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1 RECORD ON APPEAL

2 UNITED STATES COURT OF APPEALS

3 TENTH CIRCUIT

4 NO. _____

5 JULIA MARTINEZ, on behalf of herself and)
6 all others similarly situated, and)
7 AUDREY MARTINEZ, on behalf of herself and)
8 all others similarly situated,)

9 Appellants,)

10 v.)

11 GEORGE ROMNEY, Individually and as U.S.)
12 Secretary of the Department of Housing)
13 and Urban Development; CLYDE PASQUAL,)
14 individually and as Executive Director)
15 of the All-Indian Pueblo Housing)
16 Authority; the SANTA CLARA PUEBLO;)
17 and PAUL TAFOYA, individually and as the)
18 Governor of the Santa Clara Pueblo,)

19 Appellees.)
20)
21)
22)
23)

24 APPEAL FROM THE UNITED STATES DISTRICT COURT

25 FOR THE DISTRICT OF NEW MEXICO

VOLUME II

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JULIA MARTINEZ, on behalf of herself and
all others similarly situated, and
AUDREY MARTINEZ, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

GEORGE ROMNEY, Individually and as U.S.
Secretary of the Department of Housing
and Urban Development; CLYDE PASQUAL,
individually and as Executive Director
of the All-Indian Pueblo Housing
Authority; the SANTA CLARA PUEBLO;
and PAUL TAFOYA, individually and as the
Governor of the Santa Clara Pueblo,

Defendants.

No. 9717

APPEARANCES:

For the Plaintiffs: DNA-People's Legal Services, Inc.
Attorneys at Law
By: Alan R. Taradash
-and-
Robert B. Collins
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For the Defendants: ALBERT, PRELO & BERLIN, P.A.
Attorneys at Law
By: Marc Prelo
-and-
Richard J. Grodner

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED, that the above-entitled and numbered
cause came on second day of trial before THE HONORABLE EDWIN L.
MECHEM, U.S. District Judge, at Santa Fe, New Mexico, on the

1 26th day of November, 1974, at 9:02 o'clock A.M.;

2 That the plaintiffs appeared in person by their
3 attorneys of record, as set forth above;

4 That the defendants appeared by their attorneys of
5 record, as set forth above and the following proceedings were
6 had:

7 THE COURT: Mr. Prelo, did you have any more that you
8 wanted to bring out on direct examination?

9 MR. PRELO: No, Your Honor, I rested, and I think
10 passed the witness.

11 THE COURT: All right, sir.

12 JUAN CHAVARRIA,
13 having been previously duly sworn according to law, upon his
14 oath testified as follows:

15 CROSS-EXAMINATION

16 BY MR. COLLINS:

17 Q Mr. Chavarria, yesterday you stated that you have two sons?

18 A Yes, I did. I have two sons.

19 Q And where do they live, sir?

20 A They live in the Santa Clara Pueblo.

21 Q Now, are you familiar with the government at Santa Clara
22 before the Constitution?

23 A To some extents, yes.

24 Q Was there a governor at that time?

25 A Yes, there was.

1 Q Was there a lieutenant governor?

2 A Yes.

3 Q And was there a Council?

4 A Yes, there was a Council, yes.

5 Q Were they elected?

6 A They were appointed.

7 Q Now, you said yesterday that your grandfather and other
8 men taught you this rule about men being head of the
9 household; is that right?

10 A That's right.

11 Q What did they tell you about whom you should marry?

12 A Sir, speak just a little louder. I'm just a little hard
13 of hearing, you know, and, if you will, please, speak a
14 little louder.

15 Q What did your grandfather and these other men tell you
16 about whom you should marry?

17 A About whom I should marry?

18 Q Yes.

19 A Well, my grandfather and the other men, even at that time,
20 they had foreseen what may happen. At that time, when I
21 was a small child, possibly 10, 12 years old, the elders
22 have taught -- or, during that time -- it was forbidden
23 to marry into the Navajo Tribe. And, even at that early
24 stage, they have foreseen what could have happened, and we
25 are seeing that thing today.

1 Q So they told you you shouldn't marry a Navajo woman; is
2 that right?

3 A Yes.

4 Q So they told you that no matter who you married, your
5 children would be members of the tribe; is that right?

6 A Right.

7 Q They still told you that you shouldn't marry a Navajo anyway;
8 is that right?

9 A That's right. At this point I would like to say that I
10 do not want to offend any of my people from Santa Clara
11 Pueblo as to what I have said, but that has been handed
12 down to me through word of mouth, and that is the reason
13 I have said that today.

14 Q What did they tell you about if you married a non-Indian?

15 A If I married a non-Indian, I mean, if I married a non-Indian?

16 Q Yes.

17 Q That, well, we like to keep things we have, our land, our
18 culture, among our own people. For that reason, if we
19 can marry our own people, that would be much more better
20 for the tribe.

21 Q So they told you that the best thing would be if you
22 married within the Santa Clara Pueblo; is that right?

23 A That's right.

24 Q And did they also tell you it would be best if you married
25 within your own Summer People?

1 A No, that was not the rule.

2 Q I see. It didn't matter, just so it was one from Santa
3 Clara?

4 A Just so it's someone from our own tribe.

5 Q I see. So the preferred wife would be someone from your
6 own tribe. What would be the next best?

7 A The next step, possibly, would be some other Indian people.

8 Q But not Navajo?

9 A Well, I could have married maybe a Navajo, if that was
10 coming to me.

11 Q Was there any preference to marry another person from
12 another Tewa village?

13 A Well, yes, yes, there is.

14 Q What language, sir, is used in the religious life of
15 Santa Clara?

16 A The Tewa language.

17 Q Is any other language used?

18 A No.

19 Q What language is used for Council affairs of the Tribal
20 Council?

21 A Well, today, the present Council, most of the young men
22 speaks English, and they use both the Tewa and English
23 language.

24 Q I see. Is the Tewa language important to the religion of
25 Santa Clara Pueblo?

1 A Yes, it is very important.

2 Q Could someone who could not understand any Tewa at all
3 participate in the religion completely at Santa Clara?

4 A It's possible.

5 Q Mr. Chavarria, when you were Governor, do you recall
6 whether, in the Tribal Elections, absentee ballots are
7 permitted?

8 A Yes, they are.

9 Q Are there a large number or small number of absentee
10 ballots --

11 MR. PRELO: Your Honor, I believe this goes beyond the
12 scope of direct, and I would object to it on that ground.

13 THE COURT: Fine. He may examine him.

14 A Will you repeat the question again, please?

15 Q (By Mr. Collins) Are there a large number of absentee
16 ballots?

17 A Yes, there are.

18 Q In the 1930's, Mr. Chavarria, do you recall a woman named
19 Sergeant visiting the Pueblo, an Anglo woman?

20 A Vaguely remember, but I cannot say that I distinctly
21 remember her visiting the Pueblo.

22 Q Did you yourself participate in the writing of the
23 Constitution or the work around the Constitution?

24 A No, I did not.

25 Q Now, have there been naturalizations at Santa Clara before

- 1 1939?
- 2 A Right.
- 3 Q Do you know of any such naturalizations?
- 4 A Yes.
- 5 Q Do you know of the naturalization of a man named Dozier?
- 6 A Yes, I knew the man.
- 7 Q Why was he naturalized?
- 8 A Well, he lived there for quite a number of years, and when
- 9 I was quite small I remember him, you know, seeing the
- 10 man. He was a school teacher, and the reason they
- 11 admitted him into the Tribe was that he was a great asset
- 12 to the people of the Tribe.
- 13 Q He was a non-Indian; is that correct?
- 14 A Yes, he was.
- 15 Q Did he join into the religious life of the Pueblo?
- 16 A I cannot say on that. I don't know.
- 17 Q Do you recall a man named Lawrence Singer, Senior?
- 18 A Yes, I do.
- 19 Q Was he naturalized?
- 20 A Yes, he was.
- 21 Q What Tribe was he from, sir?
- 22 A He was from the Navajo Tribe.
- 23 Q Do you recall a man named Paul Tsosie?
- 24 A Yes, I do.
- 25 Q And was he naturalized?

- 1 A Yes, he was.
- 2 Q And he was a Navajo, too?
- 3 A He's a Navajo.
- 4 Q How about Mr. Tallman? I think it's David Tallman.
- 5 A Yes, I know him.
- 6 Q Was he naturalized?
- 7 A He was naturalized, yes.
- 8 Q And he is Navajo also, right?
- 9 A Yes, right.
- 10 Q When did these occur, sir, these naturalizations?
- 11 A That was in the late 30's, I guess.
- 12 Q Do you know if those three men, after they were
- 13 naturalized, participated in the religious life of the
- 14 Tribe?
- 15 A Well, I cannot say that because they belong to another
- 16 clan, and I couldn't say whether they did or not.
- 17 Q Did any of those men, after they were naturalized, become
- 18 members of the Council, Tribal Council?
- 19 A Yes.
- 20 Q Are there more mixed marriages now than there used to be?
- 21 A Yes, there is.
- 22 Q Were mixed marriages common when you were a boy?
- 23 A They were very common.
- 24 Q They were very common when you were a young man?
- 25 A I mean, what I wanted to say, was there were not so many

1 mixed marriages as there are today.

2 Q There were not so many --

3 A There were not so many in those days.

4 Q What year were you married, sir?

5 A 1931.

6 Q 1931. At that time, did most people marry within the
7 Pueblo?

8 A Yes, I would say so.

9 Q Under the Ordinance of 1939, sir, what happens in the
10 case of a child born out of wedlock?

11 A Well, they were considered as a member of the Tribe.

12 Q What happens in the case of a widow, where the husband is
13 a non-Santa Clara, the widow is a Santa Clara, the husband
14 dies and the woman returns to Santa Clara with their
15 children; can they then be recognized?

16 A No. You are talking about after the Constitution, the
17 setup of the Constitution?

18 Q I'm talking about under the Ordinance of 1939.

19 A No, they cannot be.

20 Q Widows cannot be admitted under the Ordinance of 1939?

21 A No.

22 Q Have any widows been admitted?

23 A I do not recall of any.

24 Q Governor, we had some testimony about Santa Clara pottery
25 yesterday. Is that pottery made by men or women or both?

1 A Both.

2 Q Isn't it true that a Santa Clara child receives a Tewa
3 name as well as a Spanish name?

4 A That's right.

5 Q And isn't it true that the Tewa name is received at a
6 naming ceremony?

7 A Yes, it is.

8 Q And isn't it true that that ceremony is conducted by
9 women?

10 A Yes, it is.

11 Q When you have a Tewa name, is it different from your
12 father's name?

13 A Yes, it is.

14 MR. COLLINS: Pardon me, Your Honor.

15 Q (By Mr. Collins) I may not have made one question quite
16 clear, Mr. Chavarria. When I asked about widows, I really
17 mean to ask about the children of the widow. In other
18 words, under the Ordinance of 1939, if you have a widow,
19 are her children admitted, where the father was not a
20 Santa Clara but he's dead?

21 A You mean to say if a widow under the Ordinance of 1939, her
22 husband dies, and have children?

23 Q Yes.

24 A They will be admitted into the Tribe?

25 Q After her husband dies. Yes, sir.

- 1 A Well, upon certain considerations, I think they can.
- 2 Q I'm sorry, Mr. Chavarria, I'm not certain whether we went
- 3 over this yesterday, the break, I can't tell some things
- 4 because of the break of time. You said you have several
- 5 daughters; is that right?
- 6 A Two daughters.
- 7 Q Where do they live at present?
- 8 A They live in the Santa Clara Pueblo.
- 9 Q Are they married?
- 10 A Yes, they are.
- 11 Q Are either of their husbands members of the Pueblo?
- 12 A No. I would like to say at this point that one is over
- 13 in Japan with her husband, who is in the Air Force.
- 14 Q I see. Are there quite a number of mixed marriage people
- 15 living in Santa Clara today?
- 16 A Yes, there is.
- 17 Q Are many of those ones where the Santa Clara member is
- 18 the wife?
- 19 A Yes.
- 20 MR. COLLINS: Your witness.
- 21 THE COURT: Mr. Prelo.
- 22 REDIRECT EXAMINATION
- 23 BY MR. PRELO:
- 24 Q Referring to the last question that was asked of you,
- 25 are many of them where the wife is the Santa Clara member,