Smithers, B.C.
May 28th, 1987

(PROCEEDINGS RECONVENED AT 9:30 a.m.)

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this 28th day of May, 1987. Delgam Uukw and others and Her Majesty the Queen.

THE COURT: Thank you. Well, I think that we should have a discussion about the application of the Hearsay Rule to evidence generally, and perhaps to the adaawks specifically. And I don't know whether to state my understanding of your position, Mr. Rush, or allow you to do it. I think I should allow you to do it.

MR. RUSH: Yes. I'm prepared to make a submission to you on that at this time.

THE COURT: I would be happy if you would, please.

MR. RUSH: I have some authorities which I'll make some reference to.

THE COURT: Thank you.

MR. RUSH: My Lord, it is our submission here, and I'm going to deal first with the question of the oral history, if I may characterize it that way.

It's our submission that the evidence of the oral history of the Gitksan and Wet'suwet'en people should be admitted as evidence in the case. The evidence of oral history already led by the first two witnesses was directed at establishing the following: It's directed at establishing the social organization of the Gitksan people, the identity of the House, clan and wil'nat'ahl, the identity of the chiefs, and the origin of names, how and when crests were acquired. It is directed at establishing major events in the life of the chief, and the House occurrences on the territories and in respect of villages. The relationship of the chief, the name, and the crest to particular territories, fishing sites owned by the House, at establishing the Nax Nok and the poles owned by the House. And finally, the way of life and land holding laws of the Gitksan. And although you have not yet heard evidence with regard to the Wet'suwet'en people, a similar purpose for the calling of oral history would apply regarding them.

Now the oral history in the Gitksan language, My Lord, is expressed in the word "adaawk". And in the transcript at volumes three and four, Mrs. McKenzie has, I think, expressed in very clear terms the

significance, meaning and power of the adaawk. And I think it would be appropriate to refer you to two passages in which the -- when examined, she had this to say about the history, the oral history. She said at volume three, page 188 at line 18, she said:

A "The adaawk is, as I worded, history, and it's the happening of how the Gitksan people have their names right from infant to a chief. The adaawk refers to the songs that are made for the purpose of each chief to use. The adaawk tells of the Nax Nok, why it was created and how it is shown amongst the people in the Feast House. The adaawk also tells of the territory of the chief. Now when we say adaawk, this holds the whole four of the adaawk world."

And further questioning:

Q "Does your House have an adaawk?
A Yes.
Q And does that adaawk or history describe events that occurred before you were born?
A Yes.
Q Does it describe events that occurred before the white man was here?
A Yes.
Q Do you know the adaawk of your House? I am not asking you to tell it right now, I am asking if you know it?
A Will you rephrase that again?
Q Do you Gyolugyet, if I asked you right now to tell your adaawk, could you tell it, do you know what the adaawk is of your House?
A Yes.
Q What I would like you to explain to the court is how you learned the adaawk of your House?
A I learned it through oral history through my grandmother.
Q That was Sarah?
A That was Sarah.
Q Wesley?

A Yes.
Q How did she teach it to you?
A She taught me when I was about seven years old and they had feastings about it, that I should know the adaawk, the oral, how it's put to me. Sometimes through over a meal table. These are how the older people would teach their children, their young children of their House their adaawk, at meal time and before they retire at night. And it's an everyday thing, not just once in a while, it's an everyday taught.
Q And is there a reason why it was your grandmother who taught you the adaawk?
A Because she was the oldest of the House, of Gyolugyet's House. And it was her duty to repeat those adaawk to me
Q You described earlier about other events that have occurred before you were born, such as the six sisters who all had boys?
A Yes.
Q How did you learn of that, of those events, who taught you about your history of your family, of the House of Gyolugyet?
A It's through names. When we are infants, just born, we have a name given to us, and we change our names three or four times before we reach the age of adult. Now, when these change of names, the adaawk goes with the name, this is how the Gitksan people know the adaawk of each name they hold.
Q Are the adaawk, have the adaawk of -- has the adaawk of Gyolugyet been publicly stated at any time in your lifetime, been told at a public event?
A Yes.
Q When was that and was the event that it would be told at?
A Whenever that is a feasting of names given, this is when the adaawk of Gyolugyet is repeated.
Q And you have attended such feasts?
A Yes, I have.
Q Both before and after you have been

Gyolugyet?
A Yes.
Q And at those feasts are chiefs of other Houses present?
A Yes.
Q Have you been at feasts of other chiefs where their adaawk have been told?
A Yes, I have."

I'm reading on page 190, just to the middle of the page:

Q "And from what your grandmother has told you, do you know if adaawk were told at feasts before you were born?
A Yes.
Q Can you tell the court why the adaawk are told at feasts? You have explained it happens when names are given, I understand that, but why is that important to tell the adaawk?
A Because the adaawk tells, in a Feast House, that who are the holders of fishing places, creeks and mountains that belong to each House of the chiefs, where they get food, like berry picking, they have -- they tell the owner and the location in a Feast House. So, through this -- this is how I have my knowledge now is by attending the feastings of any chief, even if it's my own feasting, I hear the chiefs repeat or tell the adaawk of theirs and ours. This is the importance of the feasting, that these adaawks are told.
Q How accurate are the adaawk of -- is the adaawk of your House, in other words, how close to the truth of those histories?
A In Gitksan law --"

Her answer was:

A "In Gitksan law all adaawks are true."

And then there was an an objection by Mr. Goldie and an intervention by the court.

THE COURT: Where did you start reading, Mr. Rush?

MR. RUSH: At line 23 on page 190.
THE COURT: Okay.
MR. RUSH: Now My Lord, a similar -- similar testimony was given by Mrs. McKenzie in volume four of the transcript, and that begins at page 235, and that is at line 36 -- actually 38.

Q "I asked whether the adaawk refers to other chiefs of the Wolf Clan who moved from Kuldo'o to Kispiox? And then you can just proceed with that, the history of that movement from Kuldo'o to Kispiox.
A Like I said, that every House of a chief has their own adaawk. Now what I am expressing now is the adaawk of how Suuwiigos lived in Gitangasx, how we fought these battles, that's the adaawk, and how the movement of the other chiefs, when Kuldo'o was founded. This is in the adaawk. Without saying how the movement of the people, it has to go down in an adaawk, it's not just a story. Adaawk in Gitksan language is a powerful word of describing what the House stands for, what the chief stands for, what the authorities --

Excuse me,

"-- what the territory stands for is the adaawk. It's not a story, it's just how people travelled is the adaawk. And it's the most important thing in Gitksan is to have an adaawk. Without adaawk you can't very well say you are a chief or you own a territory. Without the adaawk, it has to come first, the adaawk, names come after, songs come after, crests come after it and the territory that's held, fishing places, all those come into one and that's the adaawk."

Now My Lord, that ends at 236 line 12, and there is another passage on the same page beginning line 32 and running to the end of the page. It is similar evidence to the evidence I've just recited to you.
Similarly, My Lord, on page 237, beginning line

1 37 running to line 9, and again I don't intend to read
2 that, it is in the similar vein as the passages I've
3 just recited to you.
4 MR. GOLDIE: Excuse me, was that page 237?
5 MR. RUSH: That's correct.
6 MR. GOLDIE: Thank you.
7 THE COURT: Well Mr. Rush, if it's of any assistance to you,
8 subject to what your friends say, I don't have any
9 trouble with the proposition that the adaawk or the
10 oral history of the various houses is admissible. My
11 problem is to define what is the adaawk. Up to now we
12 have been proceeding on the basis that if the witness
13 says it's part of the adaawk then it's taken to be
14 part of the adaawk, ands that's an open-ended
15 principle of admissibility almost unknown to our law.
16 And that's the difficulty I'm having. I've heard
17 evidence of what I would describe, and I don't say
18 this pejoratively in any sense, but the closest thing
19 that comes to my mind is mythology. And if the
20 witness says it's part of the adaawk, am I bound by
21 that?
22 MR. RUSH: Well, the witness has described two types of oral
23 statements, one is the oral history if we can use that
24 general term, and that's described as the adaawk. And
25 then there are oral statements which are more akin to
26 stories.
27 THE COURT: Yes. And Mrs. McKenzie drew that distinction.
28 MR. RUSH: Drew the distinction. And given that distinction,
29 the stories, in my submission, say something of the
30 way of life. If Your Lordship is satisfied about
31 admitting the oral histories, I think you should be
32 equally satisfied about admitting evidence of the
33 stories that express principles of the way of life,
34 the spiritual values of the people, and something to
35 say about why -- why the people of the community are
36 morally bound, if you will, to comply with certain of
37 the laws and principles of the society. And I think
38 that of the -- for example, the law relating to
39 puberty, and the puberty taboos that you heard
40 yesterday. In my submission, these -- these would
41 sometimes fall into the category of a story, and I
42 think you heard that yesterday from Mary Johnson, and
43 you should hear that evidence on the basis that it
44 says something of the -- of the way of life, the
45 principles and the social organization of the people.
46 THE COURT: But how does it assist in the determination of the
47 subject issues in the case, which really relate to a

1 claim to an interest in land?
2 MR. RUSH: Well more than that, My Lord. It -- the -- I think
3 there are two primary foci, if I can put it that way,
4 to the statement of claim. One is a claim to an
5 interest in the land, claim to title of the land as
6 characterized as ownership of the territory.
7 THE COURT: Interest to include all possible manifestations of
8 that?
9 MR. RUSH: Yes. But the other aspect of it is the question of
10 authority or jurisdiction in respect of that land.
11 And to -- to make our case, it's my submission that we
12 must demonstrate to you common laws which apply for
13 all Gitksan and Wet'suwet'en people in respect of that
14 territory.
15 THE COURT: Using your example, how do the puberty taboos of
16 Mrs. Johnson's House -- and I'm not sure whether she
17 was tending to extend that to the whole of the Gitksan
18 or just to the -- to her House, and I'll come to that
19 in due course, I'm sure. But how does -- how does
20 that evidence assist in any way in the determination
21 of the -- either the title or the jurisdiction or the
22 land owning interest that are claimed?
23 MR. RUSH: Well I think it demonstrates that there is an
24 organized society that is governed by specific rules
25 and laws. And while we are talking there in that case
26 a law with regard to social activity and the way a
27 young person is brought up and brought through into
28 the teenage years, that is but one example. But there
29 is a range of examples which deals with the laws
30 relating to territorial acquisition, crest
31 acquisition, rules and laws relating to trespass, and
32 the like. And it's my submission that you must hear a
33 range of the types of laws which show that this
34 society is organized in the sense that it was
35 contemplated by Mr. Justice Judson on Calder, and that
36 it is an organized society with a set body of rules
37 that govern activity, day-to-day life, everyday life
38 in that society. And I think, to satisfy Your
39 Lordship that this is not something of -- that is of
40 recent creation, we must delve into the ways in which
41 these laws appeared in the histories and the
42 traditions and in the stories of the Gitksan people.
43 And I think what you've seen, in the telling of the
44 adaawk, the histories that you have, and the stories
45 that you have, and I'm -- my submission, My Lord,
46 you've only heard one or two stories as such, that
47 most of the evidence has been directed very

1 specifically at the oral history, if you will, that
2 comes into the first category of Your Lordship's
3 concern. And I think you must hear that range of
4 evidence to have the sense of the legal traditions
5 which permeate the entirety of the Gitksan society.
6 THE COURT: Well let me ask you whether there is any proper
7 distinction to be drawn between the evidence of Mrs.
8 McKenzie that the band settled -- I won't say
9 originally, but within her historical knowledge, at
10 Gitangasx and then moved to Kuldo and then moved to
11 Kispiox, that kind of history as opposed to the
12 mythology evidence, is there any proper distinction to
13 be drawn between those two types of evidence when
14 considering the admissibility of the adaawk or any
15 part of it?
16 MR. RUSH: Not in terms of considering admissibility. I think
17 there is in terms of what you take from the evidence
18 in the end of the day, because as Mrs. McKenzie has
19 said, the adaawk are the history of the Gitksan, she
20 does not make the same claim in respect of the stories
21 or how --
22 THE COURT: No, I think she did, with respect, at least I took
23 it she did. When she was asked to give the adaawk,
24 she started talking about Suuwiigos and the -- and the
25 supernatural parts of this history which I classify as
26 mythology. Now, I don't want to be unfair in using
27 that word, but for purposes of illustration --
28 MR. RUSH: Well it's very clear, My Lord, that Mrs. McKenzie did
29 not classify that as mythology. The -- despite the
30 relationship of the animal world and the spiritual
31 world with human activity that comes through in that
32 migration, that was a historical event that moved
33 through a time period that related to specific
34 villages and activities. Now, when I -- I'm trying to
35 place -- draw to my mind what would classify as a
36 story, and she had a specific word for it, and it was
37 not -- it was not of the kind of history that Your
38 Lordship has just referred to, that despite the
39 spiritual aspects of that story, it was very much an
40 oral history. And that, I say, is very much what
41 should be admitted under the exception to the hearsay
42 rule, broadly stated on the reputation and public
43 testing principles that are set out in Milirrpum.
44 Now in my submission, it really matters little as
45 between the story, if you will, and the oral history,
46 because in the end, so long as it complies with the
47 other common law tests of admissibility set out in

Milirrpum, in my submission, they are admissible under that exception. And I have -- I have something to say about more recent questions and how new events come into the history. And if Your Lordship is satisfied that the principles in Milir -- Milirrpum, if you are satisfied that the link that is drawn between the admissibility of oral history in aboriginal title cases, in that case, and the general law relating to hearsay, then it's my submission both categories of the oral history, or at least the oral tradition, the oral history of the adaawk and the stories are admissible under the principles of that case.

What I feel the Canadian cases direct Your Lordship to, is the principle -- is the application of the Milirrpum case in a wider context than in fact it is contemplated, that there is a more relaxed rule with regard to the application of those principles in aboriginal title cases. And I'm happy to go through that with Your Lordship if there is -- if you have concerns about that. But it is my submission that the courts in Canada have very much relaxed the standards of proof in dealing with Indian oral evidence, and the necessity for doing so, and accepting such evidence is related to the existence of an oral tradition in Indian societies. And if I can just pause here, My Lord, I think it's clear from Mrs. McKenzie's testimony, that that oral tradition has the two components that we have discussed already.

The result of this, in my submission, is that the evidence of the -- of informants need not only come from deceased persons, nor relate to events of great antiquity. And it's our submission that hearsay exceptions should not be limited to events where there is no direct living knowledge.

Now My Lord, the starting point for this if I may, is the Simon case, the Supreme Court of Canada decision, which in that case considered what evidence is necessary to consider whether the appellant in that case was entitled by descent benefit of the treaty, and this is to be found at tab 4 of the book of authorities that you have there. And in particular it's, the passage I want to refer Your Lordship to is found at page 406 to 407. And the Supreme Court here had this to say, bottom of 406. The question was, "Is the appellant an Indian covered by the treaty?" I'll just read this passage:

"The respondent argues that the appellant has not shown that he is a direct descendant of a member of the original Micmac Indian Band covered by the Treaty of 1752. The trial judge assumed that the appellant was a direct descendant of the Micmac Indians, parties to the treaty. The Nova Scotia Supreme Court, Appellate Division, on the other hand, relied on the decision of the New Brunswick Court of Appeal in R vs. Simon, and held that the appellant had not established any connection by "descent or otherwise" with the original group of Micmac Indians inhabiting the eastern part of Nova Scotia in the Shubenacadie area.

With respect, I do not agree with the Appellate Division on this point. In my view, the appellant has established a sufficient connection with the Indian band, signatories to the Treaty of 1752. As noted earlier, this treaty was signed by Major Jean Baptiste Cope, Chief of the Shubenacadie Micmac tribe, and three other members and delegates of the tribe. The Dick Micmac signatories were described as inhabiting the eastern coast of Nova Scotia. The appellant admitted at trial that he was a registered Indian under the Indian Act, and was an "adult member of the Shubenacadie - Indian Brook Band of the Micmac Indians and was a member of the Shubenacadie Band Number 02". The appellant is, therefore, a Shubenacadie - Micmac Indian, living in the same area as the original Micmac Indian tribe, party to the Treaty of 1752."

Now the relevant passage comes:

This evidence alone, in my view, is sufficient to prove the appellant's connection to the tribe originally covered by the treaty. True, this evidence is not conclusive proof that the appellant is a direct descendant of the Micmac Indians covered by the Treaty of 1752. It must, however, be sufficient, for otherwise no Micmac Indian would be able to establish descendancy. The Micmacs did not keep written records. Micmac traditions are largely oral in nature. To impose an impossible burden of proof would, in effect, render nugatory any right to hunt that a present-day Shubenacadie Micmac Indian would

otherwise be entitled to invoke based on this treaty."

Now My Lord, I think there is a similar view of the reception of oral testimony found in the Bear Island case in the judgment of Mr. Justice Steele, of the Ontario Supreme Court, and that's to be found at tab 5. And I want to refer you to page 26, it's the second page along. He is here dealing with evidentiary issues and what he says in this passage at the middle of the page is this:

"Indian oral history is admissible in aboriginal land claim cases where their history was never recorded in writing. However, this does not detract from the basic principle that the court should always be given the best evidence. The court has an obligation, first, to weigh the evidence and consider what evidence is the best evidence and, second, if such best evidence is not introduced, to consider making an adverse finding against the person who has failed to produce it."

Now, the other passage I want to refer you to is to -- is at page 32, and here Mr. Justice Steele went on to find that it was not a condition of the admissibility of evidence of the oral tradition that the informants of the Indian witnesses be dead. And I ask you to look at the second full paragraph on page 31:

"If a white person, or non-Indian, gives evidence as to oral tradition, this testimony is admissible generally only where the declarants are dead. In the present case, Mr. Conway, Mr. Morrison and Mr. Macdonald gave evidence as to what they had been told by Indians. In many cases, the supplier of such information is still alive and in other cases is not identified. This must be borne in mind in determining the credibility and weight of the evidence. I make this comment notwithstanding that to a degree all three of these gentlemen are experts in their own particular fields."

And at the bottem of page 32:

1 "I am not so concerned about the
2 credibility and weight to be given to the expert
3 testimony of persons such as Dr. Rogers or Dr.
4 Nichols, who are acknowledged experts in their
5 general fields. Dr. Rogers is an ethnologist and
6 any opinions that he may formulate based on
7 information received from living Indians as to
8 their oral traditions are admissible in court.
9 Unfortunately, in the present case he had made no
10 study of the Temagami Indians."
11
12 And he went on to find that was not his particular
13 area of concern.
14 THE COURT: Of course does that passage not compare to the type
15 of evidence which is habitually received from a person
16 such as an appraiser, regarding the value of land? He
17 goes out and talks to all the people that have made
18 purchases or sales comparable to the subject property,
19 or he just consults the Land Registry records and he
20 is allowed to give a synopsis because of his expertise
21 or his assumed expertise in assessing what is relevant
22 and what isn't. Isn't that what Mr. Justice Steele is
23 talking about there?
24 MR. RUSH: Oh yes, I think that's true.
25 THE COURT: So while it might apply, that passage might apply
26 with great force to your expert witnesses, does it
27 really touch the question we are talking about now?
28 MR. RUSH: Yes, it does. And for this reason, that there is a
29 process by which events of an oral history find their
30 way into the history that the Gitksan and Wet'suwet'en
31 people have worked out. It's a process of telling of
32 the event and retelling of the event, and of
33 witnessing and rewitnessing of the event in a public
34 forum. And in my submission, given that those tests
35 are the very tests applied in respect of the -- of an
36 exception to the hearsay rule under the reputation
37 principles, where those tests can be applied to the
38 oral history as it moves present in time, in my
39 submission, that is a sufficient basis upon which to
40 evaluate the trustworthiness of the evidence, that is
41 admitted.
42 THE COURT: I don't know if it's of any interest to you people,
43 but I was talking to the Chief Justice of Ontario the
44 other day and he told me that the Bear Island case is
45 being set for hearing in the Court of Appeal in
46 January, I think, next year. It's taken a long time
47 but they are finally going to get to it.

1 MR. RUSH: My Lord, my point here is that the evidence of Mrs.
2 McKenzie shows that the oral history of the Gitksan
3 may include major events in the life of a House which
4 are of relatively recent origin. The fact that the
5 events described are of recent origin does not deprive
6 them of their important place in the history of the
7 House. Now if I can state, perhaps, a little more
8 articulately, what is critical here is how the event
9 is authenticated as part of that history. And what
10 you know in the evidence from Mrs. McKenzie and Mrs.
11 Johnson, the event has passed on from one person who
12 has a duty to tell it, and if we can call that person
13 the custodian of transmittal, to another who has a
14 duty to receive it, that is the custodian of receipt.
15 The event is told and received at a public feasting.
16 The witnessing chiefs confirm and validate what was
17 said. There is a public sifting of rights pertaining
18 to the community as a whole. The oral history is
19 validated in the process of witnessing by the other
20 chiefs, and if I can put it this way: The event
21 enters the oral history when it passes through this
22 process of witnessing and validation, having been told
23 and retold in the feasts.
24 And if I can characterize the oral history in
25 this way, My Lord: The oral history starts at the
26 beginning of collective memory and extends to the
27 present, and it is subject to the process of telling
28 and retelling, witnessing and rewitnessing to assure
29 and ensure its authenticity. And it's our submission
30 it should not matter what time period the history
31 refers to in order to be valid. I think where it
32 would be otherwise, the oral history would be frozen
33 into a specific and arbitrary time frame, and it would
34 condemn history to being static in time, and it is
35 not. I think that is a truism of our being. It
36 should not be considered to be so, because the history
37 in this case is Indian oral history. And as I think
38 has been referred to in previous submissions, the oral
39 history is like a growing tree which matures over time
40 with a happening of new events. And as Mrs. McKenzie
41 said, what is happening here in this courtroom is part
42 of the history of the Gitksan for her House.
43 Now, My Lord, just as the categories of duty in
44 negligence actions are never closed, so the addition
45 of new events to the oral history are not foreclosed
46 by time. And it's for this reason that we say that
47 the court should not prejudge the oral history of the

1 Gitksan chief and Houses as terminating at some or any
2 particular arbitrary moment in time, but rather judge
3 them against the appropriate common law evidentiary
4 standards of necessity. And here I'm just taking from
5 Phipson and Wigmore and Milirrpum, of necessity and
6 circumstances creating a fair or probable trustworth-
7 iness in the evidence. And thirdly, facts generally
8 discussed in the community.
9 THE COURT: Sorry, necessity and of circumstances creating a
10 fair and probable --
11 MR. RUSH: Probable trustworthiness in the evidence and facts.
12 Thirdly, facts generally discussed in a community.
13 Now My Lord, our submission is that if these
14 tests are met, the evidence of oral history, even of
15 recent events coming from live informants should be
16 admitted. Now here, obviously, I'm directing your
17 Lordship's concern to the evidence that was led
18 concerning the John Smith Feast.
19 THE COURT: Yes.
20 MR. RUSH: And what I say about this evidence, is that I do not
21 now ask you to apply the argument that I've made with
22 regard to the admissibility of oral histories to any
23 specific body of evidence, including the John Smith
24 Feast at this time, because in our submission, you
25 need not decide that question as to the admissibility
26 of that evidence now. And I say that because in -- in
27 our submission, we don't think we've met the standard
28 of proof with regard to that particular Feast at this
29 time. But, as the evidence unfolds, as more evidence
30 is available, Your Lordship will be asked to make a
31 judgement on that Feast, as we may well ask you to
32 make judgments in respect of other recent events,
33 depending on whether or not, as we say, they meet the
34 standards as I have set out, and which I think are
35 very much the underlying fundamental principles of the
36 exception to the hearsay rule on the reputation and
37 public exposure principles set out in Milirrpum.
38 Now what our immediate submission is, is this:
39 That Your Lordship accept the evidence of the oral
40 history and, if you will, if Your Lordship divides
41 oral history against stories which are in the oral
42 tradition, that both the oral history and the stories
43 in the oral tradition should be admitted as evidence
44 in the case as coming with -- under the exceptions to
45 the hearsay rule, noted in aboriginal title cases
46 where the evidence falls into the principle set out in
47 Milirrpum that Your Lordship has referred to as -- as

1 accepting, as I understand your comments. And I would
2 just point out that I had intended to go into a
3 lengthy consideration of the Milirrpum case, I don't
4 intend to do that. It is at tab 2 for your reference,
5 My Lord, and the relevant passages there really begin
6 at page 154.
7 THE COURT: You haven't reproduced it all, I hope?
8 MR. RUSH: No, I didn't. I just took the passages dealing with
9 the admissibility of oral testimony. It begins at 154
10 and passes through to 159, and I think all of the
11 major arguments are dealt with seriatim in that case
12 by the learned judge.
13 Those are my submissions.
14 THE COURT: Well before you sit down, Mr. Rush, thank you. But
15 the -- the problem that I'm having and I'll be very
16 frank about it, is that appellate judges not faced
17 with these problems have tossed off some general
18 pronouncements about the need for evidence, but I
19 don't think they anticipated the problems that they
20 were creating such as I'm facing here, and it seems to
21 me that I can't be slavishly bound, nor by legal
22 principle do I think I am bound by pronouncements made
23 in a wholly different context. What Mr. -- what the
24 learned Justices of the Supreme Court of Canada said
25 in Calder, for example, were said in the context of a
26 trial that took four days where assumptions were made
27 that permitted that case to be tried, including
28 argument, in four days. And stare decisis doesn't go
29 so far as to require me to apply those kinds of
30 pronouncements strictly. It seems to me that I have
31 to find some way through these difficult woods, I have
32 to -- I have to find some way of allowing the
33 plaintiffs to prepare a record for appeal, we all know
34 this case will be appealed, which will -- which will
35 not be embarassed by any lack of evidence at the
36 appellate level. It seems to me, however, that there
37 have to be some limitations on the -- on the
38 academically, unassailable propositions you have put
39 forward. What are those limits and how do I deal in a
40 practical sense with a situation such as we have here,
41 where we are not talking about even a nation such as
42 the Nishga in the Calder case, but where you have for
43 your own reasons, which I'm sure have been carefully
44 considered, you've based your case upon not on the
45 nation's claims but on Houses' claims. And where I
46 have I think it's 54 plaintiffs, I don't think that
47 the authorities can be read to require me to hear viva

1 voce, the oral tradition of 54 Houses. Keeping in
2 mind that Mrs. McKenzie was in the box, I guess, for
3 about five days, I think, I haven't counted but I
4 think about five days or six, and if I'm to hear the
5 oral tradition of 54 Houses, the trial becomes not a
6 marathon but a siege. Now what is the answer to that
7 problem in 25 words or less, please, Mr. Rush?
8 MR. RUSH: I had a very lengthy submission on that.
9 THE COURT: Yes, I'm sure you do.
10 MR. RUSH: Well my first comment is that Your Lordship is
11 dealing with really a pragmatic situation and not one
12 which is a question of the admissibility of certain
13 principles.
14 THE COURT: Yes, yes.
15 MR. RUSH: And it's my view that the principles that we've
16 advanced here are sound principles for the
17 admissibility for allowing into evidence the oral
18 histories of the Gitksan and Wet'suwet'en people. Now
19 having said that, it doesn't mean to say, in my
20 submission, that the oral adaawk in relation to each
21 and every House must in the end be told by each and
22 every one of the plaintiff witnesses. It was never
23 our intention and it is not our intention to call all
24 of the plaintiffs. And the problem of the length of
25 time that it would take to call the evidence needed to
26 prove the points -- or to prove the claims in the
27 statement of claim as being carefully considered by
28 us, and it is our view that we can prove what needs to
29 be proved with far fewer than 54 plaintiff witnesses.
30 THE COURT: That's the best news I've heard so far today, Mr.
31 Rush.
32 MR. RUSH: And in my submission, My Lord, you have heard for
33 example, that there are adaawk or oral histories which
34 apply to more than one chief. You might well remember
35 that Mrs. McKenzie said that -- that the Suuwiigos
36 oral history in fact was a history that was shared by
37 at least four other chiefs, and one of those was
38 Wiigyet and that's the one that comes to mind at the
39 moment.
40 THE COURT: Yes.
41 MR. RUSH: Similarly, the history, if you will, of the dispersal
42 at T'am Lax amit is a very, if I might say, well known
43 in terms of the anthropological literature, and
44 certainly well known within the Gitksan community as
45 applying to more than one House. And we will be
46 asking you to make certain judgments with respect to
47 the application on some of the oral histories.

1 Now, it's my submission that what Your Lordship
2 voices as a difficulty with respect to the length of
3 the trial or the way the evidence will come in, is a
4 pragmatic problem, if I may phrase it that way, that
5 has to be dealt with in terms of the structure of the
6 evidence of the plaintiffs, and the -- if you will,
7 the phrasing of the evidence to give you the picture
8 of all the plaintiffs. In effect, My Lord, if we --
9 we've taken certain steps to shortcut the necessity of
10 calling 54 plaintiffs. One is the production of the
11 map similar to this, and there will be evidence from
12 one person that will deal with the territories on this
13 map. And it's our hope that this evidence will
14 satisfy you as to the territorial boundaries and the
15 ownership of those territories. But Your Lordship
16 can't do that without the underlying base, which the
17 oral histories, the adaawk, represent as existing
18 within the community. And I can tell you that it is
19 our hope that we can persuade you that once having
20 heard a number of adaawk, that you will accept that
21 these adaawk are the adaawk of -- of the -- of the
22 chiefs of the community. And there will be, of
23 course, a different presentation with the presentation
24 of evidence with respect to the Wet'suwet'en people.
25 But it is in this way that, in my submission, the
26 question of the duration of the evidence and the proof
27 of the items that we need to prove to show ownership
28 and authority over territories, must proceed.
29 THE COURT: All right. Thank you, Mr. Rush. Mr. Goldie or Mr.
30 Macaulay?
31 MR. GOLDIE: Thank you.
32 My Lord, I appreciate your Lordship's concern over
33 what you call the pragmatic problem. I am going to
34 deal with the situation as I see it at the present
35 time, in the full realization that I don't have the
36 concept of the trial that the plaintiff does. My
37 friend has a plan, and I do not -- I'm not privy to
38 that plan, so when he speaks of what will happen in
39 the future, I'm at a disadvantage in that regard, and
40 I'm going to speak about the situation as it presently
41 stands.
42 I'm going to be submitting that the adaawk cannot
43 be an umbrella. My friend wishes to have accepted as
44 evidence of the truth of the matters therein stated,
45 anything which can be -- to which the name adaawk can
46 be attached. I will be suggesting that recent events
47 cannot qualify as oral history in the terms spoken of

in the cases, and I'll give Your Lordship one obvious example. Mrs. McKenzie's evidence was that she learned the adaawk of her House from her grandmother starting at the age of seven. And that adaawk cannot have been the same adaawk that includes the John Smith Feast for very obvious reasons. Now my friend says that history is not static. Well, I agree with that. He says it's a growing event. Your Lordship will appreciate that if that principle is accepted, the adaawk can be reshaped by recent views to support a particular point of view, and thereby, the principle of reliability and trustworthiness is lost.

Now that's simply by way of an introduction. I'm going to speak now of what I consider to be the five examples of hearsay that Your Lordship has so far heard of: The first is evidence of origin; the second is evidence of territory; the third is simply evidence of what a deceased person said, that is to say direct evidence of what that person said; the fourth is evidence of an event to which there may be living witnesses, and which may well be proved by a more available and more reliable evidence; and the 5th is evidence of spiritual beliefs and happenings.

Now going back to the first, evidence of origin. As I understand it, this is in the form of an adaawk of the events of T'am Lax amit in the case of Mrs. Johnson, and in the events which led to the migration to Old Kuldo, and the subsequent migration to Kispiox in the case of Mrs. McKenzie.

If I may pause here and point out that my friend says there are two foci to his case, one is aboriginal title, and the other is present-day authority ownership and jurisdiction, and I will be saying that oral history is strictly relevant only to the first. The second is of current status, current beliefs, current actions, things of which direct evidence can be given. Now to turn back to the -- the evidence of origin.

As stated by Mrs. Johnson, the -- the matters which she has described of the dispersal, I am -- I do not understand to be directed to a particular point in the case. Now when I say I do not understand, I want to put that as an admission of my failure, perhaps, to see the point to which the evidence is directed. Whether T'am Lax amit was destroyed by a supernatural bear or a -- some other animal, is not an issue in the case. What it is apparently tendered for, is in

support of a fact to be inferred that it was an organized society, which was -- which existed, was scattered, and then led to the establishment of other communities which are now represented, it is alleged, by the plaintiffs.

So the evidence tendered does not appear to be direct evidence of any fact alleged. It is not direct evidence of the kind admitted in Milirrpum which was "My father, now dead, said this is our land." It is admissible not for the truth of the matters stated in it, but as proof of her belief, Mrs. Johnson's belief in that matter, and my friends are entitled to draw inferences from that limited aspect of its admissibility. The -- in other words, it is proof of a belief in an event which occurred a long time ago, and it is -- the fact that may be inferred from that is that there is a community belief to that effect. But if it is admitted as an exception to the hearsay rule, it is admitted as proof of the facts therein stated, and in my submission, that -- it is -- it doesn't meet the Milirrpum test in that regard. What Milirrpum said is that where there is a concurrence of many voices on a fact which is a direct probative issue, that is to say, "My father said this is our land," and you have the declarant, you have the issues of reliability and trustworthiness being met, that's fine. All I'm saying here is that the adaawk of the dispersal, the adaawk of the migration of Mrs. McKenzie's House, is not directed to that point. What it is directed to, and it is admissible for the purpose of proving, is that that belief is held by her and by the members of her House. So the evidence is admissible, but not for the purposes of the truth of what is therein stated.

Now if I may go to evidence of territory.

THE COURT: Just a moment, Mr. Goldie.

MR. GOLDIE: Yes.

THE COURT: If it's only admissible as proof of -- as proof in that limited sense, that is of her belief, and perhaps extrapolating from there, a commonly held belief in the community, for what purpose do you say it is admissible?

MR. GOLDIE: Well, I take it that my friends can argue from that, that there is a belief common to the community of which -- for which she speaks, namely her House. The fact of a common origin is perhaps a point in argument with respect to a like society. Put another

way, My Lord, if there was half a dozen points of view as to where one originated, that suggests half a dozen sources have come together in a present-day community. It is arguable that that commonly held belief is therefore of assistance to my friends in respect of their submission that there is a common -- I'm sorry, a single society which has existed for an indeterminate but lengthy period of time.

THE COURT: So put it perhaps in another way, perhaps not as eloquently, you are saying that it might be admissible, or it would be admissible to -- on the issue of social organization? Or do you go that far?

MR. GOLDIE: Yes, that's arguable. I'm now getting, of course, into questions of weight.

THE COURT: Yes.

MR. GOLDIE: And without getting into those points, I can perceive it's applicability to issues of that kind.

THE COURT: All right, thank you.

MR. GOLDIE: Well I now wanted to go -- that as I see it, and I again emphasize as I see it at this stage, is the evidence of origin that has been tendered.

Now, evidence of territory, and her -- I think with respect, My Lord, we have something quite different, and here we get into the question of evidence of reputation which is the -- is the -- what was being sought from Milirrpum and what is being sought in the other case which this is -- this evidence is admitted as proof of the matters therein stated by virtue of being an exception to the hearsay rule.

Now the evidence of territory, based on reputation, is so far -- I believe I'm right in saying this, is so far that of Mrs. McKenzie. And her evidence was at least in part, purported to be of her direct present knowledge. And I refer to volume seven of the transcript, the 20th of May, page 414, line nine -- well actually it begins at -- yes, line nine is all right:

> Q "Mrs. McKenzie, you don't have to make reference to the map itself, but if you could refer to some of the geographic locations on your territory and particularly some of the creeks' names?"

And she goes on to give the names of certain creeks. And in line 39:

A "These are the creeks that I'm familiar with that's on the territory.
Q And do these creeks, are they all within your territory?
A Yes, they're all in our territory.
Q And can you describe any mountains or other place, geographic place names, on your territory?"

And she gives one.

Q "Now, what is that, is that a mountain or a --
A It's a place at the point there.
Q It's within the territory?
A Yes, within the territory.
THE COURT: But is it a mountain?
THE WITNESS: No."

And so on down to line 26 on page 415. After naming those, she said -- the question was put to her:

Q "Is there any other place?
A That's all."

And the cross-examination, she never did state directly the reputation that she was relying upon in relation to those particular places, and I want to refer to the transcript of the 25th of May, volume nine.

THE COURT: Sorry, the reference again.

MR. GOLDIE: It's volume nine, My Lord, at page 530, line 26 to line 41:

Q "Does the adaawk of Gyolugyet describe the location of Gyolugyet's territory when Gyolugyet lived at Gitangasx?
A When they were in Gitangasx, I would say they have.
Q What does the adaawk say about the location of the territory at Gitangasx?
A The story of adaawk I hear, is when the people move -- lived in Kuldo.
Q So you don't know what the adaawk says about the territory of Gyolugyet at Gitangasx; is that correct?
A Yes. Because Gitangasx is no longer a

village.
Q But you were told about Gitangasx by your grandmother?
A Yes. There had been a village at Gitangasx.
Q Did she tell you about the territory of the chiefs who went there?
A No, no.
Q That's not part of the adaawk?
A No.
Q What about at Kuldo, is the territory of Gyolugyet part of the adaawk of the time at Kuldo?
A Yes.
Q And what does the adaawk say about that, about that territory at that time?
A Well, the adaawk goes what Suuwiigos, the warrior, did, how he formed the Kuldo village, and all the three clans and who had moved down there, like from Gitangasx."

Now Your Lordship will appreciate that that goes to what I call origin. And then the question is asked:

Q "Does the adaawk talk about the territory that Suuwiigos and the House of Gyolugyet had when they were at Kuldo?
A Yes.
Q What does it say about that?
A Well, it does say what houses they had built at Kuldo and the territory that goes with adaawk.
Q What does the adaawk say about the territory of Gyolugyet?
A Well, it just says where the territory is.
Q What does it say about where the territory is?
A Well it tells the directions of where it is, somewhere in the north-west of Kuldo.
Q Does it say anything more than that about the location of the territory?
A I just can't describe to you right now, because it involves a lot of names and a lot of the different places in the territory. But in this Feasting, people

have the feeling that they could mention these places, these names, and these territories and what other chiefs and their Houses, what territory they have. It's easily explained in the Feasting House, and it's open and I have a lot to say. But the feeling of the people here other than Gitksan don't have the very inner feeling of what they -- Gitksan people have in their minds --"

And so on, and I think my friend referred to that. But then -- and so Your Lordship will see that she didn't say what the reputation was, but then my -- she was asked this question:

Q "When your grandmother told you the adaawk when she was still alive, did she describe the territory that Gyolugyet had at Kuldo?
A Yes. She mentioned them by the creeks and the mountains.
Q And are those the creeks and the mountains that you told us about a few days ago in your evidence?
A Yes."

Now that is very close to Milirrpum, "My father told me this is the land of my ancestors." So the direct evidence is that of her grandmother, it is not the adaawk as such. It is admissible under Milirrpum but it is in my submission, got nothing to do with the general proposition that anything to which the name of adaawk is attached is admissible.

Now the next category -- well perhaps I can put it this way, My Lord, that my present view and my present submission is that each piece of evidence has to be tested on its own ground, and it becomes admissible or not according to the Milirrpum tests.

The next category is evidence of what living witnesses have said, and I take as an example in volume seven, Mrs. McKenzie's evidence, page 420, line 41, and the witness is talking about her husband who was still alive. Line 42:

MR. GRANT: "Could you describe for the court what happened when Ben went on the

1 territory?
2 MR. PLANT: Excuse me for interrupting. I'm not
3 clear if this is part of the adaawk or if
4 it is just pure hearsay.
5 MR. GRANT: This is evidence -- more recent
6 evidence of the use of the territory.
7 THE COURT: Well, I see no harm in her saying,
8 as she has, that in 1947 apparently
9 alone, or possibly not, in 1948 with
10 George Holland he went out trapping. But
11 what happened while he was there and
12 certain details surely is detail that
13 can't be proven by secondary evidence.
14 MR. GRANT: Well --
15 THE COURT: Unless it has such notoriety and
16 reputation in the community that it would
17 qualify for some exception to the hearsay
18 rule."
19
20 The point I'm making is that if that is representa-
21 tive of evidence which will be tendered, I cannot see
22 any basis for its admissibility, unless the witness --
23 unless the actor comes forward and gives the evidence.
24 Now, there was another example, and that was --
25 and I'm not going to make a submission with respect to
26 its admissibility because it is already in. Exhibit
27 11, Mrs. McKenzie stated in her evidence, and Your
28 Lordship directed that she produce it, that she was
29 keeping a book on which she wrote certain things down,
30 and my friend, Mr. Grant, produced copies of the
31 relevant pages from that book. In it, she recorded
32 what Albert Tait had said to her in 1978 and 1981
33 about her territory. Now this I don't think it is --
34 has anything to do with an adaawk. It is simply a
35 statement by somebody who is now dead, about, I
36 assume, a relevant aspect of the case.
37 It, however, is useful, because it illustrates
38 the difficulty of treating the adaawk as an umbrella
39 under which recent events could come in. At the time
40 of both of those interviews or discussions, I'll put
41 it that way, between the late Albert Tait and Mrs.
42 McKenzie, the -- the land claims issue was very much
43 to the form.
44 I was going to refer Your Lordship to an
45 affidavit of Mr. Sterritt, who was the president of
46 the Tribal Council, that was filed in support of the
47 application of the present plaintiffs to intervene in

the Meares Island appeal. Now Mr. Sterritt's affidavit which was sworn on February 1985, that is to say after this action had been commenced, stated that he was the President of the Gitksan-Wet'suwet'en Council, "and as such have personal knowledge," et cetera. He stated that:

> "The Tribal Council had been incorporated in 1978, and I have annexed a copy of the -- "

He said:

> "The purposes of the Tribal Council include the protection of aboriginal title of the Gitksan-Wet'suwet'en people.
> (7) On November 7th, 1977 --"

That is to say before Mrs. McKenzie's first discussion with the late Mr. Tait,

> "-- the Gitksan and Wet'suwet'en hereditary chiefs presented a declaration of land claims to the Ministry of Indian and Northern Affairs together with the map of the aboriginal territory of the Gitksan-Wet'suwet'en Tribal Council. Copies of that declaration and map are attached hereto as Exhibits B and C to my affidavit."

I have attached the declaration and the land claims map of the time, and of course the land claims map then presented to the minister was substantially that which is in issue in this case.

And then he says:

> "On or about December 13th, 1977, the Government of Canada accepted on principle our land claim. Since 1975 I have researched the land claim of the Gitksan Wet'suwet'en hereditary land chiefs and since March 1st I have been involved in working on behalf of the Tribal Council in researching their aboriginal claim."

Now I mention that, because one of the provisions in the -- when one is talking about the exception to the hearsay rule, is that it should not -- the

1 declaration should not be made at a time when the
2 litigation which is before the court was contemplated.
3 And this, I emphasize, is one of the reasons why one
4 cannot deal with the adaawk or the declarations of
5 deceased persons in an umbrella fashion.
6 THE COURT: But Mr. Goldie, it seems to me that, and I think I'm
7 right, that Mr. Plant put the exhibit in.
8 MR. GOLDIE: Oh, he did. It's in. It's in. I'm simply -- I'm
9 simply using it -- using this as an example.
10 THE COURT: Of hearsay?
11 MR. GOLDIE: Yes. Of why one cannot make any blanket directions
12 with respect to declarations made by deceased persons.
13 THE COURT: Well as I understand the law, hearsay, however it
14 arises and wherever it comes from is -- is
15 inadmissible to prove the truth of the facts stated
16 unless there is a clear exception. But that document
17 it seems to me, would at least be evidence of the
18 state of mind of the witness.
19 MR. GOLDIE: Oh I agree, I agree. The -- but that again is a
20 qualification made --
21 THE COURT: Yes.
22 MR. GOLDIE: -- made with respect to the purpose for which it is
23 admitted.
24 THE COURT: Well I want to make sure I understand the thrust of
25 your submission. I can see lots of reasons why that
26 document is -- was tendered and why it's admissible.
27 MR. GOLDIE: I must emphasize again, My Lord, that I'm not
28 suggesting that that document is not evidence today.
29 THE COURT: Yes.
30 MR. GOLDIE: I'm simply addressing the submission as I
31 understood it from my friend, that in this type of
32 case.
33 THE COURT: Yes. Recent?
34 MR. GOLDIE: Just because it's recent.
35 THE COURT: I see, yes.
36 MR. GOLDIE: And I'm saying there are dangers with respect to
37 recent declarations. My friend referred to the Simon
38 case --
39 THE COURT: Yes.
40 MR. GOLDIE: -- which is tab 4 in his book of authorities, and
41 that case involved the application of a treaty of
42 friendship to a band of Micmac Indians in New
43 Brunswick. My friend referred to page 407, and he
44 read these words, I quote, on the first paragraph:
45
46 "The appellant admitted at trial that he was
47 a registered Indian under the Indian Act, and was

1 an "adult member of the Shubenacadie - Indian Brook
an "adult member of the Shubenacadie - Indian Brook
2 Band of Micmac Indians and was a member of the
3 Shubenacadie Band Number 02."
4
5 His Lordship said:
6
7 "This evidence alone, in my view, is
8 sufficient to prove the appellant's connection to
9 the tribe originally covered by the treaty. True,
10 this evidence is not conclusive proof that the
11 appellant is a direct descendant of the Micmac
12 Indians covered by the Treaty of 1752. It must --"
13
14 And I emphasize these words:
15
16 "-- It must, however, be sufficient, for otherwise
17 no Micmac Indian would be able to establish
18 descendancy."
19
20 Now I read that as indicating that His Lordship
21 would not have entertained evidence otherwise
22 inadmissible, and that it was the connection with an
23 Indian band which is presumed to be the successor of
24 the tribe with which it was once connected. I don't
25 read that case as assisting in the proposition that
26 there is some general relaxation of the laws of
27 evidence. I think that it is clear that every one
28 here is anxious that a record be created that is not
29 open to criticism in the appellate court, and to the
30 extent that we can do that, we are certainly going to
31 be of whatever assistance we can. The submissions
32 that I'm making, I do hope, My Lord, will underline
33 the fact that one cannot arrive at a general
34 proposition that the adaawk as such, without further
35 analysis, is generally proof -- nor should the story
36 be admitted -- and I'm now referring to the
37 distinction made by Mrs. McKenzie -- nor should the
38 story be admitted for any purpose other than the
39 witness' knowledge of such a story, if that is
40 relevant. But where the witness herself says, "Well,
41 one is true according to our beliefs, and the other is
42 a story according to our beliefs," I don't think, with
43 respect, that Your Lordship is entitled to ignore
44 that -- the distinction the witness herself makes.
45 Now I'm not going to make any submission with
46 respect to the John Smith Feast in light of what my
47 friend stated. Her evidence is again, not proof -- as

it now stands, is not proof of the matters alleged or stated. It is so far as it is relevant, proof of her state of mind.

THE COURT: But her belief that a Feast was held apparently contrary to some existing legislation, it seems to me, is of doubtful relevance.

MR. GOLDIE: Well I haven't made any submissions on relevance, My Lord, and I come back to what I said at the beginning, I can't foresee the full thrust of my friend's case.

THE COURT: I suppose Mr. Rush's answer would be -- and Mr. Rush will correct me, of course, if I am -- if I misstate it, that it is part of the living history of the House, and is admissible for that purpose.

MR. GOLDIE: I would say it is presently admissible as evidence of her belief that such an event occurred, but it is not proof that such an event did occur, or if it did occur, that it occurred for the reasons that she had given.

THE COURT: All right.

MR. GOLDIE: The last category which I have noted, I'm taking far longer than I intended to, My Lord, is the question of spiritual beliefs and happenings. And the note I have is that this evidence and the discussion that occurred with respect to that, in the transcript for the 20th of May at page 499 -- 399, I beg your pardon, and extending through to page 403, and I'm not going to read anything there, it's fresh in everybody's recollection.

THE COURT: What's it about Mr. Goldie, which event is it?

MR. GOLDIE: Oh, well she gave evidence, and perhaps I should make a quick reference to it.

MR. RUSH: What's the volume number?

THE COURT: May 20th.

MR. GOLDIE: She gave evidence of a situation in which she almost lost her sight, or did in fact lose her sight, and the doctor at Hazelton had diagnosed it as measles. And those who were helping her at home said "No, there are other reasons why you have lost your sight." They prescribed, if I may use that word, a certain course of action, and she regained her sight. And Mrs. McKenzie testified to that, and testified to other events which indicate beliefs -- I'll put it this way: In beliefs in the curative powers other than conventional medicine.

Now again, I say if it is relevant it is admissible for the purpose of proving that that is her

1 belief. And the fact that she believes that there are
2 some things wrought by powers beyond the ken of man,
3 if I may say so, is a belief that is a very common
4 one, but it is not evidence that the plaintiffs in
5 this case hold such beliefs, or that those beliefs are
6 held by the people they say they represent.
7 Assuming that those experiences are personal --
8 are relevant, then the evidence is admissible. But
9 again, only as to her beliefs. The evidence that this
10 may extend to the Gitksan nation, I say with respect,
11 it is not evidence of that, and any such attempt to
12 characterize it as that runs head long into the
13 hearsay rule without any real basis for an exception.
14 I just have one --
15 THE COURT: Well apart from relevance, Mr. Goldie, why doesn't
16 it qualify as direct evidence of her experiences?
17 MR. GOLDIE: It does, it does. There is no issue over that. If
18 I say I have measles, the doctor -- if I say I have
19 measles, so on and so on and so on, that's direct
20 evidence. There is no issue over that.
21 THE COURT: All right.
22 MR. GOLDIE: If it is tendered for the proposition that the
23 Gitksan nation has a certain belief, then that's where
24 it runs afoul.
25 THE COURT: All right.
26 MR. GOLDIE: The difficulty which I have to conclude with, is
27 that I find it -- I find it hard to be of assistance
28 to Your Lordship if there are present rulings
29 required, and I repeat what I said. If rulings are to
30 be made now, then much of this will have to be
31 objected to, and I believe that much of the evidence
32 that has been tendered is admissible for limited
33 purposes at the present time at any rate.
34 THE COURT: Thank you. Mr. Macaulay? Sorry, Mr. Macaulay,
35 we'll take the morning adjournment now.
36 THE REGISTRAR: Order in court.
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(PROCEEDINGS ADJOURNED AT 11:00 a.m.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability.

Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO MORNING RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mr. Macaulay?
MR. MACAULAY: My Lord, the Attorney General of Canada takes the position that the oral history of the plaintiffs generally is admissible for the truth of the contents where it meets the tests of necessity and reliability or truthfulness, for example, adaawks that have been annealed or tempered by the process of repeated recital in the Feasts and assented to by a considerable part of the community that are interested in the matters that are told in those circumstances. The evidence -- the adaawk concerning the move of the -- Mrs. McKenzie's House from Kuldo to Kispiox may be an example of that. In the case of statements made by persons either alive or dead, but privately, that haven't been the subject of that tempering or testing process by the frequent retelling in the Feasts, doesn't meet the test of trustworthiness, although it might meet the other test of necessity. A statement by a head chief to one of his descendants with nothing more doesn't meet that test. That situation is to be distinguished from the situation in the Milirrpum, the Australian case, where there was a joint communal claim which was evidenced by many people saying "My father told me that this was the land of our clan."

Now, I submit also that there is no authority for the proposition that I believe was advanced by Mr. Rush that there's any special rule in the case of aboriginal claims for rights or land or jurisdiction and that none of the authorities referred to by him supports that.

Now, recent events concerning which several submissions were made are to be tested by the court in the same way as any other of the -- what's called an adaawk or oral history. The court must consider if there is better evidence available, for instance, under the general rubric of necessity. A declarant's interest is to be tested by the court under the rubric of reliability or truthfulness and it doesn't help -- and it's not relevant in the administration by the court of the laws of evidence to consider whether somebody says it's part of an adaawk or it's a story or it's something else. Those are not the touch stones, and are not to be the touch stones under which any particular piece of evidence is considered as to

its effect, as to the probative effect that it has.
In that connection, I'd draw Your Lordship's attention particularly to that portion of Wigmore which is included in my learned friend's book of authorities. It's Tab 18 of the plaintiff's book, page 557. It's part of paragraph number 1591. At the top of the page the learned author makes this observation, which I submit is a very sound expression of the law in that regard. He says, the limitation already noticed is obtaining another hearsay exception; that the reputation, to be admissible, must have arisen ante litem modum, is well established and its propriety cannot be doubted.

But that is only a sub-category of the general rule that the evidence, any evidence that a party seeks to have admitted under the exceptions to the hearsay rule, must meet the two tests of admissibility and reliability. And of course any statement made, and I refer particularly to the statements made by the late Albert Tait to the witness Mary McKenzie, are statements that are not made ante litem modum, and those don't meet the test that the authorities require. Similarily, notwithstanding the fact that they may be characterized by one witness or another as an adaawk. So that another example is -- I think my friend Mr. Rush referred to what is happening in court, here in court, being part of the adaawk. Well, that is neither -- meets neither of the tests of necessity since there's better evidence available of what's happening here, and the witness' evidence may or may not be, depending on Your Lordship's ultimate findings, the other test of reliability. So that there could be no general ruling now that each evidence as it comes up has to be considered by the court in the light of those two fundamental tests and classified accordingly. That's my submission, My Lord.

THE COURT: Thank you Mr. Macaulay.
Mr. Rush, do you wish to reply?

MR. RUSH: Yes, I do. Let me deal first with Mr. Goldie's argument, and the last point that he makes regarding spiritual beliefs. I think I need only say that the full implication of Mr. Goldie's argument is that for the plaintiffs to prove what it is they have claimed in their Statement of Claim, they would be required to call every one of the plaintiff witnesses, indeed, it might be to call every one of the Gitksan people to

show specific examples of their spiritual beliefs in order to show that is commonly held as the spiritual beliefs of the Gitksan people. And I'm sure that wasn't the implication that he intended by that argument.

Coming to his argument at the beginning, he says first that the adaawk cannot be an umbrella for all kinds, I take it for all kinds of evidence, which would otherwise be considered to be hearsay. We make no such claim. The claim that's advanced here as an exception to the hearsay rule is that evidence of oral history, evidence of oral tradition, which meets the test of Milirrpum ought to be admitted as evidence in the case. The construct of an umbrella is my friends' and it is not ours. What we say, that it is the evidence should be tested against the Milirrpum principles properly understood. And those -- the way in which my learned friend constructs those principles I say is somewhat of a misreading of the case. And I think that this appears from his subsequent arguments.

My second or third point is that my friend casts that the adaawk can somehow be reshaped by recent views as an attempt to understand or perhaps state the argument that we advance that events of a more recent nature can and may form, but not necessarily will form, part of the oral history. That's not the argument, My Lord. The argument is that recent events may add to the history just as recent events in any national -- any other national context may add to the history of, for example, Great Britain.

My next point goes to the question of my learned friend's distinction between, that is Mr. Goldie's distinction, between what constitutes evidence of oral history directed at territory, and evidence directed at jurisdiction. And I want to make it very clear that the evidence of the Gitksan and Wet'suwet'en people today about their jurisdiction is based on their jurisdiction which is of a historical nature and is deep-rooted in history, and to the extent that the oral history satisfies the Milirrpum principles that that oral history speaks of the jurisdiction and authority of the Gitksan chiefs. And soon you will hear the Wet'suwet'en chiefs in respect of their territories and the power that they have enjoyed historically as evidenced in these histories to their territories and to the use of those territories and the people that occupy them.

1 Now, my friend alluded to the evidence pertaining
2 to the T'am lax amit story and the history that is
3 involved with respect to the retelling of that adaawk.
4 Now, what we say, My Lord, is that the proof of the
5 T'am lax amit history is to show that there are deep
6 historical roots that can be traced by the chief
7 telling the story and the House to which it belongs,
8 to events of the past, to territories that were
9 acquired in the past, to rights to the territory, and
10 the crests of those territories that came out of
11 experiences of the past. If we can characterize it as
12 a chain of continuity from the past to the present,
13 and that chain is the chain of the oral history.
14 Going next to the point about the proof of
15 territory based on reputation, as my learned friend
16 says, and he pulls from the Milirrpum case the
17 statement "My father said this is my land and that is
18 permissible evidence." I have a number of things to
19 say about my friend's argument here. The first is
20 that in the Milirrpum case, this was seen by the court
21 as but with one example of the type of oral history
22 that was contemplated as being admissible in that
23 case. And if Your Lordship looks at page 153 of the
24 type of oral history that was contemplated in that
25 case, oral testimony that he said -- that -- I'm
26 sorry, it should be 154. Beginning at the top of the
27 page:
28
29 "In my opinion, the proper approach of the
30 court to the difficult problems of evidence which
31 the case poses is upon the following lines.
32 Neither the novelty of the substantive issues, nor
33 the unusual difficulties associated with the proof
34 of matters of aboriginal law in custom, is any
35 ground for departing from the rules of the law of
36 evidence which the court is bound to apply. On the
37 other hand, the rules of evidence are not to be
38 applied irrationally, are to be applied rationally,
39 not mechanically. The application of a rule of
40 evidence to the proof of novel facts in the context
41 of novel issues of substantive law, must in
42 accordance with the true rationale of the rule, not
43 merely in accordance with its past application to
44 analogous facts. The proposition there is no
45 substantive right or there is no precedent for this
46 fact situation, therefore there is no appropriate
47 rule of evidence, therefore the evidence is

1 inadmissible, is unacceptable.
2 I take as a simple example for the purposes
3 of applying these principles a piece of evidence
4 which in slightly varying forms the aboriginal
5 witnesses gave several times and which the
6 defendants contended to be inadmissible. 'My
7 father, who is now dead, said to me this, referring
8 to a particular piece of land, is the land of the
9 Rearat Jingu(ph)'. At this stage I need not go
10 into the various forms in which the statement was
11 put."
12
13 And then he goes into discuss the law as it was set
14 out in Phipson and subsequently in Wigmore.
15 My point, my first point is that the court in that
16 case clearly saw that statement as an example of a
17 much broader type of evidence which was sought to be
18 admitted as oral history.
19 Now, what we are endeavouring to lead in this
20 case, My Lord, is something that reaches far more deep
21 into the history of the Gitksan people than going back
22 to one generation of what a father or a grandmother
23 tells the recipient of the information today, namely
24 the chief that is giving the witnessing testimony. In
25 our submission, My Lord, our evidence goes to the
26 richness of that ownership. In our submission you can
27 go much farther back into the generations that have
28 preceded the one generation of information coming from
29 a grandmother. The people, the Gitksan and
30 Wet'suwet'en people, as I think it is demonstrated by
31 the adaawk which you have already heard, go back many
32 thousands of years and that it is important in our
33 submission to show the very depth of the territorial
34 ownership and the authority which the Gitksan and
35 Wet'suwet'en people lay claim to. And we are saying
36 in this case, the pleadings I think pose it very
37 sharply, that we are saying that the title goes back
38 generations and generations and that it is in fact the
39 length of ownership which is a key to the claim of
40 ownership that is made today, and that cannot be
41 demonstrated by a simple statement that "My
42 grandmother told me that the land of Gyolugyet is in
43 fact my land." And I've already made my submissions
44 to Your Lordship with respect to what it is that the
45 adaawk is addressed to and I think it is far more
46 broadly reaching than is cast by my learned friend Mr.
47 Goldie.

1 So far as the statement of deceased persons and an
2 example was given, the evidence of Mr. Ben McKenzie --
3 sorry, not the evidence of Ben McKenzie, but the
4 evidence of Mr. McKenzie, who's alive, who has given
5 evidence or given statements to Mrs. Mary McKenzie,
6 evidence of that kind we don't say ought to be
7 admitted as some exception under some other head or
8 rubric that is found in the authorities, and nor did
9 Mr. Grant press that point. And I think if Your
10 Lordship reviews the transcript on that you will see
11 that Mr. Grant did not advance with that.
12 The next point that is made by Mr. Goldie is what
13 he points out as the dangers of recent declarations,
14 and like Mr. Goldie we don't dispute that. But what
15 we say is that we have suggested to your Lordship what
16 we think are valid tests of necessity, of the test of
17 the probability of trustworthiness, and these tests we
18 say can avoid the very dangers that my learned friend
19 refers to. We don't say that to say something is an
20 adaawk, therefore makes it admissible as an exception
21 to the hearsay rule. That's not a self-serving
22 statement that we seek to advance here, but what we do
23 say is that if oral history can encompass events of a
24 more recent origin, then if they satisfy these other
25 tests, then it is my submission that they ought to be
26 accepted as oral history for the truth of what is
27 said.
28 And perhaps I should leave Your Lordship with this,
29 that the evidence of the oral history, the evidence of
30 the adaawk, is led not for the purpose of the beliefs
31 that are held. They are led here for the purpose of
32 the truth of the contents of those histories and that
33 in my submission they cannot be reduced or demeaned on
34 the basis of relegating them to the fact that this is
35 what people today believe in, but rather because of
36 the very process contemplated in the Milirrpum case we
37 see that they do have the trustworthiness and the
38 authenticity of history, once having satisfied the
39 very tests of authenticity contemplated by that case.
40 THE COURT: Well, do you advance Mrs. Johnson's evidence about
41 the destruction of the village by a supernatural bear
42 as proof of the truth of that fact? That's what you
43 just said I think.
44 MR. RUSH: Well, what I say is that that adaawk will be -- may
45 be repeated and may be explained in the context of a
46 scientific event at that time. What we will endeavour
47 to do, My Lord, is to put that event in the context of

1 a very specific moment in time that we think we can
2 demonstrate scientifically.
3 THE COURT: But -- yes, but she has said that the belief is that
4 the village was destroyed by a supernatural bear. And
5 I think you said a moment ago, and I want to make sure
6 I have your submission right, that you were putting
7 forward the history of the adaawk as proof of the
8 truth of the facts stated in it. I think that's what
9 you said.
10 MR. RUSH: Yes.
11 THE COURT: Yes.
12 MR. RUSH: Well, again, as I -- what I say is the sifting
13 process has to bring you to the acceptance, in my
14 submission, of the truthfulness --
15 THE COURT: Yes.
16 MR. RUSH: -- of the adaawk or the oral history as you've heard
17 it. Now, whether it was a supernatural bear --
18 THE COURT: Yes.
19 MR. RUSH: -- or whether it was a bear with unusual powers, a
20 large bear, what has been -- what has been brought
21 forward to the present time is the cast of a
22 supernatural bear.
23 THE COURT: Yes.
24 MR. RUSH: It doesn't mean that the event, wherein the
25 supernatural bear or the bear with extraordinary
26 powers is located, didn't happen. And it's my
27 submission, My Lord, that to say that there was a
28 supernatural or an intertwined, interrelated aspect of
29 the supernaturality, if you will, of the bear with the
30 natural element, the bear itself, to say that that
31 occurred, in no way lessens the fact that the event
32 occurred, and that in my submission --
33 THE COURT: You mean the destruction of the village?
34 MR. RUSH: That's right.
35 THE COURT: Well, I have no difficulty with that. I have
36 difficulty with, I think, the way you put the
37 proposition which may -- may be entirely semantically.
38 MR. RUSH: Well, what I say, My Lord, is that I think it is
39 clear from the evidence that you've heard that the
40 spirit world, the animal world and the human world in
41 many aspects of history are interrelated.
42 THE COURT: I have no difficulty with that at all. I don't
43 think I have much difficulty with that proposition,
44 but I have a little trouble just by one statement you
45 made.
46 MR. RUSH: Now, so far as my friend's Mr. Macaulay's comments
47 go, he made reference to the late Albert Tait's

1 evidence as found in Exhibit 11. And I need only say
2 this, that I think it was the evidence of Mrs.
3 McKenzie that in 1978 that the litigation wasn't
4 contemplated, this litigation wasn't contemplated. I
5 don't know that she said that in respect of the 1983
6 entry. What we -- so far as I'm aware of the -- in
7 the evidence she made no claim in the
8 cross-examination conducted by Mr. Plant that this
9 evidence was an adaawk. And it certainly wasn't
10 proffered by the plaintiffs for that purpose.
11 THE COURT: All right. Thank you, gentlemen. I'm not going to
12 make any ruling now. I may try to come to grips with
13 some of this over the course of next week or I may
14 allow the matter to continue for the sifting process
15 that Mr. Rush described. I have two serious problems.
16 I have the black letter law to deal with and I have
17 the practical pragmatic problem to deal with, and I
18 have as my overriding objective to ensure that a
19 proper record is created for the proper determination
20 of these issues. Counsels' submission have been very
21 helpful and I'll continue to struggle with it. I
22 think for the moment we should continue. I think that
23 I have an over-arching jurisdiction to hear evidence
24 and to reject it subsequently, if I conclude that it's
25 not admissible, whether or not an objection has been
26 taken, but I think in effect some objections have been
27 made which can be elevated to the status of blanket
28 objections to inadmissible evidence, and I'm going to
29 assume for the moment that there is an objection to
30 any -- to the admissibility of any evidence that
31 doesn't stand muster, and I'll deal with that as best
32 I can whenever it's possible so to do.
33 All right. Shall we proceed with Mrs. Johnson?
34 THE REGISTRAR: Witness, I remind you you're still under oath.
35
36 CROSS-EXAMINATION CONT. BY MR. GRANT:
37 Q Yes, My Lord I just -- I intend to go back to conclude
38 on two points I had raised yesterday. The first point
39 is -- just a moment, My Lord.
40 I have a photograph, an enlarged photograph, that I
41 wish to show to you and ask if you recognize that
42 picture?
43 A Yes.
44 MR. GRANT: I'd ask that -- this picture is Exhibit 1 for
45 identification in the commission evidence of Martha
46 Brown.
47 THE COURT: It's not an enlargement of something in Exhibit 17?

MR. GRANT: No, it isn't, My Lord, it's another photograph. I'd ask that it be marked as the next exhibit. I wish to refer the witness to it.
THE COURT: There being no objection, I see no reason why it shouldn't be an exhibit.
THE REGISTRAR: Eighteen.
THE COURT: Eighteen. Thank you.

(EXHIBIT 18: ENLARGED PHOTO OF HOUSES AND POLES OF KISPIOX)

MR. GRANT: And while that is being marked, My Lord, my learned friends asked about the dates on the photo which are in Exhibit 17 and I want to advise that, with confirmation with the Public Archives of Canada, that they have no definite dates for any of these photographs and can only make guesses, but they are in the 1900, 1920 era is what they are guessing, so it appears that the evidence of this witness as to what she has seen as a child is probably the best evidence of the dates of the photographs that there is.
THE COURT: All right. What is Exhibit 18, an enlarged photograph of what, please?
MR. GRANT: Okay. It's an enlarged photograph of houses and poles.
THE COURT: At Kispiox?
MR. GRANT: Yes.
THE COURT: Thank you.
MR. GRANT:
Q You recognize the houses in this photograph and you have seen them?
A Yes.
Q Now, what I would like you to do, there is -- on the right-hand side of this photograph there is just the corner of a house?
A Yes.
Q And starting with that one, if you can just point to the houses going from the right-hand side as you face Exhibit 18 down, if you could just indicate to the court whose houses those were?
A The first one with just the corner is Haaxw's house.
MR. GRANT: Which number is that?
THE TRANSLATOR: Twenty-seven.
MR. GRANT:
Q Twenty-seven on the plaintiff's list.
Yes, go ahead?
A And the next one is both Hawaaw and Doga ges'.

THE TRANSLATOR: Number 30 is Hawaaw.
THE COURT: Sorry?
THE TRANSLATOR: Number 30 is Hawaaw.
THE COURT: She gave two names.
MR. GRANT: Thirty is Hawaaw, and Doga ges?
THE TRANSLATOR: It's not on here.
MR. GRANT:
Q D-o-g-e-g-e-s.
And the third house?
A That's Gwii yeehl's house.
THE TRANSLATOR: Number 19.
MR. GRANT:
Q Number 19, My Lord.
The fourth house?
A That's Kliiyem lax haa's house.
Q And does that -- it appears to have a hole, did Kliiyem lax haa's house have a hole above the door?
A Yes. Yeah. And that is why they call Kliiyem lax haa's house Wil 'na k'ak.
MR. GRANT: Okay. Could you give the number for Kliiyem lax haa?
THE TRANSLATOR: Thirty-five.
MR. GRANT: And the spelling of Wil 'na k'ak?
THE TRANSLATOR: Wil 'na k'ak, W-i-l --
THE COURT: This is 35?
THE TRANSLATOR: Yes, Kliiyem lax haa. W-i-l n-a-k-'-a-a-k-'(sic).
MR. GRANT:

Q And which house is beside Kliiyem lax haa's? It appears in behind a pole. You can just see a roof there?
A It's Gutginuxw's house.
THE TRANSLATOR: Number 14.
MR. GRANT:
Q And next to that?
A Next to Gutginuxw is Gitludahl's -- no, it's Delgam Uukw.
THE TRANSLATOR: Number 4.
MR. GRANT:
Q And next to that.
A Then Gitludahl.
Q Okay. Can you look at the photograph and tell the court if Gitludahl's house is actually there?
A No, it's already torn down, but I know the exact spot and who his neighbours are.
MR. GRANT: So it was there, but at the time of this picture it

had been torn down?
THE COURT: I haven't got a name for the last one, the one we're talking about.
THE TRANSLATOR: Gitludahl was number 11.
THE COURT: Thank you.
MR. GRANT:
Q So then the next house -- after the house with what appears to be the white roof on it is a space, and that's where Gitludahl's house was; is that right?
A Yes.
Q And then the next house that you see in the picture, which seems to be a white front on it?
A That's Geel's house.
THE TRANSLATOR: Number 8.
MR. GRANT:
Q Okay. And the one next to that?
A That's Ma'uus.
THE TRANSLATOR: Number 48.
MR. GRANT:
Q And then is there one beyond that that you can see just the roof?
A Just the roof is Dawamuxw's house.
THE TRANSLATOR: Number 3.
MR. GRANT:
Q Those are all that you can clearly see in the photograph?
A Yes.
Q Now, do you recall the houses going beyond -- do you recall the houses going beyond Dawamuxw's house that were there?
A Yes.
Q Can you tell the court whose they were?
A Yeah. Next to Dawamuxw's, both Dawamuxw's and Niista huuk' and next to them is --
THE COURT: I'm sorry?
MR. GRANT: Just a second, we need Niista huuk'. That isn't on the list.
THE TRANSLATOR: Niista huuk', N-i-i-s-t-a- h-u-u-k-'.
THE COURT: Thank you.
MR. GOLDIE: I'm sorry, My Lord, I didn't catch the last two letters.
THE COURT: H-u-u-k-'.
MR. GOLDIE: H-u-u-k. Thank you.
MR. GRANT:
Q And when you refer to Niista huuk', is that the same house as is Dawamuxw's?
A Yes.

1 Q Okay. Go on. And you were saying that next to that
2 house, which house was there?
3 A There were -- they got the same house Dawamuxw and
4 Niista huuk'.
5 Q And do you recall which house was beyond Dawamuxw's
6 house?
7 A That's Xsim gaakhl's house.
8 MR. GRANT: Do you have that, Madam Interpreter?
9 THE TRANSLATOR: Yes, Xsim gaakhl, X-s-i-m g-a-a-k-h-l.
10 MR. GRANT:
11 Q Thank you. Go on?
12 A And next to -- there's a small little building that
13 you could see on the picture in the rest of the
14 picture is late Charles Wesley's building. He use it
15 as a store.
16 Q And you referred to that yesterday in one of the
17 photographs in Exhibit 17?
18 A Yeah. And next to this little building is another new
19 house, Feast House, that belongs to both Tsibasaa and
20 Antgililbix, so that's the end and -- of the houses.
21 Then the road turns and this is the corner and it
22 turns and goes up to a small hill not far from where
23 these houses are. There is Wii elaast's house.
24 THE TRANSLATOR: Number 72.
25 THE WITNESS: And he's -- Wii elaast's other chief name is Gwilax
26 gan.
27 MR. GRANT: Spell that, please?
28 THE TRANSLATOR: G-w-i-l-a-x, underlined, g, underlined, a-n.
29 THE WITNESS: And next to Wii elaast is Hlo'oxs house.
30 MR. GRANT:
31 Q This is the house of the chief who's now in
32 Gyologyet's house; is that right?
33 A Yeah. He's her -- her family.
34 MR. GRANT:
35 Q H-l-o-x(sic), My Lord, referred to earlier.
36 Okay. Now, going back to Exhibit 18, I'm going to
37 show you Exhibit 18, and the photograph -- as I say,
38 the photograph at Tab 3 of Exhibit 17. Now, can you
39 tell by the houses that are standing in Exhibit 18 and
40 Exhibit 17 which of those is the earlier picture?
41 Which is older?
42 A Oh, that one.
43 Q Yes. Is this picture more recent, that is, the
44 picture in Tab 3 than the picture --
45 A Yeah. This is older because I notice in the other
46 picture of Gutginuxw's house it's a new building and
47 it's a two-storey building.

1 MR. GRANT: Now --
2 THE COURT: I'm sorry, Mr. Grant, I'm not -- I thought she gave
3 us two different answers there as to which one was
4 oldest. When you asked her which was the oldest one
5 she first pointed to 17.
6 MR. GRANT:
7 Q Okay. In Exhibit 17 is a house of Gutginuxw; is that
8 right?
9 A Yes.
10 Q And it's a newer house --
11 A New.
12 Q -- than --
13 A Yeah.
14 Q -- than the house of Gutginuxw in Exhibit 18?
15 A Yeah. Yeah, as you could tell that it -- it's ready
16 to fell down on that picture.
17 Q Referring to Exhibit 18 for the record.
18 A Yeah.
19 THE COURT: So it's Tab 3 of 17 is more recent than --
20 MR. GRANT: Than Exhibit 18.
21 THE COURT: -- than Exhibit 18?
22 MR. GRANT: Yes.
23 THE COURT: Thank you.
24 MR. GRANT:
25 Q Now, I'd just like you to tell the court with
26 reference to Exhibit 18, if you can make reference to
27 any of the poles that are there and whose poles they
28 are, again starting at the right-hand side?
29 A Yes. The first one is Haaxw's totem pole. You can
30 see the frog's on it because they are Frog tribe.
31 THE TRANSLATOR: That's number 27.
32 THE COURT: Thank you.
33 MR. GRANT:
34 Q Then there's a second one.
35 A The second one is Hawaaw's totem pole and you could
36 see the tall hat on the top of the pole. It was given
37 to Hawaaw's family when they -- they murdered their
38 family and that figure comes from the Nass River and
39 there's another pole standing in front of that, is
40 another of Hawaaw's pole, both Hawaaw and Ska be'k'.
41 Q And is that the one that appears to have an eagle on
42 the top?
43 A Yes, there's an eagle on the top of the pole. That's
44 Hawaaw's crest. It's called Gwax skiik. That means a
45 small eagle.
46 THE COURT: And what's the number of Hawaaw, please?
47 THE TRANSLATOR: Hawaaw is number 27 -- oh, no 30.

MR. GRANT:
Q And the one you're referring to is this pole which if one counted from the -- from the right-hand side -- okay. I just want -- so the court knows, the pole from the right-hand side of the picture, it would be the fourth one over if you don't count one that's almost hidden behind it; is that right?
A Yes.
Q Okay.
A Yeah, those are Wii elaast's pole.
MR. GRANT: Which, the one hidden behind?
THE COURT: The third one?
MR. GRANT:
Q The one behind --
A Oh, no, that's hidden behind is Kliiyem lax haa's pole.
THE COURT: Stop, stop, please. Mr. Grant, we'll never get this straight if we don't stay in our numbering. Can she tell us whose pole is the third one? At least I can see a third one.
MR. GRANT:
Q Yes. The third pole from the right, can you tell whose pole that is?
A That's Gwii yeehl's pole.
MR. GRANT: Can you give a number for that?
THE TRANSLATOR: Number 19.
THE COURT: Thank you.
MR. GRANT:
Q Okay. And then there's one hidden behind the Hawaaw pole and is that the one you said was Kliiyem lax haa's?
A Yes, that's Kliiyem lax haa's. You can see the wolf standing on the top. That's Git waltxwm gibeew.
Q That's the name of that wolf on the top?
A Yes.
THE COURT: All right. Kliiyem lax haa is what number, please?
THE TRANSLATOR: Thirty-five.
MR. GRANT:
Q Okay. Now, you referred on Hawaaw's pole there was something about a bear or something on the bottom?
A Yes.
Q You can see -- this is the fifth pole from the right, My Lord.
A Yes. That's -- that's Hawaaw's pole and it's a half-bear is on the pole. It's a white grizzly bear they said.
THE COURT: Which pole is that, Mr. Grant?

MR. GRANT: This is the fifth one from the -- the fifth one from the right which -- you know, when I'm counting the one behind it.
THE COURT: Well, isn't that the fourth?
MR. GRANT: There's one hidden behind it that's just sticking up behind.
THE COURT: Which one has the bear at its --
MR. GRANT:
Q Can you just put an X" on the top of the pole with the bear in a red -- yes, with the bear in red. Thank you.
Now, to the left of that pole there's another pole that is again up to the skyline. Can you -- whose pole is that?
A That's Gwii yeehl's pole.
THE TRANSLATOR: That's number 19.
THE COURT: Sorry?
THE TRANSLATOR: Nineteen.
THE WITNESS: They've got an eagle on the top too.
MR. GRANT:
Q Now, is it correct that on your pole in Kispiox there is a -- there are -- is a crest of a whale?
A Yeah.
Q Okay. And without telling the adaawk, I don't want you to give an adaawk right now, but is there an adaawk about how you received the crest of the whale?
A Yes.
Q And is that -- is there a name in your House called Gwin lax nisims?
A Yes.
THE TRANSLATOR: Number 13.
MR. GRANT: On the --
THE TRANSLATOR: On the names of Mary's House.
MR. GRANT: On the names of Mary's House list it's number 13?
THE TRANSLATOR: Yes.
MR. GRANT:
Q And does the adaawk that tells about the whale, does it also tell about that name, Gwin lax nisims?
A Yes.
Q And is there a Nax nok in your House of saa tsaan?
A Yes, saa tsaan.
MR. GRANT: Saa tsaan?
THE TRANSLATOR: Saa tsaan, S-a-t-s-a-n(sic).
A Yes, saa tsaan.
MR. GRANT: Saa tsaan?
THE TRANSLATOR: Saa tsaan, S-a-t-s-a-n(sic).
MR. GRANT:
Q And is that adaawk of Gwin lax nisims and the whale refer to the Nax nok of saa tsaan?

A Yes.
Q Does it take quite a long time to tell that adaawk?
A Yes, it's a long adaawk.
Q I was talking -- asking you yesterday about some of the laws and you described the laws of the girls who reach puberty?
A Yes.
Q And Mrs. McKenzie referred to laws about xsiisxw or settlements. Are you aware of -- do you know of any example where settlements were given where there was an accident?
A Yes.
Q Can you tell the court -- and how -- how do you know that, who told you about that?
A My mother and grandmother, Edith Gawa, told me about a settlement between the Wolf tribe and the Fireweed tribe.
Q Do you know when this occurred approximately?
A Yeah.
Q When?
A It happens in Kispiox. They said that while they were -- the folks from Glen Vowell were pretending to attack Kispiox, they pretend to have a war and they captured one of the chief, his name is George Robinson one of Richard Morrison's relative. He's from the house of Ma'uus. And they capture him and took him away to Glen Vowell. So at the next night the people of Kispiox were preparing to attack Glen Vowell and take back the one that was captured, and after they left the ladies decided to go too. They were just playing and acting and they get together in one of a great big house that belongs to late Philip Wilson -- Philip Williams. Philip Williams is my uncle George Williams' stepfather, and I didn't see Philip Williams, and I didn't see Uncle George's mother. But that's their house where the ladies get together and Philip got a lot of guns and he -- he checked each gun and after he checked to see if there's no -- no bullets in the gun, that's -- and then he hand it over to each lady, check every gun, never missed it. Then they started out on the ice and as they -- when they pass Gwin o'op, the junction --
THE TRANSLATOR: Seven.
MR. GRANT: Number 7 --
THE TRANSLATOR: Uh-huh.
MR. GRANT: -- on the first page of the list provided yesterday?
THE TRANSLATOR: Yes.

MR. GRANT: Go ahead.
THE COURT: I'm sorry, what's number 7.
MR. GRANT: Number 7 on the first page of the list provided yesterday that's -- she referred to a place Gwin o'op.
THE COURT: I'm sorry, I thought -- I took it she was passing a gun to Olive Johnson, but maybe I'm not following the evidence.
MR. GRANT:
Q No, I think you misheard. She said that they went past Gwin o'op and this was at a junction of the bulk of the Kispiox and Skeena Rivers.
A Yes. And not far from Gwin o'op you could see a -- the river is -- just turns and that's where they met a man and the man comes from the House of both Dawamuxw's and 'Niista huuk's and his brother is late William Stevens, that's Laan is his chief name.
MR. GRANT: Is that on the list, or just give the spelling?
THE TRANSLATOR: Laan, L-a-a-n.
MR. GRANT:
Q Go ahead.
A And the ladies pretended to point a gun to him. They just say -- they were playing "guxw, guxw, guxw", and a young lady comes along with them. She's really young and she pointed the gun on the side of this man and the gun went off. People didn't understand the reason because the owner of the gun checked every gun and the man said slowly "You -- you shot me." and then he flopped down really slow. And they nearly -- there's an opening on the ice not far and the young lady nearly run into the ice. Just -- just the ladies grab her, she's so frightened of what happened.
Q You mean there was a hole in the ice on the river where she ran?
A Yes. Yes. She nearly run into the hole because she was so scared of what happened.
Q What happened next?
A So after this happens while the village is putting up their Feasts and they -- and you seen those great big houses, and they sent a little boy to spy the house of the guy that died and -- and this little boy came back to the house that sent him and said they were singing a war song. It's a really fast beat. That -- that means they will -- they will strike back, and then when this little boy told what happened a chief put on all his -- all his blankets, head dress and everything and got a rattle and go there. They went to the house that was preparing for war and he -- when he come in

he -- he sang his Xsinaahlxw with the rattle in his hand.
THE COURT: We better get a spelling of the song.
MR. GRANT:
Q Yes.
A That's the breath song.
THE TRANSLATOR: Xsinaahlxw, X-s-i-n-a-a-h-l-x-w.
THE COURT: Yes. Thank you.
MR. GRANT:
A After the breath song, then he spoke to the chiefs that the man that was shot belongs to. He told them he will -- he will be giving a compensation of hunting ground to them, not all of the hunting ground because they got a lot of territory, and they could give just -- just little bit of the territory. So everything is settled. The reason I want to tell it is just for an example even if it's an accident among the Indians they still give what we call xsiisxw.
MR. GRANT: Spell that, please?
THE TRANSLATOR: Xsiisxw, X-s-i-i-s-x-w.
MR. GRANT:
Q And were goods given from the family of the girl to the -- or from the House -- the chief of the House of the girl to the chief of the other house.
A He already gave the land, the hunting ground after the breath song so xsiisxw means compensation.
Q Mrs. Johnson, I'd like to ask you a few questions now about the selection of chiefs among the Gitksan. Can you tell the court how -- for example, what you and your brother Tsibasaa will look in -- look to in a person if you are considering who should become a chief in your House or who should be your successor?
A Yeah. Anyone that lives a clean life and not an alcoholic because the chief name is so sacred among the Indians, and also the territory, and we want someone that's really wise and understand the laws of our land and respect the rest of the tribe, honour the rest of the tribes.
Q Do you look to the wife if, let us say the person you are looking to is a man, would you look to -- expect certain things from his wife if he is going to become a chief?
A Yeah, in the very ancient time grandmother said the chiefs had a hard time selecting a chief. They select their own family, but like I said, the chiefs life should be clean and pure because -- because the eagle down is white, that means pure and eagle down is soft

and -- very soft. That's why I say when you are grieved, and the chiefs will speak to you in the Feast House if there's any death in the family, and you could feel their words how they -- how they droned on. It's just like as if the feathers fell on you, on your life, that's how their words are.

Q Is that still the case today?

A Yeah, it's still, it is today. So as you said about the wife, this happens in the ancient time if the wife of the supposed to be a chief gossips, that's what we call guu galamk'.

THE TRANSLATOR: Guu galamk', G-u-x-w g-a-l-a-m-k-'.

THE WITNESS: And gossips and hurt people's feeling, then the chiefs of the House would select another one because they want the chief and the territory to be complete pure and true and the chief is supposed to tell the truth, not to lie about anybody else's territory.

MR. GRANT:

Q Who was involved in the decision that you would be given the name Antgulilbix in 1982? Who participated in making that decision?

A I made it myself.

Q Okay.

A The reason is grandmother told me that if there's no -- no men in the family, then a woman will take a great chief, grandmother said. That's why I ask my cousin Wilfred Gawa that if he's willing to take Antgulilbix, and that's how it should be, Wilfred should go up higher. If he take Antgulilbix, and then some of the family will take Yal, but he -- he won't take it. The reason I selected him is because he's still working and he's still strong, way younger than I am because their mother is the youngest of the family.

Q That is Wilfred's mother was the youngest of the family?

A Yeah, of the family.

Q Now, you say you decided yourself?

A Yeah.

Q But did you have a meeting with your brother Stanley?

A Yeah. I had -- this was among the meeting after Wilfred didn't -- didn't want to take Antgulilbix. That's when I told in the meeting that I -- I'm willing to take my auntie's power, that's 54.

THE TRANSLATOR: Dax gyat, D-a-x, underlined, g-y-a-t.

THE COURT: G-y-a-t?

THE TRANSLATOR: Yes.

THE WITNESS: Even though I'm already retired of work, when I was strong I went back and forth to the coast and worked real hard and I can't help -- accomplish so many things, but at this time I told him even Tsaligi am luu wok'y hli dax gyathl no'y. That means whether I spent just a night after taking it, that's a very ancient word.

MR. GRANT:

Q Which, what you just said?

A Yeah, Tsaligi am luu wok'y hli dax gyathl no'y.

THE TRANSLATOR: Can I get her to say it again?

MR. GRANT:

Q Can you just repeat the word for the interpreter?

A Tsaligi am luu wok'y hli dax gyathl no'y.

THE TRANSLATOR: Tsaligi am luu wok'y, T-s-a-l-i-g-i a-m l-u-u-w-o-x-'-y(sic).

MR. GRANT:

Q Go ahead?

A Yeah.

Q You're finished?

A Yeah, that's how it's decided and all the chiefs of the different Giskaast and my own family they all agree, this was -- this was the day before Auntie Emily is buried.

Q Did a similar process occur when Stanley was selected to be Tsibasaa in 1958?

A Yes. Yes.

Q And can you describe some of the reasons why Stanley was selected to be Tsibasaa in 1958?

A Yeah. It's our own family selected him, our own crest, but -- but our law is the different Giskaast chiefs should be present and they were there too and some of -- one of the granny is still alive at that time, that is, Lucy Tait, Fred White's mother, and Lucy would like Leonard Gawa to take Tsibasaa.

Q He's the person who holds that name Gwin lax nisims now and was on your seating chart; is that right?

A Yeah. Yeah, but my brother Wilfred Gawa spoke up, that's Yal. He said "Leonard is too young to take the chief. I know him." He said. "So -- so I select Stanley to take Tsibasaa." he said.

Q Did all of the chiefs in your House agree with that?

A Yeah. Gwin lax nisims spoke up too. That's late Alfred Latz.

THE COURT: Should we adjourn Mr. Grant?

MR. GRANT: Yes, we can adjourn now. Until two o'clock?

THE COURT: All right.

THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED FOR LUNCHEON RECESS)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings transcribed to the best of my skill and ability.

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Tanita S. French
Official Reporter

⊥h2 Mary Johnson (for Plaintiffs)

(PROCEEDINGS RECONVENED PURSUANT TO AFTERNOON RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT:

Q Yes, My Lord, before leaving the area of songs, do many of the Gitksan Houses have songs today?
A Yeah, there were very many. There were -- they know the songs. Its villages know their songs.
Q And just before the break you said that the songs were -- that if the songs were lost, the house would still have its adaawk and its crests?
A Yeah.
Q Is there anything else that you can say about what would happen if the songs were lost?
A If -- if the songs were lost and -- and the chief would ask -- would tell a history of his song to another chief, then that chief would compose a song for him. That's how they carry on with the -- with the adaawks and the songs.
Q The songs that -- the song like the one you sung yesterday, was that a recently composed song or a very very ancient song?
A A very ancient song. But if they compose the song about the history, it's just as ancient too because they didn't compose it.
Q Okay. You said just then that if they compose a song it is ancient because it comes from the history?
A Yeah, it's -- it's about the ancient history that they will tell another chief, then the chief will compose the song about they adaawk.
Q So if you composed a song today about an adaawk, that song would be about the ancient adaawk, is what you're

saying?
A Yeah, yeah nothing will be added to it. It will be just about the adaawk.
Q Okay. But like the song you sang yesterday, that was a song not composed by you?
A No.
Q Or your grandmother?
A No.
Q It was composed in those ancient times?
A Yes. Yes.
Q Okay. I'd like to -- when we left off, we were talking about the Gwin o'op, this fishing site?
A Yes.
Q Where you sang the song Hawaaws. Do you have fishing sites, that is, does Antgulilbix and Tsibasaa have fishing sites?
A Yes.
Q Can you describe where those sites are located?
A The first one is located not -- not very far from the village of Glen Vowell.
Q And it's on the Skeena River?
A On the Skeena, yeah.
Q And what is the name of that site? If you can't remember, just say so and I believe the court -- I'll lead you on it. You can't remember it right now?
A It's the name that I always forget, but it comes back again.
THE COURT: Where is it?
MR. GRANT:
Q It's just above Glen Vowell; is that right?
A Yes.
Q It's between Glen Vowell and --
A Kispiox.
Q And Kispiox?
A And that's where --
THE COURT: Do you have the name in your brief?
MR. GRANT: I have the name on the list. I'm sorry, I was just letting her finish her answer.
THE COURT: All right.
MR. GRANT:
Q Sorry?
A That's Wilt gallii bax fishing site.
Q And it's called Gwin Disgyenn?
A Yes. Gwin Disygenn.
Q Number 328 on the list. This is the list of place names of Antgulilbix.
And what side of the river, if you're facing

1 downstream and you're in the middle of the river, what
2 bank is it on, the right bank or the left bank? Is it
3 on the same side as Glen Vowell?
4 A Yes.
5 Q And this is just below the -- your ancient village of
6 Wilt allii bax?
7 A Yeah, Wilt gallii bax.
8 Q Okay. 332, My Lord.
9 Now, was that fishing site used by the members of
10 your House when they stayed at Wilt gallii bax's.
11 A Yes.
12 MR. GOLDIE: Now, why not just ask her who uses it? That
13 question suggested the answer.
14 THE COURT: Oh, yes, that was a clearly leading question.
15 MR. GRANT: Yes. If my friend's opposing any leading
16 questions --
17 THE COURT: I don't think your friend objected when you suggested
18 the name that she couldn't remember, but this is a
19 matter of greater substance.
20 MR. GRANT:
21 Q And of course my question wasn't who uses it now, it
22 was at that time.
23 Now, has that site been used in your lifetime?
24 A Yes.
25 Q And who used -- who has used that site in your
26 lifetime?
27 A My grandmother told me it was Suu no'osxw that lives
28 there, and I didn't see this elderly man, one of the
29 grandfather from the House of Tsibasaa. And after he
30 died, then Emily Latz and her husband Walter Latz
31 lived there for a long time. This was while they were
32 still young. The smoke house stands just near the
33 road that -- that faced the road that turns into Glen
34 Vowell, an old road. That's where the smoke house
35 stands.
36 Q Just so that the court understands your answer,
37 there's a highway between Hazelton and Kispiox?
38 A Yes.
39 Q And a turn-off into Glen Vowell today; is that right?
40 Q A road --
41 A I mean the old -- the old road that they use for a
42 shortcut in the olden days.
43 Q And there was another road that used to be there going
44 into Glen Vowell?
45 A Yes.
46 Q And that's where the smoke house was?
47 A Yeah.

Q It's near the vegetable farm, where the vegetable farm is located on that highway today?
A Yeah. Yeah, not very far from the vegetable farm.
Q Okay. Is there a smoke house there today?
A No.
Q Why not?
A Because they -- they didn't build another smoke house because Wilfred is supposed to be the one that looks after it, but he looks after another smoke house, another fishing site.
Q And is the farm right up here near the fishing site?
A Yeah.
Q Now --
A Do you mean by Gwin Disgyenn?
Q Yes.
A Yes. There's a farm and he just put his fence right behind the smoke house and he got a nice frame house standing there. He's an elderly man, but he works real hard and his name is Fred Fallensby.
Q And that was a person who lived there, he doesn't live there today; is that right?
A No.
Q Now, if you continue -- and this is on the Skeena river, this fishing site; is that right?
A Yeah. Yeah.
Q Okay. If you continued on upstream, can you tell us where the next fishing site of Antgulilbix is located?
A It's not very far from -- from this fishing site. There's another fishing site that is called An Guux Di Git wank.
Q Three-twenty-nine on the list.
And is that on the Skeena River or the Kispiox River?
A On the Skeena.
Q And is it on the same side as Gwin Disgyenn?
A No, on the other side.
Q And --
A But they move the smoke house on this side when -- when one of the grandmother got arthritis.
Q Okay. And who stayed at that fishing site?
A That's -- that's Gwin lax nisims. Sarah Doll's mother.
MR. GRANT: Gwin lax nisims is on your list of names.
THE TRANSLATOR: Thirteen on Mary's.
THE COURT: Thirteen is what?
MR. GRANT: The name of the person Gwin lax nisims, Sarah Doll's mother, that's on the list of members of her House.

1 THE COURT: Thank you.
2 MR. GRANT:
3 Q And going further up the stream is there another
4 fishing -- where's the next fishing site of
5 Antgulilbix?
6 A There still -- go up the Skeena until it gets to the
7 other side, Holiday's Ranch, and the fishing site is
8 called Ga'gits'unhl t'a'ootsip.
9 Q Three-thirty-eight on the territory list.
10 And can you explain what that name means?
11 A It means behind the little fort that stands in the
12 middle of the Skeena River.
13 Q And was there a fort there on an island in that
14 location?
15 A Yeah.
16 Q And that was a fort of the Gitksan people that was
17 built by the people of Kispiox? Was this fort -- who
18 built the fort?
19 A No, no. I didn't say they built the fort.
20 Q Oh --
21 A They just call it Ga'tgits'unhl t'a'ootsip. That's
22 the little island that they call the Ga'tgits'unhl
23 t'a'ootsip. And sometimes the white people call those
24 little islands fort. That's where the braves were
25 fighting in the olden days when the Nass River people
26 attack our village.
27 MR. GRANT: Now --
28 THE COURT: Their ground was on the island?
29 THE WITNESS: It's not a big island, it's a very small island.
30 THE COURT: Yes?
31 THE WITNESS: With trees on it.
32 THE COURT: Yes. I just didn't understand whether you said that
33 the place where the warriors who were killed by the
34 gentlemen from the Nass was on this island or was it
35 somewhere else?
36 THE WITNESS: Yeah, one of -- one of our brave man's name is --
37 is K'alant and he was -- he was hiding on the island
38 and that's where the Nass River people attack him and
39 that's where they killed him.
40 MR. GRANT:
41 Q And the fishing site is -- it's not on the island, but
42 it's on the Kispiox side of the Skeena River?
43 A Yes.
44 Q Now, who uses this -- who in your House has used this
45 fishing site?
46 A Uncle George Williams, that's Tsibasaa.
47 Q Does Wilfred Gawa use it today?

A Yeah, he use it today, Yal.
Q If you continued up the Skeena River from this site, are there any other fishing sites of Antgulilbix further up the Skeena?
A Oh, there's one up at what they call Miinhl Antselda.
Q Number 335. Yes? And why is it called that name?
A Because of that little mountain. You could see the little mountain standing, and there's a look-out on the top and -- and on the side of this mountain there's a trail goes around it and the stones were -- were so thin around the side of the mountain. That's what they call these stones, An Saalda'm lo'op. They were smooth.
MR. GRANT: What number is that on the list?
THE TRANSLATOR: Number ten.
MR. GRANT:
Q Number 10 on page 1 of the list from yesterday. And I believe you described that before. Is this a fishing site that you have -- you have used?
A Yeah.
Q And this is a site where you were with your mother and father?
A Yes.
Q Is there any more fishing sites of Antgulilbix upstream on the Skeena River?
A No, that's -- that's all.
Q There's a place in the Skeena River between Kispiox and Hazelton where there's a bridge; is that right?
A Yeah.
Q And it's known as Four-Mile Canyon?
A Yeah.
Q Does Antgulilbix have any fishing sites in Four-Mile Canyon?
A It's Yal that owns the fishing site there.
Q And this is the Yal from your House?
A Yes.
Q That's Wilfred Gawa?
A Yeah.
Q And this -- this canyon is downstream of Glen -- it's downstream of the fishing site at Glen Vowell that you talked about, isn't it?
A No, it's on the -- as you cross the bridge, it's on the other side of the bridge. I didn't see it, I just see the -- saw the smoke house.
Q And is there a name for this fishing site?
A The name of the other fishing site is An skiis Wiiget.
Q Three-thirty-six on the list.

1 And what does that name mean?
2 A Well, remember the story about Wiiget. I know -- I
3 know a lot about this story and -- and this is what
4 happened to him. He's so greedy -- a lot of my people
5 know this story, and he eats up everything. So he --
6 when he -- as he was travelling he found a man living
7 all alone with a lot of swans in his House he dried,
8 and -- "Where you got all this?" he said. And he
9 showed him the skin of the swan. "I just wear this
10 and go out on the water and -- and catch -- tie all
11 the two or three foot of the swan and bring them over
12 to the shore." But he was so greedy and tie the foot
13 of so many swans, and the swans felt something about
14 their foot, so they all fly and they were taken up
15 into the air. And he wished that he will land on a
16 rock. If he land on the earth he will go down and go
17 down underneath the earth, so he did land on a rock
18 and nearly -- nearly -- the rock nearly cover him,
19 just his face can't move. All his hands were covered,
20 and all the animals came and looked at him and ask --
21 he ask "Help.", but they can't help him. But when a
22 link comes along --
23 THE COURT: I think you should cut this off, Mr. Grant. This
24 really isn't going to be of any help.
25 MR. GRANT: I'm only asking her about this as to why that site
26 is named.
27 THE COURT: Oh, I understand that. And the name has something
28 to do with a story that relates to Mr. Wiiget and his
29 greediness and swans and things of that kind, but
30 surely I don't need any more than that, unless you
31 think there's some special significance that I have to
32 know?
33 MR. GRANT:
34 Q Is there special marks on the rock today where this
35 fishing site is? Is there marks on the rock?
36 A They say there's a mark, but I didn't see it. The
37 reason I want to -- I want to tell this is because the
38 Nishga'a have called Wiiget their father, but Wiiget
39 is among us too and we know a lot of stories about
40 him.
41 Q About Wiiget?
42 A Yeah, so another fishing site is called ansamtu'uts.
43 Q Three-three-seven. And that's in Four-Mile Canyon
44 too?
45 A Yeah, the same.
46 Q And is that one of Yal's fishing sites?
47 A Yeah.

1 Q And what does that mean, ansamtu'uts?
2 A It means a pot of iron.
3 Q Pot iron?
4 A Yeah.
5 Q Do you know why it's called that?
6 A They use it to cook their meal.
7 Q Does Antgulilbix have any fishing sites on the Kispiox
8 River?
9 A There's a fishing site not far from the village
10 where -- where late Fred White used to fish. I
11 remember the spot and my grandmother used to fish
12 there too. It's not far from the village and that's
13 all the fishing site I know.
14 Q These are all the sites that you know of Antgulilbix?
15 A Yes. Yes.
16 Q And you know the sites of other chiefs on the Skeena
17 River too, don't you?
18 A Yeah. Yeah. Yeah.
19 MR. GOLDIE: Excuse me. Is there a name, My Lord, for the one on
20 the Kispiox? I missed it.
21 THE COURT: I don't think it was given, if there is one.
22 MR. GRANT:
23 Q No. Do you recall, is there a Gitksan name for the
24 one on the Kispiox River that you recall?
25 A Kispiox River?
26 THE COURT: The one which Fred White and your grandmother used.
27 THE WITNESS: Oh, no.
28 MR. GOLDIE: Thank you.
29 MR. GRANT:
30 Q From what you said yesterday, would it be fair to
31 say -- would it be correct that you grew up at fishing
32 sites every year from the time when you were very
33 small?
34 A Yeah.
35 Q And could you tell the court what your family would do
36 at the fishing site, what did they do with the fish
37 they caught at the fishing site?
38 A They dry them and they had a preparation for the
39 wintertime, just enough they know how much they will
40 use. And they got the deep freeze. They dug it into
41 the earth and line it with many things like birch
42 bark.
43 Q Uh-huh?
44 A And that's where they kept their food, meat and fish.
45 They also hide it from the enemies because our country
46 is rich and they know it, that's why they always
47 attack it in the olden days.

Q When you were growing up, did your family always have a lot of fish? Was there always lots of fish for your family?
A Yeah. Yeah. There were -- in my time there were no -- no welfare and no social assistance and about this time of the year everybody's busy planting potatoes and planting vegetables and they got all their gardens of black currants. That's why I still like black currents today because my mother grow -- everybody grows black currents.
Q Now, are the fish still dried today by the Gitksan?
A Yeah, they still dry it.
Q And can you explain how the fish were dried by your parents and how they are dried today?
A Yeah, first they didn't dry the fish while they were still very fresh, they just leave it overnight or put it through the stream and leave it near the water overnight and the next day then they dress it and smoke it. If they dry it -- if they dress it while they really fresh, they would be hard when they dry, after they dry.
Q And this -- they do the same method of using the fish -- of drying the fish in the same way today; is that right?
A Yeah.
Q And they got a special wood for smoke, it's the cottonwood tree, and it makes the fish really shiny, and they don't use that pine. If they use it the fish will all turn black. It's -- the smoke is too strong. So they use one special kind of tree, it's cottonwood tree.
Q And those they would get from the territory around the fishing sites or from their territory? The cottonwood trees, where would they get the cottonwood trees from?
A They were always close by everywhere, and not just the cottonwood tree, it's -- it's -- they call those wood am k'ooxst.
Q And what does that mean?
A When -- after they grow really big they call them cottonwood, yeah, they were the same only they were smaller.
Q Did -- do you remember trading with the people at Gisgagas, for fish that were at Gisgagas?
A Yes.
Q Can you tell the court when that happened and an example of when it happened that you recall and --
A Yeah.

1 Q -- where you were going?
2 A Yeah, yeah. When the hunters go out this was still
3 the month of February when the ice is still good, and
4 they pack they toboggans with food, like sugar and
5 flour and rice, lard, tea, and dried -- dried berries
6 like peaches. And when they get to Gisgagas, there
7 was a junction there at -- Gisgagas Creek runs into
8 Skeena and they call this saxwhl aks, and that's where
9 they camp, and left they camp and go up to Gisgagas to
10 trade for some dried fish there. They always got many
11 dried fish there. They trade it with tea or flour or
12 sugar. That's what they need because they didn't
13 always go to town, no road at that time, just a trail
14 that the horses use.
15 Q Did you go on such a trip?
16 A Yes.
17 Q And who did you travel with when you went up
18 towards --
19 A My first husband Peter Angus. We were going up to
20 Moose Creek, Wii minosik territory.
21 Q And did you go and stay out at Moose Creek with your
22 husband?
23 A Yes. Yes.
24 Q And was he Wii minosik?
25 A No.
26 Q Or was he a member of the House?
27 A He's -- he's a member of the House and his name is
28 'Wiis t'is.
29 MR. GRANT: Can you give that name please to the court?
30 THE TRANSLATOR: 'Wiis t'is, '-W-i-i-s t-'-i-s.
31 THE COURT: That's your first husband's name?
32 THE WITNESS: Yeah.
33 MR. GRANT:
34 Q And he was a member of the house of Wii minosik; is
35 that right?
36 A Yeah.
37 MR. GRANT: That's number?
38 THE TRANSLATOR: Seventy-seven.
39 MR. GRANT:
40 Q Seventy-seven on the list of plaintiffs.
41 A We pass -- I remember we have passed Wii gaak's
42 territory before we get to Moose Creek.
43 MR. GRANT: What number is that, please?
44 THE TRANSLATOR: Seventy-three.
45 MR. GRANT:
46 Q And do you recall the -- when you say you passed Wii
47 gaak's territory, is there a geographical place you

can refer to which was Wii gaak's territory?
A I remember they got a cabin just at the edge of the Skeena River.
Q Okay.
A And one of his boys were there when we -- we stopped there for a while and they give us something to eat.
Q You indicated that Wii minosik's territory was in the area of Moose Creek. Is there any other places that you remember the names of on Wii minosik's territory?
A Yes. Not very far from Moose Creek there's another creek runs into Skeena and they call this creek Xsi An Dap Matx.
MR. GRANT: I believe 311, but it's -- the reference to the other name isn't correct on this one, it's a different place. It's X-s-i, and then the balance of 311.
MR. GOLDIE: You mean -- excuse me, My Lord, X-s-i should precede the words Anda'ap Matx?
MR. GRANT: Yes.
THE COURT: So it's --
MR. GRANT: X-s-i and then Anda'ap Matx.
THE COURT: Thank you.
MR. GRANT:
Q And I'm not referring to the right-hand column on that reference.
Okay. Was there -- is there any other place names that you could just refer us to on Wii minosik's territory?
A Yes. On this side of Skeena there is -- they say there's another place, it's called Gwi luu skeekwit.
Q And what -- and what is that, was that a creek or a mountain or?
A It's a nice hunting ground. I didn't see it and Edith -- Edith Gawa went there once or twice and she knows there were a lot of beavers there. There is a lake there, she said, where the cabin stands.
Q When you refer to Edith Gawa, are you referring here to your -- Wilfred Gawa's wife?
A Yeah. Yeah. She belongs to the house of Wii minosik.
THE COURT: Can we have the name of this hunting ground if there is one?
MR. GRANT:
Q Yes, G-w-i-l-u-u, one word, second word is X-e-e-k-w-i-t.
Did your family also trade fish with the Nishga'a?
A No. They trade -- they trade some dried berries to the Tsimxsan people for dried clams and fish eggs and seaweed. They trade their berry, like soap berries,

that what they really like, and they still like it today.
Q So that you still trade this today?
A Yes.
Q Soap berries?
A Yes.
Q And soap berries are -- they were dried were they?
A Yes. When they were dry, but today they put up jams and they traded with the abalones.
MR. GRANT: I'm not sure we'll get through the next section, but I'm prepared to -- I'm moving into another area that's all.
THE COURT: How do you feel, Mrs. Johnson, can you carry on for a little while?
MR. GRANT: Yes.
THE COURT: Can I believe that?
MR. GRANT: I don't think she'll ever say she can't carry on.
THE COURT: Well, let's go to four o'clock if we can.
MR. GRANT:
Q I'd like to ask you about your territories, that is the territories of Antgulilbix.
A Yes.
Q How many territories does Antgulilbix have within this territory of the Gitksan?
A Yes, there's the first one is what the white people call where the moon shines on, that's Andamhl.
Q Three-twenty-two on the list.
And can you tell us where that is in relation to say one of the villages?
A It's a mountain behind Glen Vowell village and that's where the log is that I mentioned earlier. They logged off the side of this mountain.
Q When was the side of this mountain logged off?
A I don't know, maybe a few years ago.
THE COURT: How does one spell Glen Vowell?
MR. GRANT: G-e-l-e-n, one word, V-o-w-e-l-l, second word.
THE COURT: G-e-l-e-n?
MR. GRANT: What did I say? Maybe I need the adjournment, My Lord, G-l-e-n, V-o-w-e-l-l.
THE COURT: Right, thank you.
MR. GRANT: You're asking me too hard questions with English words.
THE COURT: Sorry.
THE WITNESS: And below this mountain where the vegetable farm is, not far from there is the village of Wilt galli bax.
MR. GRANT: I'd like to refer to Exhibit 17 for a moment,

please? That last name is 332.
THE COURT: Three-thirty-two.
MR. GRANT: I refer you to the second map at the end at Tab 9 of Exhibit 17.
THE COURT: The second map or --
MR. GRANT: The second -- there's two plastic holders with maps in them.
THE COURT: The second one or the second one from the end?
MR. GRANT: The last one, the very last map. It's roughly shaped like this.
THE COURT: Yes.
MR. GRANT:
Q Pie-shaped. Now, can you recognize this map, and I just will give you some pinpoints. On the top of this map is Kispiox?
A Yes.
Q It says -- that's the village there and Glen Vowell?
A Yeah.
Q Now, do you recognize that map, the territory referred to on that map, and I'm asking you about the territory that's in the heavy dark line?
A Yes.
Q Okay. Now, whose territory is that?
A That's our territory.
MR. GRANT: For the record, My Lord, I folded the bottom half. I folded the bottom half of this under which has the name on it.
THE COURT: Yes. All right.
MR. GRANT:
Q Now, can you show on that map where Andamhl is? And if it's too difficult for you to read the map, you just have to tell me, that's okay. Can you see Andamhl on the map?
A Is it that one?
Q Okay. There's a name along the line of the map, referring -- along the black line on the right-hand side of this map called Andamhl?
A Oh, yeah.
Q Now, that's the mountain that you're referring to?
A Yes.
Q Now, on the other side of Andamhl, do you know who holds that territory?
A Luutkudziiwas.
Q Do you know how long your territory is from Glen Vowell, that is, if you walked straight back up the mountain from Glen Vowell, how long would it be from where Glen Vowell is here down to the bottom, do you

1 know how long that is?
2 A Stanley might know because Stanley used to go to
3 Andamhl.
4 Q Okay. And Stanley's your brother Tsibasaa?
5 A Yes. Yes. And my father used to take him up there
6 when he was young and showed him where -- where they
7 will set the trap.
8 Q Now, on this map right in the top of the middle going
9 towards Glen Vowell there's this creek with a name on
10 it "Xsu wil galli bax"?
11 A Yes.
12 Q Do you know that creek?
13 A Yes.
14 Q And --
15 A It runs into that vegetable farm that I mentioned a
16 while ago and -- and the vegetable farm covers that
17 little creek, but as you pass by you could still see
18 the water is bubbling out there.
19 Q Okay. And then there's a little triangle just behind
20 Glen Vowell and the name Wilt galli bax on that
21 triangle. Is that where the village that you referred
22 to yesterday was located? It's right near the creek?
23 A Yes.
24 Q Okay.
25 A It's not far from the vegetable farm where there's a
26 clearing is where I remember I went with my mother
27 when I was smaller. She's going to pick some
28 blueberries where Wil Gallii Bak used to stand, and
29 when we get there there were no trees growing, they
30 just -- just bushes were growing, cottonwood bushes.
31 MR. GOLDIE: I wonder if my friend could tell us whether the
32 vegetable farm is on the -- on what side of the road
33 between Hazelton and Kispiox is that farm? Is it
34 where the old village was or is it between the road
35 and the Skeena River?
36 THE WITNESS: It's close to the old village, not very far. I
37 remember there's a trail there before the farmers were
38 there and we -- we didn't walk very long when we get
39 to where the old village stands.
40 THE COURT: Well, is there any dispute about it? My
41 recollection is that when you're driving towards
42 Kispiox it's on the left-hand side, is it not?
43 MR. GRANT: Yes. I'm just trying to recall that. There may be
44 some of it on the right-hand side too, the building is
45 on the left-hand side. I don't think there's a
46 dispute about that.
47 THE COURT: That highway is not marked on this plan is it, or is

it?
MR. GOLDIE: Yes.
THE COURT: Is this the highway?
MR. GOLDIE: Yes.
MR. GRANT: The black line -- you have Sikadook Indian reserve two, and you see the black line going through it and actually going up between Indian and reserve there? That is my understanding of what is the road, a representation of the road.
THE COURT: Is that the road?
MR. GRANT: It's a thin -- it's a thin black line, not the heavy dark line.
THE COURT: That's the one that runs towards the river?
MR. GRANT: Yes. There is one that runs towards the river and bisects the road Sikadook, that's another road, My Lord, but there's a road that's at the base of it --
THE COURT: Oh, yes.
MR. GRANT: -- that goes along, and if you follow it back you can see where it crosses the river on the right-hand side of the map and then you can see just below Kispiox where it again crosses the river along the Kispiox river.
THE COURT: Yes, right at the village.
MR. GRANT: Yes.
THE COURT: Yes. All right. So that's the road. All right. Well, on that happy note of discovery, shall we adjourn until tomorrow? We have some matter -- a matter to deal with at 9:30 I think. All right. Thank you. We'll adjourn until 9:30 tomorrow morning.
THE REGISTRAR Order in court.

(PROCEEDINGS ADJOURNED TO MAY 29, 1987 AT 9:30 A.M.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings transcribed to the best of my skill and ability.

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Tanita S. French
Official Reporter

(PROCEEDINGS RECONVENED PURSUANT TO AFTERNOON RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT:

Q Yes, My Lord, before leaving the area of songs, do many of the Gitksan Houses have songs today?
A Yeah, there were very many. There were -- they know the songs. Its villages know their songs.
Q And just before the break you said that the songs were -- that if the songs were lost, the house would still have its adaawk and its crests?
A Yeah.
Q Is there anything else that you can say about what would happen if the songs were lost?
A If -- if the songs were lost and -- and the chief would ask -- would tell a history of his song to another chief, then that chief would compose a song for him. That's how they carry on with the -- with the adaawks and the songs.
Q The songs that -- the song like the one you sung yesterday, was that a recently composed song or a very very ancient song?
A A very ancient song. But if they compose the song about the history, it's just as ancient too because they didn't compose it.
Q Okay. You said just then that if they compose a song it is ancient because it comes from the history?
A Yeah, it's -- it's about the ancient history that they will tell another chief, then the chief will compose the song about they adaawk.
Q So if you composed a song today about an adaawk, that song would be about the ancient adaawk, is what you're saying?
A Yeah, yeah nothing will be added to it. It will be just about the adaawk.
Q Okay. But like the song you sang yesterday, that was a song not composed by you?
A No.
Q Or your grandmother?
A No.
Q It was composed in those ancient times?
A Yes. Yes.
Q Okay. I'd like to -- when we left off, we were talking about the Gwin o'op, this fishing site?
A Yes.

Q Where you sang the song Hawaaws. Do you have fishing sites, that is, does Antgulilbix and Tsibasaa have fishing sites?
A Yes.
Q Can you describe where those sites are located?
A The first one is located not -- not very far from the village of Glen Vowell.
Q And it's on the Skeena River?
A On the Skeena, yeah.
Q And what is the name of that site? If you can't remember, just say so and I believe the court -- I'll lead you on it. You can't remember it right now?
A It's the name that I always forget, but it comes back again.
THE COURT: Where is it?
MR. GRANT:
Q It's just above Glen Vowell; is that right?
A Yes.
Q It's between Glen Vowell and --
A Kispiox.
Q And Kispiox?
A And that's where --
THE COURT: Do you have the name in your brief?
MR. GRANT: I have the name on the list. I'm sorry, I was just letting her finish her answer.
THE COURT: All right.
MR. GRANT:
Q Sorry?
A That's Wilt gallii bax fishing site.
Q And it's called Gwin Disgyenn?
A Yes. Gwin Disygenn.
Q Number 328 on the list. This is the list of place names of Antgulilbix.
And what side of the river, if you're facing downstream and you're in the middle of the river, what bank is it on, the right bank or the left bank? Is it on the same side as Glen Vowell?
A Yes.
Q And this is just below the -- your ancient village of Wilt allii bax?
A Yeah, Wilt gallii bax.
Q Okay. 332, My Lord.
Now, was that fishing site used by the members of your House when they stayed at Wilt gallii bax's.
A Yes.
MR. GOLDIE: Now, why not just ask her who uses it? That question suggested the answer.

1 THE COURT: Oh, yes, that was a clearly leading question.
2 MR. GRANT: Yes. If my friend's opposing any leading
3 questions --
4 THE COURT: I don't think your friend objected when you suggested
5 the name that she couldn't remember, but this is a
6 matter of greater substance.
7 MR. GRANT:
8 Q And of course my question wasn't who uses it now, it
9 was at that time.
10 Now, has that site been used in your lifetime?
11 A Yes.
12 Q And who used -- who has used that site in your
13 lifetime?
14 A My grandmother told me it was Suu no'osxw that lives
15 there, and I didn't see this elderly man, one of the
16 grandfather from the House of Tsibasaa. And after he
17 died, then Emily Latz and her husband Walter Latz
18 lived there for a long time. This was while they were
19 still young. The smoke house stands just near the
20 road that -- that faced the road that turns into Glen
21 Vowell, an old road. That's where the smoke house
22 stands.
23 Q Just so that the court understands your answer,
24 there's a highway between Hazelton and Kispiox?
25 A Yes.
26 Q And a turn-off into Glen Vowell today; is that right?
27 Q A road --
28 A I mean the old -- the old road that they use for a
29 shortcut in the olden days.
30 Q And there was another road that used to be there going
31 into Glen Vowell?
32 A Yes.
33 Q And that's where the smoke house was?
34 A Yeah.
35 Q It's near the vegetable farm, where the vegetable farm
36 is located on that highway today?
37 A Yeah. Yeah, not very far from the vegetable farm.
38 Q Okay. Is there a smoke house there today?
39 A No.
40 Q Why not?
41 A Because they -- they didn't build another smoke house
42 because Wilfred is supposed to be the one that looks
43 after it, but he looks after another smoke house,
44 another fishing site.
45 Q And is the farm right up here near the fishing site?
46 A Yeah.
47 Q Now --

A Do you mean by Gwin Disgyenn?
Q Yes.
A Yes. There's a farm and he just put his fence right behind the smoke house and he got a nice frame house standing there. He's an elderly man, but he works real hard and his name is Fred Fallensby.
Q And that was a person who lived there, he doesn't live there today; is that right?
A No.
Q Now, if you continue -- and this is on the Skeena river, this fishing site; is that right?
A Yeah. Yeah.
Q Okay. If you continued on upstream, can you tell us where the next fishing site of Antgulilbix is located?
A It's not very far from -- from this fishing site. There's another fishing site that is called An Guux Di Git wank.
Q Three-twenty-nine on the list.
And is that on the Skeena River or the Kispiox River?
A On the Skeena.
Q And is it on the same side as Gwin Disgyenn?
A No, on the other side.
Q And --
A But they move the smoke house on this side when -- when one of the grandmother got arthritis.
Q Okay. And who stayed at that fishing site?
A That's -- that's Gwin lax nisims. Sarah Doll's mother.
MR. GRANT: Gwin lax nisims is on your list of names.
THE TRANSLATOR: Thirteen on Mary's.
THE COURT: Thirteen is what?
MR. GRANT: The name of the person Gwin lax nisims, Sarah Doll's mother, that's on the list of members of her House.
THE COURT: Thank you.
MR. GRANT:
Q And going further up the stream is there another fishing -- where's the next fishing site of Antgulilbix?
A There still -- go up the Skeena until it gets to the other side, Holiday's Ranch, and the fishing site is called Ga'gits'unhl t'a'ootsip.
Q Three-thirty-eight on the territory list.
And can you explain what that name means?
A It means behind the little fort that stands in the middle of the Skeena River.
Q And was there a fort there on an island in that

location?
A Yeah.
Q And that was a fort of the Gitksan people that was built by the people of Kispiox? Was this fort -- who built the fort?
A No, no. I didn't say they built the fort.
Q Oh --
A They just call it Ga'tgits'unhl t'a'ootsip. That's the little island that they call the Ga'tgits'unhl t'a'ootsip. And sometimes the white people call those little islands fort. That's where the braves were fighting in the olden days when the Nass River people attack our village.
MR. GRANT: Now --
THE COURT: Their ground was on the island?
THE WITNESS: It's not a big island, it's a very small island.
THE COURT: Yes?
THE WITNESS: With trees on it.
THE COURT: Yes. I just didn't understand whether you said that the place where the warriors who were killed by the gentlemen from the Nass was on this island or was it somewhere else?
THE WITNESS: Yeah, one of -- one of our brave man's name is -- is K'alant and he was -- he was hiding on the island and that's where the Nass River people attack him and that's where they killed him.
MR. GRANT:
Q And the fishing site is -- it's not on the island, but it's on the Kispiox side of the Skeena River?
A Yes.
Q Now, who uses this -- who in your House has used this fishing site?
A Uncle George Williams, that's Tsibasaa.
Q Does Wilfred Gawa use it today?
A Yeah, he use it today, Yal.
Q If you continued up the Skeena River from this site, are there any other fishing sites of Antgulilbix further up the Skeena?
A Oh, there's one up at what they call Miinhl Antselda.
Q Number 335. Yes? And why is it called that name?
A Because of that little mountain. You could see the little mountain standing, and there's a look-out on the top and -- and on the side of this mountain there's a trail goes around it and the stones were -- were so thin around the side of the mountain. That's what they call these stones, An Saalda'm lo'op. They were smooth.

MR. GRANT: What number is that on the list?
THE TRANSLATOR: Number ten.
MR. GRANT:
Q Number 10 on page 1 of the list from yesterday. And I believe you described that before. Is this a fishing site that you have -- you have used?
A Yeah.
Q And this is a site where you were with your mother and father?
A Yes.
Q Is there any more fishing sites of Antgulilbix upstream on the Skeena River?
A No, that's -- that's all.
Q There's a place in the Skeena River between Kispiox and Hazelton where there's a bridge; is that right?
A Yeah.
Q And it's known as Four-Mile Canyon?
A Yeah.
Q Does Antgulilbix have any fishing sites in Four-Mile Canyon?
A It's Yal that owns the fishing site there.
Q And this is the Yal from your House?
A Yes.
Q That's Wilfred Gawa?
A Yeah.
Q And this -- this canyon is downstream of Glen -- it's downstream of the fishing site at Glen Vowell that you talked about, isn't it?
A No, it's on the -- as you cross the bridge, it's on the other side of the bridge. I didn't see it, I just see the -- saw the smoke house.
Q And is there a name for this fishing site?
A The name of the other fishing site is An skiis Wiiget.
Q Three-thirty-six on the list. And what does that name mean?
A Well, remember the story about Wiiget. I know -- I know a lot about this story and -- and this is what happened to him. He's so greedy -- a lot of my people know this story, and he eats up everything. So he -- when he -- as he was travelling he found a man living all alone with a lot of swans in his House he dried, and -- "Where you got all this?" he said. And he showed him the skin of the swan. "I just wear this and go out on the water and -- and catch -- tie all the two or three foot of the swan and bring them over to the shore." But he was so greedy and tie the foot of so many swans, and the swans felt something about

their foot, so they all fly and they were taken up into the air. And he wished that he will land on a rock. If he land on the earth he will go down and go down underneath the earth, so he did land on a rock and nearly -- nearly -- the rock nearly cover him, just his face can't move. All his hands were covered, and all the animals came and looked at him and ask -- he ask "Help.", but they can't help him. But when a link comes along --

THE COURT: I think you should cut this off, Mr. Grant. This really isn't going to be of any help.

MR. GRANT: I'm only asking her about this as to why that site is named.

THE COURT: Oh, I understand that. And the name has something to do with a story that relates to Mr. Wiiget and his greediness and swans and things of that kind, but surely I don't need any more than that, unless you think there's some special significance that I have to know?

MR. GRANT:

Q Is there special marks on the rock today where this fishing site is? Is there marks on the rock?

A They say there's a mark, but I didn't see it. The reason I want to -- I want to tell this is because the Nishga'a have called Wiiget their father, but Wiiget is among us too and we know a lot of stories about him.

Q About Wiiget?

A Yeah, so another fishing site is called ansamtu'uts.

Q Three-three-seven. And that's in Four-Mile Canyon too?

A Yeah, the same.

Q And is that one of Yal's fishing sites?

A Yeah.

Q And what does that mean, ansamtu'uts?

A It means a pot of iron.

Q Pot iron?

A Yeah.

Q Do you know why it's called that?

A They use it to cook their meal.

Q Does Antgulilbix have any fishing sites on the Kispiox River?

A There's a fishing site not far from the village where -- where late Fred White used to fish. I remember the spot and my grandmother used to fish there too. It's not far from the village and that's all the fishing site I know.

Q These are all the sites that you know of Antgulilbix?
A Yes. Yes.
Q And you know the sites of other chiefs on the Skeena River too, don't you?
A Yeah. Yeah. Yeah.
MR. GOLDIE: Excuse me. Is there a name, My Lord, for the one on the Kispiox? I missed it.
THE COURT: I don't think it was given, if there is one.
MR. GRANT:
Q No. Do you recall, is there a Gitksan name for the one on the Kispiox River that you recall?
A Kispiox River?
THE COURT: The one which Fred White and your grandmother used.
THE WITNESS: Oh, no.
MR. GOLDIE: Thank you.
MR. GRANT:
Q From what you said yesterday, would it be fair to say -- would it be correct that you grew up at fishing sites every year from the time when you were very small?
A Yeah.
Q And could you tell the court what your family would do at the fishing site, what did they do with the fish they caught at the fishing site?
A They dry them and they had a preparation for the wintertime, just enough they know how much they will use. And they got the deep freeze. They dug it into the earth and line it with many things like birch bark.
Q Uh-huh?
A And that's where they kept their food, meat and fish. They also hide it from the enemies because our country is rich and they know it, that's why they always attack it in the olden days.
Q When you were growing up, did your family always have a lot of fish? Was there always lots of fish for your family?
A Yeah. Yeah. There were -- in my time there were no -- no welfare and no social assistance and about this time of the year everybody's busy planting potatoes and planting vegetables and they got all their gardens of black currants. That's why I still like black currents today because my mother grow -- everybody grows black currents.
Q Now, are the fish still dried today by the Gitksan?
A Yeah, they still dry it.
Q And can you explain how the fish were dried by your

parents and how they are dried today?
A Yeah, first they didn't dry the fish while they were still very fresh, they just leave it overnight or put it through the stream and leave it near the water overnight and the next day then they dress it and smoke it. If they dry it -- if they dress it while they really fresh, they would be hard when they dry, after they dry.
Q And this -- they do the same method of using the fish -- of drying the fish in the same way today; is that right?
A Yeah.
Q And they got a special wood for smoke, it's the cottonwood tree, and it makes the fish really shiny, and they don't use that pine. If they use it the fish will all turn black. It's -- the smoke is too strong. So they use one special kind of tree, it's cottonwood tree.
Q And those they would get from the territory around the fishing sites or from their territory? The cottonwood trees, where would they get the cottonwood trees from?
A They were always close by everywhere, and not just the cottonwood tree, it's -- it's -- they call those wood am k'ooxst.
Q And what does that mean?
A When -- after they grow really big they call them cottonwood, yeah, they were the same only they were smaller.
Q Did -- do you remember trading with the people at Gisgagas, for fish that were at Gisgagas?
A Yes.
Q Can you tell the court when that happened and an example of when it happened that you recall and --
A Yeah.
Q -- where you were going?
A Yeah, yeah. When the hunters go out this was still the month of February when the ice is still good, and they pack they toboggans with food, like sugar and flour and rice, lard, tea, and dried -- dried berries like peaches. And when they get to Gisgagas, there was a junction there at -- Gisgagas Creek runs into Skeena and they call this saxwhl aks, and that's where they camp, and left they camp and go up to Gisgagas to trade for some dried fish there. They always got many dried fish there. They trade it with tea or flour or sugar. That's what they need because they didn't always go to town, no road at that time, just a trail

that the horses use.
Q Did you go on such a trip?
A Yes.
Q And who did you travel with when you went up towards --
A My first husband Peter Angus. We were going up to Moose Creek, Wii minosik territory.
Q And did you go and stay out at Moose Creek with your husband?
A Yes. Yes.
Q And was he Wii minosik?
A No.
Q Or was he a member of the House?
A He's -- he's a member of the House and his name is 'Wiis t'is.
MR. GRANT: Can you give that name please to the court?
THE TRANSLATOR: 'Wiis t'is, '-W-i-i-s t-'-i-s.
THE COURT: That's your first husband's name?
THE WITNESS: Yeah.
MR. GRANT:
Q And he was a member of the house of Wii minosik; is that right?
A Yeah.
MR. GRANT: That's number?
THE TRANSLATOR: Seventy-seven.
MR. GRANT:
Q Seventy-seven on the list of plaintiffs.
A We pass -- I remember we have passed Wii gaak's territory before we get to Moose Creek.
MR. GRANT: What number is that, please?
THE TRANSLATOR: Seventy-three.
MR. GRANT:
Q And do you recall the -- when you say you passed Wii gaak's territory, is there a geographical place you can refer to which was Wii gaak's territory?
A I remember they got a cabin just at the edge of the Skeena River.
Q Okay.
A And one of his boys were there when we -- we stopped there for a while and they give us something to eat.
Q You indicated that Wii minosik's territory was in the area of Moose Creek. Is there any other places that you remember the names of on Wii minosik's territory?
A Yes. Not very far from Moose Creek there's another creek runs into Skeena and they call this creek Xsi An Dap Matx.
MR. GRANT: I believe 311, but it's -- the reference to the

other name isn't correct on this one, it's a different place. It's X-s-i, and then the balance of 311.
MR. GOLDIE: You mean -- excuse me, My Lord, X-s-i should precede the words Anda'ap Matx?
MR. GRANT: Yes.
THE COURT: So it's --
MR. GRANT: X-s-i and then Anda'ap Matx.
THE COURT: Thank you.
MR. GRANT:
Q And I'm not referring to the right-hand column on that reference.
Okay. Was there -- is there any other place names that you could just refer us to on Wii minosik's territory?
A Yes. On this side of Skeena there is -- they say there's another place, it's called Gwi luu skeekwit.
Q And what -- and what is that, was that a creek or a mountain or?
A It's a nice hunting ground. I didn't see it and Edith -- Edith Gawa went there once or twice and she knows there were a lot of beavers there. There is a lake there, she said, where the cabin stands.
Q When you refer to Edith Gawa, are you referring here to your -- Wilfred Gawa's wife?
A Yeah. Yeah. She belongs to the house of Wii minosik.
THE COURT: Can we have the name of this hunting ground if there is one?
MR. GRANT:
Q Yes, G-w-i-l-u-u, one word, second word is X-e-e-k-w-i-t.
Did your family also trade fish with the Nishga'a?
A No. They trade -- they trade some dried berries to the Tsimxsan people for dried clams and fish eggs and seaweed. They trade their berry, like soap berries, that what they really like, and they still like it today.
Q So that you still trade this today?
A Yes.
Q Soap berries?
A Yes.
Q And soap berries are -- they were dried were they?
A Yes. When they were dry, but today they put up jams and they traded with the abalones.
MR. GRANT: I'm not sure we'll get through the next section, but I'm prepared to -- I'm moving into another area that's all.
THE COURT: How do you feel, Mrs. Johnson, can you carry on for

a little while?
MR. GRANT: Yes.
THE COURT: Can I believe that?
MR. GRANT: I don't think she'll ever say she can't carry on.
THE COURT: Well, let's go to four o'clock if we can.
MR. GRANT:
Q I'd like to ask you about your territories, that is the territories of Antgulilbix.
A Yes.
Q How many territories does Antgulilbix have within this territory of the Gitksan?
A Yes, there's the first one is what the white people call where the moon shines on, that's Andamhl.
Q Three-twenty-two on the list.
And can you tell us where that is in relation to say one of the villages?
A It's a mountain behind Glen Vowell village and that's where the log is that I mentioned earlier. They logged off the side of this mountain.
Q When was the side of this mountain logged off?
A I don't know, maybe a few years ago.
THE COURT: How does one spell Glen Vowell?
MR. GRANT: G-e-l-e-n, one word, V-o-w-e-l-l, second word.
THE COURT: G-e-l-e-n?
MR. GRANT: What did I say? Maybe I need the adjournment, My Lord, G-l-e-n, V-o-w-e-l-l.
THE COURT: Right, thank you.
MR. GRANT: You're asking me too hard questions with English words.
THE COURT: Sorry.
THE WITNESS: And below this mountain where the vegetable farm is, not far from there is the village of Wilt galli bax.
MR. GRANT: I'd like to refer to Exhibit 17 for a moment, please? That last name is 332.
THE COURT: Three-thirty-two.
MR. GRANT: I refer you to the second map at the end at Tab 9 of Exhibit 17.
THE COURT: The second map or --
MR. GRANT: The second -- there's two plastic holders with maps in them.
THE COURT: The second one or the second one from the end?
MR. GRANT: The last one, the very last map. It's roughly shaped like this.
THE COURT: Yes.
MR. GRANT:
Q Pie-shaped. Now, can you recognize this map, and I

1 just will give you some pinpoints. On the top of this
2 map is Kispiox?
3 A Yes.
4 Q It says -- that's the village there and Glen Vowell?
5 A Yeah.
6 Q Now, do you recognize that map, the territory referred
7 to on that map, and I'm asking you about the territory
8 that's in the heavy dark line?
9 A Yes.
10 Q Okay. Now, whose territory is that?
11 A That's our territory.
12 MR. GRANT: For the record, My Lord, I folded the bottom half.
13 I folded the bottom half of this under which has the
14 name on it.
15 THE COURT: Yes. All right.
16 MR. GRANT:
17 Q Now, can you show on that map where Andamhl is? And
18 if it's too difficult for you to read the map, you
19 just have to tell me, that's okay. Can you see
20 Andamhl on the map?
21 A Is it that one?
22 Q Okay. There's a name along the line of the map,
23 referring -- along the black line on the right-hand
24 side of this map called Andamhl?
25 A Oh, yeah.
26 Q Now, that's the mountain that you're referring to?
27 A Yes.
28 Q Now, on the other side of Andamhl, do you know who
29 holds that territory?
30 A Luutkudziiwas.
31 Q Do you know how long your territory is from Glen
32 Vowell, that is, if you walked straight back up the
33 mountain from Glen Vowell, how long would it be from
34 where Glen Vowell is here down to the bottom, do you
35 know how long that is?
36 A Stanley might know because Stanley used to go to
37 Andamhl.
38 Q Okay. And Stanley's your brother Tsibasaa?
39 A Yes. Yes. And my father used to take him up there
40 when he was young and showed him where -- where they
41 will set the trap.
42 Q Now, on this map right in the top of the middle going
43 towards Glen Vowell there's this creek with a name on
44 it "Xsu wil galli bax"?
45 A Yes.
46 Q Do you know that creek?
47 A Yes.

Q And --
A It runs into that vegetable farm that I mentioned a while ago and -- and the vegetable farm covers that little creek, but as you pass by you could still see the water is bubbling out there.
Q Okay. And then there's a little triangle just behind Glen Vowell and the name Wilt galli bax on that triangle. Is that where the village that you referred to yesterday was located? It's right near the creek?
A Yes.
Q Okay.
A It's not far from the vegetable farm where there's a clearing is where I remember I went with my mother when I was smaller. She's going to pick some blueberries where Wil Gallii Bak used to stand, and when we get there there were no trees growing, they just -- just bushes were growing, cottonwood bushes.
MR. GOLDIE: I wonder if my friend could tell us whether the vegetable farm is on the -- on what side of the road between Hazelton and Kispiox is that farm? Is it where the old village was or is it between the road and the Skeena River?
THE WITNESS: It's close to the old village, not very far. I remember there's a trail there before the farmers were there and we -- we didn't walk very long when we get to where the old village stands.
THE COURT: Well, is there any dispute about it? My recollection is that when you're driving towards Kispiox it's on the left-hand side, is it not?
MR. GRANT: Yes. I'm just trying to recall that. There may be some of it on the right-hand side too, the building is on the left-hand side. I don't think there's a dispute about that.
THE COURT: That highway is not marked on this plan is it, or is it?
MR. GOLDIE: Yes.
THE COURT: Is this the highway?
MR. GOLDIE: Yes.
MR. GRANT: The black line -- you have Sikadook Indian reserve two, and you see the black line going through it and actually going up between Indian and reserve there? That is my understanding of what is the road, a representation of the road.
THE COURT: Is that the road?
MR. GRANT: It's a thin -- it's a thin black line, not the heavy dark line.
THE COURT: That's the one that runs towards the river?

MR. GRANT: Yes. There is one that runs towards the river and bisects the road Sikadook, that's another road, My Lord, but there's a road that's at the base of it --
THE COURT: Oh, yes.
MR. GRANT: -- that goes along, and if you follow it back you can see where it crosses the river on the right-hand side of the map and then you can see just below Kispiox where it again crosses the river along the Kispiox river.
THE COURT: Yes, right at the village.
MR. GRANT: Yes.
THE COURT: Yes. All right. So that's the road. All right. Well, on that happy note of discovery, shall we adjourn until tomorrow? We have some matter -- a matter to deal with at 9:30 I think. All right. Thank you. We'll adjourn until 9:30 tomorrow morning.
THE REGISTRAR Order in court.

(PROCEEDINGS ADJOURNED TO MAY 29, 1987 AT 9:30 A.M.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings transcribed to the best of my skill and ability.

Tanita S. French
Official Reporter