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United States District Court, 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 Vi
March 28, 1989

Pursuant to Notice taken on behalf of the Defendant at
1700 Lincoln Street, Suite 4000, at 9:15 A m., before
Donna E. French, Registered Professional Reporter and
Notary Public within Colorado.

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Appearances:

Alfred McDonnell, Attorney at Law, from
the Law Firm of Arnold & Porter, 1700 Lincoln, 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, Suite 2000, P. O. Box 400, Phoenix, Arizona
85001, appearing on behalf of the Defendant.

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1 whereupon, the following proceedings
2 were taken pursuant to the Federal Rules of Civil
3 Procedure:
4 Peter M. whiteley, Ph. D. - Volume Vi,
5 having been previously duly sworn to state the whole
6 truth, testified as follows:
7 Examination
8 By Mr. Rogers:
9 Q Dr. whiteley, I understand that you have a
10 clarification to make in your earlier testimony?
11 A Yes, Mr. Rogers. Yesterday you asked me
12 with respect to pages 18 to 19 of my Hopi-navajo
13 relation report, Exhibit 3. At the bottom of that
14 page, center reads, "It appears that Navajos in the
15 area in 1889 were living 12 to 18 miles up the Moencopi
16 Wash." You asked me where did I get this figure of
17 18 miles. And I reconsulted the source that I quoted
18 at the end of that sentence that comes directly from
19 the source, mainly Bureau of Indian Affairs 1987, page
20 28.
21 Q Dr. whiteley, were you able to corroborate
22 that information through some other source?
23 A Not as I can recall. But what I said

24 yesterday was that I seemed to remember that I had seen
25 some source which indicated some Navajo presence

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1 further up that wash than 12 miles, but I can't recall
2 that at present. My recollection is just too hazy. It
3 may be that that's just -- that I haven't seen anything,
4 or it may be that I just can't recall.

5 Q Dr. whiteley, do you have any other
6 clarifications to make at this time with respect to
7 your previous testimony?

8 A Yesterday at one point I was talking about
9 the killing of George Smith. And I think I indicated
10 the year was 1862 or 1863. I think it's 1860. But I'm
11 still a little bit unsure about that.

12 Q Dr. whiteley, are there other
13 clarifications you would like to make?

14 A Not at this point.

15 Q Dr. whiteley, if you turn back to Exhibit
16 No. 48, I had a few additional questions about the
17 second page of that document. About halfway down the
18 second page of Exhibit No. 48 there is a reference to a
19 person named Kwatchikwai. And I believe it's spelled
20 here, K-w-a-t-c-h-i-k-w-a-i. During the course of your
21 archival research, have you come across any other
22 references to this person?

23 A It seems to me I've seen this name before,
24 but I can't recall where.

25 Q Based upon your work among the Hopi, have

□Page 768

1 you come across any references to -- well, strike that.
2 Do you know if this person went by a different name or
3 by any other names?

4 A I don't know.

5 Q Do you know if this person was related by
6 marriage or by blood to Tuuvi?

7 A I don't know.

8 Q There is also a reference on the second
9 page of Exhibit No. 48 to a person whose name is
10 spelled, I believe, T-a hyphen w-a hyphen, appears to
11 be, k-a-i. But it could be k-w-i. I am not sure
12 which. And there is a hyphen, y-a-m-a. I'm sorry,
13 Dr. whiteley. Were you about to say something?

14 A Yeah. My reading of that, Mr. Rogers,
15 just by virtue of some familiarity with Hopi phono
16 names, it would be T-a hyphen w-a hyphen h-o-i hyphen
17 y-o hyphen w-a: Ta-wa-hoi-yo-wa.

18 Q During the course of your work, have you
19 come across other references to this person?

20 A I honestly don't recall. There's a name
21 that rings a bell, but I'm not sure which bell it
22 rings.

23 Q Fair enough. There is a name to the right
24 of that name that I confess I have come trouble making
25 out. Can you make out that name?

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1 A I was just looking at that one, and I'm
2 having trouble with it too. Do you want to have a go
3 first and I'll see --

4 Q Well, let me ask you this: How would you
5 make out that name?

6 A Well --

7 Mr. McDonnell: He wants you to go first.

8 A I'm willing to go first if -- I think that's

9 first is H. That's either an A or an O hyphen, and I'm
10 beginning to have trouble. Part of the problem is that
11 I think the last syllable is cut off, so it's -- I can't
12 have much appreciation for the whole name. I -- I give
13 up.

14 Q (By Mr. Rogers) Fair enough. The next
15 name which is referred to appears to be a person with a
16 name, I believe, L-a-i hyphen I

17 A Um-hum.

18 Q Have you come across any other references
19 to this person?

20 A Yes, spelled L-e-h-i.

21 Q Do you know if this person went by any
22 other names?

23 A I don't know, but I believe he may have
24 been a Paiute.

25 Q Can you recall in what context you recall

□Page 770

1 seeing his name?

2 A From some documents from the mid-1870's,
3 maybe 1876 where a Mormon account was discussing people
4 contact to that Moencopi. Possibly even in Lee's
5 Journal from 1873. But the 1876 reference I think I'm
6 thinking of is James S. Brown. Or if it was 1877, it
7 might be Gibbons again.

8 Q Dr. Whiteley, based on your historical
9 research regarding Moencopi in the late 19th Century,
10 when, in your opinion, did the Navajos start farming in
11 that portion of the Moencopi Wash, which is outside the
12 1882 area?

13 A That's a hard question for me to answer,
14 because it's not a question that I've specifically
15 inquired into.

16 Q Well, Dr. Whiteley, have you conducted
17 enough of an investigation to be able to form an
18 opinion with respect to that issue?

19 A Based on the interpretation that Navajos
20 on the Moencopi Wash were actually inside the 1882 up
21 until 1889, then it would be reasonable to suggest that
22 there were probably some Navajos who started to plant
23 outside of that area in the 1890s. But I make no claim
24 that that's an absolute -- I make no claim to absolute
25 accuracy to that.

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1 Q Dr. Whiteley, I would like to turn to the
2 next section of your report, which Section 3 pertains
3 to Hopi Navajo relations. On page 22 of your report,
4 Exhibit No. 3, you state, quote, "Some Navajo raiding
5 continued after 1868." And then you have a reference,
6 "Nineteenth-century anthropologist Cosmos Mindeleff
7 characterizes Navajo raiding as more than economic in
8 motivation, but fundamentally part of Navajo culture."
9 Dr. Whiteley, in your opinion, is raiding
10 a fundamental part of Navajo culture?

11 A I think Mindeleff's characterization,
12 which was made in 1900 or shortly before that, is
13 plausible.

14 Q In what ways, in your opinion, does this
15 characteristic manifest itself in Navajo cultural
16 behavior?

17 A In its repeated occurrence in the historic
18 record, in numerous accounts that I have heard from
19 Hopis about ongoing patterns of theft. In that sense,

20 if it becomes such a continuous feature, then one has
 21 to suggest that it's a part of their culture in a
 22 general sense.

23 Q Further down on page 22 of Exhibit 3 you
 24 state, quote, Even after the cessation of formal
 25 raiding, reports of Navajo murder, theft, and

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1 harassment of Hopis have been continuous into the
 2 present, unquote. Dr. whiteley, how many Hopis have
 3 been murdered by Navajo in the 1980s? Is this --

4 A I do not know. I don't know of any.

5 Q Do you know of any in the 1970s?

6 A No. My statement was intended to be
 7 general and to include murder, theft, and harassment.
 8 The only example of murder that I cite here is the one
 9 from 1889. I certainly haven't conducted an inquiry
 10 into other incidents which may involve murder since
 11 that time to the present. So I think it's much more -- I
 12 mean, I have much more familiarity with tales of theft
 13 and harassment since that time.

14 My point there was to indicate that -- that
 15 after the cessation of formal raiding, murders
 16 continued. But I don't make a claim to have a
 17 comprehensive knowledge of the -- of the incidents of
 18 murders of Hopis by Navajos, if any, in 1970s and 1980s
 19 or in earlier decades of this century.

20 Q Fair enough. Are you familiar with any
 21 instances of Navajo thefts during the 1930s?

22 A During the 1930s? Well, since according
 23 to my consultants that this is material, a lot of which
 24 has never been written down, I just recall it from
 25 conversations. Since their accounts indicate that

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1 Navajo theft is -- has been continuous in their lifetime,
 2 I have have no reason to think that it ceased in the
 3 decade of the 1930s.

4 Q Do you recall any instances of theft by
 5 the Navajo in the 1930s?

6 A I don't recall.

7 Q Dr. whiteley, you note in this section of
 8 your report -- or highlight in this section instances of
 9 Hopi-navajo conflict. Isn't it true that the -- during
 10 the first half of the century, there were instances of
 11 cooperation between Hopi and Navajo?

12 A Certainly.

13 Q Dr. whiteley, isn't it true that during
 14 the 1930s, Hopis and Navajos in some instances worked
 15 side by side on CCC crews?

16 A I don't know that from my own research,
 17 but I have no trouble believing that that's true.

18 Q And there are also reported incidents of
 19 trade between Hopi and Navajo?

20 A Certainly. And I have witnessed such
 21 trade. I have been a part of -- a part of such trade
 22 during my time with the Hopi.

23 Q And Dr. whiteley, also in the first half
 24 of the century, it's true, is it not, that there are
 25 instances of Hopi hiring Navajo to assist in herding

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1 livestock?

2 A Certainly.

3 Q Dr. whiteley, there is also reference in
 4 your book Bacavi on page 120 --

A Does this have an Exhibit number?

Mr. Rogers: Why don't we go ahead and mark it at this point, just so there's no confusion. I don't know if there's going to be, you know, another edition published before trial, but just in case there is, I would like to mark as Exhibit No. 51 the book entitled Bacavi, B-a-c-a-v-i, Journey to Reed Springs, by Peter Whiteley, Copyright 1988.

(Defendant's Deposition Exhibit 51 was marked.)

Q (By Mr. Rogers) Dr. Whiteley, I would like to direct your attention to page 120. In the first full paragraph on that page you note, quote, Early on, Bacavi established special relations with some Navajos, which resulted in an unusual ceremonial performance. In 1911 or 1912, at Pongyaquaptewa's invitation, a large party of Navajos visited and performed a Yeibechei dance in Bacavi's plaza, unquote.

Dr. Whiteley, based upon your research at Bacavi, were you were able to investigate the

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historical indications for special relations that there were between Bacavi and the Navajos that you referred to here?

A Well, when I say "special relations," I think I am not indicating that Bacavi, as opposed to other Hopi villages, had special relations. I'm saying that Bacavi established special relations with some Navajos, perhaps as opposed to other Navajos. As to the basis of this, I don't know. I think some of it had to do with ongoing acquaintances, ongoing trading partnerships. Pongyaquaptewa, I believe, had an ongoing trading relationship with some Navajos. I think he spoke Navajo fluently and was clearly friendly with some Navajos.

Q During the course of your research, did you come across references to other instances in which Navajo performed Yeibechei or other ceremonies at one of the Hopi villages?

A I haven't come across any such reference, although in my footnotes to this one, I indicate, "After this time and until very recently, an individual Yeibechei would visit the village at certain times of the year going from house to house to ask for food." This is -- I haven't witnessed this myself, I -- but I have been told that this has happened until very recently

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and may indeed assist as not really a full Yeibechei performance, but it's -- I suppose it continues -- and I have no reason to believe that this doesn't happen in other villages too, particularly Hotevilla. That's the one that I would note most about.

Q And just so the record is clear, when you refer to "the village," your footnote on page 120, you are referring to Bacavi?

A That's correct.

Q Dr. Whiteley, I would like to turn to the next section of your report, Exhibit No. 3, to Section 4, which is from pages 27 through 38. Dr. Whiteley, on pages 28 and 29 of your report you make a comparison of Navajo and Hopi religious beliefs. And on page 28 you say that Navajo religion is, quote, fundamentally

16 individual-centered, unquote, and contrast that with
 17 Hopi religion, which you say is, quote, community -
 18 centered, unquote; is that correct?

19 A That's correct. Well, I also -- I -- what I
 20 specifically say is Navajo religious action is
 21 fundamentally individual-centered and contingent on
 22 particular occurrences of illness or misfortune. Hopi
 23 religion is community-centered, is directed to seasonal
 24 environmental concerns.

25 Q Then in support of that statement, you
 □Page 777

1 then cite to Gladys Reichard?

2 A That is correct.

3 Mr. Rogers: I would like to mark as
 4 Exhibit No. 52 an article by Gladys Reichard entitled
 5 "Distinctive Features of Navajo Religion," which
 6 appears in Southwestern Journal of Anthropology,
 7 Volume I 1945.

8 (Defendant's Deposition Exhibit 52 was
 9 marked.)

10 Q (By Mr. Rogers) Dr. Whiteley, I would
 11 like to direct your attention to page 206 of Exhibit
 12 No. 52. I suppose I should ask as well, Is Exhibit No.
 13 52 the reference that you are referring to on page 29
 14 of your report as the Reichard, 1945?

15 A It is.

16 Q From page 206 you quote from Dr. Reichard,
 17 toward the middle of page 206, that "The Navajo have
 18 more rituals to cure or restore the individual than
 19 they have for the common good. And they show greater
 20 elaboration in certain respects." Dr. Reichard also
 21 goes on to say, as part of the passage which you do not
 22 quote, "Nevertheless, every rite, every ceremony
 23 includes an underlying important factor for the good of
 24 the tribe, a feeling of power directed toward blessing
 25 all who come even remotely in contact with it.

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1 "Between the Pueblo and Navajo, there is no
 2 difference of purpose, but only a difference of
 3 emphasis." Do you see what that is?

4 A Yes.

5 Q Do you agree with Dr. Reichard's
 6 characterization?

7 A I have to reason to disagree with that.

8 Mr. Rogers: I would like to mark as
 9 Exhibit No. 53 an excerpt from the book entitled The
 10 Navaho by Clyde Kluckhohn and Dorothea Leighton, a
 11 revised edition, Copyright 1974. I believe the earlier
 12 edition is 1946.

13 (Defendant's Deposition Exhibit 53 was
 14 marked.)

15 Q (By Mr. Rogers) And Dr. Whiteley, I would
 16 like to direct your attention to pages 238 and 239,
 17 Exhibit 53, and particularly, the reference to the
 18 paragraph that begins the end of page 238. When you
 19 have had a chance to read that paragraph, let me know.

20 Dr. Whiteley, last week you mentioned a
 21 book by Dr. Kluckhohn, referring to The Navaho. Have
 22 you read the book by Dr. Kluckhohn entitled The Navaho
 23 from which Exhibit 53 derives?

24 A I have never read the whole book, no.

25 Q Toward the bottom of page 238,

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1 Dr. Kluckhohn and Dorothea Leighton write, quote, The
2 Navaho myths and rituals are focused upon the curing of
3 individuals has, thus, a firm basis in the reality of
4 the external world, but other social ends are served by
5 the ceremonials, unquote. Dr. Whiteley, based upon
6 your understanding of Navajo ceremonial practices, is
7 it true that social ends are served by Navajo religious
8 ceremonials?

9 A Yes.

10 Q Further on in the -- in that paragraph
11 Dr. Kluckhohn and Miss Leighton -- and I'm not sure if
12 it's Dr. Leighton. I'm not sure that it is.

13 A Yes, it is.

14 Q -- also state that, quote, Every rite has
15 also an agricultural overtone, unquote. Based upon
16 your understanding of Navajo religious ceremonialism, do
17 you agree with that statement?

18 A I don't know enough about Navajo religion
19 to be able to answer that question. My impression of
20 the overall paragraph -- and I think this is an
21 impression that applies to my knowledge of other parts
22 of the book, is that it tends to be rather generalized,
23 rather idealized. And given those impressions, it's
24 difficult to assent to a sentence that is taken out of
25 its context with the idea that it might be binding and

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1 absolute. I don't know that every rite has also an
2 agricultural overtone. I don't quite know what they
3 mean by that.

4 Q Dr. Whiteley, on the next paragraph that
5 appears on page 239, Drs. Kluckhohn and Leighton state,
6 quote, The contrast, which anthropologists have for
7 many years been drawing, between the ritual
8 preoccupation of Pueblos with rain and of Navajos with
9 healing is in fact an oversimplified schematization,
10 period, unquote. Do you agree with that opinion?

11 A That opinion may be true. The contrast
12 that they're identifying may indeed be a simplified
13 schematization. I don't know -- exactly know which
14 contrast they are referring to. But again, the problem
15 comes in terms of relative expertise. If we're going
16 to talk about experts on Navajo religion, it's my
17 feeling, and I believe this is certainly the thought of
18 Dr. Witherspoon, that Gladys Reichard was far more well
19 informed about Navajo religion than Clyde Kluckhohn
20 was. And I assume he would include Dorothea Leighton
21 with Clyde Kluckhohn in that statements.

22 So I think if we're to evaluate the
23 relative verisimilitude of statements by Kluckhohn and
24 Leighton on the one hand and Reichard on the other on
25 Navajo religion, I would put my strongest money on

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1 Gladys Reichard.

2 Q Dr. Whiteley, on page 28 of your report,
3 as you noted earlier, you state that Navajo religious
4 actions are, quote, Contingent on particular
5 occurrences of illness or misfortune, unquote. Is that
6 your understanding that all Navajo rituals and
7 ceremonies are centered on curing, ritual healing?

8 A Again, this is asking me to use language
9 which is very difficult for me as a cultural
10 anthropologist to -- to go along with. In a sense,
11 certainly, I know that all of Navajo religious action

12 is not absolutely, unexceptionally directed towards the
 13 curing of human illness or misfortune. The example
 14 that's occurring to me right now is
 15 ceremonies -- ceremony/ceremonies to combat drought,
 16 which is clearly something associated with more than
 17 the individual. But when anthropologists talk about
 18 rituals of affliction, they might include those which
 19 would focus upon curing individual illness and those
 20 which would be directed at redressing drought on a
 21 particular occasion. In other words, it's this
 22 contingency basis that -- that ritual is performed
 23 contingently rather than seasonally, rather than with a
 24 repeated sort of pattern, but I think is a main
 25 emphasis here.

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1 Q And when you refer to these rituals being
 2 contingent, is it contingent, as you say in the report,
 3 upon particular occurrences of illness or misfortune?
 4 A Or -- yes. But if we include drought within
 5 that or, you know, the illness of the world, if you
 6 like.

7 Q Is it tied to a particular event in the
 8 world, event of misfortune?

9 A So far as I know, yes, that is true.
 10 Somebody gets sick and needs a ceremony, and then a
 11 ceremony is performed. Somebody has some sort of
 12 misfortune, the world has a particular instance of
 13 drought, and a ceremony is performed. This is
 14 obviously generalized, and I don't claim that it covers
 15 all aspects of Navajo religion at all.

16 Q Well, Dr. Whiteley, are you familiar with
 17 the Blessingway based upon your review of the
 18 literature?

19 A My familiarity is -- is not what it was at
 20 one point in the past. I can't recall very much about
 21 what I have read in Leland Wyman's book. I have read
 22 Frank Mitchell's book more recently. I can't recall
 23 very much from that off the top of my head.

24 Q Well Dr. Whiteley, isn't it true that a
 25 Blessingway ceremony is not a curing ceremony?

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1 A Well, Mr. Rogers, you are really asking me
 2 to speculate. I mean, it's my recollection -- this is
 3 dim, but it's my recollection that Blessingway is often
 4 performed in conjunction with other ceremonies or as a
 5 part of other ceremonies which may indeed be curing
 6 ceremonies.

7 Mr. Rogers: I would like to mark as
 8 Exhibit No. 54 an excerpt from a book entitled
 9 Blessingway by Leland C. Wyman, Copyright 1970.
 10 (Defendant's Deposition Exhibit 54 was
 11 marked.)

12 Q (By Mr. Rogers) And Dr. Whiteley, I would
 13 like to direct your attention to page 4 of Exhibit No.
 14 54. And if you'd like to read a little bit more on the
 15 surrounding pages to put it into context, you are
 16 welcome to do so.

17 A Okay, thanks. Okay.

18 Q Dr. Whiteley, have you read the book from
 19 which Exhibit No. 54 derives?

20 A I haven't read the whole book, no.

21 Q On page 4, Dr. Wyman says -- or states,
 22 quote, Blessingway is not specifically concerned with

23 curing, unquote. Do you have any reason to disagree
24 with that statement?

25 A No, I don't. Again, I think it's useful
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1 to put it in the context of the other things that he
2 says about the role of Blessingway in relationship to
3 other, what he's calling, chantways, many of which are
4 to do with curing sickness.

5 Q Dr. Whiteley, is it your understanding
6 that the Blessingway ceremony, that it is -- its
7 performance is contingent upon particular occurrences
8 of illness or misfortune?

9 A No, it isn't. But, again, Blessingway is
10 certainly highlighted in this work as a major form of
11 Navajo ceremonial. But it's worth pointing out, I
12 think, that there are many, many Navajo ways to -- that
13 are cited: a Monsterway, Enemyway here. There are
14 tens of them, maybe scores of them, to my
15 recollection.

16 Q Dr. Whiteley, I would like to -- like to go
17 on to page 39 of your report, Exhibit No. 3. Toward
18 the bottom of the page you quote Berard Haile regarding
19 Navajo evaluation of land. Including Father Haile, are
20 you saying that the Navajo are not attached to the
21 land?

22 A Well, I do say later on that Navajos
23 clearly have attachments to the landscape. I think
24 the ---- the point that I am trying to get out here
25 concerns Navajo conceptions of land and the fact that

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1 these are different from Hopi attachments to land, as a
2 seminomadic society. Certainly at the time that Haile
3 was referring to, clearly the use of particular areas
4 in the landscape is different from a sedentary society,
5 which has used the same landscape over several hundred
6 years.

7 So I think the characterization that
8 Father Haile is making fits with what else I understand
9 about Navajo culture as a postural nomadic society or
10 postural seminomadic society. Clearly, they have
11 different interests in the landscape than a society -- a
12 sedentary society, which is based in the same landscape
13 over much longer periods of time.

14 Q Dr. Whiteley, I'm trying to --

15 A Let me just add --

16 Q Sure.

17 A -- this is something, of course, which
18 exists in the literature about postural societies as
19 opposed to sedentary societies or in relation to
20 sedentary societies the world over.

21 Q Well Dr. Whiteley, are you of the view
22 that Navajo do not attach religious significance to
23 particular places?

24 A No, I'm not of that view. Certainly, I
25 accept that they do attach specific significance to

□Page 786

1 such places.

2 Q And in your opinion, is this attachment
3 deeply felt?

4 A I have no reason to think that it's not
5 deeply felt.

6 Q Dr. Whiteley, over on page 30 of your
7 report, Exhibit No. 3, toward the top of the page you

8 state that Dr. Vannette's report, quote, suggests that
 9 Navajo sacred places are easily transportable from one
 10 landscape to another, unquote. Are you of the opinion
 11 that Navajo shrines are easily transportable from one
 12 landscape to another?

13 A Certain sorts of shrines, I am of that
 14 opinion, yes.

15 Q When you say "certain sorts of shrines,"
 16 do they fit into -- do you have a particular category in
 17 mind?

18 A I don't remember the -- the formal
 19 distinctions which Dr. Vannette makes. I think he
 20 makes distinctions between family shrines, regional
 21 shrines, and tribal shrines. There may be one other.
 22 I don't remember. Family shrines that he's indicating
 23 clearly are easily transportable, because one family
 24 moves into an area and sets up new family shrines. The
 25 regional shrines seem to be fairly easily transportable

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1 in that they exist in quite different areas of the
 2 Navajo reservation and elsewhere. The tribal shrines
 3 are -- the ones that I'm thinking of are the sacred
 4 mountains from the argument that I make about the San
 5 Francisco Peaks, which I find intuitively very
 6 plausible. And although I'm basing most of
 7 my -- my -- most of -- most of my citations on that from
 8 Florence Ellis's argument, but I find it very
 9 plausible.

10 I indeed do believe that that -- the fourth
 11 sacred mountain, the San Francisco Peaks, was
 12 transported from somewhere else at one time. Of
 13 course, this would also fit with the idea that Navajos
 14 have not been in the southwest itself for more than six
 15 or seven hundred years in contrast to the Hopis, who
 16 have been where they are for probably at least a
 17 thousand years, maybe a thousand years longer.

18 Q Well, Dr. Whiteley, is it your view that
 19 there are no Navajo shrines which are held by the
 20 Navajo to be regional or tribal or religious
 21 significance from generation to generation?

22 A No, that's not my view.

23 Q I take it that there are some regional
 24 shrines or tribal shrines which you would agree have
 25 been of religious significance to Navajos over the

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1 space of more than one generation?

2 A Definitely.

3 Q Dr. Whiteley, also on page 30, in making a
 4 critique of Dr. Vannette's report, you state it is
 5 also -- well, strike that. "It also seems extremely
 6 unlikely that the vast majority of the sites Vannette
 7 records are shared with Navajos living elsewhere
 8 (especially, for example, those living at the Alamo or
 9 Canyoncito reservations in New Mexico -- apparently
 10 outside the boundaries of the four sacred mountains
 11 themselves) who presumably have their own versions of
 12 such sacred places."

13 Dr. Whiteley, is it your opinion that to
 14 be a sacred place, the place must have religious
 15 significance to every one in a tribe?

16 A No.

17 Q To be a sacred place, must there be a
 18 majority of the tribe that recognize it as being

19 sacred?

20 A No. I suppose you could have a sacred
21 place which one individual identified as sacred and
22 could thus constitute a sacred place. But then this
23 raises the whole question of what is a sacred place?
24 How diagnostic is this term as opposed to an unsacred
25 place?

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1 Q Dr. Whiteley, based upon your
2 understanding of Hopi religious practices, are there
3 not Hopi shrines which are of religious significance
4 only to a particular person or that person's family?
5 A I can't think of any. But -- well, again,
6 what do you mean by "shrines"? No, actually I can't
7 think of any anyway.

8 Q Among the Hopi -- well, do the Hopi draw a
9 distinction between shrines that are of significance to
10 all the members of the Hopi tribe and those which are
11 of significance only to a subset of the tribe?

12 A Well, it depends upon how one explains
13 Hopi social structure and the independence of its
14 various units. For example, we were talking last week,
15 I believe, about the shine Apoonivi, which I identified
16 as a shrine which was of particular interest to the
17 Kwaakwant, or One-horn society. It was of such
18 significance that others were excluded from access to
19 that area. There were taboos about it.

20 But the role of the Kwaakwant in the Hopi
21 social structure, in the Hopi politicoreligious system
22 is contributory to the overall functioning of that
23 system. The Kwaakwant have a role in the whole of Hopi
24 society. And the religious activities that they engage
25 in are believed to be for the benefit of the whole of

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1 society and the -- indeed for the whole -- the Cosmos, if
2 you will, but especially for the whole of the
3 approximate landscape, the ecological resources of the
4 approximate landscape.

5 In that sense, the fact that Apoonivi has
6 special significance to the Kwaakwant does not mean
7 that the Kwaakwant, in fact, don't represent all of the
8 Hopi people or all of the Hopi people in the particular
9 village under consideration.

10 Q Dr. Whiteley, fair enough. And I don't
11 want you to have to repeat that -- what you said last
12 week. But that does raise a question as to whether I
13 understood your testimony correctly. Is it your
14 understanding that there are some shrine sites that are
15 of religious significance to some clans but not to
16 others?

17 A Can you define "shrine sites" for me.

18 Q Well, perhaps I can come at it from this
19 angle: Are there certain places which are deemed to be
20 of religious significance to some clans but not to
21 others?

22 A I don't think the question can be answered
23 that directly. In other words, for example, we have
24 talked about, and the Hopi expert witness reports,
25 several of them, are replete with references to

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1 eagle-gathering sites, which are conceived of as
2 belonging to particular clans. But what do the clans
3 or clan members do with these eagle-gathering sites?

4 They go and gather eagles, and they bring them into the
5 village. And the eagles serve as vehicles of religious
6 significance for the whole of society.

7 It's sort of like the model that the Hopis
8 use. Or the one, for example, that I have heard about
9 with Old Oraibi. Originally, Oraibi was occupied by
10 the Bear Clan. And they were living there by
11 themselves, so the story goes. Each clan as it
12 migrated in towards the Mesas, in towards Old Oraibi
13 particularly, would call on the Kikmongwi. The leader
14 of the clan would call on the Kikmongwi. And the
15 leader of the clan would also be the chief priest of
16 the clan's religious ceremony connected with the
17 religious society, and say, "We want to move into your
18 village."

19 And so the Kikmongwi would say, "Well,
20 what have you got for us? What can you contribute to
21 our community?" And the clan lead leader would say,
22 "Well, we have this ceremony, or we have this
23 particular spirit who has been helping us in our
24 migrations. It's very beneficial. We can bring rain,"
25 so on and so forth.

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1 So the Kikmongwi says, "All right. Give
2 it a go, and we'll see if it works." If it works -- or
3 if it worked, then the clan was admitted to the
4 village. If it didn't work, they were sent packing on
5 their way. And there are indeed, according to Hopi
6 traditions, many clans which would -- which were never
7 accepted and had to keep on migrating. So the idea is
8 that the religious ceremony itself is for the community
9 as a whole.

10 In other words, so when you go to your
11 eagle-gathering site and bring back an eagle, and it
12 sits on the rooftops until the home dance, and then
13 it's sent -- its spirit is sent back and you use its
14 feathers. You are doing -- all of the feathers go into
15 all sorts of other religious ceremonies throughout the
16 course of the year. So you can't really conceive of it
17 in such a separatistic fashion. Yes, it's a separate
18 activity in one dimension. But in another dimension,
19 it's very clearly an -- obviously for the benefit of the
20 whole of society.

21 Q Dr. Whiteley, you refer to -- a little
22 earlier to Florence Ellis. And I believe on page 30
23 you cite to her and also over into page 31.

24 Mr. Rogers: I would like to mark as
25 Exhibit No. 55 an excerpt from a book entitled A

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1 Garland Series, American Indian Ethnohistory, Indians
2 of the Southwest, a particular volume in that series,
3 Navajo Indians, Volume I anthropological study of the
4 Navajo Indians by Florence H. Ellis.

5 (Defendant's Deposition Exhibit 55 was
6 marked.)

7 Q (By Mr. Rogers) And I suppose for the
8 purpose of identification you should know that appended
9 to Exhibit No. 55 includes the title page, which
10 appears on page 27 of the Garland Series edition in
11 this report, which identifies the report as an
12 anthropological study of the Navajo Indians, by
13 Florence Ellis. It's identified as Def Ex E-51a,
14 Docket 229. Also attached to that is a table of

15 contents from Dr. Ellis's report, and pages 123 through
16 141 of her report.

17 Dr. Whiteley, is Exhibit No. 55 and the
18 pages that are appended to it those pages that you were
19 referencing on pages 30 and 31 as Ellis 1974?

20 A That's correct.

21 Q Is it your understanding that Dr. Ellis
22 prepared this report for submission to the Indian
23 Claims Commission?

24 A Yes, it is.

25 Q I note that this is identified as a

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1 Defendant's Exhibit. Was it your understanding that
2 Dr. Ellis was refined by the United States government
3 to prepare the report in anticipation of the Indian
4 Claims Commission adjudicating the Navajo claim?

5 A It is.

6 Q Now, you note, Dr. Whiteley, that
7 Dr. Ellis is skeptical about the claim that the
8 San Francisco Peaks have always been a traditional
9 Navajo sacred place; is that correct?

10 A That's correct.

11 Q It is true, is it not, that other
12 anthropologists have disagreed with that assessment?

13 A I can't call any to mind. But if you have
14 some in mind, I would be glad to take a look.

15 Q Certainly.

16 Mr. Rogers: I would like to mark Exhibit
17 No. 56, an excerpt from a book by Gladys Reichard
18 entitled Navaho Religion, a Study of Symbolism, dated
19 1950.

20 (Defendant's Deposition Exhibit 56 was
21 marked.)

22 Q (By Mr. Rogers) Dr. Whiteley, I would
23 like to direct your attention to page 20 of
24 Exhibit No. 56. And if you would like to look at the
25 paragraph surrounding that page, you are more than

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1 welcome to do so. Just let me know if you have had a
2 chance to review it.

3 A Okay. This is, of course, a page that I
4 quote in my report on this same page. Okay.

5 Q Dr. Whiteley, I note on page 20 of
6 Exhibit No. 56, Dr. Reichard states, "There is
7 agreement about the location of the southern mountain,
8 Mt. Taylor," and then there's the Navajo word for that,
9 "And the western, Mt. Humphreys," and there's the
10 Navajo word referring to Mt. Humphreys. Is it a fair
11 interpretation of that passage that Dr. Reichard in any
12 way felt that there was agreement that the western
13 mountain of religious significance was Mt. Humphreys,
14 which is among the San Francisco Peak?

15 A That's a fair interpretation. I think
16 it's also worth stating for the record that two
17 sentences prior to that she indicates, quote, "Seven or
18 more mountains are mentioned in the myths, but attempts
19 to identify them with actual elevations are more or
20 less futile."

21 Q But is it your understanding of
22 Dr. Reichard's view that she felt that there was
23 agreement about the location of the southern mountains
24 as being Mt. Taylor?

25 A It is in the western as Mt. Humphreys.

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1 But exactly what she means by "agreement" is also
2 somewhat unclear. And, again, my -- if I were to be
3 conducting research on this, my question would be,
4 well, what do the Alamo and Navajos think about
5 Mt. Humphreys? Is it important to them? Or Mt.
6 Taylor? Or is it important in the same -- I would guess
7 that Mt. Taylor would indeed be important to Alamo
8 Navajos. But would it have the same importance
9 directionally for them as it would for Navajos living
10 in the window Rock area?

11 Q Dr. Whiteley, I take it that you have not
12 undertaken such an investigation?

13 A No, I haven't.

14 Q Dr. Whiteley, if you would refer back to
15 Exhibit No. 54, which was the excerpt from Leland
16 Wyman's book, Blessingway. And in particular, I direct
17 your attention to page 16 to the paragraph under the
18 heading of "The Sacred Mountains." And again, if you
19 would like to take a look at the surrounding
20 paragraphs, you are welcome to do so. Just let me know
21 if -- when you have had a chance to review the Exhibit.

22 A Okay.

23 Q Dr. Whiteley, I note on page 16 of
24 Exhibit No. 54 Dr. Wyman states, "The identity of the
25 south and west mountains has never been questioned.

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1 That of the south is Mt. Taylor and the San Mateo Range
2 near Mexico. Its Navajo name, Tongue Mountain,"
3 provides a Navajo word for that, "is derived from the
4 fact that in the Blessingway myth, it is the tongue of
5 the inner form of the earth. The inner forms of the
6 mountains gave names to one another, and they called
7 this one 'which wind strikes.'" They gave no
8 explanation for it. "The mountain of the west is San
9 Francisco Peak in Arizona."

10 Dr. Whiteley, is it a fair interpretation
11 of this passage that Dr. Wyman thought the western
12 sacred mountain was the San Francisco Peaks?

13 A Well, he -- yes, it is. He indicates in his
14 book, though, at 26, though, that Mt. Humphreys is
15 properly the mountain of the west, Mt. Humphreys of the
16 San Francisco Peaks.

17 Q Is it a fair interpretation of that
18 passage Dr. Wyman considered the southern mountain,
19 being the sacred mountain, to be Mt. Taylor?

20 A It is.

21 Q And is it also fair to say that at least
22 in Dr. Wyman's view, he considered the identities of
23 the south and west mountains not to be a subject of
24 debate?

25 A It is, but I don't know that I would agree

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1 with that interpretation.

2 Q Well, Dr. Whiteley, do you consider
3 Dr. Ellis to be more qualified to speak or -- on issues
4 of Navajo religion than Dr. Reichard?

5 A Than Dr. Reichard?

6 Q Yes. Do you have an opinion which is more
7 qualified to speak on issues of Navajo religion?

8 A On issues of Navajo religion, I must say
9 clearly Dr. Reichard has more authority. On issues of
10 Navajo religious historiography, perhaps Dr. Ellis

11 would have more of a claim, since I believe that
 12 Dr. Ellis probably knows more about the history of the
 13 peoples of the southwest than Dr. Reichard did.

14 Q And I would like to continue the
 15 distinction, I think you have termed, between
 16 historiography and religion per se. Would you consider
 17 Dr. Wyman to be more of an authority on Navajo religion
 18 that be Dr. Ellis?

19 A Again, on Navajo religion, yes. On Navajo
 20 religious historiography, which would include what I've
 21 specified, probably not.

22 Q Why don't we take a break at this point.
 23 (A break was taken.)

24 Mr. McDonnell: During the break, I was
 25 given additional copies of documents, which I

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1 understand had briefly been marked for identification
 2 in the deposition as Exhibits 34 and 35. I'm told that
 3 these have clearer signature pages in both instances.
 4 They may not be identical copies or identical versions
 5 of the -- of the documents which were marked 34, 35. We,
 6 of course, make no representation that one is correct
 7 or more accurate or more authentic than the other. And
 8 I'm told these were produced -- just so there's no
 9 difficulty, these were produced to the Navajo tribe or
 10 made available for production to the Navajo tribe and
 11 in the earlier stages of this proceeding.

12 Mr. Rogers: Fair enough.

13 Q (By Mr. Rogers) And Dr. Whiteley, just
 14 for planning purposes, there was some additional
 15 documents that were given to me this morning by
 16 Mr. Scarboro also relating to documents that were
 17 discussed earlier in this deposition. What my plan is
 18 after lunch, just to go through them all, and I just
 19 have a few questions with respect to each.

20 A Okay.

21 Q Dr. Whiteley, before the break we were
 22 discussing the status of the San Francisco Peaks. I
 23 note on page 32 of your report you state, "The probable
 24 transfer of the Navajo western mountain to the San
 25 Francisco Peaks coincided with movement to the west of

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1 Mt. Taylor in the 18th, 19th centuries." And then you
 2 have a citation to Ellis. I take it it's your
 3 interpretation of Ellis that the Navajo -- well, that
 4 there was a transfer of the Navajo western mountain to
 5 the San Francisco Peaks which occurred in the 18th or
 6 19th centuries?

7 A That's correct.

8 Q Aside from Dr. Ellis, do you know of any
 9 other anthropologist? And in this question I'm
 10 excluding yourself, who agrees with Dr. Ellis.

11 A I don't know of any other anthropologist
 12 who's actually looked at this as an ethnographic
 13 problem, apart from Dr. Ellis.

14 Q So I take it your answer is that you do
 15 not know of any other anthropologist who shares
 16 Dr. Ellis's view?

17 A It's fair for me to respond to that
 18 question. I do not know any other anthropologist, but
 19 I don't actually know of any other anthropologist has
 20 inquired into the same question.

21 Q Fair enough. Dr. Whiteley, on page 32 you

22 provide a list of sites. In connection with this -- with
 23 these sites you say the, quote, borrowing of other Hopi
 24 sacred sites seems quite clear from Vannette's listing,
 25 unquote. I just have a few questions about some of

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1 these sites.

2 A Did we go over some of these last week
 3 already?

4 Q Yes, Dr. Whiteley. Some of these sites we
 5 have. I don't intend to be asking the same questions I
 6 asked last week about them.

7 A Okay.

8 Q My questions will be focused on finding
 9 out what the religious significance to the Hopi is of
 10 these sites. If we've covered the site last week, I
 11 don't intend to ask you again.

12 A Okay.

13 Q The first site that is mentioned in your
 14 list is Sunset Crater. And I believe last week you did
 15 testify to the understanding of the religious
 16 significance to the Hopis associated with this site.
 17 Dr. Whiteley, aside from what you read in Dr.
 18 Vannette's report, do you have any understanding as to
 19 why this place is of religious significance to the
 20 Navajo?

21 A Not as I can recall.

22 Q The next site that is listed is Bill
 23 Williams Mountain. And then -- and again, this is a site
 24 that was discussed last week. Aside from what you read
 25 in Dr. Vannette's report, do you have any understanding

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1 as to why this place is of significant religious
 2 significance to the Navajo?

3 A Not that I can recall.

4 Q The next place that's listed is Gray
 5 Mountain. Based on the work that you've done, of what
 6 religious significance is this place to the Hopi?

7 A I don't recall what the specific religious
 8 significance is. I think my citation to it derives
 9 from the list cited as Ainsworth, 1988, Appendix 3.

10 Q All right. I suppose as for clarity,
 11 Dr. Whiteley, is Gray Mountain you are referring to the
 12 one that's in the vicinity of the Cameron?

13 A That's correct.

14 Q Apart from what you've read in
 15 Dr. Vannette's report, do you have any understanding as
 16 to why this place is of religious significance to the
 17 Navajo?

18 A I can't remember exactly what I read in
 19 Dr. Vannette's report. I can't recall with much
 20 precision what the significance of Gray Mountain is to
 21 Navajos. I know that it's an area where certain
 22 medicinal plants are gathered. I believe it's a focus
 23 of certain ceremonial practices, certain organized
 24 ceremonial practices, but I don't remember which ones.
 25 And I don't remember if I remember that from Vannette

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1 or from elsewhere.

2 Q Fair enough. Upon what do you base your
 3 opinion that Gray Mountain was a sacred site that was
 4 borrowed from the Hopi?

5 A The fact that Gray Mountain is listed as a
 6 sacred site in the list that I site from Ainsworth, to

7 the best of my recollection, anyway, and its
 8 association -- and the fact that it's listed as a Navajo
 9 sacred site by Vannette. In other words, what I think
 10 I say here, to preface this list, is without
 11 undertaking an exhaustive comparison of a few selected
 12 sites, most obviously include, et cetera.

13 Now, I did not undertake to provide a
 14 rigorous examination and comparison of sites in terms
 15 of their specific significances or otherwise. Some of
 16 these, as I've already testified so far, I do know a
 17 little bit about their religious significance to Hopis
 18 and a little bit in some instances about their
 19 significance to Navajos. But my principal intention
 20 here is to point up specific sites which are listed for
 21 Navajos as well as for Hopis and to suggest that the
 22 sacredness of these sites to Navajos probably derives
 23 from the sacredness -- the sacredness to Hopis. As many
 24 other Navajo sites in New Mexico, the sacredness of
 25 those sites coincides exactly with, or coincides

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1 anyway, with their sacredness to Pueblo peoples.

2 The implication is, as I indicate from
 3 Ellis, there has been, in quotation marks, borrowing
 4 these sites. So in that listing that Ainsworth makes,
 5 if I was satisfied that I had heard something about
 6 this before or it rang some sort of a bell as a Hopi
 7 sacred site, then I think I would -- I would believe that
 8 this had been a sacred site for a significant amount of
 9 time, as all the other Hopi sacred sites that I know of
 10 have been, and then compare this with the list in
 11 Vannette's report and see significant comparisons.

12 Q Dr. Whiteley, to your knowledge, is Gray
 13 Mountain associated with particular clans or societies
 14 among the Hopi?

15 A Not that I know of.

16 Q The next place that's mentioned is one
 17 that I'm not sure if we covered last week or not. And
 18 if we have, I apologize. It's the east and west Sunset
 19 Mountains. Of what religious significance is this
 20 place or these places to the Hopi?

21 A Well, the -- I'm not sure that I can give a
 22 comprehensive answer to that. But I seem to recall
 23 that this is one area where eagles are gathered. And
 24 this -- it's the eagle-gathering area is the prerogative
 25 of certain clans and certain villages. I think this is

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1 one of those area that Mishongnovi mentions in one of
 2 the lists we mentioned earlier as of particular
 3 interest to them.

4 Q Do you know if this place is associated
 5 with a particular Hopi clan?

6 A Well, I think it is, but I don't know
 7 which clan.

8 Q Aside from what you read in Dr. Vannette's
 9 report, do you know of what religious significance this
 10 place is to the Navajo?

11 A No, I don't.

12 Q The next place listed is Howell Mesa. Of
 13 what religious significance is this place to the Hopi?

14 A Howell Mesa is an eagle-gathering area.
 15 It's associated with the clan migrations of a
 16 particular clan. I think the Third Mesa, it belongs to
 17 the Pumpkin or Squash Clan. I believe there is a ruin

18 somewhere in the vicinity, which is -- which is the
 19 traditional association of this clan -- maybe some other
 20 related clans. Aside from that, it might have other
 21 significances. The Hopi name for is Awat'ovi, the same
 22 name as for the village site on Antelope Mesa.
 23 It's -- seems to be a good question to us why these two
 24 places have the same name and if there is some
 25 historical association or some other traditionary

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1 association of the two places in Hopi thought. But I
 2 don't know the answer to that.

3 Q Is Awat'ovi an archaic Hopi word in the
 4 sense we were talking about it last week?

5 A No. It means "bow on the top place."

6 Q Apart from what you have read in
 7 Dr. Vannette's report, do you have any understanding as
 8 to why Howell Mesa is of religious significance to the
 9 Navajo?

10 A No.

11 Q The next place is Echo Cliffs.

12 A Oh, I'm sorry. Oh, no. Okay. Forget
 13 it.

14 Q Was there some reference to Howell Mesa
 15 that you were thinking of?

16 A I was thinking of something else that I
 17 had heard from somebody about Howell Mesa, but I think
 18 I'm wrong. I'm thinking of Coal Mine Mesa.

19 Q The next place in the list is to Echo
 20 Cliffs. Is this the place that's in the vicinity of
 21 the Gap?

22 A That's correct.

23 Q Of what religious significance is this
 24 place to the Hopis?

25 A Well, again, I can't give you a

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1 comprehensive answer, but I think it's certainly an
 2 eagle-gathering area. And I seem to recall this may be
 3 for either the -- either the Greasewood Clan or the Bear
 4 Clan, but I'm not sure.

5 Q Aside from what you've read in Dr.
 6 Vannette's report, do you have any understanding as to
 7 why this place is of religious significance to the
 8 Navajo?

9 A No.

10 Q Next place that's identified is Wildcat
 11 Peak. Of what religious significance is Wildcat Peak
 12 to the Hopi?

13 A Well, one that I know of particularly is
 14 its status as the area in times past where stone for
 15 stone axes was collected. So its Hopi name is
 16 Pinya'ingtsomo, which means "stone ax hill" or "stone
 17 ax peak." I think there are some eagle-gathering areas
 18 in the vicinity. I don't know for sure if they're
 19 associated with the peak itself.

20 Q Which Hopi clans, if any, are associated
 21 with this place?

22 A I don't really remember that. Certainly
 23 not too far away I think there are Fire Clan
 24 eagle-gathering areas that -- again, not too far away
 25 there is a place called Kwaatupatsa, which means "eagle

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1 ledge," which is claimed as an Eagle Clan migration
 2 route and supposed to be a ruin in the area which

3 belongs to the Eagle Clan. I can't remember
4 specifically how close this is to wildcat Peak. So
5 it's possible that my interpolation there is incorrect.

6 Q Apart from what you have read in
7 Dr. Vannette's report, do you have any understanding as
8 to why this place is of religious significance to the
9 Navajo?

10 A No.

11 Q The next place that is mentioned is Black
12 Mesa. Of what religious significance is Black Mesa to
13 the Hopi?

14 A Well, I think the answer to that is
15 multiple. And I don't think it's -- probably not
16 necessary for me to go into a lot of them. But there
17 are parts of -- many different parts of Black Mesa which
18 are of religious significance. In one sense, of
19 course, the Hopi Mesa themselves are the extensions of
20 Black Mesa. So we could go into, you know, multiple
21 significances. So do you want me to answer any further
22 than that?

23 Q Well, I think you are correct, Black Mesa
24 is a large area. Do you have any understanding -- well,
25 strike that. Apart from what you read in

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1 Dr. Vannette's report, do you have any understanding as
2 to why Black Mesa is of religious significance to the
3 Navajo?

4 A Again, I think there are -- maybe this is
5 from Vannette's report, but it might be from elsewhere
6 too. I think there are multiple significances on Black
7 Mesa for Navajos.

8 Q Again, it's a large area. Why don't we
9 move to the next one. Referring to Middle Mesa, is it
10 your understanding that this place is located south of
11 White Mesa?

12 A Yes, that's correct.

13 Q The only reason I bring that up, that
14 there are different places on the reservations that are
15 referred to as Middle Mesa.

16 A That's the one I was thinking of.

17 Q Of what religious significance --

18 A Do you have the Usgs map?

19 Q Sure.

20 A That will help me.

21 A Okay.

22 Q The record should reflect that I've given
23 the witness a copy of the Usgs map for Marble Canyon.
24 Dr. Whiteley, the intent of my question was just to
25 distinguish the Middle Mesa that you were referring to

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1 in your report from other Middle Mesas or places that
2 are called Middle Mesas on the reservation. I note
3 from the Usgs map of Marble Canyon that there is a
4 place that's identified as Middle Mesa. That appears
5 to be south of White Mesa. Is this the same place that
6 you were referring to on page 32 your report?

7 A That's correct.

8 Q Dr. Whiteley, of what religious
9 significance is Middle Mesa to the Hopi?

10 A I honestly don't recall. I think it's
11 possible that, again, there may be some eagle-gathering
12 areas around that, but I really don't recall. I think
13 there are certainly some medicinal plant-gathering

14 areas around Middle Mesa, as there may be in some of
 15 the other areas that we've already mentioned. If
 16 that's of -- a category of religious significance, then I
 17 think I would apply it to probably all of those areas
 18 that we've mentioned up to now. But I don't recall any
 19 more specifically than that.

20 Q Do you know which Hopi clans were
 21 associated with this place?

22 A I don't remember. I'm trying to remember
 23 the exact site of this Eagle Clan place that I
 24 mentioned, and I can't remember that. It's conceivable
 25 that it might be this far south. In which case if

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1 that's correct, then it would have maybe an eagle kind
 2 of significance. But at that point, it's really rather
 3 wild speculation.

4 Q Fair enough. Dr. Whiteley, apart from
 5 what you may have read in Dr. Vannette's report, do you
 6 have any understanding as to why this place is of
 7 religious significance to Navajo?

8 A No.

9 Q The next place you identify is white
 10 Mesa. I guess I should ask, there's more than one
 11 place in the reservations that may be called white
 12 Mesa. Is the white Mesa you are referring to is the
 13 white Mesa that appears on the Marble Canyon Usgs map?

14 A It is.

15 Q Of what religious significance is white
 16 Mesa to the Hopi?

17 A Again, to the best of my knowledge at the
 18 present, it's an eagle-gathering area. It's probably
 19 also used for -- for gathering medicinal plants
 20 and -- well, if -- this is where, again, if it is of
 21 religious significance begins to become questionable as
 22 a category in that I'm sure Hopis hunted on white Mesa,
 23 probably hunted rabbits, may have hunted other game
 24 that might have been there in the past: deer,
 25 antelope -- antelope, anyway. Given my remarks in my

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1 Hopi Tutskwa report, it's clear that some aspects of
 2 hunting practice are religious just as much as were
 3 economic.

4 Q Dr. Whiteley, do you know which Hopi clans
 5 were associated with white Mesa?

6 A I don't recall that well. I have a
 7 feeling that the Fire Clan may have a particular
 8 interest in white Mesa.

9 Q Apart from what you may have read in
 10 Dr. Vanette's report, do you have any understanding as
 11 to why the Navajo attach religious significance to
 12 white Mesa?

13 A No, I don't.

14 Q The next place that's identified in your
 15 report is Pasture Canyon. Of what religious
 16 significance is Pasture Canyon to the Hopi?

17 A well, I think several religious
 18 significances. There are, I believe, a number of
 19 shrines in Pasture Canyon. There's particularly a
 20 shrine called -- I believe it's called sa'lako, which is
 21 associated with a particular spring. I can't recall
 22 its other significances, but I think that there are a
 23 number of springs in that area which are associated
 24 with religious significance of particular kinds in Hopi

25 practice.

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1 Q Is the -- well, you've mentioned that
2 the -- there is a place in Pasture Canyon that's referred
3 to by the Hopi as Sa'lako?

4 A Yes, I think so.

5 Q Is that place associated with particular
6 Hopi clans?

7 A I don't recall.

8 Q Aside from what you may have read in
9 Dr. Vannette's report, do you have any understanding as
10 to why the Navajo consider Pasture Canyon to be of
11 religious significance?

12 A No, I don't.

13 Q The next place that you identify in your
14 list is Elephants Feet. Of what religious significance
15 is this place to the Hopi?

16 A I don't recall. I think this was one that
17 appeared in Ainsworth's list. And I can't remember its
18 cited significance there. I just don't recall that
19 one.

20 Q Fair enough. Do you know if this place is
21 associated with particular Hopi clans?

22 A I am trying to find it on this map. It
23 may not be recorded on this map maybe.

24 Q Dr. Whiteley, I am not sure that it is.

25 A Okay. Then without remembering its

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1 precise location, I don't know what significance it
2 might be.

3 Q I would like to go on to the next
4 location, that's identified as Blue Canyon. Of what
5 religious significance is Blue Canyon to the Hopi?

6 A There are a number of significances. I'm
7 just trying to see whether on this there is a
8 distinction between Blue Canyon and Coal Mine Canyon.
9 Okay. There is, yeah. My memory of some of the
10 significances between Coal Mine Canyon and Blue Canyon
11 gets a little bit mixed up. Coal Mine Canyon is a
12 tributary canyon to Blue -- to the Moencopi Wash, which
13 includes Blue Canyon in its total extent. Let me
14 clarify that. which includes Blue Canyon as part of
15 its total extent. I think -- let's see. I think the
16 fairest answer to this is I just don't recall. But I
17 think there are several significances in Hopi religious
18 practices/religioeconomic practices.

19 Q Do you recall which clans or Hopi clans
20 are associated with this place?

21 A I really don't recall. I think there may
22 be some Bow Clan association with this Mesa.

23 Q Dr. Whiteley, apart from what you may have
24 read in Dr. Vannette's report, do you have any
25 understanding as to why the Navajo considers this place

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1 to be of religious significance?

2 A No.

3 Q Dr. Whiteley, the next place is identified
4 in your list is the confluence of Colorado and Little
5 Colorado Rivers. And I believe you talked about this
6 location last week in terms of its religious
7 significance to the Hopi. Do you have any
8 understanding as to -- well, strike that.

9 Apart from what you read in Dr. Vannette's

10 report, do you have any understanding as to why this
11 place is of religious significance to the Navajo?

12 A No.

13 Q The next place is identified as the Little
14 Colorado River Canyon. I believe last week you did
15 talk about the Little Colorado River.

16 A Um-hum.

17 Q Is the -- well, let's go ahead and ask it.
18 Of what religious significance is the Little Colorado
19 River Canyon to the Hopi?

20 A Again, to the best of my recollection, it
21 has several significances. In part, I think there are
22 some -- there's some interest in eagle gathering in this
23 area. I'm not sure that that's correct, actually.
24 Maybe there are no eagle nests around there. The
25 general area is associated with this -- this Salt Trail.

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1 And there are a number of shrines reported throughout
2 this general area, for example, by Don Talayesva in Sun
3 Chief. I think that may be the best answer I can give
4 off the top of my head.

5 Q Fair enough. Do you know which Hopi clans
6 are associated with this place?

7 A I think many Hopi clans are associated
8 with it in terms of its proximity to or -- or part of
9 this Salt Trail. If it is an eagle-gathering area, but
10 I don't remember, I think it would probably be the Bear
11 Clan, maybe the Spider Clan, maybe the Snake Clan.

12 Q Apart from what you may have read in
13 Dr. Vannette's report, do you have any understanding as
14 to why this place is of religious significance to the
15 Navajo?

16 A No, I don't.

17 Q The next place in your list is to
18 Moenave. What religious significance is this place to
19 the Hopi?

20 A I don't really remember the the context of
21 that from -- again, off the top of my head. Certainly,
22 Moenave is -- is an important site ancestrally to the
23 Hopis. There were planting cotton there probably for a
24 very, very long time. Beneath the cliffs, there's a
25 spring. I'm sure that has some special significance.

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1 I forget the exact route of this Salt Trail, but it's
2 possible that that went by the -- through Moenave
3 specifically or within its general vicinity.

4 Q Dr. Whiteley, do you know which Hopi clans
5 were associated with Moenave?

6 A No, I don't. But again, given my answer
7 to the question about the Little Colorado River Canyon,
8 I think probably many clans were associated with it.

9 Q Apart from what you may have read in
10 Dr. Vannette's report, do you have any understanding as
11 to why this place is of religious significance to the
12 Navajo?

13 A No, I don't.

14 Q The next place that's listed is Salt
15 Cave. Where is Salt Cave located?

16 A Salt Cave is located somewhere -- and I
17 don't know exactly, but it's -- it's somewhere at the
18 bottom of the Grand Canyon not too far away from its
19 confluence with -- of the Colorado with the Little
20 Colorado. If you have a copy of Sun Chief, I think

21 that would give us a more accurate depiction. Or I
 22 think Malotki in his -- in one of his books, one of his
 23 two books on Maasaw describes going to Salt Cave or
 24 going to -- very close to it. So we could pinpoint it
 25 that way. But I don't remember really off the top of

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1 my head.

2 Q Well, Dr. Whiteley, I think for our
 3 purposes just -- I think just a general description of
 4 this location is sufficient. And the reason I ask, I
 5 wasn't sure if we talked about this last week or not.
 6 Of what religious significance is this place to the
 7 Hopi?

8 A I think we did talk about it in the
 9 context of its relationship to Salt Canyon, the Grand
 10 Canyon, Ongtupqa. Do you remember what I said about a
 11 possible -- well, this whole vicinity is very important
 12 to the Hopis because this is, of course, the confluence
 13 of the Little Colorado and the Colorado, is the area of
 14 Sipaawuni. But then I mentioned the significance of
 15 salt in this area, of salt woman and how this in some
 16 interpretations is associated with a consideration of
 17 the Grand Canyon and the Colorado River as the one
 18 alimentary canal of a female body. So that the earth
 19 is perhaps a female body, and this is one of her -- you
 20 know, this is one of her alimentary canals. So that
 21 the area of salt is -- is associated with areas in that
 22 body of sexual fecundity and fertility. But this is
 23 very vague and very general, and I don't claim that
 24 it's an accurate representation of Hopi conceptions of
 25 the place.

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1 Q Fair enough. Apart from what you have
 2 read in Dr. Vannette's report or may have read, do you
 3 have any understanding as to why this place is of
 4 religious significance to the Navajo?

5 A No.

6 Q The next place is Navajo Mountain, which I
 7 think we did talk about last week. And the place after
 8 that is White Rock at Salt Canyon. Again, I realize we
 9 did talk about Salt Canyon last week. Are you
 10 familiar -- well, do you know of what religious
 11 significance this particular place in Salt Canyon has
 12 for the Hopi?

13 A I don't really remember without consulting
 14 Ainsworth's list again as an initial guide. I seem to
 15 recall, again, that it may be referred to in Don
 16 Talayesva's account of the Salt Trail pilgrimage as a
 17 specific shrine, but I don't remember what it is
 18 exactly.

19 Q Do you know which Hopi clans this place is
 20 associated with?

21 A No, I don't. And again, if its
 22 significance is to this pilgrimage, then I suspect that
 23 it's to many Hopi clans.

24 Q Apart from what you may have read in
 25 Dr. Vannette's report, do you have any understanding as

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1 to why this place is of religious significance to the
 2 Navajo?

3 A No, I don't.

4 Q The next place is -- the next place in your
 5 list is Grand Falls. I am not sure if there's another

6 Grand Falls in the reservations or not. Is this the
7 place, Grand Falls, in the vicinity to the southeast of
8 Gray Mountain?

9 A I don't think it's on my map.

10 Q Well, can you describe to me where Grand
11 Falls is located?

12 A It's ten miles up a dirt road off the road
13 between Flagstaff and Leupp. I'm sorry. I'm sure we
14 were referring to the same place. It's on the Little
15 Colorado River, and it's a famous spot.

16 Q Your understanding is it's east of Highway
17 89?

18 A Correct.

19 Q And it's west of Leupp?

20 A Correct.

21 Q Of what religious significance is
22 Grand Falls to the Hopi?

23 A Again, I can't answer that
24 comprehensively. I seem to recall that it is indeed an
25 eagle-gathering area for a particular clan. I don't

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1 remember which clan that is. It may be Second Mesa
2 Bear Clan especially or another Second Mesa clan. That
3 seems to be an idea that sticks in my mind. Maybe it's
4 Bluebird Clan from Second Mesa. I don't really
5 remember. Again, we are talking about a place which is
6 along the river. And I've already mentioned last week
7 the significance of water and rivers to Hopi religious
8 conceptions as an area of a lot of water at certain
9 times of the year. It's quite probable that this area
10 has multiple other significances.

11 Q Apart from what you may have read in
12 Dr. Vannette's report, do you have any understanding as
13 to why Grand Falls is of religious significance to the
14 Navajo?

15 A No.

16 Q The next place is the Grand Canyon, which
17 I believe we discussed in exhaustive detail last week.
18 And the location after that is Woodruff Butte, which we
19 also discussed last week. Apart from what you may have
20 read in Dr. Vannette's report, do you have any
21 understanding as to why Woodruff Butte is of religious
22 significance to the Navajo?

23 A No, I don't.

24 Q Now, Dr. Whiteley, I take it it is your
25 opinion that each of the places that we have just

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1 discussed are instances in which the Navajo have
2 borrowed a sacred site from the Hopi; is that correct?

3 A That's my general inference, yes.

4 Q I take it that you cannot think of a
5 single instance in which the Hopis have borrowed a
6 sacred site from the Navajo?

7 A No, I can't.

8 Q Dr. Whiteley, on page 34 of your report,
9 Exhibit No. 3, you state that the Navajo have, quote,
10 an expedient cosmology, unquote. To your knowledge,
11 has any anthropologist besides yourself described
12 Navajo cosmology as being "expedient"?

13 A Described it exactly with those words or
14 described the implications which I associate with that
15 sort of summary adjectival qualification?

16 Q Well, fair enough. Has any anthropologist

17 besides yourself used that adjective "expedient" to
18 describe Navajo cosmology?

19 A Not that I can recall.

20 Q What do you mean when you say that Navajo
21 cosmology is "expedient"?

22 A Well, I'm using the term, as I just
23 indicated, as an -- as an adjectival qualification, which
24 is a summary inference from what I've discussed so far
25 or what I talk about afterwards. In other words, it's

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1 a cosmology which would include the ability to move
2 sacred sites expediently as people moved through the
3 landscape. It's, I think, the -- again, the
4 proliferation of sites in Dr. Vannette's report which
5 indicates multiplications of the same sites -- or
6 seemingly the site of the same religious significance
7 suggests that these have moved as Navajo families,
8 outfits, have moved into particular areas.

9 The accounts that I have heard in
10 conversations before this -- before my involvement with
11 this case with -- for example, with Dr. John Wood at
12 Northern Arizona University indicates that on Big
13 Mountain, sacred sites proliferate as they indeed
14 proliferate elsewhere for the Navajos. And again, it's
15 clear that some of these sites are replicated
16 from -- from their existence elsewhere to presumably
17 further east when Navajos lived further east.

18 what I mean by an "expedient cosmology" is
19 ones that's really capable -- as I say, capable of
20 transfer from one geographic locale to another in the
21 same way that -- that -- or in perhaps not an unrelated
22 way, but perhaps not the same way, but not unrelated
23 way that Judeo-Christian cosmology or Christian
24 cosmology is not attached to specific landscapes
25 irremediably. It's not essential for -- for all

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1 Christians to go to Jerusalem at some point in their
2 life. They can be practicing Christians without having
3 to do this in a specific place.

4 I think this is my point about Navajo
5 cosmology. One can be a practitioner of Navajo religion
6 in many, many places. And this is evidenced by the
7 sort of example that I've cited from Dr. Vannette's
8 report.

9 Q Dr. Whiteley, on pages 35 and 36 of your
10 report, you discuss Hopi and Navajo range practices,
11 animal husbandry practices. Based upon your academic
12 experience and your professional experience, do you
13 consider yourself to be an expert in range management?

14 A No.

15 Q Dr. Whiteley, are you familiar with stock
16 production as it occurred during the 1930s and 40s?

17 A I'm generally familiar with it, yes.

18 Q It's true, is it not, that stock
19 production also occurred in Land Management Unit No. 6?

20 A The way that you asked those two
21 questions, I didn't quite follow the connection. You
22 said, "are you familiar with stock production?" And
23 then you said it's true that stock production also took
24 place in District 6.

25 Q Well, I can ask it in a simpler way.

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1 A Okay.

2 Q Did stock production take place in Land
3 Management Unit No. 6?

4 A Yes.

5 Q Is it your understanding that it took
6 place sometime during the 1940's?

7 A Yes. 1943, '44, I think.

8 Q Is it your understanding of that period
9 that the United States government considered Land
10 Management Unit No. 6 to be overgrazed at the time of
11 stock production?

12 A Yes.

13 Q Dr. Whiteley, do you have an opinion as to
14 whether the Navajo range practices were unsound?

15 Mr. McDonnell: I'm sorry. I didn't
16 hear -- Navajo range practices were --

17 Mr. Rogers: Unsound.

18 A That's a reference to several sources.
19 Isn't there somebody who says specifically that it's
20 unsound? Well, I guess it's me who says it's
21 specifically unsound.

22 Based upon my reading of these documents
23 and those that I cite specifically and the fact that
24 Hopis were so crowded into District 6 that their own
25 grazing practices became unsound, and therefore stock

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1 production needed to be enacted there, and Navajo
2 population expansion historically and Navajo sheep
3 population expansion historically and the need to
4 colonize new areas because old areas became unsuitable
5 for grazing because they had been overgrazed, yes. I
6 think Navajo grazing practices, at least in part, are
7 probably or were probably or part of the -- were probably
8 ecologically unsound.

9 Q (By Mr. Rogers) Dr. Whiteley, in what
10 respects did Hopi grazing practices differ from Navajo
11 grazing practices?

12 A Well, in that I cite instances here
13 including the annual culling of cattle of Old Oraibi,
14 which was reported by Chief Looloma in the 1890s, I
15 don't know what specific practices Hopis engaged in
16 with sheep. But it's very clear that they're -- or, and
17 some continued to engage with sheep. It's very clear
18 that they're critically aware of ecological resources
19 in their interrelationships.

20 Culling, I think, would be a significant
21 way of dealing with this situation. And again, my
22 interpretation of -- of the stock production, as it
23 applied to Hopis, reflected the fact that formerly
24 accessible grazing areas by Hopis -- I'm sorry,
25 accessible areas to Hopis had been usurped by Navajos,

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1 and indeed, the government had specifically restricted
2 Hopis to District 6 prior to stock production.

3 In other words, they were forced into a
4 much smaller area of graze than they previously had
5 access to. So it was both Navajo pressure and
6 government pressure which, I think, created a situation
7 where Hopi grazing practices may have been temporarily
8 unsound.

9 Q Well, Dr. Whiteley, aside from culling,
10 are you aware of any other specific differences between
11 Hopi and Navajo grazing practices?

12 A Again, Hopis -- and I cite this, Hopis, to

13 my knowledge, do not associate numbers of stock with
 14 wealth. Wealth in this sense is not important in Hopi
 15 society, as I've written elsewhere and as others have
 16 written. In other words, there's no high priori
 17 interest in maximizing the herd size, in keeping -- well,
 18 to quote William Zah -- "Old weathers and nondescript
 19 goats alive."

20 Q Dr. Whiteley, are there any other
 21 differences that you are aware of between Hopi and
 22 Navajo grazing practices as they existed in the first
 23 half of the century?

24 A I don't think Hopis migrated nearly
 25 so far in search of pasture as Navajos did. I mean, to

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1 my recollection, some Navajos moved far distances. As
 2 I said, they were a seminomadic society. So graze
 3 their -- to graze their sheep in different areas, Hopis,
 4 I don't think, in this century and in the latter part
 5 of the last century moved over such large areas. I
 6 can't really say before that, because part of the
 7 reason that -- that they were -- they were restricted in
 8 their herding practices, again, was due to Navajo
 9 movement into Hopi areas and Navajo prevention of Hopi
 10 access to grazing areas and Navajo thefts of Hopi
 11 stock, et cetera.

12 But my general response is that Hopis
 13 probably did not move over such large areas between,
 14 say, winter and summer pasture.

15 Q Dr. Whiteley, are you aware of any other
 16 differences in the grazing practices of the Hopi and
 17 Navajo during the first half of this century?

18 A I don't know what Navajos did with cattle
 19 so much. I don't think Navajos were so interested in
 20 cattle in the early part of the century as Hopis were,
 21 and Hopis became even more interested in cattle. Hopis
 22 displaced sheep in many instances with cattle. Cattle
 23 herding, again, is, according to my understanding, less
 24 damaging to the landscape. The sheep that these sheep
 25 are descended from, for the most part, are what they

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1 call Curro sheep.

2 And they are -- they tended to -- and I think
 3 the idea is very often they would pull up an edible
 4 plant and completely destroy its roots, whereas cattle
 5 don't do that to such an extent. You know, I am not a
 6 range specialist, so this is, you know, speculative or
 7 at least very, very generalized in that, again, Hopis
 8 sold cattle yearly. In the account that I have already
 9 put on the record of driving cattle to, I think it was
 10 sunset, sunrise, this would indicate that they were
 11 annually keeping their herd sizes at -- within certain
 12 bounds.

13 Again, I don't know that Navajos did
 14 this. I don't know that they didn't do it. But again,
 15 I think it's generally correct to say that Navajos had
 16 far less interest in cattle than -- in the earlier part
 17 of the century than Hopis did.

18 Q Dr. Whiteley, are you aware of any other
 19 differences in the grazing practices of the Navajo and
 20 Hopi?

21 A If I sat here and thought about it, I
 22 could probably think of some in terms of the use of
 23 sheep camps, in terms of the use of corrals perhaps.

24 Hopis had, typically, stone corrals. I don't know this
 25 was always true of Navajo corrals. The sheep camps

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1 that I have been to, the Hopi sheep corrals that I have
 2 been to in the company of Hopi sheep herders, I can,
 3 you know, say some specific things about those.
 4 whether they be related to this or not, I don't know.
 5 I could hypothesize that there may be some differences
 6 about those things with whatever. I know of Navajo
 7 sheep-herding practices, but it's a bit speculative.

8 Q Fair enough. Why don't we adjourn for
 9 lunch at this point.

10 (A lunch break was taken.)

11 Q Dr. Whiteley, before we went on the
 12 record, I understand from you that you might have
 13 clarification of some of your earlier testimony; is
 14 that correct?

15 A That's correct.

16 Q And what clarifications would you like to
 17 make at this time?

18 A You asked me what I meant by an "expedient
 19 cosmology," and I gave an answer to that question.
 20 what occurred to me over lunch also is that included
 21 within my idea of that is the fact that Navajo
 22 cosmology has reflected the adaptations which Navajo
 23 religious practices have undergone over the last three
 24 or four hundred years. As particularly in terms of
 25 incorporations from practices -- incorporations of other

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1 practices from other peoples, especially Pueblo
 2 peoples, some of these practices I mentioned in the
 3 report.

4 The other item that I was able to recall,
 5 and I don't think this would alter the way that I
 6 answered the specific questions, but when you were
 7 asking me about some of the specific sites which are
 8 sacred places to both Hopis and Navajos, you asked me,
 9 well, do you have any knowledge about the significance
 10 of these -- any of these sites to Navajos from context
 11 other than Vannette's report. And I said no to a
 12 number of those things.

13 what I remember doesn't -- it shouldn't
 14 materially affect any of my answers, was that I have
 15 indeed looked at Van Valkenburgh's list of sacred
 16 places in my research for this project. I cannot
 17 remember off the top of my head one association with
 18 any of the specific sites that you asked me about. But
 19 I should put it on the record that I have indeed
 20 consulted Van Valkenburgh's list of sacred places.

21 This is something which occurred to me
 22 yesterday too. And it may be irrelevant. But you
 23 would ask me about possible sources to -- possible other
 24 sources to determine Aka'usi's ethnicity. And the
 25 source that I didn't mention, which I haven't looked at

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1 in connection with this -- my involvement with this case,
 2 but which again I think would be an appropriate source
 3 to look at to try to find out any other information,
 4 would be the Tuba City letterbooks and possibly also
 5 the Fort Defiance letterbooks. But I have no knowledge
 6 at this point whether there is or is not any specific
 7 information about Aka'usi in either of those sources.

8 Q Dr. Whiteley, are there any other

9 clarifications that you would like to make in your
10 previous testimony?

11 A I don't think so.

12 Q And again, Dr. Whiteley, I understand that
13 you are the only one in this room who is under oath.
14 And if you do feel it's appropriate at some juncture to
15 clarify some part of your earlier testimony, please let
16 me know, and I'll give you that opportunity.

17 A Thank you.

18 Q Dr. Whiteley, counsel for Hopi tribe this
19 morning was kind enough to provide copies of several
20 documents for which I did not have very legible copies
21 of. And I would like to go through those now. I don't
22 have a lot of questions about any one particular
23 document. I do have a few questions with respect to
24 each. The first document are two pages from the
25 annotated -- annotations to Dr. Russell's report. I

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1 asked yesterday toward the end of the day for a better
2 copy of two of the pages. They just sent me 72 and 75
3 of Dr. Russell's report in which you had written some
4 comments in the margin.

5 Mr. Rogers: I would like to mark as
6 Exhibit 57 two pages from Dr. Russell's, I believe,
7 1986 report, page 72 and 75 which have handwritten
8 notations on them.

9 (Defendant's Deposition Exhibit 57 was
10 marked.)

11 Q (By Mr. Rogers) Dr. Whiteley, having
12 obtained Exhibit 57 from counsel for the Hopi tribe, I
13 I can make out the handwriting which appears on page
14 75, but I'm still having difficulty with the first note
15 which appears in the margin on page 72. I can make out
16 the first word as being "but."

17 A Okay. The left of it reads, "But he was
18 using a matrilineal criterion, as all Hopis would."
19 Perhaps it's worth putting on the record that I think
20 that I commented yesterday about this passage with
21 a -- with some additional interpretive material. I can't
22 remember exactly what I said. But that although I have
23 this in my original notes from Dr. Russell's reports,
24 I'm not sure if this is the line of interpretation I
25 would favor, the one that's indicated in this specific

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1 note at this point. I'm referring to the matrilineal
2 criterion. This is more of a note to myself saying,
3 well, he was probably using a matrilineal criterion, as
4 all Hopis would. And that's kind of an immediate
5 response to that. And having thought of that, I'm not
6 sure my interpretation of that would be the same, that
7 Guy Naseyouma would respond that Aka'usi was a Navajo.

8 Q Do you have a theory now as to why he
9 would respond this way?

10 A Well, I think this was what I put on the
11 record yesterday. In other words, I've described a
12 variety of possible situations that Aka'usi might have
13 been identified as a Navajo by a Hopi.

14 Q Dr. Whiteley, if you would locate Exhibit
15 No. 34.

16 A Can you identify it for me? Thank you.

17 Q Dr. Whiteley, I believe last week when we
18 were discussing Exhibit No. 34, I had asked you if you
19 recalled if there were any other signatures that were

20 attached to this Exhibit or to this letter. And as I
21 seem to recall, that you did recall that there were?

22 A That's right.

23 Q Counsel for the Hopi tribe provided this
24 morning two groups of documents that appear to be
25 related to Exhibit No. 34.

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1 Mr. Rogers: I would like to mark as
2 Exhibit No. 58 a letter that's from Edgar K. Miller to
3 the Commissioner of Indian Affairs, dated March 7,
4 1933. It has attached to it a letter from Viets
5 Lomahaftewa to the Senate Subcommittee of Indian
6 Affairs, dated February 27, 1933. And attached to that
7 are two pages of signatures.

8 (Defendant's Deposition Exhibit 58 was
9 marked.)

10 Mr. Rogers: I would like to mark as
11 Exhibit No. 59 another group of documents that were
12 produced this morning by the Hopi tribe. The first
13 page of Exhibit No. 59 has the production number
14 H300313, which I believe is the same as Exhibit
15 No. 34. Appended to it is a letter from Edgar K.
16 Miller to the Commissioner of Indian Affairs, dated
17 March 7, 1933. And attached to that is a letter from
18 Viets Lomahaftewa to the Senate Subcommittee of Indian
19 Affairs dated February 27, 1933. And attached to that
20 are two pages of signatures.

21 (Defendant's Deposition Exhibit 59 was
22 marked.)

23 Q (By Mr. Rogers) Dr. Whiteley, is the
24 first page of Exhibit 59 the same as Exhibit No. 34?

25 A It is.

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1 Q Now, comparing Exhibits 58 and 59, are the
2 last four pages of Exhibit 59 identical to Exhibit 58?

3 A There are only four pages to Exhibit 58.
4 Sorry. Could you repeat the question.

5 Q Certainly. Are the last four pages of
6 Exhibit No. 59 identical to Exhibit 58?

7 A They appear to be the same to me. That's
8 why. Yes. I think they are.

9 Q Dr. Whiteley, turning to Exhibit 59, does
10 the first and third pages of Exhibit 59 appear to be
11 substantially the same?

12 A Substantially the same, yes, but I have
13 noticed minor differences. For example, in the second
14 line of page 3 we have "It is all gather different."
15 Well, as in the second line of page 1 it says
16 "Altogether different." And I think there appear to be
17 other similar typographical differences. But the
18 substance is -- I'm convinced the substance is the same.

19 Q Does it appear to you that Mr. Lomahaftewa
20 either prepared two versions of the same letter or had
21 somebody else do it for him?

22 A It does.

23 Q Now, Dr. Whiteley, last week I asked you
24 whether Exhibit No. 34 was the same as the reference
25 which is identified on page 23 of your Hopitutskwa

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1 report; I believe was Exhibit No. 1.

2 A Yes, you did. I recall.

3 Q And there is the reference there to
4 Lomahaftewa, et al., 2-27-1933?

5 A That's correct.
 6 Q Was the reference -- well, were you
 7 referring to just Exhibit No. 34, or were you also
 8 referring to the last three pages of Exhibit 59?
 9 A I can't reconstruct this positively, but I
 10 think my intention was certainly to refer to the last
 11 three pages of 59 as well. Since I conducted my
 12 research through Arnold and Porter's files last summer,
 13 there has been an extensive reorganization of those
 14 files. So my annotations to the locations of cited
 15 documents or of annotations to myself are no longer
 16 reflected in that system of organization. I can't be
 17 absolutely certain, but I am 99 percent sure that this
 18 is exactly what I intended to refer to.

19 Q And my paralegals do that to me all the
 20 time.

(Discussion off the record.)

22 Q Well, Dr. Whiteley, on page 22 of your
 23 Hopitutskwa report, Exhibit No. 1, you describe this
 24 petition being from the Shongopavi with the support
 25 from Mishongnovi. If you would take a look at the

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1 signatures which appear on the last two pages of
 2 Exhibit 59. Looking at those names, do you identify
 3 any of those people as being either from First Mesa or
 4 Third Mesa?

5 A I don't think any of them are. I think
 6 all of them are from Chimopovy, as it states on the top
 7 of page 3. Sorry. On the top of page 4.

8 Q Dr. Whiteley, you want to move on to the
 9 next group of documents.

10 Mr. Rogers: I would like to mark as
 11 Exhibit No. 60 a multipaged document. The first page
 12 appears to be a letter from Lomahaftewa to John
 13 Collier, dated March 8, 1934. The second page of
 14 Exhibit No. 60 appears to be a letter from Mr.
 15 Lomahaftewa to John Collier, dated March 8, 1934, which
 16 appears not to be identical with the first page of
 17 Exhibit 60. On the third page of Exhibit 60 appears to
 18 be some handwritten material. It also appears to be
 19 illegible. And the last two pages of Exhibit No. 60
 20 appear to be handwritten signatures.

21 (Defendant's Deposition Exhibit 60 was
 22 marked.)

23 Mr. Rogers: I would like to mark as
 24 Exhibit No. 61 a multipaged document. The first
 25 page appears to be a letter from Lomahaftewa to

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1 John Collier, dated March 8, 1934. The second page of
 2 Exhibit 61 appears to be handwritten notes; again
 3 appears to be illegible. Remaining six pages in
 4 Exhibit 61 appear to be handwritten signatures.

5 (Defendant's Deposition Exhibit 61 was
 6 marked.)

7 Q (By Mr. Rogers) Dr. Whiteley, I note on
 8 page 23 of your Hopitutskwa report, Exhibit No. 1, in
 9 the first full paragraph you have a reference to
 10 Lomahaftewa, et al., 3-8-1934; is that correct?

11 A That's correct.

12 Q Is the reference that you identified on
 13 this page either Exhibit 60 or 61?

14 A Yes. In that Exhibit 60 and 61 differ,
 15 my -- of course, they are the same number of pages. My

16 recollection is that a part of Exhibit 60, which I
 17 think is just the first page, differs from Exhibit 61,
 18 should probably be included in what I was referring
 19 to. Again, owing to the reorganization, I can't
 20 exactly reconstruction that.
 21 Q Fair enough. Do you recall if the version
 22 of this -- these two documents, Exhibits 60 or 61,
 23 whether the version you reviewed -- well, strike that.
 24 Does the version that you reviewed have the second
 25 page -- well, was the second page of the version that you

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1 reviewed legible?
 2 A I don't recall that, no.
 3 Q Do you recall if during the course of your
 4 research you were able to figure out what was being
 5 said on that page?
 6 A I don't -- I don't really recall that.
 7 Certainly, I can see right now that parts of it are
 8 decipherable. I seem to recall that the wording is not
 9 identical to the other -- to the first page of
 10 Exhibit 61. I think I would have to go back over my
 11 notes if I can -- if I was to ascertain whether I had
 12 figured that out.
 13 Q Dr. Whiteley, Exhibits 61 and 60 also
 14 differ in terms of the number of pages of signatures
 15 that are attached.
 16 A That's correct.
 17 Q Were you able to determine which exhibit
 18 more accurately reflects the number of pages of
 19 signatures that originally accompanied the petition?
 20 A I think it's a relative question. I think
 21 Exhibit 61 does, because I recognize several of the
 22 names on Exhibit 60 as being from Mishongnovi village
 23 on both the first and the second page. I'm not sure
 24 that that means there indeed aren't people from
 25 Shipaulovi on that list. But in that I -- in my report I

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1 indicate that the same request was reiterated from many
 2 signatures from Shongopavi and Mishongnovi, and I say
 3 many signatures, and that's why Exhibit 61, which
 4 certainly does have many signatures from Shongopavi,
 5 would be more likely to be the one I was referring to.
 6 Q Dr. Whiteley, just for clarification, when
 7 you were referring to the two pages in Exhibit No. 60,
 8 were you referring to the last two pages in that
 9 Exhibit?
 10 A That's correct. But you may have noticed
 11 that in Exhibit 61 there are some duplications. Page 5
 12 and 6 are substantially the same. They're not copies
 13 of the same writing in every case, but the signatures
 14 are substantially the same. And the next page after
 15 that listed as Mishongnovi village does give some names
 16 which appear earlier on page 3: for example,
 17 Komalaytewa. And indeed, the last page and the
 18 penultimate page are substantially the same.
 19 Q That's the fifth page?
 20 A No, as each other.
 21 Q Dr. Whiteley, referring to Exhibit 61, I
 22 understand that the places that are identified in the
 23 last four pages of the exhibit indicate the -- indicate
 24 Shongopavi and Mishongnovi. Do you recognize any of
 25 the names on the last four pages as people who were

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1 from First or Third Mesa?

2 A Well, strictly speaking, yes. There's
3 one, possibly even two. I'll discuss them when I'm --

4 Q And Dr. Whiteley, take your time to go
5 through it.

6 A The first one that I was referring to, and
7 I haven't been able to note any others -- certainly there
8 are some names which are duplicated from one mesa to
9 the next. But I'm aware of at least one of these which
10 would disallow an interpretation that that person came
11 from the Third Mesa. I'm referring to Lomayestewa, who
12 appears on page 5 in the right-hand column at the
13 bottom above one other name. Certainly, that's the
14 name of a man from Third Mesa, but it's also a name of
15 a man from Second Mesa. And I have no reason to think
16 that this man would be from Third Mesa. I'm pretty
17 sure he was from Second Mesa.

18 In that same column further up, the second
19 name down, which looks like Honini, I think that's a
20 guy called Honahni, who lived at Shongopavi most of his
21 life, but, in fact, was raised at First Mesa and
22 married into Shongopavi. But he was some sort of
23 representative from Shongopavi. He went to Washington
24 in 1890, for example. So calling him from First Mesa
25 is sort of doubtful.

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1 The other instance, on the last page, the
2 penultimate page, there's a name in the second -- in the
3 right-hand column three from the bottom of Numkena.
4 Numkena is certainly a Third Mesa name. It's a name
5 that's associated with Old Oraibi and with Moencopi.
6 There are Numkenas in Moencopi. I don't know their
7 family history. And it's possible that they come from
8 this man who was originally from Shongopavi. It's also
9 possible that, again, this was just a duplicated name
10 that existed also at Second Mesa.

11 In short, I have no reason to think that
12 this man was from Third Mesa, apart from the fact I
13 know that there was a Numkena at Third Mesa at one
14 point.

15 Q Dr. Whiteley, if you would, please, turn
16 to the fifth page of Exhibit 61.

17 A To the --

18 Q Fifth page. I believe that's the one that
19 it's confusing, because there's two pages that are very
20 similar. But it's the first one in the series of pages
21 in Exhibit 61 which has toward the top of the page
22 Viets Lomahaftewa and Chimopovy village. And below
23 that, Joseph Mook or Mova. Do you see that?

24 A Yes.

25 Q And Dr. Whiteley, I realize last week we

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1 had -- or you testified as to who various individuals
2 were and what leadership positions that they held.
3 Unfortunately, I don't recall all of your testimony at
4 this point. So if I ask you a question I asked you
5 last week, I apologize. Based upon your research, do
6 you know what leadership position the Chief Talhaftewa
7 held?

8 A May I ask, do we have a copy of Harry
9 James' pages from Hopi history in the room or --

10 Q I can tell you, Dr. Whiteley, I did not
11 bring it with me. Would that be one source that would

12 contain that?

13 A It would contain information about certain
14 of those individuals. I think you are going to ask
15 about that specific leadership roles. There are
16 certain individuals on this list who appear in Harry
17 James with their specific leadership roles identified,
18 but I don't remember them all. Talhaftewa, I think,
19 may have been Bluebird Clan chief and presumably some
20 religious society chief also, but I don't recall. And
21 I think that's going to be the same with the rest.

22 Indicates that Viets Lomhaftewa was
23 Two-horn chief priest at one point. There is a
24 name -- well, I think Komalaytewa, two pages
25 down -- forgive me. Stop me if I'm going --

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1 Q No. That's --

2 A I think he was probably the Kikmongwi of
3 Mishongnovi. There's also a name Suckmasa, which is
4 one, two, three, four, five, six further down -- seven
5 further down on that same page. I understand that
6 Suckmasa was Kikmongwi at Mishongnovi during a certain
7 period.

8 Q Dr. whiteley, could you spell those names
9 for the court reporter.

10 A Suckmasa is spelled here -- well,
11 S-u-c-k-m-a-s-a.

12 Q Is there a more conventional spelling for
13 his name?

14 A I would spell it S-a-k-m-a-k-a. And
15 Komalaytewa is spelled here K-o-m-a-l-a-y-t-e-w-a.

16 Q And how would you spell it?

17 A Q-u-o-m-a-l-a-y-t-i-w-a. On that same
18 page, right-hand corner, first one up Coochwytewa. I
19 seem to recall that he was chief priest of a particular
20 society, Mishongnovi, but I don't remember which one.

21 Q Dr. whiteley, last week I asked if this
22 person was the same as Dan Katchongva, and I believe at
23 that time you testified that he was the same person?

24 A No, no, no. This is definitely a
25 different person. There was -- there was a Cooch

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1 something or other. We had a document which on the
2 first page had Katchongva, spelled K-a-t-c-h-o-n-g-v-a,
3 and the last page it was spelled C-o-o-c-h. And I
4 forget the rest of it. But it wasn't -- it wasn't
5 w-y-t-e-w-a, to the best my recollection.

6 Q Dr. whiteley, out of the signatories for
7 Shongopavi, are any of those individuals -- were any of
8 those people the Mishongnovi of Shongopavi as of 1934?

9 A I don't remember the Kikmongwi name off
10 the top of my head. It may be that Talhaftewa, the
11 first of -- the second one down of the list, which is
12 T-a-l-a-h-a-f-t-e-w-a, was the Kikmongwi, but I don't
13 remember off the top of my head.

14 Q Dr. whiteley, we have one additional
15 document. If you would, let's take a look at Exhibit
16 No. 35.

17 Mr. Rogers: I would like to mark as
18 Exhibit No. 62 a document which appears to be a letter
19 from a number of individuals to John Collier, dated
20 March 7, 1934.

21 (Defendant's Deposition Exhibit 62 was
22 marked.)

23 Q (By Mr. Rogers) Dr. Whiteley, have you
24 seen Exhibit 62 before?

25 A I believe I have in that it's
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1 substantially identical with Exhibit 35.

2 Q Well Dr. Whiteley, comparing the last page
3 in both Exhibit 35 and Exhibit 62, do the signatures
4 appear to be the same?

5 A They appear to be the same people. They
6 actually look like they were written separately.

7 Q Last week when we were discussing Exhibit
8 No. 35, we had some difficulty -- at least I had some
9 difficulty identifying or being able to decipher the
10 last signature, which appears in the -- the last
11 signature on the second column. I note that Exhibit
12 No. 62, there is a person -- the last person in the
13 second column of the signature appears to be more
14 legible. Can you make out who that is?

15 A Yes. I think he's Homer Homewytewa,
16 H-o-m-e-r. I think he's spelling his name here,
17 H-o-m-e-w-y-t-e-w-a.

18 Q Do you know which village he came from?

19 A He was from -- originally from Old Oraibi.

20 Q Do you know where he was residing during
21 the 1930s?

22 A Probably in Kikmongwi.

23 Q Do you know if he held any leadership
24 position in the village?

25 A I know that later on -- I don't know about
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1 earlier. But later on, he was a medicine man.

2 Q Do you know if at the time he held the
3 position of being what you call in your report as a
4 traditional leader?

5 A I don't think he did.

6 Q Dr. Whiteley, with that, I would like to
7 return back to your Hopi-Navajo relations report,
8 Exhibit No. 3, and to the section of your report
9 dealing with Hopi conceptions, their relationships with
10 Navajo, which appear on pages 39 through 43.
11 Dr. Whiteley, to your knowledge, has any attitudinal
12 survey ever been conducted among the Hopi to assess
13 their attitude toward the Navajo?

14 A Not to my knowledge. The kind of people
15 who were doing attitudinal surveys would include Laura
16 Thompson, Richard Brandt, Wayne Dennis, but I don't
17 recall whether any of these included Hopi conceptions
18 of Navajos.

19 Q Dr. Whiteley, for -- well, aside from
20 conducting library research, what did you do to collect
21 data for this section of your report? And I'm
22 specifically referring to Section 5 of your report.

23 A I was drawing upon my years of research
24 with the Hopi. Again, I did not look at my prior field
25 notes. And it certainly is the case that there are

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1 many things that I've heard which conform to these
2 characterizations on page 39 which probably don't exist
3 in my field notes. So that's my source.

4 Q Is the information that's contained on
5 these pages, pages 39 through 43, largely
6 impressionistic?

7 A Well, I think that's fair to say, yes.

8 But "impressionistic" would have to include the
 9 impressions of a number of other people that I cite on
 10 those pages and would have to exclude inferences to
 11 specific, say, ritual practices which have been
 12 interpreted or which I have known what the intentions
 13 were as they were happening. I don't know if that's
 14 impressionistic or if it's empirical.

15 Q Fair enough, Dr. Whiteley. And maybe I'm
 16 being a little too Delphic. I take it you didn't go
 17 out and interview people or your consultants about
 18 their attitudes about Navajo?

19 A No. This is material that I've picked up
 20 on innumerable instances along the way, conversations
 21 with Hopis, observations of ritual performances,
 22 meetings and discussions among Hopis at which I have
 23 been present and so forth, as well as the published
 24 documents that I signed and probably other published
 25 documents too.

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1 Q Dr. Whiteley, on page 39 in the second
 2 full paragraph, Exhibit No. 3, you state, quote,
 3 General Hopi views of Navajos include characterizations
 4 as aggressive, overbearing, mendacious and
 5 thieving -- which while stereotypical, are all
 6 characteristics conforming to historically documented
 7 Hopi experience, unquote. Are you saying in this
 8 passage that Hopis are justified in believing in these
 9 stereotypes?

10 A I'm saying that the stereotypes rest upon
 11 certain historical experiences which they can cite
 12 which the documentary record can be investigated to -- to
 13 conform to those stereotypes.

14 Q Dr. Whiteley, in our opinion as an
 15 anthropologist, is it your opinion that Navajo are
 16 aggressive, overbearing, mendacious, and thieving?

17 A Anthropologists don't make such
 18 judgments. In other words, I -- you know, certainly
 19 there was a slightly facetious element in my response.
 20 But anthropologists do not make judgments about the
 21 character of people in these terms.

22 Q So I take it you have no view one way or
 23 the other whether or not these stereotypes hold true?

24 A As an anthropologist, I have no view.

25 Q Well, do you have a personal view?

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1 A I have some -- some personal feelings about
 2 it which I would separate from my anthropological
 3 recognition. And those personal feelings are that I
 4 think I understand where those stereotypes come from.

5 Q Well, do you believe the stereotypes are
 6 true?

7 A In that I don't really believe that any
 8 stereotype is in and of itself true, no, I don't
 9 believe that these stereotypes are true in every single
 10 instance or in any single instance, perhaps.

11 Q Dr. Whiteley, in your opinion as an
 12 anthropologist, do these Hopi stereotypes bear on the
 13 issue of land use?

14 A In that Hopis conceive of their relations
 15 with Navajos in the way that I have described, they
 16 form the entire historical context of Hopi use of the
 17 land and their ability to use the land. In other
 18 words, for example, the joint-use area, which was set

19 aside in 1964, I think, was a complete failure because
 20 Hopis were not allowed joint use by Navajos. Navajos
 21 drove them off repeatedly, or at least this is what I
 22 have heard from innumerable Hopi consultants on many
 23 occasions.

24 In that that reflects the way that Hopis
 25 have used the land that they consider their own and

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1 have been prevented from using the land, I think these
 2 are important in that, as I state later in this
 3 passage, Hopis have, I think at some point during the
 4 litigation of the -- of the last 30 years, it's been
 5 suggested that Hopis negotiate directly with Navajos.
 6 Hopis have consistently rejected such suggestions. I
 7 think that reflects this sense of their relationships
 8 with Navajos.

9 Q Well, Dr. Whiteley, that raises a few
 10 points that you made toward the last page of that
 11 section, in the last section in text where you make a
 12 similar point. Based on your research, is it your
 13 opinion that given the characteristics of Navajo
 14 culture, Hopi have been justified in consistently
 15 rejecting suggestions that they negotiate directly with
 16 the Navajo?

17 A I simply think that it's consistent with
 18 Hopi conceptions of general Navajo behavior, the sort
 19 of thing that I'm referring to in these stereotypes
 20 that they would then not want to negotiate with people
 21 who they view in these terms, because they wouldn't
 22 think that such people would negotiate with it in good
 23 faith.

24 Q Further down on page 43, the last sentence
 25 you state, quote, It is rather like asking the prey,

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1 that has already had its supportive resource-base
 2 substantially usurped, to negotiate with the predator,
 3 end quote. As an anthropologist, do you consider the
 4 Navajo culture to be predatory?

5 A I think that's stating the case too
 6 generally. I think in that I have documented, as many
 7 anthropologists before me, knowing much more about the
 8 situation than I do, have documented the Navajo economy
 9 as well as aspects of -- other aspects of Navajo culture
 10 involves an emphasis for certain pursuits on raiding in
 11 that one can characterize the raiding of sedentary
 12 villages for produce for people to be sold as slaves,
 13 to be used as slaves. One can characterize that, I
 14 think, as predatory behavior.

15 Q Dr. Whiteley, how do Hopi attitudes toward
 16 the Navajo compare with their attitudes toward Anglo
 17 culture?

18 A Oh. That -- that's an awfully complex
 19 question. Certainly, Hopis have attitudes about
 20 general Anglo behavior, about specific Anglo
 21 behaviors. Some of these are stereotypical. Others of
 22 them are just specifically descriptive. I think they
 23 differ in many ways. But without going into it in a
 24 lot of detail, I think it would be difficult to answer.

25 Q Let me see if I can narrow it. You

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1 mention on page 39 that the general Hopi views of
 2 Navajo include characterizations as aggressive. Is
 3 there a similar stereotype that the Hopis have with

4 respect to the Anglo culture? Do they consider Anglo
5 culture to be aggressive?

6 A I think Hopis in general recognize the
7 rather fragmentary status of a concept of Anglo
8 culture. They come into contact with many different
9 kinds of Anglos who represent many different kinds of
10 interests. So I think they have a range of attitudes
11 and a range of characterizations, depending upon that
12 range of behaviors that they encounter. Certainly, I
13 think they might be prepared to characterize Anglo
14 mining interests, Peabody Coal Company, as aggressive.
15 I think -- I don't think they would have too much trouble
16 with that sort of view.

17 But with -- I don't think that they
18 would -- and they probably would characterize the
19 behavior of certain Anglos who come and see dancers as
20 aggressive, but they wouldn't characterize behavior of
21 a lot of others in such terms.

22 Q But the general Hopi view -- well, do the
23 Hopis generally view Anglo culture as mendacious?

24 A Generally speaking, I don't think so.
25 Again, they would certainly identify certain behaviors

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1 as mendacious and perhaps certain groups or elements of
2 Anglo society in that way, but I don't think they would
3 characterize Anglos in general as mendacious. Maybe I
4 can answer the question that you asked a couple of
5 questions ago.

6 I think that some stereotypes of Anglos
7 would include ideas of unsophisticatedness,
8 gullibility, uncertainty as to their place in the
9 world, silliness, childishness, volubility,
10 insufficient self-control, and variations on those
11 themes. Maybe some others too, of course. Oh, lack of
12 decorum and self-presentation and interpersonal
13 relations.

14 Q Dr. whiteley, would the general Hopi view
15 of Anglo culture include a characterization of Anglo
16 culture as being thieving?

17 A Generally speaking, no. I think there are
18 certainly, again, aspects which would -- they would
19 characterize as thieving. The extensive photography of
20 Hopi ceremonies, the extensive interest in collecting,
21 acquiring Hopi artifacts on the part of the -- some
22 elements of Anglo society -- what they called a spade is
23 a spade -- the theft of artifacts from Pueblo
24 archaeological sites I think they would identify as
25 thieving. But, again, I think this characterization

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1 would be restricted to such sorts of behaviors and
2 would not cover Anglos as a whole.

3 Q Well, Dr. whiteley, within the area that
4 you've described as being within the -- or it being a
5 Hopitutskwa, there are several Anglo communities,
6 including Holbrook, Winslow, and Flagstaff. Generally,
7 do the Hopis consider Anglo occupation of those areas
8 to be usurpation of their traditional land claim?

9 A I think some Hopis would think that way,
10 yes. I don't think all Hopis would think that way.
11 Second part of my answer is sort of irrelevant, because
12 the first part covers it.

13 Q Dr. whiteley, the last -- or the next
14 section of your report pertains to population, pages

15 44 and 45 of your report. And I note that you have
 16 reported population figures on these pages. I take it
 17 that these are from published sources or from archival
 18 sources?

19 A That's correct.

20 Q In your opinion, how do these population
 21 figures bear on the issue of land use?

22 A Well, I think, as I say, I mean,
 23 throughout this report, we have a historical pattern of
 24 Navajo movement westward from Dinetah, which is
 25 D-i-n-e-t-a-h. Why would they -- why would Navajos

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1 moving into these areas, especially in the latter 19th
 2 century, why did they continue to expand into areas
 3 that they previously had not occupied? Why did many of
 4 these areas get overgrazed by Navajo livestock? I
 5 think -- why are Navajos interested in the present case
 6 and past cases of disputes with Hopis over land? I
 7 think precisely because as one major reason, what I say
 8 the major cause at the top of page 44, because of this
 9 expansion of population.

10 In other words, if Navajos had not
 11 expanded in populations since 1870 or if they had
 12 expanded at the same rate, say, as the Hopis or, I
 13 don't know, whoever, then the need for land would
 14 clearly not be so great. A problem, I think, of this
 15 factor of population explosion, population -- rapid
 16 population -- rapid, sustained, continuous population
 17 growth is that however this case is decided, Navajos
 18 will still need more land, because their population is
 19 still growing at a very rapid rate.

20 Q Dr. Whiteley, I only have one other area I
 21 wanted to ask you about, and that's something referred
 22 to in your book Deliberate Acts, which has been marked
 23 as Exhibit No. 6. Just a moment here. Dr. Whiteley,
 24 on page 143 of Exhibit No. 6, toward the bottom of the
 25 page and next to the last paragraph you state, quote,

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1 Sheep symbolism is virtually nonexistent in Hopi
 2 religion and it had always been customary to trade for
 3 mutton with visiting Navajos (a practice that has
 4 continued) unquote.

5 And over on page 163 of Exhibit 6 in the
 6 second full paragraph on that page, about halfway down
 7 in that paragraph you write, quote, The predominance of
 8 corn symbolism in Hopi religion bears this out; sheep
 9 or cattle motifs are virtually nonexistent, unquote.

10 My question, Dr. Whiteley, Based upon what
 11 you know about Hopi religious -- Hopi ritual and
 12 religion, is sheep symbolism virtually nonexistent in
 13 Hopi religion?

14 A Well, in comparison with agricultural
 15 symbolism or hunting and gathering symbolism, it's
 16 much, much less, yes. It's much, much less.

17 Q The same true for cattle?

18 A Yes.

19 Q Is the same true for horses?

20 A I believe so.

21 Q Why don't we take a break at this point.
 22 (A break was taken.)

23 A I thought of something I wanted to add to
 24 that answer.

25 Q Dr. Whiteley, was there a further

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1 clarification you wish to make?

2 A Yes. In that in my Hopitutskwa report, I
3 referred to the existence of some religious symbols,
4 sheep kachinas, cattle -- cow kachinas. Clearly it's not
5 totally nonexistent. But in comparison to the
6 predominance of other kinds of symbolism, it's much,
7 much less.

8 Q And Dr. Whiteley, I just realized there
9 was one other question I wanted to ask. Back on page
10 39 of your report, Exhibit No. 3 under Section 5, you
11 refer to social dances where Hopis impersonate Navajo.
12 Have you ever attended such a dance?

13 A Yes.

14 Q Where did you attend a dance?

15 A I have attended such a dance -- I can't
16 remember the number of places I've seen such a dance,
17 but I've seen Navajo social dances generally referred
18 to as tasavam, which is -- literally means "Navajos,"
19 probably in the majority of Hopi villages.

20 Q To your knowledge, do they take place in
21 all three Mesas?

22 A Yes.

23 Q Can you briefly describe what happens at
24 the dance.

25 A There are photographs in Jake and Susan

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1 Page's book. Hopi have such a dance at Shipaulovi,
2 which I was attending also. There are line dances,
3 individual girls. And that their chosen partners, who
4 are their clan nephews, most of them are older than
5 they are, are clan nephews who dance behind them. The
6 girls are dressed in sort of ornamental Navajo dress.
7 The men are dressed in various Navajo-associated
8 costumes. Then there is -- and these are the -- a line of
9 dancers who dance in the plaza. And then there is a
10 group of singers who are all dressed up as Navajo men
11 where they have large cowboy hats on. Many of them are
12 wearing false mustaches, maybe wearing blue jeans,
13 wranglers, which Hopis associate with Navajos, probably
14 wearing cowboy boots, maybe having a big silver concha
15 belt on them, a fancy shirt, maybe some jewelry which
16 they would associate with Navajos, maybe a -- one of
17 those leather -- I don't know what they are called, but
18 kind of leather bags which have a strap that goes over
19 the shoulder and has silver pieces on the strap and
20 silver pieces on the pouch itself.

21 And they will be singing songs. Some of
22 those songs will be in Navajo. Some of the songs will
23 be in Hopi. The songs will imitate maybe burlesque
24 Navajo singing styles. They might be much higher in
25 pitch, much tauter. I could imitate it, but I would

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1 completely make a fool of myself. The subject matter
2 of the songs makes reference to Navajo-associated
3 practices and so forth.

4 Q Dr. Whiteley, what are -- what is the
5 purpose of these social dances? Or do they have a
6 purpose?

7 A Fun. I think the way that Hopis
8 characterize them as social dances, as opposed to what
9 they consider to be more religious dances, is that
10 they're much more for fun. And one of the ways, for

11 example, nowadays that you can tell that they don't
12 take them so seriously is that people like to take
13 photographs of each other. And that is never done at a
14 religious ceremony.

15 Q Dr. whiteley, do you know if similar
16 dances were being performed toward the beginning of the
17 century?

18 A Yes, there was certainly a Navajo dance in
19 1910 in Bacavi when the Bacavi hostiles, in quotes,
20 left the Old Oraibi for the second time in 1909.
21 The -- the Old Oraibi friendlies, in quotes, mocked them
22 saying, "You guys are just going to become like
23 Navajos," meaning wandering around, not having any
24 permanent sedentary abodes, making one's living without
25 the degree of sedentism that Hopis associate with their

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1 own practices.

2 So the following year in 1910, the Bacavi
3 put on its first social dance. And they -- to get their
4 own back in Oraibi, they performed as Navajo dancers.

5 (A break was taken.)

6 Q Dr. whiteley, I don't have any further
7 questions for you at this time. I do want to give you
8 an opportunity to clarify anything which you still feel
9 needs to be clarified. Is there anything that comes to
10 mind as you sit here right now that -- about your
11 previous testimony which you believe needs any further
12 clarification?

13 A Not that I can recall at this time.

14 Mr. Rogers: Fair enough. As I mentioned
15 to counsel for the Hopi tribe off the record, I wanted
16 to provide a list of the documents which I believe,
17 according to my notes, I have requested during the
18 course of the deposition. And I realize there have
19 been different members of the firm of Arnold & Porter
20 who have been participating in this deposition. And
21 rather than have you try to compare notes and figure
22 out what I asked for, I thought I would like to provide
23 you with a list.

24 Mr. McDonnell: I see that you have it
25 written out. If you would like to just --

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1 Mr. Rogers: well, they are really more in
2 the nature of notes.

3 Mr. McDonnell: Go ahead.

4 Mr. Rogers: Toward the beginning of the
5 deposition there is a request for a group of letters
6 that Dr. whiteley wrote. One is approximately 1981,
7 1982, letter written to the Rocky Mountain Magazine.
8 In July 1986, a letter to the New York Times. And I
9 believe two letters that were written around February
10 of 1989 that were submitted to the Cultural Survival
11 Quarterly. And I may have -- that may be incorrect.
12 That may be that they will be published at that time.
13 And to the extent that these letters are published
14 sources, if you can simply provide me with the dates,
15 then I can do the chore of looking them up. Also made
16 a request for Dr. whiteley's handwritten notes
17 regarding Dr. Russell's report.

18 At this time, I would like to modify that
19 request to only request those notes to the extent they
20 referred to Aka'usi or Siwilti'ima.

21 Mr. McDonnell: Am I -- this is one of the
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22 problems of having more than one person. Am I right
23 that some of those have been provided?

24 Mr. Rogers: There were, at least my
25 understanding is that there was -- Dr. Whiteley, do --

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1 The Deponent: Some of those have been
2 provided. The notes that were made on my copy of
3 Dr. Russell's 1986 report; there are also handwritten
4 notes, which I think is what Mr. Rogers is referring
5 to.

6 Mr. McDonnell: Freestanding, that is?

7 The Deponent: Freestanding, yes.

8 Mr. Rogers: Also, during the course of
9 the deposition, I requested Dr. Whiteley's field notes
10 regarding his work in the Bacavi leading up to his
11 work, Deliberate Acts, and his book Bacavi.
12 Mr. Scarborough and I had a discussion about that on the
13 record, and I'm still taking his comments under
14 consideration. And I'll see if Jim and I can work that
15 out. My inclination at this point, for whatever it's
16 worth, is to see that there's some way that I can
17 narrow the question that may be more acceptable to
18 Dr. Whiteley and Mr. Scarborough. I also made a request
19 for Dr. Whiteley's field notes regarding his August
20 1988 field trip. And I still would like to obtain
21 those notes. During the course of the deposition --

22 Mr. McDonnell: I am not -- where -- is it
23 clear where that field trip is -- everybody knows to what
24 it refers?

25 The Deponent: Yes.

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1 Mr. Rogers: I take it, Dr. Whiteley, you
2 know what field notes I am referring to?

3 The Deponent: Yes.

4 Mr. Rogers: During the course of the
5 deposition, Dr. Whiteley also referred to a
6 conversation that he had with Mr. Abbott Sekaquaptewa
7 in which he obtained information regarding Aka'usi
8 during -- I am not sure whether it was during the August
9 1988 field trip or some other time. In either event, I
10 would like to get a copy of those field notes.

11 Mr. McDonnell: The field notes being the
12 August '88 field trip field notes?

13 Mr. Rogers: But Dr. Whiteley --

14 The Deponent: That's correct.

15 Mr. Rogers: Well, Dr. Whiteley, was the
16 conversation that you had with Mr. Sekaquaptewa
17 regarding Aka'usi during the August 1988 field trip
18 that you made?

19 The Deponent: Yes, it was.

20 Mr. Rogers: During the deposition, I also
21 requested a copy of Titiev's field notes. I am not
22 sure I gave a qualification to that or not. But to the
23 extent I didn't, I would like to modify that request to
24 those references of Titiev's field notes regarding
25 Aka'usi or Siwilti'ima, their in-laws, and however that

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1 may be defined. And I recognize that that request at
2 this point is a little vague. But having not seen
3 Titiev's field notes, I don't know how they're
4 organized or what would make sense in terms of trying
5 to select materials from that.

6 Dr. Whiteley -- during the deposition I also

7 requested a copy of a document that Dr. Whiteley
8 thought might have some information relating to
9 Aka'usi, was the 1892 allotment map of Old Oraibi.

10 The Deponent: Mr. Rogers?

11 Mr. Rogers: Yes, Dr. Whiteley?

12 The Deponent: Allotment census.

13 Mr. Rogers: I stand corrected. I would
14 also like to request at this time -- I don't believe I
15 asked for it earlier -- from Dr. Whiteley's vitae, he
16 indicates that -- he lists two publications or two
17 articles that have not been published. One is the
18 burning of an Old Oraibi altar and second is a 1988
19 paper that was submitted to the Triple A. And I would
20 like to request copies of both of those.

21 The last item in part, I guess, comes from
22 some of my confusion or uncertainty as to whether you
23 will be commissioning Dr. Whiteley to conduct further
24 work with respect to Aka'usi and Siwilti'ima or whether
25 he will be testifying at trial with respect to that.

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1 To the extent that you do decide to commission him to
2 conduct further research on Aka'usi or Siwilti'ima, I
3 would like -- well, request copies of any archival
4 material that Dr. Whiteley uncovers regarding either
5 Aka'usi or Siwilti'ima to the extent that such material
6 has not already been produced in this litigation.

7 Mr. McDonnell: Okay. We would respond in
8 due course.

9 Mr. Rogers: Fair enough. Dr. Whiteley,
10 again, thank you for your time and patience.

11 The Deponent: Thank you for your time and
12 your patience too, Mr. Rogers.

13 Mr. McDonnell: And I have no redirect to
14 test anybody's time or patience, so the deposition is
15 concluded.

16 Mr. Rogers: I guess there's one comment I
17 should put on the record. This deposition of
18 Dr. Whiteley was duly noticed. Counsel for the
19 intervenor was served with a deposition notice and has
20 not appeared at this deposition.

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1 whereupon, the within proceedings were
2 concluded at the approximate hour of 2:45 p. m. on the
3 28th day of March, 1989.

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

8
9 Peter M. Whiteley, Ph. D. - Volume Vi

10 () No changes () Amendments attached

11
12
13 Subscribed And Sworn To before me this
14 day of , 1989.

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Notary Public
Address
My commission expires

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

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I Donna E. French, Registered Professional Reporter, appointed to take the deposition of

Peter M. Whiteley, Ph. D. - Volume Vi, certify that before the deposition he was duly sworn by me to testify to the truth; that the deposition was taken by me at 1700 Lincoln Street, Suite 4000, Denver, Colorado 80203, on March 28, 1989; then reduced to typewritten form, by means of computer-aided transcription, consisting of 109 pages herein; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not related to any party herein or their counsel and have no interest in the result of this litigation.

In witness whereof, I have hereunto set my hand this 13th day of April, 1989.

Donna E. French
Registered Professional Reporter

Proofread by: Tyler Smith
Fees

Appearance: \$ 70.00
Original: \$179.85
Copy: \$174.40

25

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Hyatt & Associates, Inc.
Registered Professional Reporters
1719 Emerson Street
Denver, Co 80218
(303) 830-0208
April 13, 1989
Alfred McDonnell, Esq.
Arnold & Porter
1700 Lincoln Street, Suite 4000
Denver, Co 80203

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

WHITEL6.TXT

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

21 Thank you for your attention to this matter.

22 Sincerely,

23 Donna E. French
24 cc: Peter M. Whiteley, Ph. D.

25 □Page 871

1 Hyatt & Associates, Inc.
Registered Professional Reporters
2 1719 Emerson Street
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3 (303) 830-0208
4 John W. Rogers, Esq.
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5 2901 North Central Avenue, Suite 2000
P. O. Box 400
6 Phoenix, Az 85001

7
8 Re: Sidney vs. Macdonald, et al.
Deposition of: Peter M. Whiteley, Ph. D. - Volume Vi
9 Date of Deposition: March 28, 1989
10 Enclosed is the above original transcript. ..
11 signed, no changes
12 signed, with changes, copy enclosed
13 not signed, notice duly given April 13, 1989,
pursuant to the Rules of Civil Procedure

14
15 not signed, notice duly given
since trial is set for ^
16 signature waived
17 to be signed in court or signature pages
to be returned to court on date of trial

18
19 signature pages/amendments to be returned to
above counsel
20 signature not required
21 mailed by certified mail
22 hand-delivered
23

24 Hyatt & Associates, Inc.

cc: Alfred McDonnell, Esq.

25
□