the tradition?

21 A Well, tradition actually covers a lot of ground and I
22 would consider myself traditional to a certain extent.

23 Q Let me ask you it this way, Governor: Do you understand
24 the old way with reference to membership to a woman on
25 the Pueblo?

1 A As much as that has been explained to me, yes.

2 Q And has it been explained to you why the present system
3 is in effect?

4 A Yes. It has been explained to me why the present system
5 has been in effect.

6 Q And was this by an old timer?

7 A Right.

8 Q By elders?

9 A Others of the tribe, yes.

10 Q What did they explain to you?

11 A Again, I would say that it does cover quite deeply in
12 terms of the religious life of the tribe, which I am again
13 restricted not to openly discuss.

14 Q You have been Governor for how many terms?

15 A Seven times.

16 Q In your opinion, what would happen to the Santa Clara
17 culture if you quit enforcing the Ordinance of 1939?

18 A It would tend to destroy the Pueblo as a whole because
19 there would actually be no Government, no organization.
20 It would take away a great deal of things that you have
21 to have an organization for. You have to have a certain
22 type of a Government in order to regulate the enforced
23 rules and enforced laws and make laws.

24 Without it, we would have an influx of people that we
25 don't know who they are. They would come in from all

1 directions; Indians and non-Indians alike.

2 So it would be a destruction on the Santa Clara
3 Indian culture.

4 Q Governor, I take it that you have no objection -- strike
5 that.

6 Do you have any objection to the Martinezes getting
7 every benefit that they possibly can from the Pueblo?

8 A As a matter of fact, I will help them get anything they
9 can get from the Pueblo.

10 Q What is your prime concern insofar as this lawsuit is
11 concerned?

12 A My prime concern, as far as this lawsuit is that we like
13 to keep our Government. We like to be a responsible
14 people. We know what our community is all about.

15 We know the people, the traditions and customs, the
16 ceremonies, the religious life, the entire thing that
17 makes the Indian and his way of life. That is, to me,
18 is very important.

19 Membership, at this point in question, is very
20 important. I think the community is concerned very much
21 so about the general membership of the tribe, and I am
22 sure that, eventually, they will work out their own
23 problems.

24 Q Since 1939, Governor, has there been any member -- strike
25 that.

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