Vancouver, B. C.
October 13, 1989.

THE REGISTRAR: In the Supreme court of British Columbia, this 13th day of October, 1989. In the matter of Delgamuukw versus her Majesty the Queen at bar, my lord.

May I remind you, sir, you are still under oath? Would you state your full name, please?

THE WITNESS Frank Murray Greenwood.

MR. GOLDIE: My lord, my friends have asked me to speak to the question of scheduling, to determine whether it is necessary to sit on Saturday this week and Saturday of the next week.

If your lordship is available, and I believe at one time you indicated you would be, next week, I think we can dispense with sitting on the Saturdays.

THE COURT: Next week? Well, we were going to sit next week, weren't we?

MR. GOLDIE: No, I am sorry, it's not next week, the week of the 23rd.

THE COURT: I have made so many changes in my schedule now, let me think. I believe I am, but --

MR. GOLDIE: If we could, perhaps if I could outline the schedule that we might follow and then your lordship can consider whether it is convenient for you.

Dr. Greenwood's cross-examination and re-examination will be completed today and Mr. Williams will be called.

THE COURT: So he will be called on Monday?

MR. GOLDIE: No, we would call him today. And he would be, I anticipate, on the stand on Monday and some part of Tuesday. But in any event, we would propose calling Mr. Magwood at 9:30, if your lordship agrees, on Tuesday the 17th. Both Mr. Willms, in chief, and my friend Mr. Rush, in cross-examination, have indicated that they will not be very long.

THE COURT: We might be half a day with him?

MR. GOLDIE: Yes. He would be followed by Dr. Robinson.

THE COURT: Do you think Mr. Williams can be completed in chief and cross-examination?

MR. GOLDIE: I am not sure, but there is a little room after Mr. Magwood, because Dr. Robinson -- Mr. Grant has asked me not to call her before Wednesday morning.

THE COURT: That's the 18th?

MR. GOLDIE: That is the 18th. It is an open question whether she would be completed by Friday. I think probably

not. But if the week of the 23rd is available, the first two days, the 23rd and 24th would be taken up with reading in documents, and your lordship will have in mind that there will be an examination out of court in Smithers on the 24th. But on the 25th, 26th and 27th, it would be available for the completion of Dr. Robinson's cross-examination, if that is required, and to complete the reading in of documents. We anticipate a half day argument on documents which have been identified, have been marked for identification but not completed. And then my friends will advise us if they require the examination of what I will call a fishing affidavit, that is, to prove the nature of the fishing licences which have been marked for identification and, if so, that can be done out of court or in court. If I am correct in all of that, we would be complete no later than the 27th.

Now that takes into account the fact that I have some difficulties with the following week, and on the 6th of November I am in the Supreme Court of Canada for a re-hearing, a short re-hearing,

THE COURT: We weren't going to be sitting then anyway.

MR. GOLDIE: We were not until the 8th, when the Federal Crown would begin its case.

THE COURT: The problem is whether I am free on the 23rd, the week of the 23rd?

MR. GOLDIE: That's correct. If your lordship is not we better sit tomorrow.

THE COURT: I will have to make some inquiries. I have made so many changes, we are trying to accomodate some five judge courts and we are having a dreadful time.

MR. GOLDIE: I know your lordship stated the Monday and Tuesday would be out because you had scheduled a five man court for that period. At least that's the note I have.

THE COURT: The 23rd?

MR. GOLDIE: No, the 30th.

THE COURT: The 30th. I think that's right, and my belief is that I am free on the 23rd, but I would like to check that because I have made so many changes I am really not sure any more.

MR. GOLDIE: Well, we hope what I have outlined is something that your lordship can take as settled.

THE COURT: Let me leave it until the morning adjournment. I will raise it right after, unless you want to adjourn now and find out?

MR. GOLDIE: No, that's not necessary.

MR. RUSH: One or two matters before I re-commence the cross-examination, my lord. And I wanted to hand up the last page of the first tab of the cross-examination documents, which indicates the author of the article to be marked Dr. Emmanuel, a doctor at the University of Paris, that was handwritten on the face page and just simply --
THE COURT: Where does that belong?
MR. RUSH: It will go at the end of tab 1.
THE COURT: Thank you.

F. MURRAY GREENWOOD, Resumed:

THE REGISTRAR: Dr. Greenwood, have you got tab 15?
A I am not sure, American Political Relations of -- I think we were going to talk to that.

CROSS-EXAMINATION BY MR. RUSH: (Continued)

MR. RUSH: That's correct.
Q Just dealing with that tab, you have the binder there?
A I have part of the article. I don't have the footnotes.
Q Right. And, my lord, I indicated yesterday that I would endeavour to get the footnotes and what I have done, I have obtained the face page or cover page or beginning page of the Shy article, so I want to hand that up to you now. And that is page 155 and it's, it will become the second physical page in, that will be the page indicating the name of the book and then this page should go before page 156.
THE REGISTRAR: The second page in?
MR. RUSH: Yes.
THE COURT: Yes. All right.
MR. RUSH: This simply indicates the authorship of the particular article. I omitted that.
Q And, finally, Dr. Greenwood had indicated in his testimony that the footnotes were not appended to the article, and indeed they weren't. They were attached as a group at the end and his reference was particularly drawn to footnote 69, and I am going to hand these up. This goes at the end now of tab 15.
Q Now, Dr. Greenwood, yesterday I had referred you to the Bellin 1755 map, which is map number 14 in the Farley map folio, and you were looking at a copy at that time, because I had asked you about the placement of the fort, Camanistigoya, and you had been referred

to a passage in the, I think it was Bougainville on Posts, and I have the original now and I think it's a little better to read. And I am wondering if you will now look at this original?

A Have you got a magnifying glass?

Q If we had one, maybe we could --

A Because it's very, very difficult. I have poor eyes.

Q I am going to direct your attention here, and if you can read what is there, and if you can't maybe I will read it for you and my friend can agree what I say.

A It seems to say -- I can't read the first part. Just too small for me.

Q Can I --

A The first part I can't read.

Q Look at this original facsimile of the Ballin 1755 map, it, to my eyes, says "Camanistogoya ou Les Trois Rivieres", and Les Trois Rivieres would be the three rivers, would it not?

A Yes.

Q And in French it would be "Ou Les Trois Rivieres"?

A Yes.

Q And this is located in the northwestern section of Lake Superior. This is the indication here.

THE COURT: This one or that one?

MR. RUSH: It's this one just above my thumb line.

Q Now, that, I think you have agreed yesterday, Dr. Greenwood, was one of the Forts of the French?

A No, I think you stated there was a fort at the Grand Portage and I said probably there was. I can't testify to the permanence or otherwise of the Grand Portage in New France.

Q Can you agree with me that Camanistigoya was a French Fort?

A It says Camanistogoya there or Trois Rivieres, I can only testify as to what's on the document.

THE COURT: It's very close in miles from Grand Portage, is it not?

A Yes, I think it would be a little more southerly.

THE COURT: The Grand Portage?

A The Grand Portage would be a little bit more to the left.

THE COURT: West, yes.

MR. RUSH: Thank you.

Q Now in your evidence, Dr. Greenwood, you referred to Clarence Alvord on the Mississippi Valley?

A Yes.

Q That for your reference, 1159, take volume one, tab 32

1 A. I want to show you a map that's contained in that
2 volume, Dr. Greenwood, and I am handing up an extract
3 of the volume entitled Mississippi Valley in British
4 Politics by Clarence Alvord.
5 THE COURT: Which volume would that be, Mr. Rush?
6 MR. RUSH: Volume one.
7 Q Now, if you can -- if you will agree, you recognize
8 this work?
9 A Yes.
10 Q All right. And I would draw to your attention that it
11 is an extract from volume one, it's not the totality
12 of volume one, obviously?
13 A Right.
14 Q And I would like that marked as the next exhibit, my
15 lord, it's 1168-16.
16
17 (EXHIBIT 1168-16: THE MISSISSIPPI VALLEY IN BRITISH
18 POLITICS - ALVORD)
19
20 Q My particular interest here, Dr. Greenwood, is page
21 317, and I would like you to look at that, if you
22 will. It contains a photocopy reproduction of the
23 coloured map in the volume. And I wonder if you are
24 knowledgeable about this map, that is to say, have you
25 looked at it in your review?
26 A I have seen it, of course, in the volume, but I
27 haven't done a study of it. It didn't seem to be
28 important enough.
29 Q You will notice that it indicates that the -- in the
30 bottom right hand corner, which is the legend, it says
31 the Western Colonial Schemes, do you see that?
32 A Yes, I do.
33 Q And it details the Amherst's Detroit plan of 1767?
34 A Yes.
35 Q The Phineas Lyman Plan of 1766 and the Illinois Scheme
36 of 1766?
37 A Yes.
38 Q You were -- you are aware that those are schemes that
39 were put forward for the purpose of settlement?
40 A For the purpose of expansion, yes.
41 Q Expansion and settlement, isn't that right?
42 A Yes, but they are well after the proclamation.
43 Q Well, it seems that one is three years after the
44 proclamation. And I will come to that in just a
45 moment.
46 Now, Dr. Greenwood, if you would look, please, to
47 page 351?

A Yes.
Q And I draw your attention to footnote 607, do you see that, at the bottom of 351?
A Yes.
Q And these are the observations made by General Amherst?
A Yes.
Q And, he is referring, is he not, to the boundaries of the proposed colony based at Detroit? That appears in the last --
A That's what Alvord is saying, yes. I probably have read that document, but I don't have it before me.
Q You know nothing to the contrary; is that correct?
A That's correct.
Q All right. Now, in that description at the bottom of 351, and based -- it says on the observations by General Amherst, the Detroit colony would have taken in a great deal of land beyond the Royal Proclamation line of 1763, wouldn't it?
A Yes. There were several projects of that nature at that time.
THE COURT: Do you mean beyond the westerly or the easterly?
A Beyond the westerly boundary for settlement.
MR. RUSH: That would be the Appalachian line?
THE COURT: Beyond the Appalachian line?
A Yes. These are post-proclamation, my lord.
MR. RUSH:
Q Now, I would like you to look at the map again, Dr. Greenwood, and you will see that the Phineas Lyman plan of 1766 is outlined in blue. Do you see that, 317?
A I see it. I am not sure that the map tells me to look to blue.
Q Well, it's a faint blue but if you look under Phineas Lyman's plan, I would suggest to you that it is in a light shade of blue?
A Okay.
THE COURT: It looks like a blue crayon line.
A I am just saying, my lord, that the map doesn't tell me to look for blue.
MR. RUSH:
Q What does it say?
A Phineas Lyman's plan, 1766?
Q Yes.
A Or is this a reproduction of the colour in the original map?
Q This is a reproduction of the colour in the original

1 map.
2 THE COURT: The witness's copy is a little different from mine,
3 Mr. Rush.
4 MR. RUSH: It is?
5 THE COURT: Yes. There is a tinge of blue there and a tinge of
6 blue there. But it's pretty faint.
7 A I am not questioning the representation but just
8 simply that I can't --
9 MR. RUSH:
10 Q You can't make out that it's blue, is what you're
11 saying?
12 A If this is accurately represented then, yes, it would
13 be blue.
14 Q All right. I will produce the volume for you if you
15 like.
16 A I don't question this at all.
17 Q That's fine. Well, then, given that the Phineas Lyman
18 plan appeared, as it does, in that light shade of
19 blue, there is a similar light shade of blue or at
20 least blue lines on this map, is there not? My
21 suggestion --
22 A The only blue I see is in the square covering the
23 western part of the Ohio as it flows into the
24 Mississippi.
25 Q Was that a part of the territory around the Ohio,
26 which had been previously sought by the Mississippi
27 Company?
28 A I can't answer that. I don't know.
29 Q You know that the Mississippi Company had petitioned
30 for land in that region in 1763?
31 A Are we talking about Vandalia now, the colony of
32 Vandalia?
33 Q Yes.
34 A Well, that is in the area of Vandalia.
35 Q All right. Dr. Greenwood, I am going to show you
36 another extract, this is taken from the critical
37 period, 1763 to 1765, if you could hand it to his
38 lordship.
39 A Finished with this, Mr. Rush?
40 Q No, I am not. If you will keep that handy. I wonder
41 if you could identify this documents as volume ten,
42 taken from the collections of the Illinois State
43 Historical Library, The Critical Period 1763-65 by
44 Alvord and Carter?
45 A Yes.
46 MR. RUSH: May that be tab 17?
47

1 (EXHIBIT 1168-17:EXCERPT FROM COLLECTIONS OF THE
2 ILLINOIS STATE HISTORICAL LIBRARY - THE CRITICAL
3 PERIOD 1763-1764)
4
5 MR. RUSH:
6 Q Now, the passage I would like you to look at is at
7 pages 23 and 29, it's the second page in, Dr.
8 Greenwood, and you will see there a reference to the
9 Mississippi Company, September 9th, 1763. The bottom
10 of page 23, do you see that?
11 A Yes.
12 Q And it indicates that a meeting of the Mississippi
13 Company at Belleview, September 9th, 1763?
14 A Yes.
15 Q Indicates on page 24 who was present?
16 A Yes.
17 Q And then:
18
19 "A memorial to His Majesty being read some
20 amendments made thereto, the same is agreed to
21 and is as followeth",
22
23 And it sets out:
24
25 "To the King's most Excellent Majesty, The
26 humble Memorial of Inhabitants of Great
27 Britain, Virginia, Maryland, et cetera, May It
28 Please Your Majesty, the Memorialists consider
29 it the duty of all good subjects to improve to
30 the utmost of their power the blessings of
31 peace and reflecting how this improvement may
32 best be obtained by the exertions of their
33 abilities and the applications of their
34 fortunes, have proposed with the approbation
35 and under the protection of your Majesty to
36 settle as speedily and effectually as possible,
37 some part of the vast country on the
38 Mississippi and its waters now, unquestionably,
39 Your Majesty's territories, by the late treaty
40 of peace."
41 You are familiar with this as the Mississippi
42 Company petition, are you not?
43 A Yes, it is.
44 Q And it runs, my lord, from pages 23 through to 29.
45 And I would ask you to just look at page 29, Dr.
46 Greenwood. And that indicates, does it not, that the
47 Mississippi Company's pages were sent to the Right

Honourable, and I can't make out that word, Earl of Chatham --

MR. GOLDIE: William Earl of Chatham.

A That's the the Elder Pitt.

MR. RUSH:

Q I see. On Saturday, the 2nd of April, 1774.

A Yes.

Q Now, I would like you, if you will, just to turn back to the other tab, tab 16, which was the previous document, and I direct your attention to 315 and 316, these are the two pages preceding the coloured map?

A Yes.

Q And 315 beginning the first full paragraph.

A The lands?

Q Yes.

> "The lands for which the Mississippi Company have petitioned were all also looked upon with longing by General Phineas Lyman of Connecticut, who represented the 'Military Adventurers'."

That's your understanding, is it not?

A That's what it says.

Q But does that coincide with your research?

A I couldn't tell you who the Military Adventurers were.

Q You know Phineas Lyman?

A He had a project for settling the area west of the forks of the Ohio, yes.

Q It goes on:

> "These were colonial officers who had served in the late war and were now associated with the members of the former company of Samuel Hazard. Lyman appeared in England about 1763, it is said,"

And it gives a footnote reference,

> "but there are no direct evidences of his activities until Lord Shelburne became southern secretary in 1766. In several long memorials addressed to that official, Lyman proposed that measures should be adopted to erect in the course of years five or six, colonies along the Mississippi River from the falls of St. Anthony to the colony of West Florida."

Does that statement of fact, Dr. Greenwood, accord with your understanding of his proposal?

A Yes. I haven't read all of Lyman's many speculative proposals, but I have read one or two but it is consistent of what I know of Lyman.

Q Continuing on in this quote:

> "His general recommendation was that a governor be appointed to have oversight over all this territory but his immediate proposal was limited to the establishment of one colony at the mouth of the Ohio River."

Which is I think what you said?

A I agree with that.

Q Now, I think you also indicated, did you not, Dr. Greenwood, that the bounds of this proposed colony of Lyman's, over the western part, was approved by the Privy Council as Vandalia in 1772, was it not?

A A colony, Walpole and Company Associates, Benjamin Franklin and other land speculators petitioned for certain land and the Privy Council did agree to establish a colony called Vandalia, which would extend into the area you are talking about.

Q All right. I just would like you to look at the bottom of page 316, and I quote beginning at paragraph at the bottom.

> "This plan of Lyman's was in accord, except for an overlapping of boundaries, with one formed in Philadelphia that was destined to be the most favoured and to exercise the greatest influence in London."

This is the one you have just mentioned, is it not?

A Yes.

Q

> "In the discussion of a previous topic mention was made of the fact that George Croghan, while in England on business for Sir William Johnson, had become associated in some way with a plan for a colony in the Illinois country."

A Yes.

Q And he goes on to explain the promotion of this scheme in the next few pages.

A Yes. I think the schemes were always changing so I couldn't testify that one scheme in 1764 or '65, was exactly the one that Walpole and Associates put forward to the Privy Council, but they were generally talking about western settlement.

Q Well, I just would like to refer to you page 322 in this tab, in the first full paragraph, beginning:

> "In September the scheme was laid before Shelburne who had already read the plan and its recommendation by Johnson."

Johnson was one of the promoters?

A Yes, of a plan at that time, yes.

Q

> "His opinion was favourable but he said the project was not in accord with the opinion of certain of his colleagues. Franklin thought the reference was to Lord Hillsborough, the president of the Board of Trade, who feared Ireland might be depopulated. The other objections were the usual ones, the territory was too far inland for commerce and for government, et cetera. There was, however, one reason for opposition unmentioned by Franklin. In 1764 the ministry had determined on a gradual expansion of settlements westward and Lord Hillsborough was at that time in favour of such a policy; but the plans of these land companies looked to the opening of territory in the far west, which was separated by hundreds of miles from the settled parts of the colony and was situated in the midst of Indians known to be hostile to the English. The various objections were discussed at length; and although Lord Shelburne declared them to be of little weight, he refused to commit himself."

Now, that plan that is there being talked about is the one that you have made reference to as the Franklin-Johnson plan?

A No, not necessarily. They were talking 1764, at this point it would be extremely magical if it was the same.

Q Certainly talking about a Johnson plan, is he not?

A Yes, talking about a Johnson plan but it's not the

1 same one that was submitted to the Privy Council, and
2 I don't agree with the statement in 1764 "the ministry
3 had determined on the gradual expansion of the
4 settlements westward." I don't agree with that at
5 all. There is no evidence thereof.
6 Q Well then it goes on, "Lord Hillsborough was in favour
7 of such a policy", I think you agree with that
8 proposition?
9 A No, I don't, because we know from the documents that
10 later, in 1768 and '72, he was absolutely against
11 western expansion. It's conceivable that he changed
12 his mind in 1764, it's possible, but there is no
13 evidence here and as a professional historian I would
14 say it's very unlikely.
15 THE COURT: When did the Privy Council approve the Vandalia
16 plan?
17 A 1772, but it was never implemented because of the
18 onrush of American troubles. But they did agree to it.
19 THE COURT: 1762?
20 A Yes.
21 MR. RUSH:
22 Q You agree, do you not, Dr. Greenwood, that the origins
23 of these plans go back to 1764 or 1763?
24 A Probably 1763, possibly even earlier. The Ohio
25 Company, for example, of Virginia, had lands west of
26 the Appalachian Divide.
27 Q Yes. I want to direct your attention to, again,
28 the -- reading on in the comment that I have concluded
29 with a moment ago, at top of page 323:
30
31 "In a conference in October, the secretary of
32 state went further and said he approved of the
33 scheme but that every proposed expense for
34 America would meet with many objections. The
35 next month Richard Jackson added his influence
36 and drew up a long paper on the plan of the
37 Board of Trade and that of Lord Barrington,
38 that has already been commented upon."
39
40 Who was Richard Jackson?
41 A He was an M. P. and land speculator, also an advisor
42 of governments as well.
43 Q And, Lord Barrington?
44 A Lord Barrington was the minister for war or secretary
45 for war. War secretary.
46 Q Yes. And, "In this the author wrote strongly in
47 favour of western colonies and particularly of one in

the Illinois country."
A That's true.
Q And that is reference to 563?
A That's true.
MR. GOLDIE: That's Jackson's paper?
A Yes, Jackson had that position.
MR. RUSH:
Q We understand the author to be Jackson, yes.
I want to direct you back now to page 316 of the same text, Dr. Greenwood, and at the bottom you will see again a reference is made to George Croghan, and who was George Croghan?
A I can't remember the colony, I think what's from Pennsylvania, but in any case he was kind of a sub agent of Johnson's.
Q Was he a deputy of Johnson's, Sir William Johnson?
A Yes, a deputy.
Q All right. Now you have tab 17 there, do you?
A Which one is that?
Q It was the other document, the second of the two, Alvord, The Critical Period?
A Yes.
Q I wanted to refer you to a comment on George Croghan in the Illinois Historical Collection, and that's 1168-17, my lord, the second of the two I handed to the witness. If you have that, Dr. Greenwood, I would like you to refer to page 221.
A Yes.
Q And, this contains a letter from Croghan to Johnson of March 10th, 1764?
A Yes.
Q And I don't intend to go into it, but there is a footnote indicating some biography there of George Croghan, and you indicated that he was from Pennsylvania and he came to Pennsylvania from Ireland in 1741 and entered the Indian trade?
A Yes.
Q I would like to refer you to page 222, to the first full paragraph there. And, it says this:

"Tho I have been here now a month, nothing has been done regarding North America. The people here spend their time in nothing but abusing one another and striving who shall be in power with a view to serve themselves and their friends and neglect the public. It was but yesterday that your State of Indian Affairs was

read at the Board of Trade tho I delivered it the 13th of last month. Lord Halifax and Lord Hillsborough, both have read it and Mr. Penn told me yesterday that Lord Halifax approves much of what you have recommended."

Just pause there, was Lord Halifax a member of the cabinet at that time, 1764?

A I can't swear to it. I think he was still in the cabinet, but there were so many changes I couldn't swear to it.

Q What about Hillsborough?

A I think he was, probably, still president of the board of trade but, you know, I am not going to swear to that either.

Q I will carry on: "Lord Halifax talked to me about..."

THE COURT: The dramatis personnae shows that Lord Halifax was secretary of state for the department from 9th of September, 1763.

A Yes, my lord, but I give terminal dates, I am only interested in up to October 7, 1763.

THE COURT: All right.

MR. RUSH:

Q Was Halifax at this time a member of the Board of Trade? It would seem to indicate so by a reading of this document.

A Where?

Q He says: "I delivered the 13th of last month Lord Halifax.." Excuse me, just above that:

"It was but yesterday that your state of Indian affairs was read at the Board of Trade tho I delivered it the 13th of last month. Lord Halifax and Lord Hillsborough both have read it and Mr. Penn told me yesterday that Lord Halifax approves much of everything you have recommended."

So that would suggest to me that Halifax and Hillsborough were both on the board of trade at that time?

A Certainly not Halifax. Halifax had become southern secretary replacing Egremont in August, September, 1763. So I don't think he would have been the president of the Board of Trade. That position was taken by his brother.

Q Yes, well, if you look at the footnote, Dr. Greenwood,

1 under two, the fifth line down,
2
3 "His first employment that brought him touch
4 with colonial affairs was in the autumn of 1763
5 were through the influence of Lord Halifax he
6 was made president of the Board of Trade."
7
8 I think you commented on that. Well, let me
9 continue with the passage, fourth line from the
10 bottom:
11
12 "Lord Halifax talked with me about a boundary
13 with the Indians and I mentioned to him your
14 honour's thoughts on it, which we talked about
15 before I left Johnson Hall and there is talk of
16 settling a colony from the mouth of the Ohio to
17 the Illinois, which I am told Lord Halifax will
18 desire my opinion of in a few days. Mr.
19 Pownall told me yesterday that I would be soon
20 sent forward to attend the Board of Trade what
21 measures they will take the Lord knows, but
22 nothing is talked about except economy."
23
24 Then he goes on. And the Pownall that is in being
25 referred to is footnoted as indicating that it was
26 John Pownall?
27 A Yes.
28 Q You agree with that, do you?
29 A Yes.
30 Q All right. Thank you.
31 Q Now that colony that is there described as -- at the
32 bottom of 222 to 223 talking of settling a colony from
33 the mouth of the Ohio to the Illinois, is that the
34 area which was subsequently approved of as the colony
35 of Vandalia?
36 A It's in the general area, yes. Certainly west of the
37 proclamation line.
38 Q All right. You can set those aside, Dr. Greenwood.
39 They could be inserted in the binder.
40 Q Now in your testimony, Dr. Greenwood, you indicated
41 there was a pamphlet debate among pamphleteers in
42 England, I think you described it as such?
43 A Yes.
44 Q And this was a debate that was undertaken both in
45 England and in the Colonies?
46 A Yes, there is some evidence of a debate going on in
47 North America.

1 Q And you have drawn our attention to two pamphlets that
2 apparently argued different positions in the debate?
3 A I have referred to several pamphlets by number in my
4 footnotes.
5 Q How many?
6 A I read all the pamphlets that I could find relevant to
7 the issue in the National Archives of Canada.
8 Q Tell me how many you reviewed?
9 A Well, over 20. There were some unavailable.
10 Q And how many pamphlets were you aware of in total?
11 A Oh, probably about double that number.
12 Q So you -- am I correct in saying that you reviewed 20
13 in the archives of Canada but you knew of 20 more?
14 A Archives in Canada, also the Ben Franklin pamphlet was
15 published, of course, but perhaps half as many again
16 were unavailable.
17 Q All right. Now, one of those pamphlets that you
18 reviewed was the Benjamin Franklin pamphlet?
19 A Yes, the so-called Canada pamphlet.
20 Q And that pamphlet was published in the colonies?
21 A No, published in England, London, in 1760.
22 Q Was it also published in the colonies?
23 A Probably later.
24 Q Sometime in the late 1760s?
25 A Late 1760s, I am not sure.
26 Q Do I take it then that Benjamin Franklin, from your
27 review of those pamphlets, was one of those who
28 supported the view of western expansion as a positive
29 value?
30 A He was the only one. That's up to the Proclamation
31 date. There is a pamphlet that I mentioned in one of
32 my footnotes that comes out right after the
33 Proclamation and rehearses Franklin's arguments but up
34 to the Proclamation that's the only one I know of.
35 Q Who was the author of that pamphlet?
36 A The other one is anonymous. The Charlotina pamphlet
37 in one of my footnotes.
38 Q Sorry, you described it as the Charlotina?
39 A Yes.
40 Q That's the name of the pamphlet, is it, or the author?
41 A Well, I would have to look at my brief. I could do it
42 if you wish.
43 MR. GOLDIE: I think he ought to do it, if the answer is to be
44 complete.
45 MR. RUSH:
46 Q You can refer to the footnote then, Doctor.
47 A Yes.

1 A It's footnote -- my footnote 12, a pamphlet --
2 Q If you will just allow me to find that, please.
3 A It's a pamphlet which, from internal evidence, and I
4 don't have it laid out there, dated October or
5 November, 1763, printed in the Illinois Historical
6 Collections, 1764 to '66, page 134 to 61. It's called
7 The Expediency of Securing our American Colonies by
8 Settling the Country Adjoining the River Mississippi,
9 published in Edinborough, October or November,'63, and
10 it recommended an interior colony called Charlotina
11 and that really rehearses Franklin's arguments, just
12 takes up Franklin. But it's post-proclamation.
13 Q The name of the pamphlet is Charlotina or is that in
14 relation to --
15 A No, that's the colony that was proposed.
16 Q To be called Charlotina. Franklin represented a body
17 of opinion in American, in the American colonies, did
18 he not?
19 A Well, certainly, yes.
20 Q And he represented some opinion, body of opinion, in
21 Britain as well?
22 A Probably. But on western expansion he seemed to be
23 isolated.
24 Q Well --
25 A He, himself, admits that the opposition is strongly
26 held on page 78 of my tab there.
27 Q Well, Dr. Greenwood, I am going to ask you to identify
28 just two documents for me. I am going to ask you if
29 you would pass these up to his lordship. And I would
30 like this to be inserted and, Dr. Greenwood, you can
31 identify this as containing extracts from documents
32 relative to the Colonial History of the State of New
33 York by Brodhead, 1856?
34 A Yes. The overall editor was E. B. O'Callaghan, I
35 think.
36 Q And volume seven is those documents or containing
37 those documents with regards to the State of New York?
38 A Yes.
39 Q All right. Thank you.
40 Now I want to show you another document.
41 THE COURT: Are you tendering that as tab 18?
42 MR. RUSH: Yes, my lord, please.
43 Q Now, I am showing you a document which is extracted
44 and unfortunately does not contain the cover page, can
45 you identify this document? It's entitled Bellin's
46 Description of the Country Before 1755.
47 A Well, I assume it's taken from his book which he

published about that time, explaining his map, and I looked at the book in special collections. Is this taken from the Ontario Government's compilations?
Q This is taken from the, I would like to suggest to you, from the extract of the Ontario Government's boundary dispute.
A All right.
Q And that runs to how many hundreds of pages? You indicated at one time it was something in the order of 400 or 500 pages?
A I don't know if I stated that. I stated that the case itself ran to something like 400 pages or more.
Q This is one of those documents included in the Ontario boundary dispute transcript of proceedings?
A Yes, and taken from Bellin's book, I believe.
Q The you will see it contains an extract on remarks upon that part of the maps of North America, showing the country comprising between the 28th and 72nd degree of latitude by M. Bellin, 1755?
A Yes.
Q That's the map I showed you earlier, it it not, map folio 14?
A It refers to the maps in the plural. That part of the maps. But the extract is taken from his book which tries to explain his map, yes.
Q That's the 1755 Bellin map?
A Yes.
Q And that was on page 255 of the extract. On page 331, there is recorded here testimony of a William, I think it's McDonald, Dawson's evidence as to the Hudson's Bay Company claims in 1857?
A Yes.
Q And that runs through to 335. And then following that there is the statement of J. Harvey --
A Where is that?
Q Well, it begins, it's the letter to the Earl of -- to the Adjutant-General's office of Quebec, 17th of April, 1818, 336.
MR. GOLDIE: That is part of Dawson's evidence, is it?
MR. RUSH: I don't believe so. I think it is the next document as part of the compilation.
MR. GOLDIE: Well --
MR. RUSH: No, it is part of Dawson's evidence, that's right.
MR. GOLDIE: He tendered it.
MR. RUSH: He runs through to 337, yes, and he did tender that.
MR. GOLDIE: In support of the opinions that he has stated?
MR. RUSH: That's right. All right. I would like that to be

1 marked as the next Exhibit.
2
3 (EXHIBIT 1168-18: DOCUMENTS RELATIVE TO THE COLONIAL
4 HISTORY OF THE STATE OF NEW YORK)
5
6 MR. RUSH:
7 Q Now, Dr. Greenwood I would like you to refer to a
8 document in your document book, Exhibit 1163, tab
9 192A, and that's volume three. Right at the end of
10 volume three. It's the Palairet map.
11 A Sorry?
12 A 192?
13 Q 192A, in Exhibit 1163, volume three.
14 THE COURT: And the tab number?
15 MR. RUSH: 192A.
16 THE COURT: In volume three?
17 MR. RUSH: Yes.
18 Q Do you have the Palairet map there?
19 A Yes.
20 Q It's 192A. There we have it. Now, in reviewing this
21 map, I would like you to look in the northwest or the
22 upper left hand quadrant of the Palairet map, 1763?
23 A Yes.
24 Q And I would like you to direct your attention to the
25 Mississippi, do you see that?
26 A Yes.
27 Q And to the upper reaches of the Mississippi?
28 A Yes.
29 Q And you will see that to the east of the, let's say,
30 the northerly most point of the -- what is described
31 as the Mississippi Feature, is a designation, Sioux
32 Orienteau"; do you see that?
33 A Yes, we are talking about the -- we are talking about
34 the Mississippi, we are talking about the branch that
35 has "R. Mississippi" on it.
36 Q Yes, you see "R. Mississippi" at the northerly most
37 point of that feature?
38 A Yes, I see Sioux Orienteau.
39 Q That means Eastern Sioux, doesn't it?
40 A Yes.
41 Q Running through the feature of the Mississippi are the
42 words Sioux ou Nadusciens?
43 A Nadusciens, yes.
44 Q And, who were the Nadusciens, do you know?
45 A Well, they are the Sioux, later the Dakota, but they
46 are straddling the headwaters of the Mississippi.
47 THE COURT: Did you say later the Dakota?

A Yes, they were pushed west.
MR. RUSH:
Q Did you say Dakota or Lakota?
A Dakota, yes.
Q Because there is a Lakota Sioux, isn't there?
A I don't know.
Q Now, to the south and west of the feature depicted as the Mississippi, there is also indicated Sioux Occidenteau, and that means Western Sioux, does it not?
A Yes.
Q Now, looking at this map, Dr. Greenwood, above the feature marked R. Mississippi, just below the 50th degree north latitude, there is inscribed there, and I think you made mention of this in your testimony, first a solid line and then a dashed line and this says, "boundary between Canada and the land of the" --
A Lands, I think.
Q "...the Lands of the Hudson's Bay Company, determined by the commissaries after the Treaty of Utrecht"?
A Yes, it's in French but that's your translation.
Q That's my attempt at the translation but --
A That's what it says.
Q That's what it says. Thank you. Now, that boundary line as it is shown on this Palairet map, was never settled by the Treat of Utrecht, was it?
A No, or thereafter by the negotiators.
Q No. The line depicted here, so far as you are aware from the documentary record, depicts the claim made by the Hudson's Bay Company, is that not correct?
A Yes, beginning at the time of Utrecht, approximately, and going down do 1763, it's a claim of the company.
Q Now, is it not the case that there are two versions of this claim depicted on maps, one which is a solid line running along the 49th Parallel and one that follows a height of land?
A Well, yes, if we are talking about west of Lake Abitibi, because it's really common coming down from there, there is no doubt that, it was following the heights of land. But as we get west of, I think that's what you were referring to, were you not, west of Lake Abitibi, there are two versions, one of them is along the 49th Parallel, Bowen, for example, and the other is following the heights of land as understood then, the Mitchell map, for example.
Q All right. Now, as you have indicated the Bowen 1763 map has a similar line indicating the boundary, but

that runs along the 49th Parallel?
A Yes.
Q All right.
THE COURT: Below there, about the 48th Parallel, there is another dotted line.
MR. RUSH: Yes, I am going to draw the witness's attention to that as well.
Q Now, as you go down from what appears to be the 49th, on the 48th and still in the upper left-hand quadrant of the map, you will see another dotted line and does that not say "Northern Boundary of New England following the charter of November 3rd, 1690, extending from one sea to the other"?
Q Extended to?
A Extending.
Q Extending --
A From one sea to the other.
MR. GOLDIE: I think it's 1620.
A I can't read that.
MR. RUSH: I can't either. It appears to my eye to be 1690 but it may be 1620.
Q What's the charter that's there being referred to, Dr. Greenwood?
A I believe it's the Charter of 1620. This is on the 48th, approximately, eh?
Q Well, it appears to be on the 48th.
A The Albany Congress of 1754 stated that the colonies had entitlement right out to the Pacific, up to 48 north latitude. So it might be reflective.
THE COURT: What year was that?
A 1754, my lord, right out to the coast. Various charters, Virginia, this one, but not north of the 48th north latitude.
MR. RUSH:
Q Well, I would like just like to refer you to another one of those lines, which appears down at the 40th degree, you see the northern boundary of Virginia, following the charter of 23 May, 1609.
A Certainly it's 1609.
Q To the something of the new England following the charter of November 3rd, 1620. So, yes, must be 1620?
A It goes up to New England's claim, wherever that might be.
Q Following the charter of the 3rd of November, 1620, from one sea to the other?
A Yes. But this particular claim comes from 1609, Virginia.

1 Q And you will agree with me that that designation is
2 indicated on the western side of the Mississippi?
3 A Oh, yes.
4 Q You will see down at about the 37th degree that there
5 is also a dotted line which indicates a boundary
6 between Virginia and Carolina?
7 A Yes, in other words, if you carried their claims right
8 out to the Pacific Ocean, that would be the boundary
9 out there between them.
10 Q They are extending the claims --
11 A The map maker is saying that.
12 THE COURT: What's that notation that's at the 40th Parallel?
13 MR. RUSH: Just below the 40th parallel?
14 THE COURT: Yes.
15 MR. RUSH: Northern boundary of Virginia, following the charter
16 of, I would suggest it is 23rd of May, 1609, to the --
17 THE COURT: I am sorry, the date was the 3rd of November?
18 MR. RUSH: No, the 23rd of May, 1609, to the --
19 A Probably means the boundary.
20 MR. RUSH: "To the boundary of the New England...", "to the
21 boundary of New England, following the Charter of 3
22 November, 1620, from one sea to the other"; is that
23 right?
24 A Yes.
25 THE COURT: The date again? 1620?
26 MR. RUSH: It appears to be November -- 3 November, 1620.
27 Now, my lord, there was some discussion between my
28 friends and I about the date that appears at the 48th
29 Parallel line depicted on this map. I thought it was
30 1690 but I think I would agree that it is 1620. All
31 right. Thank you, Dr. Greenwood. You can set that
32 aside.
33 THE COURT: Is there any discussion in any of the pages leading
34 up to the Royal Proclamation that recognized these
35 colonial charters or did they just ignore them?
36 A I wouldn't say they were ignored. As I say, the
37 Congress of Albany claimed out to the Pacific Ocean
38 but defined the claim from, I think it was between 34
39 north latitude to 48. Immediately after the
40 proclamation, the annual register for 1763 says that
41 Britain now owns territory right out to the Pacific
42 Ocean. They weren't ignored but in my reading of the
43 negotiations in 1761-'62, between the French and the
44 English, the claims to the far west aren't mentioned
45 at all, nor do I find anything about the claims of the
46 British to the Pacific coast in the proclamation.
47 THE COURT: But the colonial charters seemed to claim territory

that is overlapped by the Royal Proclamation?
A That's true, my lord.
MR. RUSH: Dr. Greenwood, I want to show you the coloured photocopy of the Bowen map. And I think we can do this without having to put it up on the easel, but I am showing you the photograph of the Bowen 1763 map.
A Yes.
Q And, we may be able to do most of this without the other copy. Perhaps not. I simply wanted to ask you about the colours on this. East Florida is coloured in --
A Yellow.
Q Sorry?
A Yellow.
Q Yes. Yes. And West Florida is coloured in, to my eye, a pale green?
A I think that's faded but I have other photographs. It's definitely green.
Q And there the boundary of west Florida runs to the Mississippi River?
A Yes.
Q That is the west boundary. Now, the British colonies comprising of the lands which are apparently east of the Appalachians, including Nova Scotia, is coloured blue, is it not?
A Well, I call it green.
Q All right. And the Province of Quebec is a --
A Pink.
Q Is a pink?
A Yes.
Q And Newfoundland and a part of Labrador is, to my eye, a pale brown?
A I would call it yellow.
THE COURT: It's not shown here.
MR. RUSH: All right. We will get it right here.
Q Showing you the second of the two Bowen maps. So Newfoundland, does that appear to you to be coloured in a faint brown?
A I would call it yellow.
Q All right. Now if you will just keep those in front of you. Now, there is no colouration depicted on the photographic copy in the area of the lands reserved for Indians, is there?
A Generally, that's true. But there is an exception on this map, an indentation west in Virginia, and Maryland, so that according to the proclamation the line would run like that, right? This map shows an

1 indentation. That's an exception. That would be part
2 of Indian territory according to the proclamation.
3 That's why this map was done earlier.
4 Q That's why you say it was done earlier?
5 A One of the reasons I say it was done earlier. That's
6 the only exception.
7 Q All right. But apart from that exception, which you
8 have explained, the lands reserved for Indians, you
9 call it the reserve, there is no colouration on the
10 map depicting that?
11 A Correct.
12 Q And there is also no colouration between Labrador and
13 the Indian reserve?
14 A Well, part of the new Province of Quebec is coloured
15 pink so one would say that that was between that and,
16 say, that. You asked me whether there was any
17 colouration between Labrador.
18 Q Apart from the Province of Quebec, in terms of
19 Labrador, if Labrador extends north of what the point
20 demonstrated on the map, the map doesn't depict north
21 of the Province of Quebec?
22 A Any colouration, yes.
23 Q And, is it not the case, Dr. Greenwood, as I
24 understand your evidence, that the documentary record
25 does not show when the map was coloured, in the
26 colours that I have referred you to?
27 A Well, I would testify that the pink boundary lines
28 were certainly on the map sent to the King. I have
29 entered a qualification that is conceivable, that some
30 of the colouration, other than the lines, was done
31 after June 8th.
32 Q Yes. But you cannot testify as to when those colours
33 were placed on that map?
34 A I can testify that the delineation of the boundaries
35 by the pink boundary lines were on that map.
36 Q But apart from the delineation of the pink boundary
37 lines, you can't say when the other colours --
38 A I would say it's highly probable, but not definitely,
39 that they weren't done on the 9th of June or the 10th.
40 Q Why do you why it was highly probable that they were
41 done on the 9th of June?
42 A Because this map, it appears from all the archival
43 certificates, was physically contiguous, it was sent
44 to the King, it was an annexed map. It seems to me
45 likely they would send a finished product. The word
46 delineated might mean depicted in the 18th Century, so
47 it's theoretically possible that the colouring, other

than the boundary lines, was made later. In my judgment it's probable that this is the map as such, that went to the King.

Q I understood you to say in your evidence that the delineated boundary referred to were the pink lines that were on the map, and that's what you had testified?

A That's what I am certain went to the King. But I think it's probable that the colouration also went to the King.

Q Well, is that not simply a projection on your part, a speculation on your part?

A Well, after spending 200 hours or so on the map, I think it's a little more than that.

Q Well, there is nothing that you can refer us to, except the language, the delineated boundary that suggests that the coloured portions -- and I am not here referring to the pink lines -- was on the map at the time that it was sent to the King?

A Other than the fact that the map, according to the Public Record Office, was physically contiguous to the original Board of Trade report, which I have seen, therefore suggesting, at least as a presumption, that what we have before us from the P. R. O. was what went to the King.

Q Now, you cannot say who it was that coloured the map?

A No.

Q And it's true, is it not, Dr. Greenwood, that you can not say who it was that placed the pink lines on the map?

A That's true.

Q All right. Thank you.

Now, may Dr. Farley's map folio be placed before Dr. Greenwood, please, and in particular, map number 20. Excuse me, it's map number 12.

THE COURT: One or two?

MR. RUSH: This is the print, my lord, of the Bowen map.

THE COURT: It's in two parts.

MR. RUSH: It's part two.

THE COURT: Part two. All right.

MR. RUSH:

Q And, Dr. Greenwood, I think we have the right portion here. Maybe not.

A It's a copy of mine.

Q There are two parts to this, I will show you the other part as well. All right. I would just like you to examine for me these two maps. I think it was your

1 testimony that these maps are the -- are copies of the
2 maps that have been filed as the photograph of the
3 coloured Bowen map?
4 A I see up here the archival certificate is there, I
5 presume it's a copy taken by my clients from the map
6 that I produced for them.
7 Q Is that the only way that you can tell?
8 A Well, I can't see the colours now, can I? Other than
9 that, if you want me to start dating it --
10 Q No, I am just wondering if there is --
11 A Have a wonderful time doing that.
12 Q It's your understanding that this is a photocopy of
13 the document that --
14 A Let me look at it, please.
15 MR. RUSH: May I see the original photograph, please?
16 A It would seem to me to be a copy of the Bowen coloured
17 map, obviously not showing the colours.
18 Q And you know how that was reproduced?
19 A Well, it was engraved and I can date it.
20 Q Wasn't there a Bowen map that is -- if I may put it
21 this way -- a base map?
22 A Well, 1755, and there were later editions, one later
23 than this one in 1763 and one in 1772, yes.
24 Q Was there a 1755 Bowen map that is this map that is
25 this map?
26 A It is the map, but the cartouche, the title has
27 changed. And there are descriptions of the articles
28 of the Treaty of Paris, which clearly would not appear
29 on the earlier one, and they do not have a description
30 of the boundaries from the proclamation from this one,
31 showing that it's pre-proclamation.
32 Q There is a Bowen map, however, which is post-
33 proclamation, which indicates the boundaries as
34 indicated --
35 A Definitely, yes. A late '63 one, which has the
36 boundary laid down by the proclamation, has the
37 engraved lines for Quebec and east and west Florida
38 printed on it. This one doesn't, showing it's pre-
39 proclamation.
40 Q It's your understanding that there is a base map from
41 which presumably, the --
42 A This engraving was made.
43 Q Was taken from that?
44 A Very little change. I haven't inspected everything
45 but very little change.
46 Q But you have inspected that map?
47 A I have inspected that map.

Q And -- all right.
Dr. Greenwood I want to ask you about another subject now and --
THE COURT: Should we take the morning adjournment?
MR. RUSH: Yes, all right.
(PROCEEDINGS ADJOURNED FOR SHORT RECESS)

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

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Well, I find that I am no longer committed to the Court of Appeal on the week of the 23rd if that eases your scheduling problems.
MR. GOLDIE: Yes, it does, my lord. At least it eases my colleagues' problems with respect to tomorrow.
THE COURT: Yes.
MR. RUSH: Not just my problems.
MR. GOLDIE: No. I put the apostrophe after the S.
THE COURT: We all have problems. That means we'll not sit tomorrow, and we'll be sitting all next week and all of the week of the 23rd, or as will be required.
MR. GOLDIE: Thank you.
THE COURT: You think, Mr. Goldie, that will finish your case?
MR. GOLDIE: Yes.
THE COURT: Just to make sure what we are going to do after that -- where is the calendar? We -- then we're off the week of the 30th, we're back on the week of the 6th, is it?
MR. GOLDIE: Yes, but starting on the 8th.
THE COURT: Starting the 8th, yes.
MR. GOLDIE: Then there's a week off after that and then three weeks following that.
THE COURT: Yes. All right. Thank you. Well, may I ask if it's thought useful and advisable to sit those two days of that week?
MR. GOLDIE: Well, that's not for me to say, my lord.
MS. RUSSELL: My lord, if there are housekeeping matters to be dealt with then by all means, but we'll not be commencing until the 8th, if that's agreeable.
THE COURT: I'm talking about the 8th and 9th. We're gonna start the 8th and 9th, is it?
MS. RUSSELL: Yes. We would like to open our case on those days, my lord, if that's convenient.
THE COURT: Yes. All right. Mr. Rush.
MR. RUSH:
Q In your testimony you reviewed a number of early statutes, and I think you started with the Act of Supremacy of 1858?
A I believe it's 1559. New calendar.
Q And you ended, I think, with the Import Duties Act of 1764?
A I think that's correct.
Q And in that period how many of the statutes of the Imperial government did you review in total?
A Well, I probably looked for all the ones dealing with

colonies, but one can miss them quite easily.
Q Well, how many did you review?
A Probably in the order of maybe a hundred, 150.
Q I take it that you only reviewed those Imperial statutes dealing with colonies and not all of the Imperial statutes in that two century period?
A Correct.
Q Did you review any Colonial statutes?
A I reviewed a number of Colonial statutes dealing with Indian policy, and particularly with prohibiting private purchases of land from the Indians, 17th and 18th centuries. And I think I've cited one, 1758 Georgia drafted by Ellis, I think.
Q And how many of those did you review altogether?
A Somewhere in the order of 30 to 40.
Q By no means all of those that were made in that period?
A All the ones that were available from the sources at UBC that I could find.
Q Right. You also referred to a document that I think you entitled "A Short Extract of Proceedings at a Congress Held at Detroit"?
A Yes. 1764?
Q Yes, I believe so.
A Yes. M'hm.
Q September the 4th, 1764. And this was referred to a congress between Colonel Bradstreet and Deputies of the Indian Nations?
A Yeah. I think it was the Chipewyans and Ottawa in particular.
Q Yes. Now, there were several other similar meetings with Indian allies of the French recorded in the documents, were there not?
A Yes.
Q And that is an example of but one?
A Yes.
Q And can you indicate some of the other Indian tribes who were allied with the French who met in congress similar to that with Colonel Bradstreet?
A Well, there's the -- there was the purchase of a plot of land in Niagara 1764. I can't remember all the Indians who would have been there, but among the French Indians who you would expect to be there would be Chipewyans, the Ottawa and the Huron.
Q Is that the only one you can remember?
A Well, offhand, yes.
Q All right. You also gave us a listing of cabinet

1 ministers who were in the cabinet at the time of the
2 Treaty of Paris and who were in the cabinet at the
3 time of the Royal Proclamation. Do you recall that?
4 A Yes. And some of the people listed were not in the
5 cabinet. The president of the Board of Trade was only
6 quasi cabinet.
7 Q I think you indicated that. But what you didn't
8 indicate was how many seats there were in the cabinet
9 at both times?
10 A Well, that would be King George's prerogative.
11 Q Well, you tell me how many?
12 A Nine or ten was the average number at that time.
13 Q And during the Treaty of Paris there were nine or ten
14 cabinet seats in total, is that your evidence?
15 A Yes, that's --
16 Q Yes.
17 A -- The standard figure for the time, yes.
18 Q And I appreciate it's the standard figure --
19 A Yeah.
20 Q -- But is it your evidence that you know that those
21 were the number of seats or is this what you're saying
22 is the average of what the seats were during that
23 period?
24 A Okay. I'm saying that that's a standard number. I'm
25 saying I've looked at the cabinet minutes from 1763 to
26 1765 produced by Tomlinson. I recollect that at the
27 cabinet meetings it varied between three at the
28 minimum and nine at the maximum, and I would say an
29 average attendance would be a six. But with the
30 Treaty of Paris, for example, a number of cabinet
31 ministers met and the cabinet, in fact, ratified. But
32 the Archbishop of Canterbury for reasons unknown to
33 scholars turned up as well.
34 Q As a cabinet minister?
35 A I don't think so. He wasn't entrusted with his
36 Majesty's most, you know, most secretive affairs.
37 Q Right. Now, at the time of the Royal Proclamation
38 what was the numerical size of the cabinet? Is it the
39 same number?
40 A Same answer.
41 Q Nine to ten?
42 A Yes.
43 Q All right. Now, could the witness be shown volume
44 five which is 1166. This is Exhibit 257a. Excuse me,
45 Exhibit 1166-257a. This is Shelburne's minutes
46 submitted to the cabinet.
47 A Which tab, Mr. Rush?

1 Q 257a.
2 A Yeah.
3 Q And you quoted from a passage which is, I believe,
4 about eight pages from the back which is page 123.
5 A M'hm.
6 Q Yes. Eight pages from the back of the tab. And you
7 read most of the page to us. Are you with me?
8 A I think so. I don't have pagination on my copy.
9 Q All right. Neither do I.
10 A Is that right?
11 Q Yes. Yes, you're there. Now, I take it you took into
12 account the whole of this document, did you?
13 A Yes, I believe so.
14 Q You read the whole of the document?
15 A Yeah.
16 Q Did you read what follows in the next page 124, and I
17 begin at the top of the page.
18 A If anything.
19 Q
20 "If anything can tend to keep up the Dependency
21 and prevent a Separation of the Colonies from
22 the Mother Country, it must be a Facility for
23 the rising Generation to extend themselves
24 still further into the unsettled Continent
25 whereby they must long stand in need of the
26 friendly support of Great Britain, as long as
27 the Erection of new Governments to the Westward
28 and Southward affords an easy Settlements to
29 the needy and adventurous of the other
30 Provinces, the Migration from the Northern
31 Colonies will continue, and while it continues
32 the Price of Labour will remain high and
33 consequently leave Us nothing to dread in point
34 of American Manufacturers or Independency; on
35 the contrary the Increase of Population will
36 insure a Market for British Manufactures when
37 every European market shall have failed us.
38 But were it either intended or possible to
39 accomplish the setting Bounds to the Extension
40 of the Colonies, the Undoubted Consequence must
41 be an Increase of Inhabitants in the settled
42 Provinces, the Lands must come to be thoroughly
43 cultivated, and Manufactures at length must
44 take place, until in the end the Colonies
45 finding themselves able to subsist by their
46 interior Resources may be induced to shake off
47 all Dependency and swerve from their

allegiance. And certainly the present Extent of the American Provinces (larger than all Europe) is considerable enough if thoroughly peopled to form many very powerful nations."

You took that into account, did you?

A Yes.

Q Now, I believe, Dr. Greenwood, in this volume -- perhaps not. I think it's volume six. Do you have volume six there? This is the last tab, my lord, volume six.

A I'm not sure that I do.

Q This is 1167.

A It's a small --

Q It's not the last, it's tab 339.

A Yes, I have it.

Q All right. Now, I simply want you to confirm for me, Dr. Greenwood, that this document which is found at this tab I think you indicated was part of the 1889 arbitration?

A I think it's 1884. The final statute was 1889.

Q Yes. And this is -- how would you describe this document?

A This would be the printed record of the argument before the Privy Council on the Ontario Manitoba federal boundary dispute in 1884. Argument and interjections by the judges of the judicial committee.

Q And you indicated that this ran to some 400 odd pages?

A Something like that, yes.

MR. RUSH: All right. My lord, I have not had an opportunity of reviewing, as I look forward to with a great deal of eagerness, all of those 400 pages, but I would -- I would simply like to reserve the right when I have done that if I feel that there's anything that I can add or would want to add to that tab that I do so. It wasn't part of the material that I had made available to me and so I'll have to go to the original record then.

THE COURT: Well, we've followed that practice in other cases.

MR. RUSH: Thank you.

THE COURT: So I see no reason why you shouldn't add to the collection.

MR. RUSH: All right. Thank you.

Q Now, Dr. Greenwood, you told us you were directly retained by counsel for the Province in April of 1985 to work on behalf of --

A Yes.

1 Q Of the Province. And I think you agreed with me when
2 I asked you this during the time of your examination
3 on your qualifications that you were asked to prepare
4 an opinion on the applicability of the Royal
5 Proclamation to British Columbia?
6 A Yes.
7 Q And I think that you also indicated at the same time
8 you were on a consultancy retainer to the federal
9 government, federal defendant in this case?
10 A Eventually the two crowns shared my fees, and I can't
11 remember exactly the date of that arrangement. There
12 was a hiatus when I was not representing the Federal
13 Crown.
14 Q Can you tell me what the date was approximately at
15 which the Crowns in this case shared your fees?
16 A I think it would be towards the end of 1985.
17 Q All right.
18 A Towards the end of the year.
19 Q And at that time you were doing consultancy work for
20 both the provincial defendant and the federal
21 defendant in the case?
22 A Thereafter, certainly.
23 Q To the time at which you -- to the present?
24 A Yes.
25 Q And you billed for this work?
26 A Yes.
27 Q All right. In the course of your consultancy work,
28 and in the preparation of your opinion, certain
29 comments were made by counsel for the provincial
30 defendant in respect of your report, is that not the
31 case?
32 A Well, there were ongoing discussions about my report,
33 yes.
34 Q And on one of those --
35 A Correspondence is one.
36 Q Yes. On one of those occasions you provided comments
37 in response to those notes made of your report?
38 A Yes.
39 Q And that occurred on March the 10th of 1986, is that
40 not so?
41 A I'd have to see the documents.
42 Q Yes. All right. Well, I'm going to show you two
43 pages of a document I believe is such a document.
44 A Yes, I recollect.
45 Q Now, I'm showing you two pages of a document entitled
46 "Greenwood's Comments on Mr. Robertson's notes of 21
47 January, 1986 on Greenwood's Opinion of 15 December,

'85".
A This is probably done by my clients. I mean the heading would indicate that. So far as I can see it accurately reflects what I said.
Q All right. I simply want to draw your attention to two -- three parts of this. Firstly something you've testified to at the beginning, Dr. Greenwood, and that is you point out in part one, paragraph one:

"I have no objection, although Brigham's" --

And that's Brigham's version of the Royal Proclamation?
A Yes, it is.
Q

"Would be recognized by professional historians as the better text."

That is your opinion, is it not?
A Yes, it is.
MR. RUSH: Now, my lord, may this be the next tab, please, 1168 tab 20?
MR. GOLDIE: Well, my lord, I think if this is to go in if it's to be intelligible at all Mr. Greenwood's opinion of the 15th of December, 1985 should go in.
MR. RUSH: I don't think it needs to be placed before your lordship at all.
MR. GOLDIE: I object to it being an exhibit in that case.
THE COURT: Well, following my usual practice I would think that at least that paragraph would have to be -- would have to go in. I don't think one item of this kind in cross-examination would make the whole report admissible, but certainly the paragraph would otherwise it's unintelligible.
MR. GOLDIE: The reason I said the opinion was. Of course, if this goes in then there are observations on virtually every paragraph.
MR. RUSH: Well, my lord, I disagree with my friend's assumption or assertion that by referencing a document containing notes that that opens the gate for the totality of an opinion to float in. It doesn't follow. What I refer the witness to is a particular passage. And if my friend wants to file part one of paragraph one I don't have any trouble with that, if he wants to put that in. But I think it doesn't even go that far. I'm entitled to put notes made by this witness to the witness, and he can accept it or deny it or whatever

he wants with it, but I think it goes no farther than that.

THE COURT: You can certainly put it to the witness and there's no difficulty with that. The difficulty only arises when you seek to put in the document.

MR. RUSH: Well, I -- I don't think it goes any farther than permitting my friend if he chooses to put in the particular part of the paragraph. But, I mean, my argument is that by referencing this document and cite and placing the witness' reference point to the Brigham's version that there's absolutely no justification for placing the reference document before the witness.

MR. GOLDIE: Well, my lord, I quite agree with everything my friend has said. If he confines his question and answer to the question he put and the answer he got, but he's tendering a two page document. Now, in my submission, he doesn't have to tender any document. He's got the witness' agreement with him that Brigham's is the -- is the proposed. But to tender the document and leave it at that is, in my opinion, quite improper unless he's going to go a step further.

MR. GOLDIE: Well --

MR. RUSH: Well, my lord, I'm happy to try to reformulate my question. I'm not wedded to this document. I'm happy to try and reformulate a question which will --

Q Dr. Greenwood, I want to refer you to an entry in the second of the two pages that I've indicated here, and this is a statement at the bottom of the page where it says:

> "Whether I am the proper person to undertake it it is doubtful."

THE COURT: I'm sorry.

MR. RUSH: It's at the bottom of the second page.

THE COURT: Yes.

MR. RUSH:

Q

> "Do we have an ethno-historian or historical anthropologist on board or on call? Such a person could identify and locate tribes better than I."

Now, firstly, Dr. Greenwood, you are not an ethno-historian?

A No, I'm not.

Q And do you agree that there would be better qualified historians with a specialty in ethno-history who could identify and locate the tribes, Indian tribes of any character better than you?
A Yes. Or historical anthropologists, as well.
Q Yes.
A Yes, I agree with that.
MR. RUSH: All right. My lord, I don't need the document and I'm happy not to make reference to it. Thank you.
Q Now, you told us during the cross-examination of your -- on your qualifications, Dr. Greenwood, that you attended in court during the direct examination of Mr. Morrison?
A That's correct.
Q And you said that was in late April of '89?
A I believe it was in April, '89, yes.
Q And you heard his testimony I think you said?
A Yes.
Q And you indicated that you did not amend your report to deal with documents or facts that arose in Mr. Morrison's evidence?
A Correct.
Q Now, I want to ask you if you -- you submitted a revised report, I think you agreed, in May of '89; is that right?
A Yes.
Q And I think you also submitted a statement of account dealing with the period of your presence in Vancouver during the testimony sworn or given by Mr. Morrison?
A Yes.
Q And this is a statement of account of March -- or it appears to be April 15th, but perhaps you can assist us here. I'll hand this up to your lordship, my lord.
THE COURT: Thank you.
MR. RUSH:
Q Now, can you identify from, Dr. Greenwood, that this is a statement of account rendered to Macaulay McColl in care of Russell & DuMoulin?
A Yes.
Q And this is one that you've rendered; correct?
A Yes.
Q And it indicates at the bottom comments "re: Delgamuukw and the Queen 50 percent share"?
A Bottom of which page?
Q The first page.
A Yes.
Q And this refers to the 50/50 split arrangement?

A Yes, that was arrived at the end of '85.
Q '85. You previously talked about the split of your fees; is that right?
A Yes.
Q Now, on the second page it says:

> "April 23 - 27 discussing amending my major opinion".

A Yes.
Q Now, that was the period of time during which you attended at the -- at the court to hear Mr. Morrison's evidence, was it not?
A Yes.
Q And you'll see on May the 1st there's an entry "research at UBC on Hudson's Bay Company's Charter". Is it not the case, Dr. Greenwood, that after hearing Mr. Morrison's evidence you undertook further amendments shortly after Mr. Morrison's evidence and undertook further research to deal with matters raised in his evidence?
A I think I'd have to agree with the 1st of May in which I did look at the charter amendments, and it's my fault if I haven't made that clear. Doing research because of his evidence, yes, that's correct. But otherwise amending my opinion, no, other than small details.

MR. RUSH: Now, I want to also show you a letter which you wrote to Mr. -- Mr. Goldie, and this is dated May 31st, 1989. And this is during the time of your -- I presume to be the time at which the opinion was amended. My lord, may that document be the next tab, please.

MR. GOLDIE: May I see it, please?

MR. RUSH: I'm sorry. Not this document, the other one. The next one I'm referring to is this one.

THE COURT: Yes. Tab 20.

(EXHIBIT 1168-20: Statement of Accounts)

MR. RUSH:
Q I'm showing you now a letter apparently containing your signature dated May 31, 1989 addressed to Mr. Goldie "Re: Delgamuukw et al. The Queen in Right of B.C. et al." Now, I'm directing your attention, Dr. Greenwood, to page two of the letter and to entry number three.

A M'hm.
Q And this is under heading "The principal changes/additions relate to the following".
A M'hm.
Q And item number three indicates "p. 109 bottom - the Sioux"?
A Yes.
Q

> "N.B. Morrison has filed this document and pointed out to the judge that the Sioux as described therein resided west of the Mississippi River."

A Yes.
Q Now, isn't it the case, Dr. Greenwood, that with reference to the Sioux that you did make changes or additions to your report to answer documents?
A Yes. But they were agreed to previously with Mr. Robertson. I can't remember exactly the date, but I think it was in 1986 I'd located tribes for him, and he was a member of my client's firm.
Q I see.
A And so the decision was made at that point. The research was done then.
Q I see. But here you're pointing out a change which occurred to the report as a result of evidence that you heard given, and documents tendered by Mr. Morrison; isn't that right? You say "Morrison has filed this document and pointed out to the judge" --
A I'm probably telling my clients that it's important that I put it into the opinion, but I think that had already been decided.

MR. RUSH: All right. Thank you. You can set that aside, my lord. I don't intend to file it.

THE COURT: All right.

MR. RUSH:

Q Now, Dr. Greenwood, I understand that your billing rate for services provided to the defendants here was at the beginning in the amount of $250 per day?
A That's correct.
Q And that subsequent to that your rate was increased to 350 per diem?
A That's correct. That would be May, the end of May, 1988.
Q All right. And I think you've indicated that it was at the end of 1985 that you were retained as a consultant in respect of both defendants in the case.

All right. I want to show you an account. You can pass these to the witness. And I wonder if you can identify for me, Dr. Greenwood, there are two invoices here. The first two pages represent an invoice billing date July 23, '87, and the second is an invoice dated 19-06-11, June the 11th of '89.

A Yes.

Q Yes. You can confirm for me that these were invoices that you tendered to the defendants in the case?

A It's addressed to Macaulay McColl, but yes.

Q And the second is addressed to Russell & DuMoulin?

A Yes.

MR. RUSH: All right. My lord I'd like that to be the next exhibit.

THE COURT: 21.

MR. RUSH: Thank you.

(EXHIBIT 1168-21: Three invoices of Dr. Greenwood)

MR. GOLDIE: I think there are actually three invoices, my lord.

MR. RUSH:

Q Can you confirm that, Dr. Greenwood? The first two pages appear to be July 23, '87, and then there's a date -- there's an invoice 89-04 and then 89-06-11, and I took these three to be together, but I could be wrong about that. Can you confirm or state otherwise that these invoices are the same or are -- do we see three invoices here?

THE COURT: I see four numbers.

MR. RUSH: I do too, my lord.

A Seem to be three.

MR. RUSH: All right. Thank you. So there's the 89-04.

THE COURT: And 11.

MR. RUSH: Yes. And 89-06-11.

A Yes.

Q Well, my question to you is you can confirm that these are the invoices which you tendered?

A Yes.

Q Yes. All right. Now, I take it that the invoices I've shown you here at tab 21 and at tab 20 do not represent all of the invoices which you tendered for consultancy services provided to the defendants in respect of this case?

A These you mean?

Q Yes.

A Yes, you're right.

Q All right. I'd like you to tell me how much it was

1 throughout the period of your consultancy that you
2 have been paid by the defendants in this case for your
3 work on their behalf?
4 MR. GOLDIE: My lord, I object to that. My friend wrote me with
5 respect to this, and I have pointed out to him that I
6 am advised by Mrs. Greenwood that the records that
7 would enable the witness to answer this question are
8 in Ottawa, and that it would take some three to four
9 days to separate or segregate the fees which are
10 attributable to advice given with respect to
11 cross-examination of the plaintiffs' witnesses, advice
12 given with respect to the summaries filed by the
13 plaintiffs' experts, advice given with respect to
14 other cases, which Meares Island is the most notable.
15 And I do not, my lord, consider that an overall total
16 is of any relevance or of assistance in this case.
17 And the segregation of it is going to take, as I say,
18 three to four days. And there's some question as to
19 whether or not the records, which I am instructed are
20 computerized, are complete. Dr. and Mrs. Greenwood
21 moved from Vancouver to Montreal to Ottawa in the
22 period, and Mrs. Greenwood isn't at all confident that
23 everything is there that would enable an answer to be
24 given to my friend in a way which is relevant to the
25 case. That is to say, in a manner which would be
26 segregated so that the totals are applicable only to
27 this case. And I object to the question on the basis
28 that it is irrelevant in its present form.
29 MR. RUSH: Your lordship has made a ruling that the amount of
30 fees or payment made to an expert in terms of the
31 opinion provided to the client is relevant. And it so
32 happens that in the case of the federal -- in this
33 case the provincial defendant's expert that the fees
34 are computed on a per diem basis. It doesn't mean
35 that there is not an obligation to provide a total
36 figure where the invoices have not been disclosed as
37 part of the disclosures under your November 10th or
38 14th ruling. Now, my lord, this is not a question
39 that I raised for the first time with my learned
40 friend. I raised it first when I made a demand for
41 all of the documents that would conform to your
42 November 10th, '88 ruling. I raised it again on
43 October the 4th asking -- indicating that I would be
44 making an inquiry of the witness on this particular
45 issue and that he should inform himself. I asked
46 again at the conclusion of his direct examination. I
47 wrote to Mr. Goldie on the 10th of October indicating

once again that I would be posing questions on this issue. I think that this is a question for which evidence was compelled and evidence led of witnesses by the -- for the plaintiffs, their contracts and correspondence, the setting out details of payment arrangements were disclosed. In my submission, that it is entirely consistent with your lordship's ruling that the witness be required to indicate the amount of money that he has been paid vis-a-vis his opinion and his consultancy work on behalf of the provincial defendant, and in this case as well on behalf of the federal defendant. For your lordship's ruling to have any meaning at all, because at that time you indicated that there may well be some relevance to the amounts of money paid to experts in terms of the impact or character or shade of the opinion that has been tendered or in terms of the evidence that's been tendered. Now, in my submission, it is not sufficient simply to provide documents that indicate a per diem rate was provided. This is of no assistance whatsoever. Either the witness can tell me, which I would be satisfied with, how many days of work provided at those per diem rates or what he was paid for the period of time that he was under consultancy service. And, in my submission, my lord, it's a proper question to conform with your lordship's ruling and it ought to be answered. And it's not as though there hasn't been adequate notice of our intention to pursue this. And it can't be said that this is new to the parties or it hasn't been probed previously as between counsel and an expert.

MR. GOLDIE: Well, my lord, so far as I'm aware the only time when the issue arose other than the per diem cost, and I believe I'm correct in stating that the per diem cost is a matter which has been linked to the credibility of the witness. As I say, the only time that I'm aware of in which an overall cost was sought to be obtained was in the case of Mr. Skoda. And your lordship declined to order Mr. Skoda to pay. Now, I have two transcript references.

THE COURT: Not to pay surely.

MR. GOLDIE: Not to pay. Declined to order him to reveal the payment. In volume 146 on November the 7th a discussion arose with respect to the removal of -- of material in a letter for housekeeping purposes, and your lordship had a discussion with Ms. Mandell who said that I think they should be entitled to know

1 financial affairs if this is an issue for credibility.
2 That was -- and the discussion preceding, well if
3 there was an enormous bonus paid or something of that
4 order.
5 MR. RUSH: That was his lordship's comment.
6 MR. GOLDIE: Well, that was the context of the discussion. And
7 then with respect to Mr. Skoda, volume 247, and in Mr.
8 Willms' cross-examination he said, and I'm referring
9 at page 18149 the question was put what are the total
10 billings to the plaintiffs for that work, that work
11 being the cartographic work the Canadian Cartographics
12 has done, and my friend objected to that. And he
13 said, and this is my friend Mr. Rush at line 11.
14
15 "I can see a rationale for probing an expert's
16 billings providing the court with an expert
17 opinion in a subject that is other than
18 technical, and in this case the underlying
19 information is fundamentally of a technical
20 nature, and, therefore, my friend is asking a
21 question of what it had cost to produce this
22 type of mapping."
23
24 I do want to make one other comment, and that is
25 that my friend has objected to the filing of an
26 opinion. And if I wish to take a technical point I
27 could say there is no basis for asking any questions
28 of this witness with respect to his opinion, because
29 on my friend's objection it has been rejected and
30 there is no opinion before your lordship which can --
31 in respect of which the billings can form any basis
32 for discussing the credibility.
33 And then returning now to the discussion with
34 respect to Mr. Skoda. Your lordship asked my
35 colleague just where this would take him in relation
36 to the -- the work that Mr. Skoda had done. And your
37 lordship said:
38
39 "You see, a good part of what the company was
40 paid is going to be technical cost that has
41 nothing to do with the area you're seeking to
42 explore."
43
44 And then your lordship made a ruling at page
45 18150.
46
47 "Mr. Willms, I think that until you challenge

1 something that's on the -- on the maps or
2 question the accuracy of them in some way, and
3 in some serious way, I don't think what he
4 billed for it is going to be of any assistance.
5 If there's an issue about the reliability or
6 the bona fides of any of the material that's
7 been displayed"
8 And I emphasize that word displayed.
9
10 "Then it might become relevant, but until that
11 happens, at the very least, I would not be
12 disposed to order the disclosure of this
13 information."
14
15 My lord, the letter that I wrote to my friend on
16 October the 10th I said this:
17
18 "I have spoken to Dr. and Mrs. Greenwood about
19 the total amounts paid them. Their records are
20 in Ottawa and are not immediately available.
21 More importantly it would take some three to
22 four days work for Mrs. Greenwood to sort out
23 the charges in category of work so that the
24 amounts paid that relate to his report"
25
26 And I interject here, his report which is not
27 before the court.
28
29 "For this case can be segregated. She is not
30 at all sure that records are such that this can
31 be done. What was paid on account of Meares
32 Island for assistance in the corporation of the
33 examination of the plaintiff's witnesses, and
34 in respect of topics unrelated to this case are
35 irrelevant, and I have declined to request Dr.
36 Greenwood to undertake the work of segregateing
37 the totals."
38
39 So I -- the basis that I have for my objections
40 are twofold. Firstly, there is the fact that there is
41 no report before your lordship. Secondly, that on the
42 basis of the prior rulings relating to the disclosure
43 of fees in this case, a disclosure of a total, it is
44 limited to a determination of those parts which are
45 relevant and which are challenged in the case, and
46 there has been no challenge, because there is no
47 report, to any part of the report.

1 THE COURT: Thank you. Ms. Russell, any submission?
2 MS. RUSSELL: My lord, we certainly support the Province's
3 position.
4 THE COURT: Thank you. Mr. Rush.
5 MR. RUSH: Well, I think that there is a completely unwarranted
6 line drawn between a report in evidence. The question
7 is whether evidence tendered by the witness is
8 evidence that has been challenged. And on many counts
9 he was probed and evidence or documents he tendered
10 were probed as to their origin, his knowledge of them.
11 Throughout his evidence relies upon assertions made by
12 Dr. Greenwood about work that he did, that we must
13 accept that he did, and statements made by him about
14 evaluations that he did. This is not one of those
15 cases, as it has not been with any of the historians,
16 where the evidence has been free of some opinions. So
17 I say that my friend's rigid distinction is
18 unwarranted. The question is is in terms of the
19 evidence have there been probes and have questions of
20 credibility been raised. And there have been.
21 The second point is, my lord, that my friends have
22 already disclosed invoices. Those invoices have been
23 tendered. In my submission, the disclosure on the
24 invoices have been wholly inadequate. I mean, it's
25 clear that there are invoices -- invoices that
26 originated with Dr. Greenwood, invoices that were
27 received by Russell & DuMoulin. There must have been.
28 The witness says there were others. Some of those --
29 at least four of those have been disclosed. I
30 wouldn't need to make this submission if, in fact,
31 those invoices have been disclosed in their totality,
32 but apparently it's a significant task despite the
33 fact that Dr. Greenwood was advised in advance of the
34 fact that these questions would be coming to determine
35 where those invoices are. But I say, my lord, either
36 I'm entitled to the invoices or I'm entitled to this
37 witness' evidence directly as to how much he was paid
38 in respect of the production of his report, or I'm
39 entitled to know how many days he devoted to that task
40 and at what per diem rates. It seems the only way, in
41 my submission, that there can be any meaning or sense
42 given to your lordship's ruling is if, in fact, these
43 disclosures are made otherwise it's totally
44 meaningless. You would never be able to assess
45 whether or not the credibility of a witness should be
46 waived one way or the other based on this information
47 were it not for the fact that you had some knowledge

1 of the totals of amounts of monies that had been paid.
2 THE COURT: Well, all the witness has done, Mr. Rush, is bring
3 to my attention a collection of documents and --
4 MR. RUSH: And comment on the documents --
5 THE COURT: Well --
6 MR. RUSH: -- Contextually. And he has commented on many of the
7 documents. That's been the thrust of his evidence.
8 THE COURT: Well, but not in a way it seems to me there's been
9 any serious attack on credibility. I mean, the
10 area -- the field is so vast that there -- one would
11 never cover it. And all the witnesses hadn't covered
12 it all. In a number of statements he said I looked at
13 a number of things. I didn't take a close look at
14 them all. I don't know how many there are in total.
15 I can take a guess. But it doesn't seem to me it's a
16 credibility problem.
17 MR. RUSH: Well, my lord, in any -- you are going to be asked to
18 assess the evidence of two witnesses who did precisely
19 the same thing, and there's going to be questions --
20 one of those witnesses was not cross-examined. Mr.
21 Morrison. You're going to have to make certain
22 evaluations of the evidence brought before you both in
23 terms of the selection and in terms of the emphasis,
24 and it seems to me entirely within the ambit of your
25 lordship's ruling that in the weighing of that
26 credibility has got to be a factor that's weighed into
27 it. And, in my submission, my lord, if this is a
28 factor that you have to weigh, that is whether or not
29 the man was paid a million dollars or ten dollars, if
30 that is a fact and you -- I think your lordship has
31 already ruled that it is a factor to weigh into it,
32 then I say that we're entitled to that information.
33 THE COURT: Well, at the moment I am not conscious of any
34 credibility, serious credibility choices between Dr.
35 Greenwood and Mr. Morrison. I doubt if there will be.
36 They both put before me a collection of documents and
37 they have explained what they understand these
38 documents relate to. Mr. Morrison put before me some
39 opinions that I'm easily able to assess against the
40 documents that he was speaking about. Dr. Greenwood
41 prepared a lengthy opinion which is not before me. I
42 have some opinions from him both in chief and in
43 cross-examination relating to the collection that he
44 has supervised, but again I'm able to weigh that
45 opinion against the document itself. And in many,
46 many cases it comes down, as both counsel have argued
47 from time to time in different perspectives, that I

have to decide what the document means and what inferences should be drawn from it. That being so it doesn't seem to me it is a case that calls for fine weighing of credibility where the amount paid to either of them will have anything whatsoever to do with the conclusions I reach about what the documents mean or what their circumstances were. I'm not disposed to order the matter going any further than it is now.

Are you finished, Mr. Rush?

MR. RUSH: That being so, my lord, that concludes my cross-examination.

THE COURT: All right. Mr. Goldie, do you have re-examination?

MR. GOLDIE: I have a little, my lord.

THE COURT: Do you want to do it now? Do you have time to do it between now and when we should reasonably adjourn for lunch?

MR. GOLDIE: It is longer than two and a half minutes.

THE COURT: Shall we do it at two o'clock.

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

(PROCEEDINGS ADJOURNED)

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

Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 2 O'CLOCK P.M.)

F. MURRAY GREENWOOD, Resumed:

RE-EXAMINATION BY MR. GOLDIE: (Continued)

MR. GOLDIE:

Q Dr. Greenwood, I am putting before you volume one, tab 62 of your documents, Exhibit 1159, and I am referring you to the second to last page under that tab, and you had drawn his lordship's attention, in your evidence in chief, to the first paragraph on that page, but -- my friend asked you to read the second paragraph, beginning with the words and I quote:

> "And the same is taken for granted in the Governments lately ceded by the Crown of Spain."

Now, just pausing there, what do you understand is referred to by the words "lately ceded by the Crown of Spain"?

A I think that would be Florida.

Q All right. Continuing:

> "There is not extended up to the forts on the Ohio and perhaps to the Lake Superior, the Spaniards or French will be able at all times to cross the river."

Just pausing there, what do you understand is meant by the words "the river"?

A I believe it's the Mississippi River.

Q And continuing:

> "And come to excite the Creeks, Chichasaws, Catabaws, etc., to enmity with the Crown of Great Britain and come on the back of our settlement as they used to do."

Taking that paragraph as a whole, what do you understand is being addressed by the writer?

A I think it's all part of a piece of what Egremont wanted to prevent, that is the possibility of any boundary disputes coming from the French or the Spanish, because British territory would not be given a civil jurisdiction or would not otherwise be

1 possessed effectively by Britain.
2 Q All right. Thank you.
3 You were referred to volume four of your --
4 A I don't seem to have volume four.
5 Q I will put it in front of you. Tab 193, please.
6 A Yes.
7 Q Of Exhibit 1164, and that is the Entick, E-N-T-I-C-K,
8 map?
9 A John Entick map, yes.
10 Q You were asked with respect to this map to agree that
11 the words New France or Canada do not stretch across
12 the St. Lawrence Valley?
13 A That's correct.
14 Q What did you understand my friend meant by the words
15 St. Lawrence Valley?
16 A Well, perhaps a term of art, I assumed he meant the
17 settlement part of the St. Lawrence Valley but he
18 might have meant the heights of land.
19 Q That is to say, on both sides of the river?
20 A I think he was referring only to the western side of
21 the river.
22 Q The north and the western side?
23 A Yes.
24 Q That's what you took him to mean?
25 A Well, in asking the question, I assumed he meant where
26 settlement was, which was within, you know, a few
27 miles of the river.
28 Q And did you understand that to mean -- I am sorry --
29 and your understanding in that respect excluded, then,
30 the southern or eastern side of the St. Lawrence?
31 A Yes.
32 MR. RUSH: Isn't that a leading question, my lord?
33 MR. GOLDIE: Well --
34 MR. RUSH: He can ask him what his understanding was, he gave
35 the answer, and surely that's what he can ask and get
36 in reply.
37 MR. GOLDIE: Well, I was just paraphrasing what the witness had
38 said. I didn't intend to lead him. I was simply
39 going to ask him:
40 Q Why did you exclude the eastern or southern side?
41 A Because the words New France, the ends of the words,
42 do not travel beyond the St. Lawrence River, in the
43 easterly direction.
44 Q Prior to the Treaty of Paris, were the lands south and
45 east of the St. Lawrence River and draining and
46 watered by rivers draining into the St. Lawrence,
47 settled as belonging to England or France?

A Well, there was a debate about what is now the Province of New Brunswick, essentially, between France and England. But the territory on the Atlantic coast, south of Nova Scotia and down to but not including the Floridas, was possessed by Britain.

Q I want to refer you to plate 40 of the Historical Atlas of Canada, I think you referred to that document when you -- in some of the answers to the questions that were put to you by my friend. You are familiar with it, are you?

A Yes, I am, but I don't have it before me.

Q And can you tell his lordship when it was published?

A This is circa, 1987.

Q I am now going to put before you plate 40 and direct your attention to a map on the lower left-hand corner, and it shows New France and Louisiana coloured blue, and would you tell his lordship how the land south and east of the St. Lawrence River are depicted?

A They are depicted as recognized British territory and also as disputed territory.

Q I am now referring to the part that is depicted with horizontal lines?

A Disputed territory.

Q Pardon?

A Disputed territory.

Q Yes. Thank you. I haven't got a copy of this, I wonder if you would -- the plate that your lordship has I don't think is plate 40.

THE COURT: No, I have 36. Which is the disputed territory?

MR. GOLDIE: The one that is with hatched lines, my lord.

THE COURT: Oh, yes.

MR. GOLDIE: Could I have Dr. Farley's, map folio, please. Exhibit 1149?

Q I want to refer you to map 10, part two, which should be the part of the Mitchell map I think probably I have the wrong part.

THE COURT: I think it's part three.

MR. GOLDIE: Part three is the one I am looking for. Exhibit 1149, 10, part three.

Q Now, that depicts, does it not, Dr. Greenwood, the River St. Lawrence?

A Yes.

Q Would you tell his lordship where the words Nova Scotia appear?

A Well, slightly to the south and east of the gulf, my lord. The words Nova Scotia are printed in large black printing.

Q And then the word "Acadia" is found below that and parallel to the words Nova Scotia?
A Yes, and the word "or" appears there as well.
Q And now would you describe to him where the words New England or found?
A They are running south to north on the map, my lord, to just approximately, I think it's Three Rivers, from the south of the map.
Q All right. Thank you.
And I want to refer to Mr. Popple's map.
MR. RUSH: I object to this, my lord, this is essentially a redirect. I referred the witness to two maps, my friend in a composite question and with a composite answer, listened to evidence that is being directed on this very issue. I don't really see how this arises out of my cross at all. The Entick, yes; the Popple, the Mitchell, no.
THE COURT: Well, if it related to something that you asked the witness about on the map, would it --
MR. RUSH: But I didn't.
THE COURT: You don't think you did?
MR. RUSH: I didn't ask anything about the Popple or Mitchell map.
MR. GOLDIE: What my friend did, was to ask the witness, and he did it not with just one map, he did it a with a couple of maps --
MR. RUSH: Two.
MR. GOLDIE: I think couple is the same as two -- and where the word, to agree with him, that the words New France did not extend, did not stretch across the St. Lawrence Valley, and I wanted to firstly elicit the understanding of the witness with respect to the St. Lawrence Valley, and I have done that. Secondly, I wanted to put before him certain maps which would indicate what was on the south side of the St. Lawrence Valley. I take it my friend attaches some significance to the fact that the French words didn't go across the St. Lawrence River.
THE COURT: I think that's appropriate re-examination.
MR. RUSH: Well, my lord, the significance at all of the words New France on Canada, and their placement as letters on a map, was raised by my friend in direct.
THE COURT: You mean by putting the map in it?
MR. RUSH: No, no, he spoke to it directly. Now, what I did on cross was to present two maps saying, well, what you might have said in direct is one thing, but here are two maps to suggest something different. Now my

friend is saying, well, you didn't refer him to Mitchell and Popple on these other maps, which was part of his rolled-up question in direct, and for which there was a rolled-up answer and because you directed him specifically to two maps I am entitled to redirect. I say that's completely improper. That's as my friend going back and putting himself in the shoes where he led the evidence.

THE COURT: Except at that time he didn't know about your questions.

MR. RUSH: But he knew about the maps. He was directed to, the question was directed to the maps, where do these words appear on the map?

MR. GOLDIE: I think the entire context of the evidence in chief was to determine the western boundary of Canada. My friend's question took the witness and your lordship to the St. Lawrence Valley. According to my recollection, the witness never mentioned the St. Lawrence Valley, and I want to establish, and I don't yet know what the significance is of my friend's question, but I want to establish what these maps show with respect to the St. Lawrence Valley, and it arises entirely out of my friend's question. The whole purpose of his directing your lordship's attention to these maps was to say, here is New France or Canada, and it was in every instance directed to the western end of those words, so-called.

THE COURT: It's one, it's a matter that's very close to the line. I think that I will allow the re-examination, limited to directing my attention to places on various maps, even if mentioned previously, where there are notations which bear on this question of the south side of the St. Lawrence Valley.

MR. GOLDIE:

Q I just have one further question to put to you, Dr. Greenwood, and I am referring you to -- I wanted to refer to Mr. Popple's map, my lord, I think it's tab 9, and it is 1149-9, and again I want you to tell his lordship where the word "Nova Scotia" appears and with particular reference to the location of the word "an" of Nova Scotia?

A Nova Scotia is, the word "an" is in the wider part of the river, I am not quite sure -- well, it's east of Tadisack, that's all I can say, on this map. But it's essentially in the mouth of the River St. Lawrence, and it's going left to right and going south and east, I would say.

Q Thank you. All right. I am going to show you the reference -- well, you were referred to Father Castel, and you were asked about his occupation, and my friend referred you to one of the documents that is now in his cross-examination folder, you said that you had, your recollection was that he was a geographer?
A Yes, I think the term was used cosmographer but I took that as geographer.
Q I am going to show you in reference to your footnote, 154B, and ask you if you can identify that, and if you can, whether you can state what is described in that as -- what is described therein as Father Castel's --
A Described here as a cosmographer.
Q Cosmographer is what, for those of us who are not in your field?
A I am not sure, I suppose it's someone who deals with the geography of the planet. This is the source, though, yes. May I clarify something for the court's benefit? And that is that the question was raised that he was a Frenchman, and it's quite possible to describe him as such, I am sure, but that Frenchmen who lived in Canada for any length of time, often were called Canadien. That might not be a fair description of them, but there was no citizenship requirement.
Q Your footnote reference was to the Manitoba Historical Atlas, which is a selection of facsimile maps, plans and sketches from 1612 to 1969, and edited by John Warkentin, he is described as a professor of geography, York University, Toronto?
A Yes.
Q And Richard Ruggles, professor of geography, Queens University, Kingston?
A Yes.
Q Is he the Professor Ruggles who is one of the contributors to the Historical Atlas of Canada?
A Yes, he is.
MR. GOLDIE: My lord, I don't propose putting that in as an exhibit because I am at liberty to refer to his footnote references.
Q I would ask you, however, here to -- if you would be good enough to read in the second complete paragraph the reference to Father Castel. Perhaps you might just read the paragraph down to the words "drains south from Lake Winnipeg."
A This paragraph here?
Q Yes.
A

"Castel accepted the results of the La Verendrye expedition but he went amiss in a number of its particulars in attempting to produce an overall continental plan. He believed that Lake Superior was the crucial water body of the continent, the source of almost all of the major rivers of North America, and that its surface elevation and the heights around it were likely at the same level as or even higher than the Alps or Pyrenees in Europe. He then developed a semicircular course for the river-lake network of Manitoba. West of the height of land beyond Lake Superior the waters were directed east to west through the border lakes and then turned northwest towards Lake Winnipeg. From this large lake he averred that three rivers issued north, the Riviere Rouge-Riviere des Assinipoels, the Riviere Bourbon and Riviere Dauphin. These rivers all flowed north at first, then veered northeast to flow into Hudson Bay, whose shore he projected far to the west. The Mississippi, he concluded, also drained south from Lake Winnipeg."

Q Thank you.
A End quote.
Q I want now to refer you to the article under tab 1 of my friend's cross-examination book, 1168, Marthe Emmanuel, Le Passaage Du Nord et La "Mer De L'ouest", and it appears that Dr. Emmanuel is -- well, would you translate the description of the author at page 273?
A Doctor of the University of Paris --
THE COURT: Just a moment. I haven't found it yet.
MR. GOLDIE: Page 373 under tab 1, my lord.
THE COURT: Yes.
A Either conservator or archivist, my lord, of the documentary, the geographic documentary centre, 91 St. Jacques Street, looks like Paris 5.
MR. GOLDIE:
Q Of the University of Paris?
A Yes.
Q Thank you. Now, at page 361, my friend referred you to that page, and about two thirds of the way down the first -- the first complete paragraph or about eight lines from the bottom, and the words, and I take it quotation marks "la gloire de la Compagnie", what do you understand to be the meaning of those words?

A Can I read the passage?
Q Please do. Do you know the -- you are unable to take it from the context that --
A That is kind of a quick translation. It's not the easiest French I have ever come across.
Q Do you know how the Jesuits referred to themselves?
A Society of Jesus.
Q The Society of Jesus?
A Yes.
Q Any other names that you are aware of?
A I am sure there were lots but I don't know.
Q All right. The publication that you were asked if you recognized, is that a publication devoted to religious history?
A This is to swear to the Knight process?
Q Yes, yes.
A What year is it, do we know?
Q I am sorry, I don't.
THE COURT: It's after 1950.
A Yes. I think the journal, it's a major historical journal, published in Montreal, and it's French Canadian and at the very beginning they allowed articles in English but as I found out to my horror, after a while they did not publish in English until after sometime perhaps in the '60s.
MR. GOLDIE:
Q It's a journal of some antiquity?
A It's a very reputable journal. Started by Abbey Giroux.
Q Under tab 2 of my friend's book of documents are the articles of capitulation of Montreal, and you were asked some questions about that. You, I believe, used an English translation?
A Yes.
Q Do I understand from the reference, which is under tab 101, that that translation that you used was 1797 or earlier? And I am referring you to footnote 1 of the -- your tab 101.
A My tab 101?
Q Yes.
A Well, the translation I used was published in Shortt and Dowdy and they say here, that, and I will read it:

> "As in cases of the articles of capitulation of Quebec, the English version of the articles of capitulation of Montreal here given, follows that in capitulations and extracts of treaties

relating to Canada, 1797."

That's an obvious archival source, I could not identify it --

Q Beyond that. You say it's an obvious archival source, do I take it from what you have read that it is a source that was published or created in 1797 or earlier?

A Well, I think it's an archivist's compilation as of 1797, I can not swear whether it's P. R. O. or anywhere else.

Q Keeping that in front of you, both the English and the French, would you please turn to article 39, and I would like you to tell me whether the English words in article 39, and I quote, "and other places and posts of the countries above" is, in your view, an accurate translation of what you find in the French there?

A It's accurate but not very elegant. I think it should be "other places and posts of the upper country", "pays d'Enhaut" is upper country, that could mean anything really west of Montreal, including Fort Frontanac, which is now Kingston.

Q And in article 37, the English words, and I quote "they shall also have the furs which are in the posts above."

A Hm-hmm.

Q Is that an accurate translation of the corresponding words in the French?

A "Also have or enjoy", pelleteries, furs, "which are in the posts in the upper country" would be my translation.

Q All right. Thank you. Now please go back to article 39, and will you identify the words in French which correspond with these words, and I quote: "None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony...." have you identified --

A That's the beginning of article 39?

Q Yes.

A Yes.

Q Firstly, frontiers of the colony, is that an accurate translation for the corresponding words, "sur les frontieres de La Colonie"?

A Yes.

Q And what does the phrase frontiers of the colony refer to?

MR. RUSH: Well, doesn't that call for an interpretation, my

lord?
MR. GOLDIE: Well, if there is some scholarly --
MR. RUSH: Not a translation.
THE COURT: Yes.
MR. GOLDIE: Well if that's --
THE COURT: What does it refer to?
MR. GOLDIE:
Q What does the phrase, what does that refer to? I am asking if the witness is aware as a matter of fact, I am not aware that it's an interpretation.
THE COURT: You mean what frontiers of the colony are you aware of?
MR. GOLDIE: Yes. Well, that doesn't quite get at it, my lord, because the witness might answer that in terms of his current knowledge or current views. I am not interested in knowing whether that -- first, I will put it this way:
Q Are the frontiers of the colony elsewhere defined in the articles of capitulation?
A No.
Q Is there any reference that you can direct his lordship to which would indicate what the frontiers of the colony -- firstly, the colony is that of Canada; is that correct?
A Yes.
Q Is there any with reference to which you can direct his lordship that would assist him in determining what the words refer to?
A Well, I have to make a judgment here, my lord, and in my judgment the best source would be the Vaudreuil-Haldimand map, which was the first map of British Canada ever drawn, and it's trying to define the difference between Louisiana and Canada, and it draws a boundary between the two, and the interests in terms of the western portions ends at Red Lake. And that's about as close as you can come, I think, to a definition of Canada.
Q All right. Thank you. Now, under --
A At the time.
Q Yes, that was my -- the purpose of my question.
MR. RUSH: Well, my objection stands, my lord. I think it's pure and simply a matter of the witness's judgment.
THE COURT: What he has done is he has told me he doesn't know of a better source in determining the frontiers of Canada than the Bowen map, that's what he says.
MR. GOLDIE: That was the point that I was trying to reach in my question, my lord.

Now, my lord, you were -- the witness's attention was drawn to footnote 36 under tab 3 of my friend's references, which is Collections of the State Historical Society of Wisconsin edited by Mr. Thwaites. And the footnote itself is at page 186 and going over to 187.

A Yeah.

Q Firstly, the date of the publication of this on the first page is indicated as 1908?

A Yes.

Q Is that correct, in your understanding?

A Yes.

Q Has there been any -- and that footnote relates to the site or supposed site of Fort La Joncquiere; is that correct?

A Yes.

Q Has there been any further examination of the question of Fort La Joncquiere's existence and site since 1908?

A Yes, a great deal, that's in one of my footnotes, I think.

Q I will come to that. I also want to refer you to tab 10 of my friend's collection of documents, which consists of excerpts from the publication, Hudson's Bay Company, 1670 to 1870, volume one, by Rich, and you have told his lordship who Rich was, and I think it's at page 524, in the left hand page, and would you refer there to what is said about Fort La Joncquiere?

A Yes, this is Professor Rich speaking, not myself:

> "Fort La Joncquiere was in any case destroyed by Indians in 1752 and Saint Pierre's successor in command of the posts to the west, Louis Chapt, Chevalier de la Corne, built a more lasting settlement, possibly on the site of La Joncquiere, just below the Forks of River in 1753."

Do you want me to go on?

Q That's all right. Now, by the way, that publication is 1958?

A This is -- let me check it. It's 1960 here. It's Toronto, McClelland and Stewart Limited, 1960.

Q I am going to refer you to the Historical Atlas of Canada again, and I will be asking you to look at plate 38 -- I am sorry, it's plate 40, and I believe that's the one that your lordship has as an exhibit. I am sorry, that was --

MR. RUSH: May I see that before you show it to the witness, please?
MR. GOLDIE: Sorry.
Q Now, doctor, if you will just hold that for a minute, I will take this. I refer you to plate 40 and on the left hand part of that page, there is a cartographic depiction under the heading French Strategic Problems, 1740-1751, do you see that?
A Yes.
Q And over on the right-hand side to the right of the heading, The Fur Trade Circa 1755, there is another depiction. And I am going to refer you to that for a minute. And you will see a number of dots identified by numbers, starting at the extreme west with 103, 104, 102, 100B, is it?
A Yes.
Q And then 101 and down there. Now, by asking you to turn to plate 37, I will direct you to the key. Would you identify for us the forts or the -- I shouldn't say the forts, identify for us from the key, the places marked ---
A Going backwards from 103, which is the furthest west --
Q Starting at the furthestmost west?
A West, that's depicted there, I believe. Nothing beyond the forts, right. 103 in the key, which is, what is it 37, yes, plate 37, it says, that's Fort Des Prairies, in brackets it says, Ste. Louis, and after a semicolon, la Corne, brackets, colon, 1753, indefinitely, into the future. 102 is Fort Paskoya: circa 1750, to the future (?) 1748, Fort Dauphin is 101, 1741 to the present, 100 is Fort Bourbon.
Do you want me to keep going?
Q I think you skipped 103.
A No, I didn't. Fort Des Prairies.
Q What's 104?
A For La Joncquiere, Saint Pierre, 1751-52, 104.
Q And where is 104?
A I will have a look at that. 104 is a more easterly, even though it's called Fort La Joncquiere, it's given that nominative title, Fort La Joncquiere, it's east of la Corne.
Q Thank you. You have already told us that that is published in 1987?
A Circa 1987.
Q Who were the people stated to be the contributors on plate 40, please?

A 40?
Q It's just above in the upper left-hand side?
A Conrad Hydenwright and Francoise Noelle.
THE COURT: What present day settlement is that, the Forks to Saskatchewan?
A It's about, what is it, Nipiwin, Saskatchewan. It's about 104 longitude in Saskatchewan. It's close.
MR. GOLDIE:
Q And Francoise Noelle is a member of the department of history at Memorial University of Newfoundland, is that correct?
A That's what it says, yes. I don't know her personally.
THE COURT: I think it's in this location, where I think I saw somewhere that would suggest that La Joncquiere was in the present site of the present day Calgary?
A That's correct, my lord, that's the allegation of Mr. St. Pierre, which historians in general don't agree with. The historians who are writing on the explorers in the Dictionary of Canadian Biography, do agree that there was a Fort La Joncquiere, but it was actually east of the most westerly fort, de la Corne. So the Historical Atlas of Canada is consistent with the Canadian Biography in that regard.
MR. GOLDIE:
Q And inconsistent with the --
A Mr. St. Pierre --
Q The editor of the -- Mr. Thwaites, the editor of the 1908 paper, who suggested that it was on the site of present day Calgary?
A That's correct.
Q Now, I want to refer you to footnote 177 of your opinion, does that contain the discussion of the location of Fort La Joncquiere, in your opinion?
A Yes, it does.
Q Now, is that the same footnote, or with whatever variations there may be, that you included in the first draft of your opinion which was submitted on the 9th of July, 1986?
A Well, I don't remember changing that. I would have to check it.
Q I am going to show you, this is what my friend was sent down with the working papers of the witness. I want to show you the draft of 1986 and show you the -- what I understand to be the corresponding footnote and ask you if --
MR. RUSH: I don't see how that arises out what -- of this

1 examination, my lord.
2 MR. GOLDIE: Well, it does, my lord.
3 THE COURT: Sounds like it's answering your allegation of recent
4 fabrication. I am sure that's not the case.
5 MR. GOLDIE: It has some slight relationship to that.
6 MR. RUSH: Well, no allegation of that sort was made, my lord.
7 THE COURT: No. Well, are you asking the witness if that's
8 always been his opinion?
9 A I am trying to --
10 MR. GOLDIE: Yes.
11 THE COURT:
12 A I am trying to check the two footnotes. I wish to
13 make sure. One does change, for a variety of reasons.
14 The two footnotes look identical to me.
15 MR. RUSH: My lord, you should be aware that footnote 177
16 mentions plate 40, which I will take it to be part of
17 my friend's case in chief.
18 MR. GOLDIE:
19 Q You were referred to Vaudreuil's instructions, and I
20 am referring here to -- in I may see his book again.
21 The reference that my friend directed your attention
22 to was page 150 under his tab 3, which again is the,
23 Wisconsin Historical Collections, and you are asked --
24 your attention was directed to the first paragraph,
25 but under the heading Versailles, March 22nd, 1755, it
26 reads, and I quote:
27
28 "New France, the government whereof his Majesty
29 has been pleased to confer upon Sieur de
30 Vaudreuil de Cavagnal, comprises Canada, I'Isle
31 Royale, and Louisiana with their dependencies."
32
33 And you have told us that I'Isle Royale is Prince
34 Edward Island?
35 A I hope I didn't.
36 Q Tell us what it is again?
37 A It was Cape Breton.
38 Q Thank you. You're quite correct.
39 Am I to take it from that portion of the
40 instructions that each of those three was considered
41 to be a separate and distinct component of new France?
42 A Well, on its face, that's what it appears but, in
43 general, it's usually considered that Canada or New
44 France included Canada and Acadia, although there was
45 a lieutenant-governor at Port Royale, and that
46 Louisiana was normally a separate colony but not
47 obviously in the circumstances.

Q To your knowledge, were there any Indian tribes in the upper country allied to the French in the wars with the English?
A Yes, I said the Ottawa and the Chippawa.
Q They were considered to be in the upper country?
A Yes, I would think so.
Q Any tribes that you have identified whose habitat was west of Lake Superior?
A Identified when and for what purpose?
Q In the seven years' war as allied with the French?
A With the French, west of the Mississippi?
MR. RUSH: Wasn't this covered, my lord, in direct? I think that the question of the French allies was a question raised specifically and specifically answered and I raised it again and I got the same answer in cross.
MR. GOLDIE: Well, I am taking it from this document, which my friend put to the witness and which is now an exhibit, which refers to the "allied savages", my lord, and I just wanted to understand whether the witness had identified any such as west of the --
THE COURT: Where do I see this inelegant phrase?
MR. GOLDIE: It's on page 153. And it's part of the paragraph which my friend read. It's about halfway down.
THE COURT: Well, in re-examination I would allow you to ask him if he knows what he referred to as fitting that description.
MR. GOLDIE:
Q You recall that paragraph being directed to your attention?
A This one here?
Q Yes.
A Yes.
Q Can you point us to anything that identifies who the "allied savages" are that are referred to in that paragraph?
A I would have to consider that at length, Mr. Goldie, to interpret it. The "allied savages" of the French, as far as I understand it, were not located west of the Mississippi River.
Q All right. Thank you. At tab 12 you were referred to a publication Letters from George III to Lord Bute and it was suggested to you that the letter that you had referred to, which was from George III to Bute, was one that was prepared for publication; do you recall that?
A I recall it being suggested to me and testifying that I did not think that that was accurate.

Q Right. Now would you look at page Roman LXVI of tab 12?
A This one?
Q Yes. And that, you were referred to that, were you not?
A Yes.
Q And does that not refer to a letter from Bute to George III as one that was evidently prepared for publication?
A From Bute, not to Bute.
Q And your reference was?
A A letter to Bute from George.
Q All right. Thank you. Under tab 13, this is the publication of Anthony Stokes, who I believe you have referred to, the Chief Justice of Georgia?
A Former Chief Justice of Georgia. I had forgotten that yesterday.
Q And you were asked to refer to page 12 and a couple of paragraphs were read to you. The preceding paragraph, which begins with the words:

> "The British American plantations are principally conquered or ceded countries."

A Yes.
Q Without reading it, the authority for the Chief Justice's observations is, one of the authorities, is to the Blackstone Commentaries that you have identified?
A Volume one of Blackstone's commentaries, page 108 at the time Stokes was writing.
Q And at page 19, you were directed to, and it was read to you, paragraph two referring to proprietory governments?
A Yes.
Q And that is to the same reference, the Chief Justice had reference to the same commentaries?
A Blackstone's commentaries, volume 1, page 108, yes.
Q And it was Stokes who considered Rupertsland to be a proprietory --
A He said it might be either a proprietory colony or a charter colony.
Q And you disagree with that?
A Yes, I do. I think it was a Charter colony but he went on to say that probably one should consider them proprietory because there are proprietors that make a lot of money out of the Hudson's Bay Company, but I

1 don't think that his authority would stand up to
2 Blackstone on that point.
3 Q Under tab 15 there is a extract from a book or an
4 article by Mr. Shy?
5 A Yes.
6 Q Now, my friend provided us with the first page today
7 and it appears clear from there, that the Pownall that
8 is being referred to in that is the Thomas Pownall,
9 who is the former governor of Massachusetts?
10 A Yes, Thomas Pownall in the title.
11 Q Did you have an opportunity of reviewing that article?
12 A Yes, I did, this morning.
13 Q Do you have any observations with respect to it?
14 MR. RUSH: I object to that.
15 A I would like to comment on two questions asked of me
16 by --
17 MR. RUSH: Excuse me. Now, the question is, here is an article,
18 do you have any comments on it? Now I led, I directed
19 the witness's attention to certain passages in the
20 article. Now presumably my friend is interested in
21 redirecting on those passages. I think the very least
22 we can expect of the question is that there is some
23 direction so that the witness doesn't feel free to
24 wander hither and yon through the article. The
25 particular area of the question about which the
26 witness had asked that the footnote be provided was
27 footnote number nine. Now in my submission, my lord,
28 firstly, the question should be directed at something
29 that's related to the cross-examination; and secondly
30 it should be directed --
31 THE COURT: Well, let's see if we have to decide that. Are you
32 hoping to direct the attention of the witness without
33 leading to the article?
34 A I can handle that, my lord.
35 MR. GOLDIE: The note I made, my lord, was that the witness said
36 he wanted to look at the whole article. And as far as
37 I recall, that was the only article in respect of
38 which he sought that, and my recollection is that he
39 wasn't given an opportunity of making any observation
40 with respect to it.
41 MR. RUSH: Well, yes, he wanted to look at the whole article in
42 relation to specific questions I asked him. And the
43 specific direct -- redirect, should be directed to
44 that.
45 MR. GOLDIE: Let's see if --
46 THE COURT: I don't want to get into a -- to having to decide a
47 far-reaching question of the bounds of re-examination

if I don't have to. Are you going to make a comment about the article?

A I may make some in the course of directing my mind and explaining to your lordship my answers to two specific questions put to me yesterday by Mr. Rush. One of them is on page 170, the other is on pages 156 to 60. I am going to address specific questions asked me but I may have a judgment on the author.

THE COURT: Page 170?

A Starting at page 170.

THE COURT: You were asked about a long paragraph on page 170.

A And pages 156 to 60 as well.

THE COURT: Let's deal with 170, what do you want to tell me about page 170?

A I believe Mr. Rush asked me whether I agree with the paragraph and, particularly, the last sentence, on the, I guess it's the first full paragraph, in short, this section might have been written by Henry Ellis himself. That's Shy's opinion. I would like to testify that in terms of conciliating the Indians, yes, indeed, Ellis might have written that section, but the author himself states that Pownall did not mention western expansion or should it be prohibited, and I would testify that had Henry Ellis written it he would have said no to western expansion because he singled that out in the hints. That would be my testimony on that.

MR. GOLDIE:

Q All right. You say there is another section that you were referred to that you want to --

A 159 to 60, I believe.

Q Yes, there is --

THE COURT: Yes you were asked about pages 159 and 160 and you disagreed?

A I was not able to agree, my lord. I would have to spend a great deal of time at the archives. I do know that the author, that is Shy, in footnote nine, which I think is pages 244 to 45 of that article, and I haven't seen them here, but I have seen them before, attributes the plan of forts and garrisons to Henry Ellis. Now, Shy was indeed a military historian and one has to give him a certain degree of credit, over and above that, the document that I read into the record on the forts and garrisons, lists five purposes for military policy, 1763. Not one of those had to do with western expansion and, of course, Ellis was against western expansion and therefore it's

consistent with him having done it. However, there were other attributions, the editors of the document themselves, I think Alvord and Carter, suggested that it was Amherst and it was part of his responsibility, of course, to recommend on those things and Jack Stagg, and I referred to him in footnote four, I think it's page 301, suggests that the author was George Grenville, the first minister, or he was First Lord of the Admiralty at the time, would soon be first minister, so there is no consensus on attribution of that document.

Q All right. Thank you.

THE COURT: Shall we take the afternoon adjournment, Mr. Goldie?

MR. GOLDIE: All right. That you, my lord.

(PROCEEDINGS ADJOURNED FOR SHORT RECESS)

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

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Goldie.
MR. GOLDIE:
Q Dr. Greenwood, you were referred to the Palairet map which is found under your tab 192A in Exhibit 1163, and there was a general discussion, if I may put it that way, of boundaries which you identified as referring to New England, Virginia and Carolina?
A Yeah.
Q And they run out to the left-hand margin of the map. Do you recall that discussion?
A Yes.
Q And, in fact, they run out across the country that is marked Louisiana?
A Yes.
Q And -- well, Doctor, was there any -- was there anything agreed to or done under or by virtue of the Treaty of Utrecht with respect to British claims west of the Mississippi?
A I believe not.
Q Was there anything done or under or by virtue of any treaty between the British and the French prior to the Seven Years War which confirmed or acknowledged French sovereignty with respect to Louisiana?
A I don't know, Mr. Goldie.
MR. GOLDIE: All right. Thank you. My lord, I'm going to tender the book of footnotes 1168, I believe it is.
THE REGISTRAR: 1156.
MR. GOLDIE: 1166, yes.
THE REGISTRAR: 56.
MR. GOLDIE: 1156. I'm tendering that, my lord, as an exhibit. I don't know if my friend has had an opportunity of undertaking the review that he was going to.
MR. RUSH: I haven't, my lord, but if my friend wants to revisit it on Monday I'll hopefully have it done.
THE COURT: All right. Thank you.
MR. GOLDIE: All right. That completes my re-examination, my lord.
THE COURT: All right. Thank you. Thank you.
A Am I excused?
MR. GOLDIE: Yes. Thank you, Doctor.
THE COURT: Thank you, Doctor.

(WITNESS ASIDE)

MR. GOLDIE: My lord, I would like to, given my extended

1 references to it, to put in evidence as exhibits
2 copies of the Historical Atlas of Canada, the plates
3 that I have referred to the witness.
4 MR. RUSH: I think they should be put in evidence, however,
5 subject to my reviewing the plates and determining
6 whether or not there should be anything added to those
7 plates.
8 THE COURT: All right. Do you want to reserve a number, Mr.
9 Goldie?
10 MR. GOLDIE: If that could be done, my lord. It would be plate
11 40 and 37, I believe.
12 THE COURT: All right. Next two numbers.
13 THE REGISTRAR: 1169 and 1170.
14 MR. GOLDIE: Thank you.
15 MR. RUSH: Which is which?
16 THE COURT: Plate 37 will be 69 and 40 will be 70.
17 MR. RUSH: My lord, just on this point of cleaning up matters
18 related to the documents on the examination of Dr.
19 Greenwood, there were three documents that I had made
20 requests of my friends about. One was in relation to
21 the extra official state papers document about which a
22 reference was made, and the witness was directed his
23 attention to it and quoted from it, but my friend I
24 had understood was going to obtain a copy of that
25 document, and I think he should have it. Also tab 26
26 and 62 both contained missing --
27 THE COURT: Your tab 26?
28 MR. RUSH: No, my lord. My friend's tabs 26 and 62 in volume 1
29 both contain some pages, and I want to repeat my
30 request for the pages which I had asked for
31 previously. One of the requests I had made with
32 regard to tab 290 my friend's assisted me on that, and
33 we've got a replacement page, but I don't want it to
34 be lost in the completion of Dr. Greenwood's evidence
35 that these pages should not be obtained. I'd like to
36 receive them.
37 MR. GOLDIE: Yes. My understanding is that we have had to
38 requisition them from England. They're on their way.
39 THE COURT: They can be added to the documents when they arrive.
40 MR. RUSH: Thank you.
41 MR. GOLDIE: Thank you, my lord.
42 My lord, I call Mr. Williams.
43 THE REGISTRAR: Will you take the Bible in your right hand,
44 please, sir.
45
46
47

DAVID RICARDO WILLIAMS, a witness called on behalf of the Province, having first been duly sworn, testified as follows:

THE REGISTRAR: Would you state your full name, and spell your last name, please, sir.
A David Ricardo, R-I-C-A-R-D-O, Williams.
THE REGISTRAR: Thank you, sir. Please be seated.

EXAMINATION IN CHIEF BY MR. GOLDIE ON QUALIFICATIONS:
Q Mr. Williams, you were born in Kamloops, and received your primary and secondary education in Vancouver?
A Yes.
Q Graduating from the University of British Columbia with a Bachelor of Arts degree and subsequently with a Bachelor of Laws degree in 1949?
A Yes.
Q And you became and are still a member of the Law Society of British Columbia?
A Yes. Although for the last four years I've been non-practising. I've been on the inactive list, but I still am a member.
Q Thank you. In 1969 you were appointed one of her Majesty's counsel?
A Yes.
Q And from 1971 to '75 you were a Bencher of the Law Society of British Columbia?
A Yes.
Q You have served as a member of the Senate at the University of British Columbia, and a member of the Board of Governors; is that correct?
A Yes.
Q And amongst your professional and historical associations you're a Fellow of the Foundation for Legal Research?
A Yes.
Q A member of the Writers' Union of Canada?
A Yes.
Q A member of the Advisory Committee, British Columbia Legal History Project of the University of Victoria?
A Yes.
Q A member of the Archives Committee of the Law Society of British Columbia?
A Yes.
Q A member of the Oregon Historical Society?
A Yes.

Q The Osgoode Society?
A Yes.
Q The Association for Canadian Studies?
A Yes.
Q And a member of the British Columbia Studies?
A Yes.
Q And since 1980 you have been Adjunct Professor and Writer-in-Residence at the University of Victoria?
A In the Faculty of Law at the University of Victoria.
Q All right. And you're the chairman of a committee for the McCarthy & McCarthy award for essays on legal history?
A Yes.
Q Amongst your papers you have delivered papers entitled "Sir Matthew Baillie Begbie" to the Pacific North West History Conference of the Oregon Historical Society?
A Yes.
Q And you contributed a paper on "Legal Biography in Canada" to the B.C. Studies Conference at the University of Victoria?
A Yes.
Q A paper on The Administration of Criminal and Civil Justice in the Mining Camps and Frontier Communities of British Columbia to the Western Canada Legal History Conference in Calgary?
A Yes.
Q And that was in 1984?
A Yes.
Q You have delivered a paper on Indian Land Claims, History or Rule of Law to the Law and History Conference at Carleton University in June of 1987?
A Yes.
Q And a paper entitled "The Eight Year Old Murderer" to the Canadian Association of Law and Society at Laval University in June of 1989?
A Yes.
Q And you have been a workshop leader at the International Biography Conference in Vancouver in March of 1981?
A Yes.
Q And amongst your publications "The Man for a New Country: Sir Matthew Baillie Begbie" first published in 1977?
A Yes.
Q And then a book entitled "Matthew Baillie Begbie" published in Toronto, 1980?
A Yes. Sort of a mini Begbie, you might say.

Q Yeah. A reprint in 1988 of your book entitled "Trap-Line Outlaw: Simon Peter Gun-a-noot" first published in 1982 and republished in 1988?
A Yes.
Q You were a contributor to the "Biographical Dictionary of the Common Law", the A.W.B. Simpson, Butterworths edition in London, 1984?
A Yes.
Q And you were the author of "Duff - A Life in the Law" published in 1984?
A Yes.
Q And a contributor to a "Law & Justice in a New Land" published in 1986?
A Yes.
Q And in 1986 you published "Mayor Gerry: The Remarkable Gerald Grattan McGeer"?
A Yes.
Q You are a contributor to the Canadian Encyclopedia?
A Yes.
Q And to the Dictionary of Canadian Biography?
A Yes.
Q A contributor to law libraries in Canada?
A Yes.
Q And a contributor to a book entitled "Your Worship" of which Allan Levine is the editor?
A Yes.
Q And you have published articles in several periodicals, amongst them the Pacific North West Quarterly --
A Yes.
Q -- Of Seattle? The Gazette of the Law Society of Upper Canada and Toronto, the Advocate in Vancouver, and again the Gazette the Law Society of Upper Canada?
A Yes.
Q You published articles in those periodicals. And you have written articles for the Globe & Mail, and Supreme Court Law Review, and again the Advocate?
A Yes.
Q And you are presently at work on a piece as an author entitled "Call in Pinkertons"?
A Yes.
Q You have been awarded the University of British Columbia medal for Canadian Biography in 1978 for your biography of Sir Matthew Baillie Begbie?
A Yes.
Q You were awarded the Canadian Biography award in 1979 for the -- by the Association for Canadian Studies?

A Yes.
Q And the Hubert Evans non-fiction prize, B.C. Book Prizes, 1985 for your book on "Duff - A Life in the Law"?
A Yes.
Q And you've received an award of the Vancouver Centennial Commission for your life on Mayor McGeer; is that correct?
A Yes.
Q You have provided -- provided counsel for the Province of British Columbia with a summary of an opinion, and with other documents relating to that opinion. Would you describe to his lordship, please, your methods of research and the sources used?
A Virtually all of the work that I did leading up to the preparation of that opinion was conducted by me personally, and virtually all of it in the provincial archives, my lord, working from archival papers of various kinds; diaries, correspondence, memoranda, newspapers, official records of one kind or another, but only seldom did I resort to secondary sources. Occasionally I resorted to them. One notable instance being "Bancroft: A history of British Columbia". But it was all undertaken by me personally and mostly in the provincial archives in Victoria.
Q The sources that you have referred to include the Premier's Papers, the Attorney General's Papers, Provincial Secretary's Papers, Department of Mines Papers, Colonial Correspondence, B.C. Police Papers, contemporary newspaper accounts, diaries, memoirs, private collections of correspondence, legislative -- well, just pausing there. And these you have located in the Public Archives of British Columbia?
A Yes.
Q You've also had occasion to consult the Legislative Journals of Vancouver Island and British Columbia as reprinted by Mr. Hendrickson?
A To some extent, yes.
Q And Colonial Proclamations, Dominion Consensus and portions of RG10, a black book series on microfilm in the Public Archives of British Columbia and from the Department of Indian Affairs?
A Yes.
MR. GOLDIE: Thank you. My lord, I tender Mr. Williams as a person called to undertake research directed to the imposition and acceptance of law and order in British Columbia with a particular reference to the land claim

area in this case, to evaluate the results of such research and to express conclusions with respect thereto.

THE COURT: Mr. Rush.

MR. RUSH: My lord, Mr. Adams will be --

THE COURT: Thank you.

MR. RUSH: -- Counsel.

THE COURT: Mr. Adams.

MR. ADAMS: My lord, I have a document to hand up which my friend has provided sometime ago.

CROSS-EXAMINATION BY MR. ADAMS ON QUALIFICATIONS:

Q Mr. Williams, you recognize that as your curriculum vitae?

A This is 1986. I thought I provided a more recent one than that. I'm sorry, I don't know your name.

Q It's Mr. Adams.

A Mr. Adams.

Q That is the latest one I've seen. I've heard a few additions to it. And perhaps we can go through it and we can discuss the additions in light of your evidence.

All right. Looking at first page of this, Mr. Williams, you'd agree with me that there is nothing that appears there that is relevant to the evidence which you are prepared to give here and that is covered by your summary other than the fact that you have a Bachelor of Arts degree and a Bachelor of Laws degree from the University of British Columbia; is that correct?

A And my qualifications in the Law Society.

Q Okay. What was your Bachelor of Arts degree in?

A I can't make too much of it, Mr. Adams. It was -- it resulted from having done three years in the Faculty of Arts and two years in the Faculty of Law, which at that time led to a bachelor degree.

Q And in the arts component of that what were you studying?

A English and history.

Q And I take it you have no further academic training, formal academic training beyond that Bachelor of Arts degree in history?

A True.

Q You don't have a Masters degree in history or any other subject?

A Nope.

Q You don't have a Doctorate in history or any other

subject?
A No.
Q You have neither taken nor taught formal courses in Indian history?
A No.
Q You have no formal training in economics?
A I did some studies in economics at university. In fact, I was -- now that I think about it I was instructor -- I was not an instructor. I marked papers. In my last two years in the law school I marked papers for a professor of economics.
Q In what course?
A In economics. First year economics.
Q And do you have formal training in geography?
A No.
Q In anthropology?
A No.
Q In ethno-history?
A No.
Q In sociology?
A No.
Q You do regard yourself though as an historian?
A I regard myself as a legal historian.
Q Okay. You were in court this morning, were you, when Dr. Greenwood was completing his evidence?
A Yes.
Q You, I hope, at the back would hear a reference to a document in which Dr. Greenwood said something about what professional historians would make of a certain document. Do you recall hearing that?
A I did not hear that.
Q All right. I'm not asking you to tell me what Dr. Greenwood meant by that, but do you recognize a distinction between professional and non-professional historians?
A Well, I suppose one can -- I am not a professional historian in the sense that I have academic education in history. I consider myself as a professional historian, however, because I now make -- spend all my time at it and make my living at it, or endeavor to.
Q And when did you begin to do that?
A After I stopped practising law.
Q And if I'm to believe the correspondence I read you stopped practising law in beginning or the end of 1986, or which?
A No. 1985.
Q At the end of 1985?

A Yes.
Q Okay. And that's the point at which you say you became a professional historian?
A Professional legal historian. By professional I mean this is how I spend all my time.
Q Yes. And you'll agree with me that anyone who could read could spend all their time reading archival documents?
A Certainly.
MR. GOLDIE: Even lawyers.
MR. ADAMS: Some of them spend more than all their time reading documents.
Q For what period were you involved in the full-time practice of law?
A 35 years roughly.
Q Was that upon your graduation?
A Yes.
Q And so for the 35 years after 1949 until the end of 1985 that was your occupation?
A Yes. Except that in the last -- oh, roughly the last seven or eight years of my practice I became less interested in practising law and more interested in writing and researching. And I finally gave up law altogether and spent the rest of my time since entirely devoted to writing and researching.
MR. ADAMS: Okay. Could you look at page two of the 1986 document, please. Perhaps I should have that marked, my lord, while I have it in mind.
THE COURT: All right.
THE REGISTRAR: 1171.

(EXHIBIT 1171: Curriculum Vitae of Mr. D.R. Williams)

MR. ADAMS:
Q And there's a heading "Community Organizations" and I think that you'll agree with me that there's nothing listed there that's relevant to the subjects of your evidence here?
A I agree.
Q Okay. And then under Professional and Historical Societies what, please, is the Foundation for Legal Research?
A The Foundation for Legal Research?
Q Yes.
A This was a body that was set up some ten years or so ago under the auspices of now Mr. Justice Carruthers, and several other people, with a view to doing

research in a very legal -- formal way into legal problems and -- legal issues perhaps I should say.

Q And when did you become a fellow of that foundation?

A I can't give you the date, Mr. Adams. It must be at least ten years ago.

Q And what research have you done for that foundation that would be relevant to your proposed evidence here?

A None.

Q Okay. Could I say the same for the Writers' Union of Canada?

A Well, it's -- the Writers' Union of Canada is an organization of professional writers. That is to say people who have had books published in trade editions. And I'm an active member of that organization. I'm not sure how relevant it is to this inquiry, but I'm certainly an active member of it. I'm a member of one of the committees of it which is very active. Chairman of it, rather.

Q The Legal History Project at the University of Victoria, what's that?

A Well, this is the programme designed to encourage interested students in legal history, students and others. It was set up about ten years ago, I think, under the auspices of the present Dean of the Faculty, Dean Neilsen, and it's to encourage students to involve themselves in legal history and become interested in studying it and writing about it.

Q And as part of that project are you yourself involved in legal research or legal historical research?

A Not for that project in writing, but I have certainly been involved in the oral history segment of it. I have conducted one interview for it, and I'm about to be interviewed myself.

Q What's the interview that you conducted?

A I interviewed the late and former Chief Justice Farris about his father.

Q And are you aware for what you're to be interviewed yourself?

A My own career.

Q And I take it that your membership on the Advisory Committee of that Legal History Project doesn't involve you in teaching, does it?

A It does not.

Q The Oregon Historical Society, what is that, please?

A The Oregon Historical Society is the de facto archives of the State of Oregon, and is probably the most important archival institution on the Pacific coast.

Q How does one become a member of it?
A One joins.
Q Could I do that?
A Yes.
Q No qualifications associated with that membership?
A No.
Q Okay.
A Except an interest in history.
Q The Association for Canadian Studies, is that similar?
A That is a Canadian body which again encourages writing and studies, as the title suggests, of Canadian subjects. It publishes journals. It publishes papers. It's a very active organization.
Q Have you contributed to it its journals?
A I have not contributed to its journals, but I received an award from it in 1979 or 1980. Mr. Goldie read out the date. I've forgotten what it was. In connection with my then proposed biography of Sir Lyman Duff.
Q It hasn't published any of your papers?
A It has not.
Q What is involved in being involved with British Columbia Studies?
A It is a body similar to the Association of Canadian Studies except it's restricted to British Columbia subjects. It publishes a quarterly magazine.
Q With which you're familiar?
A Yes.
Q And that's B.C. Studies?
A Yes.
Q And anyone could join the Association for Canadian Studies and be a member, and anyone could join the British Columbia Studies and be a member?
A I think so.
Q Okay.
A I'm not so sure about the Association of Canadian Studies. I think -- I think they tend to -- well, I shouldn't say restrict, but to encourage members out of the academic community.
Q Now, is it fair to say that the focus of your research and writing involved with legal history has been on judges?
A And lawyers.
Q And lawyers. That is Justice Begbie, Mr. Justice Duff?
A Judges used to be lawyers.
Q All right. So if I say lawyers and judges has that been the predominant focus of your research

activities?
A No, not entirely. I think some of the papers which you see there are on legal history and legal biography generally.
Q All right. Well, let's look at the papers. The first one on "Sir Matthew Baillie Begbie", he was a lawyer and then a judge?
A Yes.
Q Correct. "Legal Biography in Canada"?
A That I draw to your attention, Mr. Adams, that was delivered at a conference of the Oregon Historical Society. I was invited to give a paper there.
Q The "Legal Biography in Canada" was that a conference paper?
A No. That was a paper -- yes, it was, given at the B.C. Studies Conference in October, 1979.
Q What was that about?
A Well, that was about the meager work that had been done in legal biography, and to a lesser extent perhaps legal history by writers and academics in Canada. In 1979 the situation with legal biography was virtually non-existent, and if I may say it without -- it's false modesty, this paper was one of the first papers to encourage people to get into legal biography and legal history.
Q And legal biography, I take it, is writing about lawyers and judges and their lives?
A Yes.
Q Now, the paper that's next listed is The Administration of Criminal and Civil Justice. That corresponds --
MR. GOLDIE: In the Mining Camps and Frontier Communities.
MR. ADAMS: I'm not meaning to suggest, my lord, that it doesn't say more. I'm trying to expedite things.
Q That corresponds, I take it, to the publication listed on the next page, page three under books, the second from the bottom, Contributor to "Law and Justice in a New Land"?
A That's right. It was reprinted in that book.
Q Okay. So that's one piece of work, is it not?
A True.
Q Okay. The conference that's listed at the bottom of page two, Workshop Leader at International Biography Conference in 1981.
A Yes.
Q What was the subject of the workshop that you led?
A On biography generally. How to write biography and

what makes writing a biography from other forms of non-fiction.

Q And it is a different activity from other forms of non-fiction, is it?

A I think so, yes.

Q It's a different activity from writing general history, is it not?

A Certainly.

Q Now, for whatever reason Mr. Goldie was reluctant to attribute to your first book, and that is listed at the top of page three.

A Yes.

Q And would it be fair to say that that was written at a time when you were still at best an amateur historian?

A That's quite right. It was that book that got me interested in the whole field of history and biography. That was published as a local history published first in 1966, still in print, republished in 1977. I had -- there was ten years between that -- the publication of that book and the publication of my biography of Sir Matthew Begbie, but it was that book that got me going, that church history.

Q The next book listed on page three is the Begbie book, and I take it from Mr. Goldie's question and your answer that the two Begbie books side-by-side there are -- at least cover the same ground?

A Yes. Although, the second is not an abridgment of the first. It was for a different market. It was on the same subject, but for a different market.

Q Did it involve you in additional research?

A No.

Q And it was about, obviously, Sir Matthew Baillie Begbie as lawyer and judge?

A Yes.

Q All right. Then there's the book listed "Trap-Line Outlaw Simon Peter Gun-a-noot" 1982, reprinted 1988. And, in fact, you've made some additions in 1988, did you not?

A Yes.

Q And I suggest to you that that's the only thing you've written that deals -- apart from your summary of opinion for this case that deals with the land claims territory specifically?

A Yes. Although, in Begbie there is material that is applicable to the whole province both from the point of view of administration of law, including the claim area.

Q And would it be fair to describe the Trap-Line Outlaw book as a popular history?
A If by popular you mean non-academic, yes.
Q It wasn't --
A But not in the sense of being based on inadequate research.
Q It was based on adequate research, was it?
A It was based on adequate research, yes.
Q Okay. It certainly wasn't directed at academics, was it?
A No.
Q And specifically it would not have been directed at academics interested in the history of the land claim territory?
A I don't know. I see Mr. Galois has cited it as one of his sources in one of his opinions he gave.
Q Is it your view that citing something as a source indicates approval of it?
A I don't know. To what extent academics use it I don't know. I was just told the other day that the University of Calgary had ordered 80 copies of it. Somebody at the university.
Q Well, I bought one too, but I don't want you to take that as an endorsement necessarily.
A You asked me if that is directed to academics. Academics do read it, obviously.

MR. GOLDIE: I hope you paid for it.

A So do I.

MR. ADAMS:

Q The next entry under books is the Biographical Dictionary?
A Yes.
Q Was that about a specific person?
A Yes. That was two entries in there, one article, one on Sir Lyman Duff and one on Sir Matthew Begbie.
Q Okay. And your book on Duff clearly was a book about a lawyer and then a judge?
A Yes.
Q Okay. And as I recall, and correct me if I'm wrong, your contribution to the Knafla book was not specifically concerned with events or persons in the land claims territory, was it?
A No. You will find, incidently, at the introduction to that book a reference to me as one of the six or seven other named persons as being persons being instrumental in developing an interest in legal history in this country.

Q Well, I see you described as:

> "A scholar in residence of the Faculty of Law, University of Victoria. Practised law for many years in Duncan. An historical and legal biographer, and you publish on judicial conflicts, studies of Judge Begbie, and most recently Sir Lyman Duff and Simon Gun-a-noot, Trap-Line Outlaw."

And the book on Gerry McGeer, I take it, has nothing particular to do with the subject of your proposed evidence here?

A None.

Q Okay. Under periodicals clearly the first article has to do with a lawyer or judge?

A Yes.

Q Okay. The contribution to "Legal Biography in Canada", who was that in regards to?

A That was on the subject of legal biography. Again, decrying the lack of interest in the subject by writers and scholars.

Q So that's also concerned with lives of lawyers and judges?

A Legal biography generally, yes.

Q Okay. "Historic Dissents in the Court of Appeal" has nothing to do with the subject of your proposed evidence here?

A No.

Q Nor does "Judges at War"?

A No.

Q Nor I expect on page four the "Hong-Kong Coverup of Bungling and Deceit" in the Toronto Globe & Mail?

A No.

Q And the article about Duff is about a lawyer and a judge?

A The Supreme Court Law Review?

Q Yes.

A Yes, you're right.

Q And "Judicial War" refers to what?

A It's the same subject as the historical dissents that appeared in the Advocate. Did it come out twice? I guess perhaps it did. I must have made a second contribution on the subject.

Q Same subject, different articles?

A Yes.

Q Okay. What is listed in 1986 as unpublished work

"Guilty as Sin" is that what is now "Call in Pinkertons"?
A No.
Q Those are different projects?
A No. It languishs unpublished still.
Q What's "Call in Pinkertons" about?
A That's my new work I'm now engaged on.
Q And --
A It's about the work that Pinkerton's Detective Agency did in British Columbia in the years 1895 to 1913. And it was engaged by the Province of British Columbia, and specifically by the British Columbia Police Force with various cases and investigations they did in the province.
Q This is something you started, I take it, after 1986?
A I started about six months ago.
Q You referred in your direct evidence on qualifications to a publication the title of which began "Indian Land Claims" and was June, 1987?
A Yes.
MR. ADAMS: My lord, that's something I have not had notice existed, and I would ask my friends to produce it to me.
MR. GOLDIE: My lord, I'm sure this went to my friend sometime ago, but I'm going to look into that. I don't know that we have any of the references.
THE COURT: Is it in the CV?
MR. ADAMS: It's in the new one, my lord. It's not in the old one that I had. I dare say my friend may be correct, but in the file I had this was all there was.
THE COURT: Yes. All right. Well, I notice it's four o'clock anyway. Is it a convenient time to adjourn or --
MR. GOLDIE: Well, if my friend has any further requests I should be aware of them.
MR. ADAMS: It's not something I'm demanding at this point be produced, but I would like to put my friends on notice that in the material which was disclosed to me on Wednesday the witness makes reference to his research notes compiled when doing Trap-Line Outlaw, and I'm not at this point asking for production of those, but I would like to put my friends on notice depending on the course of the cross-examination I may wish to and ask them to make whatever arrangements are appropriate to make that available if necessary.
THE COURT: All right. Are we under any pressure to start early or anything on Monday?
MR. GOLDIE: No, I think not. We're running marginally behind

time. But I want to feel free to discuss with Mr. Williams the requests that my friend has made despite the fact that my friend hasn't finished his cross-examination on qualifications.

THE COURT: All right. It seems to me that's something that must be done, is it not?

MR. ADAMS: I have no difficulty with that, my lord.

THE COURT: All right. Ten o'clock Monday morning. Thank you.

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

(PROCEEDINGS ADJOURNED TO OCTOBER 16, 1989 AT 10:00 a.m.)

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

Peri McHale, Official Reporter
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