Vancouver B.C.
October 20, 1989.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia this 20th day of October, 1989. In the matter of Delgamuukw versus Her Majesty the Queen at bar, my lord.

DAVID RICARDO WILLIAMS, resumed:

THE REGISTRAR: May I remind you, sir, you are still under oath?
A Yes.
THE REGISTRAR: Thank you. And would you state your name for the record, please?
A David Ricardo Williams.
THE REGISTRAR: Thank you, sir.
THE COURT: The Chief Justice asked me to extend his regrets and apologize, gentlemen, for detaining me. It's all his fault. Mr. Adams.
MR. ADAMS: Thank you, my lord. A couple of preliminary matters, my lord. First of all, yesterday the witness had generously offered, and I had accepted the offer, to produce such of Ms. Kurz' material as were not privileged and I wonder if my friend can indicate when that material will be forthcoming.
MR. GOLDIE: My lord, I am going to object to its production. Ms. Kurz' reports do not constitute a source upon which Mr. Williams relies. He relied upon his own research. She's not a primary authority or a secondary authority which he cites in support of his conclusions. She constitutes no greater -- has no greater standing, if I may put it that way, without any -- in any derogating from her abilities, no greater standing than a newspaper report or a book which suggests a line of inquiry, and I would, accordingly, object to grounds of relevance. As to its production, and I submit, my lord, that it's such a work or a series of reports do not fall within the area compendiously described as work product. There are no -- as I say Mr. Williams didn't rely upon that, so that's not a source of his -- of his work.
THE COURT: Well, let me see if I can sort out some concepts here. This lady is -- was employed by or instructed by the Province to do historical research.
MR. GOLDIE: She was -- she was instructed by my firm to explore

1 sources and report on sources of information which
2 appear to have some relevance to this lawsuit at a
3 time when we were having considerable difficulty in
4 determining what the issues were.
5 THE COURT: Now, then, if she's -- if she's equated to a
6 potential expert witness, her -- the product of her
7 research would be privileged until she went into the
8 box, wouldn't it?
9 MR. GOLDIE: That's correct.
10 THE COURT: And then where the circles overlap is where the
11 witness was exposed or exposed himself to her
12 research.
13 MR. GOLDIE: And it became part of his work product or it was a
14 source upon which he relied. But the letters between
15 counsel and the witness are now part of what he
16 must -- part of what he must disclose, because of the
17 possible affect those letters might have on his
18 opinion. That's independent, but all else is -- has
19 to be referable to the sources upon which he relies.
20 Now, if he had said I rely upon Ms. Kurz' research and
21 her opinion with respect to a certain document, that's
22 a source. But he doesn't rely upon that and when Ms.
23 Kurz says there is -- there is a book about the
24 Collins overland telegraph which was published in
25 1938, that doesn't become a source; unless Mr.
26 Williams goes to that book, then it becomes the
27 source. As I say, there are basically two grounds
28 upon which I make my objection. The first is
29 relevance. The second is that it lies outside the
30 area of what the witness can be tested on as a source
31 of information. How can -- how can Mr. Williams be
32 cross-examined on anything unless it's part of his
33 work product? And he has stated that he did not rely
34 upon Ms. Kurz for opinions or conclusions. If I'm --
35 if I am walking down the street and somebody says to
36 me, Say, you ought to read a newspaper article on
37 something.
38 THE COURT: You should see what's in the Globe and Mail this
39 morning.
40 MR. GOLDIE: Yes. And I without going to that newspaper article
41 make an assertion in a court of law and say, Well,
42 it's in the Globe and Mail because Mr. so and so told
43 me that, then my source doesn't become the Globe and
44 Mail. My source is Mr. so and so. And that's not
45 what this witness has said.
46 THE COURT: Can I be reminded, do counsel have it convenient or
47 in their memory better than mine to what Mr. Williams

said about Ms. Kurz yesterday?
MR. ADAMS: Yes, my lord.
MR. GOLDIE: Yes. It's at page 21112.
MR. RUSH: And 11.
MR. GOLDIE: My friend picked up her name. There is a reference in the correspondence to a person named Leslie Kurz. That's 21111, beginning at line 18, and he says:

> "She again, I believe, is a researcher engaged by the Provincial Attorney-General.
> Q And what part, if any, did she play in the collection of your documents?
> A None."

MR. ADAMS: And then he corrects himself, my lord.
THE COURT: Yes. Yes.
MR. GOLDIE:

> " -- she amassed a collection of documents which I read or certainly looked -- read indeed, but I don't think have -- I don't think I have -- excuse me -- included in any of my documents lists any material which she has collected."

So it's -- she's -- so far as he's concerned she's not the primary or secondary source of his opinions. He says on page 21112:

> "There -- there was -- there was some material in her -- there was -- I recall there was in her material some items which I myself already had.
> .....
> In one or two instances. The other material I did not use."

So we are very far afield from the work product of an expert witness. And I would make the same objection if my friend asked for the work of Mary Jane Jones who is the next person that crops up in the correspondence. I can tell your lordship that a number of names crop up in the correspondence. Some of them dead.
THE COURT: Yes. All right. Thank you. Mr. Adams.
MR. ADAMS: Well, my lord, my friend has read some but not all of the discussion with the witness.

THE COURT: Well, I have read the rest of page 1111 and on into the end of my own interjection at line 27 on the next page.

MR. ADAMS: Yes. What I call your lordship's particular attention to is the fact that the witness yesterday believed he had this material here in the courtroom with him. Now he turns out to have been mistaken in that belief.

THE COURT: Yes.

MR. ADAMS: But in my respectful submission there is some reason to infer that this material is in the witness' mind in some fashion connected with the opinion he's rendered and that's why he thinks he is carrying the material around with him when he comes to give evidence.

THE COURT: Well, he says at line 6 or 5:

> "I would have to look at her material to give you a precise answer, but the fact is I did not use it. There was -- there was -- there was some material in her -- there was -- I recall that there was in her material some items which I myself already had."

MR. ADAMS: Yes. And if "use," my lord, is understood in the sense of rely for an opinion, my friend may be correct. But in my submission the category of what's produceable is wider than what the witness decides to rely on. There is something that he has considered he may have made a mistake in failing to include it or to comment on it and in my submission I should have an opportunity to know whether that material has been considered and ought to have been included. And I refer to your lordship's ruling of November 7, 1988 at page ten where you say:

> "It is settled law that anything related to the litigation in the possession of the witness must be produced for inspection unless a claim to continued privilege is properly made. This would include letters of instruction, fee agreements, written communication from the party or its agents or lawyers relating to the assignment, memos and drafts and any other written material which has or might have been considered by the witness preparing his report or opinion or evidence."

1 And in my submission this material, so far as I know
2 about it from the witness, is squarely in that
3 category.
4 THE COURT: Well, is it, Mr. Adams? He said, "I didn't use it."
5 MR. ADAMS: But he doesn't say, my lord, that he didn't consider
6 it.
7 THE COURT: Oh, well. I think that's shaving the roast of beef
8 too thin, isn't it? I am sure that's semantical.
9 MR. ADAMS: He says so on page 21111 at line 31.
10 THE COURT: 21111.
11 MR. ADAMS: 111?
12 THE COURT: Yes.
13 MR. ADAMS:
14
15 I read or certainly looked -- read indeed --
16 there is no -- "
17
18 "-- she amassed a collection of documents which
19 I read or certainly looked -- read indeed, but
20 I don't think I have included in any of my
21 document lists any material which she had
22 collected."
23
24 Now, in my submission the fact that the witness
25 chooses not to include the material in his document
26 list doesn't insulate him from having considered the
27 material.
28 MR. GOLDIE: Well, it's the documents that he read.
29 MR. ADAMS: And I also refer your lordship to 111 at line 21 and
30 2 when he was asked, "Is that someone you know?" And
31 the answer was, "I have met her." Now, I didn't
32 explore that further, because we got to the material
33 and the witness volunteered it.
34 THE COURT: Yes. I do not think I am going to order this
35 material be produced. The breadth of the present
36 practice is exceedingly broad, but there has to be
37 limits to it and when the witness says that my
38 attention was directed to some material, looked at it,
39 I didn't use it, it seems to me that the inquiry ought
40 to stop there, otherwise it seems to me that the scope
41 of the inquiry is even broader than it should be. If
42 the language that I used in the ruling to which Mr.
43 Adams referred goes so far as to include this
44 material, then I think I have not stated the
45 proposition as precisely as I should have. I think
46 that what is required to be produced is anything that
47 the witness uses and relies upon or anything that may

affect his credibility, but when he says I looked at this material, it was brought to my attention, I looked at it and I didn't use it, I think that's the end of the inquiry.

MR. ADAMS: My lord, I have sets of tabs for volume --

THE COURT: Thank you.

MR. ADAMS: -- one of my cross-examination that I would like to hand up. They go from 16 to 31. I don't expect that we will get anywhere near as far as 31.

MR. GOLDIE: You will have to give us a new volume if you do that.

MR. ADAMS: I would.

THE COURT: There is just two, aren't there, Mr. Adams?

MR. ADAMS: I am sorry, my lord?

THE COURT: Just two, 16 and 17?

MR. ADAMS: No. It goes right through to 31, my lord. 16 and 17 are already in at tab --

THE COURT: Yes. All right.

MR. GOLDIE: What's your 17?

MR. ADAMS: 17 is the transcript.

MR. GOLDIE: Oh, yes.

THE COURT: All right. Thank you.

MR. ADAMS: While I'm on this binder, my lord, I have to correct something I said yesterday with respect to 1172-16, which was the field letter. I believe I indicated it would come from the Church Missionary Society material in the Vancouver School of Theology library and in fact I am instructed it came from the main University of British Columbia library but same source, Church Missionary Society papers.

THE COURT: Main library at U.B.C.?

MR. ADAMS: Yes.

THE COURT: Thank you.

CROSS-EXAMINATION BY MR. MR. ADAMS (Cont'd):

Q Mr. Williams, you will recall that late in the day yesterday we were talking about the sometime Indian constable, Big Louis?

A Yes.

Q And I wonder if you could refer, please, to page 13 of your opinion summary. Which is Exhibit 1173.

A Yes.

Q And there at the bottom of page 13 having referred to Big Louis you quote from a 1890 letter of Mr. Fitzstubbs?

A Yes.

Q Praising Big Louis in his devotion to the law?

A Yes.
Q All right. Now, when you included that quotation you were aware, weren't you, that Mr. Loring had specifically responded to that letter?
A The 1890 letter?
Q Yes.
MR. GOLDIE: Perhaps we should get that in front of us.
A I would like to see the letter, Mr. Adams, that you refer to of Mr. Loring.
MR. ADAMS:
Q Well, let me ask you to look in the cross-examination binder Volume 1 at tab 2 at page 28.
A Yes.
Q And there under the heading "Indian Unrest 1889" in this extract from your working papers 19 lines from the bottom, so about three-fifths of the way down you will see you say, "Loring, on the other hand,"?
A Oh, yes.
Q

> "... produced statements from other persons present who said that Big Louis had encouraged defiance of the potlatch law, and Loring stated that he himself had heard Louis say that at both October meetings, at which Fitzstubbs was not present."?

A Right.
Q And then you say that dispute between Fitzstubbs and Loring was not resolved?
A Right.
Q Now, I take it you were looking at a document when you said that Loring had produced statements from other persons present, etc.?
A Yes.
Q And were you aware that that was a specific response to the Fitzstubbs 1890 letter that you quote on page 13?
A I cannot now recall being specifically aware of it, but I made the statement in that report, I must have seen it.
Q All right.
A There were statements from other persons who were at the meeting on this subject.
MR. ADAMS: My lord, I am handing up a document which is an extract from the Attorney General of British Columbia's document 4783. If that could be shown to

the witness, please.
THE COURT: This isn't in previously?
MR. ADAMS: We will come to that, my lord. It's not.
THE COURT: All right. Thank you.
MR. ADAMS:
Q Now, Mr. Williams, if you could first look just at the cover page of that document that has the number 4783 on it?
A Yes.
Q You will see the description there:

> "Copy of DIA file entitled 'Babine agency - Correspondence regarding the impediments to enforce law and order among the Indians... "

A Yes.
Q Do you recall reviewing that file?
A At the moment I cannot say that I recall it, no. I haven't seen the document yet.
Q All right. Now, I have here the complete 4783, which includes this letter and I have not, my lord, made copies of this. But it includes the -- Mr. Loring's letter of October 12, 1889 which we talked about yesterday?
A Yes.
Q And it includes some what I might describe as higher level bureaucratic correspondence about what to do about the reports of Louis' activities? Do you recall seeing some of that?
A I don't.
Q A clerk of the Privy Council writing to the Superintendent General of Indians affairs and Mr. Fitzstubbs -- I am sorry, Mr. Field writing to Mr. Fitzstubbs, you had referred to that as part of your evidence in chief?
A Yes.
Q Yes. And Mr. Fitzstubbs letter of March 13, 1890.
MR. GOLDIE: Excuse me. Could we have a copy? The witness should have that in front of him.
MR. ADAMS: Well, my lord, this is one of the witness' documents.
MR. GOLDIE: No. I am asking to have the documents placed in front of the witness so he can follow you.
MR. ADAMS: Yes. Well, perhaps you can look at tab 79C of your documents and that will be in Volume 4 and that's Exhibit 1179.
THE COURT: I am sorry, Mr. Adams, what tab number, please?

MR. ADAMS: It's 79C, my lord.
THE COURT: Yes.
A Yes.
MR. ADAMS:
Q Now, I just want to show you -- I will show my friend first.
MR. GOLDIE: Well, that's not a complete set of the documents you are referring to.
MR. ADAMS: I understand that, but --
MR. GOLDIE: Could you place those in front of the witness, please.
MR. ADAMS: What I am going to ask the witness to do is to tell me that this is the same letter as he included in his documents.
MR. GOLDIE: Well, that's fine, but my friend has referred the witness to a series of documents and before he answers any further questions I think he should have those documents in front of him. Especially if he's going to be asked to identify any of them.
MR. ADAMS: Well, my lord --
THE COURT: Well, is there any problem of putting them before him?
MR. ADAMS: I only have one copy, my lord. It's an extensive document. The only ones I want to ask him about are the ones that I have just put in front of him and the one that he included in his own materials.
THE COURT: All right.
MR. ADAMS:
Q And I simply wanted to ask you, Mr. Williams, whether this document dated March 13, 1890, an extract from B.C., document 4783, is the same as the document you included under tab 79C?
THE COURT: Well, it's got a different date, hasn't it?
A This is not -- I am sorry, 79C?
THE COURT: 79 --
A The document you have shown me of March 13, 1890 is not the document which I have at tab 79C.
MR. ADAMS:
Q I am sorry. Let me back up for a second. Yes. I am sorry, my lord, I don't have the tab reference and I am just proceeding on the basis of the document that I have just put in front of the witness, the extract. And that is the July 5, 1890 letter from Mr. Loring to Mr. Vowell. And where I had begun, Mr. Williams, was asking you if you recall having seen that document before?
A If I may read it. Yes, I have -- I think I have seen

this document. I think I have read it.
Q All right. Had you seen it at the time that you wrote your opinion?
A I don't think I had seen it in March of 1987. I think I saw it subsequently.
Q You will agree with me, will you, that it appears to be a reply to Mr. Fitzstubbs' letter of March 13, 1890 that he refers to that in the first four or five lines on page one?
A Yes. I am not -- I am not sure of the date of Fitzstubbs letter, but yes, it seems to be in reply of one written to Fitzstubbs, yes.
Q And if you look on page 54 of your opinion report, document 17, opposite page --
A Excuse me.
Q -- 13.
A Please, there is not much room to manoeuvre in this witness box. What page?
THE COURT: The witnesses aren't expected to have room to manoeuvre in the witness box, Mr. Williams.
MR. ADAMS:
Q Page 54, which is your references to the opinion summary.
A Yes.
Q And document 17, opposite page 13, in the middle of the page?
A Yes.
Q And you say there in your note Fitzstubbs spoke of Big Louis in a letter to the Attorney General dated March 13, 1890 and you give the reference?
A Yes.
Q That's the letter you are quoting on page 13, isn't it?
A I believe so. Yes.
Q All right. And you recognize then, do you, Mr. Loring's letter as a directory response to the letter from which you quote?
A Yes.
Q All right. And this is what you will recall Mr. Loring having said beginning -- well, at the beginning of the letter he says he is replying to Captain Fitzstubbs of March 13, 1890:

> "... as for the reasons of having appointed Indian Louis as Constable, of which of one of the reasons is, that the white population from the mouth of the Skeena to Peace river gave him

a very good character"?

A Yes.
Q And that's the Fitzstubbs, part of the Fitzstubbs' quotation, isn't it?
A Yes.
Q All right. And Mr. Loring says this, beginning in the second paragraph:

"In reply I must state, that Louis is known to but a very few white men, as he stayed in the Interior nearly all his time, committing depredations in the Sicanee Territory with other few Kit-khsuns."

A Yeah.
Q

"In explanation I must note that a few malcontents of Kit-khsuns invest -- "

Or "infest," depending on whether you believe the typed version.

A I think he probably means infest.
Q All right.

"-- the Sicanee Country to reap a rich harvest in beaver, and to gain their purpose not even stop in destroying the Beaver dams which causes irreparable loss to the Siccanees, and bloodshed will following sooner or later on that account. A salary of $60.00 a month and nothing to do are the means of his being at Hazelton. By the Indians he is despised for some reason or other. He gave out, that he was saving, in order to give the grandest potlach ever known of on the Skeena River."

Now, let me ask you to go down to the last paragraph on page two:

"Furthermore that in December 1888 Louis had shown much loyalty and pluck in arresting an Indian -- "

And there again he's referring to Fitzstubbs'

comments, is he not?
A Yes.
Q All right.

"-- an Indian Pacht charged with murder, having on that occasion confronted and overcome the physical opposition of his own people and their assembled guests. If this assertion was made to the Indians it would fill them with disgust and ridicule the idea as stated above. As nearly every Indian on the river knows, that Pacht nearly dead with an abscess in his side -- "

A Oh. Yes. There is no doubt whatever I have read this letter.
Q Yes.

"-- since succumbed to the malady -- "

A That certainly cements it.
Q All right.

" -- and was hunted Vendetta Lake by the opposite faction of young men, while he had no one to side with him but his old mother. Pacht told all the Indians on his way down to Hazelton from Kish ga gash, that he must have medicine and was tired of being hunted about, sought refuge in giving him himself up. Pacht staying at Kits-pioux, and Louis as usual at ending a potlatch going on, heard of Pacht's presence and persuaded him to come to Hazelton, as there was a reward offered. The only objection raised by Pacht was, as stated by those present, that he was on his way and rather go alone. The only opposition if any was by some old women giving their fears that he might be hanged, to which Pacht remarked that he was sick and dying by inches and was not given even rest enough to sleep. As to Louis' prudence, adherence to law, and order, etc. I may make mention, that some Christian Indians came down from Lower Lakalsap and laid the complaint that Louis with some followers took possession of the next house to the one they held divine services in and started a

gambling ring, and with sticks, tins and shouting interrupted their service."

And over on page four you will see that there are further complaints against Louis that Mr. Loring either makes or reports?

A Yes.

Q And he goes on in the middle of page four:

"As to Louis having done no more, than to deliver the message entrusted to him by his Chiefs."

And again, you understand that as a reference to Captain Fitzstubbs' comments?

A I don't know.

Q You don't recall that being included in the document you are quoting from on page 13?

MR. GOLDIE: Well, let's get that in front of us.

A I -- you'll have to --

MR. GOLDIE: It -- it's in Mr. Williams' collection.

MR. ADAMS: Yes. I am afraid, my lord, I don't have a tab number for that in Mr. Williams' collection.

MR. GOLDIE: All right. Let's have it.

MR. GOLDIE: I think --

A It may be tab 34C.

MR. GOLDIE: Yes. I think that's it, my lord.

A It's tab 34C, my lord.

THE COURT: Thank you.

A Volume 3 of my documents.

MR. ADAMS:

Q Then it appears that it's in twice, my lord, because the same letter seems to be --

A Well, I can read the passage, Mr. Adams, from Fitzstubbs letter from March 13, 1890, tab 34. See, he says, Fitzstubbs says "of a charge by Mrs. Loring that Louis, Big Louis had spoken disrespectfully to Mr. Loring. Fitzstubbs says, and I quote:

"I immediately investigated the charge and came to the conclusion that the constable had not done more than deliver the message entrusted to him by his chiefs."

Q Yes. And that --

A "And I so informed Mrs. Loring." So that when Loring himself in this passage on page four talks about the

1 chiefs, he's talking about the village chiefs, not Mr.
2 Fitzstubbs as a chief.
3 Q Oh, I understand that. What I ask you to confirm now
4 is that on page four when Mr. Loring refers to Louis
5 delivering the message entrusted to him by his chiefs
6 he's refering to that comment of Captain Fitzstubbs?
7 A That's right.
8 Q All right. And, my lord, the same document is in Mr.
9 Williams' materials at tab 72.
10 A 72?
11 Q That is the Fitzstubbs letter from which the witness
12 just read.
13 A I am sorry, Mr. Adams, I missed you did you say tab
14 72?
15 Q Yes. The one you identified at 34C is also at 72.
16 A I see. Right.
17 Q All right. Carrying on in Mr. Loring's letter of July
18 5, 1890 he says in the middle of page four:
19
20 "Gh'ail has been at Blackwater Lake for the
21 last 2 years -- "
22
23 And you understand that to be a reference to a Kispiox
24 chief?
25 A Yes.
26 Q All right.
27
28 "-- and did not even know of my existence or of
29 my coming. With the most diligent enquiry am
30 not able to find one Indian who knows anything
31 about a message."
32
33 And then in the last paragraph on page four he says:
34
35 "I would have refrained from making mention of
36 the complaint in my letter of Oct. 12, '89 if
37 Capt. Fitzstubbs had paid any attention to my
38 request after complaining to him in person to
39 wit: To question Louis in my presence, and to
40 reprimand the same, if reprimand due him, in my
41 presence. I found with certainty since that
42 Capt. Fitzstubbs was not in position to do so.
43 Instead of settling matters according to my
44 request, he went to work getting up affidavits,
45 not stating facts, but suiting the occasion and
46 a certain purpose. It is not surprising they
47 were made out in the dark, without witness

when, signature of a witness could easily have been attained. The whole of the transaction would never come to my notice would have never come to my notice only through spies of the same being furnished me by the Department."

MR. GOLDIE: "Copies" I think that is.
A Yes. Well, no. It's -- I think it's spies.
MR. GOLDIE: Well, that looks like --
A I don't know.
MR. GOLDIE: Looks like an "o" with the "c" left off.
A Yes.
MR. ADAMS:
Q Or maybe a "c" without the "o". I can accept that. And carrying on:

"In accordance with Capt. Fitzstubbs conscience his case was a very weak one, and lacking foundation in order to substantiate matters, to bring into use a letter purporting to be written privately, or unsolicited.
I am not at all surprised at Rev. Mr. Fields eulogizing a person as a paragon of sublime qualities and virtues -- "

And you have seen Mr. -- and referred to Mr. Fields' letter in that connection."
A Yes.
Q

"-- whom he was not in a position to know officially, or figuratively speaking, outside of his own house."

And the person being referred to there is Captain Fitzstubbs, isn't it?
A Yes.
Q

"If the Rev. Mr. Field would work more among the people, he would gain the profit by being better posted in giving his opinion."

Perhaps "opinions":

"As to his remarks about the Indians they are ridiculously absurd."

And over onto page six in the middle of the page, paragraph beginning:

> "Hereby I am sending in refutation to what was reported to have been said, the statements of Mothe and of Kitspious Jim Holland is in the mines. I had Indians to come to my house asking for me to make a statement and offering their signatures, but did not think it necessary."

And carrying on:

> "I forgot to make mention in the matter of Rev. W.H. Pierce I was not here at the time, but Rev. W.H. Pierce of Kitse-gukla complained to me that Capt. Fitzstubbs made an official grievance out of a purely personal affair. In this that they had a religious meeting at Hazelton and Capt. Fitzstubbs requested to see a woman (a convert) which reverend W. H. Pierce objected to except in the presence of two male converts.
>
> I can attest to the fact, that Capt. Fitzstubbs' ambition is to ride a high horse and to have no one stand in his way, or question the end, that justifies the means. I have heard complaints made which out of courtesy I deferred to a time, when a reserve would exist, and closely define my charge of the Indians. I trust that truth will out as water finds its level. By truthful sources I heard that Capt. Fitzstubbs before my coming here told the Indians potlatching and dog-eating was wrong and even against the law, and changed his views on the subject after my arrival, to that it was alright and sent words to that effect broadcast, to keep doing as they have been. This the Indians cannot fathom. They are confused. Everything has been going on smoothly since Capt. Fitzstubbs departure. There are out two white men and their families residing here. Myself and family are absent part of the time. During the winter generally a few miners are living here. I should not doubt that Capt. Fitzstubbs be hailed on his

return as to a jovial good fellow. I know by good authority that he sat amongst the dog-eaters with the dog-eaters band of yellow bark about his -- "

Is that "big head"?

MR. GOLDIE: "His head."

A "His head."

MR. ADAMS:

Q

" -- about his head and covered all over with feathers.

Wherever I went in my travels I was told by the Indians of their instructions not to mind me.

While at Babine, the Rev. Father Marice -- "

It's M-a-r-i-c-e here.

"-- also told me that he was made aware of by his Indians, that Capt. Fitzstubbs had said not to mind the Indian Agent, and he would lead them into trouble, etc."

A Yes.

Q Now, you will agree with me that that document is at least highly relevant to the comments of Fitzstubbs that you quoted on page 13 of your opinion summary?

A I won't say it's highly relevant, but it certainly refers to it, yes.

Q It does more than refer to it, doesn't it?

A I won't argue with you, yes. It's a most interesting letter.

Q And it is a direct response to Fitzstubbs?

A Yes. With -- with whom at that time or for whom at that time Loring obviously had a low regard as for Captain -- the Reverend Mr. Field as well.

Q Yes. Now, are you able to tell me why no reference to that letter occurs in your opinion report, in the sources for your opinion report or in the documents that have been tendered through you here?

A Because I don't think -- in the scale of things I don't think I would rely on what Mr. Loring says in this letter. I don't -- he's giving his version of an event Fitzstubbs gave his version Mr. Loring two years

later in a letter said that he had had four more occasions to complain about Louis, but now he, Mr. Loring, realized that he, Mr. Loring, was wrong, in effect is what he said.

Q Well, you describe that in your evidence as recanting, didn't you?

A Yes. Recanting, yes, and one adds up, reflects on these things and in my judgment this did not affect my view of the importance of Big Louis as a constable at -- on salary at Hazelton.

Q Well, you'll agree with me that someone reading your opinion summary and the Fitzstubbs letter that you did include and looking through your entire document collection and not finding any reference whatsoever to this letter might be misled as to the state of the historical evidence surrounding a number of things, Big Louis, Loring, Fitzstubbs, all of which figure largely in your opinion?

A Uh-huh. Well, I say no more than I did not -- you are quite right I, did not refer to it. I read it, I weighed it. I did not disclose every document that I read or discuss, I should say I did not discuss every document I read.

Q Yes. And you didn't include this one either?

A It was not in the list attached to my opinion in 1987, correct. March of 1987, yes.

Q All right. Now, at Volume 3 of your documents, Exhibit 1178, tab 34D.

THE COURT: Have you tendered this?

MR. ADAMS: I haven't and I intend to, my lord.

THE COURT: All right. 18?

THE REGISTRAR: Exhibit 1172, tab 18.

(EXHIBIT 1172-18: Letter dated July 5, 1980, Loring to Vowell)

MR. ADAMS:

Q And you recall, Mr. Williams, referring to your evidence in chief to this letter?

A Yes.

Q And this is the letter you are referring to when you say that Loring later recanted?

A Yes.

Q Now, from your documents in your report we didn't know what he was recanting from, correct?

A Well, I read what -- I can read what he said.

Q Well, let me ask you to answer my question first.

1 MR. GOLDIE: That's what his answer is.
2 THE COURT: I think there is a serious potential for
3 misunderstanding here, Mr. Adams.
4 MR. ADAMS:
5 Q If you are having trouble recalling the letter, please
6 feel free to read it.
7 A I have no trouble recalling the letter at all.
8 Q All right. And is this the letter you are referring
9 to when you said that Loring had recanted?
10 A Yes.
11 Q All right. And then I had asked you to confirm that
12 from your report and your documents nobody could tell
13 what he would have been recanting from, because you
14 didn't include the Loring letter we have just dealt
15 with?
16 A Well, in my report I did not refer to Mr. Loring's,
17 what I call Mr. Loring's recantation.
18 Q No, you didn't refer to the letter, which was tab
19 18 --
20 THE COURT: Yes.
21 MR. ADAMS:
22 Q -- that you say your tab 34D is a recantation of.
23 THE COURT: Well, Mr. Adams, the note that I have beside this
24 letter is "Loring originally opposed Big Louis but now
25 he is complimentary," but I don't know what the
26 witness --
27 A That's what the gist of what I said, my lord.
28 THE COURT: I know Mr. Williams mentioned the word recanting
29 several times and perhaps in this context. I can't
30 read this letter. The part I have underlined looks
31 like he's being complimentary to Big Louis.
32 MR. ADAMS: I will have to find the transcript reference for
33 your lordship.
34 THE COURT: Yes. I would be glad if you could sometime. It
35 doesn't have to be now.
36 MR. ADAMS:
37 Q Let me ask you this way, Mr. Williams: You do say
38 that Loring recanted from the letter we have
39 considered, the one at tab 18 of Exhibit 1172?
40 A I believe so. I believe this is the letter in which
41 he does that, yes.
42 Q All right. And this is the only document you are
43 aware of that you would describe as a recantation of
44 1172-18?
45 A That's right.
46 Q All right. And you have already referred to this, but
47 the middle paragraph of this letter I wonder if you

1 could just read that through, please.
2 MR. GOLDIE: That's what he was starting to read.
3 A
4
5 "It may seem paradoxical, but to my choice
6 there would be no Indian as well adapted to
7 answer the purpose as Big Louis. I had
8 occasion once to disapprove of his conduct. Of
9 late he has shown himself most trustworthy and
10 loyal to which the Honourable P. O'Reilly,
11 Indian Reserve Commissioner, is well cognizant
12 of."
13
14 MR. ADAMS:
15 Q Now, you will agree with me that there is in that
16 passage no recantation of the earlier criticism of
17 Louis. What there is, is there not is, is an
18 observation that Mr. Mr. Loring's opinion of late he
19 has shown himself in a certain light?
20 A I take it as an acknowledgement by Loring that he was
21 wrong in his appraisal of Big Louis and his conduct.
22 Q You don't see him in that document recanting his
23 criticisms of Captain Fitzstubbs?
24 A He says nothing about Fitzstubbs, quite right.
25 Q My lord, the transcript reference that I had
26 volunteered is in Volume 281. This is to recanting at
27 20989 when, with reference to this document at 34D,
28 the witness said at line 24:
29
30 "Mr. Loring is now recanting. He was at one
31 time opposed to Big Louis and didn't think much
32 of them."
33
34 So there is no recanting in this document to the
35 criticisms of Captain Fitzstubbs?
36 A None.
37 Q And you are not aware of a document in which Loring
38 does recant his criticisms of Captain Fitzstubbs?
39 A No, I am not.
40 Q Okay. And you didn't see fit to include any reference
41 to that in your summary?
42 A No, I did not.
43 Q All right. I wonder if you could go to page 16 of
44 your opinion summary, please. And there towards the
45 bottom of page 16 you refer to Mr. Graham's
46 appointment at Omineca and then you quote some things
47 that he reported, and with respect to Lorne Creek?

A Yes.
Q All right. And you quote him saying:

"Many of them -- "

Referring to Indians from up and down the Skeena at Lorne Creek,

"Are selling lumber, building houses, and they are treating the miners with respect."

A Yes.
Q And then a further quotation at the very bottom of the page:

"The Indians are all peaceable and friendly towards the miners here and along the Skeena River."

A Yes.
Q Now, you didn't mean to suggest, did you, that that 1885 characterization of the relationship between Indians and miners at Lorne Creek was the only one that had been made?
A That the only one of what?
Q You didn't mean to suggest that the miners had always been treated with respect by the Indians or that the Indians were always peaceable and friendly towards the miners?
A No, I did not mean -- I am speaking of the situation as he reported it on June 20 of 1885.
Q Yes. Because you were aware that in September 1884 the Lorne Creek miners had petitioned in connection with the relationship between themselves and the Skeena River Indians?
A Yes.
Q All right. And I don't find a reference anywhere in your summary to that petition, although you did mention it in your evidence.
A Yes.
Q All right. And the reference, I wonder if you could look at Exhibit 1035, that is Dr. Galois' materials, Volume 3 at tab 105, and particularly at pages 284 and 85 and you see some of the page numbers are cut off, but 284 is visible.
THE REGISTRAR: Tab 105? This starts at tab -- 01 of Volume 3.
MR. ADAMS: Of Volume 3?

THE REGISTRAR: Yes. What is the document headed up?
MR. ADAMS: It will be a petition. I am sorry, I may have the page reference wrong. It's page 281 in that document.
THE REGISTRAR: Well, we have got 282.
A Oh, I think I have got this somewhere. Yes, I see the document.
MR. ADAMS: It will be the third page into the tab.
THE REGISTRAR: All right. This is it then.
MR. ADAMS:
Q Do you recognize the document that appears there as the Lorne Creek miners' petition?
A I am sorry, what page was it? I was looking --
Q 281, which would be the third page into the tab.
A Oh, yes. The bottom of the page there. Yes.
Q Bottom right.
A Yes.
Q Dated 15th of September 1884?
A Yes. Yes.
Q Now, you have a handwritten version of this in your documents?
A Yes.
Q And it's at tab 56C in Exhibit 1178, Volume 3?
A Yes.
Q And in your evidence in chief you refer to this in the following terms, Mr. Goldie asked you:

> "And then 56c is an indication of the concern of the white community, is it?"

And you answered:

> "Yes. People, indeed, yes. It is actually written for Lorne Creek, but certainly in the area."

A Yes.
Q And that was the extent of your reference --
A Yes.
Q -- to that document? And the transcript reference, my lord, is at Volume 282 page 21023 to 24.
A Yes.
Q Now, that evidence is all the attention that petition gets in either your summary or in your evidence?
A That's all I was -- as far as my evidence was concerned that's all I was asked about.
Q Yes. And the petition itself says beginning at the bottom of 281:

"The undersigned miners of Lorne Creek, Skeena River, beg most respectfully and earnestly to call the attention of the Government to the fact that the attitude of the Indians on the Skeena River has become threatening and dangerous to the lives of the men who are trying to develop and open up the country.
The Indians have repeatedly threatened to drive the miners from Lorne Creek."

A Yes.
Q And if you go over the page 282 --
MR. GOLDIE: Well, I think it's relevant to read the rest of that, my lord, because it provides the context of the grounds.
MR. ADAMS: Well, my lord, Mr. Goldie was -- my friend was perfectly entitled to read any part of it he wished when he had the witness refer to the document.
MR. GOLDIE: Well, I want to make it quite clear, my lord, that the witness cannot be blamed for my shortcomings. I was referring to a number of documents and I did not deem it necessary to have the witness read every document. That's my choice, not the witness'.
MR. ADAMS: Well, my lord, I will have to ask for your direction to that, because if I am to read to or have the witness read every document that I want to refer him to, we are going to be here for a very long time.
THE COURT: Well, you certainly do not have to do that. The evidence I find exceedingly difficult to follow both in chief and cross-examination and I have followed as best I can. But referring to comparisons with documents in different volumes and this process is one that so far as I am concerned is counsel's way of preparing themselves to make a submission. I can follow the general trend, but I do not think it is necessary for the witness or counsel to leave everything unspoken. As Mr. Adams says, we will be here forever if that was the case, and I think, Mr. Adams, you have to do what you think you have to do in order to prepare a record for the argument you will later be submitting and the only problem is that the witness is treated fairly in the sense that he has in front of him what he needs to have in front of him in order properly to respond to your inquiries. And how counsel proceed at this point is their choice.
MR. ADAMS:

Q Now, I had asked you, Mr. Williams, to go over the page to 282 and simply to note that there are three names there as signatories and 36 others?
A Yes.
Q Now, equally you were aware, were you not, in formulating your opinion that in October of 1884 the Gitwanga chiefs had written something about their relationship with the miners at Lorne Creek?
A Yes.
Q And can you confirm for me that the only place in your opinion summary that you allude to the existence of that petition is on page two of Exhibit 1173 and there you say under large Roman numeral V, the first definite hint by natives that they possess proprietary rights in the land was in 1884?
A Yes.
Q And you were referring, were you not, to the Kitwanga chiefs?
A To that petition, yes.
Q Yes. And you can confirm for me that that's the only mention that petition receives in your opinion summary?
A I believe so.
Q All right.
A But I certainly read it.
Q And you will agree with me, if you recall, that whereas in your opinion summary you characterize that as a definite hint by natives that they possess proprietary rights in the land, in your working papers you characterize that same petition as an assertion of title?
A Yes.
Q Yes. And you will agree with me that calling it a definite hint as opposed to an assertion of title suggests a great softening of the effect?
A Well, I accept as an assertion of title.
Q All right. And still in tab 105 of Dr. Galois' Volume 3, the Kitwanga chief's petition is reproduced there.
A At page 284?
Q Page 284 and 5.
A Yes.
Q And it's dated October 10, 1884?
A Yes.
Q And it says:

> "We, the Chiefs and principal men of the Kitwingach village, in meeting assembled, beg

respectfully to address you on a subject which we feel is one of deep importance to our own welfare and that of our children."

A Yes.

Q And then going down three lines:

"From time immemorial the limits of the district in which our hunting grounds are have been well defined. This district extends from a rocky point called 'Andemane' some two and a half or three miles above our village on the Skeena River to a creek called 'Shequin-khaat,' which empties into the Skeena about two miles below Lorne Creek. We claim the ground on both sides of the river, as well as the river within these limits, and as all our hunting, fruit-gathering and fishing operations are carried on in this district, we can truly say we are occupying it.

The district is not held unitedly by all the members of the tribe, by is portioned out among the several families, and no family as a right to trespass on another's grounds: so that if any one family is hindered from hunting on their own ground, there is nowhere else for them to go - they lose all the benefits they derived from their hunting, as they cannot follow the animals across the bounds into their neighbours grounds. We would liken this district to an animal, and our village, which is situated in it to the heart. Lorne Creek, which is almost at the end of it, may be likened to one of the animal's feet. We feel that the white men, by occupying this creek are, as it were, cutting off a foot. We know that an animal may live without one foot, or even without both feet, but we also know that every such loss renders him helpless, and we have no wish to remain inactive until we are almost or quite helpless. We have carefully abstained from molesting the white men during the past summer. We felt that though we were being wronged and robbed, as we had not given you the time nor opportunity to help us, it would not be right for us to take the matter into our own hands. Now we bring the matter

before you, and respectfully call upon you to prevent the inroads of any white men upon the lands within the fore-named district."

And then a couple of lines later:

"We hold these lands by the best of all titles. We have received them as the gift of the God of Heaven to our forefathers, and we believe that we cannot be derived of them by anything short of direct injustice."

And then skipping down to six lines from the bottom:

"Please tell us distinctly whether or not you are prepared to preserve the district we claim from the inroads of the whites, and will keep all white men off it.

We have arranged to hold another meeting before the opening of spring, before which time we hope to have your answer; if not, we will then be obliged to take such measures on our own account as we may consider to be necessary for maintaining our lawful inheritance intact."

A Yes.

Q Now, are you able to explain to me and to his lordship why you didn't see fit in your opinion summary or indeed in your evidence to discuss that petition?

A I was not asked to inquire into the history of the assertion of the Indian title. As I have said a number of times, if I ran accross material which related to it, I passed it on, but I was not asked to pronounce upon it.

Q Well --

A This was -- this was obviously -- in 1884 there were some difficulties between the Indians at Kitwanga and the miners at Lorne Creek, but evidently the year following it had all died down and by 1887, I think it was, which was the date of Graham's last letter on the subject of relations between the Indians and the white men in mining, everything was fine. The Indians were mining, the whites were mining and the whites were complaining about Graham -- Graham's adjudication in a particular dispute between the Indians in which he had come down on the side of the Indians. So in the context of what I was doing this was obviously of

1 interest, but I didn't think it bore on the task which
2 I had.
3 Q Well, except, Mr. Williams, for two things, that you
4 have agreed with me now on a number of occasions that
5 assertions of Indian or aboriginal title are relevant
6 to the imposition and acceptance or non-acceptance of
7 law and order and that was your subject?
8 A Yes. Well, I certainly read this and considered it.
9 Q And then in your opinion summary at page one, the
10 bottom of the first paragraph you say:
11
12 "My main conclusions, on which I shall
13 elaborate, are as follows:"
14
15 And when you go over to large Roman numeral V, one of
16 those main conclusions is the one that:
17
18 "The first definite hint by natives that they
19 possessed proprietary rights in the land was in
20 1884, and not until 1908 was there a full-blown
21 assertion of them by aboriginal title."
22
23 A Yes, I believe that to be so.
24 Q And it certainly indicates, does it not, that one of
25 your main conclusions was related to when and in what
26 fashion claims of aboriginal title and proprietary
27 rights were asserted by people in the lands claim
28 area?
29 A Well, certainly I referred to it in the summary of my
30 opinion, but it's -- to me it's a statement of fact.
31 It's not -- I am not really giving an opinion there.
32 I think it is so, is it not, what I have said in
33 paragraph five on page two?
34 Q We will explore that when we come to it, but --
35 A See, there is nothing in the petition, for example,
36 about the Royal Proclamation and that was very much
37 part of the 1908 assertions of title.
38 Q Well, it's clearly an assertion of the possession of
39 proprietary rights in the land.
40 A No doubt.
41 MR. GOLDIE: Well, I wonder, my lord, this discussion is going
42 to get into questions of law I am sure for which
43 ultimately are going to be for your lordship.
44 MR. ADAMS: Well, my lord, I'm in the difficulty that I
45 suggested I might be in that I am cross-examining on
46 portions of the report that I have objected to, but
47 that's what the witness does say.

THE COURT: Yes.
MR. ADAMS: As a matter --
THE COURT: Well, you have put before him a document that you suggest reflects on that fifth conclusion and he has said what he said about it and you can put such other documents in the same category, if any, as you may be advised, but I am not sure if it can go a great deal beyond that, but this is cross-examination and you can pursue it if you think that you should.
MR. ADAMS:
Q Well, I only want to pursue one question and that's this, Mr. Williams: The petition from Kitwanga in October of 1884 that we've just read through is a great deal more than a hint, isn't it?
A Well, when I wrote that what I meant was that it was not as detailed or as full an assertion of title as occurred 25 years later. As I said, there is no reference in here to the Royal Proclamation, but there is certainly a definite suggestion of inheritance of title from the God of Heaven, yes.
Q It's not just a suggestion, is it, either; it's a full-blown assertion?
A I don't think it's a full-blown assertion, because I don't think there is any reference to the Royal Proclamation in here as there was in later years and to me what -- that was what I at least had in mind when I used the word full-blown assertion.
Q So if I don't see a reference to the Royal Proclamation, I am not seeing an assertion of aboriginal title?
A Oh, no, not at all. You are seeing an assertion of aboriginal title, but I don't think you are seeing a full-blown assertion of aboriginal title as I use that phrase in writing my report.
Q All right. And it's not full-blown?
A That's what I intend to mean by it.
Q It's not full-blown until I see a reference to the Royal Proclamation?
A That is how -- what I had in mind when I penned those words.
THE COURT: Are you going on to something else, Mr. Adams?
MR. ADAMS: I am still on the same document and I still have a short question.
THE COURT: Yes, by all means.
MR. ADAMS:
Q And that is this. On page 17 of your opinion summary at the bottom of the page you quote Graham as saying

here with respect to the Kispiox people that they depend on the government to protect them. Do you see that?
A Yes.
Q All right. I want to ask you this.
A Yes.
Q Dependence on the government for protection is something that is also reflected in that Kitwanga petition of 1884, is it not?
A They ask, yes, to -- indeed they say whether you are prepared to preserve the district from the inroads of the whites. Is that the sort thing you mean?
Q Yes. That's the kind of protection at least the Kitwanga chiefs in 1884 were looking for from the government is, it not?
A Apparently, yes.
MR. ADAMS: All right. That might be a good place to break, my lord.
THE COURT: All right. Thank you.

(PROCEEDINGS ADJOURNED PURSUANT TO MORNING BREAK)

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

Laara Yardley, Official Reporter,
United Reporting Service Ltd.

1 (Proceedings resumed following short recess)
2
3 CROSS-EXAMINATION BY MR. ADAMS: (Continued)
4
5 THE COURT: Mr. Adams?
6 MR. ADAMS: Thank you, my lord. I was at page 16 of the opinion
7 summary, Exhibit 1173.
8 Q Mr. Williams, in the quotation at the bottom of the
9 page from Graham, you have him saying, "We have a
10 number of Indians here from various tribes."
11 And that's at --
12 A Yes.
13 Q Lorne Creek?
14 A Yes.
15 Q And I take it you can't tell me which tribes those
16 Indians were from?
17 A No.
18 Q Over on to page 17 you say at the top of the page,
19 that "in February, 1886 he visited Kitwanga, where the
20 chief told him he had received a letter from the
21 missionary, Robert Tomlinson, warning him that the
22 village lands might be lost, that is, taken up by the
23 white people."
24 What I want you to confirm for me, if you can,
25 please, is that neither Tomlinson's letter, which you
26 quote later on page 17, nor Graham's letter that you
27 quote on the bottom of 16, refers to village lands?
28 A Well, I better have a look at the letter.
29 Q Well, you quote the Tomlinson letter, do you not?
30 MR. GOLDIE: But he wants to see the letter from -- you're
31 asking him a question about other than the extract of
32 the letter.
33 MR. ADAMS:
34 Q If you go to the Galois documents, Exhibit 1035,
35 volume 4, tab 195. And I think you will find --
36 MR. GOLDIE: I would like to get the reference to Mr. Williams's
37 documents, my lord, if he could be given a minute.
38 A Yes, I have seen this letter, Mr. Adams. It was dealt
39 with by me, I think in my evidence at tab 15-B.
40 MR. ADAMS:
41 Q And is that --
42 A If I may -- sorry.
43 Q One letter or both letters? They are both together in
44 Dr. Galois's tab 195.
45 My lord, I might say the reason I am largely
46 confined to Dr. Galois's evidence documents, is that I
47 I only received the witness's after he had begun his

evidence and I had already marked Dr. Galois's documents to prepare the cross.
MR. GOLDIE: Well, I have had that experience too, my lord.
THE COURT: So have I. I have had this with every witness.
MR. GOLDIE: But the witness is being asked about a quotation from his own document and I think he should be looking at it.
THE COURT: You mean from his --
MR. GOLDIE: From his own material.
A Yes, I have it, my lord.
MR. ADAMS:
Q And you have had a chance to review both the Tomlinson and the Graham letter?
A Pardon?
Q You have had a chance to review both the Tomlinson and Graham letter?
A A chance when, today?
Q Yes.
A No, I haven't reviewed it today.
Q Well, my only question is to confirm for me that village lands is your phrase and doesn't occur in either of those documents?
A I see. Well, those words perhaps do not appear. I can't say because I haven't looked at the material but I take it that that's what they were talking about.
Q I can tell you that in Mr. Graham's letter, the phrases he uses are "lands" and "their lands" and Mr. Tomlinson's description you quote on page 17 of your opinion summary, "your hunting and berry grounds"?
A Well, you see, Tomlinson refers -- two of Mr. Tomlinson's -- I quote now from the second page of Graham's letter, "Two of Mr. Tomlinson's teachers were up the river last summer with letters to all the villages and interpreted to them that the government wanted to take their lands and give to whites at Kitseguecla..." and so on.
Q You weren't suggesting that the lands, that "their lands", the "their" is a reference to the Indians, is it not?
A Yes.
Q And you weren't suggesting that the lands that the Indians considered theirs were confined to those around their villages?
A I merely am quoting what Mr. Graham said and what Mr. Tomlinson said.
Q It's not your understanding that the lands the Indians claimed were confined to the lands around their

villages, is it?
A I see what you're getting at. Well, I took it to be village lands, lands around the villages, not -- but the document, I suppose, speaks for itself. What does the document say?
Q Well, my question now goes to your awareness in general.
MR. GOLDIE: Well, the witness has stated several times, my lord, his position with respect to that. And I don't think that unless my friend wants to open a new subject, what Mr. Williams's understanding about the geographical extent of what is referred to in the document, is of assistance.
MR. ADAMS: Well, my lord, the question arises from the phrase that the witness adopted and I am cross-examining him on what the foundation for the phrase was.
MR. GOLDIE: I thought he --
THE COURT: I thought he had said that, but --
MR. ADAMS: Yes, and I then asked another question, which is:
A Independent of this document, you are aware that the lands claimed by Indians in the claim territory are not confined to the lands around their villages?
A Yes, I am aware of that.
Q That is speaking as of 1886, the lands claimed by the Indians were not confined to the lands around their villages?
A Well I can't -- I don't know. The Kitwanga Petition of 1884 talks about lands generally. I find it very difficult to say, to place geographical limits on what was being talked about. I can do no more than produce the documents and comment on them.
Q Well, you knew, for instance, did you not, that as of the early 1900s the Gitksan in particular had hunting grounds at great distances from their villages?
A I am not sure that I was aware of that.
Q Well, I wonder if you could refer to the cross-examination binder, Exhibit 1172, at tab 13 to page 14, within that tab.
A Yes, all right. I now know what you're -- I now understand the question and know what you're getting at, yes. I am not sure that I was aware of as of 1901, but certainly -- I better have a look at the tab anyway.
Q Just look at the last four lines of page 14.
THE COURT: Page what?
MR. ADAMS: 14, my lord.
A Tab, Mr. Adams, again, please?

MR. ADAMS: Tab 13, page 14. It's the extract from your Gunanoot book.
A Yes, yes.
Q And you write there, "The possession of hunting or trapping grounds is very much a factor in the status of individual families or crests." And you are speaking here of the Gitksan?
A Yes.
Q And "The Yal Crest held ancestral hunting grounds at Bear Lake near the headwaters of the Skeena River 60 or 70 miles northeast of Hazelton and to the north of Takla Lake"?
A Yes.
Q Going to page 18 of your opinion summary --
A Yes.
Q Again, you're speaking of Graham at Lorne Creek?
A Yes.
Q And you quote him there speaking of the mining at Lorne Creek at the top of page 18, with respect to the Indians saying, "many of their disputes and quarrels they refer to the government to settle"?
A Yes.
Q And then you go on, "Later that same year because of some 'dissatisfaction' namely the Indians at Hazelton and Kitsequecla, asked them to go see them which he did"?
A Yes.
Q And this is the proposition I want to put to you, you don't know how many or what kinds of disputes which Indians referred to the government to settle?
A No, I can't categorize them.
Q And you don't know what the dissatisfaction expressed by the Indians at Hazelton and Kitseguecla was?
A I have said in my report -- I said that I doubted if it was a mining dispute.
Q But you don't know what kind of dispute it was?
A I do not.
Q All right. And you then draw the conclusion, at the end of the first full paragraph on page 18, you say, "The point is that he represented law and order and was regarded in those places..." and there you are referring to Hazelton and Kitseguecla?
A Yes.
Q "As well as Kitwanga and Lorne Creek as the person to administer it"?
A Yes.
Q What I want to suggest to you is that if you don't

1 know how many disputes there are or what they are
2 about, and if you don't know what the dissatisfaction
3 is, you don't know whether you are seeing law and
4 order being administered by your definition?
5 A Well, that may be your view of it, Mr. Adams, but
6 certainly was not my view of the documentary
7 references to his activities.
8 Q And what is your view of it?
9 A I have expressed it in my report.
10 Q Yes. And we have talked about the two things that you
11 apparently rely on to draw that conclusion, correct?
12 A I am speaking of his settlement of disputes at Lorne
13 Creek and I am speaking of some dissatisfaction, yes,
14 and whatever that was. That's what -- I certainly
15 rely on that. And other matters as well, which I
16 haven't stipulated, of course, that dispute in 1887,
17 as I referred to on one or two occasions, mining
18 dispute between Indians and whites.
19 MR. GOLDIE: My lord, I am informed that this is an area that
20 Mr. Willms was advised -- I shouldn't say advised --
21 Mr. Willms decided not to pursue in the cross-
22 examination of Dr. Galois, because the concern
23 expressed, I think by your lordship, that by doing so
24 while there was an objection outstanding, he might, by
25 operation of law, have elected to take a course
26 inconsistent with his objections.
27 The reference is at Volume 241, page 17748. And
28 Mr. Willms had started by proposing to put before the
29 witness, Dr. Galois, at that point, his summary, and
30 he had an outstanding objection, which is then --
31 well, it's outstanding at the time, with respect to
32 the report. And your lordship observed at page 17748,
33 line 25: "It seems to me that what your position, Mr.
34 Willms, certainly is, is that if you cross-examine and
35 you do so sufficiently to make some parts of this
36 exhibit admissable..." now that's the summary that he
37 was talking about, "...and I would think at least the
38 parts that you cross-examine on would become
39 admissable, your objection to the report must, to that
40 extent at least, be compromised."
41 Now, I -- then there was a further discussion and
42 the end result of it was that at page 17751 Mr. Willms
43 withdrew the summary, and it's my understanding that
44 he abandoned certain lines of cross-examination
45 because it would compromise the position, as a matter
46 of law. And I believe I am correct in saying that the
47 area that my friend is now on is very much that

1 particular area.
2 Now, I am not too sure if I can provide your
3 lordship with much guidance, except to bring this to
4 my friend's attention, that he may be compromising the
5 objections that he has made to the admissibility of
6 the opinions in the summary report.
7 MR. ADAMS: My lord, this isn't the passage that I had objected
8 to.
9 MR. GOLDIE: I appreciate that. This is a passage that I am
10 instructed was one that Mr. Willms felt he could not
11 cross-examine on, Dr. Galois.
12 THE COURT: Well, I am not going to stop Mr. Adams because Mr.
13 Willms desisted. I am reminded now of what you have
14 just brought to my attention, Mr. Goldie, I think I
15 mentioned the Protopappas case.
16 MR. GOLDIE: Your lordship did.
17 THE COURT: Which I am not sure is particularly relevant but was
18 in the general area. But this cross-examination
19 started upon an understanding to which I believe both
20 you gentlemen subscribed -- to which both you
21 gentlemen subscribed.
22 MR. GOLDIE: I think I did, my lord, I said it would proceed on
23 the same basis as the other cross-examinations.
24 THE COURT: I took you to be saying that you were agreeing with
25 what your friend had said, Mr. Goldie.
26 MR. GOLDIE: That's correct. That's correct. My concern is
27 that having looked up the material, I find that your
28 lordship's observation was that the difficulty was
29 that as a matter of law, rather than as a matter of
30 objection, certain results would follow. And I
31 thought it appropriate to bring this to your
32 lordship's attention because if that is correct then
33 there is nothing I can say that would preserve the
34 matter.
35 THE COURT: Well, I can only say this, that I am going to allow
36 Mr. Adams to proceed and unless I am given the most
37 powerful authority, I will not be imposing that
38 operation of law. I think that --
39 MR. GOLDIE: I am, when I --
40 THE COURT: Some other court might but I am not.
41 MR. GOLDIE: I am thinking of the other consequence, that is
42 that if Mr. Willms may request the recall of Dr.
43 Galois.
44 THE COURT: I will be glad to hear him in that connection.
45 Go ahead, Mr. Adams.
46 MR. ADAMS: Thank you, my lord.
47 Q What I was attempting to suggest to you, Mr. Williams,

is that disputes, the nature of which you don't know, involving Indians whom you can't identify, and dissatisfaction which you can locate but you can't identify, is a thin basis upon which to conclude that, as you do, that Mr. Graham in four places represented law and order and was regarded in those places as the person to administer it?

A I cannot agree it is a thin basis.

Q That's an adequate basis as far as you are concerned?

A As far as I am concerned, it is, yes.

Q All right. I wonder if you could go to page 20 of your opinion summary, please.

A Yes.

Q This is the section you headed law and order, crime?

A Yes.

Q And you deal throughout this section with convictions for crime?

A Yes.

Q Yes. And what I want to ask you first is what do crime statistics tell you which is relevant to the subject of your opinion?

A I thought that crime had some relevance to considering law and order.

Q Yes. And what specifically does the nature of the statistics that you assembled tell you?

A It tells me the number of people who have been convicted, it tells me what the disposition of their cases was, it tells me something about the people who come before the courts, it tells me something about the judicial system, the operation of it, within the claim area. If you like, it draw a picture incomplete, perhaps, but one -- a few brush strokes.

Q And is this what this represents, your opinion summary, a few brush strokes?

A No, it does not represent a complete summary of the imposition of law and order within the claim area but it is certainly one aspect of it.

Q Now, I take if that you don't have any training in statistical analysis for social science purposes?

A No.

Q Or for any other purposes?

A No, although I did study statistics briefly at university, although I make nothing of that. No, I have no specialized training in statistics.

Q You would agree with me that, first of all, convictions are an imperfect indicator of what's going on in a society?

A I am not qualified to say -- comment on that.
Q You are aware, are you not, that there are more offences than there are convictions?
A Oh, yes. But in the sense that not all conduct which might be viewed as criminal leads to actual charges, is this what you have in mind?
Q Yes.
A Yes, that's quite correct, of course.
Q Lots of people do things for which they are not convicted but they have still done them?
A Certainly.
Q And I take it you don't have any way of relating the convictions that you -- the statistics which you have assembled here, bear to the existence of offences that might have attracted convictions if they had been known about or if the law was being enforced?
A True.
Q Okay. And I want to suggest to you that for these figures to be useful you would have to know that, wouldn't you?
A I don't know. I am not able to say. I simply have here in this -- what I have attempted to do is record facts as I found them.
MR. GOLDIE: My lord, I am not sure if the witness is answering the question that was asked. He was -- my friend said "you would have to know that", and I am not sure what he means by "that". Does that refer back to behaviour which is morally bad but doesn't result in a conviction or what?
MR. ADAMS: Well, it seemed, my lord, that the witness understood the question, but it was directed at the -- the "that" was directed to the relationship, if any, between offences and convictions, and you understood that?
A That's how I took it. I didn't relate the actual convictions to conduct of a moral turpitude which did not lead to convictions. No, I drew no relationship between them.
Q And if that relationship, that is, between behaviour and convictions, was significant for your purposes, you would need to know a number of things, wouldn't you, you would need to know accurately what the population was, for instance?
A I am not a criminologist nor a sociologist, my attempt here was to find what had happened, what actually had happened in the courts with cases that came before them. I am not trying to draw any lessons on

1 behavioural matters or sociological matters.
2 Q So you don't purport to tell us here how prevalent
3 what might be identified as criminal behaviour, that
4 is behaviour against the law, was in the land claim
5 territory in the period that you are discussing?
6 A I have said in my summary, at the end of it, I have
7 summarized my views at the bottom of page 24: "The
8 impression one gets therefore from the 20 year period
9 is of a hard drinking community which gives rise to
10 the inevitable offences of drunkeness, intoxication,
11 illegal sales of liquor, assaults and occasionally
12 theft. There seems to me to be a remarkable absence
13 of crime involving physical harm unrelated to the
14 consumption of liquor, even in the few cases of
15 threatening of white settlers by Indians no actual
16 harm resulted. The claim area, or at least the
17 northwest portion of the claim area in the period that
18 I have been considering, was certainly a frontier
19 community, but there is no sense of rampant
20 lawlessness or antagonism between the white and Indian
21 residents of it."
22 Q And my proposition simply is that you couldn't tell
23 that from the crime statistics, conviction statistics
24 alone, could you?
25 A That is the impression that I, as I have stated it,
26 that is the impression that I formed on the basis of
27 the information that I found.
28 Q The figures that you assembled and then corrected in
29 your evidence, you didn't compare those to the figures
30 for any other time in this place or any other place at
31 this time?
32 A I did not.
33 Q All right. Now on the third line of page 20 of your
34 opinion summary, you say that you have compiled
35 statistics of convictions and then you say for the
36 period 1889 to 1910?
37 A Yes.
38 Q And then indeed in the passage on page 24 you just
39 referred to, you speak of the 20 year period?
40 A Yes.
41 Q Now, you don't supply, and I take it you don't have,
42 any figures before or after that period?
43 A There are a few figures before 1889, yes. I have not
44 referred to them in my summary, I admit, but there are
45 a few. I think I referred on the second, on page 21,
46 I said, "prior to 1889 there were occasional
47 references to thievery at the Omineca Mines in the

1870s, but only two actual convictions for theft, both Indians, are noted in 1873 and 1874. There was a homicide in Omineca in 1872, an Indian accused of murdering two Indian women."

In addition to that, I have since discovered that, and it was probably the earliest conviction, was one by Peter O'Reilly in 1871, that may have been -- may or may not have been in the claim area. It's the subject of a tab in my documents, there is an extract from the diaries of O'Reilly relating to it. It took place the second day out of his travels from Babine towards Skeena Forks.

Q The period 1889 to 1910 that you do refer to, you didn't have figures outside that period on which you relied to draw a picture of the area prior to 1889 or after 1910, you just didn't have enough figures, is that so?

A After 1910?

Q And before 1889.

A Yes, that is so. I found it difficult to, after 1910 I found it difficult to have any sort of reliable information from which one could draw statistical information. Prior to 1889, well, after, as of 1889, as of 1888, there was a requirement on JPs to report but, you're right, I concentrated my inquiries between 1889 and 1910.

Q Now, for the period 1889 to 1899, I believe you said that you had found 42 offences, that was your corrected figure?

A Yes.

Q All right. And from 1900 to 1910, you had found, I think, the figure is 242?

A If I can go to my --

Q I am just subtracting 284, which is your revised total on page 22, and taking 42, which is your revised total on the text on page 22.

A I thought the -- I am sorry, Mr. Adams, I am just looking at my notes. I had thought that I had given as the total over the whole period as 284.

Q Indeed you did, that was a substituted figure for the total in the table on page 22?

A Yes.

Q And then in the second paragraph down on the same page, you had said "until that year..." referring to 1900, "...there were only 20 offences." And in your evidence you revised that figure to 42?

A Yes.

Q When I take 42 from 284 I think I get 242.
A I am sorry. Yes.
Q So, you have a ten year period in which you have found 42 offences, you have a following ten year period in which you have 242 offences?
A Yes.
Q Did you consider that that difference indicated that there was a great increase in criminal activity between the first ten year period and the second one?
A I think it resulted from the great increase in the population, perhaps I should say the increase in the population, and the economic activity, the opening of the Yukon Telegraph Line in 1901, the preliminary surveys on the railroad, which were well underway by 1910, the number of people going through the country after the turn of the century was certainly greater than in the earlier years.
Q You will agree with me that there was a marked change from the incidence of criminal convictions in the first ten year period after 1889 and the second ten year period after 1900?
A Marked change in what way?
Q Statistically, numerically.
A Quantitatively, there was certainly an increase, yes.
Q That didn't prevent you from concluding that the pattern was identical over the whole 20 year period, did it?
A I think the statistics from the first ten years of the century bear out what I said in my conclusion that it was a hard drinking community, which gave rise to various forms of criminal activity.
Q Yes, my question was, you had a relatively small number of offences in that ten year period and a relatively large number of offences in the following ten year period?
A Yes.
Q But you concluded that the pattern was the same throughout the 20 year period?
A My observation applies to the whole period, yes.
Q And you say, at the bottom of page 22, that you had not attempted to relate these statistics to the area of population, that's so, is it not?
A What I said was, "I have not attempted to relate these figures to the meagre detailed information we have about the area population in order to find out, for example, the incidence of crime in the area as compared to some norm".

1 Q That was an accurate statement, wasn't it?
2 A Yes.
3 Q I would simply ask you to confirm that you hadn't
4 related the figures to the population?
5 A I had not.
6 Q On page 22 of your opinion summary the table we have
7 just been discussing appears?
8 A Yes.
9 Q You had written about four instances of Indians
10 threatening white men with guns over land squabbles?
11 A Yes.
12 Q And you revised that now to 18?
13 A Yes.
14 Q And even at the time you were writing, when you had
15 four in mind, you will agree with me that not in your
16 summary and not in its references is there any
17 indication of the date, place or circumstances of any
18 of those, as they then were, four instances?
19 A Well, I said that -- when I wrote that, I -- although
20 they were included in the overall statistical table, I
21 had not had in mind that the convictions at Kitwanga/
22 Kispiox in 1909 and at Kitwanga again in 1910, I had
23 not taken those into account when stating the -- when
24 putting the figure at four, but I certainly had them
25 in mind.
26 Q My question was: That to suggest to you that you
27 couldn't tell from anything you had written or
28 anything you referred to in your notes, the date,
29 place or circumstance of those incidents?
30 A I am not sure whether I have referred to the
31 convictions in my summary where I deal with those
32 particular episodes or not. Yes, I see, for example,
33 at page 48, I refer to convictions at Moricetown.
34 Q Was that one of the four that you had in mind?
35 A No, but they are included in here.
36 Q I am sorry, I didn't understand that answer. Was that
37 one of the four or was it not?
38 A I am sorry, Mr. Adams, I am just looking at this. One
39 of the four which --?
40 Q Was the incident you just referred to from page 48 at
41 Moricetown one of the four you referred to on page 22?
42 A Not in that context, no. I confess, no.
43 Q Are any of those four discussed?
44 A I am sorry, I better be -- better not be too quick. I
45 would have to check my notes, Mr. Adams.
46 Q So the answer is as you sit here today you don't know
47 whether they are referred to, the circumstances are

1 referred to anywhere else?
2 A I would have to check my material.
3 Q And you have not discussed, of course, in evidence,
4 the details of the further 15 incidents that you found
5 on your review of the statistics?
6 A Well, they arose out of matters I have discussed later
7 in my summary.
8 Q Yes. My question was that you haven't provided in
9 your evidence any further details of the additional 15
10 instances you found?
11 A Well, I am not quite sure. I find that hard to
12 follow. I referred to these episodes from which those
13 convictions arose.
14 Q And where do you refer to them?
15 A Well, the affairs at Kitwanga in 1909 and 1910.
16 Q That is where the additional 15 instances came from?
17 A The additional 12. If I revised the figure from four
18 to six.
19 Q I am sorry, I have your revision from four to 18?
20 A Four to six and then 18. There were two other
21 convictions of threatening, which were unrelated to
22 the events of 1909 and 1910.
23 Q So if I have -- I am looking for the 14 new ones -- I
24 am sorry, I misstated it as 15, I am looking for the
25 14 new ones, I am looking for 12 in 1909 and 10?
26 A Yes.
27 Q And two others when?
28 A Yes.
29 Q Two others when?
30 A Yes.
31 Q When were the two others?
32 A I think I will have to check my notes, Mr. Adams. Do
33 you want me to do that? I can't tell you from memory.
34 Q What are the notes you have before you?
35 A I have my working papers on this subject, I have my
36 own notes to assist me in coping with my material.
37 Q Are those notes in addition to the ones that appear in
38 your working papers that you have identified in
39 Exhibit 1172?
40 MR. GOLDIE: I don't think what we sent you on October 13th is
41 in 1172, and I should say that 1172 is a selection of
42 what was sent, and I don't know what the basis of the
43 selection is.
44 MR. ADAMS: It was identified as extracts.
45 Q But what I am asking Mr. Williams, and perhaps it's
46 Mr. Goldie who will have to tell me, do you have in
47 front of you here notes which were not included in the

1 working papers delivered to counsel for the
2 plaintiffs?
3 A I don't know. I have my own notes, whether they were
4 delivered to you or not is not my function. I don't
5 know.
6 Q Well then, I would ask, my lord, if my friend could
7 inquire and advise me as to that.
8 MR. GOLDIE: Well, as far as I am aware, my friend has
9 everything. He's made a selection and if it isn't in
10 here, I will ask him to go back and look at what he
11 has got.
12 MR. ADAMS:
13 Q Well, perhaps I could resolve it this way, if the
14 witness finds it necessary to refer to the notes on
15 the stand, perhaps I could see what he is referring to
16 and satisfy myself whether or not it's something that
17 I have seen.
18 THE COURT: Yes, I think you are entitled to do that.
19 MR. ADAMS:
20 Q Mr. Williams, on page 23 of your opinion summary, at
21 the very bottom of the page, you say, of JPs, I
22 believe, that they were eventually given criminal
23 jurisdiction?
24 A Yes.
25 Q You were referring to JPs?
26 A Yes.
27 Q When did that happen?
28 A Again, Mr. Adams, I have forgotten the exact date.
29 The provincial authorities kept a register of JPs who
30 were given criminal jurisdiction, and I think --
31 again, I am guessing now, without looking at my
32 material, I think it was probably 1904 or 1905. But I
33 don't want to be stuck with that date because I am
34 just recalling from memory.
35 Q But the fact that the jurisdiction of the JPs had
36 changed during the 20 year period suggested to you,
37 did it not, that your statistics might not be
38 representative of the period?
39 A Well, it's hard to say because in 1905 there was a
40 stipendiary magistrate appointed who did have broader
41 jurisdiction than the JP. And not all the JPs were
42 given extended criminal jurisdiction, just one or two
43 of them. So I didn't think it was a factor, really.
44 I didn't think it was a significant factor in the --
45 in dealing with the cases.
46 Q On page 24 of your opinion summary --
47 A Yes.

1 Q -- you refer in the fourth line and following to
2 "disturbances on reserves neighbouring to Hazelton
3 which I shall discuss later in this opinion."
4 Do you see that?
5 A Yes.
6 Q Which disturbances were those, please?
7 A I will try my best to give you an exhaustive list of
8 them from memory. But I had in mind the difficulty
9 there, there were two difficulties which led to
10 charges of intimidation at Moricetown, one in 1904 and
11 one in 1908. But I had primarily in mind here the
12 events at Kitwanga and Kispiox in 1909 and 1910.
13 There was an additional disturbance, rather a charge,
14 which led to a charge of intimidation at Kispiox,
15 unrelated to the sort of what I might call the main
16 event, if you like, of a single Indian who had
17 threatened a white settler, and I think that was in
18 19 -- I think that was in 1908 also.
19 Q Now, when you speak of the reserves neighbouring to
20 Hazelton, I take it you are not aware one way or the
21 other whether those took place on or concerned
22 reserves?
23 A The material sometimes shows that a particular offence
24 took place on a reserve, in fact frequently shows that
25 the offence took place on a reserve.
26 Q But you're not able to say which of those that you
27 have identified did and didn't?
28 A Not in every case, perhaps, but I do have -- a number
29 of the material does show these offences taking place
30 on reserves and saying which -- and I think saying
31 which reserve.
32 Q When you refer to the reserves neighbouring Hazelton,
33 I take it that's your expanded definition of Hazelton
34 in that it includes Moricetown and Kitwanga?
35 A Yes. I believe that Hazelton was the -- there is no
36 question that Hazelton was the -- there is no question
37 that Hazelton, in effect, was the judicial centre for
38 the area.
39 Q You are aware, are you, that it's a considerable
40 distance from Hazelton to Moricetown?
41 A Yes.
42 Q And from Hazelton to Kitwanga?
43 A I wouldn't say considerable, but at that time, 1900 or
44 so, it was pretty troublesome travelling from one
45 place to the other. But I treated them -- I think
46 they were brought in largely to Hazelton for judicial
47 treatment or disposal.

THE COURT: Mr. Adams, sorry to say that if I don't adjourn now this trial will intrude further into my social life, and we don't have such a distinguished visitor very often. So I am afraid I must adjourn now to 2 o'clock, please.

(Proceedings adjourned to 2 o'clock 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.

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO LUNCHEON ADJOURNMENT)

THE COURT: Mr. Adams. No. Mr. Rush.
MR. RUSH: My lord, a very minor matter, but nevertheless one of of the things that need to be dealt with. During the course of Mr. Magwood's evidence there were two exhibits, 1018-9 and 1018-11 that were for identification.
THE COURT: Yes.
MR. RUSH: And you may recall that Mr. Willms suggested I look at two other exhibits.
THE COURT: Yes.
MR. RUSH: I have done that and on the basis of my examination of those I'm prepared to agree that the exhibits should be marked for identification proper so they can be 1018-9 and 1018-11.

(EXHIBIT 1018-9: Teit on Tahltan and Kaska Indians)

(EXHIBIT 1018-11: Kitwancool Submissions to Faulkner)

THE COURT: All right. Thank you. Just see if I can find --. All right. Thank you. Mr. Adams.
MR. ADAMS: Thank you, my lord.

CROSS-EXAMINATION BY MR. ADAMS (Cont'd):

Q Mr. Williams, you were at page 25 of your opinion summary, Exhibit 1173, and we had been talking about statistics with criminal convictions and the statistics that you assembled in table as now amended on page 22 does refer to what -- exclusively to what you understand as criminal convictions?

A Yes. In the broad sense convictions not necessarily under the Criminal Code, but what a lawyer, I think, would take to be criminal convictions.

Q Okay. Now, I want to ask you some further questions about the potlatch law and that breaches of that law you would understand by the same definition to be crimes, would you not?

A Yes.

Q All right. And let me ask you, first, when you were reading in the documents and you found references to potlatches, what did you understand you were reading about?

A Well, first, Mr. Adams, I found no record of any conviction for an offence under the so-called potlatch law in the period I was examining.

Q That is between 1889 and 1910?
A Yes.
Q All right. And do you take it from that that that law was not being enforced?
A I -- that is is my -- my view. I say I found no evidence of any conviction under it. I take it that that is the case.
Q That it wasn't being enforced?
A Yes.
Q Okay.
A I don't think the provincial authorities were much in favour of bringing prosecutions under it.
Q Yes. And certainly it was in force to your knowledge throughout the period for which you were collecting --
A I believe so.
Q -- statistics of convictions? Yes, all right. Then that will bring me back to my original question, which was what you understood when you read the term potlatch in the documents you reviewed, what you understood you were reading about?
A I was reading about the, I suppose the feast, is it, to the --
Q You understood that that was an equivalent term, did you?
A Yes.
Q Yes. And what is that in your understanding?
A Well, I am not expert on what does or does not constitute a potlatch, but if it is the holding of that periodic feasts by the band for various occasions, then that, I suppose, is the potlatch.
Q Yes. And did you understand what the function of that activity was in the Indian societies?
A Through -- through reading I have some very rough familiarity with it, but I pretended not to have an exact knowledge of the subject.
Q All right. There was assistance in that understanding, if not in the documents you reviewed, in formulating your initial opinion; certainly when you reviewed Dr. Galois' documents you ran across documents that referred to the function of that institution, if I can call it that?
A Not only in his material, but material that I myself saw.
Q All right. And one example of that I want to refer you to first is to be found in Exhibit 1035, Volume 3, tab 145. And if you look at the last page of that long tab you will see that it's dated at Vancouver the

27th of February, 1922, and it purports to be signed by Indians of British Columbia by their solicitors Dickie and DeBeck. That's on the very last page.

A Yes.

Q All right. And if you go to the front page of the tab you will see that it appears to be directed to the Superintendent General of Indian Affairs in Ottawa?

A Yes.

Q And to describe itself as the Memorial of the Indians of British Columbia?

A Yes.

Q All right. And then under the heading number one, the institution known as the potlatch?

A Yes.

Q And when I go five lines down in that -- I am sorry, four lines down there is a sentence beginning: "Owing to the fact"?

A Yes.

Q

> "Owing to the fact that they were without writing, the only alternative was the administration of all their affairs with certain ceremonies, solemnities and certain publicity: this was done through what is commonly termed the 'Potlatch.' The Potlatch in its broadest sense is the gathering of those who are directly, or indirectly concerned, either of one tribe, or more than one tribe, for the formal publication of some event whereby the status of an individual, or group of individuals with respect to another individual, or group of individuals, or to the tribe or nation was altered or fixed. The extent of the events thus proclaimed was extremely wide, including political or administrative, judicial, economical and social."

A Yes.

Q And then going over the page, on the first line on page two it says, starting partway through the sentence:

> "... it included agreements between tribes, peace treatise and declaration of war; essentially it included ratification of all

1 contracts, transfer of property, transfer of
2 the property rights in names, crests, dances or
3 songs, either by heredity or by contract;
4 judicially it included the administration of
5 both criminal and civil law, granting of
6 divorces, etc., in short, any event which would
7 require definite statement before those
8 interested and some degree of publicity, in
9 order to make it a matter of record."
10
11 A I see that.
12 Q That doesn't conflict with anything that you know
13 about the --
14 MR. GOLDIE: Excuse me, my lord. I point out to my friend that
15 he is seeking to elicit opinions with respect to
16 matters that the witness has not expressed an opinion
17 on and in respect of which he has said he is not
18 qualified to express an opinion.
19 MR. ADAMS: My lord, what I am exploring is the witness'
20 understanding of something that he read and his
21 perhaps enhanced understanding of something that he
22 has said he reviewed. That's as far as I am going. I
23 am not asking him for an anthropological opinion. I
24 am getting at his understanding of the historical
25 documents which he has been qualified to review and
26 render opinions on.
27 THE COURT: Well, I have heard it said so often in this trial
28 that the understanding of the documents is my problem.
29 Keeping that in mind, why is the witness'
30 understanding of the document a matter that you feel
31 you should pursue, Mr. Adams?
32 MR. ADAMS: In my submission, my lord, it goes to whether he
33 knows what he's reading about. Since the term occurs
34 throughout the documents that he has reviewed and
35 purports to render an opinion on, if he doesn't know
36 what they are talking about, that may be the basis for
37 a later argument about the weight to which his opinion
38 is entitled.
39 MR. GOLDIE: Now, my lord, the witness was asked what he
40 understood by potlatch and he gave an answer. But
41 this is asking him to interpret the document or pass
42 an opinion, with respect.
43 MR. ADAMS: Well, with respect, my lord, it's not. It's asking
44 him if he has read it and if he understands it.
45 THE COURT: Well, all right. I think I'll allow the question.
46 I'll have to see if I can find a useful distinction
47 between the proposition that has been so often

1 repeated in this trial that I just mentioned a moment
2 ago and that I am doing now, and that may emerge and
3 if it doesn't, well, then, I'll discount it, but that
4 may not be possible, of the determination until after
5 I have heard the witness' answer to the question, so
6 you may proceed.
7 MR. ADAMS:
8 Q My question based on the extract that I just read to
9 you, Mr. Williams, was simply that that wasn't in
10 conflict with anything that you knew about what the
11 potlatch was?
12 A No. I may say this is the first time I've seen this
13 document. I have not hitherto seen it until today.
14 Q This is not one of Dr. Galois' documents that you did
15 review?
16 A Well, if I did I'd forgotten about it. I don't recall
17 seeing this, no.
18 Q All right. And let me ask you --
19 A And I -- nothing in my meagre knowledge of the details
20 and importance of the potlatch leads me to think it's
21 any different. I --
22 Q Okay.
23 A There it is.
24 Q And you will have noticed in the passage that I read
25 to you on the second page a link between the potlatch
26 and the transfer of among other things property rights
27 in names and crests?
28 A So it says.
29 Q Yes.
30 A I am not able to say that that is so.
31 Q Yes.
32 A Of my knowledge.
33 Q Let me ask you to look at another document and that is
34 in Exhibit 1035 Dr. Galois' Volume 2 at tab 77. Now,
35 this is in the tab, my lord, in two different
36 documents. It seems that we found a readable copy of
37 the top half and the Federal defendant found a
38 readable copy of the bottom half. And when this was
39 referred to in Dr. Galois' cross-examination, we were
40 having to jump between the two versions. This --
41 A Just a moment, Mr. Adams, please. In seems to be
42 backward in here. What is this that I'm looking at?
43 Q I think you'll find two versions of the same document.
44 One is a legal size lighter coloured one at the back,
45 this one. And I think between the two of them that's
46 possible to read the entire text.
47 MR. GOLDIE: What's the date of this?

MR. ADAMS:
Q It appears to be dated March 13, 1890. And you'll be able to see, Mr. Williams, from at least the first copy, that it appears to be from Mr. Fitzstubbs to the Attorney General of British Columbia?
A Yes.
Q All right. And the passage I wanted to ask you to look at begins on the first page -- well, yes. The second line you will see that the subject is "the law against the Indian custom known as potlatch"?
A Yes.
Q All right. And towards the bottom of the first page there is a paragraph beginning "granting readily."
MR. GOLDIE: Yes.
A Yes.
MR. ADAMS:
Q

"Granting readily that the good of the Indians is desired by all, there would appear to be fair ground for a difference of opinion as to what should be done on the Upper Skeena, at present practically on the subject of the 'Potlach.'"

A Yes.
Q

"It can without difficulty be understood that the philanthropic and missionary point of view may not in all cases commend itself to the magistrate though the supremacy of the law -- "

MR. GOLDIE: Just a second. These pages are out of order.
MR. ADAMS:
Q And I think you'll find it easier reading this at the top of the second page of the darker copy. Do you have that? "Supremacy of the law"?
A Yes, "the supremacy of the law."
Q

" -- ought I should think to be the first consideration on the part of all who have to deal with Indians."

A Yes.
Q All right.

"On the other hand, it is I believe said that to get the people as far as may be, out of tribal state, is the first step towards reformation and advancement, and that the potlach system being imbedded, in that tribal condition, is a great obstacle for this hope for progress. It is further said that various evils attend the celebration of the potlach.

The Indians on the other hand appear invariably to regard the institution of the 'Potlach' with affection, as they charish it as a social, and from their point of view beneficent institution which has grown up amonst them during perhaps centuries past."

And then going over to the third page, you will see he lists a number of numbered items, and when he gets down to five, about a third of the way down page three --

A Yes.

Q He has:

"The public giving away of these articles conforms to the publicity of all their tribal affairs."

A I see that.

Q And then six:

"That the Potlach is an assurance or benefit society having its rules by which its members are governed and its property distributed to those entitled,"

And so on?

A Yes.

Q Okay. Now, was that a document that you reviewed after the formulation and writings of your opinion summary?

A I believe so.

Q Okay. And again, there is nothing there that contradicts anything you know about the potlatch or feast in the among the Gitksan.

MR. GOLDIE: Well, I record my objection, my lord, for the same reason that I did before.

THE COURT: Thank you.

A With my limited knowledge of the subject, I agree.

Nothing disagrees.
MR. ADAMS:
Q All right. And you have said that so far as you are aware there were no convictions for violations of the potlatch law in the period 1889 to 1910?
A In the claim area that I found.
Q In the claim area, yes. And you are aware, though, having reviewed Dr. Galois' documents that were such convictions at least in the 1920s?
A Yes.
Q Okay. And you are aware, are you not, that the feast or the potlatch is linked to at least Gitksan crests?
A It -- in a general way, yes.
Q Yes. And you have written about that, haven't you?
A Yes.
Q And I would refer you to your publication Trapline Outlaw, which is at tab 13 --
A Yes. I talk about it there.
Q -- of Exhibit 1172 into page 14 where we were viewing before.
A Uh-huh, yes.
Q And there in the passage I've already read to you:

> "The possession of hunting or trapping grounds was very much a factor in the status of individual families or crests."

A Yes.
Q Yes.
MR. GOLDIE: Where is the reference to the potlatch, please? Is there a reference to the potlatch in this?
MR. ADAMS:
Q You had agreed with me, had you not, Mr. --
MR. GOLDIE: Well, excuse me. I am sorry, I am asking my friend --
MR. ADAMS: I am attempting to answer my friends' question.
Q You had agreed with me, had you not, that you understood at large a link between the potlatch or feast and crests among British Columbia Indians?
A I had understood in a general way that that was the case, yes.
Q Yes. And --
A So I have read.
Q Yes. And did you understand that with respect to the Gitksan?
A Yes.
MR. GOLDIE: Well --

A My limited knowledge. Again, I am a layman of these matters, Mr. Adams.
Q Yes.
MR. GOLDIE: I just wanted my friend -- my friends' question to the witness was in relation to you had written about it and I was asking him for assistance in where it is written, if it is in this book, just save me the trouble of going through it.
THE COURT: Are you able to assist, Mr. Adams?
MR. ADAMS: I may have been in error, my lord, in saying that the witness had written, making that explicit connection. I'm asking him, have asked him and I understand that he has said that he does draw that connection on the basis of his limited knowledge.
Q Now, I want to refer you to something else in Exhibit 1172 and that's at tab five, Mr. Williams. That was the extract from Adams on "The Gitksan Potlatch"?
A Yes.
Q And if you look at page 73 of the extract, I'm in the second full paragraph, "If we examine".
A Yes.
Q

> "If we examine the categories of people who contribute to a Gitksan potlatch, it obvious that they all share a common interest in the productive resources which are being inherited by the host. Anyone who contributes money to a feast has a claim (of sorts) to use the hunting and fishing grounds of the host and will not be killed for trespassing if found there."

And then skipping down to the next paragraph:

> "The 'children' have a direct interest in the resources and are given permission to use them, in fact, as a return for their contributions; and at the same time the 'children' are approving the host as a suitable person to control the resources."

And then going over to page 102, which is the next page in the extract, the last paragraph. Do you have that?
A Yes.
Q

> "The potlatch gives recognition to status and

in doing so it sanctions the taking over of House names by heirs whether they cme from within the deceased's lineage or from without. One's status and identity are recognized and confirmed by the potlatch which allows all participants to know which territory one is associated with by virtue of the name one uses when making contributions. No one in the society lacks such assignment to a set of resources."

A I see that.

Q Okay. Now, does that not tell you, when you are reading historical documents with reference, at least in this case, to the Gitksan, that when you are reading about a potlatch you are reading about an institution which is concerned with control and ownership of, among other things, crests and territories?

MR. GOLDIE: I object to that question, my lord. Of course, anybody reading this can draw their own conclusions. There hasn't been -- there hasn't been one question which identifies this document as far as the witness is concerned. He -- if he's supposed to agree with it, they are all series of conclusions that are stated here and my friend asked doesn't that tell you -- well, of course, anybody that reads it, that's what it tells.

MR. ADAMS: My lord, I am still getting at the witness' understanding of what he reads in historical documents. If his answer is that he doesn't understand what he is reading, I am content with the answer, but I submit that I am entitled to ask for it.

MR. GOLDIE: This is not a historical document.

MR. ADAMS:

Q Let me put it to you this way, Mr. Williams: The historical documents that you reviewed to render your opinion here didn't tell you what the feast or the potlatch was, did they?

A There were -- the historical documents which I read so far as convictions were concerned occasionally referred or at another matter, occasionally referred to potlatch, certainly the potlatch system, but although I read them I did not have full understanding of the subject and I did not pursue it and I was not asked to pursue it.

Q Yes.

A And I have not -- for example, today I not have seen until today this article by John W. Adams.
Q Yes.
A I can't say what -- I'm not in any position to comment on what he says. I simply don't know.
Q Yes. And what I put to you is that when you read reference in the historical documents to potlatches or feasts, you didn't know what you were reading about?
A I was reading about potlatches and feasts.
Q Yes.
A Without full understanding, because I don't have the expertise to have a full understanding of the system.
Q Yes. And indeed, with very little understanding at all?
A I think --
MR. GOLDIE: Well --
A -- were the ordinary understanding that a person of reasonable intelligence might bring to it. That's all I claim to have done.
MR. ADAMS:
Q Was it part of that understanding that there was a connection between the existence of the feast and the ownership of territory?
A I have read that this is so, but I am not able to say whether that is in fact the case or not.
Q All right. Let me ask you, then, a hypothetical question. Accepting for the moment that there is such a link, I want to suggest to you that when you read that the law against potlatches is not being enforced and when you read in any case, whether or not it's being enforced, it's not being obeyed, you are reading about something that is highly relevant to the question of whether the imposition of law and order was or was not accepted by people in the land claims territory.
MR. GOLDIE: I object to that, my lord.
THE COURT: Well, I am not sure that the subject matter is objectionable, but I'm a little troubled about whether I grasped the whole significance of it, because of many components to the question. Perhaps you could put it again and I will see if I can follow it.
MR. ADAMS:
Q Okay. You will recall, Mr. Williams, I was asking you a hypothetical question and the hypothetical component of it was to ask you to accept for the moment, for the purpose of answering the question, that carrying on feasts is linked to ownership of territory?

MR. GOLDIE: Well, my lord, it's the hypothetical aspect that I object to. Mr. Williams has said it time and time again that he is not a student of the potlatch. And he is being asked to accept as a hypothetical proposition knowledge of the feast system not today, but at the time of his examination of records, 1889 to 1910. That's what he's asked to accept as a hypothetical proposition and he's not in any position to accept that. If Mr. Adams wants to ask the question, a direct question, is the potlatch relevant to law and order, that's a question that I think Mr. Williams has to answer.

THE COURT: Well, I'm troubled, Mr. Adams, by the -- by the ingredients that go into the connection between a potlatch and title. There is a myriad of possibilities raised by that brief description. And I think that the witness could have accepted your proposition and given an answer based upon an understanding of your proposition that may be quite different from what you might have in mind from what I might have gathered in my mind. And to that extent I think the objection should be sustained. But you can try it again, if you want to put the question differently. But I'm just not sure all three of us are going to have -- I suppose I should include Mr. Frey and Mr. Goldie in there, so I am not sure the five of us are going to have the same understanding of what the assumption is.

MR. ADAMS: All right, my lord, I will try again.

Q Mr. Williams, if there is a link between feasting, potlatching, and ownership of territory, and maybe I can be more precise about the link I'm asking you to assume, that one of the things that happens in feasts is that ownership of territory is asserted and witnessed? Are you following me so far?

A I do. I follow your question so far, yes.

Q All right. And continuing to feast or potlatch where a feature of the feast is asserting and witnessing claims to ownership of territory, you are okay so far?

A Yes.

Q All right. Then I'm asking you to accept the proposition that when Indian people keep on doing that in the face of a legal prohibition, that's the potlatch law, that that is a highly relevant consideration in assessing whether they have accepted the imposition of law and order as you define it?

MR. GOLDIE: My lord, my objection remains. It isn't necessary

to bring in the question of title. The proposition that has been established so far as a matter of fact is that there is a so-called potlatch law. The other proposition which the witness has testified to is that it wasn't enforced. Now, what the potlatch law dealt with has not been established as a matter of fact. So my friend wants to bring into a question which has partly been established by fact, an assumption which so far has not been established. And all he's got to do is to say here's a law, it isn't enforced according to your own evidence, isn't that relevant to law and order, and proceed from there. It's -- well, I have said my say.

THE COURT: Well, I think, Mr. Goldie is right in suggesting that the question of the imposition of law or otherwise is touched by the practice of potlatching contrary to law, and I think that I have ample evidence, although I must say I was going to ask counsel, I am not sure if I have ever seen the prohibition, that is the terms of the prohibition. I may have, but I don't remember, and it seems to me that just those bare facts bears on the question, the more difficult part of it is whether that conclusion is enhanced, if I can use that term, in any way by adding this further dimension of stating or declaring a witness in title. Seems to me if the potlatch is prohibited by law, it doesn't matter or add greatly to the solution to the ultimate question what they did at the potlatch as long as it's accepted that it was a prohibited potlatch. But that's where I think your subtlty is getting us into difficulty, Mr. Adams. And if you think that it's -- that additional dimension adds to the force of your line of cross-examination that you then I think should be allowed to proceed with that.

MR. GOLDIE: I would like to add, my lord, because your lordship has touched upon a point that I think is important and that is the terms of the act itself.

THE COURT: Yes.

MR. GOLDIE: And --

THE COURT: We are assuming that the potlatch was prohibited, but I don't remember seeing the language on the prohibition. I have heard a lot about it. I may have and I have forgotten.

MR. GOLDIE: Under the tab 45 in Mr. Galois' --

THE COURT: Well, I don't have that.

MR. GOLDIE: Documents, Volume 3, the solicitors for the Indian

peoples of British Columbia refer to the law against the potlatch, and they say:

> The first statutory prohibition against the Potlatch was an enacted in 1884.... at the instigation of the Missionaries, who believe they saw in the Potlatch a heathenish institution antagonistic to the doctrines they were preaching, rather than in its true significance, as we have described above."

Now, they have gone through that particular thing and whether they are right or wrong as to the reason for it is another question. And then they go on to say:

> "The reasons given for the law against the potlatch were twofold; first that Indians improverished themselves by giving away all their possessions; and secondly that certain of the dances had degenerated into orgies."

And then they set out the section:

> "every Indian, or person who engages in or assists in celebrating the Indian festival known as the 'Potlatch' or the Indian dance known as -- "

And I can't make out the word,

> " -- is guilty of a misdemeanour and liable..... etc."

And then there is another section which prohibits encouraging the festival or the dance. And they go on to say:

> "The two different offences were therefore the Potlatch, supposed to cover the evil of a man's improverishing himself and the -- "

No, I can't make it out.

> "-- dance, to cover the evil of the dances. This law did not give satisfaction, owing to the fact that the terms 'Potlatch' and 'Tamanawas' -- "

T-a-m-a-n-a-w-a-s, that's the dance.

> " -- were not defined terms, Tamanawas being an Indian word known only by certain tribes and unknown to others, although the dance itself was known by other names. Consequently in 1897 the law was changed and the offence was described as follows:"

And then they set out this section from the revision. I suppose it's a revision to Section 149 of the Indian Act:

> "Every Indian or other person who engages in, or assists in celebrating or encourages either directly or indirectly another to celebrate any Indian festival, dance or other ceremony, of which the giving away or paying or giving back of money, goods or articles of any sort forms a part, or is a feature, whether such gift of money, goods or articles takes place before, at, or after the celebration of the same, or who engages or assists in any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature is guilty of an indictable offence."

And then he says:

> "The only other amendment to the law was in 1918 when the offence was made a summary one, rather than an indictable offence."

So that when one is talking about the enforcement or non-enforcement, one is talking about those specific misdemeanours or indictable offences, as the case may be, and I don't see in it any reference to title.

MR. ADAMS: My lord, I will endeavour to ask a simplified version of my question.

THE COURT: Thank you.

MR. ADAMS:

Q You gathered, Mr. Williams, did you not, from your examination of historical documents, that the feast or potlatch was an important central institution as far as the Indians were concerned?

A I can't accept your language that it was important and central. I gathered that it was certainly a continuing activity. How important or how central it is I am not able to judge.
Q Well, you'll recall that Constable Louis came into some difficulty when his expressed desire to continue with the potlatch ran into his also expressed desire to observe and be a servant of the law?
A Yes.
Q Does that not suggest to you that that was an important institution?
A He evidently considered it of importance to himself, yes.
Q All right.
A But I can't pronounce on the importance of the centrality of the institution.
Q Yes. And you will agree with me, I believe you agreed with me, that on the one hand for the period that you collected crime statistics, that law wasn't enforced, correct?
A I do agree. That seems to be evident. There are no record convictions under it.
THE COURT: I am sorry, did you say the law was enforced?
MR. ADAMS: Was not.
A Was not.
THE COURT: Was not.
MR. ADAMS: That is -- as I understand the witness to have said that he discovered in the period 1889 to 1910 no convictions for beaches of in the lands claim territory.
THE COURT: I am sorry. You said in force, not enforced?
MR. ADAMS: Enforced.
THE COURT: All right. Yes. Now, I understand.
MR. ADAMS:
Q And there is no doubt so far as you know that it was enforced from 1884 on?
A I believe so.
Q And you are aware from your examination of the documents that feasts and potlatches continued to be held?
A Yes, certainly.
Q And that they continued to be held even when the law was being enforced in the early 1920s?
A I don't know that, because I didn't read -- my reading did not go into the 1920s, but there are a number of references in the material before the first war to the -- to potlatches being held quite openly.

1 Q Yes. And that meant, did it not, that the law was
2 being ignored?
3 A Apparently.
4 Q Yes. All right. Let me ask you to turn to page 26 of
5 your opinion summary.
6 MR. GOLDIE: My lord, I think the -- it is obvious from what I
7 read to your lordship, that if a charge is to be
8 brought it has to be brought within the sections I
9 read, so there is -- the word "ignored" comprehends
10 both a willful desire to avoid the law and on the part
11 of the charging people -- part of the enforcement
12 authorities, a belief that a conviction couldn't be
13 obtained, having regard to the language that I read.
14 THE COURT: Well, I have been troubled by the possibility when
15 we are talking about declarations and witness'
16 entitlement, that one could have a feast and in engage
17 in that exercise without breaching the prohibition
18 against potlatching. But I -- and that's just
19 dividing up the concepts. But as a matter of criminal
20 law, what Mr. Goldie says, I think, is indisputable to
21 obtain a conviction, one would have to prove that the
22 impunged conduct had actually taken place deliberately
23 and knowingly and willingly, and then as I say, you
24 could have a feast in the declaration of title, the
25 witnessing of it without offending against that
26 prohibition. That's why I think you are in some
27 semantical or definition difficulties here.
28 MR. ADAMS: Yes.
29 THE COURT: But you are going on to something else.
30 MR. ADAMS: I am, my lord. Your lordship will be aware that
31 there is, of course, extensive evidence from the
32 plaintiffs as to the contribution aspect of the feast.
33 THE COURT: Oh, yes.
34 MR. ADAMS: And that at the appropriate time there will be an
35 argument that that was a feature that the law speaks
36 to.
37 THE COURT: Yes.
38 MR. ADAMS:
39 Q I had moved, Mr. Williams to page 26 of your opinion
40 summary, Exhibit 1173, and that's in the section that
41 you label Indian Tensions, Unrest and Confrontations?
42 A Yes.
43 Q And you say in the first sentence, you refer in the
44 first sentence to a 40 year period from 1872 to 1912,
45 and my question is why did you stop at 1912?
46 A Because I thought in my judgment the significant
47 events leading to my opinion had occurred before the

great war.
Q Yes. Was there a significant event occurring in 1912 that caused you to use that as a cut-off point?
A It probably should have been 1913. I probably had in mind that Kitwancool affair of that year. It was 1912 or 1913.
Q And I think you already told us that your reading covered the period up to about 1918 or 1920?
A Only scattered -- well, not -- few readings after 1914.
Q Yes. And later in that same paragraph, seven lines down, you refer to:

> "Effective acceptance by the Indian chiefs in the Upper Skeena of the political, legal and economic rule of the white community."

A Yes.
Q All right. Now, you didn't mean, I take it, by referring to effective acceptance to render a legal opinion?
A I rendering a legal opinion?
Q You didn't mean to --
A No. I was not asked to render a legal opinion.
Q Yes. And that's not what you were thinking you were doing here?
A No. I was not giving legal opinions.
Q You were talking about the state of mind of the people doing the accepting, weren't you?
A I was talking about the results of these events in my judgment.
Q Yes. Acceptance when it's not a legal concept is a state of mind, is it not?
A I was looking at actions and in my judgment judging reactions and in my view the reaction of the Indian community was an acceptance.
Q Yes, what I asked you was when acceptance isn't a legal concept it refers to a state of mind, does it not?
A It might, but it might not necessarily either. Behavior is as much part -- is as much the potential of acceptance as a state of mind.
Q Well, you only know whether behavior is acceptance if you can infer a state of mind from it, is that not so?
A I am not sure that I understand your question, Mr. Adams. I was attempting to observe specific acts with specific responses and to formulate some opinion about

them. I was not delving into states of mind.
Q All right. So you didn't mean that was accepted, that there was an effective acceptance as a matter of law and you didn't mean it as a state of mind. What did you mean?
A I -- I meant what I have said here:

> "... two and possibly three of these events, apart from the cumulative effect of all of these, resulted in effective acceptance by the Indian chiefs in the Upper Skeena of the political, legal and economic rule of the white community."

Q Was it possible that there was acceptance without anybody knowing that they had accepted it?
A I was judging acceptance by specific response to specific events.
Q Yes. My question was: Is it possible in your terms to have acceptance without the person doing the accepting knowing that they are doing it?
A You mean some form of automatism?
Q No.
THE COURT: Well, isn't it really as simple as this: Are you talking about objective acceptance or subjective acceptance?
MR. ADAMS: Well, I don't know, my lord.
THE COURT: Is it anything more than that?
A I was looking at observable behavior and specific response.
MR. ADAMS:
Q Yes. And you don't know observing behavior, what it means, unless you know the state of mind of the person behaving, do you?
A That's a dilemma that faces anybody at any time. One, I think, is entitled to say if a person behaves and speaks in a certain fashion, one can draw a conclusion from it.
Q About what they are thinking?
A And how they are acting.
Q But the conclusion you draw from how they are behaving is what they are thinking, isn't it?
A If I behave -- I think we are getting into the realm of philosophy here, Mr. Adams. Again, I repeat, my task was to observe specific events and the way people, certain people responded to those events and I add if possible, as I was able to do to draw a

conclusion from them. That's what I have attempted to do.
Q Are you telling me that I won't find anything in your summary or in your evidence that will tell me where as a matter of internal fact Indian people were or were not accepting the imposition of law and order as you defined it.
MR. GOLDIE: I am not sure what my friend means by internal fact.
MR. ADAMS:
Q Of personal subjective acceptance. What we usually understand by acceptance.
A If a person or context of this case, one of the Indian chiefs says something to Superintendent Roycraft in 1888, I take that -- I take it for what -- I take it it means what he says. Now, if that leads one, then, to say that then he would not have uttered those words unless the state of his mind led him to the utterance, then I suppose that may be a corollary. But I wasn't trying to speculate on the state of mind of these people.
Q Because you didn't know what the state of mind of the people was, did you?
MR. GOLDIE: Well --
A I -- how could I?
Q Exactly. How could you?
MR. GOLDIE: Well, how could anyone, my lord.
THE COURT: Oh, I have to.
MR. GOLDIE: Well, your lordship, I imagine, is going to draw some conclusions from observable facts.
THE COURT: Yes.
MR. GOLDIE: Because there is no evidence as far as I am aware of what is inside the mind of everybody who is now long since dead.
MR. ADAMS:
Q Mr. Williams, beginning at the bottom of of page 26 you refer to the Kitseguecla fire in 1872?
A Yes.
Q And you say, beginning on the second line of the paragraph under the heading, "A fire lit by the latter," and here you refer to coast Indians?
A Yes.
Q "When camping at Kitseguecla got out of control."
A Yes.
Q And then you refer over the page to it's attribution "to the white men, on the apparent reasoning that if they had not come up the Skeena to start with, there

1 would have been no fire"?
2 A Yes.
3 Q All right. Now, you're aware, aren't you, that that's
4 only one of the versions of the causes of that fire
5 that was in the documents that you reviewed?
6 A There were two.
7 Q Which two were those?
8 A There was Brown's version and Fitzgerald's version and
9 in each of them they were initially told by the
10 Kitseguecla people that the fire had been set by the
11 Tsimshian coast Indians. One of them saying, as I
12 recall, that it was an act of revenge on the part of
13 the Tsimshians.
14 Q And you didn't accept that explanation?
15 A I considered it.
16 Q You didn't --
17 A But --
18 Q -- accept it?
19 A I was inclined to accept it, but I don't think it
20 makes very much difference. If it was an act of
21 revenge it might be of some significance. I don't
22 know. But there is no question the fire got out of
23 control and it caused serious damage to the village.
24 Q Well, the thing that struck me, Mr. Williams, is that
25 you were ready to attribute it to the coast Indians
26 and ready to attribute apparent reasoning to the
27 people at Kitseguecla when large number of the sources
28 available to you suggested that it was in fact the
29 white miners who lit the fire and caused the
30 difficulty?
31 A There are differing versions of it.
32 Q Yes. And how did you come to choose that one is my
33 question?
34 A I don't think I really chose one. I said I think the
35 Indians attributed it to the white men, which they
36 did. Initially they attributed it to the Tsimshians.
37 Q Well, what you said was "a fire lit by the latter,"
38 referring to the coast Indians?
39 A Yes. And which was certainly a version of the affair,
40 substantiated version of it.
41 Q Well, let me ask --
42 A The first response, if one goes back to the very first
43 thing which people say as perhaps having more weight
44 than something thought of later on, the Indians said
45 it was Tsimshians that were at fault.
46 Q Let me ask you to look at just one document and that
47 is in Volume 3 of Exhibit 1035 at tab 137.

THE COURT: That's Galois, is it?
MR. ADAMS: That's Dr. Galois' documents, my lord.
THE COURT: Tab 137?
MR. ADAMS: Yes. It's Volume 3.
A There is one down here. Is this it?
THE REGISTRAR: No. What tab, Mr. Adams?
MR. ADAMS:
Q Volume 3, tab 137. Do you have that, Mr. Williams?
A Yes.
Q And you will recognize this as the report, by the cover page, report on the proceedings of an inquiry to investigate the conduct of certain Indian Chiefs who refuse to allow white men to proceed up the Skeena River, also into the cause of the burning of the Village of Kitseguecla?
A Yes.
Q All right. And if you turn to the page -- four pages from the back of the tab.
A Yes.
Q And I invite you to satisfy yourself that the person whose words are being recorded here is the Lieutenant Governor Trutch and that's to be found four further pages back into the tab where there is a heading "His honour proceeded to address the chiefs as follows."
A No, I'm sorry, I don't see it.
Q Seven, eight pages back.
A Eight pages back?
Q Yes.
A The eighth page back from the back.
Q Yes. And you will see right from the middle of the page, the paragraph beginning "at Victoria"?
A "His honour proceeded to address the chiefs as follows."
Q Yes.
A Yes.
Q And that refers to Trutch, does it not?
A Yes.
Q Okay. And then --
A I would take it so, yes.
Q If you just follow through the pages you'll see that it is still him talking until you get to the page I'd referred you to?
A Yes.
Q And you will see starting five lines down there is:

> "Even no proof that the fire which consumed your village was caused by white men, although

I suppose it was, they not having thoroughly extinguished their fire."

A Uh-huh.
Q And that, I take it, was the finding of the Lieutenant Governor as part of that inquiry?
A Yes.
Q Okay.
A Apparently. All right.
Q Going over to page 27 --

THE COURT: Shall we take the afternoon adjournment, please, Mr. Adams? I take it that we are going to be sitting tomorrow?

MR. ADAMS: I expect we will, my lord.

THE COURT: Yes. Could counsel let me know before the end of the day whether they think we will be all day or until noon. It's of no great consequence. Just a matter of some minor planning. Thank you.

(PROCEEDINGS ADJOURNED PURSUANT TO AFTERNOON BREAK)

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

Laara Yardley, Official Reporter,
United Reporting Service Ltd.

1 (Proceedings resumed at 3:15 p.m.)
2
3 CROSS-EXAMINATION BY MR. ADAMS: (Continued)
4
5 MR. ADAMS:
6 Q Mr. Williams, we were on page 27 of your opinion
7 summary, Exhibit 1173 and, actually, I am looking at
8 pages 27 through 29, which is the entirety of your or
9 the conclusion of your discussion of Kitseguecla in
10 1872, and the pattern of this event, is it not, as you
11 record it in your summary, that you have chiefs who
12 are invited to what you call a parley or a
13 conference -- you use both terms -- where the trouble
14 resulting from the burning of the village is settled?
15 A Yes.
16 Q And I take it you don't know anything about how
17 Gitksan chiefs, in 1872, were accustomed to settling
18 trouble?
19 A No.
20 Q And neither do you know about the role of public
21 discussion and compensation in Gitksan law?
22 A No.
23 Q So if either of a system -- or let me do it in two
24 parts, if there was a protocol under which Gitksan
25 chiefs were accustomed to settling trouble, because
26 you were unfamiliar with it you wouldn't have seen it
27 in the documents you read?
28 A No.
29 Q And if public discussion and compensation had a role
30 in Gitksan law, you wouldn't have seen it in the
31 documents because you didn't know about it?
32 MR. GOLDIE: Well, my lord, that's a very odd question to put.
33 The witness looks at documents, if he doesn't know
34 about it he doesn't see it, that means it isn't there.
35 It's not a question of what's in his mind to begin
36 with.
37 MR. ADAMS: Well, with respect, my lord, the fact that the
38 witness doesn't see it does not, in my submission,
39 mean it isn't there, it means that he is not equipped
40 to see it and that, as I understood it, was his
41 answer.
42 MR. GOLDIE: That's a very different proposition. My friend's
43 "equipped to see it" didn't figure in it. It's a
44 question of fact, is the -- are the attributes or
45 characteristics that my friend is describing to the
46 witness present in the document or aren't they?
47 THE COURT: Well, I think that we are on the verge of

1 metaphysics, what somebody sees or reads into what is
2 or isn't there is a difficult concept at the best of
3 times. I think the matter is a proper one for cross-
4 examination of an expert who has produced a collection
5 of documents and has given an explanation of some of
6 them, which from time to time has undoubtedly emerged,
7 as with all witnesses, into opinion. And for that
8 reason I think that it is not unusual that there will
9 be difficulties in either framing the questions or in
10 understanding the questions. And I am not sure that
11 your last one, Mr. Adams, was one that may have
12 received the universal understanding that I mentioned
13 a few minutes ago. But I will -- and I will, for that
14 reason, be happy if you would rephrase the question.
15 MR. ADAMS: All right.
16 Q Let me divide it again into two parts, Mr. Williams.
17 You have acknowledged that you have no particular
18 knowledge of the role of public discussion in Gitksan
19 law?
20 A That is so.
21 Q And you did not come, because of that lack of
22 knowledge, you didn't come to your examination of
23 these documents with any sensitivity to the
24 significance of references in them to public
25 discussion?
26 MR. GOLDIE: Well, my lord, the witness has said he is not
27 familiar with Gitksan law. That doesn't mean that he
28 has acknowledged that there is Gitksan law, which --
29 in which public discussion plays a part. My friend's
30 question assumes that.
31 THE COURT: Well, I think I just demonstrated the truth of the
32 dictum I pronounced a moment ago. I still think it's
33 a proper question for cross-examination. I am not
34 sure now whether your last question was one which
35 should have been understood universally or not, Mr.
36 Adams, because I have been distracted. You may
37 proceed.
38 MR. ADAMS:
39 Q All right. Let's go around again, please, Mr.
40 Williams. You have acknowledged that you have no
41 knowledge of the significance of public discussion in
42 Gitksan law, and if the term law troubles my friend,
43 my lord, in Gitksan society?
44 MR. GOLDIE: Assuming there is such, that's what you're asking
45 the witness to assume, because he says he doesn't have
46 any knowledge of it.
47 THE COURT: Yes.

1 MR. ADAMS: Well --
2 Q Do you understand the question?
3 THE COURT: I don't think it matters, Mr. Adams, because at the
4 moment, partly because of the interruptions and partly
5 for the reasons I stated, I don't know what the
6 question is now.
7 MR. ADAMS:
8 Q All right. I believe this is something you have
9 already answered, and that is you have agreed with me
10 that you have no knowledge of the significance of
11 public discussion in Gitksan law, always assuming that
12 there is such a thing?
13 A Right. I am not -- I have no knowledge of Gitksan
14 law, if there is such a thing.
15 Q So when you see references, as you record them in your
16 summary with reference to Kitseguecla in 1872, to
17 public discussion, that is, the one that takes place
18 with Trutch and others, you don't know what
19 significance, if any, that discussion has in Gitksan
20 law?
21 A True.
22 Q All right. When you see, as you do, with reference to
23 Kitseguecla in 1872, discussion in the documents of
24 compensation, and you understand that compensation was
25 paid to the Kitseguecla people --
26 A It was.
27 Q -- by the government, you don't know what significance
28 that compensation had in Gitksan law?
29 A No.
30 Q Thank you.
31 A If any. I don't know.
32 Q All right. Let me ask you to go to page 30 of your
33 opinion summary, please. Do you have that?
34 A Yes.
35 Q It's headed 1874?
36 A Yes.
37 Q Now, I would ask you first to confirm for me that for
38 the passage beginning under that heading, "in August
39 of this year", and referring to Kispiox Indians firing
40 on a pack train, that there are no references in the
41 notes to your report that would tell anyone what
42 documents you were relying on to make those
43 statements? And you will find the appropriate page at
44 56 of your opinion summary.
45 A Yes, you're right.
46 Q All right. Now, I took it from your evidence that the
47 document you were relying on, or came to rely on, is

the document that is in your volume three -- that is Exhibit 1178, my lord -- at tab 52-B?
A There is more than one, I think, Mr. Adams, but that may be one of them. What volume is that, volume three?
Q Volume three, tab 52-B.
A Yes, that's one of them.
Q All right. And that's Mr. Tomlinson's letter?
A Yes.
Q Now, I wonder if you could just -- and I noted at this point, Mr. Williams, you're referring to your notes.
A Yes.
Q Is that so?
A Yes.
Q And I wonder what it is that you are referring to in preparing to answer my question?
A I am just looking up the tab that you referred me to. As far as I am concerned, you are we welcome to look at it.
MR. ADAMS: My lord, this appears to be page 24 of a document that I have never seen before, that has tab numbers for A. G. B. C. documents, a list of questions and a series of numbers at the right-hand side that say M. Li, L-I, number, and I can advise your lordship that it is not among the documents that were delivered to me, and I would ask to have it produced to me.
MR. GOLDIE: I quite agree it is not produced to him, if it's not part of his working papers.
THE COURT: I don't understand, you want to have it produced, Mr. Adams? You have just seen it.
MR. ADAMS: My lord, it appears to be part of a much larger document.
THE COURT: You mean you want the other pages?
MR. ADAMS: Yes, this is a document I had no idea existed. My friend advised this morning that as far as he understood, the notes to which the witness was referring to on the stand were among papers that have already been delivered to me.
MR. GOLDIE: No, I beg your pardon. I said the notes with respect to convictions were amongst those that had been delivered to you. That's got nothing to do with the notes with respect to convictions. As I understand it, that's the witness's aide memoire.
MR. ADAMS: Well, that is precisely because I didn't understand my friend to be confining himself to the one narrow topic that was under discussion at that moment, that I make a blanket request for production of the notes

that the witness has available to him on the stand, which I have never seen.
MR. GOLDIE: My lord, they have got nothing to do with the preparation of his report, as I understand it.
THE COURT: I don't know whether it is or isn't. I don't know what it is.
A It's my aide memoire, my lord, it's my notes to help me expeditiously deal with matters as they arise.
MR. ADAMS: My lord, they might have aided me to expeditiously deal with matters as they arose too and they might have caused matters to arise.
THE COURT: When was this material prepared, Mr. Williams?
A It was prepared as part of the preparation leading up to my appearance to give evidence, my lord.
THE COURT: Since the preparation and delivery of your report?
A Yes.
THE COURT: Well, it's my preliminary view that what is required to be produced are the drafts, and I guess working papers is as good a word as any, that are used in the preparation of the report. It would be my preliminary view, although I have never had to deal with the question before, that after delivering the report, if the witness then sits down and says I am going to make an index of what's in my report so that I can quickly direct myself, for example, from the references in the summary of my report to the tab numbers, then I would not think that that is something that need be required. But that's just a very preliminary view.
MR. ADAMS: Well, my lord --
THE COURT: If it's sort of an index that the witness is going to use to find things, it's not counsel's brief because counsel didn't prepare it, but it's the witness's brief.
MR. ADAMS: My lord, I have two points to make: One is that on the brief inspection I have had of one page of what appears to be a much larger document, it is more than an index to tabs. It's questions posed by the witness to himself that he anticipates being posed, I can't tell. The other submission I have to make is that --
THE COURT: Well, stopping there, on what basis, Mr. Adams, would you seek to require the witness to produce that?
MR. ADAMS: Because he is referring to it on the stand in order to answer my questions. And that was my second point, is that whatever its status may be before he gets here, when he brings it with him, and answers questions out of it, in my submission, I am entitled to see what it is. Because he is not, of course,

1 confining himself to his opinion summary, he has gone
2 far beyond that in the documents that have been
3 tendered, and beyond that in the opinions that he has
4 rendered.
5 THE COURT: Well, would the progress of the case be enhanced if
6 you didn't have that, every time he was asked a
7 question he had to conduct an un-assisted search of
8 his tabs to find the tab that refers to something
9 that's in his summary?
10 MR. ADAMS: My lord, I am not objecting to him having it, I am
11 saying that I am entitled to it as well so that I know
12 what it is the witness is referring to.
13 MR. GOLDIE: My friend has it in the evidence in chief, it's the
14 outline that I was following in my questioning.
15 MR. ADAMS: Then I say, my lord, that it's even more obviously
16 relevant to a cross-examination of the witness on that
17 evidence.
18 MR. GOLDIE: Well, tell him to put it away then. My friend can
19 take it, he is entitled to see it, if the witness has
20 referred to it in the stand, but it's not a question
21 of disclosure. It's a question of using something
22 which he has prepared, which has been prepared, I
23 should say, to assist him in answering his questions
24 and dealing with his evidence. And if my friend wants
25 to say put that to one side -- I thought we had got
26 over that in this case, that if a witness needed
27 something to refresh his recollection and to follow
28 the questions that were being asked of him, he could
29 refer to it. Now, if we are going to follow the old
30 rule of exhaust your recollection, then refer to any
31 notes which assist you, then we will do that.
32 MR. ADAMS: My lord, that isn't what I have asked for. I have
33 said I have no objection at all to the witness
34 referring to it. My argument has been directed at my
35 entitlement to know what it is that is being referred
36 to.
37 MR. GOLDIE: He has told you.
38 THE COURT: All right. I am satisfied that counsel is entitled
39 to look at whatever the witness looks at for the
40 purposes of answering a question. I am not satisfied,
41 in my present state of uncertain knowledge, that it
42 goes any further than that, that is, that it's -- that
43 Mr. Goldie described as a matter of disclosure,
44 outside of the use he makes of it in the witness box.
45 And I think that, Mr. Adams, as you did a moment ago,
46 is entitled to anything that the witness refers to in
47 order to assist him to answer that question. I don't

1 think it goes beyond that.
2 MR. ADAMS: Well, my lord, in light of that, so that I don't
3 take up the court's and everyone else's time in
4 reading it, I wonder if I could ask to have the page
5 the witness has just now referred to, available to me,
6 a copy of it at least, so that I can review it before
7 tomorrow. Similarly, any other page to which he finds
8 it necessary to refer in answering my questions.
9 THE COURT: Well, I don't know. My inclination is to say that
10 maybe the witness ought to put the book away, although
11 I am not sure that I have the authority to make that
12 sort of decision. You don't know, Mr. Adams, if the
13 witness is even going to look at it again.
14 MR. ADAMS: I don't, and I have no idea what's in the rest of
15 it. Purely hypothetically, if the witness is sitting
16 there with a book and it says, "If he asks you this,
17 tell him this", I surely would be entitled to know the
18 contents of that.
19 THE COURT: Yes. Well, that would be disclosed under the ruling
20 I have just made.
21 MR. ADAMS: It would, but piecemeal as the witness draws on it,
22 with, in my submission, great disruption to the
23 cross-examination and the progress of the trial, if he
24 makes at all frequent reference to it.
25 MR. GOLDIE: There is a simple way of dealing with it, and in
26 his question say, please may have your answer without
27 referring to any material.
28 THE COURT: Well, I would be reluctant to make that universal
29 ruling, because as you, Mr. Goldie, said a moment ago,
30 that's the old fashioned rule that I thought we got
31 away from.
32 MR. GOLDIE: I agree. But it seems to me that the -- what we
33 ought to do is get along with the questions and each
34 time the witness wants to refer to it, my friend is
35 entitled to see it. But I cannot see either the legal
36 requirement or the utility of referring to something
37 which the witness prepares or has prepared for him, to
38 assist him in giving his evidence. I am talking now
39 about a witness who is dealing with five or six
40 volumes of documents.
41 THE COURT: The immediate problem is that Mr. Adams wants,
42 overnight, a copy of the page that he just referred
43 to. Is there any objection to that?
44 MR. GOLDIE: No, I think the witness having referred to it, Mr.
45 Adams is entitled to see it.
46 THE COURT: All right. I do not think that I would go further
47 and direct Mr. Williams to produce either the original

or copies of the rest of it, because it may be that it will not be referred to. So, when we adjourn Mr. Adams will be furnished with a copy of the page that he has just looked at so that he can have it overnight to assist him to prepare for his further cross-examination on other points that may be covered by the page and as the matter progresses, Mr. Adams, you are entitled to look at anything the witness looks at.

MR. ADAMS:

Q Mr. Williams, I wonder if I could ask you to put a sticky on the page that you referred to.

A Yes.

Q Thank you.

THE COURT: I think that we have reached this point that I am going to ask that we adjourn now. I have these other problems to look after today which requires a certain amount of arrangements and organization, and I think rather than start another question for three minutes, I think I am going to have to adjourn now.

Should we resume at 9:30 tomorrow morning.

MR. GOLDIE: That you, my lord.

MR. ADAMS: My lord, you had asked to be advised about our anticipation as far as tomorrow. It's my firm expectation that we will be the full day. It's possible that we will spill over.

THE COURT: I expected you to say that.

MR. ADAMS: We may spill over.

THE COURT: Well, we can't spill over. I am in the Court of Appeal -- wait a minute. I am not in the Court of Appeal next week. We are still here Monday. I am a week ahead of myself. Well, if we spill over, we do spill over.

MR. ADAMS: I will make every effort to complete tomorrow, but there is a good deal of significant material still to cover.

THE COURT: All right. 9:30 then.

(PROCEEDINGS ADJOURNED TO 9:30 A.M., SATURDAY, OCTOBER 21, 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.

Wilf Roy
Official Reporter