Vancouver, B.C.
June 6, 1989

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this 6th day of June, 1989, the matter of Delgamuukw versus Her Majesty the Queen at bar, my lord. May I remind you you are still under oath.
THE WITNESS: Yes.
THE REGISTRAR: Would you state your name for the record, ma'am?
THE WITNESS: Susan Marsden.
THE REGISTRAR: Thank you.

CROSS-EXAMINATION ON QUALIFICATIONS CONTINUED BY MR. MACAULAY:

Q Witness, you became a house member in 1974, correct?
A Yes.
Q A member of a house, Gitksan house. And in doing so you accepted the discipline of the house?
A Discipline? I'm not sure I know what you mean by that.
Q Well, for instance, you accepted the chief's statements in the house's adaawk?
A I don't know what you mean by accept.
Q Well, wasn't it -- didn't every member of your house accept what the chief said at the feast about the house's history by the way of his reciting the house's adaawk?
A They were taught it, yes.
Q You were taught it, and you accepted what you were taught?
A I think there's a -- it's not like a -- it's just not the way a Gitksan person would describe it. It's not that you -- you accept his authority, and you listen to what is told to you, and you're taught it. As a member of the house from another race, I wasn't in the heart of things in the sense of being prepared for any high ranking position, and much as I was exposed to the history of the house, I wasn't expected to take on important roles in it.
Q But you were closely connected with high ranking people in Gitksan houses?
A Yes, but my name was not a high ranking name.
Q But you heard the adaawk recited at the feast?
A Not the house of Gwinuu, no, but I was familiar with it.
Q You never heard the -- that was your house, was it?
A That's correct.
Q You never heard that adaawk recited at a feast?

A No, they're not recited at every feast.
Q Did the chief of your house tell you the history of the house?
A It was primarily my father-in-law who told me.
Q Is he a member of that house?
A He's a related house. He's the chief of a related house, and he's the head chief of that Wilnat'ahl, W-i-l-n-a-t-'-a-h-l.
Q Wilnat'ahl comprises several houses, does it?
A Yes.
Q And when he told you the history of either -- of any house, you accepted what he said?
A Well, that's that word accepted.
Q Yes.
A Well, you haven't really defined it.
Q You either accept as true or you don't accept as true a statement of history, don't you?
A Inasmuch as it was a statement of history, yes, I accepted it.
Q All right. And you were a member of a Gitksan house when you embarked on your work for the Tribal Council?
A Yes.
Q Did you do any work for the Kitwancool council?
A Not directly, no.
Q There's a separate council for Kitwancool, isn't there?
A They don't have a Tribal Council.
Q They have a Tribal Council?
A They don't have a Tribal Council.
Q They don't have a Tribal Council?
A No, they have their own elders. They have their own -- they function in a traditional manner.
Q Now, I'm going to refer you to page 21 in volume 1. Can the witness be shown 1050? Volume 1, my lord, page 21, the first full paragraph, which reads:

> "It is only the simooget, or chief, the 'very most person', that can establish the sacred context of the feast. The baxmaga, or pole-raising feast, is the culmination of a lifetime of proper practice in which the wilnat'ahl, with his leadership, have obeyed the fundamental law of respect. The simooget, like the pole, manifests the spiritual centre of the microcosm. The power that flows through the pole also flows through the spine of the chief. In a sense, the chief and the pole are one."

That is your opinion?
A That is my opinion on their beliefs, yes.
Q On their beliefs. Do you accept that the power that flows through the pole also flows through the spine of the chief? Do you believe that?
A I don't think my beliefs are at issue here.
Q You have to answer my question, witness. Do you believe that?
A My belief system and the belief system of the Gitksan overlap. They're not exactly the same.
Q But that doesn't answer the question that I just put to you.
A In part is the answer.
Q You believe it in part. Do you believe that -- well, what part do you not believe?
A My understanding is that my opinion has to do with the historical elements in the adaawk and in what I understand to be the belief system of the Gitksan. What my own personal beliefs are isn't relevant in my report or in my opinion.
Q Has Solomon Marsden told you that the adaawk includes a history of his house and Wilnat'ahl?
A Yes.
Q And do you believe that, that the adaawk is, amongst other things, a history of his house and Wilnat'ahl?
A I think that the record of movements and the different villages and the wars that he's told to me and that I've read elsewhere are accurate in essence.
Q Has Solomon Marsden told you that his adaawk has never changed for thousands of years?
A Yes.
Q And do you believe that?
A Yes. Changed in substance.
Q And I put it to you that you have accepted a system of belief from the time you became a member, a house member of a Gitksan house?
A No.
Q You didn't. Do you believe in the supernatural elements in the adaawk?
A They're not necessary to my analysis of the adaawk.
Q But do you believe them or do you not believe them?
A I don't know. I wasn't there.
Q Now, if you'll turn to page 21. Oh, the same page we've been looking at. Right at the top of the page you say -- the last sentence reads:

"Here,"

and that's -- you're referring to the feast,

> "events are witnessed in their essence, in the light of the law, as part of the flow of spirit through time."

Is that your opinion?

A That is my opinion about their beliefs.

Q Do you believe in the flow of spirit through time?

A I think it's compatible with other religious beliefs.

MR. MACAULAY: Now, I'll refer you to volume 2 at page 148.

THE COURT: 148.

MR. MACAULAY:

Q 148, my lord. The heading is "Conclusions." I'll read the following, the first conclusion:

> "The social and political institutions of the Gitksan and the laws that govern them were revealed from the spirit world, in the beginning, and throughout history,"

and I'll stop there. That is your opinion?

A That is what they've told me, and that is what is in their adaawk.

Q And do you believe that?

A I believe that that's an accurate account of their beliefs.

Q Yes, but do you believe that yourself, or did you believe that when you were writing this opinion, that the social and political institutions of the Gitksan were revealed from the spirit world?

A I have to say the same thing, that I don't think my personal beliefs are part of my opinion.

Q No, but what are your personal beliefs in that regard? Do you believe that the social and political institutions of the Gitksan were revealed from the spirit world?

A I think that it's possible.

MR. MACAULAY: Now, the flow of spirit referred to in the earlier passage, does that refer to the, amongst other things, to the power of halayts or shamans?

MR. GRANT: Well, is my friend referring -- there's two references he made earlier. Which of the two on page 21 is he referring to now?

MR. MACAULAY: The one at the top of the page, the flow of spirit through time.

MR. GRANT: The reference from the feast?
MR. MACAULAY:

Q Yes.
A I'm sorry, would you repeat the question?
Q You used the term the flow of the spirit through time. Does that refer to the power of halayts or shamans?
A Shamanic power is considered to be a spiritual power by the Gitksan, yes.
Q It's an individual power, isn't it?
A Yes.
Q It pertains to a particular person?
A It's a particular person's accessing of a power that is out there.
Q Well, in -- if you'll turn to page 137 in volume 1, where you start dealing extensively with shamanic power, you say towards the bottom of the page:

"The animals in human form are the many spirit forces on which a shaman can draw."

That's your opinion of what they believe?
A Yes.
Q And do you believe that yourself?
A I haven't had those experiences, no.
Q And at page 139 you say, in the first full paragraph on that page you say:

"The Gitksan shamanic tradition is characterized by the powers of the Bear and the Eagle. Among the important elements of the apparel of the Gitksan shaman are the bear-claw headdress and the bear-skin robe. The Gitksan shaman's use of the skin and the claws of the bear indicates that it is this spirit of the bear, in this case, that aides the shaman in his transformation to a superhuman or supernatural state."

That's your opinion of what their belief is?
A Yes.
Q And do you yourself believe that the shaman is informed by the spirit of the bear?
A Once again, I don't know. I haven't had that experience.
Q Are there still shamans?
A Not to my knowledge, but then it's not a public activity.
Q Are there any secret societies?

A Not to my knowledge; but once again, they're secret.
MR. MACAULAY: You haven't heard of any?
MR. GRANT: It's a hard question to answer, my lord. If she knows, then they're not secret.
MR. MACAULAY:
Q You know from your reading that the secret societies used to perform at the feast?
A Yes.
Q So it wasn't secret in that sense? People knew who the members were?
A They didn't actually perform. They knew who the members were.
Q The whole village would know who the members were?
A But their activities that were related -- their spiritual activities took place in secret.
Q But they had some very public functions?
A Yes.
Q And you've never seen one?
A No. And that doesn't have a great deal of time depth in the cultures, those secret societies.
Q That came up from the coast?
A It's recent in terms of centuries.
Q Now, back to volume 1, page 18, you say there the bond -- this is the fourth line.

"The bond,"

and you're referring to the land here, so that should really read the bond with the land,

"is a partnership or marriage, in the deepest sense. If the laws of respect for other forms of life is disregarded, or the principle of partnership and balance is broken in any way, the animals, or the land, or both will ensure that the wilnat'ahl will no longer harvest their territory."

And then you give a quotation from Mr. Jeff Harris, Luus. That is your opinion?
A Well, I think this is a good example of where you can -- from our western viewpoint we can look at the same phenomena logically and come to the same conclusions without having to involve ourselves in the supernatural beliefs. If you --
Q But you --
MR. GRANT: The witness isn't finished.

A We know that if we abuse the land that it has consequences for us in our own way, and they see it as a relationship with the living form -- the life forms on the planet.
Q Well, you are talking there about the belief in retaliation by the animals, aren't you? You just read that passage of Luus to refresh your memory.
A Well, I think -- I don't know. In some cases it's seen as retaliation. In some cases the animals simply aren't there any more.
Q Well, that is a form of supernatural intervention that's being talked about, is it?
A The Gitksan believe that the animals have consciousness as well, a form of consciousness, and that they know what they're doing. They see them as brothers rather than as -- as something beneath man.
Q Well, that second passage of Luus talks about the course of the river changing, the one at the very bottom of page 18, the top of page 19, and you quote this.
A Yes.
Q And Mr. Harris is describing how the river changes?
A Yes.
Q And he says, and I use his word:

"So somebody is helping the fish or they're helping themselves."

A Right.
Q And he's referring to a supernatural event, isn't he, not to the Department of Fisheries?
A We would consider that a supernatural event in the western viewpoint, yes.
Q And do you believe in such supernatural events in those circumstances?
A To a -- in part. In part. I think that animals have -- that animals are not necessarily what the western world looks at them as. I don't think I'd go as far as -- as saying -- I don't know. I have to say I don't know.
Q Well, is Jeff Harris, Luus -- he's a hereditary chief, isn't he?
A Yes.
Q He's a head chief of a house?
A Yes, the House of Luus.
Q And did you speak to Jeff Harris on this subject?
A No, this is from a tape, but I have spoken to him.

Q You have spoken to him?
A Casually.
MR. MACAULAY: Yes. You identify that as a taped interview in 1979.
THE COURT: What does NMC mean?
THE WITNESS: National Museum of Canada.
THE COURT: Oh.
THE WITNESS: It was done by a member of George MacDonald's team.
MR. MACAULAY:
Q Did you go to Jeff Harris and ask him about this passage that you saw fit to quote?
A No, I didn't.
Q Do you believe what he says about somebody helping the fish or the fish helping themselves?
A I think I just answered that.
Q Well, is your answer that may be so?
A I said I don't know.
Q When was Temlaham abandoned?
A Well, the archaeological evidence indicates that it was abandoned in the -- somewhere between 3800 BP and 3200 BP. That would be the mid-range.
Q What archaeological evidence do you rely on in that case?
A The work at Hagwilget, the work at Kitselas, and the work at Prince Rupert Harbour.
Q Are you referring to work by Sylvia Albright?
A No, I'm referring to work by MacDonald and Inglis and Ames and Coupland.
Q But they didn't work up at Temlaham?
A Ames worked at the Hagwilget dig.
Q At Hagwilget, yes.
A And MacDonald. Hagwilget is part of the Temlaham area.
Q Hagwilget is part of Temlaham?
A Yes, that area on the way to the Hagwilget bridge and the Hagwilget Canyon.
THE COURT: What were the years you said again, 3800 BP to?
THE WITNESS: To 3200.
THE COURT: 3200.
MR. MACAULAY:
Q And in your system of dating, of chronology did you use that as a bench mark, working back from that date and forward from that date?
A The dates cluster around that event in -- in a way that makes it a more stable foundation for dating, so that is a key event.

Q And now, the institution of the feast, did it pre-date the abandonment of Temlaham?
A There are indications in the adaawk that it did.
Q How long has the feast been going, the institution of the feast?
A Well, I think there are elements that came together to make the feast as we know it now and that it evolved over time, and I think there are elements indicated in the adaawk in the early times that are part of the feast. For example, the importance of identifying oneself by some crest object.

MR. MACAULAY: Well, how early did the north coast people identify themselves by some crest object?

MR. GRANT: Well, my lord, I just -- my friend has now very much embarked on the very substance of the evidence of the witness, and I wonder how --

MR. MACAULAY: Oh, very much so.

MR. GRANT: -- that is -- which, of course, I say when my friend is going into -- we're here on a qualifications thing, and my friend is jumping about. I had no objection to what he has earlier, but now he's dealing with -- jumping around into the very question of the dating, and that -- and if my friend by that questioning is conceding that this witness is qualified to give those opinions, that's fine, we can get on with it, and I could lead her, and he would have his chance to cross-examine. But I wonder what the relevance of these particular questions are to qualifications.

MR. MACAULAY: Well, my friend and your lordship will see in a minute. At any rate, the witness has given the source of that particular date.

THE COURT: Well, it is getting a little bit away from qualifications, isn't it, Mr. Macaulay?

MR. MACAULAY: Well --

THE COURT: You say it will all come clear in a moment, will it?

MR. MACAULAY: Yes.

THE COURT: All right. On that basis I will allow you to proceed.

MR. MACAULAY:

Q Now, when did the feast start evolving, at the beginning of time? 10000 BP I think is the date you start with.
A I cover this in my report, the elements of the socio-political and cultural system and how they come together. It's part of the summaries that I have in each chapter of what the adaawk indicate were aspects of the culture at particular times. I'm not -- I

haven't evolved a theory on my own. I've simply extrapolated information from the adaawk after I feel comfortable that they're either early or later or middle in terms of time.

Q Well, the early adaawk, were they adaawk that pre-date the feast?

A One of the elements in the feast is the fact that you have reciprocal services between two groups.

Q Yes.

A If a member of your house dies, a member of your opposite house does the services for you, and at the feast you pay them. There is evidence in the early adaawk of exogamous matrilineal groups that interact, and that is one of the foundations for the reciprocal services that is an essential part of the feast, and that's what I highlight as one of the aspects of what we now know as the feast that is present in the early adaawk.

Q Was there the system of verification in the earliest adaawk, in connection with the earliest adaawk?

A Verification of oral histories you mean?

Q Yes.

A It's not specifically indicated in the adaawk.

Q But you treat the early adaawk in the same way as you treat the later ones, don't you, in your methodology?

A Yes, because it's been stated many times that they're passed on as an important aspect of the heritage of the house.

Q But your methodology ignores the situation that there was no verification in the earliest times?

A Well, I didn't say there was no verification. I said there's -- it's not stated in the adaawk that there was.

Q Are you assuming that there was? Did you assume in your methodology that there was verification?

A I didn't assume it. As a result of working with this I concluded that the transmission of the adaawk was -- had been an important aspect of the culture for a long time.

Q You don't fit into any academic category?

A Not just one, no.

Q You don't belong to any academic or learned society?

A No.

Q There are no academic authorities that you consider compelling or binding?

A Do you mean disciplines or individuals?

Q Either.

A There are a number of people who have worked with the material that I have, and I respect their work very much.
Q But you don't consider their conclusions binding on you in any way?
A Not unless I can see their -- the processes that they came to. For example, with Duff, he shows his processes.
Q Do you approve of his processes?
A I don't agree with all of the conclusions, but I certainly approve of his methodology. And that's what academics do. They use the same basis of data, and they use -- they show their methodology, and then they discuss their different conclusions, whether it's the methodology or --
Q Is there anyone else's methodology you approve?
A I think when George MacDonald applies himself to a particular subject area concerning the adaawk that he does a good job of it. And certainly his -- his understanding of the culture is really quite significant.
Q Is there any academic discipline qualified to judge your work?
A Well, I feel that if -- if I wrote out all of the processes that I went through to come to the conclusions in this report, that an academic of -- that had worked with oral histories could look at it, and I think that they would approve it.
Q What -- in what discipline, if you wrote it all out?
A Well, either -- it depends on the person involved. It would be either anthropology or history or -- there are interdisciplinary -- there are people who are interested in using the methods and the points of view of different disciplines together. It's happening in universities.
Q Yes.
A It's not unheard of.
Q You haven't published anything about your methodology, have you?
A No, this has been done for the court case.
Q Have you invited opinions from historians or anthropologists on your methodology?
A My understanding was that this couldn't become public until after the court case, and, therefore, I've been waiting.
Q The methodology you developed yourself because there was no satisfactory methodology that had been

developed?

A Well, as I pointed out yesterday, the kinds of things that Duff had begun to do with the files are similar to what I did.

Q That was unpublished work, was it, that you are talking about, unpublished work of Duff's?

A Oh, I'm sorry, his -- the files that we went through yesterday on Kitkatla --

Q Yes.

A -- that are transcriptions of the Barbeau-Beynon research and summaries of them?

Q Yes. Were they published?

A No, they were never published.

Q So the work of Duff's you're talking about are works that he had not published when you make approving comments on his methodology?

A Oh, whether a work is published or not isn't, to my mind, the ultimate criterion of whether it's worthwhile. There are many Ph.D. theses that are extremely important in academic fields, and they're not published.

Q But a Ph.D. thesis is vetted by a panel from that particular discipline, isn't it?

A That's true.

Q And they're published in the sense that there is a list kept of them at the university at the very least with the -- a description of what the thesis is about?

A Um hum.

Q I don't notice any reference to Adams in the authorities you refer to in your opinion. Are you familiar with Adams' work?

A Yes, I am.

Q John Adams. Is that of any -- is his work on the Gitksan of any relevance to what you were doing?

A I didn't find it useful, no. He had a few direct quotes there that were informative.

Q You mean he quoted from others?

A Um hum.

Q But you didn't find any of his work useful, his own work?

A I don't agree with his analysis, no.

Q He is the, what, in recent times the -- his work -- he is the most prominent anthropologist who did work specifically with the Gitksan?

A No, I wouldn't say that he was considered prominent in his field. He's -- it's just that he's one of the few people that's actually published something with the

term Gitksan in it. He didn't spend a great deal of time, and it hasn't been his lifetime's work.

Q He spent a few months in the Gitksan country?

A I'm not sure how long he spent there, but from what the elders told me, his interviews weren't very in depth.

MR. MACAULAY: I have no further questions.

THE COURT: Thank you. Mr. Grant, do you wish to re-examine?

MR. GRANT: Well, the dilemma I'm faced with, as I've raised with objection to my friends, is twofold. I just want to advise your lordship that I did not -- I would, subject to your lordship's ruling, if this witness is qualified, go in depth into the methodology. After reviewing it and considering your rulings with earlier witnesses on qualifications, I made a judgment not to go into this witness's methodology during qualifications, as I saw the concern. Now, my friends have introduced that, and I'm in a way -- I don't want to -- my very cursory review of what this witness has done in qualifications was in light of how you have approached the qualification question with other experts.

THE COURT: Well, didn't you go into methodology when you dealt with the Metlakatla situation?

MR. GRANT: The Kitkatla Duff files.

THE COURT: The Kitkatla. I'm sorry.

MR. GRANT: Yes. What I'm saying is I did not go into the -- you have before you, of course, the adaawk and the Fireweed that this witness referred to. I have not gone into and would go into during her evidence the methodology as we move through the body of evidence of how she dealt with each of these things in much more detail.

THE COURT: I think I'm against you, Mr. Grant, on the question of re-examination on that issue. I think you have examined in chief on methodology, and I don't think that re-examination is open to you on that score.

MR. GRANT: Okay.

THE COURT: I'm not sure that's a mortal blow of some kind, but I think it's a procedural process that we have to go through, and I don't think you need to trouble yourself.

MR. GRANT: Okay.

THE COURT: I don't think it's open to you.

MR. GRANT: Yes. Thank you.

THE COURT: So that solves that problem.

MR. GRANT: Thank you, my lord. I just wondered if there was --

I did have a few other areas, just briefly.

THE COURT: All right.

RE-EXAMINATION ON QUALIFICATIONS BY MR. GRANT:

Q Ms. Marsden, Mr. Willms referred to Exhibit 1051-2, which you don't have to look at right now. He referred to this annotated bibliography of Miss Cruikshank in which she refers to Vansina as writing seminal work. Was Vansina -- do you know if he was an anthropologist or what field he was?

A It's my understanding he was a historian.

Q Thank you. And Vansina in that reference, and I will just read to you the -- it's a very brief reference in her annotation. She quotes at the bottom of page 5 of Exhibit 1051-2, Part III, referring to Vansina:

> "Even though he states repeatedly that the '...study of the oral traditions of a culture cannot be carried out unless a thorough knowledge of the culture and of the language has been previously acquired...' many anthropologists have remained unconvinced that he understands what this means."

Do you have or at the time you commenced the review of the adaawk did you have a thorough knowledge of the culture of the Gitksan?

A By the time I started the full --

Q Yes.

A Yes, yes.

Q And do you have a knowledge -- I know you don't speak the language. You have indicated that. But do you have a knowledge of the language that's sufficient that you've understood the names and the Gitksan words in the oral traditions?

A I have quite a large vocabulary in the language. I haven't mastered the grammar, and the vocabulary deals primarily with crests and place-names and personal names. And I understand to a certain extent the way the words are put together. And I have some understanding of the Tsimshian and Nishga languages also.

Q Do you have an understanding and did you at the time you commenced the adaawk of the kinship system of the Gitksan?

A Yes.

Q The social structure of the Gitksan?

A Yes.

Q The symbolic processes of the Gitksan?

A Yes.
MR. MACAULAY: The large map that is there, that is an enlargement of map 1 of the map --
MR. WILLMS: I object, my lord. This is something that, unless my friend can say where this refers to in cross-examination, something new. He's introducing something brand new, which is in a map that's been sitting there for two days. If the witness is qualified, I'm sure we'll hear all about the map, but I object to this on qualifications.
THE COURT: It doesn't arise out of the cross-examination, Mr. Grant.
MR. GRANT: My friends had this -- this map is part of the report, my lord. It hasn't been introduced. My friends asked the witness as to whether or not she made any reference to dating in her report. To the extent that that map, which is -- my friends have had since last November, is appendix 1 to the Marsden report, and my friends know that, that map has on it dating, independent dating. That's the only point I wish to make.
THE COURT: Well, if your question relates specifically to something that was asked in cross-examination, I think you may ask it. I do not think you can direct the attention of the witness to the map.
MR. GRANT:
Q Okay. In the preparation of your report, part of your report was a map of early migrations; is that right?
A Yes.
Q In that map of the early migrations do you refer to independent dating from another field other than the adaawk?
A Yes.
Q And which field is that?
A It's a field of geology.
Q Okay. And who do you rely on for that data?
A Prest.
THE COURT: Sorry?
THE WITNESS: P-r-e-s-t.
MR. GRANT: Prest.
THE COURT: Oh, all right.
MR. GRANT:
Q And is that with respect to glaciation?
A Yes.
Q You were asked by Mr. Macaulay about whether you agreed with other authorities just this morning, and you referred to Duff, for example, and you referred to

his files, and you said that you agree with his methodology. In the Wolf Clan or in the almost published Barbeau books of the adaawk where there's a part 1 and a part 2 does he set out his methodology?

A No, he doesn't.

MR. GRANT: Okay. You were asked about whether or not Mr. Duff, Wilson Duff's files that you relied on were published or unpublished by Mr. Macaulay this morning. Are you aware that Wilson Duff relied on his unpublished material in the Calder case when he gave evidence?

MR. WILLMS: I object, my lord.

THE COURT: Sounds leading.

MR. WILLMS: Sounds like some evidence from Mr. Grant.

THE COURT: Yes.

MR. GRANT: It's in the transcript. It's not in evidence, my lord.

THE COURT: It seems to me that's a argument you can make.

MR. GRANT: Yes, I don't need that. Those are all my questions of the witness on qualifications.

THE COURT: Thank you. All right. Mr. Willms.

MR. WILLMS: My lord, I might be a few minutes, and it might be more convenient or more comfortable for Ms. Marsden to --

THE COURT: Whatever she wishes. You can stay there and have the best seat in the house, Ms. Marsden, or you can go and sit in the back. Whatever you think would be more comfortable.

THE WITNESS: Thank you.

THE COURT: Go ahead, Mr. Willms.

MR. WILLMS: My lord, Ms. Marsden's report sets out a 10,000 year history of migration, political structure, legal structure, and resource ownership of the Gitksan, and it is my submission that no matter what qualifications the witness has, the opinions which the plaintiffs seek to tender through Ms. Marsden are not properly the subject of opinion evidence in a court of law. Your lordship will recall that Dr. Ray's evidence, Dr. Galois, Dr. Morrison were all limited to identifying relevant documents and explaining why they thought those documents were relevant but were prevented, including Dr. Lane, from interpreting the documents, which is a matter for your lordship.

There is no question, as the witness indicated in cross-examination, that there is no chronology in the adaawks, that is, there is no chronology in the sense of 10,000 years, 5,000 years or anything like that in the adaawk, and so Ms. Marsden must of necessity

interpret the adaawk, interpret the oral history in order to provide a 10,000 year history of the Gitksan. And it's my submission, my lord, that just like the anthropologists, Dr. Lane, the historical geographers, Dr. Galois and Dr. Ray and Mr. Morrison, that at best, as the proper subject of opinion evidence, interpretation is beyond the scope of the witness for opinion evidence. Identification as to relevance might be, and I'll deal with that in a minute, but it's my submission that no court of law should allow evidence on the 10,000 year history at large of migration, political structure, legal structure, and resource ownership of anyone, be it the plaintiffs or anyone. It is simply beyond the scope of proper opinion evidence.

Now, the second point, my lord -- and, my lord, that really is a more expanded way of putting the history-at-large objection that I took to Dr. Galois, with Dr. Galois' evidence. People have spent years of their lives studying small periods in history based on the relevant documentation, very narrow focused fields based on a wealth of expertise, and in this case a field whose breadth is only limited by the ice age, I suppose, 10,000 years ago -- we're going to hear about the ice age to today, and in my submission that is something that is far beyond the scope of any opinion evidence that's receivable in a court of law.

The second point, my lord, is that initially, and I marked it as Exhibit 1051-1, Ms. Marsden was described as someone who was going to give evidence on the anthropology and history of the Gitksan people, yet she's not an anthropologist, she's not a historian. You'll recall that her evidence was that she saw the annotated bibliography prepared by Dr. Cruikshank for the first time a couple of months ago, and she only skim read parts of Vansina or read parts of Vansina she thought relevant, but she didn't read Vansina until after she'd started her work, after she'd picked her methodology and started her work.

Now, the normal reaction when you talk about a 10,000 year history is that it's history, but she's not a historian. We've already been told, my lord, in court in respect of another witness by Mr. Grant that this falls within the field of anthropology. And, my lord, I'm handing up Mr. Grant's successful submission in respect of Dr. Daly in oral histories, and I've just included the page where I took the initial

objection. It's not particularly important for my present purposes, my lord. I made the objection on page 1025 at line 35, and then there was some discussion, and then Mr. Grant made his submission, the successful submission here, my lord, at line 30 on page 11926. Mr. Grant said -- I'll skip the first sentence after he describes my meritless objection. He carries on and says:

> "The point is that this witness is an anthropologist, an expert in the field. He states. 'The researcher of oral tradition must be critical and comparative in outlook.' He makes this comment, and is this -- I think it goes to weight, of course. It's a question of weight. Is this -- I think it is relevant for you to know whether this is his only -- own view or not."

And then he discusses Vansina and then carries on.

> "We have had a cross-examination of numerous other anthropological experts."

And I won't read the rest of it, but Dr. Daly then was able to explain where he got his knowledge of oral histories, and he referred to Dr. Cruikshank's annotated bibliography, and that's the annotated bibliography, my lord, that is now marked as Exhibit 1051-2. And the very thorough collection is described by Dr. Daly on the next page, page 11927.

Now, it is my submission, my lord, that if there is a field in which oral history fits, it's either history, that's Vansina, or it's anthropology, as Dr. Daly said and as Mr. Grant successfully submitted to your lordship sometime ago. But those are the academic fields, and this witness does not have the qualifications in either. In fact, my lord, you'll recall in cross-examination on qualifications this witness said in 1985 and agreed today that the study of oral history is not considered one of the subjects in anthropology. Well, in my submission, she's clearly wrong there. It is considered a subject in anthropology. It's also a subject in history. It's the subject of a very lengthy annotated bibliography dealing with all of the various writings or many of the various writings in the field.

The other point, my lord, is that the witness did say in cross-examination on qualifications, and I asked her -- and this is in the transcript starting at 16974 over to 16975, line 46 over to line 9. I said prior to -- the question was:

> "Q Prior to reading the Barbeau histories that you are chronologizing, what academic training did you have in assessing oral histories?"

And the witness's answer was:

> "A There isn't, strictly speaking, academic training available in assessing oral histories. Oral histories are dealt with by anthropologists in different ways and there is one historian who has dealt with oral histories as history, but in terms of going to a university and getting a degree in a discipline that deals thoroughly with oral history as history, it doesn't exist."

Now, that last line is correct, my lord, but there is an extremely large body of writing on oral history. And it's clear, my lord, from the witness's evidence that she has not referred to that body of writing.

The reason why this is particularly relevant, my lord, I think is highlighted by the extracts that I read to the witness in which she acknowledged that there is a great debate in anthropology and history about the use and the value of oral histories as history. And I'm just going to read briefly, my lord, from a work by Malinowski. And you may remember Malinowski was one of the leading participant observation anthropologists. Dr. Daly referred to him as being one of the founding people in participant observation. But I'm reading from the fourth to the last page in Exhibit 1051-2 where Dr. Cruikshank -- it's the large Cruikshank -- it should be in the grey binder, my lord, at -- if you go into the fourth to the last page, and it will have a page number 5 at the bottom of the page.

THE COURT: Yes.

MR. WILLMS: And here Cruikshank assesses "Myth in Primitive Psychology" by Bronislaw Malinowski, 1955, and says this:

"Malinowski took the position that what people said about their past in myth or oral narrative was largely irrelevant. These accounts had little value in and of themselves but served merely as charters to justify the present social order. Furthermore, people were quite capable of modifying their myths to minimize obvious inconsistencies in their social order. While Malinowski is associated with functionalist interpretations of myth, particularly in this paper, his latter point makes a tentative move toward some of the postulates of structuralism."

THE COURT: That's a plain language sentence, isn't it?

MR. WILLMS: To understand structuralism, my lord, I think you go back to another section and she discusses structuralism, and perhaps even then you don't understand it. But, in any event, what that highlights, my lord, is that in respect of oral histories, whether you're in the field of anthropology, as Malinowski is, whether you're in the field of history, as Vansina is, there is a tremendous academic debate as to the value and the usefulness of oral tradition. And that academic debate, in my submission, my lord, is something that really wasn't considered by this witness at all because she didn't know about it. She didn't do the reading in the area, did not have the background in the area. She developed her own methodology based primarily on some unpublished work by Duff and then carried on.

The other point, my lord, in terms of the -- one of the critical elements that are discussed in the debate, and I've been through this with other witnesses, and your lordship will recall Dr. Trigger's work, which has been put to a couple of witnesses. Vansina has been put to some witnesses. Bishop and Ray, which is 902-6, was put to Dr. Daly. One of the underlying factors in each one is the independent verification of oral histories even where historians or anthropologists have said that they're reliable. And almost universally in terms of reliability, at least in the published works, and I haven't seen any published works marked by my friends in response to the ones that I've marked, but the published works deal with recent history, a hundred years or so, as a reliable period for oral history. And Bishop and Ray

at Exhibit 902-6 is probably as clear a discussion of that as exists.

This witness has said, my lord, in cross-examination that when she was told that it was an adaawk, she accepted it. That is not critical, in my submission, which is one of the aspects of the debate in the discipline. She also acknowledged that she did not in her report, except for the recent past, refer to independent scientific dating of the report -- of the adaawks. And I suppose, my lord, that takes us to exactly what Ms. Marsden described that she did do. Her methodology, in my submission, is unique. It's not Duff's, it's different than Duff's, and if the court accepted it, we would have giving evidence someone who is not only the first in her field, but the only person in her field in the world.

In her own words, and I'm just going to read from page 16976, starting there at line 30 --

THE COURT: This is the evidence of the witness yesterday?

MR. WILLMS: Yes.

"Q Well, who would you say are the leading people in the field of oral history?
A I think it's something that's starting."

Now, my submission, my lord, is either she's clearly wrong because of the academic debate which puts oral history into either history or anthropology, or if she's right, if it's just starting, if she's the first one, then her evidence is untestable in a court of law. It will result, in my submission, in the creation of the perfect expert witness, someone's who's unassailable and impossible to refute by cross-examination or otherwise.

And it's my submission, my lord, recalling that opinion evidence comes in as an exception to the hearsay rule, and recalling Wigmore's extensive discussion, for example, of reliability in the scientific sense of opinion evidence, that is, being able to test, verify, that in that sense it's not verifiable, and in the adversary nature of our system -- the adversary nature of our system requires that opinions can be tested by cross-examination and by other evidence.

And I think, my lord, the best summary, and I've referred to it a number of times, but it's at tab 16 of the opinion authorities that I handed up some time

ago, the article entitled "The Expert in Court," where you may recall that the author of that article set out what he thought were four aspects or elements of evidence that would justify it being admitted as opinion evidence. And I'll just -- on page 205 he said:

> "First, the discipline must be consistent. That is to say, different experts must not regularly give conflicting answers to questions which are central to their discipline."

Now, if this is anthropology or history, this doesn't make it because the Cruikshank annotation shows the tremendous debate about the use and value of oral histories. But, in any event, if that's what the discipline was, this witness isn't qualified. But if it's her own discipline, if it's the very first time, experts can't regularly give answers. I mean, there are no others.

> "Secondly, the discipline must be methodical. That is to say, there will be agreement about the appropriate procedures for gathering information within the discipline."

Now, this is a brand new methodology that the witness used here. It's a modified Duff methodology, but she's not aware of any other methodology for gathering information similar to what she's done.

> "Thirdly, the discipline must be cumulative. That is to say, though any expert must be able to repeat the results of others he does not have to."

I'd just like to stop there, my lord, to say that no one can repeat the results of Ms. Marsden, and the reason why I say that no one can repeat the results of Ms. Marsden is her own evidence. At page 17001 of her cross-examination yesterday, lines 18 to 33, the following questions and answers:

> "Q Maybe if I put it this way: The cultural overview deals with some of the concepts and beliefs that are fundamental to Gitksan culture?

A Those ones I was just talking about, yes.
Q Correct. All right. And that cultural overview is fundamental to an understanding of the adaawk; is that correct?
A To an understanding. I think if you took an isolated adaawk, say one of the ones where they describe their first encounter with a white person, something we're familiar with, we know where the first white people landed. We could read that. We wouldn't need a cultural overview. But to do the kind of work that I did, I think you have to have an understanding of the culture, certainly those key aspects that are involved with adaawk."

So first culture is firmly in there. You need culture to do the work that this witness did.

And then at page 17005 she describes the work that she did at lines 16 to 21.

"Q Well, are you saying that some of your report is based on what's in your head from what somebody told you?
A Of course. It's based on my experience among the Gitksan. It's based on -- on explanations of how things work. It's based on my -- my numerous occasions to be involved in feasts."

Now, my lord, that requires anyone to duplicate her work to be Gitksan. If you're not Gitksan, you cannot duplicate the work at all. And in my submission it is -- well, I say that it is impossible for the defendants or anyone retained by the defendants to duplicate Ms. Marsden's work, especially since she didn't make any notes of what she was carrying around in her head from what people told her. There's no data to review to duplicate.

The other part, my lord, and I'm just -- this is the last -- the fourth and last item from "The Expert in Court." The author there suggests that the discipline must be predictive and therefore falsifiable. Now, this discipline isn't if it's Ms. Marsden's own. If it is predictive and therefore falsifiable, that is, if it falls in anthropology or history, she's not qualified.

Just to sum up on this point, my lord, it's my submission that if it falls within anthropology or

history, which I submit that it clearly does -- you just need to look at the Cruikshank bibliography -- it's outside her academic experience and training. If it is a special field that this witness is the only one who is in, she's the first and only one, I submit that in law the evidence is not reliable. And I'm not suggesting, my lord, that in fact, because I don't need to suggest that, that in fact it might not be reliable. I'm suggesting that in law it's not reliable because it's not testable, it's not refutable.

My lord, the third point is -- and I think I can make this quite brief, because I've made the argument before. When you read the report, when you look at the report, and I highlighted some of it in the summary, and my friend, Mr. Macaulay, dealt with some parts of it, the report is an interwoven mixture of argument disguised as opinion, findings of fact, findings that are completely within your lordship's purview and not within any expert witness's purview and, in my submission, generally can be described as a document which usurps counsel's function or replaces counsel's function or usurps your lordship's function.

Now, I suggested to my friend on April 27th of this year that copies of this report because it's not -- it is two volumes, but it's not difficult reading, be provided to your lordship so that I could make this argument on the admissibility of the report. My friend declined.

MR. GRANT: Tell him why.

MR. WILLMS: And if in response to this objection my friend suggests, for example, that you should hear the evidence to rule on the objection, I urge that your lordship take some time and read so much of the report as you think may be necessary in order to assess the objection because it's my submission that Mr. Grant should not be able to now stand up, and maybe he won't say this, but he should not now stand up and say your lordship should hear the evidence in the report after I've suggested that it be brought to your lordship's attention before now. I don't have any power to bring it before your lordship before now, but it would have been convenient for the purposes of this objection. And, of course, if this objection is valid, my lord, it saves a fair bit of time rather than hearing the evidence and then ruling later. But when your lordship reviews the report, it is counsel's argument.

It's clear when you review the report that that's what it is, that it's not opinion evidence in any sense at all.

Now, the final point, and this just deals -- those three points, my lord, were aimed at the first five items that my friend seeks to qualify Ms. Marsden to do, which is all assessing the adaawks. The sixth point was the fisheries, something -- he says:

> "...sixthly, the naming and ownership of fishing sites based on the adaawk."

Now, as I understand it, my lord, my friend wants to introduce a map through this witness. There is no evidence that she's a cartographer, that she's a surveyor, that she's got any mapping expertise. Perhaps people have told her the Indian names for some fishing sites, perhaps people have told her who owns the fishing site with a particular Indian name, but that's just rank hearsay. That's not admissible, and there is no expertise that this witness has that can assist the court beyond a hereditary chief saying the names of his fishing sites. This witness acknowledged that it's the hereditary chiefs who have the greatest knowledge in this area. The best evidence must be a hereditary chief saying what the names of his fishing sites are and where they are. And this witness, who also didn't even do the research, she read somebody else's research, she hired a researcher. It's sort of rank double hearsay. But there's no opinion exception to the hearsay rule that would allow any fish evidence in through this witness. Those are my submissions, my lord.

THE COURT: All right. Thank you. We'll take the morning adjournment now.

THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED AT 11:20 A.M.)

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

_____

Leanna Smith
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO MORNING RECESS)

THE REGISTRAR: Order in court.
THE COURT: Macaulay.
MR. MACAULAY: My lord, my friend Mr. Willms has adverted to the question of academic qualifications, and this is an odd situation. There are none. The closest we can come is a survey course as an undergraduate in anthropology and no training in history at all, even in an undergraduate sense, although this purports to be -- the report purports to be a history. Miss Marsden has no association of any kind with a scientific community or discipline, which in my submission is absolutely essential, an essential qualification for an expert witness. One of the practical reasons for that is that the doctor or the accountant or the anthropologist who gives evidence can expect that what he says will be reported to and commented on by others who are in the same discipline or scientific community. Miss Marsden -- there has been nothing published. She has published nothing. She has explained why this hasn't been published and of course this hasn't been published because it's an expert report, unlike even the Ph.D. thesis that she refers to, there has been no jury on any of her works or views.

Impartiality is another problem that the court faces in connection with this witness. She has a long and very close, exceedingly close, association with the Gitksan. Her adult career, her career in life, has been entirely -- spent entirely in that country. Her beliefs are in some measure those that she reports on, although she in cross-examination attempted to draw a distinction between what she was describing as the beliefs of the Gitksan and her own. The focus is vast rather than as narrow as conditions would permit, and that is -- that in itself is a danger. The whole of the north-west and 10,000 years ago are the limits that she has prescribed for herself. It's an encyclopaedic overview. She could be called the Gibbin of the north coast if -- in a tremendous scope of her source material and her opinions because the opinions she expresses are to a considerable extent about the whole north coast and not just the Gitksan.

She has no research experience and this is tested by her acceptance of the assertions of the chiefs that what they say in the adaawks is history and she says

she has accepted that. And her failure in one illustration, and there may be many more, but one came across in the cross-examination this morning is her failure to get confirmation from Mr. Jeff Harris of the passage she relied on about the animals taking steps to punish those who don't treat them properly. It's a stand alone method. That is to say, it is not cumulative. It is not built on anything else. The only thing it is built on and only in part is the late Wilson Duff's draft work, unpublished work, that she took as a model presumably long after his death, which is -- he died quite a long time ago.

She -- there are no limits or constraints. The opinions, the ones that I put to her, are good examples, are those of the hereditary chiefs and their ancestors, and your lordship has heard those opinions from Mary McKenzie, from Mary Johnson, from Olive Ryan, and those are the people who ought to be giving this kind of evidence as to the world view of the Gitksan and their spirituality and beliefs, not a witness who entirely lacks any sort of qualifications.

There's the problem too of reliability in the scientific sense. In cross-examination the witness contrasted western and Gitksan points of view and the implication was that the scientific evaluating testing deductive method is a western cultural method and not appropriate to that particular study, and it contrasts to the Gitksan point of view which she appears to have adopted. Now, my submission is, my lord, that the scientific method should be culture free, that is, it should be a discipline equally adaptable to Africa, to Asia, to Europe, and to North America. She puts forward the Gitksan view of history including supernatural elements that she has adopted at least in part as her own belief and that -- how would one say -- defies gravity. There is no way of ascertaining, of testing in a scientific sense, whether the spirits of the fish do what she reports them doing.

My lord, I don't see how the court in the case of a witness with so few of the ordinary qualifications or the usual qualifications, the absence of any qualifications, ought to be allowed to express opinions that on the -- of the kind that she does. And there's a question too how the spiritual beliefs of the Gitksan will go very far in assisting your lordship in deciding the issues that are before the

court in this action, that is, the issues of land ownership, occupation and use, and so on, from a fairly recent date sometime in the nineteenth century. How will that help your lordship to know that the wolf clan came down from the north 10,000 years ago and landed up somewhere in the Skeena River or even the Temlaham existed or didn't exist, and the stories concerning the downfall of Temlaham and Dizkle and the dispersal of the inhabitants along the river. That simply isn't relevant to any of the issues at bar. Those are my submissions, my lord.

THE COURT: Thank you. I don't think I need to hear from you, Mr. Grant. I propose to hear the evidence. This is a unique problem in a unique case relating to the adaawk or oral histories of the Gitksan people. The problem is unlikely to arise in other litigation and should not therefore be regarded as a precedent on admissibility. The witness who has limited professional qualifications has attempted a rationalization of Barbeau's adaawk producing a 10,000-year history of the Gitksan. She paints upon a very broad canvass with a very long bow.

It has been pointed out that other historical witnesses had been confined to identifying documents or collections of documents and to explaining their context, but they have not been permitted to interpret the documents. The difference with respect to this witness is simply that the other historical witnesses have been dealing with conventional, commercial, or historical documents which I can understand almost as well as many other readers. The adaawk are to me almost a foreign language. It will be a matter of weight, but I think the evidence of the witness may, and I repeat may, be of some assistance. As the adaawk are already in evidence and as counsel undoubtedly will be referring to them in their submissions, I confess that I need all the help I can get.

Another principle of objection was based upon the lack of historical or anthropological qualifications on the part of the witness. It would be better if this evidence were being given by Marius Barbeau or Wilson Duff or someone like them or perhaps, absent their attendance, by someone with conventional qualifications in history or anthropology, but as in the game of life we have to play the game with the cards we're dealt and I am comforted in part by the

view I have that time and effort and exposure to a culture are sometimes equivalent to diplomas.

Mr. Willms argued further that because Mrs. Marsden is the first in this field that her evidence becomes unassailable and for that reason should not be received. I do not accept that argument. I think her evidence must be reviewed with open-minded scepticism, and if at the end of the day the evidence is found lacking or unpersuasive, then it will have to be disregarded. It was also submitted that the report of the witness is really counsel's argument. If that is so, and of course I cannot make any determination on that question at this time, then no great harm will be done. I will not go on to say that perhaps she might do an incredible job in that regard not of course as good as counsel might do again.

Lastly, it is said that her qualification to relate adaawk references to fishing sites is doubtful. I tend to think this may be correct, but I propose to delay ruling on that part of her evidence until a specific question arises when the objection may be renewed. For the reasons I have just stated, I propose to admit the evidence partly on the ground that sometimes something must be done for the first time, although I shall have to keep the affirmities of the evidence, as pointed out by counsel, very much in mind in deciding what weight if any I can give to it.

You may proceed with the evidence of the witness in chief, Mr. Grant.

MR. GRANT: Thank you, my lord. My lord, while the witness is taking the stand I would like to have marked as exhibits tabs 1, 2 and 3 of Exhibit 1042 which I did not previously mark and that would be Exhibit 1042, tab 1, Susan Marsden's curriculum vitae.

THE COURT: Just a moment until I find it, please.

MR. GRANT: I'm sorry, my lord.

THE COURT: Which one is that?

MR. GRANT: It's the one that is unlabelled, my lord.

THE COURT: This is it. Yes. Which ones are you asking to be marked?

MR. GRANT: Exhibit 1042, tab 1, is the curriculum vitae of Miss Marsden which has been identified by her.

THE COURT: Yes.

MR. GRANT: Exhibit 1042, tab 2, is the bibliography of Miss Marsden.

THE COURT: Yes.

MR. GRANT: And Exhibit 1042, tab 3, is the Marsden -- her

reorganizations of sections of "The Totem Poles of the Gitksan" that she did earlier, and that is that she described and that's her work.

MR. WILLMS: My lord, I object to tab 3. I don't object to 1 and 2, and I've got a reason for that objection, if my friend is finished.

MR. GRANT: Well, I can't deal with the objection until I find out what it is.

THE COURT: You want to deal with that now, Mr. --

MR. WILLMS: Yes, my lord. That document was seen by us for the very first time on Monday. It's my submission that the only way the document is relevant is if it's part of her opinion, in which case it's way outside the 60-day rule, or if it's the facts upon which the opinion is based, in which case it's far outside the 60-day rule. If it doesn't fall into one of those two categories, since it's not referenced in her bibliography, I do not know why my friend suggests that it's admissible at all. It's something that the witness wrote, but that doesn't make it admissible. It didn't make Dr. Daly's Ph.D. thesis admissible, it didn't make Dr. Galois' Ph.D. thesis admissible, and in my submission it's inadmissible because my friend did not comply with the 60-day rule laid out by your lordship.

THE COURT: Macaulay.

MR. MACAULAY: Well, my lord, my recollection is, if it's the document I'm thinking of, is the witness said after she'd done that work she changed her opinion.

THE COURT: I didn't -- I don't recall that. Is that your recollection, Mr. Grant?

MR. GRANT: I don't recall that either. Her thinking certainly had advanced. I just will clarify the point. This document I have introduced solely as part of her background. It's part of the material. It's not a fact upon which her opinion is based. It's part of evidence of her background experience. That's all. And that's why I introduced it there. I'm not going back to it in the body of her evidence. I'm trying to deal with, now that she's qualified, deal with the -- those exhibits that dealt with the qualifications, put them behind us, and go on to the next task. That is why that document is in there.

THE COURT: Well, is it what it purports to be, that is, a reorganization of sections of "The Totem Poles of the Gitksan" by Barbeau?

MR. GRANT: Yes.

THE COURT: Well, perhaps the witness could let us know what she means by reorganization.

EXAMINATION IN CHIEF BY MR. GRANT:

Q Yes.

A I took the information that was in sections of it and charted it.

THE COURT: Well, let's just look at --

THE WITNESS: Put it -- put information about one wilnat'ahl on a single page to prevent having to flip back from one section to another in order to --

THE COURT: Well, let's look at the first text or the text on the first page "Village Tribe Phratry", et cetera,

MR. MACAULAY: My lord, it might help if your lordship looked also at page 16940.

THE COURT: That's the evidence from yesterday?

MR. MACAULAY: Yes. About line 38. Yes, there was -- it's about this tab 3.

THE COURT: What page please again Mr. Macaulay?

MR. MACAULAY: 16940, my lord, in which the witness says "I don't use this now. I think I have -- most of this I have in my head now and I change -- I have changed some of my opinions since then."

So what use will that be as an exhibit?

THE WITNESS: When I said I -- am I to respond to that?

THE COURT: Yes. Well, I think so.

MR. GRANT: Yes.

THE COURT: Well, what line was that Mr. Macaulay?

MR. MACAULAY: Starting at line 38, my lord. Well, the question was "Do you still find this useful as a -- when you are going back to the totem poles?"

THE WITNESS: At the time I did this all I had was "The Totem Poles of the Gitksan". I'd never seen the Duff files and I'd never seen the adaawk. In terms of what Barbeau said about these people I still feel that that is what this is, but since I've seen the original sources that he used, I don't agree in all cases with the way he's grouped the houses.

MR. GRANT:

Q Okay. His lordship was asking you to just -- he wanted to clarify what you meant by the reorganization by Barbeau, so maybe looking at the document you can just explain what you did for his lordship?

A Well, if I had "The Totem Poles of the Gitksan" here I could show it, but --

MR. GRANT: Well, I --

THE COURT: This isn't -- this isn't just copied from Barbeau's

text is it?
THE WITNESS: There are two sections, one section in here is copied from his text, but the one with the charts is a -- I took information from different sections of his text and grouped it by chief and related chief and put it on -- and by village and put it all together so that it could be used as a reference.
THE COURT: When I'm reading that first page, am I reading Barbeau or am I reading Marsden?
THE WITNESS: You're reading Barbeau.
THE COURT: And that extends for how far?
THE WITNESS: That extends for the entire -- the entire document. I was simply reorganizing Barbeau so that I could use it more readily and so that other people could use it more readily in terms of --
THE COURT: Let's just take the first three pages. Is that all Barbeau's text just repeated in typed script form?
THE WITNESS: No, I'm sorry, that is my introduction. I did this a long time ago.
MR. GRANT: You're referring to the three pages beginning "Village Tribe Phratry, my lord?
THE COURT: Yes.
MR. GRANT: Yes.
THE COURT: All right. And then Gitksan social organization, the charts that follow are all yours, are they?
THE WITNESS: They are my charts, but they're only based on the information in "Totem Poles of the Gitksan", and then the notes at the end of the charts are again mine.
THE COURT: Just a minute. The charts extend for how many -- these pages aren't numbered are they?
MR. GRANT: No, my lord, but they're --
THE COURT: And then the notes at the end of the charts?
THE WITNESS: There's two -- well, one page and very brief on the second page.
THE COURT: Page and a half, and then you go to Gitksan crests?
THE WITNESS: Yes, this is verbatim. This is simply taken out.
THE COURT: Gitksan crests is verbatim from Barbeau?
THE WITNESS: Yes.
THE COURT: To the end of the documents?
THE WITNESS: Pardon me?
THE COURT: To the end of the documents?
THE WITNESS: Yes. Then the last section is --
THE COURT: There's a section called "People".
MR. GRANT:

Q I think that's part of the crests section.
A Yes, that's -- he categorized crests by the subject matter of the crest in that section.

THE COURT: Which is animals, other bear crests, and then people?
THE WITNESS: Right. Right. And that's even quite useful now for anybody doing this. For example, if you want to know all of the chiefs that own a bear crest among the Gitksan, you just look it up. It's -- that form of the organization was very useful.
THE COURT: Well, I'm disposed to allow it as an index or an aide-memoire, but subject to this question of what have you changed your mind about or your opinions about.
THE WITNESS: In the first section with the clans Barbeau identified common origins of house groups and he used the term clan not in this case in the sense of frog or wolf, but in the sense of a group of houses that had common origins, and he summarized those in "Totem Poles of the Gitksan" -- you don't have that book at hand -- in paragraphs basically saying they started here and they went here, and so on, and this is who belongs in that group. And in some cases I agree with the way he grouped the houses and in other cases further research has led me to believe that they belong either in two groups or else they belong in a separate group, some of the chiefs. I could give you an example.
MR. GRANT:
Q Yes. Could you take an example from one of the charts for his lordship?
A Okay. The 'Neegyamks clan on the first page with the frog clan, he has Laelt and Ha'ku and T-Haku under the 'Neegyamks clan which -- and they have an oral history that starts on the Nass.
THE COURT: I'm sorry, that's '-N-e-e-g-y-a-m-k-s?
THE WITNESS: Yes. That's a female ancestor that married a frog, 'Neegyamks, on -- and it's said to take place on the Nass. From that, Barbeau placed their origins on the Nass. Well, there are elements in the Kitwanga frog clan that interact with the people on the Nass, but other adaawk, a weight of adaawk, indicate that Laelt and Ha'ku were actually originally from the Blackwater area to the north. Fred Johnson's own account of that migration is in evidence, so that would be an example of not that this is wrong, but that the house of Laelt has a richer history of origins than is indicated by this.
THE COURT: Well, the problem I'm going to have with this, Mr. Grant, is that it isn't clear what is taken chapter,

line, and verse from Barbeau, and what is the witness' rewriting of Barbeau, and I think I should reserve on this one. If you're not going to be referring to it in your evidence, I think we should wait until the end of the evidence of the witness and then decide if there's any need to have it in there at all. There may be that there's some usefulness in the diagrams or charts. I mentioned already that perhaps it's a convenient index, but I just don't know how I'm going to manage it if I don't have a better definition of what's hers and what isn't hers.

THE WITNESS: In this chart there's none of mine. What I was saying to you orally is what I've thought since I made these charts. This chart -- these charts are based on what's in "Totem Poles of the Gitksan". I've added nothing and taken nothing away.

THE COURT: Well, then I'd be disposed if that's the case to allow the charts, but not the text, but perhaps I don't have to deal with that now and maybe we'll all be in a better position to deal with it when we've heard the evidence of the witness. We may be in a position to --

MR. GRANT: I think I can clarify what your concern is.

THE COURT: All right.

MR. GRANT:

Q If you go to the second page you have a table of contents of it, and just correct me if I'm wrong, Miss Marsden, you indicated that the section introduction that was your writing?

A That's correct.

Q The section Gitksan social organization, the clans and chiefs of the five Gitksan villages, their origins and crests and notes, that's Barbeau?

A Except for the -- no, the notes is mine.

Q The notes are yours?

A Everything prior to that. It's just two pages.

Q Of notes are yours. The rest is your graphic graphing or charting Barbeau's data?

A Right.

Q And all those charts are Barbeau?

A That's right.

MR. GRANT: That is you graphing it.

THE COURT: He didn't draw any charts at all did he?

MR. GRANT:

Q He didn't draw the charts.

You -- then Gitksan crests is illustrated on the totem poles classified list according to types. I'm

still at the index just going through that. Is that Barbeau? That is Barbeau as well, I think, from what you've described to me?

A Yes. And the student activities suggestions are mine and the inserted maps are from published sources.

MR. GRANT: So, my lord, my understanding is that this witness wrote the introduction, the student activities, and the notes under part 2, and the other material is all out of Barbeau.

THE COURT: Well, then could I invite you, Mr. Grant, to withdraw the introduction and the student activities suggestions?

MR. GRANT: You can very readily invite me to do that. I would withdraw those and put in the rest.

THE COURT: All right. And the others I'm going to admit only as an index and -- leaving it free to counsel to point out any errors that they think are there.

Now, what do the students activities include, these maps at the end?

THE WITNESS: Yes. Well, they're for the reference. This was -- this was designed for teachers who wanted to become familiar with the system.

THE COURT: Yes. All right. I'm going to accept Mr. Grant's invitation to withdraw that as well, and the residue of that document then will be 1042-3.

THE REGISTRAR: The exhibits will be tabs 1, 2, and 3.

THE COURT: Yes.

(EXHIBIT 1042-1: Curriculum vitae of Susan Marsden)
(EXHIBIT 1042-2: Bibliography of Susan Marsden)
(EXHIBIT 1042-3: "Social Organization and Crests of the Gitksan" - Susan Marsden)

MR. GRANT:

Q Possibly we can deal with the exhibit copy?

A There are two pages of notes that I don't think you --

Q There are two pages of your notes after the --

A They were referred to, but not twice.

THE COURT: Where are they?

THE WITNESS: At the end of the first set of charts.

THE COURT: All right. We'll take those out as well.

MR. GRANT: Yes. Those are Mrs. Marsden's. Okay. That's the notes that begin "Notes. Chiefs" and it ends at the second page "Clans".

Now, just to go back to your evidence, I'd like to refer you to, and maybe madam registrar could have volume 1 of your report put in front of you so that --

because I will be referring to it on and off today, and keeping your other index there, I refer you to page 4 of the preface. Now, this is after you had referred to the adaawk and then your familiarization with histories of the neighbours of the Gitksan which Mr. Macaulay referred you to yesterday. And on the middle paragraph on page 4 you go on to say:

> "Using these sources I examined the commonalities between groups, in adaawk, crests, personal names, migration routes, village memberships and origins. These I compiled into charts which show the relationship between houses indicating their membership in the wilnat'ahl."

Now, what I would like you to do is if you could stop there and go to tab 7 of the binder which is the --

THE COURT: Of 1042.

MR. GRANT: 1042. Yes. It's the primary binder I'm going to be dealing with for the moment.

THE COURT: Yes.

MR. GRANT:

Q Tab 7, which indexes the wolf clan charts of Susan Marsden. Are these -- is this an example of the type of charting that you're referring to?

A Yes.

Q And are these the charts that you referred to yesterday?

A Yes, these are my rough charts.

Q Okay. Now, let's just take this as an example, the first page of this chart. Could you just explain to his lordship what this represents, what you were doing here? If another page is better for you just take whatever you prefer.

A Well, the first pages are Nishga, the first two pages are Nishga villages and chiefs who represent house groups. I can start with that I suppose. What I've done was I went through Duff's summary of the houses that were recorded by Barbeau and Beynon for each village by clan. This is all the wolf clan, and I went through all of the files once and became familiar with what was in them, and then I went back and pulled out from my own memory the significant items that had come up in my perusal of them in terms of identifying these house groups in terms of their connections with

other house groups. So, for example, the house of Kyexw --
THE COURT: That's K-y-e-x-w?
THE WITNESS: That's correct.
MR. GRANT: Yes.
THE COURT: Yes.
THE WITNESS: -- is stated to be from a place -- it's actually right in the area of Gitlaxdamks called Lax'nmpgul.
THE COURT: Just a moment.
MR. GRANT:
Q Gitlaxdamks is G-i-t-l-a-x-d-a-m-k-s and Lax'nmpgul is L-a-x-'-n-m-p-g-u-l.
A And the one below it is Took.
Q T-o-o-k?
A And he's closely related. This is a compilation of what's in Duff. In the adaawk Kyexw and Took arrived -- the first one and the second one arrived together in this area.
THE COURT: That's K-y-e-x-w again?
THE WITNESS: Yes.
THE COURT: And T-o-o-k.
THE WITNESS: Yes.
THE COURT: And what are you saying, they arrived together? Where do you see that?
THE WITNESS: That's not in these, I'm sorry. I should be just dealing with these charts. Okay. The statements of their origins from the Duff files and exclusively from the Duff files are indicated on these charts. The important crests that appear to show relationships to other groups and the personal names, if any, that are important are listed on these charts.
MR. GRANT: Now, if you go over -- could you go over three to page 3 and at the top of page 3 it says "Galdo'o".
THE COURT: It says "Wolf" above that? This is all wolf clan?
MR. GRANT: Yes, this whole chart is wolf clan.
THE COURT: Oh, the whole chart is. All right.
THE WITNESS: So in the Duff files on Galdo'o the chiefs listed are Gyolugyet, Niist, and Luus, and their origins are stated as Gitangasx in all three cases.
MR. GRANT:
Q G-i-t-a-n-g-a-s-x and Gyolugyet, Niist, and Luus are plaintiffs' names just for the record.
And you did the same here with respect to what you had described in the earlier village of the Nishga of the Nass; is that right?
A That's right. Then Tenimgyet, under Gitwingax, the Kitwanga house of Tenimgyet, has as their origins the

house of Woos among the Hagwilget after the deluge.
Q What's that referring to? Is it --
A What does after the deluge refer to?
Q Yes.
A It refers to the flood.
THE COURT: I don't see that here.
MR. GRANT: The third column on that page.
THE COURT: Oh, yes. All right.
THE WITNESS: And then it says this is an example of in Barbeau where he has Tenimgyet coming from just one source. You can see that in this house there are two groups that have come together to form this house. The other's from Gitlaxandakhl so I've recorded both of those origins there.
MR. GRANT: G-i-t-l-a-x-a-n-d-a-k-h-l.
THE COURT: I don't see that though.
MR. GRANT: It's right under "After deluge also Gitlaxandakhl".
THE COURT: Oh, yes. All right.
THE WITNESS: So I used these charts as the source of information when I was working with the adaawk to place when an adaawk was speaking about a chief to remind myself of the other information about that chief and his relationships to houses, and I also used these charts to condense them down to groups the way Barbeau did by what he called clan -- what I call wilna'tahl, related house groups who shared common origins and common migrations.
MR. GRANT:
Q And all of the material on this chart would have come from the Duff files?
A Yes. I haven't added anything to it.
Q And so it was one stage in your research in your method --
A I used it right through preparing the report. I had it on the wall as an aide-memoire.
Q And these all -- these are in columns, in fact, your originals were in long scripts; is that correct?
A Yes.
MR. GRANT: And you've just had them reproduced together for convenience.
Now, just if you can look briefly at tab 12 of Exhibit 1042, is that the --
THE COURT: Just -- you'll have to wait for me, Mr. Grant. If this came out of here it has to go back in, doesn't it?
MR. GRANT: Yes, that's in plastic that one.
THE COURT: Yes. All right. Tab 12.

MR. GRANT:
Q Now, is that similar chart prepared by you with respect to the frog clan?
A Okay. If you look at the second one there.
Q The second page?
A The second page.
Q Yes.
A And then ongoing from that, they're all frog, and then the first one I did a little different because the information gathered on this group was so difficult. It was piecemeal and it didn't fit as easily into the same format, so I just had a separate -- but all the rest of them are the various Tsimshian, Nishga, and Gitksan villages and their chiefs in the frog clan with again the relevant information about migrations crests, and origins, names.

MR. GRANT: Okay. And just going from there to tab 24 --

THE COURT: Well, before you leave that, I see version two -- oh, version one's up at the top?

THE WITNESS: That's right.

MR. GRANT: Sorry.

THE COURT: What are these versions meaning? You mean at one place Barbeau has one something described, and then in another place he describes something else?

THE WITNESS: Different informants. Yes.

THE COURT: All right. Tab what, Mr. Grant?

MR. GRANT:
Q Tab 24. Is this again a series of charts prepared by yourself?
A Yes. These are the ones on the eagle clan.
Q That would be the first five pages?
A And these aren't complete. My note at the end was -- covers the files that I covered and the ones that I still had to cover.
Q That's that photocopy of the index card at the end of that?
A Yes. I threw -- when I got this far I realized that because time was short with the report that I had the information I needed to talk about the eagle clan among the Gitksan since it wasn't as key a clan among them, and that's why I felt that I could stop at this point, but I'd read --

THE COURT: There's a word at the top "Gitando"?

THE WITNESS: Yes.

THE COURT: I don't think I've heard that word before.

THE WITNESS: That's one of the Tsimshian villages in the general area of Terrace. There's a sort of a grouping

of villages around there and that's one of them.
THE COURT: Thank you. "Gitsumgalum" I recognize. What's the next one, "Gitsus"?
THE WITNESS: Gitsus. That was a village at the -- almost at the mouth of the Skeena River where -- the river running out of where the channel meets the Skeena.
THE COURT: What's that word below that?
THE WITNESS: Niiyeshlkutsoo'lek. That's the name of one of the chiefs in that village.
MR. GRANT:
Q N-i-i-y-e-s-h-l-k-u-t-s-o-d-' --
A No, it is t-s-o-o-'-l-e-k.
THE COURT: And that's the name of a chief of that village?
THE WITNESS: Who was in that village at the time, at the most recent time before this information was recorded. These villages were not used in the same way after contact, so these charts record the most recent remembered villages. They don't record necessarily the ancient villages, although I have made notes where they state those as their origins.
MR. GRANT: I'd like to mark those three tabs as the next three exhibits, my lord, and these are -- this is -- these documents are notes are -- of synopses of Miss Marsden from the Duff files and they go -- are evidence of her methodology in organizing the opinions in her report.
MR. WILLMS: My lord, I make the same objection. These were just disclosed a couple of weeks ago. They're well within the 60-day rule. If they're not facts upon which the opinion was based, they're irrelevant. If they're an aide-memoire they don't need to be marked.
MR. GRANT: Well, my lord, I think my friend and I have a major difference on this. These notations are notations from the Duff files which were disclosed to my friends two years ago. All they are is the --
THE COURT: You mean the Duff files were disclosed.
MR. GRANT: The Duff files were disclosed to my friends two years ago approximately. They were -- these are a listing of the data from the Duff files. They're this witness' organization. They are -- they are not -- they are nothing more than a reproduction of that, an organizational development of the witness in preparing her opinions. It's not something different. There's nothing in these in which the witness' opinions are set out. And it would be parallel I would say to, as I believe you dealt with a week ago, Dr. Lane had summaries of land title transactions to which she referred. The land title transactions are the facts

upon which she relied. The Duff files are the facts upon which this witness relied, and all were properly disclosable. These are only a summary of those.

THE COURT: Well, I'm thinking in the worst possible way, which is out loud, but let me pursue it this way. If these are not facts upon which her opinion is based, it's because her opinion is based on the source document which is Duff or Barbeau.

MR. GRANT: Right.

THE COURT: So these didn't have to be delivered as facts upon which she relied.

MR. GRANT: Right.

THE COURT: But they would have to be disclosed when she went in the witness-box.

MR. GRANT: Yes.

THE COURT: Because they might affect the substance of her report or her credibility or something of that kind. But because they have to be disclosed when she goes in the witness-box doesn't mean that they are admissible in evidence.

MR. GRANT: Well --

THE COURT: If they're her notes to herself made for the purpose of her report and merely recording the same facts that she's relied upon which are in the source documents, well then by what theory of admissibility do they become evidence?

MR. GRANT: Well, they're -- I would say they're like --

THE COURT: They're like the witness talking to herself.

MR. GRANT: No. No. They are part of the -- they are part of the witness' organization of the raw data upon -- in the development of her methodology. Given the sharp attack of my friends with respect to this area and the -- the situation of the type of data this witness had to deal with, it's my submission that they are relevant to assist in terms of to show the methodology of this witness, the step by step process of how this witness went from that raw material to the end product.

THE COURT: Well, then shouldn't they have been disclosed with the report or at some time well in advance of the witness giving her evidence? When were they disclosed?

MR. GRANT: These documents were disclosed upon my review with the witness in discovery of the nature of these documents I believe it was.

MR. WILLMS: The letter is dated May 19th. It was received -- the documents were received May 24th, my lord.

MR. GRANT: It was couriered to my friend. Upon receipt of the documents I immediately delivered them to my friends and advised my friends of them.
THE COURT: Well, at the moment, Mr. Grant, I have trouble seeing how they're admissible. I think they could go in at your friend's insistence or by putting them in in cross-examination, but I don't see how you can put them in. You gave your friend notice of what it was that you were putting in from this witness, that is her report, and her report I take it discloses that she relied upon Duff and Barbeau source material. Now this is just an intermediate restatement or reorganization or subject headings or something of that kind that she made for her own purposes, but I don't see how they become evidence against the defendants unless they want them in.
MR. GRANT: Well, they're documents as to the methodology of the witness in terms of dealing with this material.
THE COURT: Well, I don't think the documents have to go in, and if your friends object, you can ask her what her methodology was. She could say "I went through it and made a long list of things.", and they're here if somebody wants to cross-examine on them. But I don't think that they become for that reason admissible as evidence. I don't see why you need them any way.
MR. GRANT: Well --
THE COURT: Maybe that's just because I don't understand.
MR. GRANT: Well, that's the very point that they are as part of the step process. Possibly these can be marked as exhibits for identification now because the witness has referred to them for those purposes.
THE COURT: Yes, we can certainly do that. So that's 1043.
MR. GRANT: 1042, my lord.
THE COURT: 1042, yes.
MR. GRANT: Seven.
THE COURT: And you said tab 7?
MR. GRANT: Tab 12.
THE COURT: Tab 12.
MR. GRANT: Tab 24.
THE COURT: Twenty-four. All for identification.

(EXHIBIT 1042-7 FOR ID: Tab 7 in Marsden document book)
(EXHIBIT 1042-12 FOR ID: Tab 12 in Marsden document book)
(EXHIBIT 1042-24 FOR ID: Tab 24 in Marsden document book)

MR. GRANT: Now I'm just going back to your report, Miss Marsden. On page 4, volume 1 of the report, my lord.
THE COURT: Back to page 4.
MR. GRANT: Yes. You state that:

> "Once I had traced each house to its place in this larger group I was then able to map their movements and expansion over time as they split off to different peoples, areas and villages across the Northcoast area, to their locations as recorded by Barbeau and Beynon. These charts and maps provided a context to re-examine the adaawk and place them in a chronological sequence."

Can you just explain how that interconnection occurs that the charts and maps provided the context to re-examine the adaawk and place them in chronological sequence? I just note, my lord, I didn't realize -- my friend says the time, but maybe -- I'm just moving into this area. Maybe I should just wait until after the lunch hour.
THE COURT: All right. We'll start again at two o'clock.
MR. GRANT: Thank you.
THE REGISTRAR: Order in court. Court stands adjourned until two o'clock.

(PROCEEDINGS ADJOURNED FOR LUNCH RECESS)

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

_____
Tanita S. French
Official Reporter

(PROCEEDINGS RECONVENED AT 2:00 P.M.)

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

Q Thank you, my lord. I'm sorry. I was at page 5 of your report, Ms. Marsden, volume 1, and I'm just going to read that. I'm going to endeavour to shorten it. I'll explain to you the way I'm dealing with the report as I go through, my lord, but I'm just briefly -- this is just covering briefly the overview of the methodology. You say on that page that I then --

> "These charts and maps provided a context to re-examine the ada'ox and place them in a chronological sequence. I then used those ada'ox that contained a number of discrete historical events in their original sequence and combined them so that a larger more complete sequence was possible."

Now, just to stop there for a moment, when you say that you used the adaawk that contained a number of discrete historical events, can you give an example of what you mean as a discrete historical event that you found in a number of adaawks?

A Well, the events at Temlaham, for example. There are the three major events at Temlaham: the mountain goat adaawk, the Madeek adaawk, and the dispersal adaawk. I would call those three discrete historical events.

Q Okay. Then you go on to say:

> "Using major events shared by many wilnat'ahl, I sequenced other events as taking place before or after these major ones, the Temlaxam dispersal for example. I used other indications to classify events as very old, as in 'before the flood', or recent, as in the time of guns. In this way the ada'ox began to indicate major eras spanning the time period from deglaciation to the late 1800's. Some important events were more difficult to place than others. When this occurred I re-read related ada'ox and origin accounts, and accounts of the founding of villages, to find clues as to whether it took place before or

> after a related event already placed in the sequence."

Can you give an example of where you found some important events that were difficult to place and then did this rereading of related adaawks and other accounts?

A Well, the migration under the glacier was one of those, and in putting it in the context of other adaawk that show that it was related to other houses and other clans moving from the same location and also in tying in the adaawk of Spookw at Temlaham I was able to place it prior to the dispersal from Temlaham.

Q And that adaawk or Spookw you're referring to is the one we looked at yesterday as an example --

A From the microfilm.

Q -- of the microfilm?

A Yes.

Q That's at tab 19, my lord.

A And there were also significant activities happening on the coast that allowed me to confirm that.

Q You then go on to say:

> "I also looked for data in geological and climatological reports and in archaeological publications that might date some of the events described in the ada'ox."

Can you give some examples of the geological reports or authors that you looked at?

A Well, the information on the ice age, for example, and also the account of the -- the Madeek landslide adaawk. There was geological information that had helped me to date that.

Q And who was that?

A That was by Gottesfeld, G-o-t-t-e-s-f-e-l-d.

MR. WILLMS: My lord, what's the landslide adaawk? I don't recall reading the landslide adaawk.

THE WITNESS: The Madeek.

MR. GRANT: The witness said the Madeek or landslide adaawk.

THE COURT: That's the landslide at Chicago Creek.

MR. WILLMS: Oh, that's the grizzly bear adaawk. Oh, I'm sorry.

MR. GRANT: Madeek is grizzly bear.

MR. WILLMS: Oh, sorry. I thought I missed something there.

MR. GRANT:

Q You did. The climatological reports that you referred to, what are you referring to there?

A Well, in an attempt to date the period at Temlaham, since the dispersal seems to have been caused by a change in climate from a warmer climate to a colder climate, I looked in the climatological reports from quite a number of areas in British Columbia to see if there was consistency in that field on large eras of climate, and I wasn't able to find enough consistency to rely on that.

Q Now, if I could have the map atlas, Exhibit -- Madam Registrar has it here. I'm just going to refer you to map number 1, entitled "Ancient times - the arrival about 10000 years Before Present." And that is -- source, Susan Marsden, "An Historical and Culture Overview of the Gitksan, Appendix 1." And were you -- I know you didn't produce this exact map, but were you responsible for the production of this map?

A Yes.

Q And it was prepared by Mr. Scowett (phonetic) under your direction and based on draft maps that you had organized?

A That's correct.

Q Now, in the upper right-hand corner --

A But I didn't do this map. This is a Prest map.

Q Okay. I was just going to come to that. There's the "Retreat of the recent ice-sheet in British Columbia," the source is Prest, V.K. Prest, and that's one you got. That is a map that you utilized from Prest's own publication; is that right?

A That's right.

Q And Prest is one of the persons that contributes to the Historical Atlas of Canada with respect to this glacial period, isn't he?

A Yes. I also looked at Fladmark's work on deglaciation and the various sea levels on the coast, but inasmuch as it's still somewhat controversial, I didn't rely on it.

Q That is Fladmark's dates and timing is more controversial?

A Yes, he has a stabilization, for example, of sea levels on the coast around 5,000 years ago, which fits in with some of the accounts in the adaawk, but because it's not really -- it's still a new idea in the field, I didn't rely on it.

Q And from your reading and from -- you assume that Prest -- he's an accepted --

A Yes, he's considered to be a --

MR. WILLMS: I object, my lord. It's outside her field. How

does she know?
MR. GRANT:
Q Did you read a number of sources in this field?
A I was told by geologists that he was the accepted authority on the deglaciation and that other work that had been done by Claque after that was also acceptable but that it hadn't been incorporated into this map.
Q Okay. So this is part of the -- when you refer to -- I think the geological reference on the page of your report, this is part of the sources that you were looking at there?
A That's right.
Q And this appendix was -- this map 1 was prepared in contemplation of being appendix 1 or part of appendix 1 of your report?
A Yes.
Q And the script at the top of this map, is this your writing?
A Yes.
Q And a creation of the Fireweed inset map, is that your map as well?
A Yes.
Q And the script along the right-hand side of that, is that your script?
A Yes.
Q Your writing. Okay.
A And the boxes.
Q And the boxes on the map itself. And they formulate part of your opinions?
A Yes.
MR. GRANT: My lord, I will be coming back to the map briefly. I was just dealing with it with respect to Prest. I'll be shortly coming back to it in another capacity.
THE COURT: All right.
MR. GRANT:
Q You refer to archaeological publications that you also referred to. Who are you referring to there?
A Those are the ones that I discussed this morning I think it was, the Skeena River prehistory and the article by MacDonald on the Prince Rupert Harbour.
Q Okay.
A And also information on the Hagwilget archaeology and to a lesser extent the archaeological dig at Moricetown.
Q That was the Albright dig?
A Yes, and some of the information in Albright's paper for this court case after it was published, after it

was finished.
Q And the Ames -- did you rely on Ames?
A Ames' work in the Hagwilget. I've also -- well --
Q And you assume that those archaeological datings by those different authors are correct?
A Yes.
Q In the field of archaeology?
A I've had discussions with archaeologists and also compared archaeological conclusions, and I only used those that aren't controversial and that are generally accepted by those people involved in north coast archaeology.

MR. WILLMS: I object, my lord. I mean, that's -- how can she know what's generally accepted in a field that she has absolutely no expertise in?

THE WITNESS: Well, I've talked to important --

MR. GRANT: Just a moment. I have to deal with the objection. My lord, to the extent that the witness has read the archaeological material, she -- and consulted -- consulted with archaeologists -- I mean, it certainly may go to weight, but what she's stating is what she's relied on, what she's been informed are dates that are generally acceptable, and dates where controversy has been indicated to her that they aren't, and that's as far as it goes, but certainly she can say that. In terms of her own methodology, she would not rely on something somebody told her was contentious.

THE COURT: Well, it's going a long way afield from what I qualified her for, Mr. Grant. I understood when I made my ruling on qualifications that she was going to rationalize or construct a chronology from the adaawk.

MR. GRANT: Yes.

THE COURT: Now she's becoming a clearing-house of information, of scientific information. I don't think even a qualified person is entitled to do that except in relation to the literature of his own discipline. The witness isn't qualified for that.

MR. GRANT:

Q Maybe I can clear it up with one question. With respect to the archaeological dates that you have utilized, have you assumed that those dates are correct?
A Yes.

MR. GRANT: Okay.

THE COURT: You mean you have relied upon them in the construction of your chronology?

THE WITNESS: No. The chronology stands on its own. I have

used the dates to place it in time in what we -- in --
THE COURT: You mean the order stands on its own --
THE WITNESS: The order stands on its own.
THE COURT: -- or the sequence?
THE WITNESS: The sequence of events and the assessment of time depth between the events as indicated in the adaawk.
THE COURT: Yes. All right.
MR. GRANT: Okay. Now, I'd like you to go to page 6 where you say that all of the adaawk you have examined take place in what you will call a Northcoast area, an area stretching from Owiikenox to the coastal villages of the Eyak and from the islands of the Haida to the inland areas of the Kaska and Babine.

> "Most of the events in the ada'ox take place along the Nass and Skeena rivers and on the coast from Gidestsu to Tongass."

Now, can you take a look at tab 4 of Exhibit 1042?
THE COURT: Tab 4?
MR. GRANT:
Q Tab 4, my lord. Now, tab 4, did you -- there was a base map which had some key geographical features on it such as the rivers; is that right?
A Yes.
Q That you utilized?
A I think this is a Jenness map that I used.
Q Okay. And it had some linguistic labelling on it as well?
A Yes. All of the words on the map aren't mine.
Q Okay. Now, in terms of the cross-hatching, is that what you did?
A Yes.
Q And was that your sketch -- is that your sketch of the area in which the adaawk take place --
A Yes.
Q -- as set out in the legend on the bottom?
A Yes.
Q And where you have the cross-hatching, which you've legended as "Area of Concentration of Historical Events in the Ada'ox," does that -- was that based on your findings with respect to the locations set out in the adaawk and the Duff files?
A Yes, that's where -- that's where the events that are referred to most frequently in the adaawk take place.
MR. GRANT: I'd ask that that be marked as the next exhibit, my lord.

MR. WILLMS: I object, my lord. I haven't seen this until it was filed in court, and I make the same objection I made before. If it's not a fact or an opinion, it's inadmissible. If it is, it should have been disclosed.

THE COURT: It's not really necessary for your case, is it, Mr. Grant?

MR. GRANT: No, I would just leave it as an exhibit for identification because she has commented on it. That's satisfactory.

THE COURT: All right. Exhibit 1042.

MR. GRANT: Yes. It's an aide-memoire for the court. 1042 tab 4 for identification.

THE COURT: Yes.

(EXHIBIT 1042-4 FOR IDENTIFICATION: Tab 4, Sketch Map of Area in which Adaawk took place)

MR. GRANT:

Q Can I have the Exhibit 1043, please? That's the adaawk -- Summaries of Adaawk, Ancient History of the Fireweed.

Now, when you dealt with the adaawk, did you deal with them on a clan basis as Barbeau had done?

A Yes.

Q Okay. And was the Giskaast the first clan that you worked with?

A Yes.

Q And if you look at tab 1, you prepared a summary of the adaawk which immediately follows; is that right?

A That's right.

Q Now, did you add any -- other than the titles on the right-hand side of that summary -- this is the first page -- did you add anything else to that?

A I put the -- oh, other than the titles, no.

Q Right. No?

A No.

Q And on the left-hand side we have, for example, "Personal Name Gaaw'a" and underneath "Artefact Gwisyeeni." Gaaw'a is G-a-a-w-'-a, and Gwisyeeni is G-w-i-s-y-e-e-n-i. Why did you pull out that kind of data and put it on the left-hand column?

A Because these are -- these are the aspects of a chief's power. These are the important things in the house group.

Q Okay.

A Their names, their artefacts, their territories, and

their crests all are -- and their songs all interact and interlink with the adaawk.

Q Now, this first adaawk indicates that the interpreter was William Beynon?

A Yes.

Q And did William Beynon -- was he the person who interpreted in some cases and recorded in other cases a large number of the adaawk that you dealt with?

A Yes, he was -- he worked closely with Barbeau over the years in collecting the adaawk and other information.

Q I'm sorry, you can go back to tab 5 of the 1042. This is a copy of a writing by Ms. Halpin, Marjorie Halpin, and she's from the University of British Columbia Anthropology Department, Museum of Anthropology, and this is her writing on William Beynon; is that right?

A Yes.

Q And you're familiar with this article?

A Yes.

Q And what I'd like to ask you is what did you find in -- you looked at oral histories done by other persons as well as Beynon, of course. What did you find significant about Beynon and his approach to the oral histories that was of assistance to you?

A Well, Beynon -- if you -- at the top of each of the oral histories that he collected, for example, he always insured that he recorded the name of the informant. In most cases -- in this first case he hasn't, but in almost all cases he's included the Indian name of the informant, their clan and their village, and that enables you to identify who owns this adaawk, and then when you look at all of the people who own the same adaawk, then you can move to the Wilnat'ahl and so on, as I said before. But without that information, as in Boas' "Tsimshian Mythology," you can't -- you can't make these adaawk to specific group, and, therefore, you can't place them historically, and I think he understood that because he himself was very interested in the history of his own people, and even when he wasn't being paid to collect information, he did it on his own. And I think his -- the reasons that he put this at the top was because he knew how important it was.

Q You're familiar with -- Tate was one of the persons who collected information for Boas; is that right?

A Yes.

Q Now, was there a discrepancy between the material that Tate collected and the practice that you've just

described of Beynon?
A Yes. And as I said earlier, Tate also took out what he thought would be offensive sections in the adaawk, which Beynon didn't do.
Q Okay. And that's described in more detail on pages 144 and 145 of the Beynon article by Marjorie Halpin; is that right?
A Yes.
Q And her conclusions there about Tate and what he did you found from your experience was the case?
A Yes. When I tried to work with the Boas, as I said earlier, I could only use it as corroboration or as a source of detail, not in the same way that I used the Barbeau-Beynon.
Q Okay. How long did Beynon work on this kind of collection of data?
A From around 1915 to the time he died. I think he died in the '50s.
Q Okay. Beynon was partially Tsimshian?
A Yes, he was. He had Nishga and Tsimshian blood, but he was half white and half Tsimshian. His father was Welsh.
Q Okay. Are you aware of an article by Wilson Duff in "Anthropologica 1964" with respect to Marius Barbeau?
A Yes.
Q When did you first become aware of that article by Wilson Duff?
A I don't remember what year it was, but it was when I was just starting to do research for native studies, and I went down to Vancouver, and I met him in his office at the university.
Q This is that occasion when you met Professor Duff?
A That's correct. And he gave me -- he gave me a copy of his -- of the periodical, and it was in it.
Q My lord, this has already been marked as an exhibit. I can't locate the exhibit number now of the whole document. I'm sorry, it's 901-30. It's Exhibit 901-30, and I'm going to need it to refer to the witness. I'll go to another -- possibly Madam Registrar can find it.
Now, at the same time as you were dealing with the adaawk, that is the Fireweed Clan, were you also looking at the Men of Madeek or re-looking -- I understand you had looked at it much earlier -- re-looking at the Men of Madeek and Wars of Madeek material?
A Yes, that's included in this Ancient History of the

Giskaast, excerpts from Men and Madeek.

Q Now, the Men of Madeek and Wars of Madeek, does it deal primarily with one clan or is it more -- does it deal with more than one clan?

A It deals with one branch of one clan.

Q And which?

A The inland, the Fireweed Clan.

Q Okay. And have you prepared a -- okay. I'll go back to the -- I'll return to the Duff article when it's pulled, but I'll go back to the Fireweed summary, my lord. That's that Exhibit 1043, and I'd like you to go to tab 2 and to the top of tab 2 -- the original, not your summary -- where you have the data. Now, what did you -- can you explain what this first paragraph that's in parentheses tells you with respect to this adaawk?

A Well, the woman who was his informant, whose English name is Mrs. Alfred Dudoward, her chief's name was Wiiseeks, and as we saw earlier, Wiiseeks was the chief that came down from Kitsegukla during the dispersal after -- after Tsibasaa moved to the coast, and that places her historically, and her -- and also it shows that she's a very high chief and has the right to tell this adaawk. And the -- she's also married, as was the rule, to a high chief of the Eagle Clan of another Tsimshian Village, so that validates her as an informant.

Q What about giving the narrative in English? What does that tell you? I take it not all of these were in English?

A No. And depending on the ability of the person to speak English, they -- they -- it depends on -- in this particular case the fact that it's in English is fine. In some cases, if their English is broken, it makes it more difficult to use the adaawk.

Q Now, what about the fact that this was in January 1915, and I take it that there are -- well, for example, I look at tab 13 of the same binder or -- I'm sorry, I shouldn't -- tab 9 of the same binder, and that was in 1954, just taking that at random. In other words, what does the dating -- the variation in dates of the recording of these tell you, if anything, about -- in terms of your conclusions?

A Well, that fact, the fact that there's such a time lapse between the recording, but also the fact that they're recorded in different places, like this is a -- this informant is Eagle from a Nishga village

and -- indicates that -- and then here, if you -- it indicates that the informants are not connected, the collection of the information was over a long period of time, and it corroborates. They corroborate each other as a result.

Q Now, you commenced by reading these adaawk versions with the Fireweed; is that right?

A Yes, I read them all through.

Q And then what did you do after you had read them all over the first time? What was your next step?

A Well, I grouped them according to events, if they shared the same events.

Q Okay. Now, if you go into the -- two pages into the adaawk, this Exhibit 1043, after the table of contents you have "Summary Of Major Events In Adaawk And Their Chronology." Is that what you did? Is that your second step?

A Yes. In this -- in this summary I showed that -- it's basically the same information as on the following chart -- that you can have an adaawk -- part of an adaawk containing four of the events, and then the next one only contains two, and then one of them only contains one and so on, that each version doesn't necessarily cover every event in a sequence. And that was what I was referring to earlier when I said that I could put adaawk together. Like one that has four events then places -- the other ones dove tail into the sequence.

Q These are all different informants, except I see adaawk 6 and 12 is not, but this first page is all different informants?

A Right, in different places at different times.

Q Okay.

A And almost all of them have the right to tell this through either their -- their own clan's involvement. For example, some of the informants here are the Frog Clan, but they're the Frog Clan branch that had the war with the Fireweed, and, therefore, they tell their -- their version of the events.

Q Okay. Now, I go over to the next item, which is your Ancient History of the Giskaast, and that is your chart that we referred to yesterday. Was this the next step in the process of organizing this clan -- adaawk?

A Yes.

Q And this is where you used the grouping of the major events into -- you subcategorized it, if one can say

that, such as the origins of the Giskaast, and there's seven events that you describe there?
A That's right. So in all -- all of the adaawk that I saw, which was all of the ones -- this is the total number of events in this time frame covered by those adaawk, and then the stars indicate which adaawk deal with which events. And as you can see, you can have an adaawk dealing with only one event or it can go up to seven or eight or nine.
Q Go to the next page then, and that's a map, a sketch map with the major river systems on it and writing. Is that your writing on there?
A Yes.
Q And this is, you say, chiefs of Temlaham origin?
A There's a mistake on this map. There's one place that's -- Gitangwalk should be on the Kispiox River, not the Skeena.
MR. GRANT: Okay. That's -- okay.
THE COURT: On the extreme top right?
THE WITNESS: That's right.
THE COURT: It should be the next river over to the left, should it?
MR. GRANT:
Q That's right.
A That's right.
Q Maybe you can just mark that with an arrow from the dot to where it should be, with a green arrow?
A This is approximate.
Q Okay. And then the underlined heading on that is the name of the village, right, on this map, and underneath that there's the names of chiefs?
A Okay. This is -- this is dealing with after the Fireweed had dispersed from Temlaham, which is the last section of the preceding chart, and these are the villages, and the chiefs' names underneath them indicated in the adaawk where they settled as a result of the dispersal. Now, this may not have been all simultaneous, but over time this is where the adaawk have these chiefs ending after the dispersal from Temlaham.
MR. GRANT: Okay.
THE COURT: And you don't have places like Gitangas on here. Does that mean that there were no Fireweed up there?
THE WITNESS: Preceding the founding of Temlaham --
THE COURT: I'm sorry, I said Gitangas. I meant Kisgagas.
THE WITNESS: At the time -- at the time of the dispersal, as indicated by these adaawk, a chief didn't migrate from

Temlaham to Kisgagas at this time. These are the -- the Fireweed chiefs that migrated from Temlaham. Not all Fireweed were resident at Temlaham.

THE COURT: I see. All right.

MR. GRANT: And in the sequencing this comes later than where we are in terms of the initial events? This map comes in later in the sequence?

THE COURT: This map is after the dispersal though, is it?

THE WITNESS: This is where they end up as a result of the dispersal.

MR. GRANT:

Q Now, if you can just stop there for a moment, what I'd like to ask you, you've described factors that you looked at or things that were obvious in these recording of the adaawk: the informant, their spouse, their Indian name, the village, the time it occurred. What did you look at in weighing these different versions and in assessing them? What factors did you look at?

A Well, after using the adaawk a lot, I began to -- to have a sense of -- of certain informants being extremely good sources of information. Their accounts are very detailed, their mastery of the names is also very detailed, and they -- there's a historical -- a stronger historical dimension to them. So I began to rely -- in a case of a version being different from another version, I relied on those informants that in the body of all of the work that was recorded from them were the most exceptional. There were a couple of informants that after trying to work with their adaawk for a long time I just -- I couldn't -- they couldn't jive with the other adaawk at all, and I considered that it was -- because it was consistently the same informant, I felt that that informant was not a reliable source. Also, William Beynon -- and there is one interpreter that wasn't -- that her work was consistently not -- not -- you can see that her use of words -- if you know a little bit of the Gitksan language, you can see that -- where she's using words that are translations in English but they're not quite accurate, if you have comparisons, versions to compare them to, so I would take that into consideration if there was a conflict between versions.

THE COURT: To put me in context, when do you say the dispersal took place? Do you have a date for it?

MR. GRANT: At Temlaham?

THE COURT: Yes. From Temlaham, yes.

THE WITNESS: That was the one that we discussed this morning, the 3800 to 3200 --
THE COURT: Oh, yes.
THE WITNESS: -- BP.
THE COURT: Right.
MR. GRANT: I'd like now to refer you to Exhibit 901-30, if I may.
THE COURT: I'm sorry.
MR. GRANT: Exhibit 901-30, my lord.
THE COURT: Oh.
MR. GRANT:

Q Now, this is the article that you have indicated that a number of years ago Professor Duff gave to you?
A Yes.
Q And this is an article entitled "Contributions of Marius Barbeau to West Coast Ethnology" --
A Yes.
Q -- in the publication "Anthropologica." And at the time that you -- at the time you received this, I believe from your chronology you had not at that time access to the original adaawk versions together with part 1 of Barbeau?
A No.
Q But you did have and had looked at his other publications, such as "The Downfall of Temlaham," "Tsimshian Mythology"?
A And "The Haida Myths."
Q And "The Haida Myths." Now, I'd just like to -- Duff refers to the strength of Beynon as an ethnographer or as a recorder of information as well, doesn't he?
A Yes, Beynon and Barbeau. His -- his -- he actually says on page 65 that that must have been one of the most productive field seasons in the history of American anthropology, the first -- the first field season that Barbeau and Beynon worked together.
Q And that was at Port Simpson in 1915?
A In that area, yes.
Q And that, in fact, would have been when that adaawk number 2 from your summary was done, is that right, the Dudoward adaawk? That is the one that she refers to?
A Yes.
Q Now, you then -- on page 66 of that -- of that -- this publication Professor Duff refers to notes, and he talks about -- and he says this: "It is with" -- oh, first of all, I'm sorry, he talks about two things. One is the narratives, and second is the notes on

social organization.
A That's right.
Q Now, by the narratives is he referring to the -- the adaawk originals that you were dealing with?
A Yes. And he goes on there to say:

> "The narratives consist in part of the semi-mythical histories which the Tsimshian lineages own and tell to exlain their origins and validate their rights to crests and territories. The Tsimshian call these ada'ox."

Q Okay. And then the second, he says, is the notes on social organization?
A Yes.
Q And are those the Barbeau files that Duff -- that is, the ones we looked at yesterday?
A Right. Their original form is in the notebooks, and then they -- they're typed, and also we have Duff's summaries of them.
Q And he talks about, at 66, that is Duff's saying:

> "It is with the notes on social organization that I am more directly concerned."

And then he goes on to describe them.

> "When Dr. Barbeau has on occasion referred to the census-like completeness of these notes he has not at all exaggerated. He spent time in virtually all of the Tsimshian villages, working with several dozen of informants, and systematically gathering information on each of the topics in which he was interested. Tsimshian-speaking tribes fall into three territorial and dialect divisions: the Tsimshian proper on the coast and lower Skeena River (15 tribes), the Gitksan on the upper Skeena (7 tribes), and the Niska on the Nass River (4 tribes). For each of the 26 tribes he obtained the following information,"

and then he listed five categories. And I won't give the detail, but the five are: 1, structure; 2, personal names; 3, crests; 4, villages and territories; and 5, traditions of origin. Then he goes on -- and Professor Duff goes on to say:

"All of this material has been transferred to files of my own, and will form the basis for future publications."

A That's right.
Q What is Duff talking about there?
A Well, he wanted to do the definitive account of Tsimshian social organization, and he was planning to use this -- his research for that.
Q Okay. Now, when he says "this material has been transferred to files of my own," are these the Duff files that you've been referring to and that you yourself canvassed?
A Yes.
Q Now, as you indicated, Professor Duff had a great deal of respect for both Barbeau, Dr. Barbeau, and Beynon, as he reflects here, but in this report Professor Duff expresses concern with Dr. Barbeau's own narrations in this publication that he -- that Mr. Duff gave to you. On page 71 he talks about the southward migrations. You're familiar with that concern he expressed?
A Yes.
Q And you were familiar with that at the very -- before you even starting working with the original adaawk --
A Yes.
MR. GRANT: -- and Barbeau's own material?
And I -- the court has this as an exhibit and -- although I would ask the court to make a note of pages 71 and 72 where Duff does an analysis of southward migration, my lord. This is of Exhibit 901-30.
THE COURT: 901?
MR. GRANT: Exhibit 901(30).
THE COURT: And the pages again?
MR. GRANT: Pages 71 and 72.
MR. GRANT:
Q You're familiar with that concern you've said?
A Yes.
Q Did you find similar problems when you looked at Barbeau's secondary work, that is, his own writings?
A Yes. That's part 1, part 1 of the adaawk binders.
Q Okay.
A That's a common -- it's a common problem that people have when they use the adaawk in part, that they extrapolate from one event or one sequence of events and then they make a generalized theory about a migration or a group of people, how they were founded. You can't do that. You have to look at everything and

place them all in the context of each other. And his statement here, "A single instance will suffice," he's using one Wilnat'ahl of the Eagle phratry in order to support a theory about how all of the -- the Tsimshian came from -- from Asia.

Q And Professor Duff expresses concern about that approach of Dr. Barbeau?

A Yes.

Q Did you in your conclusions about migrations -- let us talk about the migrations. Did you use more than one incident -- I'm sorry -- more than one account to come to your conclusions?

A Yes, and in addition to that I used the adaawk of all of the groups in order to come up with the migrations, not just one -- one group of one clan.

Q Okay. So in order to come to your opinion report and to your mapping, the appendix 1, you could not -- you did not just rely on one clan, but you waited until you canvassed all?

A I had to look at all of them.

Q And you looked at the neighbouring group's adaawk as well?

A That's right.

MR. GRANT: Now, I'd like to go now back to your report, volume 1. Maybe Madam Registrar can -- you just need Exhibit 1042. Actually, all of the binders except your report can be taken from you now. My lord, what I propose to do is to do it a little out of -- slightly out of order because I think it's easier to understand if we do it this way.

MR. WILLMS: This is a chronology.

MR. GRANT: Yes, my friend indicates it's a chronology. That's true, and I want to start part way through the chronology and work back. I'd like to start at page 98 of the report, volume 1.

THE COURT: You say work back. Which direction are you going?

MR. GRANT: I'm sorry?

THE COURT: When you say work back, back towards --

MR. GRANT: In time.

THE COURT: In time.

MR. GRANT: Yes.

THE COURT: Yes. All right.

MR. GRANT:

Q First of all, Ms. Marsden, this large map here is an enlargement of your map 1; is that your understanding?

A Yes.

Q Okay. Now, what I propose to do, starting on page 98,

my lord, of the map atlas and the version that you have, is deal with this section on the creation of the Fireweed, which is here, and then the first part of the report deals with this -- the ancient times, so it goes back from before that. So at this stage that's why I wish to start with the creation of the Fireweed and Temlaham. And, of course, you're familiar with -- your lordship recalls some of these adaawks.

Now, maybe I will just pull out of the exhibit book map number 1 so you have some ability to move. Now, can you -- this writing on the left-hand side -- the right-hand side you've already indicated is your writing, and is that a summation of what went on with respect to the Fireweed in the pre-Temlaham period and up to and including Temlaham and thereafter?

A Not -- not after Temlaham. This takes us up -- this takes us from the creation of the Fireweed to the founding of Temlaham and other villages from the same -- from the same migration.

Q Okay. You refer in your -- on page 98 you refer to the adaawk that include the earliest aspects of the history of the Fireweed, and I'm referring to the second paragraph on page 98,

> "begin with paired villages near the Nass river, some say above Gitlaxdamiks, others near the headwaters of the Nass, and others at Laxwiiyip at the headwaters of the Skeena. The weight of the evidence points to a northern location somewhere near the headwaters of the Nass and Skeena rivers."

A That's right.

Q Is that your conclusion?

A Yes.

Q Now, I don't -- is it easier for you to use the large map, Ms. Marsden, or the small one in terms of your own pointing and referencing?

A It's up to you.

Q I think you maybe could use that, and then his lordship can see. Can you just indicate where this starts that you're talking about?

A There's a war between two villages that takes place here at Laxwiiyip, which means a big open plain, in between the headwaters of the Nass and Skeena rivers. It's a war between the ancestors of the Fireweed and the Frog Clan.

THE COURT: You'll have to spell that for Madam Reporter.
MR. GRANT:
Q Laxwiiyip.
A L-a-x-w-i-i-y-i-p.
Q Now, can you go on to explain, just to get us -- as to what this map is indicating, what's going on on the map in terms of the arrows, who they represent?
A Well, as a result of the war, which also includes a reference to -- the translation of the terms used with the crest indicate that there was an earthquake as well, but as a result of the events that take place at Laxwiiyip at this time, both the Frog and the Fireweed disperse down the Skeena and Nass rivers. And in the adaawk covering these -- these events they state the villages that are founded as a result of this movement, and those villages are indicated by capitals that are actually highlighted in red, and they include Temlaxam, Gitenoosxw. That's right in the Terrace area down there.
Q Just a minute. G-i-t-e-n-o-o-s-x-w. Go ahead.
A Gitga'ata, which is Hartley Bay, G-i-t-g-a-'-a-t-a. That's the first recorded presence at Gispaxloots on the coast, which is a Tsimshian village. G-i-s-p-a-x-l-o-o-t-s. And also that's the founding of Ksets'oo. Yesterday there was a reference to the Gitksets'oo. That's these -- these people. K-s-e-t-s-'-o-o.
Q G-i-t-k --
A G-i-t-k-s-e-t-s-'-o-o.
Q All right.
A And those are -- oh, and Gitlaxandakhl -- I don't think I mentioned that one -- was also founded by the Frog Clan dispersing at this time.
THE COURT: We'll have to have a spelling for that.
THE WITNESS: G-i-t-l-a-x-a-n-d-a-k-h-l.
THE COURT: What was the cause of this dispersal, the earthquake?
THE WITNESS: There was a -- they were living across the river from each other. It indicates that they weren't really a well-established village community, and there was dissension between them, and there was a war. And it -- there's a long myth that accounts for it. The ancestors of the Fireweed are almost decimated. They -- well, you can read the adaawk.
THE COURT: Thank you.
MR. GRANT:
Q This is the adaawk of the sky children; is that right?

A I'm not supposed to be telling adaawk. I'm just pulling out the events that are relevant.
Q Thank you.
A And the Fireweed are created at this time. They start with their big houses with the crests on the front. It's very clearly stated that this is the beginning of crests. And then they move down both the Skeena and the Nass rivers. And that's the beginning of the Fireweed. But at Temlaxam is where the Fireweed really come into play as a significant group, and this brown line here -- it's green, I guess, on the original.
Q Yes.
A There's indications that the ancestors of the Fireweed were actually one of the groups that became wolves -- that also became wolves. They don't seem to have clan status prior to this event. And among the Tlingit they say that -- that they were -- that the people who have this adaawk among the Tlingit are still wolf.
Q And that's the arrow that goes down and moves up behind the legend?
A And moves up the coast. And there are no Fireweed among the Tlingit. And the -- the other names on the map represent those communities or settled areas as we know them today by the names we know them today that were indicated as being inhabited prior to this dispersal.

THE COURT: I take it that I shouldn't assume from the fact that there are three streams heading down towards what is now Prince Rupert that these migrations took place at the same time, should I, or should I?

THE WITNESS: For example, the Gitksets'oo one appears to have been direct, and then there was a great antiquity in that village. I don't think there's a great deal of time depth in these migrations.

THE COURT: I've got three streams. Should I assume they're all relatively contemporaneous?

THE WITNESS: Yes, in this case.

THE COURT: Okay. All right. Should we take the afternoon adjournment, please?

MR. GRANT: Certainly, my lord.

THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED AT 3:00 P.M.)

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

_____

Leanna Smith
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)

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

Q Thank you, my lord. I'd just like to take you back to your report and page 100. This is the section in which we talked -- you talk about the creation of the fireweed at Temlaham, and you give an extract from one of the adaawk by Joshua Tsiibasaa of Gitxahla. As I recall, this is -- it's from file number 12 which means it would be adaawk number 12 from part 2 of Barbeau; is that right?

A That's right, in fireweed.

Q And it's adaawk number 8 in the Giskaast fireweed binder, and you quote the extract, this is after the Ska 'wo incident that you say that:

> "Each house had a different painting. The first house was that of Daxemwilgyet. It had the Sun (gyamk). The second house, of Adisaem had the Biyaels (Stars). The third house of Laehlemxai, had the rainbow (Magai). The fourth house, that of Ligiyu'un, had Lax'oom (Sky) in front of it. All of these paintings were very bright and shining."

That's the quote on page 100 of the report. Now, is that one of the adaawk versions upon which you relied in coming to your conclusions or an extract from that version?

A Yes.

Q Okay. Now, if you go to Exhibit 1043, the summary of the ancient fireweed, and I'm looking at your chart again, Miss Marsden, that's the ancient history of the Giskaast where you have the origins of the Giskaast, Gispewudwada, G-i-s-p-e-w-u-d-w-a-d-a, and then you have this sequence of, as I've said, eight events. Where did these events occur that you are talking about in that sequence?

A They're in the original location of the people on the map there where I was showing --

Q Laxwiiyip?

A Yes.

Q Okay. Now, can you just refer his lordship to one of the adaawk versions that reflects these events as they

go on?
A Okay. On number --
Q That's tab 9 of the adaawk and summary. Now, in your summary you talk about the war between the two villages. Now, is this a war that occurred at Laxwiiyip?
A This is the same event. Yes, this is.
Q Okay. And then part two is the marriage of the daughter of Ska 'wo and that occurred -- that event is describing at the same place?
A The war takes place and the raven clan almost decimates the other group that are at this time clanless, and then the marriage of the daughter of Ska 'wo and the sky children, the creation of the sky children, and their return to the earth with the -- the new form of building and crest. And then on page 23 the -- these descendants of Ska 'wo would proceed to have a second war with the raven clan and it's at this time that the reference to the earthquake takes place, and then you have there at part five is their migrations.
Q And in this case they refer to -- they go to Temlaham?
A That's right.
Q And so that's the migration of that particular arrow or group from Laxwiiyip?
A That's right. Some accounts deal more completely with the areas to which the people migrated. Those are charted in the front also.
Q In 1987, June 11th, of 1987, Volume 17, commencing at page 1098, and going through to page -- I think going through to page 1109, Olive Ryan, Gwaans, describes an adaawk about Ska 'wo. Have you looked at her description?
A Yes.
Q And is she talking about the events at this place prior to the migration?
A Yes. That name Ska 'wo or in the coastal language that -- just drop the "s" and say Ka 'wo or "Gawa". That is the key -- one of the key words that allows you to know that the same event is being talked about and that's the ancestors of the fireweed clan.
Q Okay. Within some of the versions of this adaawk when I'm talking about the early events at this place there are a description of events that cannot be explained as natural phenomenon; would you agree with that?
A I think this adaawk would be one of those.
Q In your analysis of the adaawk, for the purposes of

chronologizing them, did you utilize those supernatural, if I may call them that, supernatural events, that is, those phenomena described in the adaawk that cannot be explained in a natural way?

A No, I used the information that relates to places, who was there, the events that take place there in terms of whether -- allowing me to place it in time, and migration routes and statements about the culture at the time, indications of the culture at the time, and that's why when I refer to the earthquake, the sequence that leads up to the earthquake, is that the sky -- the father and the sky gives the earthquake charm to one of his sons and he uses it as the ultimate weapon in his fight with the frog clan, the frog raven clan. However, in other words, that could either be referring to the fact that there was an earthquake there, or not, and that's why I say perhaps, but that is a similar to a number of adaawk where you have a magical force being said to have caused an event that we would consider to be a geological event or a "real" event in quotes.

Q Do you recall what the word that is used for the earthquake charm was I believe?

A It's saw(ph).

Q And is that -- that was translated by Beynon as earthquake?

A That's correct. It was translated as earthquake charm. It's a crest on the totem pole in Gitseguekla in the house of Guxsan, who are descendants of the ancestor Ska 'wo.

Q Now, on page 101 at the bottom, I'm referring to your report, I'll move this map out of your way, you refer to a version of the adaawk given by Herbert Wallace. This is from file number 7 of the Giskaast, and he starts by saying: "This was the origin of the Gispewudwada clan, at that time, and place." Now, when that reference is made to Gispewudwada in the adaawk, what should be taken from that? What is being referred to there? Why are they called that?

A Well, the Gispewudwada are the coastal branch of the fireweed and not all of them came from this dispersal or came from the Temlaham dispersal. Some of them were always on the coast, and the actual term Gispewudwada may have evolved later on, but since this is a coastal Tsimshian informant, he's using the term Gispewudwada instead of Giskaast.

Q So when we look at any of the adaawk, if we see the

reference to Gispewudwada we should be considering that's the fireweed clan?

A The coastal branch of the fireweed clan.

Q Now, again you go to I believe it's the same version on page 102, the last quote, the last sentence of that quote from Herbert Wallace, you say:

> "And he built a house for each of them, with the exception of the sisters who stayed with their brothers. It is here that we find the origin of the crests."

Is this consistent with other versions as to the origins of the crests being described as happening here?

A They always refer to the houses coming down with the crests on them and there's a range of descriptions of the crests, but they are basically consistent, and it's not always explicitly stated the way it is here that it is here we find the origins of crests, but sometimes they say that's when these crests began. That's when crests began. That's when the fireweed began. There are enough indications in the adaawk that I felt comfortable coming to that conclusion.

Q Okay. And page 104 of your report you talk about the earthquake and you say, this is two, four, six, fifth line down, my lord, talking about the war, you say:

> "Their greatest power is the eldest grandson's ability to turn the earth over and bury the enemy village. Perhaps this earthquake is responsible for the fact that, once the war is won, both the remaining frog clan, and the fireweed people, scatter and seek new lands."

Now, first of all, this you're referring to is the earthquake charm?

A That's right.

Q And but you say the words "perhaps". Can you just tell his lordship why you use that term there?

A Because those are the indications, but it's not stated clearly, so I don't want to come to a -- the same kind of conclusion I come -- when I don't use the word "perhaps".

Q Okay. You go on to a number of descriptions and then I would refer you to page 108. You say the -- after

the quote from Emma Wright and that adaawk -- and let me ask you this: These adaawk that you've referred to in this part of this chapter, they're all referred to in your ancient fireweed binder; is that right?

A Yes.

Q Okay. You then state:

> "The Fireweed-Raven war was not an isolated situation. The Raven clan in the north-east especially, were a numerous and powerful people."

Now, is it correct that here you are talking -- when you're talking about the raven clan, what clan would his lordship have heard them being described as?

A They're also described as the frog clan and then in Gitksan as the Ganeda and sometimes as the Lax S'eel.

Q Okay. Now, you go on to describe the raven clan and here you're talking about the raven clan. There's -- is there evidence in the adaawk as to -- like here we're talking about the creation of the fireweed, of whether or not a raven clan existed prior to these events when the fireweed was created?

A Well, when these events are described they talk about the raven clan and the village opposite which is nameless. It's not nameless, but the clan is not named until after the events take place which indicate that it was a group that was not a clan group.

Q Okay.

A And the creation of the -- well, the creation events that take place are those of creating a clan.

Q Okay. Now, you go on to say on page 108 that:

> "In the earliest times they", referring to the raven clan, "appear to have been, in almost all cases, the dominant groups and their defeat at the hands of the Sky Children in the north..."

That's at this place you're talking about, right, in the north?

A Uh-huh.

Q

> "...and elsewhere did not prevent them from continuing to gamble and war with the Wolves remaining at Laxwiiyip."

Now, first of all, did you -- have you reviewed adaawk which indicate that the raven clan were the dominant group before these events?

A Well, the -- the informants who talk about the very early times talk about the raven clan as being a unit all descended from one -- from one source, and the wolves as coming in from a number of different sources and the ravens benefited from their unity in the early times because they were one single strong force, and it's my opinion that the fireweed -- the rise of the fireweed to its significant force balanced off the raven clan.

Q And that's what you say actually in the next sentence of your report there that:

"The creation of the Fireweed re-established that balance by creating a people as unified and powerful as the Raven people."

Is that conclusion you've reached apparent from your reading of the adaawk?

A The adaawk and the statements of origins and originals -- original villages.

Q Okay. And just to be clear, the statements of origins that you're referring to are included in the adaawk files, the social organization material of Barbeau?

A Well, also in terms of the northern ravens here, the Tate and Emmons and De Laguna are also sources for that.

MR. WILLMS: My lord, I take it from that that the witness means dominant in gambling and war, but it's not quite clear, perhaps if that's not what she means she can illuminate that. I don't understand dominant other than that, but --

MR. GRANT:

Q Well, you're talking about here that the raven clan were the dominant groups. Are you referring to them being dominant in gambling and war or more than that?

A Dominant in the sense of the word dominant that what they wanted they got.

Q They were. Now then, you go on to say at the top of page 109, the first paragraph:

"That the defeat of the Raven clan was not an attempt to annihilate a people but to subdue them, so as to restore balance in the

society of which they were a part, is clearly shown by the fact that wherever they engage in war with them there are often later found established with them in paired villages."

Now, when you say wherever they engage in war with them, who are you referring to as being engaged in war with the ravens? Is that -- I take it it's the fireweed? I just want to be --

A Yes.
Q Okay.
A Sky children are the fireweed.
Q Now, then you go on to say that:

"Some of the Sky Children settled with the Raven clan at Temlaxam while others still others still paired, remained in the northern area to become the northern Gitksan."

Now, maybe you want to utilize the map here and just indicate what you mean as to the relationship post this war between the ravens and the sky children in terms of their migration?

A Well, I think it's quite clear on the map you can see the two groups migrated over the same areas and where they end they both end in the same villages.
Q Okay.
A And at Temlaham the wolves were also present at Temlaham very early, and they're on the same side of the river as the fireweed. There is several accounts that make that quite clear, as if they were the same group. And on the opposite side of the river are the ravens.
Q Okay. What -- just maybe -- I want you to just make some reference to the map, but was there a name for the raven village at Temlaham different from Temlaham?
A I'm not sure if it was named at exactly the same time, but the name is Gwingadakxhl. It means place of the loons.
Q G-w-i-n --
A -- g-a-d-a-k-x-h-l.
Q Okay. Now, the other point I'd like you to clarify on the map, Miss Marsden, is this northern -- or, I'm sorry, the eastern group, as you say, they follow each other and we know where Temlaham is. Well, that

location is on the Skeena just below or in the area of Gitanmaax or Hazelton; is that right, that we're talking -- this general location?

A It's that -- Temlaham is a broad area, variously described, but it ranges some people say as far as Kispiox to Gitseguekla and in between, but focused primarily to the -- to the west of Gitanmaax.

Q Well, is that route from Laxwiiyip to Temlaham, is that route following a river or where is that route going generally?

A Yes. As I said, this route follows the Skeena River.

Q Okay. Now then, there's the other routes to the coast and what is it following?

A This route follows the Nass River and these arrows going south are going through the Gitsumkalum area, lake and river area there, and then back down the Skeena. And here they go through the Extol(ph) River to Gitga'ata.

Q Okay. That's the -- so the northern most route going towards the coast follows the Nass and then you say the first set of blue and red arrows that go off to it towards the south is following the Gitsumkalum, and then the other group that goes towards the Gitga'ata follows the -- I'm sorry, I didn't get that.

A The Extol River.

Q The Extol. Thank you. So these routes relate to the river systems? I mean, they follow the river systems generally?

A Yes. And they indicated in one adaawk that they took that route because the coast was occupied.

Q That's the route through the Extol?

A Yes.

Q Now, is that in your -- is that part of your conclusions based on the adaawk in the statements of origin as to the routes the people took between those places?

A Yes.

Q Okay. And it's reflected in the adaawk?

A Yes.

Q Okay. You're aware of the present rules or those rules relating to clan exogamy among the Gitksan?

A Yes.

Q Do the adaawk that refer to the events at Laxwiiyip, do they refer to clan exogamy?

A Not explicitly, but inasmuch as there were two villages of different groups across the river from each other, that's a very common recurring theme in

the early adaawk. That's -- that there was one village on one side and one on the other and they were separate clans and they intermarried and there was -- there were various tensions indicating that they're not one people in the early times. The intermarriages don't always work out and the gambling can lead to war and that type of thing.

Q Can I refer you to Exhibit 1042, Miss Marsden, and that's tab 6. This is -- I'm sorry, now what are these? These are your notations; is that right?

A Yes.

Q Can you just tell his lordship what these are?

A These are -- these are excerpts from various files that made statements related to this migration.

Q Okay.

A This movement of people.

Q So was this just -- was this an indexing source you did from the raw sources?

A Well, when I came to areas where there wasn't always complete agreement in terms of the location like this one where it's variously described in different places, somewhere on the upper reaches of the Nass or at the headwaters of the Nass and Skeena or in between the two of them, and in cases like that I quoted from the files in order to give myself a body of information on which to make my decision.

Q Okay. And if you go in three pages in you see the name Laxwiiyip half-way down?

A Yes.

Q Now, you have this reference from the Beynon index and what are you referring to there?

A Some of Beynon's notebooks went to a university in the states and they created an index. They created a microfilm set which has been -- is in my bibliography and the index is for that microfilm set.

Q Okay. Now, these are files of Beynon other than the ones that are in the Barbeau typed adaawk?

A They're -- it's a table of contents and he has comments in the table of contents in this index.

Q Okay. Now, you say in this note,

> "This territory lies between the headwaters of the Nass and Stikine River and is a large plateau country. It is spoken of as the place where the story of Temlaham and Go'a,(6)..."?

A No, no, that's the linguistic spelling.
Q Okay. Sorry.

"...originate. In fact, in a narration of Go'a received years ago I remember that the informant mentioned Laxwiiyip as the place where Go'a came from and where the scene of the battle between two villages was started and only Go'a and her daughter survived, et cetera, then again I remember my old grandmother who gave as the place of origin of the House of Gwis gyen as Laxwiiyip at the head of the Stikine among the Tahltans."

And is this -- is that a quotation from Beynon himself?
A Yes, it is.
Q And Beynon is deceased now; is that right?
A Yes.
Q Now, is that one of the -- an example of the sources that you looked at in order to place the location of Laxwiiyip where this war took place?
A Yes. He's indicating in this case two separate Laxwiiyip, just for clarification.
Q Okay. Can you just expand on that, what you mean, what you're specifically referring to?
A Well, Laxwiiyip I refer to in my report is a large area at the headwaters -- if you go to the headwaters of the Nass and the Skeena and the Stikine they all are very very close together, and there's a large plateau area there. And anywhere in that area can be considered to be Laxwiiyip or a particular village site. It's a similar phenomenon with say Temlaham where you have the Temlaham area and village sites within it. It's a -- it's a term for a settlement area as opposed to a specific village site that you can pinpoint. And so in the first one at the headwaters of the Nass and Stikine River, the actual location of the ancestors of Gwis gyen is slightly to the north of that, but within the Laxwiiyip area.
Q Thank you. And the other cards or references are from other sources which are in your bibliography that you've taken out these -- just extracts so you would have them organized?
A Yes.
Q Okay.
A See, if you look on the very last -- second last page

of those.

Q Yes.

A The informant in the Hartley Bay file is talking. He says:

> "From Gitwinksihlxw", that's Canyon City, "on the Nass, from there to Wiilaxyip, the big plateau between the Skeena and Nass. Their original place at the headwaters of the Skeena was called Luugwetalganga'at (the place of canes). The ga'at was a ceremonial cane and wherever it was kept was called Ga'at and the people were called Gisga'at people of the cane."

And that is also this -- the Gitga'ata, or the people of the cane, and that's why they called that village by that name. So you can see that there are a number of names there referring to this location and you need to have the sense of the spectrum of the names in order to understand it.

Q And that was one of the reasons, I take it, that it took you so long in terms of your research?

A That's right. I had to make sure that I had covered all of the relevant sources.

MR. GRANT: Thank you. Now, what I would like you to do is to take a look at tab 13 of your -- of Exhibit 1042-7, my lord. This is a time line prepared by the witness to -- which is nothing more than a summary of certain parts of the report, and in anticipation of my friend making some objection, I wish to describe that it was prepared -- it is nothing more than the material in the report and I requested the witness to prepare this as a guide for the court and ourselves rather than editing.

THE COURT: Well, where do I find it, please?

MR. GRANT:

Q It's at tab 13 of that, I believe 1042, which is far over to your right. I believe that one over there. Yes. And it was just prepared this week, so it does not contain -- this does not contain information that's not in the report itself; is that right?

A No, I just summarized it and made reference to date sources in the left-hand column.

Q Okay. Now, the first section we have not yet come to the original Northcoast peoples, but we've been talking very briefly about the two cultures merge.

Now -- and you've listed the creation of fireweed and Temlaham era and you talk here about a number of socio-political and cultural characteristics, and I just wonder if you could just assist us by saying which of these were apparent in this era we've now talked about, which is the period of time of the creation of the fireweed up until their dispersal to Temlaham?

A Well, in the previous section you have the gambling, the feuding leading to war, what I consider to be the foundation of the wilnat'ahl wilsxw witxw socio-political organization, which is the two villages of -- across the river from each other which intermarried. And then if you go on to the creation of the fireweed you have the house group, the crest, the adaawk. In the Ska 'wo adaawk they talk about the chief of the sky teaching them to memorize their history and the importance of it, the crests on the house fronts, personal names given to the brothers, the fact that the brothers are the chiefs and that the sisters are with the brothers, which is this form of matrilineality that is among the Gitksan. I think that covers it.

Q Thank you. And you refer to this at page 109 and 110 of your report where you state at the bottom.

> "With the creation of the Fireweed, the coastal socio-cultural influences came into their own where previously they had been a more silent element."

And then you go on to describe -- you're referring to some of these elements that you've now described; is that right?

A Yes. But they're covered more completely in the earlier --

Q In the earlier material?

A In the description of the earliest groups.

MR. GRANT: Yes. Okay. I'd ask at this point, my lord, to mark as the next exhibits, Exhibit 4, 5, and 13, tabs 4, 5 and 13 of Exhibit 1042, and I'd ask to mark Exhibit 6 for identification only because the witness has referred to it.

MR. WILLMS: Well, my lord, 4 has already been marked for identification.

THE COURT: Yes.

MR. WILLMS: Five I have no objection to and 13.

THE COURT: 1042-5, yes.

(EXHIBIT 1042-5: Tab 5 of S. Marsden's document binder)

MR. WILLMS: Thirteen I object. That can be marked for identification, but --
MR. GRANT: Well, I say it should be marked proper, my lord. All it is, is it is a summation of material in the report. There's no new disclosure there that my friend did not already have at the time of the report two years ago.
THE COURT: Well, it's not a long document, Mr. Willms, is there something in there that you say isn't taken reasonably and conveniently perhaps from the report.
MR. WILLMS: I have some trouble with the Madeek 3580 plus or minus 150. I also have trouble with --
THE COURT: Isn't that what those interesting men told us?
MR. GRANT: Professor Matthews and Professor Gottesfeld told you those dates. That's right.
MR. WILLMS: Yes, that's not -- the problem I have with that, my lord, is that Dr. Gottesfeld you remember in his first draft report he hypothesized that the grizzly bear was the land slide, and then quite wisely, in my submission, my friends did not advance that as part of Mr. Gottesfeld's opinion. And now --
THE COURT: Well, they wouldn't be allowed to do that.
MR. WILLMS: No. And so I don't know anybody that has been allowed to date the grizzly bear adaawk, when that grizzly bear came over the mountain, down to that date there. I also -- the Preston Clague(ph) material there, in terms of the original Northcoast people, in my submission, my lord, it's fine as an aide-memoire to my friend. It doesn't need to be an exhibit if all it is is a summary.
MR. MACAULAY: I have another objection, my lord. This does not give the flavour of the opinion at all. It's not just a summary. It's a very different kind of thing. I think the -- it's the opinion your lordship should be reading, not the summary, the opinion as a whole. That is not intentionally so, of course, but it's -- it tends to be misleading.
THE COURT: But if it was put in the front of the opinion as an index it would have been unobjectionable, wouldn't it?
MR. WILLMS: Well, then it would have been disclosed two years ago, my lord.
THE COURT: Well, I appreciate that, but what I'm troubled by is

I don't think --
MR. MACAULAY: It's not an index. It hasn't got pagination, no, that's right. If it were put in front of the opinion as an index it --
THE COURT: Or after the index and before the text as a summary, then it wouldn't have pagination necessarily.
MR. GRANT: Well, I'm not -- my lord, I'm not suggesting that you read this instead of the report. I'm very -- but this deals with the social and political and cultural characteristics which is part of what the witness' -- that happened at each time as reflected in the adaawk and the witness, on my request, has listed them for ease of reference. They're each within the sections of the report that are labelled in the same way. I'm talking here about the listing on the right-hand column. They're not -- and the titles. And with respect to the references on the left-hand column I will have the witness speak to each of those. Those are -- that is information -- that is just information relating to the dating, that is not -- that is based on the assumptions that she made. It's an ease of reference for you as to what the development of socio-political and cultural characteristics that occurred at the time, and it's all in the report.
THE COURT: Well, this has got to be one of the most unnecessary disputes we've had in this trial. I really have difficulty seeing what harm would be done by putting it in or by leaving it out. My problem is that I just haven't read the report, so I don't know whether it's a reasonable summary of what's in the report or whether it has additional information in it. If it has any additional information in it, it probably shouldn't go in. If it doesn't, it seems to me that there's no harm in it. What is there in it Mr. Willms and Mr. Macaulay that doesn't come right out of the report?
MR. WILLMS: Well, I'm at a bit of a disadvantage, my lord, having received it for the first time yesterday. One thing that is clear as Mr. Macaulay indicated, is that it gives equal prominance to things which certainly do not have equal prominance in the report. I mean, feuding and war is described in one line along with other things like territorial ownership by river or part of it, whereas when you read the report I don't know -- I don't think I could find, maybe the witness could find, in the first 3,000 years where she talks about territorial ownership by river. I don't read

that in the adaawk. I don't read it in her summaries of the adaawk. It would take sometime, my lord, but I can say that after reading the witness' report and then reading this summary right now and yesterday that this summary is not an accurate summary of the report.

MR. GRANT: It's a summary of socio-political and cultural characteristics, and it's not intended to be an entire summary of the report at all, but those aspects, and I'll tell you why I requested the witness to do it, my lord. It was pragmatic. I wanted to shorten down the time of the witness on the stand. That was quite simply all it was. I said take these features out of the report and list them so that we do not have to spend half a day going through those particular aspects in greater detail.

THE COURT: That's the best argument I've heard so far.

MR. GRANT: And that was the sole reason I had to do it.

MR. WILLMS: I take it that we're not going to go back to the report. We can finish up with this summary and that will be it.

THE COURT: On socio-political and cultural characteristics.

MR. GRANT: With respect to socio-political and cultural characteristrics. All I will do when I deal with each area is refer the witness to this chart. That's my intent. But, of course, the -- that's on those -- development of those characteristics in the report.

MR. MACAULAY: How about the 60 pages on Shamanic warriors and Halayt power?

MR. GRANT: That I'm leaving to Mr. Macaulay who seems to be very interested in that particular area, and he can cross-examine to his heart's content.

THE COURT: I don't think that, in view of the discussion we've had, that there's any harm in marking the documents, and I don't think there's any magic in marking it or marking it for identification, so it will be the next exhibit which is number 10.

MR. WILLMS: I think it will be 1042-13.

THE COURT: Yes.

(EXHIBIT 1042-13: Tab 13 of S. Marsden's binder, "Time line socio-political cultural overview")

MR. GRANT: And it will be the time line social cultural overview.

THE COURT: Yes. All right.

MR. WILLMS: Now, 6 I've got a different --

THE COURT: We haven't talked about 6.

MR. WILLMS: I think my friend tendered it for identification.
MR. GRANT: It's the same kind of material we've already dealt with.
THE COURT: Yes, 1042-6 for identification.

(EXHIBIT 1042-6 FOR ID: Tab 6 of S. Marsden's document binder)

MR. GRANT: And my friend said that -- oh, yes, 1042-4 was already in for identification.
THE COURT: All right. How are we getting along, Mr. Grant?
MR. GRANT: I feel now that we're into the evidence itself we're not doing very badly at all. I had not anticipated we would be over a day and a half in qualifications, but I'd like to be able to assess it and I certainly would at this time tomorrow be able to advise you.
THE COURT: You'll be all day tomorrow?
MR. GRANT: I anticipate I will be all day on direct evidence, yes.
THE COURT: Should we plan to sit an extra hour tomorrow afternoon if necessary?
MR. GRANT: Maybe I could ask your lordship whether or not Thursday is equally possible for you.
THE COURT: Yes. We can sit an extra hour on Thursday as well, if necessary. By the time we get to Thursday night we're getting close to the end of the week. Are you anticipating we're going to have to sit on Saturday?
MR. GRANT: Well, I had asked -- that was something more in my friend's hands. I'm hopeful that I will -- I'll finish tomorrow or with some -- or very -- or not very long into Thursday morning. That's what I anticipate.
THE COURT: Well, counsel --
MR. WILLMS: If that's -- if my friend will be finished Thursday morning, we'll be finished Friday night without sitting extra hours, if my friend is finished Thursday morning.
MR. MACAULAY: I agree with that, my lord.
THE COURT: Yes. All right. Well, then we'll sit an extra hour tomorrow afternoon if the situation changes and it seems that it's necessary to do that in order to accomplish what Mr. Willms and Mr. Macaulay think is accomplishable. All right.
MR. WILLMS: My lord, there's one matter that I raised yesterday and that is, as described by the witness, the work that she did for legal counsel which incorporated some of the work and reflected the work in her report, the same subject matter, and my friend at the time I

raised it said that he wanted to check your lordship's ruling on that, and what my suggestion is is that my friend, if he disagrees that it's producible under your lordship's ruling, I ask that my friend have it available for your lordship sometime tomorrow so that you can review it so that it doesn't hold up the cross-examination.

THE COURT: Mr. Grant?

MR. GRANT: Well, I told my friend that I would deal with this with him tomorrow morning, and the reason is that I have to -- I have now looked at your ruling and I have to discuss this matter with the witness because of the way -- of what my friend is referring to in the transcript, and what the witness has referred to. I have to canvass that as to what specifically we're dealing with here. In principle I have absolutely no difficulty at all if there's going to be -- if I'm going to argue that it's not producible under your previous ruling, there's no difficulty with disclosing it to you, subject to me checking with the witness that what I have is here in the city. If not, I'll have to arrange to bring it down.

THE COURT: We'll speak to the matter again tomorrow morning.

MR. GRANT: Yes. Thank you.

THE REGISTRAR: Order in court. Court stands adjourned until ten o'clock tomorrow.

(PROCEEDINGS ADJOURNED TO 10:00 A.M. JUNE 7, 1989)

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

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Tanita S. French
Official Reporter