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Page 505
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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 Iv
March 24, 1989

Pursuant to Notice taken on behalf of Defendant
Macdonald at 1700 Lincoln Street, Suite 4000, Denver,
Colorado 80203, at 9:05 A m., before Michelle R.
Mccollum, Certified Shorthand Reporter and Notary
Public within Colorado.

Appearances:
Mary Gabrielle Sprague, James E. Scarboro,
and David Warren, 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 506

I N D E X

	Page
3 Examination Of Peter M. Whiteley, Ph. D. : Volume IV March 24, 1989 By Mr. Rogers	507 Initial Reference
7 Defendant's Deposition Exhibits:	
8 31 Letter to Scattergood from Colton, 5-16-32	507
9 32 Letter to Miller from Colton, 6-10-32	509
10 33 Hearing regarding Boundary, Navajo-hopi Indian reservation, 12-7-32	518
11 34 Letter to Senate Subcommittee of Indian Affairs from Lomahaftewa, 2-27-33	533
12 35 Letter to Collier, 3-7-34	539
13 36 Notes for Hopi Administrators by La Farge, 2-37	544
14 37 The Tradition of the Hopi Lands, by Kotchungva	547
15 38 Letter to Collier from Macgregor, 8-6-38	551
16 39 Hopi Traditional Claims, Appendix IV	551
17 40 Meeting at Polacca regarding Hopi Reservation Boundaries	581
18 41 Hopi Hearings, July 15-30, 1955	589
19 42 Journal of Anthropological Research (Enclosed previously to counsel.)	589

23
24
25

Page 507

1 whereupon, the following proceedings
2 were taken pursuant to the Colorado Rules of Civil
3 Procedure:
4 Peter M. Whiteley, Ph. D.,
5 having been previously duly sworn to state the whole
6 truth, testified as follows:
7 Examination
8 By Mr. Rogers:
9 Q Dr. Whiteley, I would like to pick up
10 again with page 21 of your Hopitutskwa report, Exhibit
11 No. 1. Toward the top of the page, you discuss letters
12 and other materials by Dr. Colton and others discussing
13 boundary shrines. And you say that "The idea that
14 boundary shrines should be considered seriously by the
15 government was recommended by anthropologist Harold
16 Colton." And you refer to a letter by Colton dated
17 May 16, 1932.

18 I would like to mark as Exhibit No. 31 a
 19 letter from Dr. Colton to J. Henry Scattergood, dated
 20 May 16, 1932. Has a production number on the first
 21 page H200206.

22 (Whiteley Deposition Exhibit 31 was
 23 marked.)

24 Q Dr. Whiteley, is Exhibit No. 31 the same
 25 source as you're referring to on page 21 as Colton

Page 508

1 5-16, 1932?

2 A Yes.

3 Q I note in the fifth full paragraph on the
 4 first page of Exhibit No. 31, Dr. Colton writes, quote,
 5 If a division is made segregating the Hopi lands, some
 6 clause should be placed in it allowing the Hopis to
 7 visit their shrines that would lie on Indian land
 8 outside their own reservation and giving them the right
 9 to designate such shrines if they care to do so,
 10 unquote.

11 Is it a fair interpretation of this letter
 12 that Dr. Colton thought it appropriate to permit the
 13 Hopis to visit certain shrine areas?

14 A I'm not really sure if I understand your
 15 question, but that certainly seems to be an
 16 interpretation. That's inferable from the letter, yes.

17 Q Based upon Exhibit No. 31, or other
 18 writings that you've reviewed authored by
 19 Dr. Colton, was Dr. Colton of the view -- or have you
 20 ever found an account expressing the view by Dr. Colton
 21 that the Hopis should be given all the land benefits
 22 between the shrines?

23 A I don't recall ever having seen such an
 24 account.

25 Q Further down in the paragraph on page 21

Page 509

1 when you first refer to Dr. Colton, you note that
 2 Dr. Colton produced a preliminary listing of kachina
 3 and eagle shrines. And you refer to a source, a letter
 4 by Dr. Colton of 6-10, 1932.

5 I would like to mark as Exhibit No. 32 a
 6 letter from Dr. Colton to Mr. Edgar K. Miller, dated
 7 June 10, 1932. Has a production number on the first
 8 page H100736.

9 (Whiteley Deposition Exhibit 32 was
 10 marked.)

11 Q Dr. Whiteley, is Exhibit No. 32 the same
 12 as your reference to Colton's 6-10, 1932?

13 A Yes.

14 Q I note in Exhibit No. 32 there is what
 15 appears to be a partial listing of shrines which
 16 Dr. Colton had been informed or believed were
 17 significant to the Hopi. Based upon your archival
 18 research, did Dr. Colton produce any initial lists of
 19 shrines?

20 A I don't recall if he did, but the Museum
 21 of Northern Arizona is full of an awful lot of
 22 information that Dr. Colton recorded over the years.
 23 It's conceivable that he may have recorded additional
 24 areas which were Hopi shrines.

25 Q I take it during your archival research

Page 510

1 you didn't uncover any of these?

2 A Not that I can recall.

3 Q Dr. Whiteley, Dr. Colton does provide a
4 list of shrines. Have you been able to figure out
5 whether any of these shrines that he identifies are
6 considered to be boundary shrines by the Hopi?

7 A Again, given the imprecision of our
8 understanding of boundaries in Hopi cultural terms,
9 it's hard to answer that question. Certainly the
10 shrine that he lists as 2 (c), "The Sun Forehead Clan
11 has a shrine in the Shevalon Creek Canyon southeast of
12 Winslow," that would seem to be in the general area of
13 this ruin that we have been talking about called
14 Sakwavayki, S-a-k-w-a-v-a-y-k-i, which I think we were
15 considering as a border shrine.

16 Q Dr. Whiteley, are there any of the other
17 shrines that are listed here that, to your knowledge,
18 are considered to be boundary shrines?

19 A I think by some designations -- and as I
20 have made clear so far, designations in the record do
21 indeed differ. The "shrine located somewhere on the
22 eastern flanks of the San Francisco Peaks," quote,
23 which is 1 (a), might constitute a border shrine in
24 some versions of the Tutska boundaries.

25 Q Are there any others on Dr. Colton's list

□Page 511

1 or partial listing that, to your knowledge, Hopis
2 considered to be boundary shrine, or at least some
3 Hopis considered to be a boundary shrine?

4 A Not to my knowledge.

5 Q Dr. Whiteley, in the course of providing
6 this list, Dr. Colton identifies his consultant for
7 this information as being a person named Edmund. Do
8 you know that person's last name?

9 A Nequatewa, N-e-q-u-a-t-e-w-a.

10 Q Is this the same person that we discussed
11 yesterday in reference to a petition that was sent to
12 Congress?

13 A Can you refresh my memory to that
14 discussion.

15 (Discussion off the record between the
16 deponent and Ms. Sprague.)

17 A Mr. Rogers, are you thinking of
18 Nequatewa?

19 Q Yes. I was wondering if that was the same
20 person.

21 A No, it isn't. However, just for your
22 information, I indicated that an Edmund Nequatewa was
23 one of the people at Shongopavi who I had talked to at
24 one point, and I think we may have talked about
25 ethnogeographic issues. That Edmund Nequatewa is the

□Page 512

1 son of this Edmund Nequatewa. This Edmund Nequatewa is
2 the author of numerous articles in Plateau and the
3 author of the book Truth of the Hopi.

4 Q And you refer to a Plateau. That's a
5 publication?

6 A That's correct.

7 Q Do you know which mesa he came from?

8 A Yes, he came from -- he came from
9 Shongopavi, but I have a feeling he had a relationship
10 by marriage to Hotevilla, but I may be mixing him up
11 with his son.

12 Q Now, Dr. Colton, in his letter, draws a
13 distinction between kachina shrines and eagle shrines.

14 Is that distinction still recognized by anthropologists
15 who study Hopi?

16 A I don't know that anthropologists who
17 generally have studied the Hopis have studied shrines,
18 so I don't think that's a -- that is a distinction that
19 can reasonably be made. Certainly there are
20 distinctions between different types of shrines, but I
21 don't think these two are the only types.

22 Q Dr. Whiteley, do you know what a kachina
23 shrine is?

24 A In terms of what?

25 Q Well --

□Page 513

1 A Do I know what it looks like?

2 Q Well, that's a good place to start. What
3 does a kachina shrine look like?

4 A Well, the only ones that I know about or
5 that I've seen myself are variable in character. They
6 might consist of as little as a small tree with prayer
7 feathers attached to it or they might consist of a
8 stone structure which is semi-permanent or a stone
9 structure which is temporary, which would have certain
10 ritual sacramental devices associated with it,
11 typically prayer feathers, cornmeal, possibly other
12 things. But I think it's fair to say, although this is
13 not an area that I claim expertise on, that kachina
14 shrines vary in character according to the kind of
15 kachina that they're associated with.

16 Q Are kachina shrines dedicated to
17 particular kachinas?

18 A I believe that -- well, some of them
19 certainly are. Others of them may be more general.

20 Q Under the listing of kachina shrines,
21 Dr. Colton identifies one as being located somewhere in
22 the eastern plains of the San Francisco Peaks. Do you
23 know which shrine he's referring to?

24 A He may be referring to the Aalosaka
25 shrine, which is A-a-l-o-s-a-k-a, which I understand

□Page 514

1 is -- well, there is a representation of this shrine on
2 the peak, which is the second highest peak in the
3 San Francisco range. But his description of it as
4 lying somewhere on the eastern plains of the
5 San Francisco Peaks may mean that he's referring to
6 this shrine, that it actually covers a much larger area
7 in Hopi conception, or he may be referring to a
8 different shrine.

9 Q Is the shrine Aalosaka associated with a
10 particular clan?

11 A It may be. I don't really remember.

12 Q The second shrine he refers to is Ice Cave
13 at Sunset Crater. Are you familiar with which shrine
14 he's referring to?

15 A I have been to Sunset Crater. I haven't
16 been to the Ice Cave at Sunset Crater.

17 Q Do you know what the Hopis call this
18 place?

19 A I may know and have forgotten or I may not
20 know. I think it's pretty easy to find out. There's a
21 book edited by Ekkehart Malotki about Hopi legends of
22 the Sunset Crater region, so I'm confident that there
23 would be some indication of place names in there.

24 Q Do you know if the shrine is associated

25 with a particular Hopi clan?

□Page 515

1 A I think some of the Sunset Crater ruins
2 are associated with particular clans. I don't remember
3 which ones.

4 Q Now, Dr. Whiteley, are you able to figure
5 out what Dr. Colton is referring to in 1 (c), "A shrine
6 east of Pinyon"?

7 A Well, it isn't really something I've
8 thought about. I mean, I can sit here and speculate.
9 Maybe I can look at a map. I think I would like a USGS
10 map. It's called the Pinyon Quadrant.

11 Q Dr. Whiteley, the scale on the USGS maps
12 that I brought with me do not include the Pinyon maps.
13 I think you're referring to the individualized maps.

14 A I believe that should do it. I may have
15 the wrong quadrant. I may have given you the wrong
16 one. It's the next one over.

17 Q Marble Canyon?

18 A I'm sorry?

19 Q Marble Canyon?

20 A Well, maybe this one won't do it, but I
21 thought this was -- I think there was one called Pinyon.
22 What scale is this? This is 15 minute or --

23 Q Well, it has a key which identifies the
24 different maps.

25 Ms. Sprague: This is 1 and 250,000.

□Page 516

1 A Well, let me have a look. I think this
2 shrine that's referred to has something to do with the
3 Powamuy Ceremony and it may have to do with a
4 particular kind of kachina. There are -- I believe,
5 within the general Pinyon area that is referred to in
6 Hopi generally as Kiisiwu, K-i-i-s-i-w-u, there are at
7 least two shrines to particular kinds of kachinas. One
8 of these, I believe, is to the kachina Tsowilaw,
9 T-s-o-w-i-l-a-w.

10 Q (By Mr. Rogers) Do you know which clan or
11 clans these shrines are associated with?

12 A For Third Mesa, the primary one is
13 Badger. Possibly the secondary one would be Kachina.

14 Q Dr. Whiteley, during the 1930s, was
15 Dr. Colton considered to be one of the leading experts
16 on the Hopi?

17 A He knew a lot about Hopi ethnology and
18 archaeology. I don't know whether he could be
19 characterized as one of the leading experts, but again,
20 that would depend how we define that term. If we
21 defined it academically, he probably wouldn't have been
22 since he was not attached to a major university and
23 didn't publish very much of significant theoretical
24 import.

25 Q Well, Dr. Whiteley, during the course of

□Page 517

1 your research, or just based on your academic
2 experience, have you ever come across any accounts
3 authored by Dr. Colton in which he expresses any views
4 or opinions as to the extent or boundaries of the Hopi
5 traditional land claim?

6 A Well, that's a very large question.
7 Dr. Colton published an awful lot of material through
8 his journal Plateau and through the Museum of Northern
9 Arizona's bulletins over the years. I think that would

10 require a great deal of reading through all his
 11 published and unpublished work before a definitive
 12 answer would be broached.

13 Q Well, Dr. whiteley, I'm not expecting you
 14 to call to mind every article or letter that you may
 15 have reviewed by Dr. Colton, but as you sit here right
 16 now, can you recall any publications or letters by
 17 Dr. Colton which he expressed an opinion as to what he
 18 thought the Hopi traditional land claim was?

19 A I can't recall.

20 Q Fair enough. During the course of your
 21 research and your academic experience, do you recall
 22 any accounts by Titiev in which he expressed his view
 23 or what he thought the Hopi traditional land claim was?

24 A I can't recall.

25 Q Dr. whiteley, on pages 21 and 22 of your

□Page 518

1 Hopitutskwa report, you refer to the Senate Boundary
 2 Hearings that took place in December 1932.

3 I would like to mark as Exhibit No. 33 a
 4 multipage document. Has a title on the first page
 5 Boundary Navajo-hopi Reservation, dated December 7,
 6 1932. Has a production number on the first page
 7 H100753.

8 (whiteley Deposition Exhibit 33 was
 9 marked.)

10 Q Dr. whiteley, this exhibit may be a little
 11 confusing in terms of which page numbers to refer to.
 12 On each page there appears to be a selection of pages
 13 to refer to. And I note in your citations that you've
 14 been kind enough to cite both the page numbers that
 15 were part of the original congressional document and to
 16 the page numbers that have been marked in the upper
 17 right-hand corner of the exhibit. My first question, I
 18 guess, to you is, Is Exhibit No. 33 the same as the
 19 reference that appears on page 22 as being the boundary
 20 hearings?

21 A Yes.

22 Q I would like to to direct your attention
 23 to page 41 of Exhibit No. 33. And the page numbers I
 24 will be referring to are the page numbers that were
 25 part of the original congressional document. This

□Page 519

1 passage appears to be quoting from some testimony
 2 provided by a man named Secakamama; is that correct?

3 A Um-hum.

4 Q I'm sorry. Your answer was yes?

5 A Yes.

6 Q Now, Dr. whiteley, referring to page 37 of
 7 Exhibit 33, I take it that this statement was made
 8 during a meeting at Mishongnovi and Shipaulovi village
 9 sometime in November of 1932?

10 A Yes. Wait. Yes, it is.

11 Q Do you know where Secakamama was from,
 12 which village?

13 A No, I don't. I think he's probably from
 14 Shongopavi. I'm certain that this rendition of his
 15 name is incorrect. It doesn't correspond with any name
 16 that I can recognize as a Hopi name. The first three
 17 syllables are recognizable. The last two aren't, or at
 18 least the fourth syllable isn't.

19 Q Well, do you know if this person went by
 20 any other name?

21 A No, I don't.
 22 Q Do you know who the person is or who
 23 they're referring to here?
 24 A No, I don't.
 25 Q From the context of the hearing

Page 520

1 transcript, were you able to tell if this person held
 2 any position at Shipaulovi or any of the other villages
 3 at Second Mesa?

4 A I don't, but from the context of some
 5 other remarks, for example, if you look at what
 6 Mr. Miller says, bottom of page 40, top of page 41, he
 7 seems to be generally talking about the Indians of
 8 Chimopovi, which he spelled C-h-o-m-i-p-i-v-i, so my
 9 inference is that this man is indeed from Shipaulovi.

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

12 A Oh, okay. Counsel has just pointed out to
 13 me that in the middle of page 41 the interpreter says,
 14 "Secakamama represents both villages, and he will
 15 speak." I don't know what "both villages" means there,
 16 although -- well, maybe it means Mishongnovi and
 17 Shipaulovi, given our identification of it as a meeting
 18 meeting that has occurred of Mishongnovi and Shipaulovi
 19 village, but the problem is that there are special
 20 relationships between the villages of Second Mesa, so
 21 very often you will find people, particularly at this
 22 juncture, who are speaking both for Mishongnovi and
 23 Shipaulovi.

24 During the early 20th century, a number of
 25 people had moved from Mishongnovi to Shipaulovi and

Page 521

1 then to Shongopavi. En masse, maybe 50 people. These
 2 are small villages or were at that time of, you know -- I
 3 don't know, 200 people maximum. So in other words, who
 4 was speaking for what village, I think, would be
 5 somewhat difficult to figure out unless we had more of
 6 the context.

7 Q Dr. Whiteley, on page 21 of your report,
 8 at the very bottom of the page, you quote from a
 9 certain passage of this person's testimony. And in
 10 part you quote him as saying, quote, what we want is
 11 our own domain, and two hyphens, the outside line, the
 12 old reservation from San Francisco Peaks and around,
 13 unquote.

14 I note then on page 41 of Exhibit 33,
 15 several paragraphs above, this person does refer to an
 16 old boundary. Do you see where that is?

17 A Yeah. That's sort of in the middle of the
 18 page too.

19 Q Is it your interpretation of this person's
 20 testimony that he's describing what he considers the
 21 traditional Hopi claim to be?

22 A Well, he seems to be referring to part of
 23 it, yes.

24 Q And, Dr. Whiteley, I don't want to belabor
 25 this, but some of the descriptions are very hard for me

Page 522

1 to follow, and I would like to try to go through some
 2 of this to see if I can see if my interpretation
 3 comports with yours.

4 This person testifies about the boundary
 5 that, quote, "It is near Flagstaff on south of Winslow

6 Chavez Pass and on up to Woodruff Butte, then down to
 7 Salina and up to the Little Colorado River." And
 8 there's some dashes. "Then following the river down
 9 Salt Canyon and back down to San Francisco Mountain,"
 10 unquote. I take it that where he is describing the
 11 boundary that one location is somewhere near Flagstaff?

12 A Yes. It's not entirely clear to me who is
 13 speaking at this point, whether this is this fellow
 14 through the interpreter or if it's the interpreter
 15 himself. If this fellow did indeed speak English
 16 clearly, his English isn't very good. If it's the
 17 interpreter, it's conceivable that he missed out a
 18 couple of places in his interpretation of Secakamama's
 19 words because the way that it's represented here, it
 20 doesn't make a lot of sense, as you're indicating, I
 21 think.

22 Q Well, I want to try to take a stab at
 23 seeing if -- well, I want to find out if you've figured
 24 where he's describing. After he describes Flagstaff,
 25 he says, "It goes on south of Winslow Chavez Pass." Is

Page 523

1 it your interpretation he's describing some area south
 2 of Winslow?

3 A He would seem to be referring to -- yeah,
 4 Chavez Pass which is the Nuvakwewtaqa ruin
 5 N-u-v-a-k-w-e-w-t-a-q-a, which is not too far away from
 6 Sakwawayki, S-a-k-w-a-v-a-y-k-i.

7 Q So your interpretation of that is that he
 8 is describing an area which is nearby the Apache
 9 Dissent Trail?

10 A Generally speaking, yes.

11 Q And then he says, "It goes on up to
 12 Woodruff Butte."

13 A Yes.

14 Q "Then down to Salina." Do you know what
 15 he's referring to by "Salina"?

16 A I don't --
 17 (Discussion off the record between the
 18 deponent and Ms. Sprague.)

19 Q Dr. Whiteley, I can represent to you that
 20 there is a Salina that is near Keam's Canyon. Salina,
 21 Arizona. But I know from my review of the maps I
 22 couldn't find any other --

23 A But then he says, "Down to Salina and up
 24 the Little Colorado River." So if it was near Keam's
 25 Canyon, that wouldn't seem to make that much sense.

Page 524

1 Maybe he's referring to the one at Zuni, to the Zuni
 2 Salt Lake because that is, as we know, an important
 3 shrine from certain Hopis, from Mishongnovi
 4 especially. But he seems to be talking about somewhere
 5 close to the Little Colorado River.

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

8 A It really isn't clear. I guess my guess
 9 is that he especially -- maybe this is a clue to his
 10 identity. Maybe he's from Mishongnovi because I
 11 believe the shrine at Zuni Salt Lake is especially
 12 important to people from Mishongnovi. My guess is he
 13 may be referring to that. If you notice on this map,
 14 it's not too far away from the head rivers of the
 15 Little Colorado.

16 Q Are you referring to the place on the map

17 referred to as Salt Lake?

18 A That's correct. And, of course, the
19 Spanish term, Salina is the general term for salt beds
20 or a salt lake.

21 Q Well, from this juncture of Salina, he
22 then goes on to say, "It goes up the Little Colorado
23 River." And then he says, "following the river down
24 Salt Canyon," or referring to Salt Canyon. Is that a
25 reference to the Grand Canyon?

□Page 525

1 A Yes, it is. And, of course, this is where
2 things get very confusing. Maybe he means -- or the
3 interpreter meant to include some arc from Zuni Salt
4 Lake up to the Colorado River, say around Navajo
5 Mountain rather than the Little Colorado River. That
6 would make more sense to trace that down into Salt
7 Canyon than at the Grand Canyon, to my way of thinking.

8 Q Well, is it fair to say from this
9 description it's not clear whether the area he's
10 describing even includes the three mesas, if indeed
11 he's referring to the Little Colorado River?

12 A I think so, but I think you -- not to
13 interpret it that way, you would have to think that he
14 was out of his mind.

15 Q Is it clear from the description whether
16 he's including Navajo Mountain within the area?

17 A It's not clear, no.

18 Q Is it clear from his description whether
19 he's including any of the area which is northeast of
20 the three mesas?

21 A It's not clear.

22 Q Dr. Whiteley, over on page 22, you have an
23 extensive quotation in your report from a person who's
24 identified as Veits or Veits, V-e-i-t-s, which I
25 believe comes from page 49 of Exhibit No. 33.

□Page 526

1 A It's Veits. And the correct spelling is
2 incorrectly spelled in this report. It's V-i-e-t-s.
3 Not in my report, in the boundary report, yes.

4 Q Did this person have another name or go by
5 another name?

6 A Lomaheftewa, L-o-m-a-h-e-f-t-e-w-a.

7 Q Did he hold a leadership position in
8 Shongopavi?

9 A Yes. He was head of the Two Horn Society,
10 I believe, although probably not at this time. That
11 would be later.

12 Q And, Dr. Whiteley, on page 22 of your
13 report, you quote from this person a description, I
14 take it, that the area that's described in the
15 quotation and also appears on page 49 of Exhibit 33 is,
16 in your opinion, what this person thought the Hopi
17 traditional claim was?

18 A Yes.

19 Q On page 49 of Exhibit 33 and also on the
20 quotation that you have on page 22 of your report, the
21 description, according to this person, starts out,
22 "From here north to the Colorado River." Is it
23 fair -- is it a fair inference when he says "here," he's
24 referring to someplace in Second Mesa?

25 A Yes, it is, but I should underscore the

□Page 527

1 fact that in his English, he says, "I will point it out

2 through from here north."

3 Q So I take it, or at least your
4 interpretation is, that Second Mesa isn't one of the
5 boundary marks that he's describing?

6 A Quite certain.

7 Q He goes on to say, "North of the Colorado
8 River." Is it a fair inference that he considered the
9 Colorado River to be one of the boundary markers?

10 A It is.

11 Q And he says, "Down along the river through
12 that Marble Canyon." Is he referring to the canyon
13 through which the Colorado runs?

14 A Yes.

15 Q "And down away distant from that bridge at
16 Lee's Ferry, down along a line and at a certain place
17 coming up from the canyon." Do you interpret that
18 passage as saying at some point the boundary point
19 comes up from the Grand Canyon?

20 A Yes.

21 Q Are you able to tell from this passage
22 where he intended the boundary to come up from the
23 Grand Canyon?

24 A No, I am not. And in the way that Hopis
25 often translate directions like southwest, these don't

□Page 528

1 work in the way that Anglos think that they do, I
2 think, for the most part. So he may be referring to a
3 line leading southwest. He may actually be referring
4 to a line southeast. Hopis often mistranslate Hopi
5 directions into English cardinal directions. And
6 they're not the same, but they do that to help Anglos
7 try to understand things, even if they look as if
8 they're making mistakes when they do that.

9 Q Well, there is in that line a reference to
10 southwest. Are you saying that that might be
11 southeast?

12 A It could be southwest or it could be
13 southeast, in my interpretation.

14 Q It goes on to say, "On southwest from
15 there along the San Francisco Peaks, recognized as
16 being an old shrine of the Hopis in considering that as
17 a boundary, the original line, but a little farther
18 down, and along from there south." When he's referring
19 to "there," is he referring to the San Francisco Peaks?

20 A That's a -- that's very hard to tell.

21 Q From the passage, is it a fair inference
22 that he's saying that San Francisco Peaks are one of
23 the boundary markers?

24 A I think you could interpret that either
25 way, frankly. I mean, see, he says "along the San

□Page 529

1 Francisco Peaks, recognized as being an old shrine of
2 the Hopis in considering that as a boundary." He could
3 be referring to an area in the vicinity, the general
4 vicinity of the San Francisco Peaks. He may not be
5 referring to the San Francisco Peaks per se as a
6 boundary line, especially since he says, "The original
7 line, but a little farther down." Maybe he means Bill
8 Williams Mountain.

9 Q Are you able to tell what he's referring
10 to when he refers to "an old shrine of the Hopis"?

11 A No, I'm not.

12 Q Are you able to tell what he's referring

13 to when he says or refers to "an original line"? Is he
 14 drawing a distinction between a later line and an
 15 original line?

16 A I think he's referring to the -- to an idea
 17 of the Tutskwa boundary in contradistinction, say, than
 18 to the 1882 Executive Order lines, but I don't know if
 19 he's making that contrast or if I'm just attributing it
 20 to him.

21 Q Well, he continues on, and he says, "but a
 22 little farther down, and along from there south through
 23 them blue ridges." Is it your interpretation of that
 24 reference that he's referring to the Blue Ridges that
 25 we talked about yesterday?

□Page 530

1 A It is.

2 Q He says from there "up to the last
 3 point." Do you know what he's referring to when he
 4 says "the last point"?

5 A My guess is he would be referring to
 6 Nuvakwewtaqa or Sakwawayki.

7 Q He goes from there, and he says, "And
 8 southwest from Winslow and then from there eastward
 9 along the highest point, along there and up to this
 10 Woodruff Butte along there a little ways ahead up there
 11 at a certain point turning north and a little above
 12 Ganado along the pine ridges coming down along there."

13 Is it your interpretation of this passage
 14 that he's describing a boundary running from Woodruff
 15 Butte to Ganado?

16 A Yes, it seems to be, but I was sort of
 17 amused when you were reading those words because it's
 18 so -- obviously his English is different from what we
 19 expect it to be. And it's so difficult to infer
 20 exactly what he means that I don't think there's any
 21 way of identifying a particular border from Woodruff
 22 Butte to Ganado. We can do bits of it, I think. He
 23 refers to pine ridges, but that phrase, "then from
 24 there eastward along the highest point," comma, "along
 25 there and up to this Woodruff Butte along there a

□Page 531

1 little ways ahead up there at a certain point turning
 2 north and a little above Ganado." I mean, so much for
 3 the claims that the Hopis don't have conception of
 4 space.

5 Q Dr. Whiteley, is it clear from the passage
 6 whether he is including Namituyqa, the place nearby
 7 Lupton?

8 A It's not clear.

9 Q And from a place he describes as being "a
 10 little above Ganado," he says, "along the pine ridges
 11 along there, intersecting with the canyon. What you
 12 call it? Canyon de Chelly."

13 A Oh, well, reading that, then he may well
 14 be including Namituyqa.

15 Q And why do you say that?

16 A Well, because if he's going what seems
 17 like -- I mean if my interpolation of this is correct, if
 18 he's going northward along pine ridges, which come into
 19 the Canyon de Chelly, then that might indicate that he
 20 had indeed followed a trajectory which would include
 21 Namituyqa. Oh, wait a minute. I see where you're
 22 questioning that. It's hard to say. It depends which
 23 side of Ganado he means.

24 Q I take it that Ganado is to the northwest
25 of Lupton?

Page 532

1 A Yes.

2 Q He does mention Canyon de Chelly, then he
3 says, "Along there coming up pointing north straight up
4 to the Navajo Mountain."

5 A Um-hum.

6 Q I take it from that he's describing the
7 boundary that runs from Canyon de Chelly up to Navajo
8 Mountain?

9 A That's correct. But again, I think this
10 confirms my point about imprecision of Hopi translation
11 to cardinal directions. As I read the map, going
12 straight north from the Canyon de Chelly, you do not
13 reach Navajo Mountain. Navajo Mountain is northwest.
14 The Hopi term kwiniwi, k-w-i-n-i-w-i -- I'm not sure if I
15 have the suffix correct, which is generally -- which
16 means northwest in English, is very often translated as
17 north or northeast by Hopis, in my experience.
18 Sometimes even as east, so . . .

19 Q Dr. Whiteley --

20 A Sorry, Mr. Rogers. This may be taking up
21 useless space on the transcript, but let me just say
22 that to clarify, Hopi directions work by sunrise and
23 sunset points on the horizon at the solstices. So they
24 don't exactly equate with northwest, northeast,
25 southwest, and southeast either.

Page 533

1 Q And, Dr. Whiteley, for what it's worth, I
2 can tell you that has caused no end of confusion in lay
3 depositions in this case. And I'm painfully aware of
4 that imprecision that results not from the confusion of
5 the witnesses, but from difficulties of translation.

6 Dr. Whiteley, on pages 22 and 23 of your
7 report, you refer to yet another petition, this
8 petition being from Shongopavi. And you quote from it
9 on page 23 and have a reference to a source
10 Lomahaftewa, 2-27, 1933.

11 I would like to mark as Exhibit No. 34 a
12 letter from Veits Lomahaftewa to the Senate
13 Subcommittee of Affairs, dated February 27, 1933. Has
14 a production number H300313.

15 (Whiteley Deposition Exhibit 34 was
16 marked.)

17 Q Dr. Whiteley, is Exhibit No. 34 the same
18 as the reference you refer to on page 23 of your report
19 as Lomahaftewa 2-27, 1933?

20 A It is.

21 Q Is this person the same person that was
22 being quoted in Exhibit No. 33 as Veits?

23 A Yes.

24 Q Dr. Whiteley, in the second full
25 paragraph -- sorry, third full paragraph on Exhibit

Page 534

1 No. 34, there is a description of a boundary line, and
2 I believe that you also quote this passage on page 23
3 of your report. Is it your understanding that this is
4 to express or reflect Veits Lomahaftewa's view of the
5 traditional land claim?

6 A Yes.

7 Q Again, I want to go through the
8 description to make sure that I understand --

9 A Although --
 10 Q -- where some of the places are.
 11 A Sorry. In my citation of this, I have it
 12 as Lomahaftewa, et al., and I believe it was
 13 accompanied by another petition, a series of names. So
 14 if we say that it's Lomahaftewa's interpretation, we
 15 should also include those others that appended their
 16 signatures to it.
 17 Q Dr. Whiteley, I realize it may have been a
 18 while since you've seen copies of Exhibit No. 34. Do
 19 you recall if there was a signature page attached to it
 20 or a petition page?
 21 A I think there was, yes.
 22 Q Do you recall where you saw Exhibit 34
 23 with the petition page?
 24 A In the files of Arnold & Porter.
 25 Mr. Rogers: Counsel, I believe this

□Page 535

1 document was produced to us as it is. I don't recall
 2 seeing a signature page with it. It may be that that
 3 has been produced to us, but when Exhibit 34 was
 4 obtained for use in this deposition, there were no
 5 attachments to it, at least in our collection. To the
 6 extent in your collection there is a copy of Exhibit 34
 7 which does have a signature page or has an attached
 8 list of signatures, I would like to get a copy of that.
 9 Ms. Sprague: I will look for that.
 10 Q (By Mr. Rogers) Dr. Whiteley, I would
 11 like to go through the description that appears on the
 12 third full paragraph of Exhibit 34. The author says,
 13 quote, "Starting from the north called Do-go-na-vie."
 14 Is it your interpretation he's referring to Tokoonavi?
 15 A Yes.
 16 Q In other words, Navajo Mountain?
 17 A The Navajo Mountain area.
 18 Q He says you go from this place, and I
 19 believe it's "in the cliff of Colorado River, follow
 20 the river down to Salt Canyon." Again, Salt Canyon
 21 refers to the Grand Canyon?
 22 A That's right.
 23 Q "From there along west"-- I'm not sure if
 24 the next word is a --
 25 A I think it's been deleted. I think it's

□Page 536

1 "along west side of."
 2 Q "West side of Flagstaff." So you
 3 understand this boundary goes along the west side of
 4 Flagstaff?
 5 A Yes.
 6 Q Is it clear to you how far west?
 7 A It isn't.
 8 Q He says you go "through Blue Ridge to mt.
 9 called Pe-heg-ha." Is this reference -- and that's
 10 spelled P-e dash h-e-g dash h-a. Is that the same
 11 place that you were describing a couple days ago as
 12 Pohoqha, P-o-h-o-q-h-a?
 13 A Yes, it is. And I think at that time I
 14 identified Pohoqha as blue ridge or blue ridges, which
 15 reflected the interpretation that I received last
 16 August. The Pe-heg-ha seems to distinguish between
 17 Blue Ridges proper and this place, which sounds to be
 18 like a mountain, but the interpretation of what a
 19 mountain is is not entirely clear. Maybe Pe-heg-ha

20 refers to sunset mountain. I don't know. I would have
 21 to look at the map more thoroughly.

22 Q From this place, he goes on -- he says,
 23 "From thereto" (sic)-- well, "thereto" (sic) "woodruff
 24 Butt," (sic), "there turning eastward covering
 25 Petrified Forest to Mission Spring." Do you know where

□Page 537

1 Mission Spring is?

2 A I don't know exactly. Let me examine the
 3 map again.

4 Q Certainly.

5 A I have a feeling he may be referring to
 6 St. Michaels. Without access to a larger scale USGS
 7 map, it's very difficult to tell what he's referring
 8 to. Maybe there was -- well, I assume that there was a
 9 spring which was commonly referred to as Mission Spring
 10 by Hopis at the time and presumably by Anglos at the
 11 time in the vicinity that he was thinking about. But
 12 which one that is, I don't know.

13 Q Do you think it was somewhere in the
 14 vicinity of St. Michaels, or you just don't know?

15 A That's really -- yeah, I just don't know.

16 Q Doctor, from this description, is it clear
 17 whether the area he's describing includes the landmark
 18 you described earlier as being near Lupton?

19 A Well, if my interpretation that Mission
 20 Spring does refer to somewhere near St. Michaels, it
 21 would probably include Natuyqa, N-a-t-u-y-q-a. If I'm
 22 not correct, then I don't know.

23 Q Is it clear from this description whether
 24 part of Canyon de Chelly is included within the
 25 boundary area?

□Page 538

1 A It's not clear.

2 Q Dr. Whiteley, on page 22 of your report,
 3 as you get to describing Exhibit No. 34, you state,
 4 quote, "A petition from Shongopavi," parenthesis, "with
 5 support from Mishongnovi," and you have a reference,
 6 "which as the mother village has a distinctive role in
 7 the maintenance of and public statement of claims to
 8 the Tutskwa, cited the following boundaries," unquote.
 9 What type of role did Shongopavi have in the
 10 maintenance of and the public statements as to the
 11 Tutskwa?

12 A I don't know the full ramifications of his
 13 role, but there are a number of statements by Hopis on
 14 the record, by anthropologists on the record, by my
 15 consultants that I have heard, which indicates that
 16 Shongopavi has a special role in protecting the Tutskwa
 17 and speaking up for it and in trying to maintain rights
 18 in it.

19 Q Well, Dr. Whiteley, during this general
 20 time period -- and by that I mean from the 1920s through
 21 the 1940s, did Oraibi leaders, leaders from Old Oraibi,
 22 defer to the pronouncements of Shongopavi leaders
 23 regarding land matters?

24 Ms. Sprague: I object. That question is
 25 vague.

□Page 539

1 A Can you make the question more precise.

2 Q (By Mr. Rogers) Well, I can try.
 3 Dr. Whiteley, I understand that under Hopi tradition
 4 certain people hold positions of authority that other

5 Hopis recognize or acknowledge them as having a special
 6 province, expertise as to certain subjects, be it
 7 religious ceremonies, clan history. Let me ask you
 8 with that preface, were there certain -- according to
 9 Hopi tradition, did Hopis from other mesas acknowledge
 10 Shongopavi as having special authority or expertise
 11 when it came to land matters?

12 A Inter-village relations and relations
 13 between the chiefs of different villages are really
 14 rather poorly known about. It would be very hard to
 15 give a definitive answer either way to that question.

16 Q So I take it you don't know?

17 A I don't know.

18 Q Dr. Whiteley, on page 23 of your report,
 19 you refer to a petition from Kykotsmovi, Moencopi, and
 20 Shongopavi that was submitted to Commissioner John
 21 Collier. You have a reference Fredericks, et al., 3-7,
 22 1934.

23 I would like to mark as Exhibit No. 35 a
 24 multipage document which appears to be a letter from a
 25 group of individuals to John Collier dated March 7,

Page 540

1 1934. Has a production number on the first page
 2 H100912.

3 (Whiteley Deposition Exhibit 35 was
 4 marked.)

5 Q Dr. Whiteley, is Exhibit No. 35 the same
 6 as the reference you refer to on page 23 of your report
 7 as Fredericks 3-7, 1934?

8 A It is.

9 Q Is there any description of a traditional
 10 land claim contained in Exhibit No. 35? The reason I
 11 ask is in text you refer to the petition restoring or
 12 requesting the restoration of prior legal rights.

13 A Right.

14 (Discussion off the record between the
 15 deponent and Ms. Sprague.)

16 A I don't think there is any formal such
 17 description.

18 Q Dr. Whiteley, directing your attention to
 19 the last page, there are a number of signatures that
 20 appear. And I note that, for example, there's the name
 21 which appears to be Roger Honahni.

22 A Yes.

23 Q And Mr. Honahni was from Moencopi?

24 A Yes. Later after he moved there from Old
 25 Oraibi.

Page 541

1 Q I'm sorry. Perhaps it confuses it. Do
 2 you understand Mr. Honahni moved from Old Oraibi to
 3 Moencopi after 1934?

4 A No.

5 Q I misunderstood you. Above Mr. Honahni's
 6 name, there's a reference to William H. Dalton.

7 A Yes.

8 Q And Mr. Dalton was also from Moencopi?

9 A Yes.

10 Q And below Mr. Honahni's name appears to be
 11 a Sam Shingoitewa.

12 A Yes.

13 Q Was that person also from Moencopi?

14 A Yes.

15 Q Are there any other names that are listed

16 here that you recognize as people from Moencopi?
 17 A Thomas Jenkins may have been living at
 18 Moencopi at the time or sometime before that. Jacob
 19 Coin might have been living at Moencopi before that, or
 20 at that time.

21 You know, one of the problems with
 22 identifying village membership between Oraibi and other
 23 Third Mesa villages and Moencopi is that people move
 24 back and forth a lot or they were married between
 25 villages and would have, from a Hopi viewpoint, really

□Page 542

1 a subdual identity, dual membership in those villages,
 2 or maybe triple membership if they had relatives in
 3 Hotevilla, Moencopi, Old Oraibi.

4 So to the best of my recollection, Jacob
 5 Coin is the name associated with Old Oraibi. Thomas
 6 Jenkins nowadays or in recent years certainly has been
 7 most associated with Kykotsmovi and Hotevilla. But in
 8 the 1910s, I understand, or '20s he was associated with
 9 Moencopi. I don't recognize all of these names, so I
 10 can't give a definitive answer for all of them.

11 Q Fair enough. Now, Dr. Whiteley, with
 12 reference to some of the earlier petitions, you note in
 13 the report that they were signed by traditional
 14 leaders. Are any of these signatures here traditional
 15 leaders?

16 A Uncle Johnson was the fellow who I was
 17 talking about as the subject of this article I'm
 18 writing. He was the rightful heir of the chiefship to
 19 the Two Horn Society, the chiefship of the Bow Clan at
 20 Old Oraibi.

21 Q When you refer to the article you're
 22 writing, that refers to "The Burning of the Altar"?

23 A That's correct. If we had a clearer copy,
 24 maybe I could determine who the last name on the right -
 25 hand column was, or perhaps you've done that already.

□Page 543

1 Q No, I have not. I have been having some
 2 trouble making that out.

3 A I am too. It's possible that person may
 4 be a religious leader. It -- well, this is wild
 5 speculation, but if it says Hermequaftewa, which it
 6 could do, then I think he was a religious leader at
 7 Second Mesa.

8 Q Just so the record is clear, you're
 9 referring to the name which appears directly below the
 10 name of Jacob Coin?

11 A That's correct.

12 Q Are there any others that are considered
 13 to be traditional leaders?

14 A Well, in that I have said yesterday that
 15 Fred Kabotie in older years was a prominent member of
 16 the Bluebird Clan, and I think chief of the Bluebird
 17 kiva at Shongopavi, that's a traditional leadership
 18 role. I believe Edmund Nequatewa also had some
 19 traditional leadership role at Shongopavi. Thomas
 20 Jenkins in recent years has become a spokesman for the
 21 traditionalist movement. And when I say "recent
 22 years," I mean since the 19 -- I guess it's the late
 23 1940s.

24 Q Are there any others?

25 A Not that I can recognize from my current

□Page 544

1 recollection of their associations. There may indeed
 2 be offices which some of these individuals are
 3 associated with that would qualify them to be included
 4 within the source of traditional leadership roles that
 5 you are, I think, asking about.

6 Mr. Rogers: Why don't we go ahead and
 7 take a break.

8 Ms. Sprague: That's fine.

9 (A break was taken.)

10 (Ms. Sprague left the deposition room.)

11 (Mr. Scarboro entered the deposition

12 room.)

13 Q (By Mr. Rogers) Dr. Whiteley, on page 24
 14 of your report, you have an excerpt from a report
 15 document prepared by Oliver La Farge. I'll ask you
 16 some questions concerning that document.

17 I would like to mark as Exhibit No. 36 a
 18 multipage document entitled Notes for Hopi
 19 Administrators by Oliver La Farge, February 1937. Has
 20 a production number H200305.

21 (Whiteley Deposition Exhibit 36 was
 22 marked.)

23 Q Dr. Whiteley, is the Exhibit No. 36 the
 24 same as the reference you list on page 25 of your
 25 report as La Farge, February 1937?

□Page 545

1 A It is.

2 Q Dr. Whiteley, I had a couple of questions
 3 regarding some of the statements that Mr. La Farge
 4 makes during his report. Is it your understanding that
 5 Mr. La Farge was an anthropologist?

6 A Yes, he was an anthropologist.

7 Q I would like to direct your attention to
 8 page 15 of Exhibit No. 36. In the second full
 9 paragraph, Mr. La Farge states, quote, "As the
 10 aboriginal village, Shongopavi has a specific claim,
 11 distinct from the general tribal claim, to an enormous
 12 area of land which includes the site of the new high
 13 school at Oraibi and a considerable portion of the
 14 San Francisco Mountains."

15 Is Mr. La Farge referring to here what we
 16 talked about a few days ago as a village claim?

17 A I don't know, but our identification of a
 18 category "village claims" conforms with his
 19 representation here.

20 Q Based upon your archival research, or any
 21 discussions you might have had with your consultants,
 22 is it your understanding that the site of the new high
 23 school at Oraibi he's referring to is a place near
 24 Kykotsmovi or in Kykotsmovi?

25 A Yes.

□Page 546

1 Q Based on the work you've done with your
 2 consultants or your archival research, do you know if
 3 Shongopavi asserted a claim around the area of
 4 Kykotsmovi?

5 A I have never heard of that, that I can
 6 recall anyway. Certainly I've read this entire
 7 document, so I've encountered it before in La Farge's
 8 conception.

9 Q Based on the archival research you've done
 10 and your work with your consultants, did Shongopavi
 11 assert a separate claim, separate from the tribal

12 claim, to the San Francisco Mountains?

13 A I think my answer to that would have to be
14 the same as what I've just stated. I think La Farge is
15 confusing things.

16 Q And what do you think he's confusing?

17 A I think he's trying to interpret some
18 different traditions, and I don't know that La Farge
19 spoke Hopi. I know that he didn't speak Hopi very
20 well, if he did speak any Hopi, and I think he's
21 probably generalizing from some specific statements
22 that he may have received, some of which he may have
23 understood, others not.

24 Q Dr. Whiteley, over on page 35 of
25 Exhibit 36, the second full paragraph, Mr. La Farge

Page 547

1 states, quote, "The older villagers"-- I'm sorry. "The
2 older villages also have water claims extending far
3 beyond the clan holdings." Do you agree with that
4 statement?

5 A Well, he seems, by "clan holdings"--
6 without rereading the first paragraph, which I will if
7 necessary, but my guess is that by "clan holdings,"
8 he's referring to agricultural fields around the
9 villages. He's not referring to clan eagle-gathering
10 areas.

11 Q well, he does state that the older
12 villages also have water claims extending beyond the
13 clan holdings. Is he referring to village land claims?

14 A It's not clear from his language. By the
15 term "older villages," he may be referring to the Hopis
16 as a whole who are associated, and they were all
17 associated in one way or another, with older villages.

18 Q Dr. Whiteley, I would like to turn back to
19 your report, Exhibit No. 1. On pages 26, and carrying
20 over to page 27, you refer to a statement that was
21 submitted through a person named Dan Kotchungva, and
22 you have a reference to Kotchungva, et al., no date.

23 I would like to mark as Exhibit No. 37 a
24 document that has a title on the first page "The
25 Tradition of the Hopi Lands." Has a production number

Page 548

1 E24212.

2 (Whiteley Deposition Exhibit 37 was
3 marked.)

4 Q Dr. Whiteley, is Exhibit No. 37 the same
5 as the reference, that note on page 27 of your report,
6 as Kotchungva, et al., no date?

7 A Yes.

8 Q I would like to direct your attention to
9 the last page of Exhibit No. 37 to the area where it
10 indicates certain people thumbprinted the documents.
11 Most of these people I note their positions are
12 identified through the course of the document, but not
13 all of them are. The first reference is to a
14 Coochongeva, C-o-o-c-h-o-n-g-e-v-a. Is that the same
15 person as Dan Kotchungva, K-o-t-c-h-u-n-g-v-a, or are
16 those separate people, different people?

17 A As far as I can judge, I think it's a
18 reasonable interpretation that they're the same
19 individual. But why they're spelled so differently on
20 page 1 and on page 4, I don't know.

21 Q The last person, whose thumbprint I
22 imagine appears, is a person by the name of Archie

23 Quamala, Q-u-a-m-a-l-a. And I believe he's identified
 24 in the document as being from Shongopavi. Do you know
 25 if he had any position at that village?

□Page 549

1 A I don't know. I might say for the record
 2 that I have never seen the original of this, which I
 3 assume is handwritten. It might be that if I had seen
 4 that I could interpret this a little more precisely.

5 Q Dr. Whiteley, among the signatories, is
 6 there anyone from Old Oraibi?

7 A Well, Dan Kotchungva was from Old Oraibi.
 8 So was James Poonayowma. Of course, they went to
 9 Hotevilla at the split of 1906, but they were from
 10 Old Oraibi, if that's what you mean.

11 Q Among the signatories, are there any
 12 representatives from Old Oraibi?

13 Mr. Scarboro: Other than in the sense
 14 he's already explained it? I mean, he just said
 15 they're from Old Oraibi. You mean at the time they
 16 signed it?

17 Mr. Rogers: Yes.

18 Mr. Scarboro: If you know.

19 A There don't appear to be. However, on
 20 page 2, Kotchungva is speaking, and he says, "The
 21 Oraibi chief is absent. He has chosen to remain away
 22 so now I speak in his place."

23 Q (By Mr. Rogers) Based upon your archival
 24 research or the work with your consultants, is it your
 25 understanding that Mr. Kotchungva had authority to

□Page 550

1 speak on behalf of Oraibi, Old Oraibi?

2 A Well, as I'm sure you know, political
 3 relations among Third Mesa villages are very much
 4 contested. There are some who would say that the words
 5 of traditional leaders from Hotevilla did indeed to
 6 apply to all of Third Mesa.

7 If my interpretation of the Oraibi split
 8 that Kotchungva's father was Yukioma. Yukioma was very
 9 closely associated with the position of war chief, then
 10 in a sense, since they inherited the position, they
 11 could be speaking for all of Third Mesa.

12 Q I want to make sure I understand. Under
 13 the traditions, traditional leadership roles at
 14 Old Oraibi before the split, was the war chief
 15 acknowledged by people of Oraibi as having authority to
 16 speak as to land matters?

17 A I don't know, and I don't think anybody --
 18 at least I don't know about some older Hopis, but I
 19 don't think any anthropologists know that. To my
 20 knowledge, I'm the only one who's written about the
 21 role of the war chief in Old Oraibi, attributing it
 22 with the importance that I think it indeed held.
 23 whether that importance included a role in reference to
 24 a statement of land issues, I don't know.

25 Q Dr. Whiteley, on pages 27 through 29 of

□Page 551

1 your report, you quote at length from a document
 2 prepared by Gordon Macgregor. I would like to mark as
 3 Exhibit No. 38 a document that appears to be excerpts
 4 from a document or a letter from Gordon Macgregor to
 5 John Collier dated August 6, 1938. Production number
 6 appears on the first page H101020.

7 (Whiteley Deposition Exhibit 38 was

8 marked.)

9 Q I would also like to mark as Exhibit
10 No. 39 a four-page document; has a title on the first
11 page Appendix Vi --

12 Mr. Scarboro: Appendix?

13 Q (By Mr. Rogers) Appendix Vi, Hopi
14 Traditional Claims. Signature or notation appears on
15 the last page as being signed Gordon Macgregor,
16 anthropologist. First page has a production number
17 E24267.

18 (Whiteley Deposition Exhibit 39 was
19 marked.)

20 Q Dr. Whiteley, I've marked both of these
21 because I'm a little uncertain as to which of the two
22 exhibits may have been referring to your report. Have
23 you seen Exhibit No. 39 before?

24 A I think I have, yes.

25 Q And I note there is a reference on page 29

Page 552

1 of your report to Macgregor, 8-6, 1938. Is that
2 reference the same as Exhibit No. 38?

3 A It seems to be, yes. I seem to recall
4 that somewhere he says that the Moencopi claim has been
5 sent in elsewhere, so I seem to recall there may be two
6 documents or appendices. It's obviously not -- well, I
7 don't know. I think this is the one anyway. Let's --

8 Mr. Scarboro: "This," meaning Exhibit
9 No. 38?

10 The Deponent: Exhibit 38 is the one that
11 is referred to here, yeah, unless we discover otherwise
12 as we go through it.

13 Q (By Mr. Rogers) Well, I note that in
14 Exhibit No. 38 there are -- Exhibit 38 appears to be a
15 typed version of another document. There are signs
16 shown by asterisks, which I take to mean that some
17 material was deleted.

18 A Um-hum.

19 Mr. Scarboro: Are you asking for his
20 opinion about that?

21 Mr. Rogers: Well, I'm leading up to that.

22 Q (By Mr. Rogers) Is it your understanding
23 that Exhibit No. 39 was part of a longer document of
24 which Exhibit No. 38 was also a part?

25 A I think so. I may be speculating here,

Page 553

1 but I believe that Arnold & Porter may have added to my
2 quoted statement, Hopi Exhibit 205, page 1 to 3, and I
3 may have actually been quoting from the original, which
4 may include those passages which are indicated by these
5 asterisks. So in that sense, I'm not sure that this
6 does refer to the exact same document as Exhibit 38.

7 Mr. Scarboro: Was the document, John,
8 that you have marked as Exhibit 39 the same as Hopi
9 Exhibit 205 or is --

10 Mr. Rogers: Exhibit No. 38?

11 Mr. Scarboro: This is the same as 205?

12 Mr. Rogers: Yes.

13 Mr. Scarboro: But not 39?

14 Mr. Rogers: That's correct. And the
15 reason for my question, I note that Exhibit No. 39,
16 about halfway down the page, discusses previous Second
17 Mesa claim. The paragraph --

18 Mr. Scarboro: I see. Of course.

19 Mr. Rogers: -- appears to be identical
 20 with the first paragraph.
 21 Mr. Scarboro: Does it go on in that way?
 22 Mr. Rogers: There appears to be bits and
 23 pieces.
 24 Mr. Scarboro: Well, you're right. I see
 25 what you're saying.

Page 554

1 The Deponent: I don't. Can you do that
 2 again.

3 Mr. Scarboro: Yeah. He's saying right
 4 here, this picks up right here and seems at least to go
 5 on for several paragraphs.

6 The Deponent: Um-hum.
 7 Mr. Scarboro: Now, how far it goes, I
 8 don't know. And I guess your basic question, John, is
 9 what, if anything, can Dr. Whiteley tell us about the
 10 relationship between these two documents.

11 Mr. Rogers: Yes.
 12 A If that's the question, I can't really
 13 tell you anything. Clearly they seem to have some
 14 relationship.

15 Q (By Mr. Rogers) Well, Dr. Whiteley, let's
 16 start with Exhibit No. 38 -- well, strike that.

17 A Mr. Rogers?

18 Q Yes?

19 A Do you have a copy present of my first
 20 draft because that may help me to identify what
 21 document I was actually citing. It may not.

22 (Mr. Rogers handed the deponent a
 23 document.)

24 A Thank you.

25 Q If it helps, Dr. Whiteley, I notice there

Page 555

1 is a reference of page 25 of the first draft.

2 A Exhibit 205. Yeah. Okay. So it does
 3 seem to be our Exhibit 38.

4 Q Dr. Whiteley, starting on page 27 of your
 5 report, we have the quotation starting with the line,
 6 "In 1930 and again in 1933." That corresponds with the
 7 first paragraph in Exhibit 38.

8 A That's correct.

9 Q Is it your understanding that
 10 Mr. Macgregor is describing there a claim which is
 11 unique to Second Mesa, or is he describing what you've
 12 described in this report as a more general tribal
 13 claim?

14 A I think it's a more general tribal claim.
 15 But again, the way that he goes through the different
 16 villages after this paragraph would indicate that that
 17 wasn't clear. But in his phrase, "The Second Mesa
 18 villages have presented maps outlining their conception
 19 of the Hopi country," that would indicate that -- yeah.

20 And further down on that page, that
 21 paragraph he says, "This claim is the true Hopi
 22 country," that suggests that -- that suggests that that
 23 is a tribal claim.

24 And when he indicates after that this
 25 claim is "one which Second Mesa would like to have the

Page 556

1 government formally recognize as the Hopi, rather than
 2 the Navajo country."

3 Q It's your understanding that Mr. Macgregor

4 was an anthropologist?
 5 A Yes, I'm afraid so.
 6 Q Do you know what, if any, fieldwork that
 7 he conducted among the Hopis in connection with this
 8 report?
 9 A I don't. I do know that -- well, I seem to
 10 recall that Collier sent him out from Washington to try
 11 and ascertain what this claim was. He may have had
 12 some relationship with Page, with Gordon Page, but he
 13 was part of a crew of anthropologists associated with
 14 Collier in the 1930s and '40s who produced a series of
 15 studies on acculturation, social change.
 16 Q In Exhibit No. 38, once again in the
 17 second full paragraph -- and I believe this paragraph is
 18 also put in your report, it states that "Sipaulovi
 19 village is given the section of the geographic Hopi
 20 area which they consider theirs."
 21 Again, is it a fair interpretation of the
 22 passage that Macgregor believed this falls in the
 23 paragraph expressed "a village claim," as opposed to a
 24 more general tribal claim?
 25 A I think that is a fair interpretation of

□Page 557

1 that paragraph, yes.
 2 Q It goes on to describe what that claim is
 3 in the paragraph. Does that description comport with
 4 your understanding as to what that village claim is, or
 5 do you have an understanding?
 6 A I don't have a specific understanding of
 7 what Shipaulovi's village claims is.
 8 Q The following paragraph in Exhibit No. 38
 9 refers to Shongopavi. Is it your understanding as to
 10 what is described there is the village claim of that
 11 village?
 12 A That's what he seems to be trying to refer
 13 to, yes.
 14 Q Do you have any understanding as to
 15 whether Mishongnovi has a village claim?
 16 A Well, I assume that he wasn't inventing
 17 this out of his head, so I assume that he's referring
 18 to some sort of idea of specific village interests in
 19 the area that he identifies. But beyond that, I really
 20 don't know.
 21 Again, it's worth noting that these areas
 22 overlap between Shongopavi and Mishongnovi. I'm sure
 23 they do with Shipaulovi as well, and probably other
 24 villages.
 25 Q well, based upon your archival research or

□Page 558

1 the work you've done with your consultants, are you
 2 familiar with what boundaries, if any, are claimed by
 3 the people of Mishongnovi for part of their village
 4 claim?
 5 A well, I mean, this was part of my archival
 6 research.
 7 Q Apart from Exhibit No. 38?
 8 A we can go through Exhibit No. 39. It says
 9 the same thing, right?
 10 Q I think in part. Apart from Exhibits 38
 11 and 39?
 12 A Okay. Sorry. Certainly I know that
 13 different villages have different traditions.
 14 Mishongnovi has its own traditions. I don't know

15 expressly whether these include land traditions, but it
 16 would not surprise me, putting that first idea together
 17 with Macgregor's statements here, that some of them do
 18 refer to land in this second one. Check it. And the
 19 second place he was talking about was Sipaulovi, now
 20 Mishongnovi.

21 Q On the second page of Exhibit 38, there's
 22 a paragraph that follows First Mesa on traditional
 23 boundaries. During the course of that paragraph,
 24 there's a description about halfway through the
 25 paragraph which starts with the words "The First Mesa

□Page 559

1 claim begins." Do you see where that is?

2 A Um-hum, yes.

3 Q Is it a fair interpretation of that
 4 passage that Macgregor is describing a village or a
 5 mesa claim that's distinct from a tribal claim?

6 A That's a fair interpretation.

7 Q Again, apart from Exhibits 38 -- I'm sorry.
 8 Did you --

9 A Well, as I think about that again, the
 10 village as distinct from a tribal claim, I think I
 11 would be prepared to assent that he seems to be trying
 12 to describe a mesa area claim. Whether that is in and
 13 of itself distinct from a tribal claim is another
 14 question.

15 Q Dr. Whiteley, apart from Exhibits 38 and
 16 39 and based upon the archival research that you've
 17 done and the work with the consultants, does the
 18 description of what Dr. Macgregor refers to -- or
 19 Mr. Macgregor refers to as the First Mesa claim comport
 20 with your understanding of the area that First Mesa
 21 people have a special distinction for the land?

22 A I really don't know. I think if you want
 23 to examine Daryll Forde's piece on Hopi land, that
 24 might be a way of confirming or disconfirming this, but
 25 I don't know.

□Page 560

1 Q Based upon the research that you've done,
 2 to your understanding, did First Mesa make a
 3 territorial claim to Moencopi?

4 A I don't know. Although, again, in that
 5 there are clan traditions which I cite, especially over
 6 the Spider Clan and I think the Bear Clan, that
 7 especially the Spider Clan and Snake Clan which claim
 8 Moencopi, there is certainly representatives of Snake
 9 Clan. At past there have been representatives of
 10 Spider Clan and Bear Clan at Walpi. Maybe that would
 11 constitute a first claim interest in the Moencopi
 12 area.

13 Q Dr. Whiteley, turning to Exhibit No. 39,
 14 based upon our previous discussion of the relationship
 15 between Exhibits 38 and 39, do you recall if you've
 16 seen Exhibit 39 before, or another version or a copy of
 17 it?

18 A I think I have, yes.

19 Q Dr. Whiteley, on page 273 of Exhibit
 20 No. 23 -- Exhibit No. 39 --

21 Mr. Scarborough: would you give the page
 22 number again.

23 Mr. Rogers: 273.

24 Mr. Scarborough: That's the first page.

25 Mr. Rogers: Be the first page of the

Page 561

1 exhibit.

2 Q (By Mr. Rogers) In the second full
3 paragraph -- well, the second full paragraph is not
4 included in Exhibit No. 38, but it states that, quote,
5 I feel the Government must move very carefully in
6 recognition of the tradition that has been given. It
7 is not a unanimous claim, nor fully believed in as
8 given by all the tribe, unquote.

9 And a similar statement appears at
10 page 275 over the heading of "Summary." It says,
11 quote, The claims, as have been described, indicate
12 that the Hopi have no unanimity of opinion on their
13 boundaries or territory, unquote.

14 Is it your understanding that Macgregor's
15 opinion was there was no unanimity of opinion of the
16 Hopi of the extent or the boundaries of the Hopi
17 traditional claim?

18 Mr. Scarboro: I'm not sure that came out
19 a question. Was the question whether it was, in
20 Dr. Whiteley's understanding, Macgregor's opinion?

21 Mr. Rogers: Yes.

22 Q (By Mr. Rogers) Based upon what you've
23 read in Exhibit 39 or other materials you may have
24 reviewed by Mr. or Dr. Macgregor.

25 A Yes. But when you asked me earlier if

Page 562

1 Macgregor was an anthropologist, I said, "I'm afraid
2 so." When I state in my report that I have
3 disagreement with several of his interpretations on
4 page 27, this is the kind of thing, or one kind of
5 thing, that I'm talking about. In other words, I don't
6 think Macgregor was a very good anthropologist. I
7 don't think he was very good at interpreting cultural
8 concepts.

9 Q You do mention that you disagree with
10 several of his interpretations. And which
11 interpretations do you disagree with?

12 A Should we go through the whole letter?

13 Q Well, let me try it this way,
14 Dr. Whiteley. I note in the quotations that you do
15 cite from Macgregor's report. At certain points you
16 put in brackets the words "an exaggeration." Do you
17 see where those are on pages 27 --

18 A Yes.

19 Mr. Scarboro: You indicated places,
20 plural. Is there another place?

21 The Deponent: It has a place on 28 where
22 I say also the result of inadequate research.

23 Mr. Scarboro: Correct.

24 Q (By Mr. Rogers) Now, Dr. Whiteley, aside
25 from those two instances, were there other instances in

Page 563

1 Exhibit No. 38 that you disagree with his
2 interpretations?

3 Mr. Scarboro: In any place in Exhibit 38,
4 as distinguished from the quoted material?

5 Mr. Rogers: Anywhere in Exhibit No. 38.

6 A Mr. Rogers, I would have to go through
7 every statement in Exhibit 38 before I could answer
8 that question.

9 Q (By Mr. Rogers) Well, I'm not sure I want
10 to put you through the trouble of doing that. I take

11 it that you do disagree with his statements that we
12 just cited out of Exhibit No. 39?

13 Mr. Scarboro: What statements are you
14 referring to?

15 Mr. Rogers: Well, I can read them again.

16 Mr. Scarboro: Please.

17 Q (By Mr. Rogers) First from page 273,
18 quote, I feel the Government must move very carefully
19 in recognition of the tradition that has been given.
20 It is not a unanimous claim or fully believed in by all
21 the tribe, unquote. And on page --

22 A You missed out two words there. I don't
23 want to be picky, but I do think that makes what he's
24 getting at somewhat difficult to interpret. You missed
25 out "as given by all the tribe."

Page 564

1 Q Just for clarity, I can't remember what
2 I've read.

3 Mr. Scarboro: You read the second
4 sentence.

5 A The second sentence.

6 Mr. Scarboro: Excuse me. The first and
7 second sentence in the first full paragraph.

8 Q (By Mr. Rogers) Well, let me try it
9 again. On page 273, Mr. Macgregor states, "I feel the
10 Government must move very carefully in recognition of
11 the tradition that has been given. It is not a
12 unanimous claim, nor fully believed in as given by all
13 the tribe."

14 And then over on page 275, quote, The
15 claims, as have been described, indicate that the Hopi
16 have no unanimity of opinion on their boundaries or
17 territory, period, unquote.

18 I take it, Dr. Whiteley, that you disagree
19 with those interpretations or those statements?

20 A The second one I have more ground for
21 making a definite decision on whether I would disagree
22 or agree with it.

23 The first one I'm not exactly sure what
24 he's saying. Without being able to interview
25 Mr. Macgregor, and I assume that he's dead, I don't

Page 565

1 exactly know what he means by "unanimous." And again,
2 this is a problem of cultural interpretation. Did he
3 get all of these accounts from people together in the
4 same room? If he didn't, maybe that's a reason why
5 they didn't seem to be unanimous. If he had collected
6 everybody together at the same time, maybe they would
7 have indeed presented a unanimous claim.

8 Maybe it was part of Macgregor's interest
9 not to represent a unanimous claim, to try to subvert
10 the significance of the traditional claim. I really
11 don't know. I mean, Macgregor was employed by the
12 government. He had a specific interest. He was not
13 neutral.

14 Q Dr. Whiteley, you mentioned that with
15 reference to the second statement as appearing on
16 page 275 that you felt that you did have enough
17 information to state whether you agreed or disagreed;
18 is that correct?

19 A That's correct, I stated that.

20 Q Do you -- what is the basis for your
21 agreement or disagreement?

22 A The basis for agreement or disagreement is
23 the fact that I think his statement is clearer.

24 Q And do you agree with it?

25 A Broadly conceived, yes. Again, with the
□Page 566

1 sort of provision that I've mentioned over the last few
2 days, you are not going to find Hopis who are ten years
3 old who share the same opinions on boundaries or
4 territory as Hopis who are 85 years old.

5 Now, the way that this sentence is stated
6 is the Hopi, which seemingly includes every single Hopi
7 who was alive at the time. This may -- again, it may
8 just sound like splitting hairs philosophically, but
9 this is where I think Macgregor is not a very good
10 cultural interpreter.

11 Q Now, Dr. Whiteley, you've drawn a
12 distinction in your writing in your articles and your
13 book between the Pavansinom and the Sukavungsinom.

14 A Pavansinom is P-a-v-a-n-s-i-n-o-m.

15 Sukavungsinom is S-u-k-a-v-u-n-g-s-i-n-o-m.

16 Q Is it your opinion that there would be a
17 consensus or a near consensus among the Pavansinom as
18 to what the traditional boundaries are?

19 Mr. Scarboro: At any particular point in
20 time?

21 Mr. Rogers: At any particular point in
22 time.

23 A I don't know.

24 Q (By Mr. Rogers) In your view, during the
25 1930s, would there have been consensus or near

□Page 567

1 consensus among the Pavansinom with respect to the
2 boundaries of the traditional land claim?

3 Mr. Scarboro: Now, just to make sure I
4 understand, you're not asking whether there was a claim
5 or whether it included some territory, but you're
6 asking about the extent of the definition of it?

7 Mr. Rogers: Yes.

8 A There may have been a consensus among the
9 Momngwit, which is M-o-m-n-g-w-i-t, who I've identified
10 as the most important Pavansinom.

11 Q (By Mr. Rogers) Are you saying that it's
12 possible that there was a consensus, or is it based
13 upon either archival research or work that you've done
14 with your consultants?

15 A I'm saying it's possible.

16 Q During the course of your field research,
17 were you able -- well, did any of your consultants
18 indicate to you that the people you've just identified
19 did have a pretty clear notion as to the boundaries of
20 the traditional land claim?

21 A Well, as I have said before, we're dealing
22 with different sorts of cultural interpretations of
23 human relationships with a landscape. I cannot recall
24 any specific conversations in which somebody indicated
25 that the Momngwit had a fully consensual notion of a

□Page 568

1 tribal boundary claim as you have enunciated that. But
2 again, I think it's putting an awful burden on the idea
3 that Hopis would interpret such issues in the same way
4 as you seem to be suggesting.

5 (Discussion off the record between the
6 deponent and Mr. Scarboro.)

7 Q Dr. Whiteley --
 8 A Mr. Rogers, counsel has just extended from
 9 a couple of things that I was saying, and I think it's
 10 fair to put some of these things together. It is
 11 indeed my opinion that if the Momngwit from the
 12 different villages had been assembled at the same time
 13 in the same place and they were fully aware of the
 14 consequences of what some government agent like
 15 Macgregor was asking them, they may indeed have been
 16 able to come up with a consensual view of the Tutskwa
 17 which would have included the area, possibly even a
 18 larger area, as that that I've identified on a former
 19 exhibit where I drew the red line.

20 Q And, Dr. Whiteley, is that supposition
 21 based on the work that you've done with your
 22 consultants or is it based on your archival work or
 23 both?

24 Mr. Scarborough: I'm going to object to the
 25 characterization of it as a "supposition." I think the

Page 569

1 witness expressed it as an opinion.

2 Mr. Rogers: Very well.

3 Q (By Mr. Rogers) Dr. Whiteley, what do you
 4 base that opinion upon?

5 A Upon ten years of -- almost ten years of
 6 research among the Hopi.

7 Q Dr. Whiteley, during the course of your
 8 fieldwork leading up to your Ph. D. thesis and leading
 9 up to your publication of your book, were any of your
 10 consultants considered to be what you describe as part
 11 of the Momtsit?

12 A Momtsit? That's a different outfit
 13 altogether.

14 Q Oh, perhaps I've misunderstood. There was
 15 a group of people you've identified in your previous
 16 answer?

17 A Momngwit.

18 Q Momngwit. During the course of your
 19 fieldwork --

20 A Yeah.

21 Q -- were any of the people acting as your
 22 consultants people you would consider part of the
 23 Momngwit?

24 A Yes.

25 Q Did you discuss with any of those

Page 570

1 individuals the Hopi traditional land claim?

2 A Yes.

3 Q And which individuals?

4 A Well, again, without consulting my notes,
 5 certainly with Harry Kewanimptewa, who I have
 6 identified as Kikmongwi, is as probably the rightful
 7 heir of the position of Blue Flute Chief.

8 Q Anyone else?

9 A With or in conjunction with discussions of
 10 other things with Percy Lomaquahu.

11 Q Anyone else?

12 A George Nasoftie.

13 Q Anyone else?

14 A I can't remember if I in company with
 15 somebody else, discussed this with Stanley Bahnimptewa,
 16 but certainly I have been present at discussions with
 17 him.

18 Q I take it you just can't recall if the
19 traditional land claim came up during the conversation?

20 A I can't recall.

21 Q Was there anyone else?

22 A I have been present at discussions between
23 one person and Ebin Leslie, the Kikmongwi,
24 K-i-k-m-o-n-g-w-i, of First Mesa. I can't recall if
25 that conversation involved reference to the traditional

Page 571

1 land claim.

2 Q Dr. Whiteley, I don't believe you referred
3 to that person before. Do you have a spelling for his
4 name?

5 A E-b-i-n L-e-s-l-i-e.

6 Q Is there anyone else that you can recall?

7 A I have been in a discussion with Henry
8 Polingyouma, P-o-l-i-n-g-y-o-u-m-a, who I believe is a
9 kiva chief at Shongopavi. I can't remember which kiva
10 it is by name, but I will remember the kiva.

11 I have been in discussions with Radford
12 Qomahongniwa, which I'm not sure how he spells that
13 name. I would spell it Q-o-m-a-h-o-n-g-n-i-w-a, who is
14 the snake chief at Shongopavi.

15 Q I take it, Dr. Whiteley, you can't recall
16 if you talked with him about the traditional land
17 claim?

18 A I can't recall. I have been present at
19 discussions with David Monongye, former chief of
20 Hawiwvi, H-a-w-i-w-v-i, in Hotevilla. And I think he
21 may have been a chief of Wuwtsim in Hotevilla,
22 W-u-w-t-s-i-m.

23 Q I'm afraid you'll have to spell his last
24 name.

25 A You certainly know this individual,

Page 572

1 Mr. Rogers. I would guess M-o-n-o-n-g-y-e. A major
2 traditionalist before his death last year. I could go
3 on like this. I mean, I've been in the presence of
4 numerous Momngwit and there have, I'm sure, been
5 discussions of land issues in some of those encounters,
6 but I can't remember.

7 Q Fair enough. And, Dr. Whiteley, I realize
8 that you don't have your field notes here. And it
9 would take an examination, I take it, to figure out if
10 such a conversation took place?

11 A That might help in a lot of occasions. It
12 might not help in all occasions. One doesn't write
13 down everything.

14 (Discussion off the record between the
15 deponent and Mr. Scarboro.)

16 Q Dr. Whiteley, you've had an opportunity to
17 confer with the counsel for the Hopi Tribe. Is there a
18 further clarification that you would like to make in
19 your answer?

20 A Yes. Counsel has just suggested that I
21 state something, which I believe to be true, is that
22 although I have referred to a whole series of
23 conversations, the opinions in my report are based in
24 general on, as I say, almost ten years of research
25 among the Hopis. They are not based on recollections

Page 573

1 of these specific conversations. They are based on
2 general -- on my general knowledge that I've acquired

3 from this amount of research, as well as on the
4 specific documents that I consulted for the report.

5 Mr. Scarboro: And I take it,
6 Dr. Whiteley, that you did review or examine notes
7 concerning conversations with the persons you have
8 identified in connection with preparing your report for
9 this case?

10 The Deponent: That's correct.

11 Mr. Scarboro: And you did not review
12 those notes in connection with expressing the opinions
13 you're expressing today?

14 The Deponent: That's correct.

15 Mr. Scarboro: I just wanted to make sure
16 where we are on the production of documents, John,
17 so . . . Because I think the agreement between us is
18 quite clear.

19 Mr. Rogers: Several days ago I did make a
20 request for Dr. Whiteley's field notes. Are you
21 telling me now -- and I was told by Ms. Sprague that --

22 Mr. Scarboro: Oh, I understand she had a
23 chance to talk with you on or off the record. But as I
24 read the agreement between the Hopi Tribe and Navajo
25 Tribe in this matter and the lawyers, we've agreed to

□Page 574

1 produce documents, and I believe have produced
2 documents, perhaps with isolated exceptions, that
3 Dr. Whiteley either relied upon, reviewed, or examined
4 in connection with the opinions he's expressed either
5 in his report or here. I think that discharges our
6 obligation under the agreement we've reached by
7 correspondence.

8 Mr. Rogers: I take it your position is
9 the Hopi Tribe refuses to produce that material?

10 Mr. Scarboro: No, I'm not refusing, but,
11 you know, in the agreement, you wrote the letter that
12 embodies it, how these field notes would fall under
13 that agreement. I don't believe that under that
14 agreement they're subject to production, but I would be
15 glad to talk about it. And I don't think we need to do
16 it on the record, but I would be glad to do it on the
17 record too.

18 As I read the letter and look at it too,
19 it seems to be beyond the scope of what we agreed for
20 production. I understand there may be exceptions or
21 particular notes regarding particular matters that may
22 well be subject to production. But I understand you've
23 made a request for every piece of paper that
24 Dr. Whiteley has made over the course of his career and
25 his field notes. And that is not only a gross invasion

□Page 575

1 of his professional and private interests, but it's way
2 beyond the scope of anything that we have agreed upon
3 with you guys. And I -- you know, at least I think you
4 ought to take a look at your letter and tell me where
5 in that letter you think such documents would be
6 subject to production.

7 Mr. Rogers: Well, Counsel, it certainly
8 wasn't my intent -- and I think the record will show when
9 my request was made, I certainly was not asking for
10 every single piece of paper that Dr. Whiteley has
11 compiled in connection with all the work he's done for
12 the Hopi Tribe. I did make a request for production of
13 his field works with respect to his Ph. D. thesis and

14 his other fieldwork with his consultants.

15 Mr. Scarboro: And his other fieldwork
16 with his consultants. Is that every time he's ever
17 talked to somebody in the Hopi Tribe and talked to
18 someone and written it down? What are you saying,
19 John?

20 Mr. Rogers: Well, if you'll let me
21 finish, I can probably articulate a little better.

22 Mr. Scarboro: All right.

23 Mr. Rogers: As this deposition has
24 continued, Dr. Whiteley has been able to say particular
25 people he's talked to or might have talked to about the

Page 576

1 Hopi traditional land claim or Hopi-navajo relations.
2 Now it may be possible to try to narrow down the
3 request to those portions of those interviews that
4 related to that. I'm, frankly, skeptical that
5 Dr. Whiteley can somehow separate out in his own mind
6 or ignore what previous work he's done among the Hopi
7 in reaching conclusions on his report.

8 And a second point, I believe I'm entitled
9 to take a look at those interviews to see whether the
10 descriptions afforded in those interviews are
11 consistent with the boundaries afforded in
12 Dr. Whiteley's report.

13 I agree it's been a long time since I've
14 taken a look at the agreement from last April. It is
15 fair that we pointed out we had no idea Dr. Whiteley
16 was going to be an expert witness until long after that
17 agreement was entered into.

18 Mr. Scarboro: The same issue would apply
19 in this case, including Dr. Russell, as well as other
20 of our experts who have done work among the Hopi or
21 involving the Hopi not only in connection with this
22 case, but prior times as well, matters as well. It's
23 not anything that's unique to Dr. Whiteley.

24 I wish you would take a look at the
25 agreement because I think the agreement makes clear

Page 577

1 that the documents that we agreed would be subject to
2 production on both sides were documents that were
3 reviewed or examined or relied upon in connection with
4 the preparation of this report.

5 And obviously, Dr. Eggan, for example, in
6 his deposition barely consulted anything in writing the
7 report itself, but obviously his report was based upon
8 a lifetime of work, in some sense, among the Hopi. If
9 broadly construed, I suppose you would go through his
10 house and look at everything he did to decide whether
11 or not the opinions he was expressing were, in some
12 fashion, impeached or undercut by some piece of paper
13 somewhere in his life.

14 I think expert discovery is broad. These
15 depositions have gone on for an enormous length of time
16 and, in my view, largely wasted time. I think we have
17 an agreement. I think the agreement is clear. I wish
18 you would take a look at it. And I'm not saying that I
19 absolutely refuse to do it, but as I read that
20 agreement, the request is way beyond the scope.

21 Mr. Rogers: Well, Counsel, let me add a
22 few points and then we'll move onto better things, like
23 lunch. We may be quibbling over what it means by
24 relying on the terms of the agreement. I think it's

25 very difficult to separate out -- or it would be very

□Page 578

1 difficult for Dr. Whiteley to separate out the work
2 he's done from his consultants and --

3 Mr. Scarboro: He did not -- with one
4 exception. He did not interview consultants in
5 connection with doing the work he's done in this
6 report, and you know that. He has been interviewing
7 consultants at Hopi for years about many, many things.
8 They are none of your business. And they are not the
9 business of this litigation. At some point you are
10 going to have to rely upon what Dr. Whiteley tells
11 you.

12 This report is put together, as you can
13 tell from its face, from documentary archival
14 materials. That's how it's put together. That's the
15 basis for the report. We can go on and on and on with
16 this exercise at a great cost to you, to your client,
17 and to my client, and to Dr. Whiteley, and everyone
18 else.

19 It seems to me -- if we have to go in front
20 of the judge and deal with this, let's go in front of
21 the judge and deal with it, but we have been generous,
22 and I think you have been generous, in the productions
23 that both sides have made in this case with regard to
24 experts. And even to go back through all of his notes
25 and ascertain every person he may have talked to who

□Page 579

1 may have said something at some point in time about
2 Hopi-Navajo relations or the land claim would be an
3 enormous and burdensome and difficult thing to do.

4 And I just think, you know, you are
5 getting ample testimony from this witness about what he
6 has relied upon, what he has done, and the bases for
7 his opinion. And the bases for that opinion are not a
8 great mystery. And I don't think we need to go through
9 all of his closets and all of his drawers and all of
10 his professional life in order to get our jobs done in
11 this case. Do you want to make another speech?

12 Mr. Rogers: Certainly, Counsel, I'm
13 willing to consider limitations on my earlier request,
14 and I've tried during the course of this deposition to
15 ask Dr. Whiteley what he recalls about these various
16 interviews, but understandably he can't recall. He has
17 been able to provide a list of various people who he
18 thinks did provide information.

19 The second point, and the last point and
20 we can go to lunch, I think Dr. Whiteley did testify on
21 the first day of his deposition that after undertaking
22 his commission to do these reports, he did do a field
23 trip to Hopi and did talk to consultants, specifically
24 regarding the subject of his report. And again, those
25 field notes have not been produced either. I certainly

□Page 580

1 think I'm entitled to those.

2 Mr. Scarboro: Well, that may well be, and
3 I was intending in what I said previously to set aside
4 that incident because I was told something about it and
5 there may be others like it. But I just wanted to make
6 the general point that in general he has not, in
7 putting together this report, done the sorts of
8 fieldwork that other experts have done in connection
9 with preparing their reports, including your experts

10 and ours. His report is put together on a somewhat
11 different basis.

12 As a psychological matter, I suppose we
13 could all say that you know our opinions are the sum
14 total of who we are and what we've done. But
15 Dr. Whiteley has told you that he cannot recall even
16 these conversations, and he has also told you that he
17 didn't use them in preparing this report and expressing
18 the opinions that are contained in this report. And I
19 think that that probably ought to be the end of that
20 particular category of request. But if you will take a
21 look at the agreement and get back to me, maybe there's
22 something we can work out.

23 Mr. Rogers: Well, I think we've both had
24 ample opportunity to state our positions, so I would
25 suggest we should go to lunch.

□Page 581

1 Mr. Scarboro: I think that's a great
2 idea.

(A lunch break was taken.)

3 Q (By Mr. Rogers) Dr. Whiteley, I would
4 like to pick up again in Exhibit No. 1 at page 30. On
5 that page, you quote from a series of minutes of a
6 meeting at Polacca. You quote from a statement of a
7 person named Kwotka, what they describe as the Walpi
8 Kikmongwi.

9 I would like to mark as Exhibit No. 40 a
10 document that has a title on the first page Meeting at
11 Polacca, December 4, 1939. Has a production number on
12 the first page E24216.

13 (Whiteley Deposition Exhibit 40 was
14 marked.)

15 Q Dr. Whiteley, is Exhibit No. 40 the same
16 as the source you refer to at the bottom of page 30 as
17 the meeting at Polacca 12-4 of 1939?

18 A Yes.

19 Q And I believe that this passage that you
20 quote on page 30 is from pages 10 and 11 of Exhibit 40?

21 A Yes.

22 Q On page 10, starting on page 10, is the
23 section that you're quoting. It quotes from quotes
24 within, "Then the Hopi replied and pointed out the
25

□Page 582

1 boundary of his reservation, beginning near Ganado and
2 along the line that Maho described." And I believe in
3 text on page 30 of your report you indicate that his
4 statement, Maho's statement is described on the
5 previous pages, starting on page 2 of Exhibit 40.

6 Dr. Whiteley, do you know who Maho was?
7 Did he hold a position at one of the villages?

8 A He was a Fire Clan elder at First Mesa. I
9 think he did hold a position in one of the societies,
10 but I don't remember which.

11 Q On the first page of Exhibit 40, the
12 statement toward the middle of the page by Tom
13 Preston -- I'm sorry. It's on the first page of
14 Exhibit 40. And Mr. Preston is quoted as saying,
15 quote, This man, Maho, will be the one to present our
16 land claims. His office demands that when we come to
17 the time concerning land propositions that he is the
18 one to present the case, unquote.

19 Was there something -- well, I'm sorry.
20 which village was Maho from?

21 A He was from First Mesa. I don't know. I
 22 would assume he was probably from Walpi, or he would
 23 have some identification from Walpi, I think.

24 Q Do you know if there was something about
 25 his leadership position which gave him special status

□Page 583

1 with respect to land issues?

2 A I don't know.

3 Q Do you have any idea as to what
 4 Mr. Preston is referring to here when he refers to
 5 Mr. Maho's office?

6 A I might be able to inquire into that, but
 7 off the top of my head, I can't give a definite answer.

8 Q Dr. Whiteley, as I mentioned before,
 9 quoted before, page 10, Kwotka refers to the line that
 10 Maho described. Now I note on page 8, carrying over to
 11 page 9 of Exhibit 40, Maho does appear to describe an
 12 area or a trip that some Hopis -- where he recalls some
 13 Hopis made. Is that "the line" in your interpretation
 14 that Kwotka is referring to?

15 A I don't recall if Maho has referred to
 16 other areas prior to pages 8 or 9, so I'm not sure.
 17 See, we have a reference to Kwotka's --

18 Q Well, I can tell you, Dr. Whiteley, on
 19 page 7 toward the middle of the page there does appear
 20 to be a different reference to a boundary where it
 21 picks up with the words, "The white mand," m-a-n-d,
 22 said "--

23 A Page 7.

24 Q "My plan for your boundary is this: Up
 25 from the Grand Canyon, down from Flagstaff, and down to

□Page 584

1 a certain butte by Winslow, and in the east where a
 2 rock has a hole through it." Do you see that?

3 A What part of the page?

4 Q Right almost in the middle.

5 A Well, that appears to be a different
 6 boundary. Let me find exactly where Kwotka's quote is.

7 Q It's toward the bottom of page 10 and
 8 carries over to the top of page 11.

9 A It's hard to tell which -- again, without
 10 spending much more time on this, which line Kwotka may
 11 be referring to. The two are indeed distinct in Maho's
 12 descriptions between page 2 and page 8 and 9.

13 Q Dr. Whiteley, I can tell you, for what
 14 it's worth, I have a hard time following what Maho
 15 says. When you were working on your report, did you
 16 try to figure out what that line was that Maho was
 17 describing, or lines?

18 A I don't remember. I think I probably did,
 19 actually, in thinking about it, but I can't remember
 20 what I determined.

21 Q Fair enough. On page 7, the portion that
 22 I read just a moment ago where Maho refers to -- or says,
 23 quote, in the east where rock has a hole through it,
 24 then someone has placed a parenthetical, "The reference
 25 to the paper that he had was a certain rock near

□Page 585

1 Sanders, Arizona, where there was supposed to be a map
 2 in a crevice" (sic) "of a rock in the Hopi country."

3 During the course of your archival
 4 research or work with your consultants, have you ever
 5 come across any other references to this map or that it

6 was supposed to be in the crevice of a rock near
7 Sanders?

8 A No.

9 Q I would like to turn back to Kwotka's
10 description, which appears in pages 10 and 11. He
11 describes -- well, is it your interpretation that this
12 description that Kwotka provides is a description of
13 the Hopi territorial land claim, at least as Kwotka
14 understood it?

15 A I think that's a reasonable inference,
16 yes.

17 Q And that according to Kwotka, it begins
18 near Ganado and it runs along the line, whatever that
19 line is that Maho described; is that right?

20 A Yes.

21 Q He goes on to say, "Thence on the eastern
22 side along Black Mountain by Lujani," L-u-j-a-n-i.

23 A He means Lohali, yes.

24 Q what?

25 A He means Lohali Point.

□Page 586

1 Q Lohali Point?

2 A Yeah.

3 Q Is that a place different from local mine
4 point?

5 A Yes.

6 Q where is that place located?

7 A It's a little further south. I believe
8 it's on Balaki Mesa. If we have a good enough map, I
9 can find it. I need the other section of the map.

10 Q which, the Usgs?

11 A Yes. This one -- here it is.

12 Q Oh. Now, Dr. Whiteley, I believe the
13 first day of this deposition, perhaps the second, you
14 indicated that one interpretation or one translation of
15 the word Tokoonavi is to Black Mountain; is that
16 correct?

17 A That's correct.

18 Q Is it your interpretation that the
19 reference here to Black Mountain is to Navajo Mountain?

20 A No, it's not.

21 Q Is this referring to the Black Mountain
22 that is near Balaki Mesa?

23 A That's correct.

24 Q Dr. Whiteley, do you know if the Black
25 Mountain that is by Balaki Mesa has any religious

□Page 587

1 significance to the Hopi?

2 A May I look at your map again. I don't
3 recall if its significance is, quote, religious as
4 opposed to something else.

5 Q Do you know if it's associated with
6 particular Hopi clans or a clan?

7 A well, if there are eagles up there and if
8 Hopis go collecting eagles up there, then I assume it's
9 got some sort of religious association.

10 Q Do you know which clans?

11 A No, I don't.

12 Q Do you know if Balaki Mesa is of any
13 special clan significance to the Hopis?

14 A The answer is the same in that there were
15 certain Hopis who herd cattle, and I think even have
16 farms in the upper reaches of the Polacca Wash and use

17 to collect wild onions, if I recall, up in that area.
 18 It's possible that those Hopis who went there for those
 19 purposes had some sort of clan rights to do so.
 20 Again, if there -- if we extend those rights
 21 or if Hopis extend those rights from those upper
 22 reaches of the Polacca Wash down as far as Black
 23 Mountain and Balaki Mesa, then maybe there would be
 24 such clan associations.

25 Q Dr. Whiteley, further down on page 11 of
 Page 588

1 Exhibit 40, in the first full paragraph on that page,
 2 the next to the last line in that paragraph Kwotka is
 3 quoted as saying, quote, "As far as the northern line
 4 is concerned, it still is the Grand Canyon that is the
 5 border, but the southern has been relinquished." And
 6 in parentheses it says, "Meaning south of Holbrook,"
 7 parentheses, period, unquote.

8 Do you understand what he's referring to
 9 when he says "has been relinquished"?

10 A No, not really. I could speculate that he
 11 was referring to the 1882 Executive Order reservation
 12 boundary on the southern part. But if that was the
 13 case, why wouldn't he mean the same thing for the
 14 northern line.

15 Q During the course of your archival
 16 research, aside from this reference, did you come
 17 across any accounts in which Hopis indicated that in
 18 their belief the southern portion of their traditional
 19 land claim had been relinquished?

20 A Not that I can recall. And certainly I
 21 went through this document, read it from beginning to
 22 end. So aside from this, I just don't recall. And I
 23 hadn't recalled this one.

24 Q Dr. Whiteley, turning back to Exhibit
 25 No. 1 on your Hopitutskwa report, page 31 toward the

Page 589
 1 top of the page, you refer to the Hopi hearings of 1955
 2 and provide a page citation 147 to 150, which in your
 3 view is an illustration of some of the illustrations of
 4 the traditional land claim.

5 I would like to mark as Exhibit No. 41 a
 6 document that has a title Hopi Hearings July 15-30,
 7 1955. Has a production number on the first page
 8 214333.

9 Mr. Scarborough: Are these excerpts from the
 10 hearings or a complete set?

11 Mr. Rogers: These are excerpts. And I
 12 guess for identification, contains pages 1 through 48
 13 and then it skips to page 143 to page 162.

14 Q (By Mr. Rogers) And, Dr. Whiteley, I will
 15 just be referring to what you cited in your report,
 16 pages 147 to 150.

17 (Whiteley Deposition Exhibit 41 was
 18 marked.)

19 Q Dr. Whiteley, are pages 147 through 150 of
 20 Exhibit No. 41 the reference, the same reference that
 21 you indicate on page 31 as Hopi hearings?

22 A Yes.

23 Q And this is an account by Mr. Charlie
 24 Homehongva?

25 A Yes.

Page 590

1 Q Did Mr. Homehongva -- well, from what mesa
 Page 36

2 did Mr. Homehongva come from?
 3 A where are these hearings held?
 4 Sipaulavi. I my guess is that he was from Sipaulavi.
 5 My guess is he would be from Sipaulavi or Mishongnovi.
 6 Oh, he says he's from Sipaulavi. Yes. On the first
 7 page, page 143.
 8 Q He also indicates that he's a leader of
 9 the village?
 10 A Yeah.
 11 Q Do you know what leadership position he
 12 held?
 13 A No, I don't. But if he identified himself
 14 as the leader of this village, I very much doubt that --
 15 if others from Sipaulavi had disagreed, they would have
 16 stood up and told him to sit down.
 17 Q Dr. whiteley, on pages 148 and 149, this
 18 gentleman refers to a meeting that was held at Old
 19 Oraibi. Do you see where that account is?
 20 A Yeah.
 21 Q I'm sorry?
 22 A Yes.
 23 Q And he says, "We all know that there was a
 24 meeting called many years ago in Old Oraibi." And then
 25 he goes on to discuss who attended the meeting. And he

□Page 591

1 identifies Loloma --
 2 A Yes.
 3 Q -- Seetpella, and then several other
 4 people. During the course of your archival research or
 5 your work with your consultants, have you ever had any
 6 references or come across any references to such a
 7 meeting?
 8 Mr. Scarborough: Other than this one?
 9 Mr. Rogers: Yes.
 10 A I don't recall.
 11 Q (By Mr. Rogers) Do you have any reason to
 12 believe that it did not take place as it's described
 13 here?
 14 A No.
 15 Q I believe you testified earlier that
 16 Loloma was Kikmongwi at Old Oraibi?
 17 A Did I No, I seem to recall that we
 18 haven't mentioned Loloma. We were talking
 19 about Tawakwaptiwa.
 20 Q Could be correct. Was Loloma a Kikmongwi
 21 of Old Oraibi before the other gentleman we mentioned?
 22 A Yes, he was.
 23 Q It's spelled here in text L-o-l-o-m-a.
 24 Dr. Whiteley, I take it that's not the conventional
 25 spelling of that person's name?

□Page 592

1 A Yes. The better spelling is
 2 L-o-o-l-o-l-m-a.
 3 Q During the course of your research on the
 4 Hopi, have you come across references to the person
 5 named Seetpella?
 6 A No, I haven't, but this sounds like it
 7 might be a nickname. But it might not be. It might be
 8 his real name.
 9 Q Do you know who the Kikmongwi was at
 10 Shongopavi at 1905 or 1906?
 11 A I can't recall.
 12 Q Dr. Whiteley --

13 A But this, oh, but this would have occurred
 14 before 1905 or 1906 because Loololma died probably in
 15 1904, but certainly between 1901 and 1905.

16 Q Well, let me then ask you this, Do you
 17 know who was the Kikmongwi at Shongopavi at the turn of
 18 the century, about 1900?

19 A I think I probably have records which
 20 would tell me, but I don't know off the top of my head.

21 Q Fair enough. The next thing that's
 22 referred to is Takaniltsie, T-a-k-a-n-i-l-t-s-i-e. Do
 23 you know who that refers to?

24 A No. Again, that sounds like a nickname,
 25 but it may not be.

□Page 593

1 Q The next name is -- it's referred to as
 2 Tawimoke, T-a-w-i-m-o-k-e.

3 A Your pronunciation is improving,
 4 Mr. Rogers.

5 Q Somebody has got to improve.

6 A Yes. No, I don't recognize his name, but
 7 again, I might have records which would identify this
 8 person.

9 Q The next person that's referred to over on
 10 page 149 is a person named Iss, I-s-s.

11 Mr. Scarboro: Where is that one?

12 Q (By Mr. Rogers) As a spokesman for
 13 walpi.

14 Mr. Scarboro: Oh, fourth line from the
 15 top, about the middle of the line.

16 A Yeah, that's undoubtedly a nickname or a
 17 short form.

18 Q (By Mr. Rogers) Do you know who it refers
 19 to?

20 A No, but again, it's possible that I might
 21 be able to -- I might find that in some records.

22 Q The next name that's referred to about
 23 three lines below that is Beeva, B-e-e-v-a. Do you
 24 know who that refers to?

25 A No. The name sounds like it might

□Page 594

1 be -- that's the Hopi word for tobacco, so that might be
 2 a Hopi nickname for this individual.

3 Q Dr. Whiteley, I would like to turn over to
 4 page 39 on Exhibit No. 1, your Hopitutskwa report, to
 5 the second sentence in the first full paragraph. You
 6 state, "Government representatives at the highest
 7 level, both before and after 1934, repeatedly
 8 acknowledged the traditional claim and promised
 9 exclusive Hopi control over certain areas, especially
 10 those pertaining to religious activity, and hunting,
 11 wood gathering, and salt gathering."

12 Dr. Whiteley, when you state that
 13 government representatives acknowledged the traditional
 14 claim, do you mean that the government promised to give
 15 the Hopi all the area within the traditional claim?

16 A No, I don't mean that. I mean that they
 17 acknowledged it.

18 (Mr. Warren entered the deposition room.)

19 Q I'm trying to pursue what you mean by
 20 "acknowledged." Do you mean that the government agreed
 21 that the Hopis' traditional claim claimed boundaries as
 22 where you say they are?

23 A Can you repeat the question.

24 Q Sure. When you say that the government
25 representatives acknowledged the traditional claim,
□Page 595

1 what did you mean by that?

2 A This is a summary passage where I'm tying
3 together some of the threads that have been pursued in
4 some of the previous pages. So I mean, for example --
5 I'm not going to go through them all -- but Murphy
6 presented the traditional claim to the allotment
7 office, I mean that Commissioner Rhoads, for example,
8 was aware of the traditional claim or at least parts of
9 it and was considering it as a significant aspect of
10 what might go into decisions about Hopi land as
11 recognized by the government.

12 I mean that Collier after 1934 on several
13 occasions acknowledged aspects of the traditional
14 claim. He even sent Macgregor out as part of it to
15 figure out what it was, as we've already seen. So as a
16 summary passage, it's designed to cover a range of
17 historical actualities.

18 Q Dr. Whiteley, you conclude that sentence
19 by saying the government representatives promised
20 exclusive control over certain areas. What areas?

21 A Especially those pertaining to religious
22 activity or hunting, wood gathering, and salt
23 gathering. Now, without making a thorough inquiry into
24 those areas and others, I can't give a full answer to
25 that question.

□Page 596

1 Q Dr. Whiteley, I was hoping we could
2 shortcut this, but perhaps we can't.

3 Mr. Scarborough: How would we shortcut it?

4 Mr. Rogers: Oh, by trying to focus on the
5 summary passage rather than try to go through each of
6 the citations.

7 Mr. Scarborough: I see. Oh, I think
8 Dr. Whiteley is saying it's only meant to be a summary
9 of what's gone before. It's not meant to be a
10 different kind of statement.

11 Mr. Rogers: Well, what counsel for the
12 Hopi Tribe says may be correct.

13 Q (By Mr. Rogers) Dr. Whiteley, when you
14 made the statement about government representatives
15 promising exclusive Hopi control over certain areas,
16 are you referring back to the references that appeared
17 earlier in this section of your report?

18 A Yes, I assume so, as well, perhaps, as
19 some other documents which I elected not to include. I
20 mean, this does not purport to be an absolutely
21 exhaustive representation of every single encounter
22 between Hopi representatives and government
23 representatives in which government representatives
24 promised something to the Hopi about land.

25 Q Well, Dr. Whiteley, as you sit here, can
□Page 597

1 you recall any documents which you believe indicate
2 that government representatives promised exclusive Hopi
3 control over certain areas, other than those that
4 you've cited in this chapter? Do you have particular
5 documents in mind?

6 A Let me read this section again, okay?

7 Q Certainly.

8 A Shall we take a break for a half hour and
Page 39

9 shall I read the whole section?
 10 Q I think that may help shortcut this and
 11 save you going through all the documents.
 12 Mr. Scarboro: Good idea. It may save
 13 time.
 14 Q (By Mr. Rogers) And, Dr. Whiteley, my
 15 intent here is just to make sure I've got what you're
 16 going to be talking about at trial. And I understand
 17 that there may be other documents out there that may
 18 help corroborate or support your position, but to the
 19 extent that you -- you do have some of those documents in
 20 mind, I would like to try to find out what they are.
 21 If you can't recall what they are, then I'll accept
 22 that answer. But I do think it will help us save time
 23 if we can just review it.

(A break was taken.)

24 Q Dr. Whiteley, have you had a chance to go
 25 through some portions of your report?
 Page 598
 1 A I have.
 2 Q Dr. Whiteley, other than those documents
 3 that you've referred to on pages 7 through 39 of your
 4 report, are there other documents that you believe
 5 support your contention that government representatives
 6 promised exclusive Hopi control over certain areas?
 7 A There may well be.

8 Q Do you have any particular documents in
 9 mind at this time?
 10 A I can't recall.
 11 Q Aside from those promised pertaining to
 12 exclusive Hopi control over religious activity,
 13 hunting, wood gathering and salt gathering, can you
 14 think of any other areas which, in your opinion, the
 15 government promised Hopi exclusive control?
 16 A Well, my report says, "Certain areas,
 17 especially those pertaining to religious activity and
 18 hunting, wood gathering, and salt gathering." I don't
 19 recall all dimensions of those areas.

20 Q So I take it you didn't have some other
 21 use -- or you don't have some other use in mind, as you
 22 sit here today, aside from areas reserved for religious
 23 activity, hunting, wood gathering, and salt gathering?
 24 Mr. Scarboro: Object. Misstates both his
 25 testimony and the report. Go ahead.

Page 599
 1 A It's possible that this reading and the
 2 citation of the documents that exist in this report
 3 would refer also to herding activities.
 4 Q (By Mr. Rogers) Aside from the documents
 5 that you have cited on pages 7 through 39, can you
 6 think of any documents referring to government promises
 7 of an exclusive Hopi area for herding?
 8 A I don't know if I've cited all of these
 9 documents in my report. In my notes from Arnold &
 10 Porter's files there are certainly references to
 11 exclusive, I believe, herding areas apportioned the
 12 Hopi, particularly in the 1920s and 1930s, possibly
 13 earlier than that also.

14 Q Can you describe any of the documents that
 15 you're thinking of.
 16 A Those that I have in mind at present refer
 17 to herding areas in a general vicinity of Moencopi.
 18 Superintendent Walker in the 1920s, and again in the
 19

20 1930s, with respect to something that was referred to
 21 as the walker-dalton Line, apportioned the land for
 22 Hopi herding, and I think it was exclusively for Hopi
 23 herding, or exclusively for Hopi use. And the
 24 intention would be on walker's side for herding
 25 activity.

□Page 600

1 Q Can you recall any other documents?
 2 A The fairest answer is that I can't recall.
 3 Q Dr. whiteley, I would like to turn now to
 4 the later session of your report dealing with the
 5 cultural meaning of "Tutskwa," and it starts at page 50
 6 of your report.

7 During the course of this section, you
 8 discuss, among other things, Hopi clans. And I think
 9 this is probably as good a time as any to discuss one
 10 of your articles on Hopi clans. I would like to mark
 11 as Exhibit No. 42 an article which appears in the
 12 Journal of Anthropological Research, January of 1985,
 13 entitled Unpacking Hopi "Clans": Another Vintage out
 14 of Africa?

15 (Whiteley Deposition Exhibit 42 was
 16 marked.)

17 Q And, Dr. whiteley, I have a copy of your
 18 second article as well if you would like to read that
 19 to put the first into context, but I don't plan to be
 20 asking you any questions about the second.

21 A Okay.

22 Q As we go through this, if you feel a need
 23 to look at the first article, let me know, and we'll
 24 make it available.

25 A Okay.

□Page 601

1 Q For identification, Dr. whiteley, is
 2 Exhibit No. 42 a copy of your article, November of
 3 1985, of "Unpacking Hopi Clans"?

4 A Yes.

5 Q Dr. whiteley, is it your position that
 6 clan control over economic activity has been overstated
 7 in what you describe in your article as the
 8 "conventional view"?

9 A Yes.

10 Q Now, you note that on page 369 of
 11 Exhibit No. 42 the clan land did exist at Oraibi at the
 12 turn of the century. Was that correct?

13 A Which page?

14 Q This would be pages 368 and 369.

15 A Can you repeat your question.

16 Q Well, certainly. Maybe just not even
 17 specifically referring to the article. Dr. whiteley,
 18 at the turn of the century, did clan land exist at
 19 Oraibi?

20 A So-called clan land existed.

21 Q And is there a reason for your
 22 qualification "so-called"?

23 A Yes.

24 Q And what is the reason for that
 25 qualification?

□Page 602

1 A The reason, which I explore in the
 2 article, is that these were not lands that represented
 3 joint estates on the part of corporations wherein every
 4 member of a clan unit would have equal access or

5 wherein every member of a clan had any access.

6 Q Dr. Whiteley, among the Hopi, was there
7 particular land that was identified by the Hopi as clan
8 lands?

9 A I've never heard the term "clan lands" in
10 a Hopi linguistic framework that I can translate that
11 concept as a generic. What I mean is I've heard the
12 term, for example, Sakwaawungvasa,
13 S-a-k-w-a-a-w-u-n-g-v-a-s-a, which generally speaking
14 means Eagle Clan land. More precisely it means Eagle
15 Clan field. I've heard the term wimvaavasa,
16 W-i-m-v-a-a-v-a-s-a, which in a general sense refers to
17 lands which are controlled by clans on the basis of
18 ritual prerogatives. But I have never heard a term
19 that can be translated by the term "clan lands" as it
20 is used by most anthropologists up to 1985.

21 Q Dr. Whiteley, referring to the second
22 category of lands that you've just described -- I'm not
23 sure I can pronounce the word that went with it -- were
24 there such lands in Oraibi during the turn of the
25 century?

□Page 603

1 A Yes.

2 Q Were they used for agricultural purposes?

3 A Yes.

4 Q Were there similar lands, similar types of
5 lands, at Moencopi, say, at the turn of the century?

6 A I don't recall.

7 Q Do you know if there were such lands in
8 the 1930s at Moencopi?

9 Mr. Scarboro: By "at," do you mean near
10 Moencopi, or claimed by Moencopi, or claimed by Oraibi,
11 or near Oraibi? What do you mean by the question?

12 Mr. Rogers: Well, let's try it in the
13 Moenkopi wash.

14 Mr. Scarboro: Just physically located in
15 the --

16 Mr. Rogers: In the Moenkopi wash.

17 A My recollection is Nagata's account
18 indicates it.

19 Q (By Mr. Rogers) Do you have any reason to
20 disagree with Nagata's conclusion?

21 A No.

22 Q Dr. Whiteley, on page 369 of your article,
23 you say toward the middle of the page, quote, Secondly,
24 disputes over land were a feature of the split; thus,
25 subsequent opinions on the location of particular clan

□Page 604

1 lands have often been politically loaded, unquote.

2 when you refer to clan lands here, are you
3 referring to clan lands in the second sense of the word
4 you gave, a word that this poor lawyer cannot
5 pronounce?

6 A Yes.

7 Q In what sense was it politically loaded in
8 terms of determining the location of particular clan
9 lands?

10 A Let me reread the paragraph.

11 Q Certainly.

12 A Well, I think in one sense, certainly that
13 which is identified by Titiev in the quotation that I
14 have from him, namely quotes the exact boundaries that
15 are uncertain -- I'm sorry. Let me back up. Titiev

16 includes a diagram of Oraibi clan lands, but he
 17 acknowledges that, quote, "The exact boundaries are
 18 uncertain despite the fact that the Oraibi chief was my
 19 principal informant on this question. He did not give
 20 me perfectly reliable data in all instances, and he
 21 frequently omitted important material."
 22 In other words, he -- I think what Titiev is
 23 getting at -- but, you know, this is at least five years
 24 since I wrote this and maybe seven originally, I think
 25 what Titiev is getting at -- what Titiev is getting at is

□Page 605

1 he may not have included lands belonging to the Fire
 2 Clan or the Spider Clan because those were two clans
 3 with which he was in explicit unanimity over the split.
 4 Q And at least your interpretation of
 5 Titiev's statement is that the -- or Titiev's consultant
 6 for political reasons, in some instances, provided
 7 unreliable information?
 8 A That's what Titiev says.
 9 Q And based upon your research regarding
 10 those clan members or other people who moved to
 11 Hotevilla and their descriptions of what holdings they
 12 had at Oraibi, did your research confirm Titiev's
 13 suspicion?
 14 A Do you mean Hotevilla and Bacavi?
 15 Q Yes.
 16 Mr. Scarboro: Let me just ask for a
 17 clarification here. Titiev's suspicion regarding what,
 18 that the information was incomplete, that it was
 19 unreliable, that it was inaccurate?
 20 Mr. Rogers: Yes.
 21 Mr. Scarboro: All of the above?
 22 Mr. Rogers: Yes.
 23 A Again, I think I would have to look at
 24 Titiev's diagram to refresh my memory on that.
 25 Q (By Mr. Rogers) So at the present time

□Page 606

1 you can't recall?
 2 A I can't recall.
 3 Q Dr. Whiteley, further down on the page,
 4 you state, "The plain fact is that not all clans have
 5 'clan land.'" Again, when you referred to "clan land,"
 6 are you referring to it in the second sense of the word
 7 that you gave to me earlier?
 8 A Yes.
 9 Q Is that still your view, that not all
 10 clans had clan land?
 11 A At Third Mesa, yes, that's still my view,
 12 given the rest of the focus in the article that one
 13 cannot always be sure what is a clan by the
 14 conventional definitions.
 15 Q Dr. Whiteley, over on pages 370 and 371,
 16 toward the bottom of the page -- well, in fact, at the
 17 top of page 371 you state that "it is men who have
 18 use-rights in the soil itself." Is it your
 19 understanding of the inheritance rules that were
 20 followed at Oraibi at the beginning of the century that
 21 land would pass along patrilineal lines rather than
 22 matrimonial lines?
 23 A That's not a question I can answer as
 24 such. I mean, I assume that you've read the rest of
 25 the article, so it should be clear that some land was

□Page 607

1 inherited matrilineally. Some land, I think even
 2 before the split, was probably inherited
 3 quasi-patrilineally, if one indeed can identify patri
 4 lines in the Hopi system. I don't think I'm making a
 5 watertight case for that in this article, but this is
 6 part of a very intricate anthropological debate. Are
 7 you sure you know what you're asking me?

8 Q Not always, Dr. Whiteley. Toward the
 9 bottom of the page of 371 and toward the top of 372,
 10 you refer to a study, which I assume was done in your
 11 Ph. D. study, of 109 sheepherding groups at Oraibi in
 12 1906. Based upon that study, is it your view that
 13 herding activity was organized by clan at Oraibi in and
 14 around 1906?

15 A In real terms, yes, that's my view. That
 16 would not exclude Hopis perhaps referring to herding
 17 groups as composed of matrimonial units.

18 Q Now, earlier you refer to, in a certain
 19 sense, certain agricultural areas being called "clan
 20 lands." Were grazing areas designated as clan lands?
 21 Is that one activity? Do you follow that definition?
 22 And again, I'm referring to Oraibi.

23 A There was certainly individuals who had
 24 more or less exclusive grazing rights in certain
 25 areas. I think it would be perfectly within the realm

Page 608

1 of Hopi discourse to characterize those interests or
 2 they would characterize those interests as dependent
 3 upon their clanship or associated with their clanship.
 4 whether that means that structural, functionalist
 5 anthropologists can then infer that those land areas
 6 are joint estates of corporate units is a different
 7 question.

8 Q Well, perhaps you can help me here. On
 9 page 372 you state, "Similarly, cattle herding, which
 10 seems to have been important at Third Mesa since the
 11 18th century," you have a reference, "was not
 12 administered by clan-based groups."

13 A Where are you?

14 Q On page 372 at the first full paragraph.
 15 Dr. Whiteley, what did you mean by that statement?

16 A What I mean by that statement is that my
 17 interpretation was, I believe, from the research that I
 18 conducted about the Hopi and at Hopi, that cattle
 19 herding was conducted by smaller groups than those
 20 covered by clans; that members of those groups may not
 21 always have been clan relatives. And judging by the
 22 way that I've phrased this, I would interpret that I
 23 found out by that time that it was, in most cases, not
 24 a practice which was organized by clan-based groups.

25 Q Dr. Whiteley, you refer to Third Mesa in

Page 609

1 this sentence. Were you also thinking of Moencopi, or
 2 would that inclusion also apply to Moencopi?

3 A Third Mesa does include Moencopi in a
 4 conceptual sense.

5 Q Yes, I understand that, but have you done
 6 enough research, or do you have an opinion whether -- at
 7 Moencopi whether cattle herding was administered by
 8 clan-based groups?

9 A I can't recall that with sufficient
 10 precision. Nagata's book would tell us.

11 Q Further down on the page in the next

12 paragraph you state, "Neither hunting nor gathering
13 were organized by clan, although rabbit hunts, in
14 particular, involved large groups."

15 Are you still of the view that at Oraibi
16 hunting and gathering were not organized by clan?

17 A I have learned nothing since the time that
18 I wrote this, which may have originally been 1981 or
19 1982 and probably at the latest 1985, which would
20 disconfirm the statement that I wrote at that time as
21 it appears here.

22 Q Does the statement also extend to Moencopi
23 as well?

24 A Moencopi is conceptually a part of Third
25 Mesa.

□Page 610

1 Q So, in your view, neither hunting or
2 gathering was organized by clan at Moencopi?

3 Mr. Scarboro: If you know.

4 Q (By Mr. Rogers) If you know.

5 A Not to my knowledge. And I think this
6 probably applied at Second and First Mesa too, although
7 that's speculation on my part.

8 Q Dr. Whiteley, in this section of your
9 report at page 55 there was one footnote that caught my
10 eye. Footnote 11, you state, quote, "One consequence
11 of this," and then you have a reference of text, "is
12 that Hopi statements of their use of the landscape,
13 such as in the records of Dr. Ainsworth's interviews,
14 tend to be especially reliable, since it is absolutely
15 axiomatic in Hopi thinking that willful mendacity about
16 such matters have inevitably injurious personal and
17 environmental effects." Dr. Whiteley, is it your
18 opinion that --

19 A Mr. Rogers, are we finished with
20 Exhibit 42 for the time being?

21 Q Yes.

22 A Thank you.

23 Q Dr. Whiteley, is it your view that Hopis
24 never exaggerate when it comes to describing or talking
25 about land matters?

□Page 611

1 A Given that you've asked the question in
2 such an absolute fashion, I can't say that Hopis never
3 exaggerate when they are talking about land matters.

4 Q Are you saying in this footnote that
5 statements of Hopis regarding land matters are likely
6 to be more reliable than statements, say, of Navajo?

7 A That is my opinion.

8 Q And what is that opinion based upon?

9 A It's based upon -- it's based upon in the
10 Hopi case being able to equate stated Hopi accounts of
11 their land holdings with previously recorded Hopi
12 accounts of similar land holdings with accounts by
13 anthropologists of land holdings. I'm thinking in the
14 case folks of particular families and it's my opinion
15 that -- and I mean "opinion" in this sense
16 impressionistically. I'm not sure I mean it in a legal
17 sense. I understand the two are different. That there
18 tends to be extreme reliability when Hopis talk about
19 these things. But, of course, it says they tend to be
20 especially reliable, which doesn't mean they are always
21 absolutely reliable. And this does not obviate the
22 fact that there are in fact disputes in Hopi societies

23 over land. I don't think anybody has ever pretended
24 otherwise.

25 Some of the claims that I have heard

Page 612

1 reported by Navajos I find to be -- they sound very
2 exaggerated. Some of the claims about emergence on
3 Black Mesa and having always been in the Black Mesa
4 area where, to my knowledge, the historical records are
5 pretty unequivocal, I think, that Navajos weren't even
6 in that area until the 19th century. The extension,
7 for example, in Dr. Vanette's report of sacred areas to
8 areas which exist where there were clearly no Navajos
9 probably in the early part of this century and
10 certainly in the last century seems to me to suggest
11 that there is -- there are some grounds for thinking that
12 Navajos' statements about land ownership tend to be
13 very, very inconclusive.

14 Q Dr. Whiteley, do you know of any other
15 anthropologists, besides yourself, which holds the view
16 that Hopi accounts regarding land matters are likely to
17 be more reliable than Navajo accounts?

18 A Have I talked specifically with Hopi
19 anthropologists about this question? No. If I asked a
20 number of anthropologists who have sufficient knowledge
21 of both Hopi and Navajo society, I think I probably
22 could do that.

23 Q Well, Dr. Whiteley, my question wasn't
24 whether you have asked them, but do you know of any
25 anthropologists that share your view that Hopi accounts

Page 613

1 regarding land matters are likely to be more reliable
2 than Navajo accounts?

3 A I think I answered that question,
4 Mr. Rogers.

5 Q Well, do you know of any?

6 A I answered the question. Can you read it
7 back from the transcript.

8 Q Did you identify any?

9 Mr. Scarborough: He has answered the
10 question, John. He's answered it by saying he's never
11 talked to anybody about it, but he suspects if he does,
12 he would confirm that there are other people that share
13 the view. That's the answer you got and why don't you
14 just -- I mean, he's told you he hasn't talked to anybody
15 about it. That's the question.

16 Q (By Mr. Rogers) Well, in terms of your
17 reading the literature, Dr. Whiteley, do you know of
18 any other anthropologist who in print has stated the
19 agreement with your view or who has stated in their
20 opinion Hopi accounts regarding land matters are likely
21 to be more reliable than Navajo accounts?

22 A I haven't recalled --

23 Mr. Scarborough: Have you even considered
24 any in writing who have stated the contrary?

25 Mr. Rogers: Counsel, you'll get your

Page 614

1 chance to ask questions later.

2 Mr. Scarborough: Strike that last question.
3 It's Friday afternoon.

4 Q (By Mr. Rogers) Dr. Whiteley, I had just
5 a few other questions regarding clan lands.

6 Dr. Whiteley, it's true, is it not, that various Hopi
7 clans have a migration myth which explains the clans

8 arrival at Hopi?
 9 A Yes. With the proviso that you're using
 10 the myth in the anthropological sense rather than the
 11 vernacular sense.
 12 Q And, Dr. Whiteley, you understand when I
 13 do use that word I'm trying to use it in the
 14 anthropological sense in the best way I understand
 15 that. And I certainly don't mean to be pejorative in
 16 making those references. From the Hopi perspective,
 17 does each clan own its own migration myth?
 18 Mr. Scarboro: Own?
 19 A Own its own migration myth?
 20 Q (By Mr. Rogers) Yes.
 21 Mr. Scarboro: I'm going to object to the
 22 question as vague and ambiguous without some definition
 23 of "own."
 24 A Could I ask you to rephrase the question.
 25 Q (By Mr. Rogers) Certainly. From the Hopi

□Page 615

1 perspective, is a person from one clan -- well, strike
 2 that. From the Hopi perspective, does a person of one
 3 clan feel as qualified to tell the migration story of
 4 another clan as a person would be if they were a member
 5 of that clan?
 6 A In general terms, no. But again, with the
 7 proviso that, for example, an old man whose father was
 8 a member of another clan than his own may indeed know
 9 more and may indeed be willing to tell more of his
 10 father's migration myth than a young member of that
 11 clan.
 12 Q Dr. Whiteley, does the migration myth for
 13 each clan differ from mesa to mesa? Are there
 14 differences in interpretations? I guess to give an
 15 illustration, would someone, say, from the Bear Clan in
 16 the Third Mesa have the same interpretation of the
 17 migration myth as, say, a person of the Bear Clan on
 18 Second Mesa?
 19 A Certainly not that part where the Bear
 20 Clan moved from Shongopavi from Oraibi.
 21 Q I take it that goes back to the story of
 22 Matsito?
 23 A That's correct.
 24 Q And exactly who ran away with whose wife?
 25 A That's correct.

□Page 616

1 Q Dr. Whiteley, if you refer back to Exhibit
 2 No. 6, Deliberate Acts, page 52, toward the center of
 3 the page you state, quote, each clan in each village
 4 has its own version of clan history, unquote. Is that
 5 still your view?
 6 A Yes.
 7 Q Does that mean a clan member of a
 8 particular clan in Hotevilla will have a different
 9 interpretation of his clan's migration than a member of
 10 the same clan who lives in First Mesa?
 11 A Probably so, yes, at least in part.
 12 Q I'm sorry, Dr. Whiteley. I don't
 13 understand your reference to "in part."
 14 A Well, I imagine without looking at some
 15 specific clan histories that Fire Clan people from
 16 First Mesa and the Third Mesa would indeed have a
 17 lot -- their histories would have a lot in common, as
 18 stated. They might not coincide in every respect. My

19 suggestion here is that they, in fact, would not
 20 coincide in every respect, but that doesn't mean that
 21 they would not coincide in every respect. What did I
 22 say?

23 Q Dr. Whiteley, you'll get an opportunity to
 24 read it.

25 A My point is that I think that they would

Page 617

1 coincide in some respects and not others.

2 Q Dr. Whiteley, I would like to turn to your
 3 section dealing with the religious meaning of the
 4 Tutskwa. And this might be an appropriate place to
 5 discuss certain aspects that are raised in your book
 6 Deliberate Acts. Is it a fair paraphrase of one of the
 7 points that you make in your book that since the split
 8 at Oraibi in 1906 there has been a decline in societies
 9 in ritual ceremonies on Third Mesa?

10 A Yes.

11 Q And, Dr. Whiteley, I note on pages 273
 12 through 283 in your book, Exhibit No. 6, Deliberate
 13 Acts, you describe various rituals which are no longer
 14 performed at some of the villages, including Oraibi,
 15 Bacavi, and Hotevilla.

16 A Yes.

17 Q I believe at page 275 you indicate, for
 18 example, at Oraibi the wuwtsim functionally ceased in
 19 the 1920s?

20 A Yes. I think I was meaning something
 21 specific there.

22 Q How do you interpret that statement?

23 A Let me try and get at what I think might
 24 get around this. In other words, wuwtsim did
 25 functionally cease in Oraibi in the 1920s, if I'm sure

Page 618

1 I was not wrong when I said this, although it's been a
 2 long time since I wrote this too. But what I said
 3 elsewhere is that individual wuwtsim continued to
 4 attend to some individual responsibilities for a long
 5 time after this sensation of public performances by the
 6 society as a whole.

7 Q Well, is it fair to say -- and I don't want
 8 to have to go through every line in these pages -- that
 9 at Oraibi and Bacavi and Hotevilla the frequency with
 10 which various public religious ceremonies occurred
 11 decreased during the first half of the century?

12 A Yes.

13 Q Dr. Whiteley, was there a similar decline
 14 in ritual activity at First and Second Mesa during that
 15 time period, or was this a phenomenon isolated to Third
 16 Mesa?

17 A There has been, I understand, some decline
 18 in some religious ceremonies at First Mesa and
 19 Shongopavi and Mishongnovi at least on Second Mesa, but
 20 the reasons for the decline are somewhat different from
 21 the reasons at Third Mesa.

22 Q What are the reasons at First and Second
 23 Mesa?

24 A I don't know enough or I don't have
 25 sufficient recall at this point to be able to give a

Page 619

1 definite answer to that question.

2 Q Dr. Whiteley, do you know which societies
 3 were still functioning in Moencopi during the 1930s?

4 A Again, Nagata would be a much more
5 reliable source, but, of course, we must remember that
6 Moencopi maintained religious dependence on Old
7 Oraibi's religious structure and still does in part.

8 Q Dr. Whiteley, are you saying that the
9 decline that occurred at Old Oraibi would have also
10 been accompanied by a decline at Moencopi?

11 A Well, if Moencopi never had its own
12 independent cycle of ceremonies from Old Oraibi -- and by
13 "ceremonies," I'm referring to particularly the Wuwtsim
14 ceremonies -- then I don't see how you could call it a
15 decline.

16 Q Well, Dr. Whiteley, to your knowledge,
17 were there any ceremonies being performed at Moencopi
18 in the 1930s?

19 A I'm sure there was some ceremonies being
20 performed at Moencopi in the 1930s, or at least I would
21 be very surprised to learn that there were no
22 ceremonies performed in that decade.

23 Q Do you know which ones?

24 A No, I don't. I think Nagata, again, would
25 be a pretty reliable source on that, Nagata's book.

□Page 620

1 Q Dr. Whiteley, I only have a few more
2 questions regarding this report, the first report.

3 Mr. Scarborough: Can it be? Can it be?

4 Q (By Mr. Rogers) And particularly with
5 reference to the sixth section of your report dealing
6 with the religious and economic use of the Tutskwa.

7 Mr. Scarborough: Pages?

8 Mr. Rogers: Oh, starting at page 75.

9 Mr. Scarborough: Thank you.

10 Mr. Rogers: And running through page 83.

11 Q (By Mr. Rogers) Now, Dr. Whiteley, I
12 realize that it is your contention that use was made of
13 the Tutskwa by the Hopi. The following series of
14 questions I'll be asking you is to discover to what
15 degree or to what extent you investigated various kinds
16 of economic activity during the 1930s. Now, I don't
17 know from your report that you've investigated those
18 areas, but there is a suggestion that you may be
19 expressing some opinions regarding economic use of the
20 Tutskwa, so I want to focus on particular types of
21 use.

22 A Do I indicate that this was in the 1930s
23 particularly?

24 Q Well, that's what I want to try to find
25 out, if you have indeed investigated various aspects of

□Page 621

1 economic activity by either the Hopi or Navajo during
2 the 1930s.

3 Mr. Scarborough: And you want to know
4 whether he personally has, as distinguished from
5 reading other people's reports?

6 Mr. Rogers: That's correct.

7 Q (By Mr. Rogers) And the purpose of this
8 is so I'm not surprised at trial to learn that you have
9 talked to 900 Hopi.

10 A Maybe it's a good --

11 Mr. Scarborough: Well, why don't you let him
12 ask a question.

13 Q (By Mr. Rogers) It has a flavor of a
14 laundry list, and I wanted to prepare you for that.

15 Dr. Whiteley, during the course of your investigation,
 16 in preparing the report, did you investigate where
 17 Hopis farmed during the 1930s?

18 A Personally or in terms of reading
 19 documents?

20 Q Well, aside from reading the reports that
 21 have been prepared by the other Hopi experts or the
 22 Navajo experts or by the intervenor's experts.

23 A I am sure that I read some of the material
 24 in Arnold & Porter's files, for example, about the Page
 25 investigation of Hopi agricultural land. This material

Page 622

1 would be covered in the notes that I am sure Arnold &
 2 Porter produced, which I refer to as my box notes.

3 Mr. Scarboro: Let me just state for the
 4 record that we have not asked Dr. Whiteley to testify
 5 about locations of particular Hopi farms or Navajo
 6 farms in the 1930s. As you probably know, we have
 7 other experts who will testify on that subject.

8 And we have asked Dr. Whiteley to opine at
 9 the trial on the nature of the Hopi land claim and
 10 their relationship, the Hopi attitude about land in the
 11 1930s and earlier and later. But we have not at this
 12 point asked him to express any opinions about, you
 13 know, where cows were or where farms were or where
 14 people performed particular kinds of acts or where they
 15 may have gathered wood or operated or performed wage
 16 work or such things.

17 And the reason I'm offering that is
 18 because I'm sure he's read about such activities as he
 19 was working on his report, reviewing other reports,
 20 looking at the Navajo expert work and so forth, but we
 21 have not asked him to at this point to testify -- and
 22 have no -- do not anticipate asking him to testify on
 23 those subjects at trial.

24 Q (By Mr. Rogers) Well, perhaps the
 25 simplest way to do it is ask you what your

Page 623

1 understanding is of what you will be testifying at
 2 trial. Dr. Whiteley, is it your present understanding
 3 that you will be testifying at trial regarding where
 4 Hopis farmed during the 1930s?

5 A It's my understanding that I won't be
 6 testifying on that.

7 Q Is it your understanding that you will be
 8 testifying about where Hopis grazed their livestock
 9 during the 1930s?

10 A May I consult counsel?

11 (Discussion off the record between the
 12 deponent and Mr. Scarboro.)

13 Mr. Scarboro: No. Just say no. That's
 14 not our intention to have you testify about those
 15 matters.

16 A No.

17 Q (By Mr. Rogers) Is it your understanding
 18 that you will be testifying about where Hopis gathered
 19 firewood in the 1930s?

20 A No.

21 Q Is it your understanding that you will be
 22 testifying regarding where Hopis gathered plants for
 23 subsistence or religious purposes during the 1930s?

24 A Well, as you're asking these questions,
 25 again, depending upon -- I don't know what the

Page 624

1 questions -- the specific questions at trial will be, of
 2 course. But if some of those questions pertain to
 3 usages of outlying areas, shrine areas and so forth, I
 4 think as we've seen over the last two or three days, I
 5 have indicated knowledge of certain sorts of gathering
 6 activities like eagle gathering and so forth and as
 7 this appears in my report.

8 Mr. Scarboro: Yeah, I want to add
 9 something too. And that is, of course, Dr. Whiteley is
 10 aware that they generally engaged in these activities.
 11 And if he were asked at trial, he would so state, and I
 12 believe he's qualified to state. If the question is
 13 what particular areas people did perform particular
 14 activities in in the sense of a body count or looking
 15 at where particular farms, exact locations of
 16 particular farmers, and identity of farmers' plot by
 17 plot, we have no intention of asking him that at
 18 trial. If questions were put, were Hopi gathering wood
 19 in the Tutskwa in the 1930s, I'm sure his answer would
 20 be yes. And I don't think that's really a
 21 controversy. But I think the best guide is his report.

22 Mr. Rogers: I think that's fair enough.
 23 And I was trying to drive at the particular locations.

24 Mr. Scarboro: And as you know, he has not
 25 done fieldwork. We have not asked him to do fieldwork,

Page 625

1 the kind we have asked Ainsworth and others to do
 2 compiling particular information about where particular
 3 Hopi people were located and particular activities, and
 4 we do not intend to ask him to do that.

5 Mr. Rogers: Why don't we take a break at
 6 this point.

7 (A break was taken.)
 8 (Discussion off the record.)
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Page 626

1 whereupon, the within proceedings were
 2 concluded at the approximate hour of 3:05 p. m. on the
 3 24th 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 IV
 Page 51

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() No changes () Amendments attached
Subscribed And Sworn To before me this
day of , 1989.

Notary Public
Address
My commission expires

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Page 627

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 IV,
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 24, 1989;
then reduced to typewritten form, by means of
computer-aided transcription, consisting of 126 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 12th day of April, 1989.

Michelle R. Mccollum
Certified Shorthand Reporter
Proofread by: C. Politzki
Fees
Appearance: \$70.00
Original: \$207.90
Copy: \$176.40

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Page 628

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Hyatt & Associates, Inc.
Registered Professional Reporters
1719 Emerson Street
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April 12, 1989
Mary Gabrielle Sprague, Esq.
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Denver, Co 80203

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10

Re: Sidney vs. Macdonald vs. James
Deposition of: Peter M. Whiteley, Ph. D. - Volume IV
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 Amendment form signed, please have them notarized and return for filing . . .

X to this office within 30 days to comply with the statute to ^, within * days with copies of Amendments to this office to this office by ^ since trial in this matter is set for ^ to court on the date of trial, with copies of Amendments to other counsel, plus copy to this office.

Thank you for your attention to this matter.

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

Page 629

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Re: Sidney vs. Macdonald vs. James
Deposition of: Peter M. Whiteley, Ph. D. - Volume IV
Date of Deposition: March 24, 1989
Enclosed is the above original transcript. ..

signed, no changes
signed, with changes, copy enclosed
not signed, notice duly given 4-12-89
pursuant to the Rules of Civil Procedure

not signed, notice duly given 4-12-89
since trial is set for 9-89
to be signed in court or signature pages
to be returned to court on date of trial

signature pages/amendments to be returned to
above counsel
signature not required
mailed by certified mail
hand-delivered

Hyatt & Associates, Inc.
cc: Mary Gabrielle Sprague, Esq.