

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
Page 631
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

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 V
March 27, 1989

Pursuant to Notice taken on behalf of the Defendant
at 1700 Lincoln Street, Suite 4000, Denver, Colorado
80203, at 10:10 A m., before Diane K. Goodell,
Registered Professional Reporter and Notary Public
within Colorado.

Appearances:

James E. Scarboro, Alfred T. McDonnell,
and David C. 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.

17
18
19
20
21
22
23
24
25

Page 632

I N D E X

	Page
3 Examination Of Peter M. Whiteley, Ph. D: Volume V	
4 March 27, 1989	
5 By Mr. Rogers	633
6	Initial Reference
7 Defendant's Deposition Exhibits:	
8 1 Report by Whiteley, Hopitutskwa: An	
9 Historical and Cultural Interpretation of	
10 the Hopi Traditional Land Claim	633
11 3 Report by Whiteley, On the History of	
12 Hopi-Navajo Relations	635
13 6 Deliberate Acts	723
14 43 Anasazi and Navajo land Use in the Mckinley Mine	
15 Area Near Gallup, New Mexico, Volume Ii: Navajo	
16 Ethnohistory, by Kelley, with a contribution	
17 by Whiteley	634
18 44 Excerpt of proof of Navajoland: Family	
19 Settlement and Land Use	634
20 45 Excerpt from Navajo Indians Ii, by Reeve	681
21 46 Handwritten letter, 6-16-1888	689
22 47 Typewritten copy of letter, 6-16-1888	690
23 48 Handwritten document, 7-28-1898	697
24 49 Excerpt of report by Russell	707
25 50 Letter to Leupp from Murphy, 3-25-05	711
(Enclosed previously to counsel.)	

Page 633

1 whereupon, the following proceedings
2 were taken pursuant to the Federal Rules of Civil
3 Procedure:
4 Peter M. Whiteley, Ph. D. - Volume V,
5 having been first duly sworn to state the whole truth,
6 testified as follows:
7 Examination
8 By Mr. Rogers:
9 Q Well, Dr. Whiteley, I understand that you
10 have a clarification that you'd like to make.
11 A Yes. On page 18 of the Hopitutskwa
12 report, Exhibit 1, I've been over this since our
Page 2

13 discussion the other day, and I want to change the
 14 wording slightly with respect to the quotation of
 15 Saloftoche, et al., 5-15-1926. I think this claim
 16 refers more to a Hopi conception of the 1882 executive
 17 order boundaries rather than -- rather than it may
 18 necessarily do to the tutskwa, so I haven't yet worked
 19 out how I'm -- how I shall change that wording, but
 20 that's the sentiment that it will reflect.

21 Mr. Scarboro: And just so the record's
 22 clear, the reference that Dr. Whiteley just referred
 23 to, I believe it is spelled in his report as
 24 S-a-l-o-f-t-o-c-h-e.

25 Q (By Mr. Rogers) Dr. Whiteley, are there

Page 634

1 any other clarifications you'd like to make?

2 A I don't think so.

3 Q Dr. Whiteley, I'd like to now move on to
 4 your report regarding the History of Hopi-Navajo
 5 Relations.

6 I'd like to mark as Exhibit No. 43
 7 excerpts from a report entitled
 8 "Anasazi"-- A-n-a-s-a-z-i --"and Navajo Land Use in the
 9 Mckinley Mine Area Near Gallup, New Mexico, Volume Two:
 10 Navajo Ethnohistory," by Klara, K-l-a-r-a, B. Kelley,
 11 K-e-l-l-e-y, with a contribution by Peter Whiteley.

12 (Whiteley Deposition Exhibit 43 was
 13 marked.)

14 Q I'd like to mark as Exhibit No. 44
 15 excerpts from a document entitled, "Navajoland: Family
 16 Settlement and Land Use." On the front page, and I
 17 think on each of the pages, there's stamped on the page
 18 the word "Proof."

19 A May I ask whether Exhibit 44 has been
 20 produced to Arnold & Porter?

21 Q Dr. Whiteley, I'm not sure. I know that
 22 we obtained a copy of it only a few weeks before this
 23 deposition.

24 A Um-hum.

25 Q I don't know if we've produced it or not.

Page 635

1 A Okay. The reason I ask is that I only
 2 obtained a copy of this about two weeks before the
 3 deposition, so I haven't myself supplied Arnold &
 4 Porter with a copy of this.

5 Mr. Scarboro: Those Brown & Bain lawyers
 6 are on the job, aren't they?

7 Q (By Mr. Rogers) Dr. Whiteley, on page 2
 8 of your report, Exhibit No. 3, you note in Footnote
 9 No. 1 that for this section -- I take it "this section"
 10 is referring to Navajo History and Historical Movements
 11 to the Early 1900s -- you say, "I rely, in part, on my
 12 earlier work on Navajo history, published in Kelley
 13 (1982), currently being republished as Kelley and
 14 Whiteley (in press)." Are the references that you're
 15 referring to in that footnote the same as Exhibits 43
 16 and 44?

17 A Yes, they are. Exhibit 44, I haven't had
 18 a chance to go through myself yet to ascertain which
 19 sections I may have originally contributed and which
 20 Klara has revised or edited. As I mentioned on the
 21 record last week, although I am listed as joint author
 22 on "Navajoland," Klara Kelley is really the principal
 23 author, and has undertaken all editing that was

24 conducted on the document since I wrote the original
25 manuscript for "Anasazi and Navajo Land Use" in 1980.

□Page 636

1 Q And, Dr. Whiteley, I don't intend to spend
2 much time on Exhibit No. 44, other than to find out
3 what sections you worked on. I think most of my
4 questions will be devoted to Exhibit No. 43.

5 A Okay.

6 Q Dr. Whiteley, if you would, Exhibit
7 No. 44, if you'd turn to page numbered 3, to the third
8 full paragraph on that page. It says there that
9 "Whiteley covers the period from Navajo origins to
10 1864, and Kelley is responsible for the other
11 chapters."

12 Dr. Whiteley, referring over to the table
13 of contents which appears in Exhibit No. 44, are the
14 sections that you've helped work on in Exhibit No. 44
15 those sections that are contained in Chapters 2 and 3,
16 subject to whatever editorial changes Dr. Kelley might
17 have made?

18 A Yes, they are.

19 Q So I take it the focus of your research
20 was the period before 1964?

21 A That's correct.

22 Q Dr. Whiteley, in Chapter 1 of Exhibit
23 No. 44, there are several references that are made in
24 the course of the chapter to the authors. Did you
25 participate in writing Chapter 1?

□Page 637

1 A I did not.

2 Q Have you had a chance to review it?

3 A Alas, I have not.

4 Q Dr. Whiteley, turning to Exhibit No. 43 --

5 A Oh, I'm sorry. I should say, to further
6 clarify my last response, I did read this chapter
7 before it went to press. I think Dr. Kelley wrote it
8 in 1985, and I saw it at that point, but I haven't had
9 a chance to go through it in galley proof form.

10 Q Do you recall if you were able to provide
11 any comments to Dr. Kelley on that chapter?

12 A I don't recall that well, but I seem to
13 think that I told her that it was okay with me, but I
14 may have given her some specific comments which she
15 incorporated. I really just don't recall.

16 Q Do you recall if there were other portions
17 of the book, aside from Chapters 1 through 3, that you
18 worked on?

19 A I'm pretty certain that I did not.

20 Q Turning to Exhibit No. 43, with respect to
21 Exhibit No. 43, is your contribution focused on the
22 period of time from Navajo origins to 1964?

23 A It is.

24 Q And I take it the work that appears from
25 page 2 through page 32, up to the title "Conquest and

□Page 638

1 and Its Aftermath," were the sections that you worked
2 on?

3 A That's correct.

4 Q And, Dr. Whiteley, I had some questions
5 regarding Exhibit No. 43, some passages that are
6 contained there, and if during the course of my
7 questions you'd like to take some time to review some
8 of the passages in context --

9 A Um-hum.
 10 Q -- with the rest of what's written in
 11 Exhibit 43, please take the time to do so.
 12 A Um-hum.
 13 Q Dr. Whiteley, on page 6 of Exhibit No. 43,
 14 in describing the period of time during the first half
 15 of the century of the 1600s, you state, "But probably
 16 the main cause of hostilities between the Spaniards and
 17 the Navajo Apaches in the 17th century was the slave
 18 trade. The basic commodity was nomadic Indians, and
 19 McNitt --" reference to 1972 --"points out that most
 20 'Navajo' raids against the Spanish and the Pueblo
 21 Indians were to retaliate against slaving expeditions.
 22 Scholes"-- and there's a reference to 1936 --"reports
 23 raids on Jemez"-- I believe --

24 A Um-hum.
 25 Q --"in the 1620s that may have had this

Page 639

1 motive."
 2 Dr. Whiteley, is it still your view that
 3 Navajo raids against the Spanish and the Pueblo Indians
 4 in the first half of the 17th century were in
 5 retaliation for the slaving expeditions against the
 6 Navajo?

7 A Well, although this is rather difficult to
 8 reconstruct, and I certainly do not intend to be
 9 evasive, it's my recollection that that sentence,
 10 those -- or those three sentences were actually inserted
 11 by Dr. Kelley into my account, but -- I don't recall
 12 whether that is absolutely true, but I think it is.

13 Q So I take it you would agree with that
 14 interpretation?

15 A I think on this score I -- I'd defer to
 16 Dr. Kelley as senior author. When I wrote this, I was
 17 a graduate student, and it was principally her
 18 document, so I -- I felt I was merely providing textual
 19 background for something that she was more interested
 20 in molding.

21 Q I see. Well, Dr. Whiteley, the line that
 22 I'm in -- I realize that Dr. Kelley may have added some
 23 additional material to these sections, but I don't know
 24 as I sit here what she wrote and/or what you wrote.

25 A Indeed. I mean, the only possible way to

Page 640

1 to be certain about that is to try to locate the
 2 original manuscript that I submitted to Dr. Kelley, but
 3 I don't know that that still exists.

4 Q Well, what I suggest, as we go through,
 5 there are certain passages in this that I'm interested
 6 in, and if it's your recollection that you didn't write
 7 it, then you can so testify, and then I'll ask you if
 8 you agree with it.

9 A Okay.

10 Q Following the passage that I just read
 11 from page 6, it states, "Meanwhile, droves of Pueblo
 12 Indians were seeking refuge from Spanish oppression
 13 among the Navajos"-- there's a reference to Vivian
 14 1960 --"and provoked more raids upon the Spanish."

15 Dr. Whiteley, before the Pueblo Revolt,
 16 were there instances of Pueblo Indians seeking refuge
 17 among the Navajo?

18 A To the best of my recollection, again,
 19 this -- these two sentences were part of an insertion by

20 Dr. Kelley, but the statement that some Pueblo Indians
 21 were seeking refuge among the Navajos I think is
 22 correct, and I don't have any trouble with that.

23 Q Do you know which groups of Pueblo
 24 Indians?

25 A Oh, off the top of my head, that's very

Page 641

1 difficult. I seem to recall that Jemez was one which
 2 had a -- at least for a period of time, had an alliance
 3 with Navajos.

4 Mr. Scarboro: Could you spell that.

5 The Deponent: J-e-m-e-z.

6 A But there may -- I mean, there may be others
 7 that I just don't recall, and I may be wrong about
 8 Jemez at this point.

9 Q (By Mr. Rogers) Fair enough. Further on
 10 in the paragraph on page 6, it's stated, "The Navajos
 11 also attacked other Pueblo Indians because the Spanish
 12 enlisted them in the militia. By the early 17th
 13 century, the Spanish governors had come to depend
 14 mainly on Pueblo auxiliaries. Soldiers of the
 15 presidial force never exceeded 100," and there's a
 16 reference to McNitt. "Puebloans predominated in
 17 Spanish expeditions against the Navajo Apaches until
 18 the American period," referring to Lieby -- or Lieby.
 19 "Whether the Puebloans were willing participants or
 20 not, the Navajo Apaches undoubtedly did not appreciate
 21 them for it."

22 Dr. Whiteley, do you recall whether you
 23 wrote that passage or if that was something that
 24 Dr. Kelley wrote?

25 A With the possible exception of the first

Page 642

1 sentence that you read, namely, "The Navajos also
 2 attacked other Pueblo Indians because the Spanish
 3 enlisted them in the militia." I did write the rest of
 4 it, certainly. She may have added that first sentence
 5 as a link or that may have been my words, but I -- I'm
 6 uncertain about that sentence. The rest of it, I am
 7 confident that I wrote that.

8 Q Well, Dr. Whiteley, is it your view that
 9 one of the reasons why the Navajo attacked the
 10 Puebloans during the 1700s was because Puebloans were
 11 used by the Spanish as soldiers against the Navajo?

12 A That it was a reason, yes. Yes.

13 Q Now, you do say that the Puebloans
 14 predominated in Spanish expeditions against the Navajo
 15 Apaches until the American period. Do you consider the
 16 American period running up to 1846?

17 A Yes. I mean, beginning in 1846.

18 Mr. Scarboro: Yeah, beginning.

19 Q (By Mr. Rogers) And it's still your
 20 understanding that Puebloans were used as auxiliaries
 21 in expeditions against the Navajo at least up until
 22 1846?

23 A That's correct. To the best of my
 24 recollection, however, none of these Puebloans would
 25 include Hopis, or at least Hopis living at Moencopi,

Page 643

1 and may possibly have included some Hopis that had been
 2 relocated to Rio Grande.

3 Q Fair enough. And by referring to
 4 Puebloans, I -- please understand me as not referring

5 only to the Hopi.

6 A Okay.

7 Q Dr. Whiteley, over on page 7 of Exhibit
8 No. 43, in the first full paragraph on that page, it
9 states, "Chaos ruled for the next 20 years until the
10 Great Revolt of 1680." There's reference to Scholes.
11 "Governor Lopez' greed for slaves in the early 1660s
12 brought forth more than 100 complaints against him by
13 the Franciscan fathers. Once he reportedly sent 70
14 Apache slaves to the mines of
15 El Parral"-- E-l, new word P-a-r-r-a-l --"in Chihuahua,
16 and before they had even arrived there, he had
17 dispatched 40 presidial soldiers and 800 Puebloan
18 auxiliaries to take more slaves," and there's reference
19 to McNitt.

20 Dr. Whiteley, do you recall whether you
21 wrote that passage?

22 A I really don't recall. My best guess is
23 probably that Dr. Kelley wrote that passage. I -- I
24 think -- huh. There are parts of this entire paragraph
25 that seem more familiar than others, as if I indeed,

□Page 644

1 would have written them, but the paragraph as a whole,
2 my best guess at this point is that it was -- it was -- had
3 input from both authors.

4 Q Fair enough. Well, Dr. Whiteley, based
5 upon your understanding of the period of the second
6 half of the 1700s, say from 1660 to 1680, is it your
7 understanding that the Spanish continued to conduct
8 slaving expeditions against the Navajo?

9 A I think that's probably true, yeah. I
10 have no reason to question that statement, so --

11 Q And Puebloan auxiliaries were used as part
12 of these expeditions?

13 A Again, if McNitt -- McNitt says it and
14 Kelley is quoting it, or possibly I am quoting it, then
15 I have no reason to question it.

16 Q Dr. Whiteley, I'd like you to turn to
17 page 9 of Exhibit No. 43, to the first full paragraph
18 on that page. About halfway down that paragraph, it's
19 stated, "However, the major Navajo grievance was
20 against the Spanish. From the time of de Vargas"--
21 d-e, space, new word V-a-r-g-a-s --"entry in 1692 until
22 he had quelled the last vestiges of Pueblo rebellion in
23 1696, numerous reports show Navajo allying themselves
24 with particular groups of Puebloans and with other
25 Apaches (even with the Utes on one occasion.) Their

□Page 645

1 goal was to drive the Spanish out again, though all
2 these attempts failed," and referring to Reeve. Do you
3 recall whether you wrote that passage?

4 A I think I did, yes.

5 Q Is it your understanding of the period
6 that in the 1690s the Navajo allied themselves with
7 various Puebloan groups in hopes of driving the Spanish
8 out?

9 A I think the way you actually read it --
10 maybe I'm being excessively pedantic, but you said --
11 when you read that, you said, "Numerous reports show
12 Navajo ally themselves." It says, "Navajos." In other
13 words, there may have been some Navajos who did and
14 others who didn't, but I don't think the passage
15 itself, or at least my reading of the intentions of

16 myself as author, if I indeed, was, which I'm pretty
 17 sure I was, would indicate that all Navajos were allied
 18 with Puebloans in that period.

19 Q Based on your understanding of the period,
 20 do you know which Puebloan groups did enter such
 21 alliances?

22 A Again, my recollection is hazy. I seem to
 23 recall -- I suppose I should insert the proviso that
 24 what's already appeared in this report before is that
 25 the identification of a specifically Navajo ethnicity,

Page 646

1 as opposed to other kinds of Apaches, is in
 2 considerable doubt in the 17th century. In other
 3 words, the Spanish just referred to Apaches, and they
 4 started to refer to a different group as Apaches de
 5 Navajo or del Navajo or what have you, but functionally
 6 speaking, it's extremely doubtful that most of the
 7 Spanish could tell any of the -- did differentiate
 8 between Navajo Apaches and other kinds of Apaches.
 9 Certainly, their languages were probably identical
 10 between some Apachean groups anyway, if not all --
 11 probably not all, but some, at that point.

12 So if it's in a Spanish record that one
 13 pueblo was allied with the Navajo or Navajos, we don't
 14 always know whether that really means people who
 15 subsequently came to identify themselves as Navajos as
 16 opposed to Jicarillas or Gilenos or -- Jicarillas is
 17 J-i-c-a-r-i-l-l-a-s. Gilenos is G-i-l-e-n-o-s --
 18 possibly even Mescaleros, but -- M-e-s-c-a-l-e-r-o-s -- but
 19 again -- so it's hard to know if this is a definitive
 20 statement, but to answer your question, I seem to
 21 recall, again -- but particularly perhaps Jemez,
 22 J-e-m-e-z, and possibly Taos, T-a-o-s, were mentioned
 23 as having Navajo alliances, and very probably others
 24 too.

25 Q Based upon your research of the period,

Page 647

1 again, that being the vicinity of the 1690s, do you
 2 know if any such alliances were entered into by the
 3 Hopi with -- with either the Navajo or Apachean groups?

4 A I seem to recall having read since this
 5 document was produced an account written by Dr. Kelley
 6 which indicates that there may have been some Navajos
 7 present at one point at Wolpi, maybe, in the 1690s, but
 8 I don't recall anything about an alliance, and I don't
 9 exactly remember the source that she was citing, but it
 10 seems to have been an unusual occurrence, I think.

11 Q Dr. Whiteley, there was one reference a
 12 little earlier on that I inadvertently skipped. Going
 13 back to page 7, in the second full paragraph, in the
 14 second line, it's stated, "The Navajo Apache seem to
 15 have farmed, although how much they depended on farming
 16 is questionable, especially since most parts of the
 17 'Navajo Province' are either too dry or too cold for
 18 reliable crops." And then it goes on to discuss
 19 reference to Aberle, A-b-e-r-l-e, and then some other
 20 information.

21 Dr. Whiteley, is it your belief that
 22 Navajo or the Navajo were engaged in agriculture before
 23 1700?

24 A May I read the whole paragraph?

25 Q Certainly. And, again, Dr. Whiteley, if

Page 648

1 it helps you to look at other parts of the report,
2 you're more than welcome to do that.

3 A Let me just go through --

4 Q Certainly.

5 A -- a little -- okay. Without being able to
6 refer to some more specialized documents in Navajo
7 archaeology, I don't feel that I can make a conclusive
8 response to this statement -- to this question. I think
9 the statement, "The Navajo Apaches seem to have
10 farmed," is my statement, and if my recollection is
11 correct, this is supported by general works that I've
12 read since this was written.

13 In other words, I quote a passage from
14 Jorgensen in my report. I actually question his
15 implication or -- that Navajos may have been
16 horticulturists, in part, before they even arrived west
17 of the Rio Grande, but he does make -- he does make
18 reference to that argument, which is that Navajos
19 acquired -- protonavajos acquired horticulture from their
20 contact with Plains peoples during migration from
21 Canada. Without being a specialist in this particular
22 field, it's very difficult, though, for me to make any
23 solid judgment on that.

24 I think the prevailing -- prevailing
25 accepted migration route is via the Plains, but that

□Page 649

1 prevalence, I think, has probably only been -- it's only
2 been prevalent since the late '70s, early '80s, and, of
3 course, it's still disputed. There are still those
4 that argue that Navajos migrated via the Rocky
5 Mountains, by the eastern escarpments of the Rocky
6 Mountains. There is still an argument, I believe --
7 maybe it's been completely refuted by now -- there is an
8 argument that Apaches came via the Great Basin.

9 Again, all of these things are
10 interlinked. Clearly, you can't learn horticulture
11 from the Plains people if you've migrated via the
12 Great Basin, but I think it's -- to the best of my
13 knowledge and to the best of my recollection, it's fair
14 to say that Navajos were, indeed, engaged in some form
15 of horticultural practices in the 17th century.

16 Q Dr. Whiteley, I'd like to turn back to
17 page 9 of Exhibit 43. In the second full paragraph on
18 that page, it states, "During and after the Reconquest,
19 many Puebloans fled among the Navajo, and reports on
20 the refugees reveal where the Navajo were living.
21 Reeve reports that Puebloans from Jemez, San Juan,
22 Santo Domingo, and Cochiti selected a refuge at either
23 Acoma or Zuni or remained in the Jemez Mountains.
24 Still others fled to the 'Apaches of Cebolleta or to
25 the eastern Plains Apaches,'" and referring to Reeve.

□Page 650

1 Dr. Whiteley, did you recall if you were
2 the one to write this passage, or is this something
3 done by Dr. Kelley?

4 A I think I wrote this passage.

5 Q Is it still your view that, following the
6 Pueblo Revolt and during the period of the Reconquest,
7 many Puebloans fled among the Navajo?

8 A Again, just a diacritic note. You left
9 off the "s" on both occasions in the first sentence
10 where "Navajos" appears, and so it says, "Many
11 Puebloans fled among the Navajos, and reports on the

12 refugees reveal where the Navajos were living." At
 13 least in the first part of that sentence, this doesn't,
 14 to my way of interpreting this now, necessarily include
 15 all Navajo, but to answer your question, yes, it is my
 16 understanding that there were Pueblos who fled among
 17 the Navajos.

18 Q Do you know which Pueblo groups did so?

19 A Well, again, just -- it's possible that I
 20 even mentioned this at someplace else in this report.
 21 I can look, if that's necessary, or I can hazard a
 22 recollective guess. I'm pretty sure that there were
 23 people from San Ildefonso, which is S-a-n
 24 I-l-d-e-f-o-n-s-o; from Jemez -- gosh, I'm certain that
 25 there were a number of other Pueblos from where

□Page 651

1 refugees fled among the Navajos, but I can't give a
 2 definitive answer to that now, really.

3 Q Fair enough. And, Dr. Whiteley, for what
 4 it's worth, I thumbed through the rest of your report,
 5 and I wasn't able to find any other references.

6 A Again, I think that's something that could
 7 be fairly easily discovered with a little -- a little
 8 research.

9 Q Do you have particular sources in mind
 10 that would be places that you would check to try to
 11 find that information?

12 A Well, I think to start with, I would try
 13 one of the pertinent articles by Frank Reeve from the
 14 New Mexico Historical Review. There are a series.
 15 There are about four between 1956 on that, and
 16 there -- about four between '56 and '58, especially, and
 17 there are some others subsequent to that.

18 Okay. I think particularly the article
 19 published in 1958, which is listed in my bibliography
 20 for the "Hopi-Navajo Relations" report.

21 Beyond that, there are some more recent
 22 things which have appeared on Navajo history which I
 23 think in general terms duplicate the sources on earlier
 24 history that I was consulting. It's conceivable that
 25 some of the articles in the Handbook of North American

□Page 652

1 Indians might refer to this in such specific terms.
 2 Lee Correll's semi-published historical material,
 3 that's, on Navajo -- maybe they even are published by
 4 now -- might be a good place to start.

5 I can think a little further if you want
 6 me to, but that -- I can possibly think of one or two
 7 more sources if I sat and thought about it.

8 Q Well, Dr. Whiteley, I think that will give
 9 me a good start.

10 Returning again to page 9 of Exhibit
 11 No. 43, toward the very bottom of the page, in the last
 12 line, it states, "However, while Forbes' date may be
 13 too early, Navajos had apparently settled in the
 14 vicinity of Canyon de Chelly by 1700 when Hopi refugees
 15 from Awatovi"-- A-w-a-t-o-v-i --"fled there," and there's
 16 a reference to Brugge 1972. Dr. Whiteley, was this a
 17 passage that you wrote, do you recall?

18 A I don't recall whether I did write that or
 19 not. I certainly recall my dissatisfaction with
 20 Forbes, which I think is a dissatisfaction that's very
 21 generally shared among historians, but I don't recall
 22 whether I did write the rest of the sentence.

23 Q well, Dr. whiteley, based upon your
24 investigation of the period, is it your view that
25 Navajos were settling in Canyon de Chelly by 1700?

Page 653

1 A I don't have sufficient knowledge to
2 judge. That's not something that I did take and put in
3 my report for Arnold & Porter. I seem to recall that
4 the first mention of Canyon de Chelly occurs
5 considerably later in the 18th century. In order to
6 really give a complete answer to that, I think I would
7 have to consult the source cited, which is Brugge
8 1972.

9 If this is anywhere near correct, I think
10 that -- and, again, I'm speaking -- I'm trying to recall
11 from work conducted nine years and more ago -- I think
12 this depends upon some tree-ring dates, and Brugge has
13 been criticized by a number of other anthropologists
14 for his interpretation of tree-ring dates, but that may
15 also be correct, and I -- you know, I -- at this point, I
16 cannot make a reason -- a reasoned judgment either way.
17 If there is definitive evidence that that's the case, I
18 would certainly be willing to accept it.

19 Q well, fair enough. And, Dr. whiteley, I
20 understand it's been a while since you wrote portions
21 of this report. I take it, based upon what you know
22 right now, you do not have sufficient information to be
23 able to form an opinion one way or the other as to
24 whether Navajo were -- or Navajos were settling in
25 Canyon de Chelly by 1700?

Page 654

1 A That's correct.

2 Q Based upon your research of the period,
3 were there people from Awatovi who were settling in
4 Canyon de Chelly around 1700?

5 A I honestly don't recall that. I think
6 it's -- I seem to recall there may be something of that
7 nature in Dr. Adams' report, but I don't recall exactly
8 what that is.

9 Q Continuing over to page 10 of Exhibit
10 No. 43, toward the very top of the page, following the
11 reference to Brugge, it states, "And several dwellings,
12 stock corrals, and antelope hunting corrals on
13 Black Mesa date from the early 1700s; an isolated early
14 date is 1622"-- as referenced in Van Valkenburgh --
15 "though some early dates may come from dead wood used
16 on structures built much later."

17 was this a passage that you wrote, do you
18 recall?

19 A I think it probably was, yes.

20 Q well, is it still your view that several
21 Navajo dwellings, stock corrals, and antelope hunting
22 corrals on Black Mesa date from the early 1700s?

23 A well, I don't really know if it's -- it's
24 appropriate to refer to it as my view. In other words,
25 what I was doing for this report was simply culling

Page 655

1 ethnohistoric sources, for the most part secondary
2 sources. I don't even recall if I looked at one
3 primary source for a project that I was in -- that was at
4 the behest of Dr. Kelley.

5 So, in other words, I was presenting her
6 with information which existed in the document -- in the
7 published record. In that sense, all I'm doing in this

8 sentence is reporting on information that's contained
9 in Van Valkenburgh 1956. I'm not assenting to the -- to
10 the contents of that information.

11 Q Well, fair enough. Dr. Whiteley, based
12 upon your research of the period, do you have an
13 opinion as to whether Navajos were -- or whether Navajos
14 had dwellings, stock corrals, antelope hunting corrals
15 on Black Mesa in the early 1700s?

16 A I really don't have an opinion, and I
17 think it would have to depend on tree-ring analysis,
18 and that is something which is being revised on an
19 ongoing basis, I think; so, in other words, I think the
20 first question to ask of that would be, "well, do those
21 dates hold up in current or recent analyses by the
22 tree-ring lab, which is based in Tucson?" But beyond
23 that, I -- I don't have -- I don't have a sufficient
24 awareness of the most recent literature on Denver
25 chronology or the Denver chronological specimens under

□Page 656

1 which this was interpreted to make a -- to make a
2 conclusion.

3 Q Fair enough. Now, more generally, in your
4 report, you do describe Navajo movement toward the
5 west. Based upon that research, do you have an opinion
6 as to whether the Navajo movement westward had reached
7 Black Mesa by the early 1700s?

8 A My general feeling is that it -- it had
9 not. And I think, again, if it had, I would have put
10 that in the "Hopi-Navajo Relations" report, and I don't
11 think Black Mesa occurs until considerably later. I
12 seem to recall the first reference is in the
13 19th century. So unless I was presented with
14 definitive evidence to counter that view, I think I
15 would be skeptical that there are now Navajos present
16 on Black Mesa earlier.

17 Q And what is the basis for that skepticism?

18 A I think, again, I'm -- this is mostly
19 speculative, but I think of a great thinness of
20 historical documents at the time. Van Valkenburgh's
21 date, for example, of an isolated early date of 1622,
22 that's four years before there is any mention of
23 Navajos as a distinct Apachean group in the documentary
24 record, in other words, so it would be totally
25 illogical for him to claim 1622 as a Navajo site,

□Page 657

1 because at least in the historical record, documentary
2 record, Navajos don't exist till 1626. In other words,
3 this area is -- I mean, there's -- there are no historical
4 records which -- to my knowledge, which would confirm
5 that there are any Navajos present at all at Black Mesa
6 in 1622, because there were no Navajos at that point,
7 according to the Spanish, if you see what I mean.

8 The second thing is that in the
9 interpretation of sites from that period, it's my
10 feeling -- and that feeling is based in part on reading
11 of the literature, but it's also based in part on the
12 fact that I've trodden around a lot out there -- I find
13 it extremely dubious that any kind of remains from the
14 early 18th century, even, could be ethnically
15 distinguished between Hopi and Navajo. How can you
16 prove, for example -- I mean "you" rhetorically, not you,
17 rhetorically -- how can you prove that this antelope
18 corral was a Navajo antelope corral as opposed to a

19 Hopi antelope corral? I think the amount of research
20 that's been done on differences in hunting practices is
21 simply insufficient.

22 And even if you could definitely state,
23 "well, look, the shape of this antelope corral means
24 that it's Navajo," doesn't mean that you could
25 definitively state that Hopis weren't using

□Page 658

1 similar -- similarly shaped antelope corrals. Given that
2 sort of problem, the task of identifying ethnicity from
3 such source of remains on Black Mesa I think is
4 extremely difficult. It's much easier to identify Hopi
5 and Puebloan ethnicity because of the incidence of
6 potsherds, which seem to be identified with a specific
7 area through time and can be associated with an ethnic
8 group. But what is cited here, several dwellings,
9 stock corrals, and antelope hunting corrals, to my
10 knowledge, none of these can be definitively
11 distinguished as to ethnicity at this juncture.

12 Q Dr. whiteley, I think a little further on
13 in your report you comment that during the contact
14 between a Hopi and Navajo -- Navajo and other Pueblo
15 groups, that certain aspects of Hopi material culture
16 or Puebloan material culture were imported into Navajo
17 culture. Based upon your research, were there aspects
18 of Navajo culture that was imported into Hopi culture?

19 A I think I testified last week that there
20 were certainly some Navajo ideas which were -- which are
21 represented in Hopi culture, and that Hopis perform,
22 quotes, "Navajo social dances," I e., social dances in
23 which they represent Navajos in one form or another.

24 There are certain kachina dances which
25 represent Navajos in one form or another. In fact,

□Page 659

1 there are three or four different kinds of, quotes,
2 Tasap katsina -- T-a-s-a-p k-a-t-s-i-n-a -- or which
3 translates literally as Navajo katsinas. I think some
4 of these ideas were clearly borrowed from the
5 observation of Navajo practices with regard to items of
6 material culture. It's possible that -- well, without
7 being able to answer that question more specifically, I
8 think it's -- it's bound to be true that there are items
9 traded from Navajos to Hopis and Hopis to Navajos. I
10 have no problem with that idea.

11 Specifically what was traded and what
12 might become a part of the Hopi material culture --
13 cultural inventory, I'm not very sure. I was going to
14 guess that it's possible that some items of silver came
15 from Navajos to Hopis, but I don't think that would be
16 until the latter 19th century, anyway. With that
17 exception, I really can't recall anything which I could
18 definitely say was adopted from Navajos.

19 Q Dr. whiteley, I'd like to skip over to
20 page 17 of Exhibit No. 43, to the second full paragraph
21 on that page. It states, "Though the peace continued,
22 during the 1750s to 1770s and thereafter, Spanish
23 encroachment on Navajo lands contributed increasingly
24 to hostilities," period.

25 Do you recall if you were the one to write

□Page 660

1 that passage?

2 A I think I did write that, yes.

3 Q Is that still your view?

4 A This is referring, if I recall, to the
5 general area around Mount Taylor and Cebolleta.

6 Q And if it would help you to read the rest
7 of the paragraph, please do so.

8 A Yes, I think I can assent to that, that
9 view.

10 Q Further on in that paragraph, you do
11 discuss the grant of 1762 by Antonio Baca, I believe.

12 A Yes.

13 Q And toward the end of that paragraph on
14 page 17, it states, "Perhaps because he"-- and I think
15 "he" is referring to Baca at this point --"no longer
16 needed the Navajos as allies, the Spanish governor made
17 a secret pact with the Utes in 1773 and they soon began
18 bringing in Navajo children as slaves. According to
19 Brugge"-- and then there's a reference 1972: 97 --"this
20 pact finally provoked Navajos to begin raiding again in
21 1774, thus ending the half-century of peace."

22 In your view -- well, based upon your
23 research of the period, is it your understanding in the
24 1770s the Spanish and the Utes started raiding the
25 Navajo for slaves?

□Page 661

1 A I honestly don't recall if I wrote this
2 sentence. My intuition is that probably Dr. Kelley
3 added this. My -- in general, I think she probably added
4 most of the stuff about slaving, because I think that
5 had been a specific subject of her doctoral research or
6 other research that she had conducted.

7 I'm certainly aware of the fact that the
8 Spanish took Navajo -- Navajos as slaves, but I don't
9 seem to recall having a specific enough knowledge to
10 cite to this, so my guess is that probably she wrote
11 that sentence, possibly the next -- the next one.

12 Mr. Scarborough: When you say "that
13 sentence," which sentence are you referring to?

14 The Deponent: "Perhaps because he no
15 longer needed the Navajos as allies, the Spanish
16 governor made a secret pact with the Utes in 1773 and
17 they soon began bringing in Navajo children as slaves."

18 A Again, without -- well, without some
19 significant contrary evidence, I feel generally
20 confident that if Dr. Kelley did, indeed, insert this,
21 it's probably a reliable statement.

22 Q (By Mr. Rogers) Based upon your research
23 of the period, is it your understanding that the
24 resumption of slaving expeditions by the Spanish and
25 perhaps the Utes prompted the Navajo to begin raiding

□Page 662

1 again in the 1770s?

2 A I don't really think I can add anything to
3 the way I just answered that. In other words, I don't
4 recall this sufficiently well to be able to give a
5 specific answer to the question about whether I know
6 that a secret pact between Spanish and Utes to capture
7 Navajo children as slaves promoted more Navajo raids on
8 the Spanish.

9 If my intuition is correct that perhaps
10 Dr. Kelley inserted this particular passage, as I say,
11 I have no reason, unless presented with contrary
12 evidence, to doubt the reliability of Dr. Kelley's
13 interpretations.

14 Q Fair enough. On page 18, first full

15 paragraph, what's being described is a period around
 16 the 1780s. About midway through the first paragraph,
 17 it states, "Through this period, the Navajos were
 18 spreading rapidly westward into the Chuska"--
 19 C-h-u-s-k-a --"Mountains, the Tunicha"-- T-u-n-i-c-h-a --
 20 "Mountains, Canyon de Chelly and possibly still further
 21 west, perhaps joining local groups that had scattered
 22 thinly after the Pueblo Revolt."

23 Dr. Whiteley, do you recall if you wrote
 24 that passage?

25 A Let me reread the paragraph before --

□Page 663

1 Q Certainly.

2 A I really can't recall if I wrote this
 3 paragraph. I seem to think that I probably did write
 4 that part of it which goes up to "... the Laguna Indians
 5 around Cebolleta (reference to Jenkins and Minge.)"

6 Part -- part of this is -- the way that I'm
 7 trying to reconstruct this is really a rather
 8 impressionistic reading of who might have put these
 9 words together in that fashion. That sounds to me more
 10 like my language than it -- and the rest of it sounds
 11 like Dr. Kelley's language. And the rest of
 12 it -- sorry. Clarify what I just said. So what I'm
 13 saying is that the first three sentences of that
 14 paragraph sounded more like my language. The rest of
 15 it, or at least parts of the rest of it, sound like
 16 they may be more likely to be Dr. Kelley's language.

17 Q Okay. Fair enough. Well, Dr. Whiteley,
 18 based upon your research into that period, during the
 19 1780s, were the Navajos spreading westward into the
 20 Chuska Mountains, the Tunichas Mountains, and
 21 Canyon de Chelly?

22 A May I consult Exhibit 3 --

23 Q Certainly.

24 A -- with respect to this. This -- there seems
 25 to be a difference in the emphasis of the wording

□Page 664

1 between my report on page 5, at the end of the first
 2 full paragraph -- towards the end of the first full
 3 paragraph, and the wording of this paragraph. This
 4 paragraph, as you indicated, indicates that "Navajos
 5 were spreading rapidly westward into the Chuska
 6 Mountains, the Tunichas Mountains, and
 7 Canyon de Chelly, and possibly still further west. .."

8 what I say in my report is that Navajos
 9 began moving southward from Dinetah to the Cebolleta
 10 Mountains and southwestward to the Chuskas, and
 11 possibly westward to the Canyon de Chelly. The former
 12 statement is much more definite. The latter statement
 13 is much more tentative in terms of its identification
 14 of specific places.

15 At this point, without going over quite a
 16 lot of ethnohistorical reports, again, I feel more
 17 comfortable with the statement I have in my report than
 18 the statement that we have been reading from in
 19 Exhibit 43, page 18.

20 Q well, Dr. Whiteley, as you noted, in
 21 Exhibit No. 43, it does state that the expansion was
 22 possibly still further west. I believe it's referring
 23 to those three places, including Canyon de Chelly.
 24 Based upon your research of the period, is it your
 25 interpretation that it is possible that the Navajo were

Page 665

1 spreading west of Canyon de Chelly by the 1780s?
 2 A It's certainly possible and, indeed,
 3 likely that there was some Navajo presence west of the
 4 Canyon de Chelly by the 1780s. In the -- in my report, I
 5 indicate that reports of raiding, Navajos raiding Hopi
 6 villages, in the 1770s occurred. Clearly, there were
 7 Navajos present if they're raiding, and that's the Hopi
 8 mesa, but whether they were -- were generally resident in
 9 that area seems to have been, I mean, I think, again --
 10 this has to be impressionistic, but I think it's
 11 doubtful.

12 Q Then I take it you think it may be
 13 possible that there were Navajo residents west of
 14 Canyon de Chelly?

15 A I don't mean to be facetious, but in the
 16 sense anything's possible, yeah, there might have,
 17 indeed, been one outfit, or whatever the appropriate
 18 social unit was at the time -- probably different from an
 19 outfit -- which may have been two miles west of the
 20 mountains of Canyon de Chelly or even, you know, a
 21 hundred yards west of it, but that's not saying very
 22 much. Can you -- do you want to ask a question which
 23 will identify the area more specifically?

24 Q Well, I think we'll get further into that
 25 as we go into the report. Why don't we go ahead --

Page 666

1 Mr. Scarborough: Sure.
 2 Mr. Rogers: -- and take a short break at
 3 this point.

4 The Deponent: Okay.
 5 (A break was taken.)

6 Q (By Mr. Rogers) Dr. Whiteley, returning
 7 back to Exhibit No. 43, on page 24 of Exhibit 43,
 8 described on that page, among other things, is the --
 9 what's referred to here as Vizcirra's,
 10 V-i-z-c-i-r-r-a's, Treaty of 1823, and in the second
 11 full paragraph on that page, there's a discussion of
 12 the signing of the treaty, and the last two lines of
 13 that paragraph state, "Meanwhile the range of Navajo
 14 population continued to expand. Reports of military
 15 expeditions mentioned following fleeing Navajos as far
 16 as Black Mesa, north of the Hopi villages, and then
 17 north into Utah."

18 Dr. Whiteley, do you recall if you were
 19 the one that drafted this passage?

20 A I don't recall that.

21 Q Fair enough. And based upon your archival
 22 research that has been conducted in connection with
 23 this case, in your view, in the 1820s, following the
 24 Vizcirra's Treaty of 1823, were Navajo groups found as
 25 far as Black Mesa, north of the Hopi villages, and

Page 667

1 north into Utah?

2 A Well, in my report in Exhibit 3, I -- I
 3 think I follow more specifically the account of Rubio
 4 Vizcirra's expedition of 1823, which locates sites
 5 rather more specifically than this account. My
 6 recollection is that -- let me just have a look at these.

7 Q Certainly.

8 A And this is the bottom of page 6, top of
 9 page 7. Well, what I state is, "In 1823. . . Governor
 10 Viscarra's"-- well, let me just read the whole thing.

11 "In 1823, during his expedition against the Navajo,
 12 Governor Vizcirra's various parties thoroughly scoured
 13 the area from Oraibi to Moencopi, from Moencopi to
 14 White Mesa, and thence northeast following Oljato Creek
 15 towards its confluence with the San Juan River.
 16 Throughout the vast majority of this area he found no
 17 signs whatever of Navajo presence. He had found a few
 18 traces of Navajos in the vicinity of Big Mountain, and
 19 he caught up"-- out of my quotation there -- which is, of
 20 course, on Black Mesa -- back to the quotation --"and he
 21 caught up with a band on Skeleton Mesa, north of Marsh
 22 Pass." Okay. That's the end of what I need to read.

23 Either Brugge isn't exactly clear on this
 24 or my memory isn't sufficiently precise to know whether
 25 they actually went over the line which is the current

Page 668

1 border between Arizona and Utah into Utah. My
 2 recollection of Brugge's article is that he was quite
 3 specific in -- on these areas at Skeleton Mesa and Big
 4 Mountain, and that's why I mentioned them, and the
 5 account in Exhibit 43 seems to be much more of a
 6 general statement.

7 Q Dr. Whiteley, further down on the page on
 8 page 24, in the last two lines on that page, it says,
 9 "Similarly"-- and I think there's an "l" missing in that
 10 word--"the New Mexicans continued punitive expeditions
 11 and took slaves. In 1846, estimates of the number of
 12 Ute and Navajo slaves held by the New Mexicans ranged
 13 from 1500 to 1600; the most frequently accepted figure
 14 was in excess of 2000." It has reference to Young.

15 Dr. Whiteley, do you recall if you drafted
 16 that passage?

17 A I don't recall, but again, if my general
 18 presumption that the great majority of material on
 19 slaving, I e., that that was inserted by Dr. Kelley, is
 20 correct, then I think it's more likely that she
 21 inserted this passage.

22 Q Dr. Whiteley, based upon your archival
 23 research, is it your understanding that slaving
 24 expeditions against the Navajo continued through the
 25 1840s?

Page 669

1 A Well, again, I have no reason to question
 2 this statement adequately -- I mean, well, just to
 3 question the statement, and if Dr. Kelley inserted it
 4 and felt that Young's statement was accurate, I -- I -- I
 5 would -- at first glance, I think it was reliable.

6 The only possible question I would have
 7 about it is that, certainly with respect to Hopi in
 8 this period, I think it's generally felt that Spanish --
 9 Mexican, in this period -- Mexican visits to Hopi were
 10 virtually nonexistent, because they were afraid of
 11 Navajos who they would encounter en route. Certainly,
 12 this doesn't mean that they're afraid of all Navajos,
 13 but it's possible that, given that, they wouldn't mount
 14 slave-raiding expeditions against all Navajos, but
 15 probably those in certain areas.

16 Q Based on your archival research, do you
 17 know which areas the Mexicans or -- the Mexicans focused
 18 on?

19 A No, I don't.

20 Q Dr. Whiteley, if you would turn to page 31
 21 of Exhibit No. 43. If you would take a look at the

22 first full paragraph on that page. This refers, in the
 23 second line of that paragraph, to a time period around
 24 1861, and it goes on to say, "During that year"-- and I
 25 believe they're referring to 1861 --"and the next,

Page 670

1 Navajo raids increased, especially when the troops were
 2 recalled to fight the Confederates in Texas. But the
 3 Navajos probably were more often the victims, because
 4 between 1860 and 1868 citizen expeditions of up to 400,
 5 and Puebloans and Utes as well, were encouraged to raid
 6 the Navajos, and they took many women and children as
 7 slaves." There's a reference to Brugge.

8 Dr. Whiteley, do you know if you drafted
 9 that passage or is that something that you think
 10 Dr. Kelley wrote?

11 A Again, I can't be absolutely conclusive
 12 about this, but my feeling is that I probably drafted
 13 the first two sentences of the paragraph, up to
 14 "friendly horse race," and then the information
 15 following that, which again is linked explicitly to
 16 slave -- slaving statistics and to -- again, cites this
 17 source of Brugge 1972, who I think has appeared in some
 18 previous instances where I haven't been -- where I have
 19 thought that probably Dr. -- Dr. Kelley wrote that
 20 passage. My guess is that -- that probably she wrote at
 21 least the next two sentences after those first two
 22 sentences of the paragraph.

23 Q Dr. Whiteley, based upon your archival
 24 research of the period of the 1860s, is it your
 25 understanding that slaving expeditions against the

Page 671

1 Navajo continued through the 1860s?

2 A I think it's very probable.

3 Q Again, based upon that research, did these
 4 expeditions continue to use Puebloans as auxiliaries?

5 A Again, without being able to recall
 6 Dr. Lieby's work, which was used as the major source in
 7 this, I think, for accounts of Puebloan auxiliaries in
 8 Spanish military expeditions, I imagine that that,
 9 indeed, would be true, and if Dr. Kelley inserted this
 10 based upon her research, then I'm -- I have no problem
 11 assenting to that passage.

12 Q Well, by the date of the 1860s, it would
 13 have -- the area of Arizona-new Mexico would be part of
 14 the domain of the United States government; is that
 15 correct? The Mexican government would be out of the
 16 picture by this period of time?

17 A I think so, yes. Yes. Although, when you
 18 say Arizona and New Mexico, of course, 1863 marks the
 19 birth of Arizona, and so until that year, we're just
 20 talking about New Mexico.

21 Q That's correct. During the course of your
 22 archival research, did you come across any evidence
 23 indicating that the United States government encouraged
 24 citizen expeditions, or citizen expeditions that were
 25 out to obtain Navajo slaves?

Page 672

1 A Let me just read through the passage.

2 Q Certainly.

3 A That seems to be an implication of this
 4 passage, and I have no reason to doubt it, and I think
 5 it would be quite likely.

6 Q During the course of your archival

7 research, did you come across any accounts indicating
8 that Hopis participated in slaving expeditions against
9 the Navajo?

10 A I don't recall ever having seen such an
11 account. Again, there might be a couple of sources to
12 return to initially if one were to try to establish
13 whether that, indeed, was the case. I'm thinking of
14 Bailey's -- what is it called? It's cited -- hold on.
15 Lynn Bailey's Indian Slave Trade in the
16 Southwest." And there's also something by
17 Frank Mcnitt, I think, about slaving among the Navajos,
18 but I'm not sure if I have that one right.

19 Q If we go down on page 41 of Exhibit 43, in
20 the second full paragraph, it states, "In 1863
21 General Carleton was faced with a surfeit of troops who
22 had enlisted to fight in the Civil war, but who had
23 defeated the Confederacy in New Mexico by 1862. He
24 conceived a plan to subdue the Navajos and Apaches, and
25 at the same time open up the country, especially the

Page 673

1 San Francisco Mountains where there were reports of
2 gold."

3 Do you recall if that passage was drafted
4 by you or if it was drafted by Dr. Kelley?

5 A I don't recall that one.

6 Q Fair enough. Based on your archival
7 research that you've done regarding the period, is it
8 your view or interpretation that one of the reasons
9 that General Carleton had for rounding up and
10 relocating the Navajo was to open up the San Francisco
11 Peaks area to gold hunters?

12 A Do we have a copy of the note -- note 5
13 which is cited there?

14 Q Dr. Whiteley -- and I realize it's been a
15 while since you perhaps have reviewed this source -- was
16 there a particular place in the report where the notes
17 were contained?

18 A I think there should be notes at the end
19 of each section, so probably from page 127 on.

20 Q Dr. Whiteley, I have brought with me a
21 complete copy of the second volume of your report. I'm
22 certainly willing to have you take a look at it. I'd
23 rather not mark it as an exhibit.

24 A Okay. Thanks.

25 Q I have it turned to page 127, and there

Page 674

1 appears to be a series of notes.

2 A My best guess is that I -- I indeed, was
3 the author, then, of these sentences from the paragraph
4 that you just cited and of this note. I think it's
5 quite conceivable that if -- I mean, in retrospect, I
6 think it's quite conceivable that if there were reports
7 of the presence of gold in the San Francisco Mountains,
8 General Carleton might have had that as a motive behind
9 his desire to round up Navajos.

10 Q Dr. Whiteley, further on on the page, on
11 page 31 of Exhibit 43, you discuss how General
12 Carleton's strategy was executed. In the last
13 paragraph, the last two sentences on page 31, it
14 states, "By the 1860s, Navajos were living in Little
15 Colorado River Valley and in the San Francisco
16 Mountains. During Carson's campaign, some Navajos fled
17 as far as the Grand Canyon, the Datil"-- D-a-t-i-l --"and

18 Ladron"-- L-a-d-r-o-n --"Mountains, and to the southwest
19 of Zuni."

20 Do you recall if you drafted that passage?

21 A I don't recall.

22 Q Dr. Whiteley, based upon your archival
23 research, in your opinion, by the 1860s, were Navajo
24 living in the Little Colorado River Valley?

25 A Let me consult my report. Without going

□Page 675

1 through this in detail, I seem to recall citations of
2 expeditions which included the Little Colorado River
3 Valley in the 1850s that made no mention of Navajos, or
4 one of them, I think, made mention of contact with two
5 Navajo hunters from Canyon de Chelly down towards the
6 area of the Little Colorado River Valley.

7 So when we examine the statement, "By the
8 1860s, Navajos were living in the Little Colorado River
9 Valley," again, I think it would be good to have a more
10 precise notation, more precise date in mind, than "by
11 the 1860s." Does that mean by the year 1860? Does it
12 mean, perhaps, by the year 1868, or 1864 even? I think
13 I would be more comfortable going with a statement that
14 indicated Navajo presence in the Little Colorado River
15 Valley, which accounted for this lack of evidence of
16 Navajo presence -- Navajo residence in this area in the
17 1850s, I e., that one would -- one associated Navajo
18 presence in that area with the military pressure that
19 was applied to the Navajos from 1858 onwards.

20 Q Well, Dr. Whiteley, let me try it this
21 way, and I -- I want to try to use the words that -- or the
22 reference that you used, that you said you felt more
23 comfortable with. You used the phrase "Navajo
24 presence." By 1864, were -- was there a Navajo presence
25 in the Little Colorado River Valley?

□Page 676

1 A I think it's very likely that some Navajos
2 fleeing from Carson, indeed, went to some parts of the
3 Little Colorado River Valley.

4 Q Based upon your archival research, do you
5 have an opinion as to which parts?

6 A No, I don't.

7 Q Based upon your archival research, by
8 1864, was there a Navajo presence at the San Francisco
9 Peaks?

10 A Again, as a response to Carson's pressure,
11 I think it quite likely that there were some Navajos
12 who were in the vicinity of the San Francisco Peaks.
13 Carson's pressure began in 1863, I think -- '62, '63.

14 Q Dr. Whiteley, based upon your archival
15 research, by 1864, was there a Navajo presence in the
16 vicinity of Gray Mountain, which is southwest of
17 Tuba City?

18 A I really can't say. I -- I have no way of
19 being able to answer that.

20 Q Based upon your ar -- I'm sorry. Were you
21 finished?

22 A Well, yeah. I was going to say, and I
23 think -- again, by Navajo presence, I don't think this
24 should be equated with the idea of sedentary residence,
25 and it's quite possible that after the round-up,

□Page 677

1 certainly some of those Navajos who might have been
2 present for temporary periods, even, in the Little

3 Colorado River Valley or the San Francisco Mountains,
4 went elsewhere, perhaps further east.

5 Q Dr. Whiteley, based upon your archival
6 research, by 1864, was there Navajo presence in the
7 vicinity of Moencopi, Moenavi, that area?

8 A In that some -- in that some Navajos killed
9 George Smith in 1863, I think, somewhere in the -- well,
10 I can't remember exactly where that was, but it was
11 somewhere, I think, between Moencopi further north to
12 the Colorado River. Maybe it was around Preston Mesa,
13 somewhere like that, or White Mesa. If you extend
14 Moencopi-moenave area vicinity to include to that far
15 away, certainly there's a record of Navajo presence in
16 that they killed this guy. He's a -- he's a Mormon, of
17 course. Other than that, I can't recall anything off
18 the top of my head.

19 Q Dr. Whiteley, do you have an opinion as to
20 how extensive Navajo presence was in the area of, say,
21 from Moencopi to Preston Mesa?

22 Mr. Scarboro: Again --

23 Q (By Mr. Rogers) And, again, in 1864.

24 Mr. Scarboro: 1864.

25 A I think it was probably very scattered,

□Page 678

1 what there was of it, and again, given the fact that
2 this reference was to a raiding party, I don't recall
3 if there's -- if there was any point at which they
4 identified where that raiding party's home base was,
5 which may have been, and I seem to think probably was,
6 considerably further east than where the killing took
7 place, but again, this is a -- this time of chaos, there
8 would have been a great deal of movement of Navajos
9 trying to escape from Carson, and if the figures
10 of -- that Johnston cites from 1870 that there were
11 probably about 3,000 Navajos, or up to 3,000 Navajos,
12 that didn't get rounded up and sent to Fort Sumner,
13 then if we use that figure, 3,000, and put that
14 throughout this entire northwestern Arizona area, I
15 think the number of those who have been -- well, again,
16 part of the difficulty in answering the question is
17 that this is a people in flight.

18 I mean, if we take -- if we take one day in
19 1864 in this area, maybe it would be different from the
20 next day, because they would have moved in flight.
21 Maybe they went to the Grand Canyon or up to Navajo
22 Mountain or back somewhere east or to the south or -- I
23 don't really know, and I don't know that there is any
24 way of knowing from the archival records that I've
25 looked at, but if we did take one day in 1864 and say,

□Page 679

1 "well, how many Navajos were present between Moencopi
2 and White Mesa?", I think the number would have to be
3 very, very low indeed, based upon this
4 3,000 figure which was scattered throughout northern
5 Arizona.

6 Mr. Rogers: Why don't we break for
7 lunch.

8 The Deponent: Okay.

9 Mr. Scarboro: Sure.

10 (A lunch break was taken, after which
11 Mr. McDonnell was present in the deposition room.)

12 Q (By Mr. Rogers) Dr. Whiteley, I'd like to
13 refer back to page 2 of your report on Hopi-Navajo

14 Relations, Exhibit No. 3. Toward the end of the first
 15 full paragraph on that page, you note that "Apachean
 16 specialist Morris Opler has suggested that entry"-- and
 17 I think you mean there the Athapaskan entry --"into the
 18 Southwest occurred about 1400 A D."; is that right?

19 A Yes.

20 Q Dr. Whiteley, do you share that opinion?

21 A Morris Opler is an authority on southern
 22 Athapaskans, and he has presided over a lot of
 23 considerations of their patterns of migration entry.
 24 If he was prepared to say this in 1983, I think that's
 25 a very supportive confirmation of what he's saying. I

Page 680

1 don't know that I have enough information to actually --
 2 to definitely agree with it or to -- to disagree with
 3 it. I certainly think that he has more authority in
 4 this matter than I do.

5 Q Dr. Whiteley, are there scholars that
 6 believe the Athapaskan entry into the Southwest
 7 occurred earlier than 1400?

8 A Well, there are, yes. Perhaps most
 9 notably on record is Forbes, but he seems to differ
 10 markedly from other scholars, even those who think that
 11 southern Athapaskans did, indeed, enter the Southwest
 12 around 1400 A D.

13 Q And when does Forbes estimate that entry
 14 took place?

15 A I don't remember, but -- it's 2 or 3 hundred
 16 years, maybe even more than that, earlier, but I don't
 17 remember for sure.

18 Q Are there other scholars besides Forbes
 19 who place the date earlier than 1400?

20 A I think there are, yes, but I can't answer
 21 that definitively without looking at some sources.

22 Q Now, Dr. Whiteley, excuse me if I seem to
 23 be skipping around in reports. Some of these topics
 24 we've already covered this morning, and I don't want to
 25 go through them again. On page 12 of your report, you

Page 681

1 refer to reconnaissance that was conducted by
 2 Captains Shepherd and Walker in 1859, and that, your
 3 description of their course, derives from a source by
 4 Reeve.

5 I'd like to mark as Exhibit No. 45 an
 6 excerpt from a book, Navajo Indians II, 1974, and the
 7 excerpt contains a portion of a report by
 8 Frank D. Reeve titled "The Navajo Indians."

9 (Whiteley Deposition Exhibit 45 was
 10 marked.)

11 Q And, Dr. Whiteley, if you would refer to
 12 pages 67 and 69, as those page numbers appear at the
 13 top of the page, Exhibit No. 45. I think that there
 14 are page numbers that are also at the right-hand side.

15 A Um-hum.

16 Q Now, Dr. -- well, first of all,
 17 Dr. Whiteley, is the reference that you have on page 12
 18 to Reeve 1974, 67 through 69, the same as Exhibit
 19 No. 45, pages 67 through 69?

20 A Yes, it is.

21 Q Dr. Whiteley, you paraphrased Frank Reeve
 22 as to say, on page 12, he describes their route as
 23 being from Fort Defiance to the west, south and
 24 southwest of the Hopi villages, and perhaps you can

25 help me. I've looked through the description provided

□Page 682

1 by Reeve on pages 67 through 69, and I confess I have
2 some difficulty following exactly where he's taking
3 these two captains through the Southwest.

4 I can tell from the description where they
5 start out from Fort Defiance, at some juncture reach
6 the Jadito Wash, go to the Hopi villages, go to the
7 Hopi Buttes, and then return to Fort Defiance, and I
8 understand that there are a number of excursions in
9 different directions that the two captains undertook
10 between that, where -- what I can't find are the
11 references in Reeve to the portions of their journey
12 west of the Hopi villages. It -- is it clear from
13 Reeve's description that these two captains went west
14 of the Hopi villages --

15 A Let me --

16 Q -- do you think?

17 A -- reconsult the text.

18 I think there may be some inclarity in the
19 way that I've stated this. I think what I intended to
20 say was that Reeve -- Reeve gives the detail of
21 Shepherd's route which went from Fort Defiance to the
22 west, south and southwest of the Hopi villages. NOW, I
23 think the way that you read it back to me indicated
24 that I was meaning that they went west of the Hopi
25 villages. That doesn't seem to be the case from this

□Page 683

1 account on pages 6 -- or at least of Shepherd's. I only
2 read Shepherd's trip. It doesn't seem to be the case
3 that they went to the west, so I can't -- unless I just
4 made a mistake there, which is possible.

5 Well, whatever the case is, I think it
6 needs to be rephrased. It's not clear. It's not
7 clear. And certainly an implication that they went to
8 the west of the Hopi villages would be incorrect, or at
9 least all of -- west of all of the Hopi villages,
10 including Oraibi, would be incorrect.

11 Q Dr. Whiteley, if I understand you
12 right -- or correctly, what you're saying is that
13 Shepherd and Walker's route did go west of
14 Fort Defiance?

15 A Yes.

16 Q But at least the account in Reeve of the
17 description doesn't indicate that on the routes they
18 went west of the three mesas?

19 A That's correct. That's correct. So I
20 think some sort of rephrasing is called for in there.

21 Q Oh, and, Dr. Whiteley, if at some later
22 point you want to revise that phrase, perhaps before we
23 leave the deposition, you're welcome to. I think it's
24 clear enough from the record now that -- what you
25 intended to say.

□Page 684

1 A Okay.

2 Q Dr. Whiteley, on page 13 of your report,
3 toward the bottom of the page, you have a short
4 summary -- or you quote from what I believe is
5 Exhibit No. 45, at page 3. And do you see where
6 that is?

7 A Pages 13 and 14?

8 Q Yes.

9 A Yeah.

10 Q And the first line that you quote up here
11 in the -- apparently comes from page 3 of Exhibit
12 No. 45. It states, "westward from the Chuska Range,
13 the Navajos did not live much beyond the Pueblo
14 Colorado Wash and Steamboat Canyon."

15 Now, Dr. Whiteley, I note on page 3 of
16 Exhibit No. 45 there is a similar phrase that says,
17 "westward from the Chuska Range, the Navajos did not
18 live much beyond the Pueblo Colorado Wash," and then it
19 appears to have been Keam's Canyon, and Keam's has been
20 scratched out and then above that, in handwriting, is
21 "Steamboat."

22 A That's correct.

23 Q Do you know who put in that handwritten
24 notation?

25 A I don't know who put it in specifically,

□Page 685

1 but it appears, to my knowledge, in all the published
2 copies of this work. In other words, it was -- it was
3 put in prior to publication. It's not something that
4 some reader has just put in. There are a number of
5 other such changes throughout the text of this Garland
6 series ethnohistory account in the Indian Claims
7 Commission's findings.

8 Q Well, is it your inference from that that
9 it is the author who put in the change?

10 A Either -- either the author or at the
11 approval of the author.

12 Q Dr. Whiteley, is it your understanding
13 that the report of Mr. -- or Dr. -- I'm not sure which --
14 Reeve that's attached on Exhibit No. 45 was a report
15 that was submitted to the Indian Claims Commission?
16 And if it will help you to -- I might direct your
17 attention to the third page of the exhibit.

18 A Yes, it is. Yes.

19 Q Is it your understanding that he was
20 retained by the United States government to act as an
21 expert on the government's behalf in that case?

22 A It is.

23 Q Is it your understanding of the Indian
24 Claims Commission's purpose and the function of the
25 commission to determine the extent of aboriginal claims

□Page 686

1 of various tribes who filed claims in -- before the
2 commission?

3 A I don't know what their specific intent
4 was. I -- I don't -- if -- if you know that, I'd be willing
5 to agree with you. I didn't -- the aboriginal claims,
6 that was something I didn't know was possible in
7 defining purpose.

8 Q well, let me ask you this: Do you have
9 any understanding as to what the function of the Indian
10 Claims Commission was?

11 A To address Indian land claims.

12 Q And these were claims that were brought
13 against the United States government?

14 A Yes.

15 Q Dr. Whiteley, I'd like to turn over to
16 page 18 of your report, Exhibit No. 3. On the second
17 half of that page, starting with the words, "The year
18 1888," you have a discussion of the Moencopi/tuba City
19 area. I just want to make sure I understand the first
20 sentence which appears in the second full paragraph in

21 that -- on that page.

22 Dr. Whiteley, is it your opinion that by
23 1888, Navajo were present in the Moencopi/tuba City
24 area in equal numbers with Paiutes and Hopis?

25 A I accepted that as a conclusion offered

□Page 687

1 from the report I cited, which refers to a specific
2 letter that -- that makes that statement --

3 Q Well, let me make sure --

4 A -- so that would be my understanding, yes.

5 Q Now, below the quotation, you make a
6 statement, "It appears that Navajos in the area in 1889
7 were living 12 to 18 miles up the Moencopi wash."

8 A That's correct.

9 Q Now, I note in the quotation, which
10 appears to be from a Welton -- or a letter by Mr. Welton,
11 that there is a reference to -- apparently, to some
12 Navajos that were some 12 miles above Moencopi.

13 A Um-hum.

14 Q Dr. Whiteley, do you recall what source
15 you were referring to when you said that they were
16 living 12 to 18 miles? I can understand the reference
17 to 12. I don't understand the reference --

18 A Right.

19 Q -- to 18.

20 A I don't recall that reference, but I seem
21 to recall a reference indicating the presence of some
22 Navajo in camps of -- what -- I can try and reconstruct
23 what I did to arrive at that conclusion. What I did
24 was I -- whatever reference it was, and, I'm sorry, I
25 can't remember it -- I got out a map and said, "Okay.

□Page 688

1 Well, where is this in relation to Moencopi?" And I
2 said, "Well, it's about 18 miles up the Moencopi wash,"
3 so that's why I said 12 to 18. I think -- I think that's
4 what I said, unless I did come across another reference
5 that said specifically 18.

6 Q But you can't recall the reference right
7 now?

8 A No, I can't. No.

9 Q Dr. Whiteley, have you ever reviewed the
10 Welton letter?

11 A I'm sorry?

12 Q Have you ever -- the quotation on page 18
13 identifies the source as Welton 6-17-1888, and you note
14 that it's quoted --

15 Mr. Scarboro: Quoted?

16 (By Mr. Rogers) -- in another source.

17 A Yeah.

18 Q Have you ever reviewed the Welton letter?

19 A The original letter? No, I haven't.

20 Q Dr. Whiteley, I realize that you haven't
21 had a chance to review the letter, but there are some
22 pieces of information in the letter that I would like
23 to ask you about in case you have some familiarity with
24 the facts.

25 I'd like to mark as Exhibit No. 48 a

□Page 689

1 letter from Mr. Welton dated June 16, 1888, and it has
2 a production number on the first page, H23515.

3 The Reporter: Is that 46?

4 The Deponent: Yes.

5 The Reporter: You said 48.

6 Mr. Rogers: Oh, I stand corrected.
 7 Mr. Scarboro: Do you want to break for a
 8 few moments and have him read this letter, or are there
 9 particular passages you want to point out?

10 Q (By Mr. Rogers) There's going to be
 11 particular passages that I'm pointing you to. And,
 12 Dr. Whiteley, if you feel it will help you, we also
 13 have a typewritten transcript of some portions of the
 14 letter. I will not be asking you questions about those
 15 portions of the letter, but if you feel it will help
 16 you, I can also make those available.

17 The court reporter has --

18 Mr. Scarboro: I --

19 Q (By Mr. Rogers) -- pointed out that I
 20 misidentified the exhibit number on the Welton letter
 21 dated June 16, 1888. It's been marked as Exhibit
 22 No. 46.

23 And, Dr. Whiteley, the pages in particular
 24 I'll be directing your attention to are those that have
 25 the production number in the lower right-hand corner of

□Page 690

1 the page, H23521, the last two digits being 21, and
 2 then the following page, H23522.

3 Mr. Scarboro: Mr. Rogers, can you tell us
 4 where you obtained this document?

5 Mr. Rogers: From the Hopi tribe.

6 Mr. Scarboro: Okay. Would you please go
 7 ahead and produce your typewritten version so that we
 8 might take a look at it. It's a long letter, and I
 9 think it would be useful for me, at least, to see the
 10 thing --

11 Mr. Rogers: Certainly.

12 Mr. Scarboro: -- in context.

13 Mr. Rogers: It is with the -- and I'm happy
 14 to provide it, as long as it's with the understanding
 15 that I can't vouch for the transcription --

16 Mr. Scarboro: I appreciate that.

17 Mr. Rogers: -- and it's just our best
 18 effort to try to make out what it says.

19 Mr. Scarboro: Okay. I think it would be
 20 helpful to have it before us.

21 Mr. Rogers: Why don't we go ahead and
 22 mark this. I'd like to mark as Exhibit No. 47 a
 23 transcription that has been prepared by members of my
 24 firm, paralegals, who attempted to figure out what
 25 certain passages in Exhibit No. 46 say.

□Page 691

1 Mr. Scarboro: Thank you.
 2 (Whiteley Deposition Exhibit 47 was
 3 marked.)

4 Q (By Mr. Rogers) Oh, I should note too,
 5 Dr. Whiteley, in comparing Exhibit No. 47 with
 6 Exhibit No. 46, in preparing the transcription, we have
 7 attempted to have the production numbers of the pages
 8 correspond with each other between the two exhibits.

9 A Ah. Mr. Rogers, looking at this letter, I
 10 think I have seen a copy of it before somewhere in the
 11 files of our report, but -- I did not use it in my
 12 writing of this report, but the wording and this
 13 association with these allotments of 1888 does strike a
 14 chord, so I think I may have seen it before.

15 Q And when you're referring to the document,
 16 you're referring to Exhibit No. 46?

17 A No. When I'm -- yes, exactly. In the
18 context of this discussion, yes, not in the context of
19 the -- in my report where I'm quoting from this Bureau of
20 Indian Affairs document. That's just for your
21 information. I mean --

22 Okay. But Brown & Bain has not, in fact,
23 transcribed pages ending 21 and 22, right?

24 Q That's right.

25 A Has not?

□Page 692

1 Q Has not, but I think they're included,
2 again, in Exhibit No. 47 just as they appear in the
3 Exhibit No. 46. Apparently my paralegals made the
4 judgment that it was legible.

5 Mr. Scarboro: Gone so far and no
6 further. What pages is it again, John, you're
7 directing the witness to?

8 Mr. Rogers: Yes. It's the two pages with
9 the production number on the first page H23521, the
10 last two digits being 21 --

11 Mr. Scarboro: Okay.

12 Mr. Rogers: -- and the page that follows.

13 Q (By Mr. Rogers) Now, Dr. Whiteley, you
14 mentioned last week that you had conducted some
15 investigation into the early history of Moencopi, and I
16 just wanted to ask you some questions about the
17 individuals who are identified on those two pages,
18 starting off with the first person who's mentioned on
19 page with the Production No. H23521. It refers to a
20 La-tack-see, which is I think L-a - - -t-a - or t-o -- I'm
21 not sure which -- c-k - - -s-e-e. Do you see what that
22 is?

23 A Yes.

24 Q During the course of your archival
25 research or other work that you've done, have you ever

□Page 693

1 come across that name?

2 A Yes.

3 Q Have you seen that name spelled in a
4 different way?

5 A Yes.

6 Q How else is it spelled?

7 A I think I've probably seen it spelled
8 several different ways. The way I would spell it to
9 reflect current orthographic conventions, if I've heard
10 it pronounced right -- and I'm not sure that I ever heard
11 a Hopi pronounce it, but the way I would spell it is
12 L-e -- L-e-t-a-k-s-i, but I'm doubtful about the k.
13 Maybe it should be Q

14 Q Do you know if this individual went by any
15 other name?

16 A I don't remember. I -- most Hopis have at
17 least one name and several nicknames. It's possible
18 that he might have another name, but I don't know.

19 Q Based upon your archival research and
20 other work that you've done, do you know if this person
21 was related by blood or marriage to Tuuvi?

22 A I believe he was related by marriage to
23 Tuuvi, or to Tuuvi's clan, anyway, which in Hopi is
24 sort of the same thing.

25 Q Do you know who his wife was?

□Page 694

1 A I believe his wife was Nasilewwi, which I

2 would spell N-a-s-i-l-e-w-w-i.

3 Q Dr. Whiteley, I believe we had a brief
4 exchange on this last week, and for the life of me I
5 can't remember what you told me. Was Tuuvi still alive
6 as of 1888?

7 A I believe that Tuuvi died in 1887 or 1888,
8 but I'm not sure. I'm not sure of the source of that.

9 Q Dr. Whiteley --

10 A That's fine.

11 Q Oh, I'm sorry. Were you finished?

12 A No. At this point, I mean, I could go
13 back over some records possibly and figure out why I
14 thought that, but I don't seem to recall ever having
15 seen a document which indicates "Tuuvi died today," or
16 something like that.

17 Q Do you know if during the latter part of
18 the 1800s Letaksi had a leadership position in
19 Moencopi?

20 A Well, Nasilewwi certainly did.

21 Mr. Scarboro: Spell that.

22 The Deponent: That's the same spelling as
23 before.

24 Mr. Scarboro: Oh.

25 A As her husband, if I'm correct about that,

□Page 695

1 and I think -- I mean, he would certainly have had a
2 significant role, but I don't recall whether that role
3 had any official status or title in Hopi.

4 Q (By Mr. Rogers) Was Nasilewwi related by
5 blood to Loololma?

6 A No, but --

7 Q I -- oh, wait a minute. I can't remember
8 Loololma's wife's name. L-o-o-l-o-l-m-a. And I can't
9 remember if she was Piikyasa clan, P-i-i-k-y-a-s. When
10 you said by blood, I immediately thought in terms of
11 the Hopi way that she -- Nasilewwi -- might be part of
12 Loololma's clan, which she wasn't. But do you have
13 that information there, I mean, about Loololma's wife?
14 Do you know? What clan was she? I -- it escapes me.

15 Q No, I can tell you that I don't.

16 A Okay. If we have a copy of Titiev's
17 Old Oraibi, we could figure that out pretty quickly.
18 Oh, I don't know. I guess I'm speculating too far
19 right now, but I -- I think Loololma was married to a
20 woman from the Maasaw clan, M-a-a-s-a-w, which would
21 mean that Nasilewwi couldn't be his daughter, so as far
22 as I know, Letaksi was -- did not have a blood
23 relationship with Loololma, at least in the way that
24 blood relationships are conceived of in Hopi.

25 Q Was Letaksi's wife considered to be the

□Page 696

1 leader of the Moencopi?

2 A She was certainly referred to in that way
3 in documents. I've never inquired of Hopis
4 whether -- what they thought about her leadership role.

5 Q Did she derive her leadership position
6 because of her membership in a clan?

7 A My interpretation would be yes.

8 Q And do you know what clan she belonged to?

9 A I think she was -- she was Piikyasa,
10 P-i-i-k-y-a-s, which --

11 Q Dr. Whiteley, the second name --

12 A -- which was Tuuvi's clan.

13 Q -- second name which is listed on the page
 14 we were looking at refers to a man -- refers to a person
 15 Yuash-a-yua, Y-u-a-s-h - - -a - - -y-u-a. During the
 16 course of your archival research, have you ever come
 17 across a reference to this person, or other references
 18 to this person?

19 A I would like, if possible, to see another
 20 instance of this name written down before I could make
 21 an answer to that. It's not entirely clear to me that
 22 that first letter is a Y. And Y-u-a-s-h doesn't make
 23 sense in Hopi. It could be a Q which would
 24 potentially make more sense. I seem to recall that I
 25 have seen this name written down before, as I'd just

□Page 697

1 indicated, as I've seen the list of those in the
 2 allotment schedule of 1888. I may, as I say, have seen
 3 this letter itself before. I think I recall that I
 4 have seen it before, but on the evidence as given
 5 there, I don't think that I can identify this
 6 individual.

7 Q Fair enough. Do you know if this
 8 individual's a man or a woman?

9 A If the last three letters are y-v-a, which
 10 they may well be, then it would be a man. If they are
 11 not y-v-a, then I don't know.

12 Q Dr. Whiteley, I don't mean to make a
 13 mystery out of this, but it's just I have had a very
 14 hard time trying to figure out who some of these people
 15 are. One thing which may help is another document from
 16 that same general period.

17 I'd like to mark as Exhibit No. 48 a
 18 document that has Production No., first page,
 19 Nav 0003 0126, and appears to be a handwritten document
 20 purporting to be an affidavit from Ah-cow-er-shee,
 21 dated 28 July 1897.

22 (Whiteley Deposition Exhibit 48 was
 23 marked.)

24 Q Dr. Whiteley, have you seen Exhibit 48
 25 before?

□Page 698

1 A No, I haven't, but, of course, I'm
 2 familiar with part -- part of it, because it's quoted, I
 3 believe, in Russell's report.

4 Q Yes, that's -- that is correct.
 5 Dr. Whiteley, if you would refer to the second page of
 6 Exhibit No. 48, I note that down about halfway down
 7 that page, there is a reference to a Yay-she-wah --

8 A Ah.

9 Q -- Y-a-y - - s-h-e - - w-a-h, who is
 10 identified in the exhibit as the brother of
 11 Nah-she-le-wah.

12 A Um-hum. Yes, that sounds -- that sounds
 13 correct, and it's -- I would -- just to clarify what I said
 14 about Y-u not meaning anything to me from a Hopi
 15 perspective, I would probably spell this Y-e-e-s-i-w-a,
 16 Yeesiwa, I think, if I'm -- if my interpretation is
 17 correct.

18 Q Dr. Whiteley, during the course of your
 19 archival research, did you come across any other
 20 references to a person who I believe, given the
 21 different spellings, more or less translates as being
 22 Yay-she-wah or Yuash-a-yua?

23 A I'm pretty sure that this fellow I

24 was -- must be mentioned in one of Godfrey's reports, at
 25 least. I'm certain -- well, I'm not certain, but I'm

□Page 699

1 pretty sure that I would have encountered him in
 2 Titiev's census notes of Old Oraibi, and it's
 3 conceivable that I would have encountered him in
 4 another census of Oraibi clans conducted by
 5 Leslie White around 1930, '31, but which is much less
 6 reliable than Titiev's census.

7 Q Again, I understand this is a reach, but
 8 during the course of your research regarding the early
 9 history of Moencopi or the history of Moencopi in the
 10 late 1800s, were you able to determine whether
 11 Yay-she-wah was related by blood or marriage to
 12 Loololma?

13 A I wasn't. I wasn't -- I mean, I haven't
 14 made such a determination. It may be possible to do so
 15 by consulting Titiev's materials. I think his
 16 published work and -- and possibly his census notes could
 17 help us do that.

18 Q Do you know if he was related to Tuuvi by
 19 blood or marriage?

20 A Well, if I'm correct -- or if this document
 21 is correct that Yay-she-wah was, indeed, Nasilewwi's
 22 brother, and I'm correct that Nasilewwi is Piikyas
 23 clan, which I think I am, and that Tuuvi is Piikyas
 24 clan, then it would seem that he would be related by
 25 clan to Tuuvi, yeah.

□Page 700

1 I should indicate that my interpretation
 2 that Tuuvi is Piikyas clan is not without some debate.
 3 There is some doubt about Tuuvi's clan. There is one
 4 point, I think, in Titiev's notes, possibly even his
 5 published work, where he suggests that Tuuvi may be
 6 Butterfly Clan, and he seems to retract that at a later
 7 point. There is a statement in -- maybe this is
 8 gratuitous. I don't know if it helps the case -- there's
 9 a statement in an article by Ekkehart Malotki called
 10 something about Indian pictographs in a very early
 11 Bureau of American Ethnology report which cites Tuuvi
 12 as stating that a pictograph of a cloud is of his
 13 clan.

14 well, this is the only occasion, to my
 15 recollection, of there being any such thing as
 16 Oomawwungwa, O-o-m-a-w-w-u-n-g-w-a, or Cloud Clan, at
 17 Third Mesa. If he was, indeed, of a separate clan from
 18 Piikyas, it was clearly a very closely related clan.
 19 It was -- Oomawwungwa and Piikyas, in Oraibi thinking,
 20 were very closely related.

21 Given my critical comments on the
 22 interpretation of clans and clan eponyms, specifically,
 23 it may be that he was simply selecting this eponym from
 24 a range of available eponyms -- from a range of eponyms
 25 available to him as a member of this phratry group to

□Page 701

1 identify himself by, so it wouldn't actually indicate
 2 that he was of a different clan. But this gets us back
 3 to the problem of what's a clan that we had talked
 4 about a little bit here from my earlier article.

5 Q And, Dr. Whiteley, I thank you for your
 6 comments. In trying to figure out what went on in the
 7 last century in Moencopi, at least for me, it's been
 8 very hard to put together, so I do find those comments

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
□Page 702
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
□Page 703
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

helpful.

On the next page of Exhibit No. 46, it refers to a male Indian head of family named Ah-cou-cha, A-h - - -c-o-u - - -c-h-a. Does this reference refer to Accowsie?

A It would seem to.

Q Below that there is -- under Item 4, it refers to a male Oraibi Indian named Och-she, appears to be O-c-h - - s-h-e. Have you come across any other references to that person?

A I think I have seen that name before, and I think I've seen it spelled somewhat differently before, but I can't remember who it is.

Q Can you recall how you saw it spelled elsewhere?

A It might have been h-a-u on the end instead of an e, Och-shau, but my interpretation is that it would be a short form of a Hopi name of probably five syllables or four syllables.

Q Do you know what the longer name is?

A No, I don't.

Q During the course of your research, were you able to determine whether this person was related to Loololma?

A Not that I can recall.

Q Were you able to determine whether this person was related to Tuuvi?

A When you say "related to," this opens a very difficult area. Do you -- can you specify that more exactly?

Q Well, I chose the word as supposed to be deliberately all-encompassing. I guess you could break it down -- well, as related to Tuuvi by marriage?

A I -- I don't know.

Q Do you know if this person was related to Tuuvi by clan?

A I don't know, but that would be certainly easier to ascertain.

Q Dr. Whiteley, on the first page of Exhibit No. 46, and I believe it's also on the first page of Exhibit No. 47, if that's a little easier for you to read, Mr. Welton indicates that as of the time that he's writing Exhibit No. 46, there were 16 people at Moencopi, 16 Oraibi Indians at Moencopi. Does that -- is that consistent with your historical research regarding the history of Moencopi, that as of approximately 1888, there were approximately 16 people living at Moencopi?

A Without going over some of -- some of the records that I either have copies of or I know that exist, principally Mormon records, I can't answer that definitively.

Q Do you know which records you're referring to or have in mind?

A Possibly the diary of Christian Lingo Christensen. Maybe the Tuba City stake records. I can't remember how they've divided their stakes up, but maybe there's a Little Colorado stake, which could have included some information on this too. The George Tanner collection at the University -- Northern Arizona University collections library brings together a number

20 of Mormon records from elsewhere. Probably none of
 21 these are additional to what exists in Salt Lake City,
 22 but that's a collection which may contain some material
 23 about this.

24 Q Dr. Whiteley, last week we touched briefly
 25 on the subject of Accowsie, and now I'd like to

□Page 704

1 complete that discussion. Do you have an opinion as to
 2 whether Accowsie was a Navajo?

3 A Do we have a copy of last week's
 4 transcripts so that I can reexamine what went into
 5 that?

6 Q Dr. Whiteley --

7 A Because it -- I might just be reiterating
 8 the same thing.

9 Q Dr. Whiteley, I'm sorry to say we don't
 10 have a daily transcript --

11 A Okay.

12 Q -- of what we discussed, and I don't
 13 believe I asked you that question last week, and my
 14 intent is not to repeat --

15 A Okay.

16 Q -- the same questions. I think we did -- I
 17 did ask you some questions regarding some biographical
 18 information about Accowsie.

19 A Okay. May I then ask what criteria you
 20 might be thinking of with which I could make such a
 21 judgment? Criteria which would be associated with some
 22 concept of blood or some concept of culture?

23 Q Well, we can try and -- I think both of
 24 those angles, it -- it's true, is it not, Dr. Whiteley,
 25 that the person Accowsie, by blood, was a full-blooded

□Page 705

1 Navajo?

2 A I believe that that's true, yes.

3 Q Based upon what you know about Accowsie,
 4 would you as an anthropologist characterize Accowsie as
 5 a Navajo or as a Hopi?

6 A As a cultural anthropologist, I e., as
 7 distinct from a physical anthropologist, who might be
 8 interested in his genetic inheritance and so forth, I
 9 think -- I think Accowsie's principal cultural identity
 10 was as a Hopi.

11 Q And what do you base that opinion upon?

12 A I base it on a number of issues that I -- I
 13 think we did go over last week: on his adoption into a
 14 Hopi clan, the Eagle clan; on his initiation into
 15 certain Oraibi religious societies, especially a
 16 wuwtsim society. I forget which wuwtsim society, but
 17 one of the four. I base it on the fact that he was
 18 sent to Alcatraz as a Hopi in 1894 for almost a year.
 19 And I base it on the account that I received last
 20 August from Abbott Sekaquaptewa which describes
 21 Accowsie's adoption into his clan by one of
 22 Sekaquaptewa's lineal ancestors -- ancestresses.

23 And there are possibly a couple of other
 24 ideas that I might base it on too as part of that
 25 overall picture, but I haven't worked this -- worked this

□Page 706

1 out yet completely. I haven't been asked by Arnold &
 2 Porter formally to prepare testimony for this or -- well,
 3 I haven't been asked formally, certainly, so I don't
 4 know that I can then give you a complete response to

5 that question. It would certainly -- it would certainly
6 include the things that I have mentioned or -- I
7 mentioned his identity as adopted by the Eagle clan.
8 This is in Titiev's census notes, yeah.

9 Q Yeah, and I believe you mentioned that
10 last week.

11 A Yeah.

12 Q And you mentioned there are some other
13 ideas you have. What are those?

14 A May I consult with counsel?

15 Q Certainly.

16 Mr. Scarboro: Sure. Let's take a brief
17 break.

18 (A break was taken, after which
19 Mr. McDonnell was no longer present in the deposition
20 room, and Mr. Warren was present in the deposition
21 room.)

22 Q (By Mr. Rogers) Dr. Whiteley, before
23 the -- or during the break, I offered you a copy of
24 Dr. Russell's report, "Navajo Use of Lands in Arizona
25 in 1934," with special reference to Land Management

□Page 707

1 Unit No. 3, Volume 1, dated July 1988, and I asked you
2 to review pages 78 -- I'm sorry -- pages 74 through 78 of
3 that report in hopes that we can go through some of the
4 text that's presented there regarding Accowsie, so as
5 to help me identify at which points you disagree with
6 Dr. Russell.

7 Before we get to that report, if it will
8 help you, during the break, counsel for the Hopi tribe
9 produced some annotations from what I believe is an
10 earlier version of Dr. Russell's report.

11 A That's correct.

12 Q And I do have some questions regarding
13 that, but it may also be of assistance to you as we go
14 through the paragraphs.

15 I'd like to mark as Exhibit No. 49 what
16 appears to be pages 70 through 75 of Dr. Russell's
17 report dated March, I believe, 1986, with the cover
18 sheet, with some handwritten notations.

19 A That cover sheet, Mr. Rogers, is actually
20 the previous page, page 69, the back of that page, so
21 it wasn't intended as a -- as something which would mark
22 off a discrete section which that cover sheet so
23 identified.

24 (Whiteley Deposition Exhibit 49 was
25 marked.)

□Page 708

1 Q Dr. Whiteley, turning to the volume of
2 Dr. Russell's report which I gave you during the break,
3 which is part of the July 1988 report, I'm referring to
4 page 74. I'd like to direct your attention to the
5 paragraph on page 74 which begins with the sentence
6 "That Accowsie was a Navajo is without doubt," and then
7 continues over to page 75. Now, do you see that
8 paragraph?

9 A Yes. This means that you don't want me to
10 address the two previous paragraphs?

11 Q Well, why don't we go ahead, just for
12 completeness, and start with those two paragraphs
13 instead.

14 Dr. Whiteley, referring to the first
15 paragraph which appears on page 74, do you have any

16 disagreement with any of the statements that are
 17 contained in that paragraph?

18 A Yes. Sentence 1, "Navajo offspring of
 19 marriages between Navajos and Hopis," I don't know what
 20 his criteria are for identifying those offspring as
 21 Navajo as opposed to Hopi.

22 Sentence 2 -- sentence 2 is okay, as far as
 23 I know.

24 Sentence 3, the phrase, "The Hopi spouses
 25 and their Navajo children," why are these Navajo

□Page 709

1 children rather than Hopi children or Hopi/navajo
 2 children or whatever? What are the criteria? I think
 3 that's all from paragraph 1.

4 Paragraph 2, sentence 1, "Among the
 5 largest group of Navajos resident at Moencopi," what
 6 are the criteria for identifying them as Navajos? Is
 7 he including some of the children from the previous
 8 paragraph? If so, on what basis are these Navajos?

9 Still in that same sentence, next line,
 10 "The descendants of Bijooshi," on what line,
 11 patrilineal or matrilineal? This raises another issue
 12 altogether about genetics versus culture, which system
 13 of identification now we're using here. Are we using
 14 western concepts of genetics, blood? Are we using Hopi
 15 or Navajo concepts of ethnobiology, I e., their
 16 concepts of something that we might think of as
 17 something like blood? This is a major issue of
 18 anthropological discussion, especially the last 20
 19 years or so.

20 In other words, different cultures
 21 obviously have different concepts of, quotes, "blood,"
 22 and the very idea itself of, quotes, "blood" is a
 23 western concept, so that would be a question that I
 24 was -- that I would raise in this context of some moment
 25 at some point, what constitutes identity in cultural

□Page 710

1 versus ethnobiological interpretations, whatever? I
 2 think that does it for that paragraph.

3 Q Well, Dr. Whiteley, then the third
 4 paragraph that begins with the statement "That Accowsie
 5 was a Navajo is without doubt," I take it that you
 6 disagree with the first sentence?

7 A Yes.

8 Q Are there other parts of that paragraph
 9 that you disagree with?

10 A Yes. The second sentence seems to imply
 11 that the quotation that follows it is that Accowsie
 12 identified himself as a Navajo Indian, and referring
 13 back to Exhibit --

14 Q I believe it's 48.

15 A Thank you. On page 1, I see nothing in
 16 that original document where I -- where Accowsie is
 17 identifying himself as a Navajo Indian. It seems to be
 18 McLaughlin who's identifying him as a Navajo Indian.
 19 At least, whatever the -- whatever the situation is, I
 20 think the way -- the way it's implied in the second
 21 sentence of this paragraph is -- is open to some sort of
 22 debate.

23 Q Dr. Whiteley, based upon your archival
 24 research or other work you've done, do you have any
 25 reason to believe that Mr. McLaughlin had difficulty

□Page 711

1 distinguishing between Hopi and Navajo?

2 A No, I have no knowledge either way of
3 Mclaughlin's ethnological expertise.

4 Q Are there other parts of that paragraph
5 with which you disagree? And that paragraph is the one
6 that begins "That Accowsie is a Navajo is without
7 doubt."

8 A Yes. On page 75, the sentence beginning
9 "In a letter concerning allotments, Accowsie was
10 identified as a Navajo," that's a quotation from
11 Mathew Murphy, who in my opinion, looking at documents
12 of the period, from the time that Murphy was, I
13 believe, a superintendent of the western Navajo
14 reservation to the time that he became special
15 allotting agent for the 1882 executive order
16 reservation, and possibly for -- and for Moencopi too, I
17 believe, that -- that Murphy exhibited pronavajo bias on
18 a number of occasions.

19 Q Dr. Whiteley, have you seen that
20 reference, Murphy 1905?

21 A No, I haven't seen it.

22 Q I'd like to mark as Exhibit No. 50 a
23 letter from Mathew M. Murphy to Francis E. Leupp, dated
24 March 25, 1905.

25 (Whiteley Deposition Exhibit 50 was

□Page 712

1 marked.)

2 Q And, Dr. Whiteley, having looked at
3 Exhibit No. 50, can you recall if you've seen it
4 before?

5 A I'm pretty sure I haven't.

6 Q It notes in the last paragraph of Exhibit
7 No. 50, "In this connection, I wish to report that five
8 Moquis tell me that A-cow-e-she claim No. 5 really
9 belongs to the Moquis, but that A-cow-e-she being a
10 Navajo asserted his superiority over the Moquis and
11 'jumped' this claim."

12 Based upon your archival research or other
13 research that you have done, do you have any reason to
14 believe that Murphy was not told that by five Moquis at
15 Moencopi?

16 A I have no reason to believe that as you've
17 stated the question, but I have no -- I have no reason
18 not to believe it. I have no reason to believe it
19 either. Murphy was notorious as a -- as an allotting
20 agent later, in 1908 to '11, hiring his own sons as
21 the -- as the surveying team, paying them a vastly
22 overrated rate by the government, of switching
23 allotments all over the place on Third Mesa, with
24 extending his work, extending his sphere of influence
25 by so doing. This is my interpretation, I might add,

□Page 713

1 but I believe it's a -- it can be well-supported by
2 available documentary evidence.

3 So, frankly, unless I have access to a
4 series of other documents from Murphy or related to
5 this specific letter, I would feel very hesitant to say
6 that I believed what Murphy was saying. I think there
7 are clearly instances, for example, in one of the
8 exhibits to my other report, Murphy's Map B, where it
9 seems that he could have no ulterior motive for
10 presenting this information. Here, I am suspicious
11 that Mr. Murphy may, indeed, have had an ulterior

12 motive. He may not, but he may, indeed, have.

13 Q Fair enough. Now, Dr. Whiteley, can you
14 think of any reason why Murphy would make up the
15 account that is described in that last paragraph of
16 Exhibit 50?

17 A Well, for example, it's quite conceivable
18 that he was subject to Navajo pressure to have this
19 area specified as Navajo. I think that is an
20 invariable conclusion from some other instances of
21 Murphy's involvement with Navajos and Hopis. So
22 however he would go about doing this, that might have
23 been something which would impel him. I'm speculating,
24 of course.

25 And I think just to extend from that, that

Page 714

1 Murphy was, indeed, interested in expanding the circle
2 of his influence, and if he could do this among Navajos
3 there, and this was his desire -- if it was, then that
4 would certainly help along those lines.

5 Q Dr. Whiteley, are there any other
6 statements in the paragraph that starts on page 74 and
7 ends on 75 with which you disagree?

8 A Well, the next sentence, I -- "This letter
9 indicates that government officials were aware that
10 Accowsie's allotment was being given to a Navajo and
11 not to a Hopi Indian," clearly, if I was able to follow
12 up my critique of the previous sentence, that would
13 call this sentence into question also.

14 Q Are there any other statements in that
15 paragraph with which you disagree?

16 A No.

17 Q Moving on to the next paragraph, that
18 begins on page 75 with the words, "Other residents of
19 Moencopi were aware," do you have any disagreement with
20 any of the statements that are made in that paragraph?

21 A Well, I think, generally speaking about
22 the paragraph, I would have questions along the lines
23 that I just raised in terms of genetics versus
24 ethnobiology versus cultural identity, or I don't know
25 if these three are opposed to each other, but

Page 715

1 something -- some questions within those areas.

2 For example, where -- where it indicates,
3 "Nagata, who conducted an ethnographic research study
4 at Moencopi, indicates at least three times in his
5 field notes that Accowsie was a Navajo," without seeing
6 Nagata's field notes on that, I would like to know the
7 context of the identification of Accowsie as a Navajo.

8 Again, further down the paragraph, "Guy
9 Naseyouma, during his deposition, was asked if Accowsie
10 was a Navajo and his response was positive," what
11 exactly was the question that Mr. Naseyouma was asked?
12 What was the context of the question? What -- how many
13 other questions had he been asked prior to this
14 question?

15 What I'm getting at is the identification
16 of Accowsie as a Navajo by other Hopis could occupy a
17 variety of frames of reference. On the one hand,
18 it -- it could be simply a means of -- of individuation, of
19 recognizing some particular Hopi with special
20 characteristics, like you would describe somebody else
21 by a nickname which would indicate some of their
22 personal characteristics, as in they have skinny thighs

23 or whatever, short or something like that.
 24 It could also be a term of derogation.
 25 Hopis certainly like to derogate each other once in a

□Page 716

1 while, and they would choose -- they would pick on some
 2 aspect of an individual's identity which could serve
 3 that purpose. Certainly, from a Hopi point of view,
 4 calling somebody a Navajo -- calling another Hopi a
 5 Navajo is generally speaking derogatory -- I think
 6 probably always derogatory.

7 It's possible that this was part of
 8 Accowsie's overall identity within Hopi -- Hopi
 9 frames -- frames of reference. It's sort of on this
 10 line. And perhaps it's not entirely different from
 11 when you ask a white American, "well, what are you?"
 12 and they will very often tell you, well, "I'm an
 13 Italian," or "I'm French," or "I'm English," when their
 14 ancestors actually left those countries 200 years or so
 15 ago.

16 In other words, it's part of an overall
 17 identity, the primary aspect of which I think I would
 18 argue is, in Accowsie's case, Hopi. So I think those
 19 are complex aspects to this question which I'd raise in
 20 respect to this paragraph and other paragraphs too.

21 Q And aside from those concerns, were
 22 there -- oh, I'm sorry, Dr. Whiteley. Were you --

23 A Well, just to extend from that, the end of
 24 the paragraph, I -- the sentence, "Nagata confirms that
 25 Elmer Accowsie is one-half Navajo," again, I would like

□Page 717

1 to know exactly what the criteria for the
 2 identification are.

3 I think in that letter that you were
 4 referring to earlier where I said I was becoming
 5 obsessed with this issue as a point in my research last
 6 summer, I indicated that there was -- I had a
 7 conversation with Walter Burnett -- oh, I don't know,
 8 long before I was involved in this case -- 1984, I think,
 9 because we both worked at Northern Arizona University,
 10 and I remember him talking about several residents of
 11 the Navajo reservation whose name was Keam, and they
 12 got this name from Thomas Keam. Thomas Keam had had a
 13 Navajo wife, and they were descendants of Thomas Keam,
 14 and his Navajo wife -- well, on the same basis of
 15 interpretation of descent, these people should be
 16 Englishmen or Englishwomen, because they had a father
 17 who was an Englishman. Keam's was an Englishman. I
 18 find that intrinsically very questionable.

19 Q Are there any other statements in that
 20 paragraph with which you disagree --

21 A I think --

22 Q -- aside from this general critique of the
 23 paragraph?

24 A I think -- no, I don't think so.

25 Q Dr. Whiteley, I do want to pursue one

□Page 718

1 thing that you did say. As an anthropologist, what
 2 criteria would you use to try to characterize a person
 3 as a Hopi or a Navajo?

4 A As a cultural anthropologist -- and, again,
 5 I distinguish that from a physical anthropologist or a
 6 biological anthropologist -- I think my assessment would
 7 be based upon an individual's predominant life-style;

8 who does he live with, what sorts of practices does he
9 or she engage in on a daily basis and with whom? Is
10 this individual marked by any special cultural marking
11 devices as a Hopi?

12 Well, as a member of a particular culture,
13 in the specific Hopi case, I'm thinking -- I think most
14 specifically of wuwtsim initiation, which in Hopi
15 conception marks you as a Hopi, as an adult Hopi, and
16 is a very important tradition in Hopi society. In the
17 20th century, some of this has changed, of course, but
18 at the time when everybody at Old Oraibi was -- male was
19 being initiated into one of these societies, that was --
20 that was a major criteria. I guess -- and I can think of
21 possibly some other things, but they would all really
22 derive from the general statements I just made, so they
23 would probably all be covered by those general
24 statements.

25 Q Well, can you offer what those criterion

□Page 719

1 would be?

2 A Well, for example, to my knowledge,
3 there's nowhere in the documentary record where his
4 name appears as Bijooshi or any of the other Navajo
5 variatives that are listed in Russell's report. They
6 always appear as Accowsie. Accowsie is a Hopi word,
7 Hopi name, which means sunflower. I don't right now
8 know which clan it belongs to, but it undoubtedly
9 belongs to a Hopi clan, and from that I infer that that
10 clan gave him his name, that -- I think a name like that
11 is really -- in the overall context of all these other
12 things, too, is a persuasive factor.

13 Again -- and this is somewhat more
14 impressionistic, and I don't think I could depend on
15 this just by itself, but if you look at that
16 photograph -- or those two photographs at Alcatraz, which
17 we did last week, I don't think there's any way to tell
18 from aspects of their costumes or their -- specifically
19 their hairstyles which one of those individuals is a
20 Navajo. The very fact that the two published occasions
21 on which those photographs -- individuals have been
22 identified, which both derived from Helen Sekaquaptewa,
23 who is an old lady who knows a lot about the old Hopi
24 culture -- the very fact that she's unable and didn't
25 identify Accowsie, misidentified him -- whoever is in

□Page 720

1 that picture as a Hopi, as a Hopi man, the very fact
2 that she couldn't distinguish that, I think that would
3 be per -- very, very powerfully persuasive that this man
4 looked like a Hopi.

5 What I mean specifically about his
6 hairstyle is in the 19th century especially, Navajo men
7 typically wore their hair back from the forehead like
8 this and, indeed, one of the Hopi words for a Navajo,
9 which I believe is -- which would be Q-a-l-a-l-z-t-a-g-a,
10 means, literally, forehead man, because you can see all
11 of their forehead. Again, this is -- as I say, this is
12 very, you know, sort of -- sort of flimsy evidence if
13 this is the only evidence that you have, but, again,
14 there's nothing in that photograph which indicates that
15 he's not, in fact, wearing his hair just as a Hopi man
16 would be and as he would be expected to as somebody
17 initiated into wuwtsim, because wuwtsim gives you
18 special rights to have your hair that way. There's a

19 special sort of association with Hopi traditions
 20 adopted about hair and manhood and so forth, those
 21 sorts of things. I might be able to think of some
 22 more.

23 Q Fair enough. I want to make sure I didn't
 24 misread something you said before. Did you ever ask
 25 Helen Sekaquaptewa about those two photographs of

□Page 721

1 Accowsie?

2 A No, I didn't -- or let me see. No, I
 3 didn't.

4 Q Do you recall -- well, based on your
 5 research, has somebody else or -- I mean, did you read an
 6 account in which somebody else reviewed those
 7 photographs with Helen Sekaquaptewa?

8 A Yes. I think that's -- I think Harry James
 9 identifies them as having come from Helen
 10 Sekaquaptewa. If he doesn't there, I think it's -- I
 11 don't want to say "there." I mean in his publication,
 12 1974.

13 Q Well, it's one of the other references in
 14 the footnote that accompanies the photograph in
 15 Deliberate Acts.

16 A Correct, yes. Then I think it is so
 17 identified somewhere else.

18 Q Dr. Whiteley, I'm not sure I asked at the
 19 time. Both of those photographs that we looked at last
 20 week, one that appears in Deliberate Acts and one that
 21 appears in your book Bacavi, both were taken at
 22 Alcatraz?

23 A Yes, to the best of my recollection.
 24 Certainly, the one -- yes, they must have been taken down
 25 there. Well, the one that's been previously published,

□Page 722

1 I am 99.9 percent certain was taken at Alcatraz. The
 2 other one appears in a sequence of photographs which
 3 are at the Mennonite library. A couple of the others
 4 of those are very clearly at an institution which I
 5 think is Alcatraz, but they might -- I mean, it's
 6 possible that they were en route and they were taken
 7 en route, but I sort of think they were taken at
 8 Alcatraz.

9 Q And the latter photograph is the one that
 10 appears in Bacavi?

11 A In Bacavi, yeah.

12 Q Now, Dr. Whiteley, you've talked about the
 13 criteria that a cultural anthropologist would look at.
 14 What criteria do the -- if you know, what criteria do the
 15 Hopi use in characterizing a person as being a Hopi or
 16 a Navajo?

17 A Well, really, some of those that I was
 18 just trying to get at were those which a cultural
 19 anthropologist would look at. What are the cultural
 20 criteria for so identifying somebody? This -- especially
 21 these ideas that he was given a Hopi name, probably in
 22 the context of initiation or some form of formal
 23 adoption, that he was adopted into the Eagle clan, that
 24 he was initiated into one of the wuwtsum societies, and
 25 presumably other societies too. The fact that he would

□Page 723

1 lead much of his life engaged with Hopis in Hopi
 2 practices of agriculture and shepherding. The fact
 3 that he was married to a Hopi woman and lived in a Hopi

4 village for most of his life.
 5 Beyond that, it gets a little bit finer.
 6 I mean, there certainly must be some finer distinctions
 7 that Hopis would make, but --

8 Q well, Dr. Whiteley, I note in Deliberate
 9 Acts you have a description of marriages at Bacavi, I
 10 believe, from 1910 to --

11 A Um-hum.

12 Q -- I believe it was 1980 or thereabouts,
 13 and you indicated that about 80 percent -- or, I'm sorry,
 14 18 percent of the marriages that took place during that
 15 period were between Hopis and non-hopis?

16 A Um-hum.

17 Q And I believe this is -- I was just looking
 18 at it. If you want to refer back --

19 A Okay.

20 Q -- it's at page 188 of 6, Exhibit No. 6.

21 Dr. Whiteley, now, again, from the Hopi perspective,
 22 and not just from the perspective of a cultural
 23 anthropologist, but from the perspective of the Hopis,
 24 when a woman, a non-hopi woman, marries a Hopi man, do
 25 other Hopis then consider her to be a Hopi?

□Page 724

1 Mr. Scarboro: Just viewing this factor in
 2 isolation?

3 Mr. Rogers: Yes.

4 Mr. Scarboro: Just by itself?

5 A I think -- I think probably the most -- the --
 6 the best answer to that is no, but on a day-to-day
 7 basis, with certain of the sorts of cultural criteria
 8 that I've either talked about or alluded to, they may,
 9 indeed, behave with respect to her as if she was Hopi.
 10 It's possible that, for example, if she lived in a Hopi
 11 village for a while, she might be given a clan, she
 12 might be adopted into a clan, and so forth. In other
 13 respects, I'm sure people would continue to refer to
 14 her as whatever, a Papago or something like that.

15 Q (By Mr. Rogers) I guess reversing the
 16 situation, if a non-hopi man marries a Hopi woman, and
 17 then goes to -- well, strike that. If a non-hopi man
 18 marries a Hopi woman, do other Hopis consider him to be
 19 a Hopi?

20 Mr. Scarboro: Again, just by virtue of
 21 that union?

22 Mr. Rogers: By virtue of the union.

23 Mr. Scarboro: Yeah.

24 A Well, again, it's somewhat -- in the first
 25 six months of their marriage, after 70 years, or --

□Page 725

1 Q (By Mr. Rogers) Well, let's pick a -- I do
 2 wish to isolate on the factor of marriage itself.

3 A Um-hum.

4 Q Let's say in the first six months.

5 A Probably not. Yeah, I would even say
 6 definitely not, but I can't presume to speak for all
 7 cases.

8 Q And I take it that the perception of that
 9 person, of the non-hopi spouse, as not being a Hopi may
 10 change over time as that person picks up various
 11 cultural attributes of the Hopi?

12 A That's -- that's conceivable, and that's
 13 what I would be referring to, but I think the chances
 14 of that happening would be considerably greater if that

15 individual was living in the village from the age of 6
 16 or 7 or 8 or 9 than if they married into the village at
 17 the age of 25.

18 Q And that's because before marriage they
 19 may have picked up some different cultural attributes
 20 of being a Hopi?

21 A Well, yes, but they may have had certain
 22 cultural attributes, if you will, imposed upon them -- or
 23 perhaps not imposed, but, you know, if -- for example,
 24 they would have probably gone through several
 25 initiations, which would give them certain specific

Page 726

1 criteria of Hopi cultural identity as like the ones I
 2 mentioned.

3 Q Dr. Whiteley, where there is intermarriage
 4 with Hopi/non-Hopi and there are children, do the Hopis
 5 consider the children to be Hopi?

6 A Assuming that the non-Hopi spouse has not
 7 been -- let's say presuming that the birth occurs, say,
 8 within the first year following marriage. This is
 9 complicated nowadays by federal requirements of tribal
 10 identification, many of which requirements most Hopis
 11 who are having children know very well about.

12 Mr. Scarborough: As of 1934, perhaps?

13 Mr. Rogers: Certainly, or, say, to the --

14 Mr. Scarborough: Just to pick a particular
 15 time that would make it easy to estimate.

16 Mr. Rogers: Say, before 1940.

17 (At this time, Mr. Warren left the
 18 deposition room.)

19 A I think that would be, generally speaking,
 20 a predominant leaning towards the fact that if the
 21 children were of a Hopi mother, then they would
 22 automatically have -- be attributed with some kind of
 23 Hopi identity. If the children were of a non-Hopi
 24 mother and a Hopi father, I think it would be much more
 25 questionable. If -- and, again, these criteria really

Page 727

1 have to be combined. If they were living in a Hopi
 2 village, that would be a -- again, a significant factor.
 3 For example, if a Hopi woman was -- and this
 4 was conceivable in 1934 -- if she had married an Anglo
 5 male from New York, and he had taken her to New York
 6 and they raised their children in New York, and the
 7 kids have never learned to speak Hopi and -- et cetera,
 8 et cetera -- never been initiated, then it's more likely
 9 that their identity would be -- by other Hopis.
 10 Sorry -- by Hopis would be regarded as -- as questionable.

11 But, again, you know, we're treading on
 12 very fine lines here. It's often -- I think it's -- it
 13 would be defined in -- in the specific case. The way
 14 that Hopis would do it, I think, is -- is, depending on
 15 the question they were being asked, depending upon the
 16 purpose of the question, they would give you a
 17 definition based upon what was being sought after.

18 Q But I understand your answer, then, from
 19 the Hopi point of view, that if a person could be Hopi
 20 for certain purposes, but also could be non-Hopi for
 21 other purposes? Is that what you're driving at?

22 A I'm -- I'm pondering whether I agree with
 23 the way that you phrased that all the way, and I think
 24 I mostly do. The only problem of opposition there
 25 between Hopi and non-Hopis is that, again, somebody

Page 728

1 might have an additional identity to the fact that
 2 they're a Hopi, that they are Hopi rather than having a
 3 distinctive identity from Hopi, so -- well, I think this
 4 is an example I raised last week.

5 One tradition is that the Greasewood clan
 6 either were descended ultimately from Paiutes or lived
 7 for a while with Paiutes. Often, other Hopis who might
 8 want to be derogatory about Greasewood clan members, or
 9 if Greasewood clan members wanted to claim something
 10 special, something distinctive, something additional,
 11 you might say, "well, yes, we're Paiutes. We're from
 12 the Paiutes," or something like that. So in that case,
 13 it wouldn't necessarily be oppositional. It would be
 14 additional to their primary identity as Hopis. I mean,
 15 nobody really questions that the Greasewood clan are
 16 Hopis. They all speak Hopi. None of them speak,
 17 probably with the exception of a few who might have
 18 learned it, Paiute. You see what I'm saying?

19 Q Yes, I think I understand that.
 20 (At this time, Mr. Warren reentered the
 21 deposition room.)

22 Q I'd like to pick up again with
 23 Dr. Russell's report, the next paragraph, which appears
 24 on page 76 of Dr. Russell's report, and begins with the
 25 words, "Additional information to indicate." Do you

Page 729

1 see where that paragraph is?

2 A Um-hum.
 3 Q That's the first full paragraph on page --

4 A Right.
 5 Q -- 76. Are there any statements in that
 6 paragraph with which you disagree?

7 A The first -- the impli -- well, the first
 8 clause, really, "Additional information to indicate
 9 that Accowsie and his descendants were Navajos,"
 10 again, I would question the meaning of that term
 11 "Navajos" along the lines I already mentioned. What
 12 were the exact -- what were the -- what was the exact
 13 context of the question that was asked? Were any
 14 Navajo Indians living in Moencopi in 1934? Was that --
 15 did that question specify whether Navajo Indians meant
 16 as identified by census records according to
 17 four-fourths blood or did they have any -- did it have
 18 any sense of ethnobiological classifications? Did it
 19 have a cultural underpinning? These are really the
 20 same questions that I've asked about other things, but
 21 they would apply to this, too.

22 Q Well, Dr. Whiteley, have you reviewed any
 23 of the interviews that Dr. Ainsworth or people working
 24 with him conducted? I guess my question is, Have you
 25 reviewed any of these questionnaires that are referred

Page 730

1 to in this paragraph?

2 A These are Dr. Ainsworth's questionnaires?

3 Q Yes.

4 A No, I haven't.

5 Q And I suppose I should ask, Have you
 6 reviewed any of the general questionnaire formats that
 7 were used by Dr. Ainsworth?

8 A Yes, I have, but I don't recall -- I don't
 9 recall what the specific contents were.

10 Q Are there any other statements in the

11 paragraph with which you disagree?
 12 A The last sentence, "The reference to Elmer
 13 Accowsie as a Navajo indicates that the descendants of
 14 Accowsie were considered to be Navajo Indians by
 15 Hopis," again, it depends upon the question that they
 16 were asked, the context of the question, and I think
 17 this is a generalized conclusion which may not be
 18 warranted if all relevant factors were taken into
 19 consideration.

20 Q Are there any other statements in that
 21 paragraph with which you disagree?

22 A I don't think so.

23 Q Moving to the next paragraph, that begins
 24 on page 76 and continues onto page 77, the paragraph
 25 begins, "Bijooshi, a member of the Navajo Bitter Water

Page 731

1 clan," and continues on, are there any statements in
 2 that paragraph with which you disagree?

3 A Well, in my notes to the 1986 version, I
 4 underlined this and indicated he's a member of the Hopi
 5 Eagle clan rather than the Navajo Bitter water clan. I
 6 do not have any information to indicate that he was not
 7 a member of the Navajo Bitter Water clan, so I don't
 8 know that I would necessarily challenge that statement,
 9 but I would put forward the idea that he was a member
 10 of the Hopi Eagle clan.

11 Second sentence, "His first wife was a
 12 Navajo," what's the source for this? No source is
 13 cited. So I would -- without some source, I would find
 14 that statement intrinsically questionable.

15 Q I take it you don't have any information
 16 to the contrary?

17 A I don't have any information to the
 18 contrary, no, or at least not that I can recall.

19 Q Are there any other statements in that
 20 paragraph with which you disagree?

21 A Well, I guess not that I disagree, but
 22 again, on my '86 report's comments, I put -- "at least
 23 one and possibly two granddaughters resulting from this
 24 marriage" -- I e., Accowsie and Navajo woman -- "are still
 25 alive in Tuba City," and I -- my comment is, "Yes, not

Page 732

1 Moencopi, where his other descendants" -- I think that
 2 says "live" or "lived," indicating that I would use
 3 this as a means of interpreting the fact that other
 4 descendants who have been previously referred to in
 5 previous paragraphs would, indeed, be on this count
 6 confirmed as Hopi, if you will.

7 Q Are there any other statements in the
 8 paragraph with which you disagree?

9 A With the last statement -- last sentence,
 10 which includes reference to some previous sentences,
 11 but the last sentence, the idea that these "Several of
 12 Accowsie's children" -- or what Russell says -- "Bijooshi's
 13 children, together with their own children, comprise
 14 several of the Navajo camps at Moencopi," I think this
 15 calls into question Russell's entire notion of a Navajo
 16 camp. I -- to use that phrase in reference to people who
 17 are living in stone and mud houses in the village of
 18 Moencopi as Navajo camps, I find frankly
 19 incomprehensible.

20 Q Dr. Whiteley -- and I realize it may have
 21 been a while since you looked at his report -- do you

22 recall how Dr. Russell defined "Navajo camp"?

23 A I don't.

24 Q Are there any other statements in the
25 paragraph with which you disagree?

□Page 733

1 A Well, in that that -- that -- that the
2 questioning of that last sentence would include a
3 questioning of implications that children by
4 Talashainum, whom he lists 1, 2, 3, 4, 5, 6, the
5 implication that they are Navajos, I would -- you know,
6 I'd question that. And just because there are two
7 wives noted in Dr. Russell's report -- I better spell
8 this out --

9 Mr. Scarboro: Three. Or --

10 A T-a-l-a-s-h-a-i-n-u-m.

11 Q (By Mr. Rogers) Dr. Whiteley, as you note
12 that there are some of the children of Accowsie that
13 are mentioned in that paragraph, to date, have you
14 conducted an investigation as to how, as a cultural
15 anthropologist, those people should be characterized as
16 Hopi or Navajo?

17 A No, I haven't, but off the top of my head,
18 it's rather surprising that they all, with the
19 exception of the last one, Elmer, who's given an
20 English name, are principally identified here by Hopi
21 names. These are all Hopi names, with the exception of
22 Elmer, and his last name, Accowsie, is obviously his
23 father's name.

24 Q Dr. Whiteley, the next paragraph that
25 appears on page 77 starts with the words, "Bijooshi's

□Page 734

1 second Hopi wife was," and continues on. Is there
2 anything in that paragraph with which you disagree?

3 A Yes. That in the third sentence, "this
4 Navajo woman," meaning Mabel Jenkins, I would question
5 the idea that she was a Navajo woman.

6 Q Well, to date, have you conducted an
7 investigation as a cultural anthropologist how -- well,
8 strike that. Have you done any work with a view to how
9 this woman should be characterized, as either a Hopi or
10 Navajo?

11 A To date, I haven't. Again, off the top of
12 my head, she was the daughter of Choshhapinama, which
13 means "looking for a blue bird." That's purely
14 gratuitous, but I like the name in Hopi. The fact that
15 she's listed as alive and living in Moencopi Village in
16 1934, both of those would, from a cultural perspective,
17 be factors in the conclusion that she had a primary
18 cultural identity -- Hopi cultural identity as a Hopi.

19 Mr. Scarboro: John, I take it you are
20 asking the witness whether he has conducted a
21 particular investigation into the circumstances of the
22 particular people mentioned on page 77 and others in
23 the report; is that right? In other words, you're
24 asking whether --

25 Mr. Rogers: Yes, as we've gone through

□Page 735

1 them. I understand that Dr. Whiteley has some, at
2 least --

3 Mr. Scarboro: Yeah.

4 Mr. Rogers: -- preliminary opinions
5 regarding Accowsie.

6 Mr. Scarboro: Do you wish to ask him what
Page 44

7 his opinion is based upon an assumed set of facts or
 8 based upon the characteristics that are set forth in
 9 this report? For example, we do know with regard to
 10 Mable Jenkins -- Jackson Jenkins that her mother was a
 11 Hopi woman, that she grew up in the village of
 12 Moencopi, that she spoke Hopi, that she -- so forth. I
 13 mean, do you want to ask him what his opinion is based
 14 on those characteristics?

15 Mr. Rogers: I mean, we can pursue that if
 16 Dr. Whiteley has an opinion. My impression was --

17 Mr. Scarborough: I'm sure he has an
 18 opinion --

19 Mr. Rogers: Fair enough.

20 Mr. Scarborough: -- based on those
 21 characteristics. I mean, you asked him the question
 22 whether he made any more extensive field
 23 investigation. No, he has not, but I do not believe
 24 that, therefore, he does not have an opinion.

25 Q (By Mr. Rogers) Well, I think your

Page 736

1 counsel -- or counsel for the Hopi tribe presents a good
 2 point. Do you have an opinion whether -- in the
 3 perspective of a cultural anthropologist, whether Mable
 4 Accowsie Jackson Jenkins should be characterized as a
 5 Hopi or a Navajo?

6 A My opinion of that, based on the
 7 information that's contained in this paragraph -- and I'm
 8 clearly inferring information which is not specifically
 9 included -- is that she would be -- her primary cultural
 10 identity would be Hopi, and I think that information
 11 that I'd be inferring is the fact that she probably
 12 lived in Moencopi Village from her birth until 1934,
 13 certainly, and, therefore, it's quite likely that she
 14 spoke Hopi, and that this was her principal language
 15 and the language that she used on a day-to-day basis in
 16 her activities in Moencopi Village; and that probably
 17 most of her daily economic activities, most of her
 18 household activities, if not all of these, would occur
 19 in a context provided by the status of Moencopi Village
 20 as a Hopi village.

21 Q And in the paragraph above that reference
 22 to Mable Jenkins, there were the six descendants that
 23 are identified of Accowsie starting with --

24 A Wait a second.

25 Q -- Nahwahongshi?

Page 737

1 A That's --

2 Q Right at the top of page 77.

3 A Yeah.

4 Q Do you see where those names are?

5 A Yeah, um-hum.

6 Q Dr. Whiteley, do you have enough
 7 information at this point to reach an opinion as to
 8 whether -- from the perspective of a cultural
 9 anthropologist, whether any of those individuals should
 10 be characterized either as a Hopi or a Navajo?

11 A Well, based on the same sort of thing that
 12 I've inferred about Mable Jenkins, I would infer -- and
 13 the fact that I'd mentioned that the names of the first
 14 five are Hopi names, I would infer that their primary
 15 cultural identity was as Hopis. Certainly, I'm aware
 16 that Elmer Accowsie's name, at least, and I think
 17 possibly some of the others, may appear on censuses as

18 Hopi/navajo, something like that, but again, I think
 19 those censuses would be employing different criteria
 20 than those we have so far raised as cultural criteria.
 21 Q Do you base your opinion that these people
 22 should be characterized as being Hopi upon anything
 23 else?

24 A Not at present.

25 Q Dr. Whiteley, last week you mentioned that

□Page 738

1 you were planning or contemplating undertaking an
 2 investigation of Accowsie. At the same -- is it also
 3 your plan to investigate Accowsie's descendants?

4 A This is something that depends upon my
 5 instructions from Arnold & Porter.

6 Q I take it at this point you just don't
 7 know?

8 A I just don't know, yeah.

9 Q Dr. Whiteley, I'd like to move on to the
 10 next paragraph on page 77, which starts with the
 11 sentence, "Bijooshi was an extremely important person."
 12 Do you see where that is?

13 A Um-hum. Yes.

14 (At this time, Mr. Scarborough left the
 15 deposition room.)

16 Q Dr. Whiteley, is there anything in that
 17 paragraph with which you disagree?

18 A Well, on my notes to the 1986 version of
 19 this report, for the second sentence, I say that "How
 20 reliable are these?", which refers to Dr. Russell's
 21 informants, because I find that to be, again, an
 22 intrinsically debatable question, unless there are -- is
 23 other evidence presented to substantiate it. Or at
 24 least what was the context in which these informants
 25 indicated this, what were the questions that were asked

□Page 739

1 that they were -- that they were responding to?

2 Q Is there anything else in that paragraph
 3 with which you disagree?

4 A Not that I can see at present.

5 Q Dr. Russell, at this point, does refer to
 6 what he describes as Bijooshi's brothers -- or a
 7 brother. I'm sorry. And, Dr. Whiteley, if I asked you
 8 this last week, I apologize. Do you know who
 9 Accowsie's siblings were, assuming that he had any?

10 A I don't, but again, I would ask, which
 11 cultural criteria of kinship are being employed here?
 12 Was this his genealogical, biological brother? Was it
 13 simply a male member of the Bitter Water clan, perhaps
 14 of the same generation, perhaps not of the same
 15 generation, to whom the Navajo kinship term "brother"
 16 would be -- or term translates roughly as "brother" might
 17 be extended?

18 Q Well, Dr. Whiteley, to your knowledge, did
 19 Accowsie have any biological brothers or sisters?

20 A Not to -- I just don't know the answer to
 21 that. I just don't know.

22 Q Dr. Whiteley, in the next paragraph on
 23 page 77, which starts with the phrase "Under his Hopi
 24 name," and then continues on to page 78, is there
 25 anything in that paragraph with which you disagree?

□Page 740

1 A I don't know if this is really
 2 disagreement. Perhaps it's worth pointing out that by

3 the very first phrase, "Under his Hopi name," I've
4 written in here, "Indicative in itself." Why is, at
5 least to my knowledge, Bijooshi never the name that is
6 used in documentary records? Why is Accowsie always
7 the name that is used? That would be indicative to a
8 certain extent in itself of his cultural identity.

9 Q Is there anything else in the paragraph
10 that --

11 A Yes. In the second sentence, it -- second
12 sentence, indicating that, quotes, "Bijooshi, after
13 receiving permission at some point in the late
14 19th century to farm from the Navajos already present
15 in the area, brought with him to Moencopi several
16 relatives of his wife," it doesn't indicate which wife
17 this is, at least not here. Since we have three wives
18 from above, then this statement is rather problematic.

19 Q Dr. Whiteley, two of the wives are
20 identified as Hopis; is that correct?

21 A Yes.

22 Q Based upon whatever research you've done
23 to date on Accowsie, does Dr. Russell have the Hopi
24 wives properly identified?

25 A I -- based upon the research that I've done

□Page 741

1 so far, I don't really have a way of judging that.

2 Q Fair enough.

3 A I -- I seem to recall that -- well, I actually
4 don't have any reason that I can think of right now for
5 questioning that Talashainum and Choshhapinama were,
6 indeed, his wives.

7 Q Do you have an idea when he married either
8 one of them?

9 A No, I don't. Again, it's possible that
10 information could be found, which would -- which might be
11 indicative, I e., the age of their oldest child. That
12 might be somewhat indicative.

13 Q And last week you mentioned Titiev's
14 census notes, which you seem to recall reviewing. Do
15 you recall if Accowsie's wife or wives are mentioned in
16 those rolls?

17 A I don't recall, but I'm pretty certain
18 that at least one of them would be, and maybe -- maybe
19 two of them, but here we also run into -- into a problem
20 of cultural translation. What is a wife? Is it merely
21 someone with whom you have children? Did any of these
22 individuals go through traditional marriage
23 ceremonies? Do we have any indications of that in the
24 records?

25 The very concept of wife is, from a

□Page 742

1 cultural anthropologist's perspective, not something
2 which is cut and dried.

3 Q Dr. Whiteley, based on the work you've
4 conducted so far, do you know if either of these people
5 who are identified by Dr. Russell as wives -- as
6 Accowsie's Hopi wives were related by -- related
7 biologically to Tuuvi?

8 A I don't know.

9 Q Do you know if either one of them were
10 related biologically to Tuuvi's wife?

11 A I -- I don't know, but again, this might --
12 this might be something which could be discovered from
13 Titiev's census notes.

14 Q Based on the work you've done so far, do
15 you know if either one of these women, Accowsie's Hopi
16 wives, were related to Letaksi that we talked about
17 just recently?

18 A Again, I -- I either don't know or I can't
19 recall at this point.

20 Q Fair enough. Do you know if either one of
21 these women are related to Letaksi's wife -- and I can't
22 pronounce her name.

23 A Again, I don't know. Again, it may not be
24 too difficult to discover that.

25 Q Again, from Titiev's census notes?

Page 743

1 A Right. Possibly also these that -- these
2 genealogies of Leslie white that I mentioned earlier,
3 one of them, but which are considerably less reliable
4 than Titiev's census notes. Possibly also from the
5 1900 national census, from subsequent censuses. They
6 may indicate to a certain extent.

7 Q Dr. whiteley, again, referring to the
8 paragraph which begins toward the bottom of page 77 and
9 continues on to the top of page 78, are there any other
10 statements in that paragraph with which you disagree?

11 A I'm sorry. I'm -- my laughter is directed
12 to the fact that we're clearly dealing with an
13 anthropologist here. "His wife's mother's daughter's
14 husband," "his wife's mother's sister's husband's
15 mother's sister's daughter's husband."

16 Q Makes perfect sense to me.

17 A I think without working out all these
18 specific relationships and who -- who the individuals
19 are, which I'm -- I have no reason to doubt Mr. Russell
20 on this score, my question that I raised is did these
21 people receive these allotment plots via Accowsie or
22 via his wife, and possibly via other individuals who
23 may have been related by marriage, et cetera?

24 well, for example, just to take the
25 penultimate one, the one that I just read, which begins

Page 744

1 "his wife's mother's," et cetera, it seems to me that
2 that would be likely to have derived, from that, from
3 his wife rather than from him, or -- or not derived
4 necessarily from his wife, but associated with his
5 wife's lineage rather than his lineage.

6 Q (By Mr. Rogers) Dr. whiteley, a few
7 additional questions about Accowsie. I think earlier
8 when I asked you what you based your opinion on of
9 Accowsie, you mentioned his stay at Alcatraz. Last
10 week we discussed -- reviewed two sources, one by
11 Constant Williams, another one by Mr. Voth, that
12 referred to Accowsie being at Alcatraz. During the
13 course of your archival research, have you uncovered
14 any other sources, archival sources that refer to
15 Accowsie specifically being at Alcatraz?

16 A Not that I can recall.

17 Q During the course of your archival work,
18 have you come across any sources referring to Accowsie
19 in connection with the offense which led up to a group
20 being sent to Alcatraz?

21 A Not that I can recall.

22 Q Aside from the documents that we've
23 discussed here today and the references which are
24 indicated in your book, Deliberate Acts, and the

25 references in your book about Bacavi, and aside from

□Page 745

1 the census references, and aside from Dr. Russell's
2 report, have you come across any archival records
3 making reference to Accowsie which you can recall?

4 A Not that I can recall. I do have a copy,
5 which I think I mentioned last week, of an allotment
6 census of Old Oraibi from 1892 to '94, which may have
7 Accowsie's name on it, but I don't remember.

8 Q Can you recall any other archival
9 documents?

10 A Not at present.

11 Mr. Rogers: Counsel, at this time I would
12 like to request, on behalf of the Navajo tribe, the
13 allotment census from 1892 that Dr. Whiteley's
14 referring to.

15 Mr. Warren: I'm not familiar with the
16 document that he is referring to now. I'd be glad to
17 take your request into consideration and see if we can
18 identify it and produce it to you, if it has not yet
19 been produced.

20 Mr. Rogers: Okay. Fair enough.

21 Q (By Mr. Rogers) Dr. Whiteley, before we
22 took a break, you were listing some of the facts that
23 you were relying upon for your conclusions on your
24 opinion about Accowsie, and you mentioned the fact that
25 he had been adopted into the Eagle clan, that he had

□Page 746

1 joined an upper order religious society, he was sent to
2 Alcatraz for a year, and you'd had a chance to -- you
3 obtained information from Helen Sekaquaptewa. At that
4 point, you mentioned you also had some other ideas in
5 mind, and at that point asked to talk to counsel for
6 the Hopi tribe.

7 Dr. whiteley, what were those other ideas
8 that you had in mind?

9 A Let me first ask, Mr. Russell, do you
10 intend to go through the rest of page 78 and 79,
11 because some of those might come up in the context of
12 disagreements with some of Dr. Russell's statements
13 about his Navajo identity.

14 For example, on page 79, the second full
15 paragraph, first sentence, "Lok'aa'hosteen and Bijooshi
16 reportedly also built and used traditional Navajo
17 dwellings," the only identification that he gives of
18 these traditional dwellings is forked-pole hogans.
19 This sort of dwelling, without knowing more
20 specifically what it might be, could well have been a
21 Hopi dwelling too. When the village of Bacavi was
22 built, two of the earliest dwellings were what Hopis
23 called homokiki. Homokiki is the Hopi term for a
24 hogan, while the individuals who built these in Bacavi
25 were certainly Hopis. So, in other words, that's a

□Page 747

1 source of possible questioning of what might constitute
2 Navajo identity as distinct from a Hopi identity.

3 Q Dr. whiteley, would that be another
4 instance in which Hopis have adopted at least some
5 parts of the Navajo material culture?

6 A I am doubtful. I think this type of
7 shelter may -- by the very fact that it has a Hopi name,
8 may have -- have been a part of Hopi culture for a long,
9 long time.

10 Q Thus, your answer is you don't know?
 11 A Well, apart from the answer that I stated,
 12 I suppose the answer is that I don't know, yeah.
 13 Q Okay. Why don't we take a break at this
 14 point.
 15 A Okay.
 16 Q And I do intend to go through these other
 17 paragraphs, but before I move on to this other fellow,
 18 I wanted to --
 19 A Okay.
 20 Q -- try to close at least most of the major
 21 parts of Accowsie out.
 22 A Okay.
 23 Mr. Rogers: Why don't we take a break at
 24 this point.
 25 (A break was taken, during which

□Page 748

1 Mr. McDonnell reentered the deposition room.)
 2 Q (By Mr. Rogers) Dr. Whiteley, I want to
 3 compliment you on your handwriting. You do write, I
 4 think, better than some of us, and I'm able to make out
 5 most of your notes that appear on Exhibit No. 49.
 6 There were a couple that I was not able to, perhaps
 7 less because of your penmanship but because,
 8 apparently, some of the corners of the right-hand
 9 margin has been sliced off.
 10 I'd like to direct you to Exhibit No. 49,
 11 on page 72, to the first notation that's in the margin,
 12 and I believe the first word is "But."
 13 A Yes.
 14 Q Do you see where that is?
 15 A Yes.
 16 Q What does that say?
 17 A I think I would need to look at a copy
 18 which would include more of the right-hand margin
 19 before I can be sure of what that says.
 20 Mr. Rogers: Well, perhaps the simplest
 21 thing is, Counsel, do you have the -- his handwritten
 22 notes?
 23 Mr. Warren: I --
 24 Mr. Rogers: Would it be possible to get a
 25 better copy of these notes?

□Page 749

1 Mr. Warren: I believe we can probably
 2 find something that's legible. If you'd like, we can
 3 reserve this question until tomorrow morning, perhaps --
 4 Mr. Rogers: That's fine.
 5 Mr. Warren: -- and by then we could locate
 6 it for you.
 7 Mr. Rogers: That's fine.
 8 Q (By Mr. Rogers) Dr. Whiteley, on page 75
 9 of Exhibit No. 49, towards the top of the page, it
 10 refers to -- I see the reference is to Nagata. Can you
 11 make out what's in that marginal notation, or would you
 12 need to look at the original?
 13 A Again, I think it might be better to get
 14 another copy. I -- I -- maybe I can answer it as far as
 15 you need to know. What I did there, I recall looking
 16 at this page of Nagata, page 158 of Nagata's book, and
 17 I think what I wrote is, "Nagata calls this man,
 18 quotes, 'a Navajo captive living in or residing in
 19 Oraibi,'" and I think the substance of what else I say
 20 is, "This contrasts with other individuals Nagata

21 identifies in the same paragraph as just Navajos," so
 22 my critique of the attribution of this statement to
 23 Nagata that this was a Navajo man would follow that
 24 line. The way that Nagata actually identifies him in
 25 that paragraph is not as a Navajo man, but as a Navajo

Page 750

1 captive living in, residing in -- maybe we can look at
 2 Nagata -- in Oraibi, and this was distinct from those
 3 other individuals who he did identify as -- just as
 4 Navajos.

5 Q Dr. Whiteley, do you have any reason to
 6 believe that Accowsie did not speak Navajo?

7 A I don't have any reason to believe that,
 8 no.

9 Q I'd like to direct your attention back to
 10 Dr. Russell's 1988 report, on page 78. In the first
 11 full paragraph on page 78, there is a discussion of a
 12 person whom Dr. Russell identifies as Lok'aa'hosteen?

13 A Yes.

14 Q And he also identifies him by another name
 15 of Siwilti'ima?

16 A Um-hum. Yes.

17 Q To date, have you conducted any
 18 investigation about Siwilti'ima?

19 A To date, I haven't, no.

20 Q To date, have you conducted enough of an
 21 investigation to be able to form an opinion as to any
 22 of the statements which are contained in the first full
 23 paragraph on page 78?

24 Mr. Warren: Does he have any opinion as
 25 to any of the statements in the paragraph?

Page 751

1 Mr. Rogers: Yes.

2 A I don't have any reason to question any of
 3 the statements as they exist in the paragraph. Perhaps
 4 an implication, however, which isn't directly stated,
 5 that some of the children of this man in his marriage
 6 with a Hopi woman -- and he lists six -- I can't remember
 7 if he does this in the next page, but by analogy with
 8 what he's already done with Accowsie's children, he
 9 would be claiming that these children had some kind of
 10 Navajo identity, and I think that would be
 11 questionable.

12 Q (By Mr. Rogers) Dr. Whiteley, if it
 13 helps, if you'd look at the last paragraph on page 80,
 14 carrying over to page 81.

15 A Okay. Yes. You -- you're right.

16 Q I take it it's your interpretation
 17 Dr. Russell is not claiming that the descendants of
 18 Siwilti'ima are Navajo?

19 A Yes, that is my interpretation, although,
 20 of course, he allows himself the fact that he's still
 21 seeking additional information which may make up his
 22 mind one way or the other, and you've got -- he does
 23 include in the text at page 79 indications that at
 24 least two of Siwilti'ima's children spoke Navajo. He
 25 identifies this man as Lok'aa'hosteen, and states,

Page 752

1 quotes, "One informant has also stated that one of
 2 Lok'aa'hosteen's sons dressed like a Navajo and was a
 3 participant at Navajo traditional ceremonies." So, in
 4 other words, although he makes this disclaimer on pages
 5 80 to 81, it does actually seem to be an implication

6 that he's trying to get at from this paragraph on
7 page 79.

8 Q Dr. Whiteley, I'd like you to turn over to
9 page 79, Dr. Russell's continued report, to the
10 paragraph -- or second full paragraph on that page, which
11 begins, "Lok'aa'hosteen and Bijooshi reportedly also
12 built." You previously testified regarding the
13 characterization of the forked-stick or the forked-pole
14 hogan. Are there any other statements in that
15 paragraph with which you disagree?

16 A Not that I can see at present.

17 Q In the next paragraph on -- starting on page
18 79, which begins with the phrase, "Informants have also
19 indicated that Bijooshi and Lok'aa'hosteen were
20 responsible," then it goes on and continues with it,
21 are there any statements in that paragraph with which
22 you disagree?

23 Mr. Warren: Take a moment to review it
24 now.

25 A Without conducting a focused inquiry into

Page 753

1 Nagata's statement about livestock operations at
2 Moencopi being virtually nonexistent around the turn of
3 the century, I have an intuition that I might find that
4 questionable because of some of Nagata's other
5 statements about Third Mesa stock raising -- early Third
6 Mesa stock raising, so it's possible that I would
7 and -- would develop a conclusion which disagreed with
8 that if I were to conduct such a focused inquiry.

9 Again, this page, this reference to
10 Nagata, page 158 on the -- in the next -- I'm sorry. This
11 is the third sentence of that paragraph. This is the
12 only -- states that the only -- Nagata states that "The
13 only Moencopi resident that was involved in this
14 industry"-- meaning livestock --"at this time was a
15 Navajo man." Without reconsulting Nagata's page, it
16 seems to me this may be the same reference to what
17 Nagata actually says is a Navajo captive raised in
18 Oraibi, but it may not. I'd need to look at the page
19 again.

20 I have no reason to question that
21 Goldtooth indicated what he indicated in the following
22 sentence. Whether it's true or not, I don't know.
23 Again, the -- the next sentence, "According to one
24 informant, the Navajos at Moencopi"-- I from what I've
25 said so far, obviously have questions about that

Page 754

1 varying concept --"acquired their livestock through
2 their Navajo relatives and friends." My question would
3 be, who was this informant? What was his information
4 based on? Is it confirmed by any other informants, by
5 documentary records of any kind?

6 In other words, what I'm getting at there,
7 if by "Navajos at Moencopi" Russell is here including
8 some of the children of Accowsie and one of his Hopi
9 wives, for example, I guess I would find it
10 questionable that they might have acquired grazing
11 rights by asking Navajos for permission, so that's why
12 I would find this sentence intrinsically subject to
13 questions.

14 Q (By Mr. Rogers) Dr. Whiteley, the next
15 paragraph that appears on page 80 begins with the
16 words, "According to several informants," and then

17 continues. Are any of the statements in -- well, do you
 18 disagree with any of the statements contained in that
 19 paragraph?

20 Mr. Warren: John, may I ask for a
 21 clarification. When you ask the question, are you
 22 asking him whether he disagrees with any of the
 23 statements of Dr. Russell or whether your question
 24 would extend to statements cited or quoted or referred
 25 to by Dr. Russell within the text?

□Page 755

1 Mr. Rogers: It would be those statements
 2 that Dr. Russell is making in the report.

3 Q (By Mr. Rogers) It simply means -- I'm just
 4 trying to highlight what areas of disagreement that you
 5 do have, and that's the intent of my question.

6 A Okay. Well, sentence 1, again, I would
 7 ask for other information. What are the sources,
 8 what's the context in which those sources stated this,
 9 and so forth, related questions.

10 Question -- sentence 2, which reads, "Rather
 11 than face the uncertainty of removal to New Mexico,
 12 they may have sought refuge with the Hopi at Oraibi,"
 13 possible. Not certain. May just not be true. Maybe
 14 Accowsie moved to Oraibi before the round-up. Again,
 15 we have to conduct a more focused inquiry.

16 This idea in the next sentence about
 17 Carson's capturing two Navajo -- two Oraibi leaders, this
 18 has been questioned or at least -- the fact that he did
 19 it hasn't been questioned, but the interpretation of
 20 why he did it has been questioned by Harry James.
 21 Russell states that he'd heard of an alliance between
 22 the Navajo and the inhabitants of Oraibi, and that was
 23 why he captured these leaders. James says that Carson
 24 learned that he'd made a mistake two or three days
 25 later after he -- or four days, whatever, after he did

□Page 756

1 this capturing and turned these guys loose. He
 2 realized that, in fact, there wasn't any such an
 3 alliance. Whether James's interpretation is correct,
 4 I -- again, this would require further investigation. I
 5 certainly wouldn't be prepared to refute James's
 6 interpretation off the top of my head, but it's a
 7 factor that has to be taken into account.

8 I have, in Deliberate Acts, indicated I
 9 think that it's probable that the chief who he actually
 10 captured, or one of the chiefs who he actually
 11 captured, may not have been the kikmongwi, which I
 12 think is the general interpretation of the term "chief"
 13 here, but perhaps the qaletakmongwi, or war chief.
 14 That's q-a-l-e-t-a-k-m-o-n-g-w-i. Again, that's really
 15 a guess on my part.

16 I don't really have any disagreement with
 17 the next sentence. The final sentence, well, under
 18 what -- and the clause that he has based it on their ties
 19 into the area, if this includes the fact that they're
 20 tied into a Hopi system of ties, then I couldn't
 21 disagree with the sentence.

22 Q Dr. Whiteley, I have one more question
 23 that is -- perhaps is related to a discussion of
 24 Accowsie, and relates to a discussion we had earlier
 25 dealing with how the Hopis, as opposed to a cultural

□Page 757

1 anthropologist, would consider someone as being either

2 a Hopi or Navajo. According to the Hopi, are the
3 people at Hano considered to be Hopi?

4 A For certain purposes, yes; for other
5 purposes, no.

6 Q For what purposes are they considered to
7 be Hopi?

8 A This is a very difficult question.
9 Certainly, for some purposes of identifying a common
10 historical heritage or some purposes of identifying
11 their original associations with the people of Walpi or
12 Qodsaptuvela, which is Q-o-d-s-a-p-t-u-v-e-l-a, the
13 predecessor of Walpi, in terms of some aspects of their
14 land assignments by the leaders of Walpi originally and
15 subsequently, in terms of certain ritual associations --
16 and I can't be more specific about that without
17 consulting, say, Edward Dozier's books or one of Edward
18 Dozier's books on Hano. Dozier is D-o-z-i-e-r -- and for
19 other reasons which I just -- I can't specify now off the
20 top of my head.

21 Q For what purposes are they considered not
22 to be Hopi?

23 A I think for certain historical purposes or
24 certain ritual purposes, certain sociocultural
25 purposes. In other words, what I am -- what I'm thinking

□Page 758

1 of when I say the latter is I don't recall what
2 marriage rules are between, say, Walpi or Sichomovi,
3 S-i-c-h-o-m-o-v-i, and Hano, but it's possible that
4 there may be a blanket rule that any -- any Hopi from the
5 former two villages might be able to marry a Hopi that
6 was from Hano. I sort of think that's doubtful, if
7 there were two clans which were identical, but not all
8 of the clans are the same. But this is very
9 complicated, and it's not something that I really have
10 sufficient knowledge of off the top of my head to
11 really -- to really give a good answer to.

12 Mr. Rogers: Fair enough. Why don't we go
13 ahead and adjourn for the day, Dr. Whiteley.

14 The Deponent: Okay.

□Page 759

1 Whereupon, the within proceedings were
2 concluded at the approximate hour of 5:07 p. m. on the
3 27th 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
10 Peter M. Whiteley, Ph. D.
11 Volume V

12 () No changes WHITEL5.TXT
13 () Amendments attached
14
15 subscribed And Sworn To before me this
16 day of , 1989.
17
18

19 Notary Public
20 Address
21 My commission expires
22
23
24
25

Page 760

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

1 I Diane K. Goodell, Registered
2 Professional Reporter, appointed to take the deposition
3 of
4 Peter M. Whiteley, Ph. D. - Volume V,
5 certify that before the deposition the deponent was
6 duly sworn by me to testify to the truth; that the
7 deposition was taken by me at 1700 Lincoln Street,
8 Suite 4000, Denver, Colorado 80203, on March 27, 1989;
9 then reduced to typewritten form, by means of
10 computer-aided transcription, consisting of 133 pages
11 herein; that the foregoing is a true transcript of the
12 questions asked, testimony given, and proceedings had.
13 I further certify that I am not related to
14 any party herein or their counsel and have no interest
15 in the result of this litigation.
16 In witness whereof, I have hereunto set my
17 hand this 12th day of April, 1989.
18
19
20

21 Diane K. Goodell
22 Registered Professional Reporter
23 Proofread by: C. Politzki
24 Fees
25 Appearance: \$ 70.00
Original: 219.45
Copy: 212.80

Page 761

1 Hyatt & Associates, Inc.
2 Registered Professional Reporters
3 1719 Emerson Street
4 Denver, Co 80218
5 (303) 830-0208
6 April 12, 1989
7 James E. Scarboro, Esq.
8 Arnold & Porter
9 1700 Lincoln Street
10 Suite 4000
11 Denver, Co 80203
Re: Sidney vs. Macdonald, et al.
Deposition of: Peter M. Whiteley, Ph. D.

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 55

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 . . .

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 762

Hyatt & Associates, Inc.
Registered Professional Reporters
1719 Emerson Street
Denver, Co 80218
(303) 830-0208
John W. Rogers, Esq.
Brown & Bain, P. A
2901 North Central Avenue
Post Office Box 400
Phoenix, Az 85012

Re: Sidney vs. Macdonald, et al.
Deposition of: Peter M. Whiteley, Ph. D.
Date of Deposition: March 27, 1989
Enclosed is the above original transcript. . .

signed, no changes
signed, with changes, copy enclosed
not signed, notice duly given April 12, 1989,
pursuant to the Rules of Civil Procedure

not signed, notice duly given ^
since trial is set for ^
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: James E. Scarboro, Esq.