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In The United States District Court
For The District Of Arizona
No. Civ 74-842 Phx-ehc

Ivan L. Sidney, Chairman of the Hopi Tribal Council of
the Hopi Indian Tribe, for and on behalf of the Hopi
Indian Tribe,

Plaintiff,

vs.

Peter Macdonald, Chairman of the Navajo Tribal Council
of the Navajo Indian Tribe, for and on behalf of the
Navajo Indian Tribe,

Defendant,

vs.

Evelyn James, et al.

Intervenor.

Deposition Of Peter M. Whiteley, Ph. D.
Volume I
March 21, 1989

Pursuant to Notice taken on behalf of Defendant
Macdonald at 1700 Lincoln Street, Suite 4000, Denver,
Colorado 80203, at 9:35 A m., before Michelle R.
Mccollum, Certified Shorthand Reporter and Notary
Public within Colorado.

Appearances:

Mary Gabrielle Sprague and James E.
Scarboro, Attorneys at Law, from the Law Firm of Arnold
& Porter, 1700 Lincoln Street, Suite 4000, Denver,
Colorado 80203, appearing on behalf of the Plaintiff.

John W. Rogers, Attorney at Law, from the
Law Firm of Brown & Bain, P. A, 2901 North Central
Avenue, Post Office Box 400, Phoenix, Arizona 85012,
appearing on behalf of Defendant Macdonald.

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Page 3

I N D E X

	Page	Initial Reference
3 Examination Of Peter M. Whiteley, Ph. D. : Volume I		
4 March 21, 1989		
5 By Mr. Rogers	4	
6		
7		
8		
9 Defendant's Deposition Exhibits:		
10 1 Report by whiteley, Hopitutskwa: An Historical and Culteral Interpretation of the Hopi Traditional Land Claim	10	
11 2 Errata Sheet	10	
12 3 Report by whiteley, On the History of Hopi-navajo Relations	10	
13 4 Errata Sheet	10	
14 5 Curriculum Vitae	17	
15 6 Deliberate Acts	57	
16 7 Excert of Report by Ives	83	
17 8 Letter from whiteley to Man	102	
18		
19 (Enclosed)		
20		
21		
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1 whereupon, the following proceedings
2 were taken pursuant to the Federal Rules of Civil
3 Procedure:
4 Peter M. whiteley, Ph. D. - Volume I
5 having been first duly sworn to state the whole truth,
6 testified as follows:
7 Examination
8 By Mr. Rogers:
9 Q Dr. whiteley, are you represented by
10 counsel today?
11 A How do you mean?
12 Q well, I note that Ms. Sprague is sitting
13 at your side. Is Ms. Sprague your lawyer?
14 (Discussion off the record between the
15 deponent and Ms. Sprague.)
16 A Ms. Sprague is not my lawyer. she
17 represents the Hopi Tribe.
18 Q Is that what Ms. Sprague just told you?
19 A Yes.

20 Q At least your understanding is you're here
21 today, and you're not represented by counsel?

22 A Yes.

23 Q Dr. Whiteley, have you ever been deposed
24 before?

25 A No.

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1 Q Have you ever been a witness at a trial?

2 A No.

3 Q I'm sure Ms. Sprague has explained to you
4 some of the ground rules attorneys follow in
5 depositions?

6 A Um-hum.

7 Q But there are a few guidelines I would
8 like to discuss with you now, just to work out some
9 ground rules. First of all, do you understand that you
10 are under oath today and the testimony that you give
11 here is as if you were testifying in court?

12 A Yes.

13 Q Now, during the course of the deposition,
14 if you do not understand the question that I ask,
15 please tell me, and I'll do my best to clarify it.

16 A Okay.

17 Q I know I'm prone to get tongue-tied at
18 times. And if you have a blank expression on your
19 face, I will guess that you probably didn't understand
20 my question, but if there is a question that you didn't
21 quite understand, please let me know.

22 A Okay.

23 Q I also ask, for the benefit of the court
24 reporter, that you please let me finish asking my
25 questions before you answer them. The court reporter

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1 is here to take the verbatim transcript of what is said
2 today. And if two people are talking at the same time,
3 it generally throws most court reporters into an
4 epileptic fit and it makes it very difficult to read
5 the transcript later. So if you will wait until I
6 finish my questions, that might help the court
7 reporter.

8 A Okay.

9 Q One more point about the court reporter,
10 the court reporter transcribes words, so if you wish to
11 signify yes or no, you have to say those words.
12 Normally in conversation, we utter noises, sometimes to
13 signify affirmatives or to signify no, but the sounds
14 um-hum and huh-uh turn out the same in a written
15 transcript.

16 During the course of the deposition, if
17 you want to take a break for any reason, let me know,
18 and we'll take one. Generally I like to take a break
19 about every hour, hour and a half, and I find that
20 keeps me refreshed and also keeps the witness
21 refreshed. But certainly if you want to take a break
22 before then, you're welcome to do that. Is that
23 agreeable with you?

24 A Yes, that's fine.

25 Q Dr. Whiteley, have you met with the Hopi

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1 Tribe's attorneys in preparation for this deposition?

2 A Yes.

3 Q And who did you meet with?

4 A With Mary Gay Sprague and with Jim

5 Scarboro.

6 Q And when did you meet with them?
7 A With Mary Gay Sprague on Sunday the 19th
8 and Monday the 20th, and with Jim Scarboro on Monday
9 the 20th.

10 Q During the course of your preparation
11 session, did you review any documents?

12 A I reviewed the documents that I had
13 written, if that's -- if that falls into the category
14 "documents." I also reviewed some of my notes. I
15 didn't review any archival documents that I can
16 recollect.

17 Q Aside from meeting with the attorneys for
18 the Hopi Tribe, did you do anything else to prepare for
19 this deposition?

20 A I read an article by Lawrence Rosen, an
21 anthropologist. He's an expert witness from the
22 American Anthropologist, 1977, I think.

23 Q And what was the article about?

24 A About the role of anthropologists as
25 expert witnesses, how they have testified in claims

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1 cases previously and how this compares with our
2 professional sociologists that have testified on
3 certain occasions, psychologists assessing the role of
4 anthropological knowledge in these cases.

5 Q Did the article provide any guidelines
6 that a person could follow in testifying?

7 A Not really, no. It was more of a -- sort of
8 a solely analysis role of expert witnesses.

9 Q Aside from this article, did you do
10 anything else to prepare for this deposition?

11 A No.

12 Q Dr. whiteley, how much have you been paid
13 in connection with your work in this litigation?

14 A My rate of pay is \$60 per hour. I can't
15 tell you exactly how much I have been paid so far. For
16 the year 1988, I was paid a total of something like
17 \$31,000. This year I haven't been paid so far, or I
18 haven't actually received any checks from the Tribe
19 yet, but I have put in statements of account something
20 like for \$4,000, I think, maybe 5. I don't remember
21 exactly.

22 Q Now, Dr. whiteley, I want to go over some
23 basic definitions to make sure we're talking about the
24 same land area. Is it your understanding that this
25 lawsuit does not involve lands within the 1882

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1 Executive Order area?

2 A That is my understanding, yes.

3 Q And it is also your understanding it does
4 not involve lands within the 1868 Treaty Reservation
5 for the Navajo?

6 A That is my understanding. Although, might
7 I just say that with respect to the 1882 Executive
8 Order Moqui and the 1868 Navajo, that is obviously
9 material in my Hopitutskwa report, which pertains to
10 those areas separately of anything I might say about
11 the 1884 area.

12 Q I understand that aside from the 1862 area
13 and the 1882 Executive Order area, is it your
14 understanding that this lawsuit involves all the
15 remaining land, the Arizona portion and the Navajo

16 Reservation?
 17 A Yes.
 18 Q And just for convenience, is it all right
 19 if we refer to those as the 1934 lands or the 1934
 20 Reservation?
 21 A Sure.
 22 Q When I use those terms, you will
 23 understand me to be talking about the lands we just
 24 described?
 25 A Yes.

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1 Q Is there a more convenient way for you to
 2 refer to them?
 3 A No, that's fine.
 4 Q I would like to mark as Exhibit No. 1 a
 5 report that I believe that you prepared entitled
 6 Hopitutskwa: An Historical and Cultural Interpretation
 7 of the Hopi Traditional Land Claim by Peter M.
 8 Whiteley, Ph. D., Sarah Lawrence College, October 1988.
 9 I would like to mark as Exhibit No. 2 an
 10 errata sheet, has at the top of the first sheet Errata;
 11 below that, and it repeats the title of the report,
 12 Hopitutskwa: An Historical and Cultural Interpretation
 13 of the Hopi Traditional Land Claim.
 14 I would like to mark as Exhibit No. 3 a
 15 second report, which I believe you authored.
 16 A Yes.
 17 Q Has a title, On the History of Navajo -- I'm
 18 sorry. On the History of Hopi-navajo Relations, Peter
 19 M. Whiteley, Ph. D., Sarah Lawrence College, October
 20 1988.
 21 And I would like to mark as Exhibit No. 4
 22 an errata sheet to that report, has at the top Errata
 23 and just below that, "On the History of Hopi-navajo
 24 Relations."
 25 (Defendant's Deposition Exhibits

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1 whiteley 1 through 4 were marked.)
 2 A Should I examine these?
 3 Q Certainly. Dr. Whiteley, during the
 4 course of this case and taking various depositions,
 5 some problems have come up with the reports of the
 6 experts, things that the experts intended to have
 7 included in the reports for whatever reason didn't
 8 manage to get included. Sometimes the wrong tables
 9 ended up in the reports. Sometimes the wrong maps were
 10 attached to the reports. Because of that history, I
 11 would ask you to take a look at Exhibits 1 through 4 --
 12 A Okay.
 13 Q -- with a critical eye to make sure there
 14 is not anything missing, such as tables, appendices.
 15 A I think I can say now that there are maps
 16 which are still to be added.
 17 (Discussion off the record between the
 18 deponent and Ms. Sprague.)
 19 A Then I assume if all the pages are here -- I
 20 don't know if you want me to look at every single page
 21 that everything is here as it is intended except for
 22 these additional maps.
 23 Q Fair enough. Dr. Whiteley, during the
 24 course of the deposition, if you note that something is
 25 missing, let me know. I know that these reports are

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1 lengthy and sometimes things just get omitted
 2 unintentionally. I take it that Exhibits 1 through 4
 3 were prepared by you?

4 A Exhibits 1 and 3 were prepared by me.
 5 Exhibits 2 and 4 were prepared from information that I
 6 gave to Mary Gay Sprague.

7 Q In the form of dictation?

8 A Yes, in the form of dictation.

9 Q I take it that Exhibits 2 and 4 reflect
 10 changes that you would like to make in your reports,
 11 Exhibits 1 and 3?

12 A Yes.

13 Q Now, you mentioned that there were some
 14 maps that you intend to have attached to the reports.
 15 Do you intend to have -- well, one, have these maps been
 16 prepared?

17 A Not yet, no.

18 Q Do you intend to have reports attached to
 19 both reports?

20 A Reports?

21 Q I'm sorry. Do you intend to have maps
 22 attached to both reports?

23 A Yes.

24 Q Starting with the Exhibit No. 1, the
 25 report on the Hopitutskwa, have you planned or have you

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1 figured out which maps you're going to be attaching to
 2 the report?

3 A Not finally, no. We have, I think, three
 4 or four under consideration.

5 Q Can you describe those that are under
 6 consideration.

7 A One of these is a Miera Y Pacheco map
 8 pertaining to the Dominguez-escalante Expedition.

9 Q Dr. Whiteley, I think you're going to have
 10 to spell that for the reporter.

11 A Okay. Miera Y Pacheco is M-i-e-r-a, new
 12 word Y, new word P-a-c-h-e-c-o. And the
 13 Dominguez-escalante Expedition is D-o-m-i-n-g-u-e-z,
 14 Escalante, E-s-c-a-l-a-n-t-e. That's one map. Another
 15 map is one which was prepared by Antonio Armijo,
 16 Armijo, A-r-m-i-j-o, from 1829, 1830.

17 Another map is one that was constructed in
 18 1858 by a soldier, whose name I forget for the time
 19 being, which reflects the boundaries of Navajo
 20 territory as specified in the Treaty of Laguna Negra,
 21 Laguna, L-a-g-u-n-a, new word Negra, N-e-g-r-a, in
 22 1855.

23 Q would that happen to be Captain
 24 Meriwether?

25 A No. Was Meriwether a captain?

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1 Q Oh. That's a good question.

2 A I thought he was governor, but I'm not
 3 sure. Then the next one is -- actually, that
 4 report -- that map is referenced in my report, I think.
 5 I can find you the name, if you want me to do that.
 6 The next one would be from 1859 or 1858, 1859, prepared
 7 by Egloffstein, E-g-l-o-f-f-s-t-e-i-n. May I ask
 8 counsel a question about --

9 Q Certainly.

10 (Discussion off the record between the
 11 deponent and Ms. Sprague.)

12 A Are there other maps that --
 13 Ms. Sprague: We can certainly proceed
 14 along these lines. I believe, Mr. Rogers, that after
 15 the lunch hour we could provide you a listing of the
 16 maps. Perhaps that would be easier to go through that
 17 way. If you want us to proceed, I think I could recall
 18 a few that we had discussed now.
 19 Mr. Rogers: It may be helpful just to
 20 prepare a list. I'm just trying to find out what I'm
 21 to expect.
 22 A I think we're talking about a total of
 23 five or six maps, so there may be ones that we decide
 24 not to include after that list, but that covers most of
 25 them as they concern -- yeah, we should prepare a list.

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1 Q (By Mr. Rogers) Dr. Whiteley, do you
 2 intend to attach any maps to your Hopi-navajo report,
 3 Exhibit No. 3?
 4 A Yes, I think so, but again, I think I
 5 could provide a more definite answer to that question
 6 after lunch.
 7 Q Okay. Why don't we defer that, then --
 8 A Okay.
 9 Q -- and give you a chance to write it down
 10 and that might give us some guidance.
 11 A Yes.
 12 Q Okay. Dr. Whiteley, you have been kind
 13 enough to provide errata sheets to your reports. Is
 14 there anything else that you feel needs to be changed
 15 in either of your reports, Exhibits 1 or 3?
 16 A Not that I know of.
 17 Q Dr. Whiteley, to the extent that you have
 18 opinions about the 1934 lands, are those opinions
 19 expressed in your two reports?
 20 A Yes.
 21 Q Are there any opinions that are expressed
 22 in your reports that you now have second thoughts
 23 about?
 24 A No.
 25 Q Are there any areas covered by your

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1 reports which you feel that you need to conduct
 2 additional research?
 3 A For the purposes of the reports?
 4 Q Yes.
 5 A No. I think there could well be
 6 additional research conducted with respect to certain
 7 opinions which are stated in the reports, but not those
 8 forwarded in the boundaries of the reports as they have
 9 been constructed.
 10 Q Dr. Whiteley, have you currently conducted
 11 any additional research in connection with this
 12 lawsuit?
 13 A No.
 14 Q Do you have any plans to conduct
 15 additional research in connection with this lawsuit?
 16 A Possibly, yes. I have been asked to
 17 possibly prepare rebuttal testimony for some statements
 18 about the identity of an individual named Aka'usi, who
 19 appears in the process report. Aka'usi is spelled --
 20 Q Pick a spelling.
 21 A A-k-a -' - u-s-i.
 22 Q Dr. Whiteley, I take it -- well, strike

23 that. Have you read Dr. Russell's reports?
 24 A I have. I have -- I read the reports that
 25 were available last summer. I haven't read additions

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1 or changes to his reports that he submitted after
 2 August.

3 Q Aside from the possibility of conducting
 4 research with respect to Aka'usi, do you have any other
 5 plans to conduct additional research in connection with
 6 this lawsuit?

7 A Not currently.

8 Q I would like to mark as Exhibit No. 5,
 9 Dr. Whiteley, what has been submitted to us as being
 10 your vitae. Has a production number on the first page
 11 E26352.

12 (Defendant's Deposition Exhibit Whiteley 5
 13 was marked.)

14 Q Dr. Whiteley, have you had a chance to
 15 look at Exhibit 5?

16 A Yes.

17 Q Is Exhibit 5 something that was prepared
 18 by you?

19 A Yes.

20 Q Do you recall approximately when Exhibit 5
 21 was prepared?

22 A I think it was around October 1988.

23 Q Now, Dr. Whiteley, I would just like to
 24 find out if there's anything that needs to be updated
 25 in this resume. Is there anything which, in your

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1 judgment, should be added to your resume reflecting
 2 activities that you may have undertaken since last
 3 October?

4 A Yes, I suppose there is. 19 -- in the -- do
 5 you want me to proceed to list then?

6 Q Certainly.

7 A In the category "Professional Activities
 8 and Honors," there should be -- above 1988, there should
 9 be something from 1989 which indicates -- and I won't
 10 choose the exact wording here -- that I presented a paper
 11 at Dartmouth College on Structure: An Agency in Hopi
 12 History.

13 Under "Professional Experience" on the
 14 second page, under "Teaching," I should, under 1985 to
 15 present, add another course entitled Ethnography and
 16 Literature, co-taught with a literature professor.

17 Under page 3, "Research," I should add
 18 preliminary research, one month 1988 to '89 in Lesotho,
 19 which is spelled L-e-s-o-t-h-o, with respect to a
 20 possible research project on Basotho, B-a-s-o-t-h-o,
 21 history.

22 Q Dr. Whiteley, where is this taking place?

23 A Lesotho is in southern Africa.

24 Q I was going through my list of
 25 southwestern Indian tribes, and I didn't think I heard

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1 of that word before.

2 A Under "Consulting," something which is
 3 missing altogether but which should probably be 1988 to
 4 '89 is as a consultant to a project administered by the
 5 American Foundation for the Blind for projects at Hopi,
 6 blindness among Hopi individuals and who have special
 7 needs.

8 Under "Publications and Other writing,"
 9 this vitae is intended as a professional vitae for
 10 applying for academic jobs and so forth, so I did not
 11 include all of my writings. In 1977 or '78, in
 12 conjunction with a number of other authors attached to
 13 the Office of Contract Archaeology at the University of
 14 New Mexico, I was the principal author of a chapter of
 15 a report on Laguna Pueblo. My research and writing was
 16 about Laguna Pueblo history, origins and history. And
 17 I also prepared -- I think that was actually 1978.
 18 1977, I prepared another report which was
 19 incorporated within a publication on that same
 20 institution, the Office of Contract Archaeology by
 21 Dorothy Cattle, C-a-t-t-l-e, and another author whose
 22 name eludes me for the moment, on Laguna Pueblo
 23 sheepherding practices.
 24 1978, I presented an M. A colloquium at
 25 the University of New Mexico, which was called African

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1 Models in the South American Lowlands, which was not
 2 published but was a formal M. A colloquium
 3 presentation. 1984 shows a preliminary version of the
 4 article which was published as 1985b and 1986; I e.,
 5 that article which was in two parts is called
 6 "Unpacking Hopi Clans." The preliminary version was
 7 entitled "Wither Leads the Keresan Bridge." Keresan,
 8 K-e-r-e-s-a-n.

9 In connection with my historical
 10 background regarding Hopi interest in this case, I
 11 wrote a letter in 1981 or '82 to the Rocky Mountain
 12 Magazine, I think it's called, which was published
 13 along with a letter from Edward Abbey that was
 14 pertaining to the 1882 Reservation and the Relocation
 15 Act and the protests against that Relocation Act.

16 Q Do you recall what the substance of the
 17 letter was?

18 A It was to -- it was to respond to an article
 19 in the previous issue of this magazine which had
 20 portrayed a view of relocation which I felt was biased
 21 in favor of the Navajos and did not take into account
 22 Hopi perspectives.

23 Q And perhaps I misunderstood you or
 24 misheard you, Doctor. Your recollection is that was
 25 written in 1981 or '82?

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1 A '81 or '82. I'm afraid I can't remember.

2 Q Do you know if you still have a copy of
 3 that letter?

4 A I do in New York. We, presumably -- the
 5 University of Denver library must have the Rocky
 6 Mountain Magazine. It should be fairly easy to find.

7 Mr. Rogers: Counsel, do you have any
 8 objection to making that letter available?

9 Ms. Sprague: No, I don't believe so. I
 10 haven't seen a copy of it. It might take a while to --

11 Mr. Rogers: Oh, certainly.

12 Ms. Sprague: -- get a copy of it, but
 13 that's no problem.

14 A In 1986 -- I don't know if this is part of
 15 my file elsewhere -- I wrote a letter to The New York
 16 Times, which was published, which was basically about
 17 the same thing. It was a response to a letter in the
 18 Times protesting Navajo relocation, which I had felt to

19 be similarly biased in favor of the Navajos without
 20 allowing adequate space for Hopi perspectives.
 21 On the same line, I have a letter in press
 22 with the journal Man. I don't exactly know in which
 23 issue it will appear, and it will be sometime this
 24 year, which responds specifically to a book review by
 25 David Aberle, A-b-e-r-l-e, again, with this same

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1 subject in question.
 2 I also wrote a letter -- or two letters in
 3 February of this year, one to the journal Cultural
 4 Survival Quarterly in response to an article or two
 5 articles on Navajo relocation which appeared in one of
 6 their issues last year. I have received a response
 7 from the -- from an assistant editor at that journal.
 8 The response does not indicate whether or not they will
 9 publish that letter.

10 The second letter was to a journal called
 11 The Anthropology Newsletter, which was a response to an
 12 article which appeared in the January Anthropology
 13 Newsletter, which was a report by a panel of the
 14 American Anthropological Association. I forget the
 15 exact name of the panel. It's something like Hopi -
 16 Navajo or Navajo-hopi Panel or something like that.
 17 That -- if they are intending to publish that, that
 18 should probably appear in the March issue of The
 19 Anthropology Newsletter. I haven't seen a copy of that
 20 issue yet. It may appear in April. Again, they may
 21 decide not to print it, so . . .

22 Q (By Mr. Rogers) Dr. Whiteley, do you have
 23 any objection -- do you still have copies of these two
 24 letters?

25 A I do.

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1 The Deponent: I think I sent you copies
 2 of those, Mary Gay. You don't know?

3 Ms. Sprague: No.

4 A If not, then they would be in New York.

5 Mr. Rogers: Again, Counsel, do you have
 6 any objection to making those available?

7 Ms. Sprague: I don't believe so.

8 Q (By Mr. Rogers) You also mentioned a
 9 letter to The New York Times. It was in 1986?

10 A 1986. July or -- I can't remember if it's
 11 June or July, but it's June or July, yeah.

12 Q And do you still have a copy of that
 13 letter?

14 A I believe I do, yes.

15 Mr. Rogers: Again, Counsel, do you have
 16 any objection to making that available?

17 Ms. Sprague: No.

18 Q (By Mr. Rogers) Dr. Whiteley, are there
 19 any additional materials or publications or other
 20 writings?

21 A I don't think so.

22 Q Now, Dr. Whiteley, I just want to go
 23 through some of the items that are listed in your
 24 vitae. Dr. Whiteley, are you a citizen of Great
 25 Britian?

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1 A Yes, I am.

2 Q When did you start your studies in the
 3 United States?

4 A 1976.
 5 Q I would like to start with -- it's listed as
 6 your educational background. You attained your M. A
 7 and B. A at Cambridge University?
 8 A Yes.
 9 Q And that was in Britain?
 10 A Yes.
 11 Q Did you specialize?
 12 A Yes. British degrees are considerably
 13 more specialized than U. S. college degrees, so when I
 14 indicate that this was in archaeology and anthropology,
 15 that's functionally all I studied for my time there,
 16 work courses in anthropology and archaeology. I didn't
 17 take any English literature or history. I did take
 18 some social psychology in connection with that, what
 19 Cambridge refers to as tripos, t-r-i-p-o-s, the
 20 archaeology and anthropology tripos. But other than
 21 that, that was the only class that was not formally
 22 within the archaeology and anthropology curriculum and
 23 it was connected with it.
 24 Q During the course of your studies, did you
 25 take any courses on American Indians?

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1 A On American Indians?
 2 Q Yes.
 3 A Yes.
 4 Q Approximately how many courses?
 5 A Well, again, when we say "courses," the
 6 course structure is different. There are a series of
 7 lectures for which one is not examined at all except,
 8 in general terms, the content of them once examined
 9 upon the end of three years at the institution, but one
 10 is not assigned a grade for a particular lecture.
 11 I took a seminar in North American
 12 Indians, I forget the exact title, taught by Stephen
 13 Hugh-jones. Hugh-jones is H-u-g-h, hyphen, J-o-n-e-s.
 14 I took a seminar in local land Amazonian anthropology,
 15 if we're going to include Northern American and South
 16 American Indians.
 17 Q Certainly.
 18 A Stephen Hugh-jones was also my supervisor,
 19 which is a particular office at Cambridge where you
 20 meet with a supervisor once every week in tutorials,
 21 and you write an essay, having read two or three books
 22 and three or four articles each week. And Stephen
 23 Hugh-jones is an American Indian specialist.
 24 To my recollection, those were the only
 25 courses, those two seminars that I've mentioned, which

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1 were concentrated on American Indian cultures and
 2 societies. And there were numerous tutorials in which
 3 the subject matter pertained to American Indians. But
 4 so far as I can recollect, there were no other lecture
 5 courses or seminar courses which were exclusively
 6 focused on American Indian societies and cultures.
 7 There certainly were many lectures which would utilize
 8 American Indian materials from time to time.
 9 Q Do you recall if you did any course work
 10 specifically pertaining to Hopi Indians?
 11 A I think the fairest answer to that is I
 12 don't recall.
 13 Q Fair enough. Do you recall if you did any
 14 course work specifically with reference to Navajo

15 Indians?

16 A I do. One of the texts utilized in this
17 course on Northern American Indians was Navajo
18 witchcraft by Clyde Kluckhohn. And that would have
19 been a class taken in 1973, I think.

20 Q Do you recall any additional course work
21 that you did with respect to Navajo Indians?

22 A Again, I think the fairest answer is that
23 I really don't recall.

24 Q Fair enough. While -- well, during the time
25 you were at Cambridge, did you conduct any

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1 archeological fieldwork, and not just pertaining to
2 American Indians?

3 A No. May I just say --

4 Q Certainly.

5 A -- that the structure of the archaeology
6 and anthropology tripos, British degrees are three
7 years long. Okay. And you have a term system where
8 you have three terms in the year. They are -- contrary
9 to how it might sound because of the shortness in
10 comparison to American university degrees, they're
11 very, very intensive. You aren't allowed to work
12 outside of your education at all. If you were found
13 working, you would probably be kicked out of the
14 place.

15 So the way that the archaeology and
16 anthropology tripos is structured are Cambridge degrees
17 are in two parts; part one of archaeology and
18 anthropology is taken in the end of the first year.
19 During that year, you study lectures and seminars and
20 tutorials in archaeology, physical anthropology, and
21 social anthropology. After that year, you have to
22 choose what your specialty is going to be.

23 My specialty was social anthropology, so
24 with the exception of that social psychology class -- or
25 I actually can't remember what the social psychology

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1 component consists of. It consisted of at least one
2 lecture. It may have consisted of two tutorials. With
3 the exception of that, all I studied during my time at
4 Cambridge was social psychology.

5 Q I see. And, Dr. Whiteley, you came to the
6 United States to study in 1976?

7 A Yes.

8 Q And that was at the University of
9 New Mexico?

10 A Yes.

11 Q During your graduate work, did you
12 specialize?

13 A Yes. I specialized in ethnology at the
14 University of New Mexico. I should also indicate that
15 I have an M. A from the University of New Mexico which
16 I received in 1978 and there was a year when I went
17 back to England to Oxford University to study for a
18 degree at Oxford in ethnology and prehistory. I was an
19 ethnologist. I was not a prehistorian. And I decided
20 during that year that I could not do what I wanted to
21 do at Oxford, so I returned to the University of
22 New Mexico in 1979.

23 Q And the degree that you obtained from the
24 University of New Mexico, your M. A degree, was in
25 anthropology?

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1 A Yes.
 2 Q At some point during your graduate
 3 education did you decide to specialize in pueblo
 4 cultures?
 5 A Yes.
 6 Q Do you recall approximately when that was?
 7 A 1979.
 8 Q And what prompted you to specialize in
 9 that area?
 10 A I had gone to the University of New Mexico
 11 in 1976 with the idea in mind that I would conduct
 12 research in Amazonia. One of my teachers at the
 13 University of New Mexico, who I was particularly
 14 impressed by in terms of his scholarship and his
 15 ethnological area, was Alfonso Ortiz, A-l-f-o-n-s-o
 16 O-r-t-i-z, who is a pueblo scholar. He's a pueblo man
 17 himself. He's from San Juan Pueblo, San Juan.
 18 In connection with the classes of his that
 19 I took informally, I went with him and some other
 20 students to a number of the Rio Grande pueblos
 21 initially and then began to go more and more and on my
 22 own to those pueblos and to pueblos further west,
 23 including in 1978, for the first time, Hopi. Actually,
 24 I'm not sure of 19 -- if 1978 was the first time I went
 25 to Hopi.

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1 Q Do you recall if it was after you returned
 2 from Oxford?
 3 A No, it was before. I may also have gone
 4 for the first time in 1977. I can't quite remember,
 5 but 1978 I went to the Hotevilla, H-o-t-e-v-i-l-l-a,
 6 snake dance. All of these things together, Alfonso's
 7 courses visited Rio Grande pueblos and Laguna, Acoma,
 8 Zuni, and Hopi, added up to my interest in switching my
 9 research focus to the southwest from Amazonia and also
 10 the work that I've mentioned already conducted for the
 11 Office of Contract Archaeology at the University of New
 12 Mexico on Laguna Pueblo history and sheepherding
 13 practices.
 14 Q Aside from Ortiz, did you study under
 15 someone else while you were at New Mexico regarding
 16 pueblo cultures?
 17 A I conducted most of my work along that
 18 line on an independent study basis with Harry Basehart,
 19 B-a-s-e-h-a-r-t.
 20 Q Was he your thesis adviser?
 21 A He was on my doctoral thesis committee.
 22 In effect -- well, actually, no, he was not my thesis
 23 adviser. He was emeritus by the time I was studying
 24 with him.
 25 My principal adviser for my thesis was

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1 Professor Karl, K-a-r-l, H. Schwerin, S-c-h-w-e-r-i-n,
 2 who is a South American specialist. But since he had
 3 been my adviser from the first going to the University
 4 of New Mexico, I retained him when I returned.
 5 Q During your graduate studies, did you
 6 undertake any course work -- oh, I'm sorry.
 7 A I'm sorry. May I interject?
 8 Q Certainly.
 9 A I also took classes with Louise Lamphere,
 10 L-a-m-p-h-e-r-e, some of which involved pueblo

11 studies. I was her teaching assistant for a year in
 12 which she taught classes with American Indian subject
 13 matter, and I presented some material at that point on
 14 Hopi culture during the course of that year.

15 Q Do you recall if you studied under anyone
 16 else at the University of New Mexico regarding pueblo
 17 cultures?

18 A The reason I'm thinking about this is
 19 because after a certain point in graduate school, the
 20 nature of one's study is different, obviously, from
 21 formal courses. So, for example, I spent a year in
 22 1982 to -- no, 1981 to '82 at the School of American
 23 Research in Santa Fe as a resident fellow. One of my
 24 other co-resident fellows was Linda Cordell,
 25 C-o-r-d-e-l-l, who is a southwestern archaeologist who

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1 studied quite a lot about prehistoric pueblos.
 2 Clearly, we talked a great deal over the course of the
 3 year. Whether that constitutes formal study, she was a
 4 university professor at the University of New Mexico.
 5 Do you see where I'm --

6 Q Yes. I understand where the confusion
 7 arises. Do you recall if there was anyone else you
 8 studied under in a formal sense that pertained to
 9 pueblo cultures?

10 A I don't think there was.

11 Q During your graduate work at the
 12 University of New Mexico, did you do any course work
 13 regarding the Navajo?

14 A Not course work which was specifically
 15 focused on Navajo, but, again, Louise Lamphere's course
 16 in American Indian culture and society dealt with some
 17 Navajo material. Her course in social organization
 18 dealt with some Navajo material. Keith Basso taught a
 19 seminar there, which I sat in on periodically, which I
 20 believe included some Navajo material. If it didn't
 21 include Navajo material per se, it certainly included a
 22 lot of Apachan material.

23 Martha Weigle, w-e-i-g-l-e, taught a
 24 course, which I don't recall explicitly including
 25 Navajo material, but I seem to -- she is a southwestern

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1 specialist, and we were in a number -- working in a
 2 number of southwestern cultures.

3 Q During your graduate work, did you have
 4 the opportunity to do any archaeological fieldwork?

5 A Yes.

6 Q And what fieldwork did you do?

7 A I did about two weeks only of survey work
 8 at the Kaiser Steel mine area near Raton, R-a-t-o-n.
 9 Kaiser is K-a-i-s-e-r. That was actually employed on a
 10 contract basis. It wasn't part of my formal graduate
 11 education.

12 Q Was it for an archaeological clearance?

13 A Yes, and I was just part of a survey crew.

14 Q Aside from these two weeks that you spent
 15 on this project, during the time that you were in
 16 graduate work, did you conduct any other archaeological
 17 fieldwork, either as part of the formal studies or as
 18 part of a contract work you would have done in
 19 connection with archeological clearances?

20 A No.

21 Q Dr. Whiteley, I understand from your book

22 that you conducted some work at Bacavi during the early
23 1980s; is that correct?

24 A As you phrased the question, yes, but some
25 of that work has continued into the late 1980s too.

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1 Q And I understand that you began your time
2 at Bacavi sometime at 1980, '81?

3 A 1980, yes.

4 Q What prompted you to investigate Bacavi?

5 A I had determined by that point that I
6 wanted to do some research at Hopi. I didn't know what
7 sort of research specifically it could be, given the
8 constraints which exist upon anthropological research
9 among all the Pueblos, especially Hopi. It's extremely
10 difficult to do resident fieldwork among the Hopi these
11 days.

12 I began to go out to Hopi in February of
13 1980. And during that month I was invited into
14 somebody's house to eat during the Powamuy,
15 P-o-w-a-m-u-y, or bean dance as it's referred to in
16 English, in Bacavi. While I was there, I learned that
17 the village of Bacavi was interested in having its
18 history written down. So I went away and made -- wrote a
19 formal proposal, which I submitted to the community
20 development specialist and the governor of the village
21 at that time to conduct such a research project into
22 the village's history which would utilize both Hopi
23 oral history and whatever information I could ascertain
24 from archives, previously published works, et cetera.
25 That proposal was submitted to the community. Some

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1 kind of survey, either formal or informal, I don't know
2 which, was conducted, and about three months later the
3 project was approved.

4 Q Now, I note from your vitae under
5 "Research" you note that during 1980-81 that you spent
6 14 months at Bacavi?

7 A Yes.

8 Q Were you residing there at that time?

9 A Yes.

10 Q And that since that time --

11 A With the exception of -- which I don't
12 include in here -- with the exception of those two weeks
13 of archeological survey work, which were conducted in
14 June or July, I think June 1981; so I went out of the
15 field, I went away from Hopi to Raton for two weeks and
16 then went back to Hopi for the remainder of that stay.

17 Q And, Dr. Whiteley, I note from your vitae
18 that you have a listing of approximately how much time
19 each year that you spend on your field research. Are
20 these listings accurate, to the best of your
21 recollection?

22 A What are you looking at exactly?

23 Q Well, let me just go down through the
24 list. To the best of your recollection, in 1988 --

25 A I see. You're on page 3.

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1 Q Yes. -- you spent one month in Bacavi?

2 A That's an approximation. I spent -- let me
3 see. I think it's an accurate approximation. I spent
4 some time in January there. I don't remember exactly
5 how many days, but probably about five or six days. I
6 spent some time in March there. I don't remember how

7 many days, but probably, again, about five or six
8 days. I spent some time in August there, which was
9 about, if I recall, something like eight or ten days.
10 So rounded up for these purposes, I would refer to it
11 as an approximately a month.

12 Q Fair enough. Then in 1987, you spent
13 approximately one month, broken up during the course of
14 the year?

15 A Yes, broken up during the course of the
16 year.

17 Q And two months during 1985?

18 A Yes, six weeks of that was continuous and
19 the other two weeks were throughout the course of the
20 year.

21 Q And you have a notation for 1981 through
22 1985 as being periodic?

23 A Um-hum.

24 Q Approximately how much time did you spend
25 at Bacavi at that time?

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1 A I really can't say. After I left the
2 field in 1981, I went pretty immediately to Santa Fe
3 for my resident fellowship at the School of American
4 Research. I went to Hopi periodically throughout that
5 year. I was there for a year. I don't know really how
6 often I went. I think I went at Christmas for a week
7 or so in '81-82. And then throughout the year I would
8 go for a weekend here or a weekend there. In
9 19 -- leaving aside 1982, I guess, between 1983 and 1985,
10 I was the coordinator or director of the Special
11 Collections Library at Northern Arizona University at
12 Flagstaff. During that entire period, I rented the
13 house that I had lived in while I was living in Bacavi
14 in 1980 to '81. So I would go from Flagstaff on
15 weekends for a week here, a week there. I've never
16 added it up. I really can't say. But certainly
17 between '83 and '85, those periodic visits were more
18 intensive or more substantial than they were between
19 '81 and '83.

20 Q During the course of doing your work at
21 Bacavi, was there someone at the University of New
22 Mexico who was supervising your work?

23 A Well, there was until I completed my
24 Ph. D., which was in 1982.

25 Q And who was that?

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1 A That was this doctoral thesis committee,
2 the head of which was -- sorry, doctor of dissertation
3 committee, which was headed by Karl Schwerin and
4 comprised also of Alfonso Ortiz, Harry Basehart, Scott
5 Rushforth, R-u-s-h-f-o-r-t-h, and Margaret Szasz,
6 S-z-a-s-z. I think that's all.

7 Q I take it that the field research that you
8 did at Bacavi ultimately resulted in your Ph. D. thesis?

9 A Yes.

10 Q And that, in turn, eventually resulted in
11 your book Desperate Acts?

12 A Yes.

13 Q And the other history of Bacavi, which the
14 name escapes me at this point --

15 A Journey to Reed Springs.

16 Q Yes. Can you recall approximately how
17 many informants you talked to during your preparation

18 of this material?
 19 A No, I can't. The reason I can't is they
 20 are too numerous.

21 Q During the course of collecting informant
 22 data now, did you take field notes?

23 A Yes.

24 Q Did you find some resistance by your
 25 informants to you taking notes of their conversation?

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1 A I didn't for most of the conversations
 2 that I took notes on. I didn't take notes during the
 3 conversations. Well, I say "most." I don't know,
 4 again, what the proportions are. Some conversations I
 5 tape-recorded and took notes on simultaneously, but in
 6 time that -- the practice of actually taking notes in
 7 person just didn't seem to be an appropriate way of
 8 conducting research at Hopi, so I trained myself to
 9 memorize what I considered to be the most significant
 10 aspects of conversations and wrote it down afterwards.

11 Q Now, Dr. Whiteley, do you speak Hopi?

12 A I speak a little Hopi.

13 Q During these interviews, did you have to
 14 use an interpreter?

15 A Not really. Let me explain.

16 Q Certainly.

17 A Again, I'm hesitating when I say "not
 18 really." Probably the most productive, if I am to find
 19 one single most productive time of my field research,
 20 consisted in recording conversations which were
 21 arranged between a number of older individuals. They
 22 would talk to each other for four hours at a stretch,
 23 in Hopi, principally. There was a younger man there,
 24 and he and I afterwards translated the tapes and
 25 transcribed the tapes together. In that sense, he

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1 served as an interpreter for that period. But the
 2 great majority of Hopi consultants that I know, and
 3 those that I don't know, speak English as well as
 4 speaking Hopi. There are probably a few people in
 5 their 90s who know no words of English, but that's
 6 probably an exaggeration too.

7 So I would say that most Hopis -- again,
 8 given the constraints of the fact that this is a
 9 generalization and as such subject to some risk, I
 10 would say that probably all Hopis up into their 80s
 11 speak English quite well, as well as speaking Hopi very
 12 well.

13 Q You mentioned that perhaps the most
 14 productive time of your field research was when there
 15 would be a number of elderly gentlemen?

16 A I didn't just say "gentlemen." I said
 17 individuals.

18 Q Individuals would speak at three or four
 19 hours at a stretch. I take it that these sessions you
 20 did not -- you were not asking questions?

21 A No. I mean, all the questions -- the frame -
 22 work of the concerns had been put forward beforehand,
 23 so they were aware of what we were interested in.
 24 "We," meaning all of us. And then they took the lead
 25 in addressing what they considered to be most

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1 important.

2 Q What was the name of your interpreter?

3 A I would rather not say.
 4 Q And why is that?
 5 A Because Hopi research depends upon
 6 confidentiality and the protection of the privacy of
 7 individuals. And as you will note from reading the
 8 introductory passages to both of my books, I
 9 specifically state that I don't mention individual
 10 names, for the most part, of living or recently
 11 deceased Hopi individuals.
 12 Q And is it your belief that the person you
 13 used as an interpreter would object to having his name
 14 disclosed?
 15 A I don't think that's the issue.
 16 Q Well, Dr. Whiteley, an issue like this as
 17 to who your translator is, I would like to respect any
 18 pledge of confidentiality that you have because it's
 19 not especially relevant to know his particular
 20 identity. There may -- this may cause a problem later on
 21 in a deposition where a person's identity may become
 22 important, but we'll drive off that bridge when we come
 23 to it. Are all of your informants from Bacavi?
 24 A No.
 25 Q Do you recall some of the other villages

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1 from which you had informants?
 2 A They're listed in Deliberate Acts, but
 3 they include Hotevilla, Moencopi, Old Oraibi,
 4 Kykotsmovi, Shongopavi, Mishongnovi, Shipaulovi, and an
 5 area which I identify generically as Polacca. If you
 6 would like me to spell those, I would be happy to spell
 7 them in a way that I think is currently accepted as
 8 their mode of spelling.
 9 Q I think that that's probably critical,
 10 otherwise I think we'll be lost.
 11 A Okay. So I started with Hotevilla.
 12 Hotevilla is H-o-t-e-v-i-l-l-a. Moencopi, which I'm
 13 not, for the time being, dividing into upper and
 14 lower -- I've talked with people from both villages -- is
 15 M-o-e-n-c-o-p-i. Old Oraibi is O-r-a-i-b-i.
 16 Kykotsmovi is K-y-k-o -- well, just o-t-s-m-o-v-i.
 17 Shongopavi is -- the way that I think is probably the
 18 most agreed upon spelling is S-h-o-n-g-o-p-a-v-i.
 19 Mishongnovi is M-i-s-h-o-n-g-n-o-v-i. Shipaulovi is
 20 S-h-i-p-a-u-l-o-v-i. Polacca is P-o-l-a-c-c-a.
 21 Now, I should emphasize -- and this is
 22 something that is pointed out in both Deliberate Acts,
 23 and I think perhaps even more so in Bacavi: Journey to
 24 Reed Springs, that these spellings are those which I
 25 believe are those which are generally preferred or

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1 generally the most conventional spellings in the
 2 villages. They are not spellings which conform to
 3 currently prevailing orthographic conventions, those
 4 established principally by Ekkehart, E-k-k-e-h-e-r-t,
 5 Malotki, M-a-l-o-t-k-i, and Emory Sekaquaptewa,
 6 E-m-o-r-y S-e-k-a-q-u-a-p-t-e-w-a. I can provide you
 7 with spellings of those village names according to
 8 those orthographic conventions, if you would like me to
 9 do so.
 10 Q Dr. Whiteley, I think for our purposes, as
 11 long as we have a consistency through the
 12 transcript, I think you would -- you will be understood.
 13 And, of course, after the deposition you will have an

14 opportunity to review the transcript. I know I have
 15 trouble with Hopi words, and I'm sure the court
 16 reporter will have. And if you can bear with us and
 17 correct those which are misspelled, I would appreciate
 18 it.

19 A Okay.

20 Q But I think for the purposes of the
 21 transcript, consistency is all we're looking for. And
 22 during the course of this litigation, all these
 23 villages have been spelled in a myriad of ways. That's
 24 just something we have to live with in a lawsuit.

25 A Okay. Let me just also say the way that I

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1 think most people from Bacavi spell the village is
 2 B-a-c-a-v-i.

3 Q Dr. Whiteley, do you recall how many
 4 informants you have from Moencopi?

5 A No, I don't.

6 Q Was it more than five?

7 A Probably. Part of the reason -- I'm not
 8 trying to be elusive, but part of the reason is that
 9 there are so many interrelations between people from
 10 Bacavi and Hotevilla and Kykotsmovi and people from
 11 Moencopi that very often people had relatives from
 12 Moencopi who were visiting or we would go and visit
 13 their relatives in Moencopi, so I really -- and there are
 14 people in Bacavi certainly who live in Bacavi who are
 15 from Moencopi, who grew up in Moencopi, or who had all
 16 of their relatives living in Moencopi. So it's very
 17 hard to draw the line.

18 Q Fair enough. So it's probably more than
 19 five. Would it be more than ten?

20 A Probably.

21 Q More than 20? Dr. Whiteley, I'm just
 22 trying to get an order of magnitude.

23 A I know, but my problem is as I stated
 24 it -- in other words, if we were -- if we're to sort of
 25 develop a hierarchy of what constitutes, to use your

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1 term, "informants"-- my term is really "consultants." I
 2 think that's the way the Hopis prefer. That's the one
 3 I try to use most -- to develop a hierarchy of different
 4 kinds of informants slash consultants, then maybe I
 5 could answer that more definitively, but I don't know
 6 exactly how we would go about developing that
 7 hierarchy.

8 In other words, what I'm saying in a Hopi
 9 context, if, for example, you are present at a
 10 conversation in which there is somebody from Moencopi
 11 and maybe they will be talking about something
 12 significant in the Moencopi history or something like
 13 that, and you take a significant note of that and write
 14 it down, and you may never see that person again or not
 15 for six months or for a year, in a certain sense, in a
 16 sense that you are using the information of your
 17 overall understanding of Hopi history or Third Mesa
 18 history, or whatever research it is that you are
 19 conducting, that person would count in some way as an
 20 informant -- as an informant slash consultant. But
 21 that's clearly in a different order of magnitude, if
 22 you will, than somebody you see on a daily basis and
 23 have seen over an entire year on a yearly basis or over
 24 a period of years on a systematically periodic basis.

25

Q Well, Dr. Whiteley, I think you make a

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1 good point. In your book, Deliberate Acts, and in some
2 of your articles, you do use the word "consultants."
3 What does that word mean to you?

4 A It means those Hopi individuals from whom
5 I have learned information.

6 Q And there's a distinction in your mind
7 between a person who is a consultant and other people
8 you may have talked to?

9 A No, or at least as I just indicated, if
10 we're to try to establish some sort of hierarchy of
11 those distinctions, I think we would have quite a bit
12 of work to do. I'm not exactly sure where we would
13 continue to draw the significant lines.

14 Q I see. Dr. Whiteley, I realize this
15 research occurred some time ago. Do you recall if in
16 any of your conversations with the people from Moencopi
17 whether events during the 1930s were discussed?

18 A I don't recall, in the way that you've
19 explicitly phrased that question.

20 Q I take it in the conversations you do
21 recall that people from Moencopi at that specific time
22 frame, that of the 1930s, was not discussed
23 specifically?

24 A My research -- the research that we are
25 talking about, we seem to be talking about, which

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1 concerns Bacavi history, was principally concerned with
2 Bacavi history and the history of Third Mesa as a
3 whole. In the course of that research, I certainly
4 wrote down a lot of things which weren't specifically
5 connected to Bacavi history. Some of those things
6 included Moencopi history. I at this point don't
7 recall if any of them which pertained to Moencopi or
8 which were from -- which derived from Moencopi, people
9 from Moencopi, specifically addressed the decade of the
10 1930s. Give me three months to go through my field
11 notes, and I might be able to give you a more
12 definitive answer.

13 Q Fair enough. And, Dr. Whiteley, I realize
14 that there will be some questions that I ask that will
15 be based upon your recollection and sometimes you're
16 simply not going to be able to recall, but the only way
17 for me to find out is to ask the question.

18 A Sure.

19 Q Certainly if you don't recall, that's a
20 fair answer.

21 A Well, I'm concerned, though, when I say I
22 don't recall, this doesn't mean that I'm trying to
23 exclude information from this deposition or that I have
24 simply lost track of that information if I ever knew
25 it, but it may indeed be substantial and it may be

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1 accessible to me in some form or another, but I just
2 can't recall it out of my head at this particular
3 moment.

4 Q Fair enough. Now, Dr. Whiteley, is it
5 fair to say that for the informants that you've
6 identified from these various villages, you also have
7 an objection to identifying who they are?

8 A Yes.

9 Q And is it for the same reason that you

10 gave to me --

11 A Yes.

12 Q -- about identifying your interpreter?

13 A Yes.

14 Q For the interviews that you conducted with
15 your consultants or with other people you talked to,
16 did you conduct these interviews or these conversations
17 yourself?

18 A The vast majority of them, yes.

19 Q Were there instances in which you had
20 other people conduct interviews for you?

21 A Not per se, no. But I was, for example,
22 given transcripts of interviews -- or not really
23 interviews, but, you know, Hopis, like us, all tend to
24 be interested in recording the oral history or at least
25 some Hopis tend to be interested in recording the oral

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1 history of their elders. So in a sense, they have done
2 this. Clearly some Hopis feel some of these tapes are
3 very significant, and they want to have them other than
4 in tape-recorded form, so they have transcribed them or
5 typed them up themselves. I have seen two or three
6 such typed transcripts of interviews.

7 I have to -- to respond to your question
8 fully, I have certainly obtained information from what
9 individuals I have been talking who have reported from
10 their conversations -- I wouldn't call them interviews,
11 conversations with other Hopis, and I have utilized
12 some of that information as part of my overall
13 understanding of Hopi history and society and culture.

14 Q Dr. Whiteley, how were you able to assess
15 the reliability of information that was obtained from a
16 written transcript or information that was obtained
17 secondhand?

18 A I think -- I state this explicitly in
19 Deliberate Acts, at a number of different points. My
20 principal criteria for determining the verisimilitude
21 of consultant statements of greater importance -- really
22 when you think that they're not very important, you're
23 not terribly concerned about how true they are, as it
24 were, but with statements of greater importance, my
25 principal criteria pertained to what statements gave a

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1 picture of a particular situation that was more
2 thoroughly explanatory. And as a rule of thumb, I used
3 the concept of explanatory adequacy and scientific
4 explanations, which basically indicates that the most
5 explanatorily adequate explanation is one which deals
6 with -- is one which employs the least number of
7 variables to explain the most number of phenomenon.
8 Obviously there's more to it than that. That's just a
9 shortened version.

10 So those statements which conformed to
11 those rule of thumb sort of criteria were those that I
12 relied on more than others. In addition, or
13 simultaneously, I used statements in relation to each
14 other, those which contained issues or ideas which were
15 explicitly contradictory. I would then use them as
16 questions for both consultants or for several other
17 consultants or et cetera, and try to determine what was
18 the most reliable interpretation deriving from those
19 sorts of questions.

20 Also additionally, also simultaneously, I

21 was gaining increasing access to archival records.
 22 Some of these served as confirmations. Some of them
 23 served as negations of consultant statements. Again, I
 24 would use the information. Not that written records
 25 per se are any more reliable than oral records, I must

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1 say, but I would use those written records as part of
 2 the overall method of trying to establish the correct
 3 interpretation of a particular series of events or
 4 event and so forth.

5 There may have been other ideas -- I'm sure
 6 there were -- which were in my mind at the time for
 7 attempting to evaluate the verisimilitude of statements
 8 clearly, as an ethnographer, in which time becomes more
 9 sophisticated at evaluating the reliability of certain
 10 consultants in relationship to others.

11 So I think I would tend, as I think all
 12 other ethnographers would tend, after a while to rely
 13 more on certain consultants rather than others, at
 14 least for certain kinds of information.

15 Q And as an ethnographer, what types of
 16 criteria would you use to be able to assess the
 17 reliability of the consultant?

18 A Those that I have indicated. I mean, if
 19 you have a consultant who gives you a statement which a
 20 number of other people say, "Yes, so and so is right
 21 when they say that," rather than them saying, "He
 22 doesn't know what he's talking about," that would be
 23 part of the increased reliability of this first
 24 consultant. If that consultant's statements accorded
 25 well with written statements in the documentary record,

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1 if other consultants would say, "well, if you want to
 2 know about that, you should go and ask so and so" on a
 3 repeated basis and if -- do you see what I'm getting at?
 4 I mean similar sort of statements which would attest in
 5 a mutually confirming fashion to the reliability of
 6 that consultant.

7 Q Dr. Whiteley, in speaking to some of your
 8 consultants, would you also attempt to evaluate their
 9 demeanor?

10 A What do you mean by the term "demeanor"?

11 Q Well, you mentioned that some of the
 12 things you used to evaluate the reliability of an
 13 informant is what others had to say about them, in
 14 terms of whether the person knew something or not, and
 15 that you could also look for some corroboration or
 16 check the informant's or consultant's statements
 17 against what's in the archival statements. In
 18 evaluating consultants' reliability, would you also
 19 evaluate whether the person, for example, appeared to
 20 be senile?

21 A I'm sorry. I didn't hear the last --

22 Q Whether the person appeared to be senile.

23 A Yes, that was an issue. Yeah, definitely.

24 Q And I take it that in conducting the
 25 research for Deliberate Acts, at least some of your

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1 consultants were very elderly?

2 A Can you specify what you mean by "very
 3 elderly."

4 Q Well, let me try it this way. Did you
 5 have any consultants who were at Oraibi in 1906, 1907?

6 A Yes.
 7 Q Is it fair to characterize them as
 8 elderly?
 9 A In 1980, just being at Oraibi in 1906
 10 would make you 74 years old. Is that elderly?
 11 Q Well, is it to you?
 12 A I asked you to define your term "elderly,"
 13 and, you know, I'm not sure that I know what you're
 14 asking.
 15 (Discussion off the record between the
 16 deponent and Ms. Sprague.)
 17 Q Let me try it this way, Dr. Whiteley.
 18 were there some consultants and some people you talked
 19 to that you felt, because of the ravages of age, had
 20 lost some of their memory or their memory wasn't as
 21 clear as it might have been before?
 22 A Yes.
 23 Q And were there other people who, because
 24 of age, appeared to you to be perhaps confused?
 25 A Yes, but I don't think that I really

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1 gained any information from those individuals
 2 that -- except for one, which I included as a serious
 3 part of my research.
 4 There was one man who at the time -- he's
 5 now died -- was, I think, 89 years old. He had had a
 6 stroke. The stroke impaired his speech. It was hard
 7 to tell what he was saying, although he was actually
 8 very articulate in English, as well as in Hopi.
 9 Clearly the sort of statements that he would make I
 10 would not rely on in the same sense as I would rely on
 11 those who, in my subjective impressionistic judgments,
 12 were wholly sound in mind and totally articulate and so
 13 forth. Nonetheless, this particular individual did say
 14 some things which I would then take to these other
 15 individuals or still other individuals, and they would
 16 say, "well, yes, whatever, you know, he said, the way
 17 that you were reporting it is quite right." In that
 18 sense, then, I must say that I would rely on those
 19 aspects of this individual's statements.
 20 Q I take it from your answer that there were
 21 occasions in which you would make an assessment of how
 22 well a consultant or another informant recalled events
 23 in the past?
 24 A Yes, all the time.
 25 Q And what kind of criteria would you use?

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1 A The same that I have mentioned.
 2 Q A person's demeanor?
 3 A I didn't employ the term "person's
 4 demeanor," and I still don't know what you mean by
 5 that. The criteria that I have specified pertained to
 6 what we might call intersubjective verisimilitude. It
 7 might include, as I've indicated, the archival
 8 confirmation or disconfirmation. They -- well, I guess
 9 that really covers what I said before in general terms.
 10 Q Well, would you make an evaluation as to
 11 whether -- well, as to how articulate the person was in
 12 assessing their reliability?
 13 A That would be part of my assessment, yes,
 14 but articulacy per se is problematic because -- I mean,
 15 some people clearly are highly articulate in Hopi and
 16 really quite a bit less articulate in English. With

17 people like that, especially, as my understanding of
 18 the Hopi language improved and, of course, it did
 19 improve over the course of time and it's still
 20 improving, then the way we talk is sort of in a mixture
 21 of the two languages.

22 Now, if I evaluate that person's
 23 articulacy in the English language and say, "well, this
 24 person isn't very articulate," clearly that wouldn't be
 25 a method for judging their information. So when you

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1 say articulacy or articulateness or whatever, that's a
 2 concept which I think has to be specified as to its
 3 specific import in this context.

4 Q well, Dr. whiteley, during the course of
 5 your fieldwork at Bacavi, did you hear accounts
 6 provided by your consultants or other informants that
 7 were --

8 A May I interject?

9 Q Yes.

10 A You seem to be creating categories of my
 11 consultants or other informants. Obviously it's up to
 12 you if you want to do that, but I don't want to be
 13 seen, when I respond to your questions, to be
 14 implicitly assenting to that categorization. I you
 15 know, formally reject it, if you will.

16 Q Fair enough. well, when you were at
 17 Bacavi conducting your fieldwork there, did you
 18 encounter accounts of what happened at the Oraibi split
 19 which were contradictory with one another?

20 A Yes.

21 Q Did that surprise you?

22 A No.

23 Q why didn't that surprise you?

24 A As I indicate in a specific passage in
 25 Deliberate Acts, differing interpretations of an event

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1 of such tumultuous significance which had such a
 2 dramatic effect on subsequent Third Mesa history,
 3 it's -- it would be extremely unlikely if there was one
 4 single interpretation that precluded all others. Is
 5 there one single interpretation of the Second World
 6 war, for example? No, I don't think so.

7 Q Okay. Fair enough.

8 Mr. Rogers: why don't we take a break at
 9 this point.

10 Ms. Sprague: That's fine.

11 (Defendant's Deposition Exhibit Whiteley 6
 12 was marked.)

13 Q (By Mr. Rogers) Dr. Whiteley, we've
 14 already made several references to your book,
 15 Deliberate Acts. And just so the record is clear, I've
 16 marked as Exhibit No. 6 the book Deliberate Acts by
 17 Peter M. Whiteley, copyright date is 1988. Dr.
 18 whiteley, would you take a look at Exhibit No. 6.

19 A Yes.

20 Q If you can confirm that is a copy of your
 21 book Deliberate Acts.

22 A Yes, it is.

23 Q Now, Dr. Whiteley, before we took a break,
 24 you explained your reasons for not wishing to subscribe
 25 to a hierarchy among the people that you talked to, but

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1 I am struggling for simply a word that you feel

2 comfortable with to describe the Native peoples that
3 you talked to.

4 A "Consultants" is my preferred term.

5 Q Okay. Certainly. So I know, for example,
6 Dr. Ainsworth during his deposition felt uncomfortable
7 using "consultants" and drew a distinction between
8 "informants" and "interviewees." So I want to use a
9 term you're comfortable with. So during this
10 deposition when I use the term "consultants," you will
11 understand that to mean those Native peoples from which
12 you obtained information?

13 A Yes, yes. When we say "Hopi consultants,"
14 but there were also, I guess really rather peripherally
15 to which are our major concerns here, Anglo
16 consultants. I spoke with the daughters of two
17 missionaries, for example. I spoke with H. R. Voth's
18 daughter, and I spoke with J. B. Frey's daughter. Voth
19 is V-o-t-h. Frey is F-r-e-y. Both of them grew up for
20 part of their early lives at Hopi. I certainly don't
21 call them Hopi consultants, but they are consultants
22 whose information I would utilize to contribute to my
23 overall understanding.

24 Q Fair enough. I would like to direct your
25 attention back to Exhibit No. 5, which was your vitae.

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1 Again, on the third page of Exhibit No. 5, which is
2 describing -- it's under the heading of "Research," in
3 the third entry under research, you describe "Field and
4 archival research on several southwestern
5 anthropological and archaeological projects, Office of
6 Contract Archaeology, University of New Mexico: 1977
7 through 1981. Topics included the Laguna Pueblo,
8 Navajo history and land use," and I'm not sure how the
9 next word is pronounced.

10 A Carnue.

11 Q "Carnue," C-a-r-n-u-e, "(Hispanic)
12 Pueblo." Can you briefly describe what work you did
13 with respect to the Laguna Pueblo.

14 A Well, as I've indicated earlier, the two
15 reports that I've prepared in 1977 and 1978 on Laguna
16 concerned the history of sheepherding practices and
17 current sheepherding practices. This was in connection
18 with a contract project. I'm trying to remember the
19 name of the contract project name that it refers to, a
20 certain area of the Laguna Reservation.

21 The 1978 report is called something like
22 An Archeological Survey of so many acres near
23 Papaguate, New Mexico. And Papaguate is
24 P-a-p-a-g-u-a-t-e. So the first year in '77 I was
25 concerned with sheepherding, and I looked at records of

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1 the Bureau of Indian Affairs, Pueblo Branch -- that's
2 probably not the right term for that office in
3 Albuquerque -- which included Laguna sheepherding
4 records, sheep dipping records, and so forth. I looked
5 at general treatments of sheepherding, of treatments of
6 sheep and cattle herding in the southwest. The names
7 Towne, T-o-w-n-e, and Wentworth, are two names of
8 principal texts along those lines which stick in my
9 mind. There may be others which have slipped my mind
10 for the present. I looked at records of sales and so
11 forth. And I really -- that's about all I can remember
12 which distinguishes my research in '77 from what

13 happened in '78.

14 In '78, I looked at archival records, both
15 those which were primary resources in the sense that
16 they were microfilmed records of letters and so forth,
17 in the University of New Mexico special collections
18 wing part of the library. I looked at existing texts
19 on Laguna society and Laguna history. And I looked
20 at -- again, forgive me if I don't make this distinction
21 from my research in '77 and '78, but it was during one
22 of those points that I encountered William Zeh's report
23 on the situation of the grazing situation on
24 southwestern Indian reservations, which was put
25 together in 1930, I believe, '30 or '31 or '29. I

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1 don't exactly remember the publication date. Well, it
2 wasn't published. It was part of a Soil Conservation
3 Service report. So I was looking at Scs, Soil
4 Conservation Service, Department of Agricultural source
5 of reports. I was also gaining material from other
6 branches of the Bia in Albuquerque pertaining to Laguna
7 land holdings, I think. I think that covers it pretty
8 well. I may have missed some things.

9 Q Dr. Whiteley, did you do any field
10 research on this project or was it all library work?

11 A No, it was all library work. Well, when
12 you say "library work," I include these other sources.

13 Q Include archival research?

14 A Yes. But like the pueblo Office of the
15 Indian Affairs on Indian School Road in Albuquerque,
16 which probably no longer exists, and then another Bia
17 office, which used to be on Lomas Boulevard in
18 Albuquerque, those aren't libraries, but they did have
19 records.

20 Q You also identify that you did research on
21 the topic of the Carnue (Hispanic) Pueblo. Was there
22 any fieldwork involved in that work --

23 A No.

24 Q -- or was it mostly library?

25 A That was all archival and library

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1 research. I think -- well, no. I'll let you ask what
2 you're going to ask.

3 Q Dr. Whiteley, can you briefly describe
4 what work you did with respect to Navajo history and
5 land use, as identified in that history.

6 A Yes. That was all archival and library
7 also, the substance of which was included in that
8 report which was authored principally by Klara Kelley --
9 K-l-a-r-a. Kelley is K-e-l-l-e-y -- which is cited, I
10 think, in my publications as Navajo History and Land
11 Use to 1864, and In Anasazi and Navajo Land Use by
12 Klara B. Kelley and Peter Whiteley.

13 Q It's under the listing for 1982b?

14 A 1982b, yes. I think the actual byline is
15 by Klara B. Kelley, with a contribution by Peter M.
16 Whiteley. But I wasn't concerned to have this
17 absolutely pinpoint accurate for the purposes of this
18 arrangement.

19 Q I understand that. Did this
20 publication -- well, strike that. Did this report -- is a
21 later version of this report listed further down on the
22 fourth page of your resume under "in press a"?

23 A Yes.

24 Q I take it that the manuscript that you
25 authored in 1982 is being prepared for publication?

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1 A Yes, with some editing. As far as I am
2 concerned, Klara is clearly the principal author of
3 both of these documents. She has conducted some -- she
4 did conduct some editing on the first report that I
5 prepared before it went into this 1982b. Since that
6 time, she's also conducted some editing on what I
7 wrote. I haven't conducted any editing on it, which
8 will be included into this in press A okay.

9 Q So --

10 A So although when this in press A Navajo
11 Land appears, it will say Klara B. Kelley and Peter M.
12 Whiteley, without any distinction as to who is the
13 principal author. That is merely something which I
14 agreed to as Klara proposed it. It's not something
15 that I requested. But she is being awfully generous in
16 considering me as the joint author, if you will.

17 Q I take it that there are distinctions in
18 the text between what's listed here as 1982b --

19 A Um-hum.

20 Q -- and what's listed as in press A

21 A Yes.

22 Q The differences that appear in the entry
23 under "in press a" were not made by you?

24 A Yes, that's right.

25 Q Have you examined the galley proofs for

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1 the publication?

2 A I have, but again, I received them about
3 two weeks ago, I think, and I cannot claim to have
4 conducted any kind of rigorous examination of those
5 galley proofs. I have seen them all together. I've
6 flipped through them, but I have not -- I have not
7 examined them in a rigorous fashion.

8 Q Have you had a chance to even read it?

9 A NO.

10 Q Dr. Whiteley, have you ever had the
11 opportunity to conduct any fieldwork among the Navajo?

12 A Not that I would define as such. In the
13 sense that during my time at Hopi, especially in 1980
14 to '81, or even, if you will, during my time in
15 Flagstaff in 1983 to '85, on numerous occasions I have
16 come into contact with Navajos, have talked to them.
17 They have talked to me. I have certainly learned some
18 things about Navajo culture, Navajo history, Navajo
19 society from those sorts of contacts, but I would not
20 define that as fieldwork.

21 Q Well, aside from the fieldwork that you've
22 done among the Hopi, have you conducted fieldwork with
23 any other Indian group?

24 A The problem is the term "fieldwork." I
25 mean, it's as -- as so many terms, it's at its edges

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1 somewhat relative. In the sense that I mentioned that
2 I have been to all of the pueblos of New Mexico, I
3 think possibly with one or two exceptions, but I think
4 I have been to all of them at one time or another to
5 see dances in which I have talked to people, I have
6 been to Mescalero Reservation in connection with one
7 piece of research which was not included in this under
8 this "Research" category of my Cv, but which was -- or

9 actually is it included? Where is it? Yes, it's
 10 included under the "Consulting" category under 1983
 11 Soil Systems, Inc., but I was there for two days. I
 12 certainly learned some things. Was it fieldwork?
 13 Depends how you define "fieldwork." I regret to say
 14 that some anthropologists would indeed define it as
 15 significant fieldwork. I don't really feel comfortable
 16 myself defining it as such.

17 Q Fair enough. Can you briefly describe
 18 what work you did in connection with this entry,
 19 consulting work 1983 for Soil Systems, Inc.

20 A Yes. The principal research was into the
 21 history and land use practices of Mescalero Apaches and
 22 anybody else who came into the Tularosa Basin in
 23 New Mexico. This was a contract project with White
 24 Sands Missile Range. I can't remember -- actually, it was
 25 a project that was submitted to the National Park

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1 Service, so I can't remember its exact sponsor, but it
 2 pertained to an area including the White Sands Missile
 3 Range, presumably in connection with some building
 4 structure, or I can't remember exactly what.

5 Q Can you recall what work you did on this
 6 project?

7 A Yes. I was -- I really -- that was -- this is
 8 misstated in this section, in the section under
 9 "Consulting," 1983, it says with Florence H. Ellis.
 10 That should be in the section under 1982 to '83,
 11 Luebben, Hughes, and Kelly, attorneys. One of my
 12 students typed this up. I didn't type it up. That
 13 should state under 1983 this research for Soil Systems,
 14 Inc., with Klara B. Kelley.

15 Now, on this, I think I conducted the
 16 great majority, maybe even all of the research. And it
 17 went in with Klara's and my name on it. Again, the
 18 principal focus was on archival and library research.
 19 And I guess as it says, it was concerned with Mescalero
 20 Apache history, culture, society, movements into the
 21 Tularosa Basin, the usage of the Tularosa Basin
 22 primarily, and Euro-american local history and
 23 movements into the Tularosa Basin, which principally
 24 for the time period that we are talking about, which is
 25 up to the year, I think, 1946, pertains -- because after

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1 that time the missile range effectively relocated
 2 everybody who was there -- was concerned with the
 3 movement into that area, in the first place, Hispanic
 4 colonists in New Mexico and, in the second place, with
 5 Anglo cattlemen who moved in in the late 19th century.

6 Q Just so the record is clear, there is an
 7 entry, or following the description of the work that
 8 you conducted for Soil Systems, Inc., there is a
 9 notation that says "with Florence H. Ellis." And I
 10 take it that that last entry with Florence H. Ellis
 11 should appear in the entry which appears directly
 12 below?

13 A Precisely. And instead of saying "with
 14 Florence H. Ellis" where it says it, it should say
 15 "with Klara B. Kelley."

16 Q I would like to move to the entry that
 17 appears below that. It appears you have done some
 18 consulting work for, I believe, Luebben --

19 A Luebben.

20 Q L-u-e-b-b-e-n, Hughes, and Kelly?
 21 A Um-hum.
 22 Q It indicates you've done ethnographic and
 23 archival research at Santo Domingo, New Mexico. Again,
 24 was this principally archival research and library
 25 research?

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1 A As it turned out, yes. Ethnographic
 2 research was begun, and I think consisted of, if my
 3 memory serves me correctly, one or two days of presence
 4 at Santo Domingo, New Mexico, during which members of
 5 the Tribal Council discussed many of the issues and
 6 then selected certain individuals to take Florence
 7 Ellis, her daughter, and myself around the pueblo
 8 pointing out certain specific sites and then to other
 9 areas outside the immediate environs of the pueblo,
 10 again pointing out certain specific sites and talking
 11 about their significance in Santo Domingo history and
 12 culture. But that project -- my involvement in that
 13 project was interrupted sometime in the summer of 1983
 14 because I never got paid, and I had just graduated, and
 15 I did not have any resources at all, so I had to engage
 16 in work which would pay me.

17 Q Now, Dr. Whiteley, during the course of
 18 your graduate work, did you ever have the opportunity
 19 to study under Dr. Ellis?

20 A No. She was not teaching at the
 21 University of New Mexico while I was a graduate student
 22 there.

23 Q During the course of your career since
 24 that time, have you had a chance to work with her on
 25 any projects, aside from this?

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1 A Not on any projects aside from this, but
 2 she is a friend of my wife's family, so I have seen her
 3 on three or four, five or six other occasions not in
 4 any research capacity, but during those meetings we
 5 talked at one time or another about different issues of
 6 southwestern ethnology, southwestern history, and so
 7 forth.

8 Q As long as we're on this consulting
 9 category, it indicates under the first entry under the
 10 title "Consulting" that you are an expert witness for a
 11 pending land case. I take it that's this lawsuit?

12 A That's right.

13 Q Aside from the preparation of your
 14 reports, have you undertaken any consulting projects
 15 for Arnold & Porter regarding this case?

16 A Yes, yes.

17 Q And what projects?

18 A May I consult with counsel?

19 Q Certainly.

20 (Discussion off the record between the
 21 deponent and Ms. Sprague.)

22 Q Dr. Whiteley, have you had a chance to
 23 consult with the attorney for the Hopi Tribe?

24 A Yes.

25 Q I forget precisely what question I asked,

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1 but I'll ask it perhaps a little different way. Aside
 2 from preparing Exhibits 1 through 4, what consulting
 3 projects have you undertaken for Arnold & Porter?

4 A I was initially asked to conduct an

5 evaluation of the expert witness reports of the
 6 Hopi -- for the Hopi Tribe that had been written to that
 7 time. I did do that. I have been asked also to
 8 evaluate the content of Navajo expert witness reports.
 9 I have also been asked to comment upon or give an
 10 account of my understanding of the situation with
 11 respect to a Aka'usi, A-k-a -' - u-s-i.

12 Q Now, you mentioned first that you had
 13 undertaken an evaluation of the expert reports of the
 14 Hopi Tribe. Are you referring to the reports that were
 15 prepared by the Hopi Tribe's other experts?

16 A Yes.

17 Q And was that a project that you completed?

18 A Yes.

19 Q Did it result in written comments or a
 20 written report?

21 A No, it didn't. It really resulted in an
 22 oral report and oral discussions.

23 Q And you indicated that you were asked to
 24 evaluate the content of Navajo expert reports?

25 A Yes.

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1 Q Is that a project which you've conducted
 2 work on?

3 A Yes.

4 Q Have you completed that work?

5 A May I ask a question of counsel?

6 Q Certainly.
 7 (Discussion off the record between the
 8 deponent and Ms. Sprague.)

9 A Yes, we think so.

10 Q And with respect to this project, has it
 11 resulted in any written comments or reports?

12 A In that there are -- in that there are some
 13 specific comments throughout my reports in Exhibits 1
 14 and 3, yes, those are written comments. I've also
 15 prepared notes to -- I think in my reports the only -- the
 16 only -- the only Navajo expert witness reports that I
 17 comment upon are those of Vanette and Witherspoon.
 18 Vanette, V-a-n-e-t-t-e. Witherspoon,
 19 W-i-t-h-e-r-s-p-o-o-n. I've also made a number of
 20 notes on the report of Russell, but to the best of my
 21 recollection, nothing of those has appeared in my own
 22 reports.

23 Q well, Dr. whiteley, did you review the
 24 report that was prepared by Dr. Marcus?

25 A Dr. Marcus?

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1 Q Yes.

2 A Can you refresh my memory of its title.

3 Q I can't recall the specific title, but it
 4 pertained to various boundary lines that were described
 5 in some of the archival materials from the 19 -- late
 6 1920s to 1930s.

7 A Did it -- it didn't provide aerial
 8 photography as part of its criteria?

9 Q No.

10 A If it was a report which was available and
 11 bound and printed for the Hopi Tribe lawyers last
 12 summer, I'm sure I looked at it, but clearly my memory
 13 of it is not significant enough to suggest that I did
 14 some formal analysis of it.

15 Q Fair enough. There was also another

16 report prepared by either Dr. or Mr. Ebbert pertaining
 17 to the aerial photography.

18 A Doctor.

19 Q Do you recall if you had any written
 20 comments on that one?

21 A I didn't have written comments. Now that
 22 I'm thinking about the idea of a report by Marcus on
 23 boundaries, I think I did look at that, yes. But I
 24 didn't have written comments on that either.

25 Q Can you recall approximately how many

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1 notes or pages of notes you had on Dr. Russell's
 2 report?

3 A Seven or eight. There are also some notes
 4 in the body of the copy of the report of his that I had
 5 written on those pages. Seven or eight is an
 6 approximation. There may be five or six. I'm not
 7 absolutely sure.

8 Q Fair enough.

9 Mr. Rogers: At this time I would request
 10 the production of Dr. Whiteley's notes pertaining to
 11 Dr. Russell's report, as well as the copy of
 12 Dr. Russell's reports that may have been edited by
 13 Dr. Whiteley.

14 Ms. Sprague: Mr. Rogers, we have drawn
 15 the line in our production of documents relating to
 16 Dr. Whiteley, as we did with the production of other
 17 expert materials, and as I believe the Navajo Tribe has
 18 done with respect to the production of your expert
 19 materials; and that is any document that is related to
 20 the substance of the opinion to be expressed at trial
 21 has been produced.

22 We have produced Dr. Whiteley's written
 23 notes on Dr. Witherspoon's report and on
 24 Dr. Vanette's report because he expressed comments on
 25 those reports in his report, and we expect that he will

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1 express opinions on those reports at trial.

2 We do not expect Dr. Whiteley to comment
 3 on Dr. Russell's report, with the exception of the
 4 particular topic identified, and that is Aka'usi. That
 5 would be in the nature of rebuttal if Dr. Russell
 6 testifies that Aka'usi should be considered a Navajo
 7 for purposes of this litigation. It may be that we
 8 should excise Dr. Whiteley's notes regarding Aka'usi.
 9 We haven't fully addressed the issue of how we handled
 10 production relating to rebuttal evidence. We don't
 11 expect to put Dr. Whiteley on the stand as part of our
 12 direct case and have him expound on Aka'usi. He would
 13 only offer testimony on that subject if Dr. Russell
 14 proceeds to characterize Aka'usi as a Navajo.

15 So we need to work out our position on
 16 rebuttal testimony. You may well have some information
 17 in that situation as well. I'm not sure. With respect
 18 to any comments Dr. Whiteley provided to us on the Hopi
 19 reports, he did take some notes on those reports in
 20 preparation of his reports, and we have produced those
 21 notes.

22 With respect to inquiry into his opinions
 23 of Hopi expert reports that are not relevant to his
 24 reports or his testimony, we take the position that
 25 that's protected work product. I think I -- this is the

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1 position that we've taken in other -- in other
 2 situations. We've tried to be consistent here.
 3 Mr. Rogers: Well, Counsel, I appreciate
 4 your comments. And I think you probably anticipated
 5 where I was going with the sum of these questions. I
 6 am in somewhat of a bind in trying to assess
 7 Dr. Whiteley's testimony. He is testifying that he has
 8 reviewed Dr. Russell's reports and prepared comments on
 9 those reports, and he also, as you've mentioned, may be
 10 used as a rebuttal witness for what Dr. Russell has to
 11 say about the person named Aka'usi. I haven't decided
 12 in my own mind at this point whether we feel this is a
 13 sufficient mode to bring a motion to compel. I can
 14 tell you in any case if those materials are not
 15 provided to us and if Dr. Whiteley is asked at trial to
 16 comment upon other phases of Dr. Russell's report, we
 17 will move to exclude it. It's difficult for us
 18 to -- probably that's enough to be said at this point.
 19 As far as Dr. Whiteley's report in
 20 evaluating the other Hopi expert reports, certainly I
 21 don't understand the basis for the objection. In
 22 Dr. Whiteley's report an entire page is devoted to
 23 recounting his reading of the other reports, and I take
 24 it from his comments in his report that he is, in part,
 25 relying or basing his opinions on what he read in some

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1 of those other reports.
 2 So to the extent there have been written
 3 notes or work that he has viewed regarding the reports,
 4 to the extent there was any work product production or
 5 Rule 264b, I think that production has been waived. Is
 6 there some flaw in my logic there or is there something
 7 there I'm just not seeing?
 8 Ms. Sprague: I believe the distinction is
 9 his views of the Hopi expert witness reports that are
 10 relevant to his work and views that may not be
 11 relevant. We do not think it appropriate to subject
 12 Dr. Whiteley to a sentence-by-sentence review of the
 13 other expert reports to determine whether he agrees
 14 with every single point that is made in every single
 15 report. I believe that his -- a general evaluation of
 16 the reports, to the extent that he provides some
 17 context for the report and to some degree a census of
 18 the reports is fair game in this deposition.
 19 Mr. Rogers: Well, perhaps I'm a little
 20 confused and maybe the best way to proceed is just do
 21 it on a question-by-question basis.
 22 I do at this point wish to reassert
 23 Navajo's demands for Dr. Whiteley's written comments on
 24 Dr. Russell's report, along with Dr. Whiteley's
 25 annotated copies of Dr. Russell's reports.

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1 Q (By Mr. Rogers) Dr. Whiteley, have you
 2 prepared any written comments to date regarding
 3 Aka'usi?
 4 A There are written comments -- may I consult
 5 with counsel?
 6 Q Certainly.
 7 (Discussion off the record between the
 8 deponent and Ms. Sprague.)
 9 A There are written comments that I have
 10 noted in my notes on Dr. Russell's report and in
 11 separate handwritten notes, but I have not outlined

12 what my testimony will be in any kind of formal
 13 document which I have presented to Arnold & Porter.
 14 Mr. Rogers: Okay. Then at this time on
 15 behalf of the Navajo Tribe, I would also demand
 16 production of those materials that were just described
 17 by Dr. Whiteley.

18 A I think it's fair to say, Mr. Rogers, that
 19 we're talking about the same materials. They would be
 20 included actually in the Navajo Tribe's demand for all
 21 of those materials.

22 Q (By Mr. Rogers) Well, let me ask you
 23 this, just in terms of how they were organized: Do you
 24 have separate pieces of paper pertaining to Aka'usi, or
 25 are they blended in the other pieces of paper

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1 pertaining to Dr. Russell's report?

2 A They are -- in my handwritten notes on
 3 sheets of paper, they are blended in. Where Aka'usi
 4 appears in Dr. Russell's report, they are clearly
 5 separate, if you will, although they are also
 6 associated with some other remarks which don't
 7 explicitly pertain to Aka'usi in every respect.

8 Mr. Rogers: Do you want to go ahead and
 9 break for lunch?

10 Ms. Sprague: Okay.

11 (A lunch break was taken.)

12 Mr. Rogers: Okay. Back on the record.
 13 Before we went on the record, Dr. Whiteley and counsel
 14 for the Hopi Tribe were kind enough to provide me with
 15 two lists. Each of the lists describes some maps that
 16 Dr. Whiteley is contemplating including in his report.

17 Q (By Mr. Rogers) Dr. Whiteley, I would
 18 just like to go through the list and make sure I
 19 understand which ones that you are referring to.
 20 Starting with the list of maps for the Hopitutskwa
 21 report, there's a notation on the list which says
 22 page 4, Page and Page map. I take it that the map that
 23 you're referring to on the list -- or strike that. It's
 24 your -- you're presently contemplating including a map
 25 with your Hopitutskwa report that copies the map which

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1 appears on the National Geographic article written by
 2 Jake and Susan Page?

3 A Yes.

4 Q I believe that's at pages 610 and 611?

5 A Yes.

6 Q The second item on your list refers to
 7 page 10, has a reference to Mateer. Now, on page 10 of
 8 your Hopitutskwa report, which is Exhibit No. 1, you
 9 refer in the last paragraph to some work that was done
 10 by Mateer in 1880, do you not?

11 A I think work was done in 1879. The date
 12 of presentation to the Commissioner of Indian Affairs,
 13 I assume, was 1880.

14 Q And you make reference to Mr. Correll
 15 using Mateer's map?

16 A Right.

17 Q And you're presently contemplating
 18 including Mateer's map with your report?

19 A Yes.

20 Q And I note that you brought along a copy
 21 of the map that you were thinking about using?

22 A Yes.

23 Q I note that it has production number on
 24 the first page, 310540. Is this the map that you are
 25 thinking about including with your report?

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1 A Yes, it is.
 2 Q The next item on your list refers to
 3 page 16, Murphy. I note in Exhibit No. 1 on page 16
 4 toward the middle of the page there is a reference to
 5 Mr. Murphy submitting a map, no date.

6 A Yes.
 7 Q Is that the map that you are referring to?

8 A That is.
 9 Q The next entry on the list is page 9 and
 10 is referencing a petition map. Is that the map that
 11 appears following page 19 --

12 A Yes, it is.
 13 Q -- in your Hopitutskwa report? I'm sorry.
 14 It is?

15 A Yes.
 16 Q The next entry on your list is to page 42,
 17 Colton map. I note on Exhibit No. 1, page 42, the last
 18 paragraph, there is a reference to Dr. Colton's article
 19 published 19 -- 1964 regarding Hopi trails, and you note
 20 that he provides a map in the article. Is that the map
 21 that you are referring to?

22 A It is.
 23 Q The next item on your list is page 46,
 24 Hafen, H-a-f-e-n, I believe, and Hafen. There's a
 25 reference to Antonio Armijo. And you refer, in the

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1 first paragraph toward the very end of that paragraph,
 2 last sentence, to a map, which is in Hafen and Hafen,
 3 1954; is that correct?

4 A That's correct.
 5 Q And that's the map that you're thinking
 6 about using?

7 A Yes.
 8 Q Now I would like to turn to the second
 9 list that was provided, which, I take it, are maps that
 10 you're contemplating using with your Hopi-navajo
 11 relations report, which is Exhibit No. 3?

12 A That's correct.
 13 Q On the first entry is page 6, and there's
 14 a reference to a map which appears in Underhill. And
 15 as I mentioned off the record, my Spanish is terrible.
 16 Can you tell me how to pronounce that?

17 A Smiera Y Pacheco. It's referred to in
 18 this report as -- or under the term Dominguez-escalante.

19 Q And the spelling of the first phrase was
 20 S-m-i-e-r-a Y P-a-c-h-e-c-o. And Dominguez-escalante
 21 is in Dr. Whiteley's report as cap D-o-m-i-n-g-u-e-z
 22 hyphen E-s-c-a-l-a-n-t-e. And just so that we have a
 23 complete notation, that is the map that appears in the
 24 book entitled The Navajo?

25 A Yes.

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1 Q By Ruth Underhill?

2 A Yes.

3 Q And it's the map which appears at
 4 page 49 -- is it the map that appears following page 49?

5 A Yes.

6 Q And there's a caption on that page which
 7 says, "Escalante's map, showing the 'Provincia de

8 Nabajoo'?"
 9 A Yes.
 10 Q The next entry on the list is to page 11
 11 of Exhibit No. 3 to a Egloffstein.
 12 A Egloffstein, yes.
 13 Q Yes. And I take it that's the map that
 14 appears in Ives 1861?
 15 A It is. I'm not sure if this is the
 16 appropriate moment, but we have discovered in the
 17 report at page 11 Egloffstein is misspelled. It should
 18 be E single g-l-o-f-f-s-t-e-i-n, as it appears as I
 19 spelled it this morning.
 20 Q Again, my German is no better than my
 21 Spanish or Hopi. But I take it that the map that
 22 you're contemplating using is referred to in Ives in --
 23 A Yes.
 24 Q -- in page 128?
 25 A Yes.

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1 (Discussion off the record between the
 2 deponent and Ms. Sprague.)
 3 Q Do I have the page reference wrong?
 4 A Yes, I think. Counsel has just mentioned,
 5 and this confirms my memory too, that the map doesn't
 6 appear at page 128. It's under an insert in a pocket
 7 or at the end in a pocket, but I don't recollect that
 8 it actually appears facing page 128. I guess one
 9 problem is that there are two maps like this and the
 10 other one is a different map altogether.
 11 (Discussion off the record between the
 12 deponent and Ms. Sprague.)
 13 Mr. Rogers: I would like to mark as
 14 Exhibit No. 7 an excerpt from a report, has a title
 15 Report upon the Colorado River of the West, by
 16 Lieutenant Joseph C. Ives, dated 1861. Attached to
 17 Exhibit No. 7 is a map which appears in three parts, or
 18 three separate sheets of paper.
 19 (Defendant's Deposition Exhibit whiteley 7
 20 was marked.)
 21 Q (By Mr. Rogers) And, Dr. Whiteley, if you
 22 would take a look at the map which appears in Exhibit
 23 No. 7 on the first sheets of paper and compare it to
 24 the map that you've provided to me before we met on the
 25 record. All I want to do is confirm I've got the right

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1 map.
 2 A I think you do, but I don't think these
 3 three sheets cover the entire area of the map. We only
 4 have a part of it.
 5 Q I think you're correct. I think the upper
 6 half of the map has been copied in Exhibit No. 7. If
 7 you would turn to the third page of the exhibit where
 8 there is a title "Rio Colorado of the west."
 9 A Yes.
 10 Q And directly above that there is a
 11 reference to Map No. 2.
 12 A Yes.
 13 Q Is it -- are you contemplating using Map
 14 No. 2 --
 15 A Yes.
 16 Q -- which appears in Ives?
 17 A Yes.
 18 Q Further down on page 11 on Exhibit

19 No. 3 there is a reference to a sketch of Navajo
 20 country. And you reference, "see wheat 1960 at
 21 page 111." Is this the map you refer to as appearing
 22 on page 111 with whipple?

23 A Yes, that's the one. And it may be worth
 24 pointing out that this is W. D. Whipple, a major
 25 explorer, who I think is referenced in this report

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1 also. There's also Whipple, but his initials are
 2 different.

3 Q And I take it it's the map which appears
 4 in Wheat's book, as the identifying numbers in Wheat's
 5 book, as parenthesis 963 parenthesis 1853 Whipple,
 6 W. D. ?

7 A That's correct.

8 Q Doctor, if you'll bear with me on that, I
 9 just want to make sure I'll be able to track these maps
 10 down later.

11 I would like to go back to Exhibit No. 5,
 12 which is your vitae. Under the heading of
 13 "Consulting," you have a listing from 1981 to 1988 that
 14 you've conducted projects for the Hopi Tribe and it was
 15 the "Office of General Counsel, Department of Health,
 16 Department of Education, Office of Public Relations."
 17 Approximately how many projects have you undertaken for
 18 the Hopi Tribe, apart from the work that you've done in
 19 connection with this lawsuit?

20 A Approximately -- if by "projects" we include
 21 everything from so such as questions asked by
 22 representatives of these offices, I think maybe ten to
 23 a dozen.

24 Q Were you paid for these services?

25 A Some of them I was paid for, others of

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1 them I was not paid for. Some of them I was -- my
 2 expenses were reimbursed, if expenses were entailed.

3 Q Did any of the projects pertain to land
 4 use and the 1934 lands?

5 A No -- correction. I was asked a question
 6 over the telephone by Michael O'Connell of the Office
 7 of General Counsel of the Hopi Tribe pertaining to
 8 population censuses for 1935 or 1936. I forget the
 9 exact context of the question, but some of its context
 10 may have referred to individuals who were involved with
 11 the use of 1934 lands.

12 Q Aside from answering this question or for
 13 providing information in response to this question, do
 14 you recall any other projects that you've undertaken
 15 for the Hopi Tribe that pertained to the 1934 lands?
 16 And again, I'm excluding the work you've done in
 17 connection with this litigation.

18 A It's complicated. It's complicated to
 19 reconstruct my memory of it too. I think I would have
 20 to say yes because in 1985 I was contacted by Fred
 21 Eggan and Alan Ainsworth and John Fritz while I was in
 22 Flagstaff. And I suppose they were acting in their
 23 capacity as expert witnesses for this case before the
 24 case was moved from Boyden, Kennedy & Romney to Arnold
 25 & Porter, which took place, I think, in 1986.

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1 They came to talk with me in Flagstaff.
 2 And at that point they indicated that they thought it
 3 would be useful for me to have some sort of involvement

4 in this case. They, I believe, informed Mr. Kennedy of
 5 this. Mr. Kennedy, I can't quite recall, either wrote
 6 to me or telephoned me. I think he telephoned me. And
 7 we had some conversation about my possible involvement
 8 in this case. That must have been in November or
 9 December 1985. And it was in December 1985 that the
 10 Hopi Tribe discovered some reason to want to change
 11 their law firm, for this case, from Boyden, Kennedy &
 12 Romney to Arnold & Porter. So that's why it's
 13 complicated because I don't know that they were -- I
 14 don't know that Eggan and Fritz and Ainsworth were
 15 specifically acting on behalf of the Hopi Tribe, but I
 16 suppose in a sense they must have been.

17 Q Well, do you recall, did you undertake any
 18 projects for Mr. Kennedy?

19 A No.

20 Q The reason I asked, this morning we
 21 covered Arnold & Porter. I thought I should close up
 22 that loose end.

23 A Yes.

24 Q Aside from the conversation that you had
 25 with Mr. O'Connell and the contact that you had with

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1 Drs. Eggan, Ainsworth, and Fritz, do you recall any
 2 other projects you've undertaken for the Hopi Tribe
 3 that pertained to the 1934 lands?

4 A No.

5 Q Dr. Whiteley, I would like to direct your
 6 attention to the second page of the vitae. Under the
 7 heading of "Professional Experience," you list your
 8 teaching experience. I take it from your vitae, since
 9 1985 you've been a faculty member at Sarah Lawrence
 10 College?

11 A That's correct.

12 Q Is this a tenure position?

13 A No, Sarah Lawrence doesn't have tenure
 14 track positions in the same fashion as exist in most
 15 institutions, but it is, in effect, a tenure track
 16 position.

17 Q You also have a long list of courses that
 18 you've taught at Sarah Lawrence. Have you taught any
 19 courses on the Navajo?

20 A Again, I should state that the way that
 21 Sarah Lawrence teaching works is that the vast majority
 22 of courses are year-long seminars with 15 students that
 23 meet twice a week over the year. Each student in that
 24 class also gets to meet with the teacher on an
 25 individual basis every two weeks for an individual

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1 tutorial.

2 Subjects covered in the class will have
 3 some relationship to what may be covered in the
 4 individual tutorial work, which is known as conference
 5 work, but they may not be so directly related. With
 6 this context in mind, there are a number of seminars in
 7 which I have taught Navajo materials. There are a
 8 number more conferences in which I have taught Navajo
 9 materials.

10 Q Now, you refer to Navajo materials. Is
 11 there an emphasis in the course work that you provide?

12 A I'm sorry. How do you mean "emphasis"?

13 Q Well, is it a focus on Navajo religion,
 14 Navajo material, culture? Is there some particular

15 aspect of the Navajo that you teach?
 16 A On a regular basis, I teach a series of
 17 texts. These are Gary Witherspoon's Language and Art
 18 and the Navajo Universe, James Downs' The Navajo, Clyde
 19 Kluckhohn's The Navajo Witchcraft. I have also taught
 20 Frank Mitchell's Blessingway Singer in seminars. I
 21 can't pretend that this is going to be a complete list
 22 because there have been other things too. I have also
 23 taught in conference David Aberle's The Peyote Religion
 24 Among the Navajo. There is An Autobiography of a
 25 Navajo woman. I think the name is Shepard, published

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1 by Ballena Press. That's how I remember it,
 2 B-a-l-l-e-n-a. I have taught Dine Bahane, Navajo
 3 Creation Myths, edited by Paul Zolbrod, I have
 4 taught -- or specifically had students read Leland
 5 Wylman's Blessingway, Guy Cooper's, C-o-o-p-e-r -- I'm
 6 sorry. Leland is L-e-l-a-n-d w-y-l-m-a-n. Guy
 7 Cooper's Development and Stress in Navajo Religion. I
 8 have had students read from Gladys Reichard's Navajo
 9 Religion and from her -- R-e-i-c-h-a-r-d, and from her
 10 Dezba, D-e-z-b-a; Charles Amsden, A-m-s-d-e-n, Navajo
 11 Weaving; Marion Rodee, R-o-d-e-e, on Navajo weaving;
 12 Kate Kent, K-e-n-t, on Navajo weaving; Gary
 13 Witherspoon, Navajo Kinship and Marriage; Louise
 14 Lamphere, L-a-m-p-h-e-r-e, To Run After Them; Vincent
 15 Crapanzano's, C-r-a-p-a-n-z-a-n-o, The Fifth world of
 16 Forster Bennett, B-e-n-n-e-t-t. There is a collection
 17 of Navajo creation myths published as a Bureau of
 18 American Ethnology bulletin for around 1956. I can't
 19 remember the editor or author of those. That's also
 20 one. There may be others, but I think that covers
 21 probably the majority.

22 Q Dr. Whiteley, I'm trying to get a sense
 23 for the seminar work that you've done on the Navajo.
 24 Are you telling me that the seminars essentially cover
 25 the area from the different aspects of Navajo culture,

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1 not just --
 2 A It depends on how the seminar is
 3 construed. For example, this year I am teaching
 4 Language and Art in the Navajo Universe by Gary
 5 Witherspoon in two different seminars. One of those
 6 seminars is entitled Ethnology and Literature, which I
 7 am co-teaching with Arnold Krupat, K-r-u-p-a-t, which
 8 is a literary specialist and specialist on the textual
 9 analysis of Native American texts of Native American
 10 biographies. We are interested in how that text
 11 represents aspects of a cultural reality. In other
 12 words, we're interested -- well, we're interested in a
 13 lot of things, but we're interested principally in what
 14 it is that Witherspoon tells us about Navajo reality
 15 from that text and what he doesn't tell us.

16 I'm also teaching the same book, as I
 17 said, in another course entitled The Anthropology of
 18 Ritual and Symbolism. In that course, my principal
 19 interest in the text is how language and art in the
 20 Navajo universe depicts the construction of a rather
 21 different sort of metaphysics and rather different
 22 cosmology, a rather different sort of world view than
 23 the one that most of the students are ordinarily
 24 familiar with from their prior experience.

25 I've taught that text in another book -- I'm

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1 sorry, in another class entitled Exploring American
2 Indian Life and Culture. My principal aim in that
3 class was to use it as an ethnographic introduction to
4 some parts of Navajo culture. Again, because of the
5 way that the Sarah Lawrence curriculum is set up, the
6 way that you teach text, the way that you teach
7 subjects is somewhat different in a curriculum -- in a
8 more orthodox institution, if you will, which just
9 constitutes -- where the curriculum consists of lectures,
10 where the teacher specifies exactly what is discussed.

11 Q I see. Dr. Whiteley, your resume also
12 indicates -- or your vitae also indicates you were
13 adjunct professor in anthropology at Northern Arizona
14 University; is that correct?

15 A Yes.

16 Q Was that a tenure position?

17 A No.

18 Q It indicates that you taught a graduate
19 seminar in Pueblo Indian Ethnology. During the time
20 that you were at Arizona University, did you teach any
21 other courses?

22 A No.

23 Q The first page of your vitae and carrying
24 onto the second page, you have a listing of
25 scholarships and grants that you've obtained since

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1 1979. Are the awards related to the research you've
2 done on the Hopis?

3 A No.

4 Q Perhaps I missed something. Can you tell
5 me which ones do not.

6 A Okay. Starting at the bottom, 1979 to
7 '80, the Social Science Research Council did not
8 pertain to that.

9 Q Did it relate to any other Indian tribe?

10 A Actually, it should be 1978 to '79.

11 That's incorrect. It related to a possible research
12 project in Amazonia. The tribe was centrally under
13 consideration is called waiyana, W-a-i-y-a-n-a, French
14 Surinam -- I'm sorry. French Guyana, and Surinam, and
15 Brazil.

16 Q well, perhaps the simplest way is to go up
17 the list. I take it the award for University of
18 New Mexico Graduate Research Award was for your
19 doctorate research on the Hopis; is that correct?

20 A Yes, yes.

21 Q And the same is true for the entry which
22 appears above that, the Frieda Butler Foundation Award?

23 A Correct.

24 Q The same is true for the Sigma Xi --

25 A Xi.

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1 Q -- Xi Award, for Hopis?

2 A Yes.

3 Q The same is true for Byron Harvey, Iii,
4 Fellowship?

5 A Yes.

6 Q Is the entry that appears above that for
7 John R. Wilson awards also related to your research on
8 Hopi?

9 A It is.

10 Q Is the weatherhead Fellowship also in

11 connection with your research on Hopis?
 12 A Yes.
 13 Q And you have a listing above that
 14 indicating the -- it was an award from Northern Arizona
 15 University. Was that also in connection with your
 16 research on Hopi?
 17 A The examination of the archives at Denver
 18 Museum of Natural History had specifically Hopi
 19 content. The attendance of the American Anthropologist
 20 Association annual meetings did not have a Hopi
 21 content.
 22 Q The entry above that is from the American
 23 Council of Learned Societies. Was this in connection
 24 with your work in Amazonia?
 25 A No, that was in connection with work on

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1 Hopi.
 2 Q And it was held at Bogota?
 3 A Yes.
 4 Q I suppose there are stranger things. The
 5 grant above that, which is identified the American
 6 Philosophical Society, again, that was in connection
 7 with your work at Hopi?
 8 A Yes.
 9 Q On the next page there's a listing of
 10 three grants at Sarah Lawrence. Are those in
 11 connection with Hopi?
 12 A Principally, yes. In principal, those
 13 grants entail -- I can tell you exactly -- \$ 600 per year to
 14 hire a student assistant to type papers.
 15 Q Resumes?
 16 A Resumes. And so most of that, most of the
 17 work that I've had her do, has -- has only been three of
 18 them -- have been pertaining to Hopi in one way or
 19 another.
 20 Q Turning further on in your vitae, on a
 21 listing of your publications, aside from the work that
 22 you've done with Professor Kelley or Dr. Kelley in a
 23 review of Plains Indian Sculpture, do all of the other
 24 articles, publications listed here pertain to the Hopi?
 25 A Let me check. 1987a pertains to the Hopi,

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1 but also pertains especially to all of the other
 2 pueblos. It also includes passing references to
 3 Navajos, Havasupi, H-a-v-a-s-u-p-i, Yaqui, Y-a-q-u-i,
 4 Pima, P-i-m-a, Papago, P-a-p-a-g-o, I think also Mayao,
 5 M-a-y-a-o, Seri, S-e-r-i, Apaches, A-p-a-c-h-e-s, of
 6 various kinds.
 7 Q Dr. Whiteley, aside from the -- oh, I'm
 8 sorry.
 9 A Yes, let me just keep going through the
 10 list. You didn't mention those that continue on the
 11 next page, "Manuscripts in Preparation," but the last
 12 one, the last category, which is Manuscripts in
 13 Preparation C, one of those books is not exclusively
 14 Hopi. It includes some mention of Hopi. The other two
 15 are principally concerned with Hopi.
 16 Q Dr. Whiteley, you do have three
 17 publications listed on the second page of your vitae
 18 that were in preparation. And I'm principally
 19 concerned with the first two. Has the first one now
 20 been printed or is it still in the process?
 21 A No. When you say "publications," I have

22 them listed as manuscripts.

23 Q Yes.

24 A The first one, A no, it hasn't been
25 published. I don't have any commitment from anybody to

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1 publish it yet. The second one, B, will not be
2 published in the form that it was presented in at that
3 meeting. A related paper will be written, which will
4 be published in a book to be edited by Brian Swann,
5 S-w-a-n-n.

6 Q If you would, if you could briefly
7 describe what the first publication or the first
8 manuscript, "Auto-de-fe: The Burning of an Oraibi
9 Altar" is. Can you describe briefly what that is.

10 A It pertains to an event in 1922 when a
11 Hopi man from Oraibi by the name English name of K. T.
12 Johnson, J-o-h-n-s-o-n, took out the altar of the Two
13 Horn Society, which was his rightful inheritance, set
14 it up in public, and burned it.

15 I found a text in the Mennonite Archive
16 Library in Newton, Kansas, which is a pamphlet prepared
17 by the Mennonite Church and printed. It's not just a
18 manuscript, but presumably printed for
19 intracongregational circulation wherein Johnson
20 describes his reasoning for this and how he did it.
21 And another Hopi man, Lomavietu, L-o-m-a-v-i-e-t-u,
22 also provides a description of that process.

23 The article reprints the entire text with
24 an introduction examining the contexts, numerous
25 historical and cultural contexts for that action, and

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1 annotating the text to a considerable extent.

2 Q Well, Dr. Whiteley, is it your position or
3 opinion that the burning of this altar was related to
4 the thesis that you put forward in your book Deliberate
5 Acts?

6 A Yes.

7 Q And it was related to the decline of
8 ritualism in Oraibi?

9 A Yes.

10 Q Can you briefly describe what the second
11 manuscript is about, "Names and Practices in Hopi
12 Person Constructs."

13 A This has a new title, which was the title
14 that it was presented at the anthropology meetings with
15 in November. And the new title is, if I can recollect,
16 "Naming Intentionality and Personhood in Hopi
17 Society." The paper was written as part of a session
18 on persons themselves in pueblo and northwest societies
19 which was organized by myself and Susan Golla,
20 G-o-l-l-a, which is a northwest coast specialist, to
21 respond directly to an article by Marcel Mauss,
22 M-a-u-s-s, written in the 1930s but reprinted in
23 English for the first time in 1979 and reprinted in
24 another context in 1985, which has had quite a lot of
25 influence in Anthropological Studies and Personhood.

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1 Most specifically examines Zuni and by extension,
2 explicit extension, Hopi naming practices and masking
3 practices and includes this in an analysis of the
4 evolution of the concept of the person. This is
5 Mauss's concept, not my concept. My paper examined
6 Hopi naming practices and how these depart from Mauss's

7 conception of pueblo personhood and what I -- or I guess
8 suggest what I think Hopi naming practices say about
9 Hopi concepts of Hopi personhood.

10 Q Dr. Whiteley, I note that most of the
11 grants and research that you have received have been in
12 connection with your work with the Hopi.

13 A That's true.

14 Q And that most of your publications also
15 deal with the Hopi.

16 A Yes.

17 Q Dr. Whiteley, is it fair to say that you
18 are making a career off of the Hopis?

19 A You refer, I assume, to a statement in
20 Deliberate Acts wherein I indicate that quote -- may I
21 turn to this exhibit to find the specific --

22 Q Certainly, certainly.

23 A On page Roman numeral xvi, 60, "I am still
24 subject to the charge that I am making my career off
25 the Hopis. This is undeniably true, and I only hope

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1 that in so doing my writings have significance for Hopi
2 people."

3 This is a response and is part of a
4 passage wherein I talk about the structure of the
5 passage is designed to address the problematics of
6 conducting fieldwork at Hopi in the 1980s. It's
7 constructed to address the problematics of
8 anthropologic practice in general and specifically in
9 reference to the Hopis. And so I am trying to place my
10 own practices in the context of those problematics.

11 The specific passage that this quote comes
12 from is where I'm addressing what I perceive to be Hopi
13 concerns about anthropological practice. A typical
14 Hopi charge is that so and so, whether they are
15 anthropologists or some other outside researcher who
16 wants to publish on the Hopi, is only interested in
17 making money off the Hopi.

18 So earlier in the passage I indicate
19 specifically that I have donated all author's royalties
20 off this book to a local Hopi community fund. When I
21 say I'm still subject to the charge that I'm making my
22 career off the Hopis, it's undeniably true that this
23 book is about the Hopi, that my writings are about the
24 Hopi. It's undeniably true that within the academic
25 community, one's career is very frequently responsive

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1 to what one writes. If one doesn't write anything,
2 one's career may not move in any direction at all. In
3 that sense, this charge, which was taken from numerous
4 conversations -- no Hopi has ever gotten up and said,
5 "You're making your career off the Hopis," but I've
6 heard it with reference to other sorts of outside
7 research. I'm responding sort of with that vein in
8 mind.

9 Q Fair enough. As long as we are focusing
10 on some of your statements that you made and some of
11 your articles and your books and elsewhere, is it also
12 fair to say -- or is it fair to say that in the ongoing
13 dispute between the Navajo and the Hopi you've declared
14 yourself to be pro-hopi?

15 A I have declared on a number of occasions
16 that in these ongoing disputes there needs to be an
17 equal voice from the Hopi side and from the Navajo

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18 side. My opinion about prevailing media coverage of
 19 the disputes is that it has been overwhelmingly in
 20 favor of Navajo points of view to the virtually
 21 complete exclusion of Hopi points of view. I am
 22 concerned to try to address that imbalance.

23 Q And it's in that sense, at least, that you
 24 feel that you are pro-hopi?

25 A I have been associated with the Hopis in

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1 one way or another for about ten years. I've come to
 2 know certain things about Hopi life, Hopi concerns,
 3 Hopi analyses of things. I feel concerned that some of
 4 these have not been sufficiently addressed in the
 5 general public's access to interpretations of disputes
 6 between the two peoples.

7 Q I'm not sure if I understand, but perhaps
 8 this will help. I would like to mark as Exhibit No. 8
 9 a copy of the letter -- I think you've referred to
 10 earlier today, to the publication Man, the first page
 11 of which has a production number E24273.

12 (Defendant's Deposition Exhibit Whiteley 8
 13 was marked.)

14 Q Dr. whiteley, have you had a chance to
 15 review Exhibit No. 8?

16 A Yes.

17 Q I note in the second paragraph on the
 18 first page of Exhibit 8 following the quotation you
 19 state, "No anthropologist more than tangentially
 20 involved with either Hopis or Navajos has succeeded in
 21 remaining neutral in the ongoing land disputes between
 22 these two peoples. My own declared interest is
 23 pro-hopi." Dr. whiteley, what did you mean by those
 24 two statements?

25 A I think to try to clarify these things

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1 with the question that I was responding to previously,
 2 when one's writing, especially letters to a journal,
 3 clearly one is concerned with their rhetorical input.
 4 One's concerned to try to represent certain things in a
 5 certain way that the reader of the journal will read it
 6 and hopefully to try to come to their own conclusions
 7 from what is stated.

8 In saying this, "No anthropologist more
 9 than tangentially involved," et cetera, and then, my
 10 own declared interest is pro-hopi, I am explicitly
 11 attempting in the context of this letter to
 12 say -- nowhere in this letter do I say, at least that I
 13 recall, that I have conducted X number of years
 14 fieldwork among the Hopi, I have published this, and I
 15 have published that. I am attempting to indicate that
 16 my allegiance in this specific dispute with Professor
 17 Aberle is toward the Hopi because I think with this
 18 specific dispute with him his allegiance is toward the
 19 Navajo. So that's really my view of that. I don't
 20 think this is the sort of statement which can stand on
 21 its own without analyzing the rhetorical context in
 22 which it was uttered. It's not an academic statement.

23 Q Again, in fairness to you, I want to make
 24 sure I understand what your intent is or was when you
 25 wrote this letter. When you said that, quote, My own

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1 declared interest is pro-hopi, unquote, was that
 2 intended as a rhetorical flourish?

3 A It took place within the context -- within a
 4 context which had its own rhetoric. When I use the
 5 word "rhetoric," I'm using it in the literary critical
 6 sense. I'm not using it in the sense I think you just
 7 used it, when one speaks of rhetorical flourishes and
 8 so forth. In other words, every statement has a
 9 rhetorical statement in our terms. So it took place
 10 within its own rhetorical context.

11 Q But I take it you do not deny authoring
 12 Exhibit 8?

13 A No.

14 Q And you still stand by it?

15 A I stand by its intentions, as I've stated
 16 those intentions to you here, and that they are
 17 intentions which relate to the writing of a letter to a
 18 journal. They aren't intentions which are involved
 19 with the development of an academic argument, for
 20 example, or a legally binding declarative quality.

21 Q Well, I just want to make sure I
 22 understand your last answer. Are there any statements
 23 contained in Exhibit 8 that you wish now to retract?

24 A Can you define for me what you mean by the
 25 term "statements." I could give you a statement like

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1 "It's a nice day today." Is that the same sort of
 2 statement as "In December 1940 the Japanese bombed
 3 Pearl Harbor"?

4 Q Well, I guess my question is directed to
 5 the sentences which are contained in Exhibit No. 8. Is
 6 there anything contained in this letter which you now
 7 have second thoughts about?

8 A May I consult counsel?

9 Q Certainly.

10 (Discussion off the record between the
 11 deponent and Ms. Sprague.)

12 A No, I don't. I don't have second thoughts
 13 about it.

14 Mr. Rogers: why don't we take a break at
 15 this point.

16 Ms. Sprague: Okay.

17 (A break was taken.)

18 Q (By Mr. Rogers) Dr. Whiteley, toward the
 19 very end of your vitae, you have a listing for primary
 20 anthropological interests, which you appear to break
 21 into two parts, theoretical and ethnographic. The
 22 phrases that follow those two terms reflect
 23 subdisciplines in anthropology?

24 A They do in the theoretical category, not
 25 really in the ethnographical category.

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1 Q Can you tell me what ritual and symbolism
 2 refers to as a subdiscipline of anthropology.

3 A It refers to approaches which focus upon
 4 ritual practices, symbolic devices, relief systems,
 5 myths, cultural concerns which get expressed through
 6 such symbolic vehicles.

7 Q Can you describe to me what interpretive
 8 anthropology is.

9 A Interpretive anthropology is sort of a
 10 theoretical way of looking at society and looking at
 11 culture, which attempts to interpret it in a way which
 12 is not entirely dissimilar from the interpretation of
 13 texts by literary critics and so forth. Interpretive

14 anthropology has a subdiscipline or whatever is most
15 significantly associated with the name of Clifford
16 Geertz, G-e-e-r-t-z. The way that he has framed his
17 writings has come to create this category of
18 interpretive anthropology.

19 Q Can you explain to me what structuralism
20 refers to.

21 A Structuralism is a school of
22 anthropological inquiry deriving principally from the
23 work of Claude Levi-strauss. Claude, C-l-a-u-d-e.
24 Levi-strauss is L-e acute accent v-i dash
25 S-t-r-a-u-s-s. Structuralism is applied to all kinds

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1 of areas, to kinship, to myths. It's an analysis which
2 uses its model of culture of social practices as -- its
3 model derives from structural linguistics. It's more
4 complicated, obviously. If you want me to, I can go
5 further, but . . . Do you want me to?

6 Q No, I think the reference that you gave
7 helped me to try to understand, and I also hesitated.
8 I know at the beginning you laughed a little bit.

9 A The question what is structuralism in
10 anthropology is a very complicated question. I think
11 the best understanding is to read Levi-strauss,
12 Structural Anthropology, Volume 1, Structural
13 Anthropology, Volume 2, as well as other books.

14 Q Can you describe what political
15 anthropology is.

16 A Anthropology which is concerned with the
17 political systems of different societies.

18 Q And can you describe what kinship and
19 social organization refers to.

20 A That branch of anthropology, social
21 anthropology, cultural anthropology, which is
22 associated with how societies are organized, what their
23 kinship systems are, since kinship is a major principle
24 for the organization of society and nonstate level
25 societies.

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1 Q And it's the type of work that Titiev did,
2 Fred Eggan did, among the Hopi?

3 A Some of Titiev and Eggan's concerns were
4 with socialization, I think especially Eggan.

5 Q Can you describe to me what indigenous
6 knowledge systems are, what that discipline is?

7 A I'm sorry?

8 Q Or what that subdiscipline is.

9 A It's not really a subdiscipline. I guess
10 it's just a field of inquiry. What I mean to say by
11 that here really is what are indigenous interpretations
12 of that society, their societies, their histories,
13 their cultures. For example, in the Hopi case, how do
14 Hopis explain the world? How do they explain their
15 society? How do they explain their history, et
16 cetera?

17 Q Well, is an inquiry focused upon
18 epistemology?

19 A It would employ epistemology or what I
20 have called ethnosociology. It may also include
21 ethnogeography. Basically anything that goes into a
22 Hopi or other indigenous system of knowledge about
23 reality. In the sense it's epistemology. It would
24 also ethnogeography, et cetera.

25

Q So it's closer to just the belief systems

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1 about the world?

2 A That's not really what I said.

3 Q I'm trying to get a sense for it. You

4 have a listing below that for your ethnographic

5 interests. You list the Hopi. Is your expertise with

6 the Hopi generally or only focused on Third Mesa, or

7 particular villages within Hopi?

8 Ms. Sprague: John, I'm going to object to

9 that question unless you define "expertise." That's a

10 word that has a lot of different meanings.

11 Mr. Rogers: Well, sure.

12 Q (By Mr. Rogers) why don't I just ask you,

13 Dr. Whiteley, do you consider yourself to be an expert

14 on the Hopi?

15 Ms. Sprague: I think you have to define

16 how you mean "expert."

17 Q (By Mr. Rogers) Have you heard the word

18 "expert" used before?

19 A I have heard the word "expert" used

20 before.

21 Q What do you understand the word means?

22 A It means somebody who has a special

23 understanding of a particular subject.

24 Q Okay. Well, during the -- and that's the

25 definition you feel comfortable with?

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1 A I hadn't thought of it as a definition,

2 but I guess I feel comfortable with the way I stated

3 it.

4 Q Well, Dr. Whiteley, certainly my intent is

5 not to confuse you. Will you understand me when I ask

6 you if you believe yourself to be an expert on various

7 topics that I mean to use the definition that you've

8 just given?

9 A Can we write that definition down so that

10 I can keep looking at it while I'm answering what you

11 might ask me about that?

12 Q Certainly. If we could have it read back,

13 and you can copy it on your pad.

14 A Okay.

15 (Page 109, lines 22 and 23 were read

16 back.)

17 A Okay.

18 Q Okay. Dr. Whiteley, now that you've had a

19 chance to write the definition down, are there any

20 respects in which you wish to modify the definition

21 you've just given? And again, my intent is to use

22 words that you do feel comfortable with.

23 A Yes. I feel comfortable with this, but

24 part of my reasons for choosing these words are some of

25 them are quite indefinite because it's a fairly

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1 indefinite category, so I don't want to imply that I

2 think this is a very precise, rigorous definition which

3 could conform, say, to the canons of rigor of a

4 scientific definition.

5 Q Fair enough. Dr. Whiteley, do you

6 consider yourself to be an expert on Hopi archaeology?

7 A I don't mean to be evasive, but relative

8 to whom?

9 (Discussion off the record between the

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deponent and Ms. Sprague.)
 A Counsel has just suggested that we not use this statement that I've offered which you have indicated should be a definition. Instead we should use some sort of definition which specifies the sorts of things that I write about most of the time for academic audiences, so that it would have some sort of academic underpinning.
 Q Well, again, Dr. Whiteley, I want to try to use a definition that you feel comfortable with. Am I correct in understanding you don't know what the word "expert" means?
 A When you asked me was I an expert on Hopi archaeology, I had trouble relating that question to the statement that I had made, which you had redesignated a definition, because I found it to be a relative sort of question in that context.
 My anticipation, and I think the anticipation of counsel, was that if you're planning to ask a series of questions along this line, everyone that is asked will have similar relativistic problems. So I guess while I can say that I'm comfortable with this definition -- with this statement slash definition, statement for me and definition for you, in a certain context, if it's really not going to help us to answer the questions that you intend as precisely as possible, maybe we should move to something which is more -- which would be more responsive.
 Q Well, Dr. Whiteley, let me see if I can give you some background information that may be of some assistance to you. One of the things I would like to accomplish in the deposition is to identify what areas of expertise that you have.
 A Um-hum.
 Q Before you are permitted to testify at trial in this matter, your counsel, or counsel for the Hopi Tribe, will have to establish as a matter of foundation that you do have expertise in certain areas. And if that is established, the judge may permit you to testify. But you certainly are in a position, as an expert witness, that you are able to testify to things that ordinary lay people could not testify to. And the reason for those rules of evidence is that either because of academic training or of particular life experiences or because of professional experience, the law recognizes that certain individuals do have a level of expertise which may be of help to the fact finder. And what I'm trying to struggle through here are what things you are expert about and what things that you are not.
 A Yes.
 Q And I would like to try to work through this with a set of definitions that you will feel comfortable with.
 Now, Dr. Whiteley, I understand that within the community of scholars that consider themselves anthropologists and archaeologists, there are people who are considered to know something about archaeology and other people who only have a superficial understanding of that subject.
 A Um-hum.

21 Q And I'm trying to sort out where you fit
 22 in the continuum within this community of
 23 archaeologists and anthropologists. I don't know if
 24 that helps you formulate a definition.
 25 A It does. It does. I think, though, that

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1 some sort of definition which does address these sorts
 2 of academic standards is perhaps one I would be more
 3 comfortable with, or I don't know about being
 4 comfortable with, but maybe it will be helpful in terms
 5 of answering these questions.

6 Ms. Sprague: I think the difficulty is
 7 the legal standard is obviously one we have to meet.
 8 And as I understand it, it's a person who has
 9 information that would help the trier of fact decide
 10 the case, as you have stated. That may well be a very
 11 different standard than the one that applies in
 12 anthropological circles. Someone may come into a
 13 courtroom who has much more understanding than the
 14 general public and who can help the trier of fact. On
 15 the other hand, in an academic setting, if the
 16 individual has not spent ten years on a particular
 17 subject, then in an academic parlance, they're not an
 18 expert.

19 The difficulty here is that it's hard for
 20 Dr. Whiteley to respond in terms of the legal standard,
 21 although the academic standard is probably, I suspect,
 22 higher than the legal standard. So perhaps we should
 23 proceed with the academic standard, realizing that it
 24 and the legal standard are not the same thing.

25 Mr. Rogers: Oh.

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1 Q (By Mr. Rogers) And, Dr. Whiteley, I'm
 2 not asking you to opine as to what the legal standards
 3 are. I understand you're not a lawyer. And I'm not
 4 sure if this lawyer understands it, so I certainly
 5 don't presume that you are familiar with that. But I
 6 am struggling with some definition that you are
 7 comfortable with. And it's probably more of an
 8 intuitive process in the field of anthropology as to
 9 who knows something and who knows less. Can you think
 10 of a definition of "expert" which you would feel
 11 comfortable with?

12 A I must say I find it rather difficult.
 13 Can you think of one that you can suggest to me that I
 14 might be able to live with?

15 Q Well, I thought the definition you came up
 16 was just fine.

17 Mr. Rogers: Counsel, do you have a
 18 dictionary?

19 Ms. Sprague: Yeah.

20 Mr. Rogers: Let's see what that
 21 provides.

22 (Interruption in the proceedings.)

23 Q (By Mr. Rogers) Well, Dr. Whiteley, for
 24 what it's worth, in the American Heritage Dictionary of
 25 the English Language, the first definition of expert is

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1 "A person with a high degree of skill or knowledge in a
 2 certain subject" or, which is, I think, pretty close to
 3 the first definition that you came up with. And if you
 4 would like to take a look at the dictionary and take a
 5 look at the definition and see if there's one that

6 comes closer to what you may have in mind, please feel
7 free to take a look.

8 A Why don't we try and work with this
9 definition, although I notice that it has a phrase
10 which you didn't include when you read it, which is "a
11 person with a high degree of skill in or a knowledge of
12 a certain subject."

13 Q I stand corrected. Well, let's try this
14 definition and see how it weathers. Dr. Whiteley, do
15 you consider yourself to be an expert in Hopi
16 archaeology?

17 A I consider myself to be an expert in
18 general terms on the Hopi. I consider myself to have
19 more expertise on Hopi archaeology than a layperson. I
20 consider myself to have more expertise on archaeology
21 than a nonanthropologist. I do not consider myself to
22 be an expert on Hopi archaeology in the sense that
23 Charles Adams is an expert on Hopi archaeology, which
24 is a sense that implies a considerably higher degree of
25 skill in or a knowledge of that subject.

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1 Q Fair enough. Dr. Whiteley, have you done
2 any archeological fieldwork of either Hopi areas or
3 sometimes otherwise referred to as Anasazi ruins?

4 A By "fieldwork," I assume you mean formal
5 archeological fieldwork sponsored by an institution
6 like a university or a research outfit?

7 Q Well, to provide an example, what
8 Dr. Adams did in --

9 A Walpi.

10 Q -- Walpi?

11 A No, I haven't.

12 Q Do you consider yourself --

13 A Oh, sorry. Let me retract that partially
14 and say yes, in line with what I was saying this
15 morning about having conducted some survey work for a
16 very minor period of time in the Raton area, some of
17 those artifact scatter sites featured were Anasazi.
18 But I will -- I am quite willing to allow that that was
19 insignificant as constituting any sort of archeological
20 research for myself.

21 Q Fair enough. Do you consider yourself to
22 be an expert in Navajo archaeology?

23 A In general, no, I do not. Although, in
24 the terms that I answered your question about Hopi
25 archaeology, I probably know -- well, I certainly know

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1 more about Navajo archaeology than a layman, a
2 nonanthropologist who hasn't specialized in Navajo
3 archaeology. But in general terms, I think I can
4 answer that much more easily no.

5 Q Do you consider yourself to be an expert
6 in Hopi material culture?

7 A Again, I consider myself generally to be
8 an expert on Hopi ethnology. The study of ethnology
9 includes the study of material culture. As an
10 anthropologist, I've studied material culture, cross
11 culture materially as part of my training. I have not
12 explicitly focused any of my research on Hopi material
13 culture, so I am not an expert in the sense that Barton
14 Wright is an expert on Hopi material culture, for
15 example. Wright is w-r-i-g-h-t.

16 Q Do you consider yourself to be an expert

17 in Navajo material and culture?

18 A Again, with the proviso that as an
19 expert -- I'm sorry. Strike that. As an anthropologist
20 who has general knowledge of southwestern Indian
21 ethnology and some specific knowledge of Navajo
22 ethnology, I consider myself to have a greater degree
23 of expertise than a layman or a nonanthropologist who
24 hasn't studied that particular subject. Within the
25 criteria of expertise of the academic discipline of

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1 anthropology, I would not claim to be an expert on
2 Navajo material culture.

3 Q Do you consider yourself to be an expert
4 in Hopi religion, religious beliefs?

5 A Now we get into another difficult aspect
6 of this problem of being an expert. Part of the
7 problematics that I was addressing in that passage that
8 we were discussing about the relationship between
9 anthropologists and Hopis pertains to this very
10 question of outsiders claiming any kind of expertise on
11 the Hopi. Hopis will say, "Well, so and so came here
12 for two months and the next thing we know, they're
13 claiming to be an expert on this or that aspect of Hopi
14 culture." I think this is a reasonable complaint.

15 I think that I have much greater expertise
16 on Hopi religion than a layman or a non -
17 anthropologist. I think I have greater expertise on
18 Hopi religion than a lot of other anthropologists who
19 specialize on the Hopi. I think I probably have less
20 expertise than someone who has focused in a very
21 specific way on Hopi religion, like Armon Geertz,
22 A-r-m-o-n G-e-e-r-t-z, who is -- that's what he's been
23 most interested in is Hopi religion. I sort of think
24 that if I were to adhere to the Hopi standard of
25 expertise, which seems to be higher than all the others

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1 we've come up with, I wouldn't be an expert on Hopi
2 religion until I lived there all of my life and had
3 lived in the community as a member of the community.

4 Another aspect of this problem, when you
5 raise the concept of religion, relates to cultural
6 interpretation as a whole. Is Hopi religion a Hopi
7 concept? That's questionable. If this is a category
8 of outsiders invention, then it becomes fraught with
9 problems of an intercultural understanding.

10 Q Well, Dr. Whiteley, I think your point is
11 well made. And the intent of my question, I suppose,
12 was to focus more upon the community of
13 anthropologists. It wouldn't surprise me if a Hopi
14 would be deeply suspicious of anyone who pretended to
15 be able to explain Hopi religious beliefs, and I would
16 expect the same would be true of the Navajo. Within
17 the community of anthropologists, using that as a frame
18 of reference, do you hold yourself out to be an expert
19 on Navajo religion and religious beliefs?

20 A No, I really do not. But again, with the
21 proviso that I consider myself to have a considerably
22 greater degree of expertise on Navajo religion than
23 anthropologists who have never studied the Navajo or
24 than perhaps some anthropologists who have studied some
25 aspects of Navajo culture. I have read quite a few

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1 texts which pertain to Navajo, quotes, religion, end

2 quotes. I mean those quotes not as any kind of
 3 derogatory comment on the Navajo, I mean as a question
 4 of what the concept of religion means. In other words,
 5 I could put quotes around all the time I've used
 6 religion in the Hopi context just now too.

7 So in the sense that as anthropologists
 8 who specialized on the southwest for ten or so years
 9 and who have read quite a lot about Navajo culture as
 10 somebody who has a professional interest in that, as
 11 somebody who is doing a professional reading of that
 12 material, then I think I know considerably more, have a
 13 considerably higher degree of knowledge of Navajo
 14 religion than a lot of nonanthropologists and than a
 15 lot of anthropologists who haven't specialized in
 16 Navajo.

17 Q Dr. Whiteley, have you ever done any
 18 ethnographic work with the Navajo?

19 A Well, I think I should let what I said
 20 about that this morning or in the early part of this
 21 afternoon session stand. No, I really don't consider
 22 that I have done ethnographic work with the Navajo. I
 23 have certainly talked to Navajos on numerous
 24 occasions. I have talked with a Navajo Peyote drummer,
 25 P-e-y-o-t-e, over a period of hours in which we were

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1 talking about Navajo Peyotes. I don't think I can
 2 claim that as formal ethnographic research into Navajo
 3 religion, but it certainly means that I have a more
 4 direct understanding from Navajos about certain aspects
 5 of Navajo, quotes, religion than an anthropologist
 6 who's never talked to a Navajo or a nonanthropologists
 7 who has never talked to a Navajo about those subjects.

8 Q Fair enough, Dr. Whiteley. I'm just
 9 trying to gauge how much work you have done. You did
 10 mention this morning you have talked on occasion with
 11 various Navajo. Have you ever interviewed a Navajo
 12 medicine man regarding Navajo religious beliefs?

13 A No.

14 Q Do you --

15 A Well, again, can you specify what you mean
 16 by "a Navajo medicine man." The term that I think is
 17 in more general use in Navajo use is a singer or
 18 someone who is a hand trembler, as in the example I
 19 just gave you, is a Navajo Peyote drummer, not a Navajo
 20 medicine man. I don't think a Navajo Peyote drummer is
 21 someone who's, generally speaking, considered to be in
 22 a general category of medicine man, but are we sure
 23 that we have our terms correct here?

24 Q Fair enough, Dr. Whiteley. Have you ever
 25 interviewed a singer?

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1 A No.

2 Q Have you ever attended a Yei-bei-chai?

3 A No.

4 Q Have you ever attended a blessingway?

5 A No.

6 Q Did you ever attending an enemy way?

7 A No.

8 Q Have you attended any Navajo ceremony?

9 A No.

10 Q And again, I'm trying to focus in on, I
 11 suppose, the academic community of an anthropologist or
 12 the community of anthropologists. And the next

13 category deals with social organizations, and I'm sure
 14 the Hopis consider themselves to be the experts on
 15 social organization. But do you consider yourself to
 16 be, within the community of anthropologists, an expert
 17 on Hopi social organization?

18 A Yes.

19 Q Do you consider yourself to be an expert
 20 on Navajo social organizations?

21 A Only in the ways that I have already
 22 specified limit my claims to expertise. I know more
 23 about Navajo social organizations than a
 24 nonanthropologist or somebody who hasn't studied the
 25 texts on Navajo social organization. I have read quite

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1 a lot of texts in my training as an anthropologist, in
 2 my role as a teacher of anthropology, on Navajo social
 3 organization. I can relate these texts to my
 4 understandings of an anthropologist, large theoretic
 5 understanding of social organization. In that sense, I
 6 have considerably greater expertise on Navajo social
 7 organization than an anthropologist who has never read
 8 about Navajo social organization. But by the canons in
 9 which I answered your previous question about Hopi
 10 social organization in the affirmative, no, I am not an
 11 expert on Navajo social organization.

12 Q Well, now, Dr. Whiteley, I would like to
 13 return back to the last page of your vitae. Under the
 14 category of "Ethnographic," you have a number of
 15 listings, including the Hopi. You have a listing for
 16 Pueblo Indians. Are there particular pueblo tribes
 17 that you feel that you have more expertise about than
 18 others? Are there some that you're more familiar
 19 with? Maybe that's an easier question.

20 A I think, but it really depends about
 21 really what you would ask specifically about some
 22 aspect of pueblo culture as a whole. If you notice the
 23 way that this category is structured, the first four
 24 entries, I e., Hopi, Pueblo Indians, other Southwest
 25 Indians, Native North America, this is sort of

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1 hierarchy arranged, if you will. In other words, I
 2 consider that my -- again, to use the terms of our
 3 dictionary definition, that I have a higher degree of
 4 expertise on the Hopi than I have on the Pueblo
 5 Indians. I have a higher degree of expertise on the
 6 Pueblo Indians than I have on other Southwest Indians.
 7 I have a higher degree of expertise on other Southwest
 8 Indians than I have on Native North America. But all
 9 of these things are sort of on this hierarchical
 10 continuum of general expertise. The closer you move to
 11 the specific end of Hopi, the more expert I become. Do
 12 you see what I'm saying?

13 Q Yes, I do. At least I believe I do.
 14 Dr. Whiteley, do you have a similar hierarchy within
 15 the category of Hopi?

16 A Yes, I do.

17 Q And, for example, would you consider
 18 yourself to be more familiar with Third Mesa than, say,
 19 First Mesa?

20 A Yes, I would.

21 Q Are you more familiar with Third Mesa than
 22 Second Mesa?

23 A Yes.

24 Q And how would you put Moencopi within that
25 hierarchy?

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1 A In that Moencopi is conceptually a part of
2 Third Mesa in Hopi thinking, in Third Mesa Hopi
3 thinking, then I would say that I have an expertise on
4 Third Mesa, which includes Moencopi.

5 Q Are you as familiar -- or would you consider
6 yourself to be as familiar with Moencopi as, say, the
7 other Third Mesa villages?

8 A I am not as familiar with Moencopi as I am
9 familiar with Bacavi. I am not as familiar with
10 Moencopi as I am familiar with Hotevilla. I think I
11 am -- we're talking relative terms. I think I'm probably
12 about as familiar with Moencopi as I am with Kykotsmovi
13 and as I am with Old Oraibi.

14 Q This morning you provided a list of the
15 places where you conducted fieldwork while you were
16 working on your Ph. D. thesis and a long list of
17 villages. Did you conduct any fieldwork at walpi, that
18 was not among the list?

19 A Well, the way that I use the term Polacca
20 is to -- which is a reflection of Hopi usage, at Third
21 Mesa, Hopi usage is to include the other villages, I
22 mean all the villages of First Mesa, which are walpi,
23 Sichomovi, and Hano. And Polacca is actually the place
24 where most people have residences down below, and
25 they'll return to their residences on top of First Mesa

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1 for ceremonial occasions and other occasions. I have
2 been to walpi on many occasions. So some of those
3 occasions I have been accompanied by other Hopis, some
4 of whom have taken me into houses of people who live
5 continuously in walpi, and they have engaged such
6 people in extended conversations, from which I have
7 learned considerable amounts of information. Does that
8 answer your question?

9 Q Yes, it does. Did you conduct any
10 fieldwork at Hano or have consultants that were from
11 Hano?

12 A I think the same way that I've described
13 what my experience at walpi applies to Hano too.

14 Q Are their cultural differences between
15 Hano and, say, walpi?

16 A Well, of course there are. I think I can
17 say that there are more definitively as a result of
18 what I have read about Hano that's been written by
19 other anthropologists than I can directly from my own
20 experience, but I certainly have been in Hano on enough
21 occasions, and I have seen differences in ceremonial
22 practices to speak in a way which would confirm what I
23 have read about and confirm within a way that I would
24 be quite happy to say to another anthropologist, for
25 example, yes, there are differences between Tewa and -- I

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1 mean between Hano and walpi. I have seen some of these
2 differences.

3 Q In terms of the hierarchy of familiarity
4 within the general topic of Hopi, would you be least
5 familiar with Hano because of its cultural differences,
6 or are you able to isolate Hano in that hierarchy?

7 A Are you asking with respect to my own
8 personal experience there or are you asking with

9 respect to my understanding of ethnographic texts which
10 have been written on different Hopi religions?

11 Q Well, Dr. Whiteley, I guess I'm asking for
12 a blend of the two and trying to gauge your familiarity
13 or your expertise within the general category of Hopi.

14 I believe earlier you testified that you
15 believe that you would be more familiar with Third Mesa
16 and then with First Mesa. Now, I understand that the
17 lineage -- the people at Hano is different than from the
18 other people at Hopi. And my question was directed to
19 try to find out if because of the difference in lineage
20 and the results of cultural differences at Hano if you
21 would consider yourself to be, within the category of
22 Hopi, least familiar with Hano?

23 A I find that extremely difficult to
24 answer. I could say that that's true, and I guess in a
25 general context I would have no objection to saying

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1 that or agreeing to that as stated. But when it comes
2 down to it, I may in fact, from my personal experience,
3 from my reading, know something more about Hano than I
4 know, for example, about Sichomovi or that I know about
5 Polacca proper because not much has been written about
6 Polacca proper.

7 Q Well, I think that's a fair enough
8 answer. I guess it depends upon what type of work that
9 you've done, the library work you've done, reading
10 anthropological texts; in some respects, you would be
11 more familiar with Hano than you would with some of the
12 other communities.

13 A I think that's probably true. But I
14 really -- you know, I stand by the hesitancies and
15 tentativeness of my previous response.

16 Q Well, Dr. Whiteley, before we get to your
17 report -- and I promise you that we will eventually get
18 there -- I have a few questions just about the work that
19 you conducted in preparing the reports and conducting
20 your investigation. When were you retained to work on
21 this lawsuit?

22 A The first consultation that I had with
23 Arnold & Porter was in March of 1988. After that time,
24 a contract was drawn up with the Hopi Tribe, and I
25 began to work for Arnold & Porter, for the Hopi Tribe,

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1 on June the 6th or 8th, sometime before the middle of
2 June, after the first of June.

3 Q Now, you mentioned that your first
4 consultation with Arnold & Porter was in March of
5 1988. Did that take place in Denver?

6 A Yes -- no. No, the first consultation -- I'm
7 sorry. The first consultation took place in
8 Albuquerque.

9 Q And who did you speak to?

10 A Mary Gay Sprague.

11 Q During this first consultation, was it
12 your understanding that you would be conducting work
13 for the Hopi Tribe through Arnold & Porter, or was this
14 meeting in the nature just as a preliminary contact to
15 talk about your availability?

16 A Yes, it was a preliminary exploration to
17 see whether I might be interested in and suitable for
18 some kind of work with respect to the case.

19 Q Was there any meetings that followed?

20 A Yes. The next meeting was in Denver.
 21 Q And when did that occur?
 22 A I think it was April the 24th or
 23 something, April the 21st.
 24 Q And was that meeting held at Arnold &
 25 Porter?

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1 A Yes.
 2 Q Who was at that meeting?
 3 A That meeting was with Mary Gay Sprague and
 4 James Scarboro, and I think that's all at that first
 5 meeting, but I don't really recall properly. Certainly
 6 those two were the most present.
 7 Q During the course of this meeting, were
 8 you asked to prepare any reports or were you still on a
 9 preliminary stage?
 10 A I had been asked by telephone to give some
 11 comments on -- I'm trying to remember if I have the order
 12 right, if this occurred at this meeting or if this
 13 occurred after this meeting or at the third meeting.
 14 But I think it was by this meeting that I had already
 15 had copies sent through the mail to me of Hopi expert
 16 witness reports, and I was asked to present some
 17 comments about those reports at this meeting on
 18 April the 24th slash 21st.
 19 Q And again, Dr. Whiteley, I understand that
 20 we're talking about some events that happened some time
 21 ago, and I don't expect you to have an exact
 22 recollection of when things occurred. I have enough
 23 trouble remembering what I did last week, let alone six
 24 months ago. Perhaps the easier way to go about it
 25 would be just to come up with the chronology of the

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1 meetings and that may give us the time frame.
 2 Was there another meeting that you
 3 attended in between the April 24th meeting and the time
 4 that the contract was signed?
 5 A I don't think there was. I think that was
 6 the -- well, no, no. When was the contract signed? I
 7 had a contract, a preliminary contract, sent to me or a
 8 contract format sent to me, but I can't remember when
 9 that contract itself was signed.
 10 Q Let's try it this way: Following the
 11 April 24th meeting, did you have another meeting with
 12 the attorneys for the Hopi Tribe?
 13 A well, I had a meeting when I began working
 14 in the early part of June.
 15 Q And where did that meeting take place?
 16 A Here.
 17 Q And who did you meet with?
 18 A well, I met with Jim Scarboro and with
 19 Mary Gay Sprague and David Warren, and I think that's
 20 all.
 21 Q Can you recall when you were asked to
 22 prepare the reports that have been marked as Exhibits 1
 23 and 3?
 24 A I think, to the best of my recollection,
 25 the idea was after this April meeting that I would

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1 write a report, so I came to Denver in early June to
 2 examine the materials in Arnold & Porter's file
 3 preparatory to writing that report. Sometime during
 4 that process it became clear that I should write two

5 reports and that, if I recall, was at my instigation,
6 I e., two reports rather than one report.

7 Q Why did you feel it was necessary to write
8 two reports instead of one?

9 A I think, if I recall, that my initial
10 intention had been to include the fundamental subject
11 matter of the Hopi-navajo Relations report in the body
12 of an entire single unitary report. And as my research
13 went on, it became increasingly clear that that would
14 be more -- it would stand better as an integral report of
15 its own.

16 Q I believe earlier you testified that at
17 the April meeting, to the best of your recollection, or
18 perhaps before that by telephone, that you were asked
19 to provide comments on expert reports; is that correct?

20 A I'm sorry. Can you repeat the question.

21 Q Certainly. Again, I'm just trying to get
22 the chronology down. Is it your recollection before
23 the April 24th meeting you had been contacted by
24 telephone and asked to provide comments on expert
25 reports?

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1 A Yes.

2 Q And at the April 24th meeting, did you
3 provide those comments?

4 A Yes.

5 Q I think you've also testified that an idea
6 came out of the April 24th meeting that you would
7 prepare a report; is that correct?

8 A Yes.

9 Q What were you asked to prepare a report
10 about?

11 A I was asked to prepare a report which
12 would synthesize the conclusions of the Hopi expert
13 witness reports and provide further material which
14 would form an overall rationale linking those reports
15 and linking my perceptions of Hopi interest in and
16 understanding of the case as it pertained to this
17 lawsuit.

18 Q Were you asked to do anything else in this
19 report?

20 A I don't recall honestly. I think what
21 I've said pretty well covers it.

22 Q Now, you testified that along the way
23 while conducting the research you decided that two
24 reports would be more appropriate than one. As you
25 worked on the projects that resulted in your two

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1 reports, were there other changes made in the scope of
2 the reports?

3 A I think there were ad hoc changes that I
4 would make as I was going through the material that had
5 been assembled and placing it in the context of my
6 previous knowledge. So it would seem to be, to me, to
7 be appropriate to include this section or a section on
8 that or a section on the other, and so forth. But in
9 general terms, this is the way that as an
10 anthropologist, as an ethnohistorian, as a cultural
11 interpreter, whatever category I work -- in other words,
12 I want to see what I'm considering to be significant
13 emerge from the material itself rather than having an
14 absolutely rigid program beforehand.

15 So in the same sense as I responded to

16 your previous question, as having an overall goal of
 17 synthesizing the Hopi expert reports, since I was not
 18 retained at that point as an expert witness, and
 19 providing a linking rationale, that's -- those sorts of
 20 general concepts became threshed out into actualities
 21 in the course of my research and thinking about what I
 22 was looking at.

23 Q Fair enough. Well, during the course of
 24 your work following the April 24 meeting or the late
 25 April meeting, do you recall if any of the attorneys at

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1 Arnold & Porter called you or had conversations with
 2 you in which they indicated that they would like you to
 3 address additional topics in your report, other than
 4 what had been talked about at the April meeting?

5 A I don't recall.

6 Q As of last April or April '88, was it your
 7 understanding that the report that you were going to
 8 author or in the reports were going to cover the
 9 Hopitutskwa?

10 A Well, they were going to cover what I've
 11 said really. It was my idea to frame things in terms
 12 of Hopitutskwa, but that was before me, I think, that
 13 generally stated task of providing synthesis and
 14 rationale.

15 Q Well, as you had invisioned the report as
 16 of late April following the meeting, was it your intent
 17 to include a section discussing the Hopitutskwa?

18 A I think it probably was, yes.

19 Q Was it also your intent at that point to
 20 have a section or sections discussing Navajo-hopi
 21 relations?

22 A I think it probably was, yes.

23 Q During the course of your research, were
 24 there topics that you originally intended to include in
 25 your report that during the course of your research

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1 fell along the wayside, you decided not to include?

2 A Topics or -- I'm having some difficulty with
 3 this question. I think yes, that there was certainly
 4 topics that I would consider, whether they were topics
 5 which constituted in my mind entire sections in the
 6 report, I don't know if I could say that. I might have
 7 thought, well, maybe I should have a short discussion
 8 of this subject or that subject. And when it came to
 9 it, well, this is really what I've said over here. So
 10 that's it. I mean, just repetition or whatever.

11 So at this point I think I would exclude
 12 those topics, but I don't think there would be entire
 13 sections that I decided to exclude. I don't think
 14 that's true, no.

15 Q Do you recall any subject that you did
 16 decide to exclude?

17 A Not definitively, no. I think if I
 18 searched long enough I could come up with one, but
 19 whether it would be more representative of something
 20 that was important in my mind as opposed to something
 21 that I can't remember now, I don't know that.

22 Q Fair enough. At what point did you learn
 23 that you would be an expert witness in this litigation?

24 A My understanding is that my status as an
 25 expert witness is still in question and still may be

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1 challenged by Brown & Bain, so I don't know if I am an
2 expert witness or not.

3 Q At what point were you told by the
4 attorneys from Arnold & Porter that they would like to
5 have you as an expert witness?

6 A I think after I had submitted the
7 reports. May I ask if counsel could confirm that
8 or . . .

9 Q You're certainly welcome to ask. I'm
10 principally concerned with your recollection. If your
11 answer is you just don't recall, I can accept that.

12 A The answer that I just gave is the best
13 answer that I can find.

14 Q During the course of your work on the two
15 reports, did you have conversations with some of the
16 other anthropologists and archaeologists who have been
17 designated as experts in this case?

18 A No, with the possible exception of Fred
19 Eggan. I can't remember. I did see Fred at some point
20 last summer. I can't remember at what stage -- I was in
21 either researching or writing those reports -- whether it
22 was before all this took place or during it or after
23 it, but I did talk to Fred at some point last summer.
24 I can't exactly remember when.

25 Q Do you recall if this conversation with

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1 Dr. Eggan was in connection with your report, the work
2 that you were doing?

3 A Yes, I do recall. No, it was not. No, it
4 was not. I have never discussed my reports in this
5 case with Dr. Eggan.

6 Q During the course of your research for
7 your reports, did you confer with Dr. Fritz?

8 A Not during the course of my research for
9 these reports, no. But as I mentioned earlier, I did
10 meet with Dr. Fritz in 1985, I think it was. Not in a
11 research capacity.

12 Q Have you conferred with Dr. Fritz since
13 the time you've written your reports?

14 A No, I have not.

15 Q After you had completed -- well, strike
16 that. I understand that both of your reports went
17 through two drafts? For each report were two drafts
18 submitted to Arnold & Porter?

19 A How are you defining "drafts"? My
20 question is, for example, today in this deposition,
21 we've found a typo. Since this is now a previous
22 generation version of the ultimate document which will
23 include a correct spelling of Egloffstein. So in the
24 sense it's a draft --

(Discussion off the record between the

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1 deponent and Ms. Sprague.)

2 A Okay. Yes, two.

3 Q Just so we're clear, Exhibit 1 shows a
4 date of October 1988?

5 A Yeah.

6 Q And there was a previous draft that showed
7 a date of August 1988?

8 A You're correct.

9 Q And the same is true for the Navajo-hopi
10 Relations report?

11 A That's correct.

12 Q When you submitted the first draft of both
13 reports to Arnold & Porter, did you receive comments
14 from the attorneys on the drafts?

15 A Yes.

16 Q Did you incorporate any of the comments in
17 your report?

18 A I incorporated comments as -- sorry. I'm
19 just trying to answer this question precisely. I
20 incorporated suggestions which were contained in their
21 comments about what would be an appropriate subject to
22 comment upon in a particular passage and so forth.

23 Q Do you recall if there were any comments
24 that you did not incorporate or any suggestions that
25 you did not take that were suggested by the Hopi

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1 Tribe's lawyers?

2 A I can't recall.

3 Q Did you receive -- well, strike that. To
4 your knowledge, were either the August or October 1988
5 versions of your reports circulated among the other
6 experts that have been retained by the Hopi Tribe?

7 A Not to my knowledge.

8 Q So I take it you haven't received any
9 comments or feedback from those other experts
10 concerning your report?

11 A No.

12 Q In working on your reports, did you do any
13 fieldwork?

14 A I visited Hopi for several days in
15 August. I think it was about a week. I said this
16 morning five or six days or a week. I can't exactly
17 remember how many days I was there, in which I did
18 indeed ask some Hopis some questions, some of which
19 were related to subjects, questions, deriving from the
20 report or associated with the report.

21 Q And where did you go on this trip?

22 A For Third Mesa, to Bacavi, principally. I
23 spent some time in Kykotsmovi. I think I spent some
24 time in Shongopavi.

25 Q Which is on Second Mesa?

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1 A Yes.

2 Q Did you visit any other villages or Hopi
3 villages during this trip?

4 A I don't think so. Oh, Hotevilla,
5 Hotevilla. Yeah, I went to Hotevilla.

6 Q During the trip, did you go to Moencopi?

7 A I don't think I did, but if I remember
8 that I did later, I will tell you.

9 Q Fair enough. Now, Dr. Whiteley, who were
10 the people that you talked to about these subjects?

11 A Well, given my previous concerns about
12 confidentiality, I would rather not say.

13 Q Well, Dr. Whiteley, I can understand your
14 preference and it would be my desire to try to respect
15 that, but you have testified that you did conduct
16 fieldwork, field research, among Hopis with questions
17 associated with the subject of your report.

18 A Um-hum.

19 Q While I can do without the name of your
20 interpreter while you were at Bacavi, this is an area
21 which I do need the information. And I'll again put
22 the question to you. During your field trip in August

23 of 1988, who did you speak with?
 24 (Discussion off the record between the
 25 deponent and Ms. Sprague.)

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1 A I'm not prepared to answer that question
 2 at this point.

3 Q And, Dr. whiteley, just so I understand,
 4 are you refusing to answer the question?

5 A I am not prepared to answer that question
 6 at this point.

7 Ms. Sprague: Mr. Rogers, I think we --

8 Mr. Rogers: well, let me finish this.

9 Ms. Sprague: Excuse me.

10 Q (By Mr. Rogers) As you can understand,
 11 there are certain legal formalities that I need to go
 12 through if I intend to obtain a court order to require
 13 you to answer the question. And because of that, in
 14 your answers you said that you were not prepared to
 15 answer that. Now, the word "prepared" can be taken in
 16 two different senses, either that you don't know or
 17 that you're refusing to answer.

18 With that preface, Dr. whiteley, are you
 19 refusing to answer my question as to who you spoke with
 20 in August of 1988, which Hopis you spoke with in August
 21 of '88, with regard to the subjects of your report?

22 A At 4:06 on Tuesday afternoon, the 21st of
 23 March, I am refusing to answer that question. I am not
 24 disallowing the possibility that some answer, which
 25 might or might not be acceptable to Brown & Bain, may

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1 be proffered at some point in the future.

2 Q Under what type of circumstances?

3 A This is something which I would like to
 4 discuss with counsel.

5 Mr. Rogers: Counsel, I didn't mean to
 6 break you off. Did you have a statement that you
 7 wanted to make?

8 Ms. Sprague: I was simply going to say
 9 that I think that this is a subject that you and I
 10 could discuss and perhaps some understanding could be
 11 reached. Perhaps there could be a framework
 12 established within which Dr. whiteley could answer the
 13 question.

14 Mr. Rogers: Okay. Well, I suggest we
 15 take a break at this point and see if we can get pass
 16 this impass.

17 Ms. Sprague: Okay.

18 (A break was taken.)

19 Ms. Sprague: Mr. Rogers, we're ready to
 20 proceed. We request that the Navajo Tribe agree to a
 21 confidentiality agreement along the lines of the
 22 agreement that was signed on July 19, 1988. That
 23 agreement does not expressly cover information provided
 24 by Dr. whiteley because it was directed to the
 25 production of materials by Brown & Bain to Arnold &

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1 Porter, but I believe its provisions would be
 2 applicable to portions of a deposition transcript, and
 3 I have been informed that in the deposition of
 4 Dr. Vanette when certain material was inquired into, in
 5 particular the location of shrines, that the transcript
 6 was marked at that point with a confidentiality symbol
 7 of some sort and the material that was so marked was

8 set aside from the rest of the transcript. And we are
9 willing to proceed under that type of arrangement.

10 Mr. Rogers: Oh, I don't have any problem
11 with doing that. I mean, before I swear my life away.
12 As I recall this agreement was very close to the
13 confidentiality agreement we drafted for Dr. Adams,
14 that he had a similar agreement. He had a contract
15 with the Hopi Tribe. And I understand one question
16 which I didn't address on the record, one question I
17 didn't identify before when we were off the record or
18 when we were on the record before was one issue of
19 field notes.

20 Q (By Mr. Rogers) Dr. Whiteley, did you
21 take any field notes during your visit last August or
22 August 1988?

23 A Yes, I did.

24 Q Do you recall approximately how many pages
25 of notes you had?

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1 A I think probably no more than a page, to
2 the best of my recollection.

3 Q During the course of preparing the reports
4 that you've authored in this case, did you refer back
5 to any of your field notes that you had compiled on
6 your research on Bacavi, research that resulted in your
7 Ph. D. thesis?

8 A To the best of my recollection, no.

9 Q Do you recall if during the course of your
10 work, your fieldwork that resulted in your Ph. D.
11 thesis, do you recall if you asked any of your
12 consultants about the Hopi traditional land claims or
13 the Hopitutskwa?

14 A Yes, I do recall that.

15 Q And I take it that they answered your
16 questions or provided answers to your questions?

17 A Yes.

18 Q Do you recall if you asked any of your
19 consultants regarding Hopi-navajo relations?

20 A Yes.

21 Q Approximately how many pages of field
22 notes do you have in connection with your work in
23 Bacavi?

24 A I have no way of answering that question.
25 I don't know.

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1 Q Are they assembled in field books?

2 A They are assembled in folders which are
3 divided by individual consultants. They are assembled
4 into folders dealing with certain conversations. They
5 are assembled into a field journal. And diary. And
6 they are assembled into a series of tape recordings,
7 some of which have notes to them which were conducted
8 during the recordings. Some of which have notes from
9 the tape recordings themselves and others of which are
10 not recorded in written form but are recorded only in
11 tape recorded form. The number of tapes, cassette
12 tapes, and reel-to-reel tapes that we are talking about
13 is something like 30 or 40 or possibly even more. So I
14 don't know how all of this translates to a number of
15 pages.

16 Q Okay. Fair enough.

17 Mr. Rogers: Counsel, the agreement which
18 you've handed to me of July 19, 1988, Navajo Tribe is

19 willing to enter into a similar agreement with respect
 20 to Dr. Whiteley affording an equal measure of the same
 21 protection that was afforded to Dr. Adams and was
 22 discussed with Dr. Vanette.

23 I would at this time make a formal demand
 24 for the production of Dr. Whiteley's field notes
 25 concerning his trip last August of 1988. In light of

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1 his testimony regarding his earlier field research, I
 2 would also request the materials he identified in his
 3 testimony, including the field notes, the tape
 4 recordings, transcripts, and any other materials that
 5 Dr. Whiteley compiled during his research at Bacavi.

6 Ms. Sprague: His research during any time
 7 period at Bacavi?

8 Mr. Rogers: At Bacavi.

9 Ms. Sprague: Okay. We will take that
 10 under advisement.

11 Mr. Rogers: I am willing to consider
 12 taking less than that if --

13 Q (By Mr. Rogers) Well, let me ask you
 14 this, Dr. Whiteley. You mentioned that you did ask
 15 consultants during your research at Bacavi, while you
 16 were working on your Ph. D. thesis, about the Hopi
 17 traditional land claims, the Hopitutskwa, and Hopi land
 18 relations. Were these conversations separated or kept
 19 in a separate file in your field notes or journals?

20 A No.

21 Q I take it that that information would be
 22 among other information that you have?

23 A Yes.

24 Mr. Rogers: In light of that answer, I
 25 would reassert our demand for that material.

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1 Ms. Sprague: We'll take that under
 2 advisement.

3 Q (By Mr. Rogers) Dr. Whiteley, are those
 4 materials located in New York or are copies here in
 5 Denver?

6 A They're located in New York. None of them
 7 have been presented to Arnold & Porter.

8 Q Is the same true for your field notes of
 9 your August 1988 trip?

10 A Yes.

11 Q So they're not -- to your knowledge, they
 12 are not located here in Denver?

13 A They are not located here in Denver,
 14 period.

15 Mr. Rogers: I do need to make a
 16 statement. I can understand with respect to
 17 Dr. Whiteley's work on Bacavi -- it was not my
 18 expectation coming into this deposition that
 19 Dr. Whiteley would have inquired into these subjects
 20 during his work at Bacavi, and I would not presume that
 21 counsel for the Hopi Tribe would be more knowledgeable
 22 than I would be. I am disappointed that the Hopi Tribe
 23 did not produce Dr. Whiteley's field notes and field
 24 materials for his August 1988 investigation. And I'm
 25 just putting you on notice now that it may require any

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1 additional materials that Dr. Whiteley has available,
 2 may necessitate a resumption of this deposition at a
 3 later time after I've had an opportunity to review

4 those materials given what's at stake in this
5 litigation, it affects thousands of lives. And the
6 information which is relevant to this case is truly at
7 a premium. It's not easy to get, as Dr. whiteley has
8 testified. With that speech, Counsel, do you have a
9 speech to make too?

10 Ms. Sprague: I will simply state that
11 until this afternoon counsel to the Hopi Tribe was not
12 aware that such notes existed. We were not aware that
13 Dr. whiteley had made inquiry of Hopi people in August
14 of 1988 that could possibly be construed as related to
15 his report.

16 when we asked him for his notes relating
17 to his report, he did not understand that request to
18 include this page of notes. We will make a decision as
19 to whether they should be produced and make our best
20 efforts, if we decide to produce them at that time, to
21 get them to you.

22 Q (By Mr. Rogers) Dr. whiteley, have you
23 looked at this agreement?

24 A No, I haven't.

25 Q Dr. whiteley, why don't you take a look at

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1 it.

2 Mr. Rogers: And why don't we go off the
3 record.

4 (Discussion off the record.)
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1 whereupon, the within proceedings were
2 recessed at the approximate hour of 4:45 p. m. on the
3 21st day of March, 1989.

4 I Peter M. whiteley, Ph. D., do hereby
5 certify that I have read the foregoing deposition and
6 that the same is a true and accurate transcript of my
7 testimony, except for attached amendments, if any.
8
9

Peter M. whiteley, Ph. D. - Volume I

10 () No changes () Amendments attached
11
12

13 subscribed And Sworn To before me this
Page 63

14 day of
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WHITE1.TXT
, 1989.

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Notary Public
Address
My commission expires

□Page 153

C E R T I F I C A T I O N

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I Michelle R. Mccollum, Certified
Shorthand Reporter, appointed to take the deposition of
Peter M. Whiteley, Ph. D. - Volume I
certify that before the deposition the deponent was
duly sworn by me to testify to the truth; that the
deposition was taken by me at 1700 Lincoln Street,
Suite 4000, Denver, Colorado 80203, on March 21, 1989;
then reduced to typewritten form, by means of
computer-aided transcription, consisting of 155 pages
herein; that the foregoing is a true transcript of the
questions asked, testimony given, and proceedings had.
I further certify that I am not related to
any party herein or their counsel and have no interest
in the result of this litigation.
In witness whereof, I have hereunto set my
hand this 31st day of March, 1989.

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Michelle R. Mccollum
Certified Shorthand Reporter
Proofread by: J. Prato
Fees
Appearance: \$70.00
Original: \$255.75
Copy: \$217.00

□Page 154

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Hyatt & Associates, Inc.
Registered Professional Reporters
1719 Emerson Street
Denver, Co 80218
(303) 830-0208
March 31, 1989
Mary Gabrielle Sprague, Esq.
Arnold & Porter, P. C.
1700 Lincoln Street, Suite 4000
Denver, Co 80203

Re: Sidney vs. Macdonald vs. James
Deposition of: Peter M. Whiteley, Ph. D. - Volume I
Enclosed is the original signature page of the above
deposition. It was agreed that you would arrange for
signature for the above deposition by means of your
copy transcript and the enclosed original signature
page.
Also enclosed is a form of Amendment for changes, if
necessary. After having the signature page and

WHITEL1.TXT

13 Amendment form signed, please have them notarized and
14 return for filing . . .

15 xx to this office within 30 days to comply with
16 the statute
17 to ^,
18 within * days with copies of Amendments to
19 this office
20 to this office by ^ since trial in
21 this matter is set for ^
22 to court on the date of trial,
23 with copies of Amendments to other counsel,
24 plus copy to this office.

25 Thank you for your attention to this matter.

26 Sincerely,
27 Hyatt & Associates, Inc.
28 cc: John W. Rogers, Esq.
29 Peter M. Whiteley, Ph. D.

30 □Page 155

31 1 Hyatt & Associates, Inc.
32 Registered Professional Reporters
33 1719 Emerson Street
34 Denver, Co 80218
35 (303) 830-0208
36 John W. Roger, Esq.
37 Brown & Bain, P. A
38 2901 North Central Avenue
39 Post Office Box 400
40 Phoenix, AZ 85001

41 8 Re: Sidney vs. Macdonald vs. James
42 Deposition of: Peter M. Whiteley, Ph. D. - Volume I
43 Date of Deposition: March 21, 1989
44 Enclosed is the above original transcript. ..
45 signed, no changes
46 signed, with changes, copy enclosed
47 not signed, notice duly given 3-31-89
48 pursuant to the Rules of Civil Procedure

49 14 not signed, notice duly given 3-31-89
50 since trial is set for ^
51 to be signed in court or signature pages
52 to be returned to court on date of trial

53 17 signature pages/amendments to be returned to
54 above counsel
55 signature not required
56 mailed by certified mail
57 hand-delivered

58 22 Hyatt & Associates, Inc.
59 23 cc: Mary Gabrielle Sprague, Esq.

60 24
61 25
62 □

4 those materials given what's at stake in this
5 litigation, it affects thousands of lives. And the
6 information which is relevant to this case is truly at
7 a premium. It's not easy to get, as Dr. Whiteley has
8 testified. With that speech, Counsel, do you have a
9 speech to make too?

10 Ms. Sprague: I will simply state that
11 until this afternoon counsel to the Hopi Tribe was not
12 aware that such notes existed. We were not aware that
13 Dr. Whiteley had made inquiry of Hopi people in August
14 of 1988 that could possibly be construed as related to
15 his report.

16 When we asked him for his notes relating
17 to his report, he did not understand that request to
18 include this page of notes. We will make a decision as
19 to whether they should be produced and make our best
20 efforts, if we decide to produce them at that time, to
21 get them to you.

22 Q (By Mr. Rogers) Dr. Whiteley, have you
23 looked at this agreement?

24 A No, I haven't.

25 Q Dr. Whiteley, why don't you take a look at

□Page 151

1 it.

2 Mr. Rogers: And why don't we go off the
3 record.

(Discussion off the record.)

□Page 152

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9 Peter M. Whiteley, Ph. D. - Volume I

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□Page 153

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2 Shorthand Reporter, appointed to take the deposition of
3 Peter M. Whiteley, Ph. D. - Volume I
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5 duly sworn by me to testify to the truth; that the
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8 then reduced to typewritten form, by means of
9 computer-aided transcription, consisting of 155 pages
10 herein; that the foregoing is a true transcript of the
11 questions asked, testimony given, and proceedings had.

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13 any party herein or their counsel and have no interest
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15 In witness whereof, I have hereunto set my
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20 Michelle R. Mccollum
21 Certified Shorthand Reporter
22 Proofread by: J. Prato
23 Fees
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1 Hyatt & Associates, Inc.
2 Registered Professional Reporters
3 1719 Emerson Street
4 Denver, Co 80218
5 (303) 830-0208
6 March 31, 1989
7 Mary Gabrielle Sprague, Esq.
8 Arnold & Porter, P. C.
9 1700 Lincoln Street, Suite 4000
10 Denver, Co 80203

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necessary. After having the signature page and

13 Amendment form signed, please have them notarized and
return for filing . . .

14

15 Xx to this office within 30 days to comply with
16 the statute
17 to ^,
18 within * days with copies of Amendments to
19 this office
20 to this office by ^ since trial in
21 this matter is set for ^
22 to court on the date of trial,
23 with copies of Amendments to other counsel,
24 plus copy to this office.

21

Thank you for your attention to this matter.

22

23 Sincerely,
24 Hyatt & Associates, Inc.
cc: John W. Rogers, Esq.
Peter M. Whiteley, Ph. D.

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