Vancouver, B.C.
September 15th, 1988.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia, this Thursday, September 15, 1988. Calling Delgamuukw and Her Majesty the Queen at bar.
I caution the witness you are still under oath.
THE COURT: Oh, Madam Registrar, I've come with the wrong bench book. The current one is right on my desk, or on my credenza.
THE REGISTRAR: Very good.
THE COURT: If you could get it for me, please.
I think that counsel may be interested to know, if they haven't heard, that Chief Justice McLachlin's husband died last night, which is a matter that was expected momentarily and has now happened, and of course Chief Justice McLachlin is not going to be here today or for a little while, but there will be a private family service, and we'll know more about it later in the day. It's very unfortunate.
MR. GOLDIE: I think it a matter of great sorrow for her, and there's obviously nothing that the members of the bar can do except to record their very deep sympathy with her in this circumstance.
THE COURT: Thank you, Mr. Goldie.
MR. RUSH: I would just like to join with my learned friend.
MR. MACAYLAY: And I, my lord.
THE COURT: Yes. Thank you, gentlemen. All right. I think we can start, Mr. Rush. I can make some temporary notes and transfer them later. My book will be along in just a moment.
MR. RUSH: Thank you.

NEIL STERRITT, Resumed:

EXAMINATION IN CHIEF BY MR. RUSH CONTINUED:
Q Mr. Sterritt, would you just go over to map overlay 9A, please, and point out to his lordship the territory that you have been referring us to in this 1 to 50,000 map?
A The Village of Kispiox is located right in this spot on the map, and the territory that I'm referring to is immediately north of Kispiox, about four or five miles on the west side of the Kispiox.
MR. RUSH: Your lordship may recall that Mr. Sterritt had

1 concluded his evidence yesterday dealing with this
2 Ma'uus Territory.
3 Q Now, Mr. Sterritt, I think you also told us yesterday
4 that subsequent information came to your attention
5 about the adjustments that occurred in this
6 territorial boundary. Can you express where those
7 are?
8 A Yes. The major adjustment was the one I referred to
9 yesterday in terms of Date Creek, D-a-t-e, in relation
10 to the Gitksan name Xsu Wil Masxw. X-s-u space W-i-l
11 space M-a-s-x-w. What I said about the territory of
12 Antgulilibix, A-n-t-g-u-l-i-l-i-b-i-x, applies because
13 there's a common boundary here between Antgulilibix
14 and Ma'uus, M-a-'-u-u-s.
15 MR. RUSH: That's 48 on the list.
16 A Now, as a result of listening to what Mary Johnson had
17 said I mentioned that I contacted a hereditary chief,
18 Jeff Harris Sr., and asked him if he would accompany
19 me and show me where Xsu Wil Masxw was. X-s-u space
20 W-i-l space M-a-s-x-w. And he said we should drive
21 some distance up the Kispiox, approximately five
22 miles, which would be a good point. And so we did
23 that. And from that vantage point he not only
24 described the information about Date Creek, but he
25 described in considerable detail information about the
26 Territory of Ma'uus and Amaget. That's A-m-a-g-e-t.
27 And as a result the northern boundary of this Ma'uus
28 Territory, which was based on limited amount of
29 information and extrapolation, became altered to add a
30 minor amount of territory. If you look on the
31 northern boundary you see two lakes on either side of
32 the boundary at Lot 2564 and Lot 2555. Jeff Harris
33 informed me that both of those lakes should be within
34 the territory. And then from there the boundary goes
35 slightly southeast to where the canyon is at Lot
36 number 2560. There's a bridge crossing there and it's
37 the narrow spot, and that is the crossing -- or the
38 boundary goes to there.
39 Q Mr. Sterritt, when you refer to lot number, there is a
40 lot number shown on the map in front of you, is that
41 right?
42 A Yes. Lot 2560F. And on the map you can see a bridge
43 crossing there. The road goes either side and that's
44 the area of the boundary.
45 Q Okay. Were there any other adjustments that were made
46 to this boundary?
47 A Well, as I mentioned, the boundary should come down

Xsu Wil Masxw until it hits Date Creek, and at that point the boundary comes up the -- up Date Creek a distance and then over the mountain south of Ansa Luu Hlo'os. It's written on the map A-n-s-a space L-u-u space H-l-o-'-o-s. And then the line goes down to the Kispiox, from there goes east to the Kispiox.
Now, there were -- there was other information not only from Jeff Harris, but other persons.
Q You mentioned Percy Sterritt yesterday. Was he one?
A Yes. I'm talking about subsequent information.
Q Yes.
A Also Pete Muldoe.
MR. GOLDIE: Excuse me. Is that an addition to the people that you got subsequent information from?
MR. RUSH: Yesterday -- I think so. Yes.
Q Yesterday, Mr. Sterritt, you indicated that you had received information in May of 1987 from Jeff Harris Sr., and I believe is that what you have just referred to?
A Yes.
Q And then from Percy Sterritt and Stanley Williams?
A No. Stanley Wilson.
Q Excuse me. Stanley Wilson?
A Yes.
Q And are you now saying further that you obtained other information from Pete Muldoe?
A Yes. On the east side of the Kispiox -- the boundary goes across the Kispiox on the east side, and Pete Muldoe provided information on that side, as well as Jeff Harris Sr.. That is a subsequent change that would be reflected on map 9A. That is not on this map.
Q Now, in the course of your discussions with Jeff Harris Sr. did you make notes of those discussions?
A Yes, I did.
Q And are those contained in your loose-leaf notes?
A Yes. They are dated at the end of May of 1987.
Q Okay.
A And there were further discussions as well in 19 -- if not later on in 1987 also in the spring of 1988.
Q During those discussions with Mr. Harris in May of -- late May of 1987 did you sketch out a map of this area?
A Yes.
Q Based on information he provided you?
A I wouldn't call it a map. It would actually be a sketch of the mountains and naming the features on the

mountain.
Q This was done the same time as you had the discussion with Mr. Harris?
A Yes.
Q I just want to show you two pages of a sketch which if you can identify the two pages as yours?
A Yes. Those are the sketches that I made from two different locations. One was just north of what we locally call 17 Mile Bridge, which is very close to the Sportsman's Lodge on the east side of the Kispiox River.
MR. RUSH: Just pause there and hand that to his lordship, please.
THE COURT: Thank you.
MR. RUSH:
Q Yes. Go ahead, please.
A And then the other view -- I wanted to get different perspectives because of the features, and the other view was approximately two and a half miles south of the Sportsman's Lodge on the east side of the Kispiox River.
Q Right. And do those sketches indicate the information provided by Mr. Jeff Harris Sr.?
A Yes, they do.
Q And does the information that's contained there, is that reflected in that 9A?
A Yes, it is.
MR. GOLDIE: Well, I take it that my friend's question is intended to determine whether this information was passed on to Mr. George?
MR. RUSH: Yes. If that step has to be taken.
Q The information that is contained there, Mr. Sterritt, was that passed on to Mr. George?
A Yes.
MR. RUSH: All right. My lord, first I'd like to ask that the map that's marked "Draft Copy", that is indicated as labelled Schedule B and marked Ma'uus, M-a-'-u-u-s, be marked as the next exhibit.
THE COURT: Mr. Goldie?
MR. GOLDIE: I have no objection to that, my lord. I was going to suggest that if the -- if the affidavit to which this was appended is attached and that would complete it and it need not, as far as I'm concerned, under that circumstances be marked for identification if it is -- if it is attached to and identified as being that which was sworn to by Mr. Jeff Harris Jr..
MR. RUSH: Well, my lord, I don't think there's any objection to

it going in on its face. I hadn't intended, and I don't really intend at this point, to put in the interrogatory response to which it attaches.

MR. GOLDIE: Well, in that case it should be marked for identification.

MR. RUSH: I don't object to that.

THE COURT: All right. The next number, please.

THE REGISTRAR: The next number is 684 for I.D..

(EXHIBIT 684 FOR IDENTIFICATION:
Draft Map - Ma'uus Territory)

THE COURT: Do you have some more things to mark, Mr. Rush? Some more things to mark now?

MR. RUSH: Yes. I was going to ask that the sketch -- the two sketches that are stapled together be marked as the next exhibit.

THE COURT: All right. Any objection to that, gentlemen?

MR. GOLDIE: No, my lord.

THE COURT: All right. 685.

THE REGISTRAR: That would be an exhibit?

THE COURT: Yes.

THE REGISTRAR: Thank you.

(EXHIBIT 685:
Sketche - 2 pages by Neil Sterritt)

THE COURT: Anything else, Mr. Rush?

MR. RUSH: No.

THE COURT: Can I interrupt then, just for a moment, to give to counsel a copy of a -- well, the copy of a letter of notice that I received yesterday relating to a bridge over Sam Green Creek which was copied to me, and to which I propose to make no response. As it's come to me in the course of the trial I just want to expose counsel to it. I don't consider myself inflamed or anything of that kind by its contents.

MR. RUSH: I take it -- my lord, it appears that our clients are involved in this. I take it -- you're passing this back to me. Would you like to retain this in your file?

THE COURT: I don't have any anxiety about it. I'm not sure what I should do about it. I thought having received a letter that might relate to the case I should show it to counsel. I'm quite happy to put it in one of my miscellaneous files, or prepared to have it put in the court file. Perhaps the court file is where it should

be.
MR. RUSH: I think if that's your lordship's resolution I don't have any objection to that.
THE COURT: I think we'll just put it in the court file.
MR. GOLDIE: I agree with that, my lord. I think any purported communication from the clients in this case ought to be to the court file.
THE COURT: All right. Madam Registrar, would you put that in the court file, please.
THE REGISTRAR: Yes.
THE COURT: All right. Thank you, Mr. Rush.
MR. RUSH: All right. Thank you.
Q Mr. Sterritt, I'm going to show you another map which is labelled "Schedule C", and in the bottom right hand corner, the opposite side of the face page, is the lettering Basyelax Haa, B-a-s-y-e-l-e-x new word H-a-a, and on the face stamped "Draft Copy" and then Basyelex Haa again on the face page.
MR. MACAYLAY: My lord, counsel has the advantage -- at all times have the advantage of an overlay showing these boundaries, the interrogatory map boundaries. It may be of assistance to your lordship in following this evidence. I am not making this available to your lordship together with a representation that it's absolutely accurate, or anything like that, it's just the best we could do with a whole series of these sheets. If my friend has -- the plaintiffs' counsel have no objection I'll hand one of these up. We're following it with this. As I say, I emphasize these lines aren't said to be absolutely accurate in every respect, but it shows the area. This number eight, for instance, we're coming to on the map it shows number eight, your lordship, will be able to zero in as Basyelax Haa's. Outline any house in Basyelax Haa Territory.
THE COURT: Thank you, Mr. Macaulay. Have you seen this, Mr. Rush?
MR. MACAYLAY: They have it. Counsel have it propped up here. Everybody has a copy.
THE COURT: You're looking over Mr. Grant's shoulder. What do you say, Mr. Rush?
MR. RUSH: Well, the rest of Mr. Macaulay's maps, as they become known, I think, have been presented to you as an aide memoire. I don't really object to this.
THE COURT: All right.
MR. MACAYLAY: There's another one that --
THE COURT: I'm sorry, Mr. Macaylay, it's the overlay to

anything in particular? Does it fit on your face map?
MR. MACAYLAY: The federal --
THE COURT: On that one?
MR. MACAYLAY: Clearly, yes. There is another one that could be used to advantage with that, and that is -- it's the plaintiffs' map, but it's -- it's 9A. And the witness keeps referring to 9A. And all this is is our Mr. McKinnon's enlargement to the federal scale of the plaintiffs' other map. The plaintiffs have done a certain scale and this is enlarged to another. If you use the two you can see where the witness is describing changes in lines, and so on.
THE COURT: Have you seen this one too, Mr. Rush?
MR. RUSH: No, I've never seen this one.
MR. MACAYLAY: No, we just got it.
MR. RUSH: But I -- with all respect to this map, you have the identical map, or what we say is the correct version of that overlay beside you as the top overlay. 9A is the little one to your left.
MR. MACAYLAY: The reason I mentioned this one is that it would fit on the same map, two together.
THE COURT: I see.
MR. MACAYLAY: Would go together. This is the plaintiffs' map, but done to the scale of the federal map.
THE COURT: Yes. Well, perhaps you should let Mr. Rush look at it and if he has no objection I'll be glad to have it. I'm happy to have all the help I can get.
MR. MACAYLAY: Then when the witness says we have changed -- as a result of field trips and discussions the boundary changes took place here and there it's easy looking at the two overlays, one on top of the other, to see what he's talking about. I don't see any -- that it's any disadvantage to the plaintiff. Probably makes it easier to follow Mr. Sterritt's evidence.
MR. RUSH: We'll, have a look after.
THE COURT: Thank you, Mr. Macaulay.
MR. MACAYLAY: I take it we're on number eight. You see, there's a code at the top giving the names, and I think this is number eight on this, the Basyelax Haa Territory.
MR. GOLDIE: I'd like to say, my lord, that it's seldom that a federal scale is smaller than the wall, but in this case I find it quite useful.
THE COURT: Thank you. All right, Mr. Rush.
MR. RUSH: Yes. All right.
THE COURT: Your friends are letting you proceed.
MR. RUSH: Always grateful for any help Mr. Macaulay can

provide, such that it is at times.
My lord, the map that is before Mr. Sterritt is from the interrogatory of William Blackwater, Basyelax Haa, dated February 15th, 1987.
Q Now, the map -- Mr. Sterritt, I'm asking you if you can recognize the lines, the boundary lines as depicted on this map?
A Yes, I can.
Q And what can you say about those lines?
A Well, the boundary lines as represented here contain the Territory of Basyelax Haa, but the extrapolation inaccuracy that appears here is that there are two territories contained within the boundary lines, and it was a judgment call on my part in terms of the relationship between Basyelax Haa --
THE COURT: Maybe you can give the plaintiff number.
MR. RUSH: That's two.
THE REGISTRAR: Number two.
A And Niist. Now, I hadn't appreciated at this point that there were two separate territories there.
MR. RUSH:
Q At what point are you talking about?
A When this draft map was drawn.
Q Do you know when that was?
A I couldn't say, but it represents what -- what I had provided with Marvin George at the time -- provided to Marvin George, and I don't recall the exact date. But the reason that there are two different -- or I combined the territory is that Walter Blackwater -- pardon me. David Blackwater and Billy Blackwater are brothers, but they do have separate houses, and there is a separate territory here. There is a boundary between the Territory of Basyelax Haa and Niist. Now, the northern -- yes, the northern boundary line --
MR. RUSH: Niist is 54.
THE COURT: Yes.
A Which is on your left when you look at the map is correct. There should be little or no difference between that line and the line on map 9A. And the separation between the Territory of Basyelax Haa and Niist begins on the Nass River at the mouth of Xsi Tsinihl Denden Ando'o. That's X-s-i space T-s-i-n-i-h-l space D-e-n-d-e-n --
THE COURT: I'm sorry. D-e-n twice?
A Yes. Space A-n-d-o-'-o. Now, on the topographic map that is Vile Creek. V-i-l-e. And as a result of later discussions with Walter Blackwater he was

more -- he was able to identify for me more accurately where that boundary went. And the separation between Niist and Basyelax Haa begins on the Nass River at the mouth of Vile Creek and then follows the height of land generally east to cross a creek about in the middle of the map called Xsi Andap Matx. That's X-s-i space A-n-d-a-p space M-a-t-x. It crosses that about seven miles from the main lake in the middle of the map and then continues along the height of land down to the Skeena River about a mile below Xsi Tsinihl Denden. That's the creek that flows into the Skeena. That's X-s-i space T-s-i-n-i-h-l space D-e-n-d-e-n. And that appears on the map, on the topographic maps as Canyon Creek. So now there was -- that describes the separation between the two, but there is a further definition on the southern boundary of Basyelax Haa which if you see -- if you look in the Nass River, which is the dark line running diagonally across the left hand corner of the map, there is a creek between the M and the S of Xsi Txemsem. X-s-i space T-x-e-m-s-e-m.

THE COURT: T-x-e-m?

A S-e-m.

THE COURT: Thank you.

A And there's a creek between the S and the M which is on the topographic map as Sallysout. That's spelled S-a-l-l-y-s-o-u-t. Sallysout Creek in Gitksan is Xsa Galliixawit. X-s-a space G-a-l-l-i-i-x-a-w-i-t. Now, the boundary follows Xsa Galliixawit Creek looking on this map for about five inches and then continues on up another creek, which was identified to me by Albert Tait, called Xsi Luu Alagwit. X-s-i space L-u-u space A-l-a-g-w-i-t.

THE COURT: A-l-a-g?

A W-i-t.

THE COURT: Thank you.

A And there is no name on the map for that, on the topographic series map. And then the boundary basically follows the height of land pretty well as it's represented here all the way to the Skeena. And then that would describe the Territory of Basyelax Haa.

MR. RUSH:

Q Who were your informants with regard to the map that's in front of you?

A Walter Blackwater. Oh, the map that's in front of me?

Q Yes.

A It -- for various geographic features within it it is -- the details arise partly out of the field trip that I took with Walter Blackwater, David Blackwater and Nancy Supernault in September of 1986. There is also information would be contained within the notes of -- that I referred to of Chris Harris, Richard Benson, Perry -- no, not Perry Sampson. A man by the name of Arthur Sampson. There are two Arthur Sampsons. And that would be -- that would be in my field book. Steve Morrison, I know he talked about this. I'm not sure that I took a note of it. That would be in the mid 1970's.

Q All right.

MR. GOLDIE: All of those dates are in the mid 1970's that he's talking about? Chris Harris?

A No. The Chris Harris information is copies of his notes that I have, and that information he gave to me in the 1970's. And Steve Morrison in the 1970's. He died about 1977 or '78. Arthur Sampson would be in about 1983, 1984 in my field books. And then, of course, the subsequent detail that I got was from Walter Blackwater in 1986 and discussions subsequent to that field trip. I should mention that this is also a route that we flew on the over flight -- the overview that we took last summer. We flew right up Canyon Lake from the Skeena when we left Slamgeesh Lake, S-l-a-m-g-e-e-s-h, and then flew up here and then down the Nass River.

THE COURT: That's where we stopped and changed seats in the second helicopter?

A Right at the mouth of Sallysout Creek, yes.

MR. RUSH:

Q And is the information that you received on a heli-flight prior to 1986 contained in this map?

A Yes.

Q And what heli-flight was that? If you can remember.

A A heli-flight that I took up on the flight with James Morrison and David Gunanoot and Glen Williams.

Q And that would be in June of 1983?

A Yes. And also in May of 1983 a heli-flight with Pete Muldoe, David Blackwater and Albert Tait.

Q Were notes made and kept of that?

A Yes. They're in my field book.

Q And it shows on your summary of field trips as that flight having occurred on May 20th, '83?

A Yes.

Q Now, in terms of the adjustments that you've mentioned

in respect of this territory you've indicated that you received instructions from Walter and David Blackwater, and you mentioned a heli-flight of 1986. Were there instructions that you received about those adjustments that you received from anyone else?

A No. No.

Q All right. And the information of Walter and David --

A I should add that Pete Muldoe provided further detail on the southeast boundary to me in terms of detail, but it didn't alter the boundary to any degree, but he also is a person who provided subsequent information to me.

Q All right. And the date in which Walter and David Blackwater provided you with that information?

A I had several sessions with Walter and David. It would be during 1987 and in the winter of 1988.

Q Right. The sessions with Walter and David Blackwater in 1987, would that be in the fall of '87?

A I believe that it is. I'm not -- I'm not certain.

Q Okay. Now, would these -- these are in your field notes?

A They're in the loose-leaf. Those should be in the loose-leaf notes.

Q Under the name of Walter Blackwater and David Blackwater separately?

A Most of my information with David and Walter will appear under Walter.

Q Okay.

A I should say all of them will appear under Walter.

Q Okay. Now, Mr. Sterritt, I wonder if you just look at map overlay 9A and tell us whether the changes that you were instructed about were reflected in that map so far as the Basyelax Haa and Niist Territories?

A Yes, they are.

MR. RUSH: All right. Thank you. Thank you, Mr. Sterritt. Can you set that map aside. May that be the next exhibit for identification, please.

THE COURT: 686 for identification.

THE REGISTRAR: Right. 686 for I.D..

(EXHIBIT 686 FOR IDENTIFCATION:
Draft Map - Basyelex Haa Territory)

THE COURT: Mr. Macaulay, on this overlay you've given me, I take it that in areas where there is no number there was no interrogatory map to cover that territory; is that the explanation?

MR. MACAYLAY: Well, that's right, my lord. You'll see where for instance there's number eight -- you've been looking at number eight just now and there was an interrogatory map, but if you go down to number 28 --
THE COURT: Just go adjacent to number eight. To the east there is a territory with no number in it.
MR. MACAYLAY: I can't explain right now the reason for that, because it seems to be a definite boundary. Wii'goob'l. I'll find that out, my lord. But there are others where there were no maps and they appear in interrupted circles like 28, and 40, 49, 50. Those were just general areas. They indicate general areas of --
THE COURT: What does an interrupted circle mean?
MR. MACAYLAY: Well, those are the cases where there were no maps.
THE COURT: All right.
MR. MACAYLAY: There was a written description in the interrogatories so we could in a general way indicate where the house territory was said to be.
THE COURT: Well, on the extreme -- well, just north of the southeast corner of the external boundary there's quite a large territory with no number in it at all.
MR. GOLDIE: We, of course, didn't get interrogatories from all of the present plaintiffs.
THE COURT: I see.
MR. GOLDIE: The interrogatories were originally delivered to the 47 plaintiffs when the case started.
THE COURT: So this area that's down on the southeast corner would be an area for which no interrogatory map is --
MR. GOLDIE: I would have to check that, but that is one problem.
THE COURT: Explanation. All right. Thank you.
MR. MACAYLAY: This is only handed up as a useful guide for this witness and understanding his evidence at a glance, so to speak.
THE COURT: Yes.
MR. MACAYLAY: If your lordship had placed our overlay on 9A you would have seen again at a glance what the witness was talking about.
THE COURT: Yes. I can see that on 9A what I have here.
MR. MACAYLAY: Niist and Basyelex Haa.
THE COURT: All right. Thank you.
MR. RUSH:
Q I'm showing you another map, Mr. Sterritt. This one is labelled Schedule C, and it was identified with the name of Kliyem Lax Haa, K-l-i-y-e-m new word L-a-x new

word H-a-a.
THE COURT: A-a?
MR. RUSH: Yes.
Q Do you recognize what that depicts, Mr. Sterritt?
A Yes, I do.
Q What's that?
A It's the draft of the Territory of Kliyem Lax Haa.
MR. MACAYLAY: I think we are dealing with number one now, my lord.
THE COURT: Thank you.
MR. RUSH:
Q And, Mr. Sterritt, that is marked draft copy?
A Yes.
Q And what's -- what is the general area that this map depicts?
A This is at the -- generally at the head of the Nass River north of Blackwater Lake.
MR. RUSH: And, my lord, this is a map that is a 1 to 50,000 scale map, and was attached to the interrogatory of Martha Brown on January 27th, 1987.
THE COURT: Is she Kliyem Lax Haa?
MR. RUSH: She is -- was. She is deceased.
THE COURT: Thank you.
MR. RUSH:
Q There's been a feast in respect of the passing of the late Martha Brown, Kliyem Lax Haa?
A Yes, there has.
Q And who's the present holder of the name?
A Martha Brown's daughter, Eva Sampson.
Q Thank you. Now, Mr. Sterritt, I think you gave testimony about this earlier this week, I think on Tuesday, about this territory; is that right?
A Yes, I did. I was talking about the external boundary at the north end of this territory. I didn't discuss other parts of it.
Q And was that in respect of the evidence you gave about the changes from overlay map 4 to overlay map 6?
A Yes, it was.
Q All right. Now, setting aside what you said at that time can you tell his lordship what information you received and passed on to Marvin George that was the basis for the description that's shown on this map?
A Yes. My uncle, Percy Sterritt, had provided me with some information as early as 1974, 1975 that should appear in my journals, or in one of my journals. It will appear in some loose-leaf notes of the time, or scraps of paper. And also subsequent to that we

discussed this area, and some of that information will appear in my field books.
Q And from -- did you have other informants?
A Yes. I had a conversation once with both Percy Sterritt and George Wilson, who was Wiimugulsxw. W-i-i-m-u-g-u-l-s-x-w. And they provided me with information that -- that appears in my very early notes. I had discussions with Walter Blackwater in 1982 or 1983. I talked to Martha Brown over a period of time.
Q Would those be contained in your field notebooks?
A Yes.
Q All right. And was the boundary here subsequently adjusted after that earlier information was passed on to Marvin George?
A Yes. This boundary represents some information that I had at the time, and then I had subsequent discussions with Percy Sterritt where I asked him more precisely where the boundary went in relation to the Nass River, and he advised me that the former Niist, Charles Sampson, had told him that the boundary was on either side -- the tops of the mountains on either side of the Nass River. That discussion was in late 1987 or early 1988, and that appears in my loose-leaf notes. I had discussions with Walter Blackwater, and he corroborated that information and identified the name of the mountain on the west side of the Nass River as Wil Maxhla Dox Hla Genx Wii Gwiik. That's W-i-l space M-a-x-h-l-a space D-o-x space H-l-a g-e-n-x space W-i-i space G-w-i-i-k. That's where they're talking about the large tracks of the groundhog. That's what that means. And that is the height of land immediately west of the Nass River. And the boundary should go along that and then down to the creek that comes into the -- from the left just above the name Niist.
Q On your map?
A On this map, yes. And Walter also identified the name of that creek. It was my effort to try and locate a number of creeks -- or creeks or rivers in this area. And Walter was able to identify that that creek, in fact, is Xsi Maxhla Biluust Maawxs. That's X-s-i space M-a-x-h-l-a space B-i-l-u-u-s-t --
THE COURT: I'm sorry. B-i-l?
A B-i-l-u-u-s-t space M-a-a-w-x-s.
MR. RUSH:
Q And when did Walter Blackwater do that?

A In 1987. And I don't recall just when it was that that -- I believe it was in the fall of 1987.
Q And that would be in your loose-leaf notes?
A Yes.
Q The changes you were instructed about, are they reflected in that map 9A?
A Yes.
Q Do you just want to have a look on there?
A Yes, they are. This is the territory here, and the change from the Nass River to the mountains on the west appears right there.
THE COURT: Has the territory been cut off at the top as well?
A Yes. Whereas the map that was in front of me extends up there. This is the area that I described with the tree with the writing on it is in this area.
MR. RUSH:
Q You're pointing on the northerly point of the boundary --
THE COURT: Yes.
MR. RUSH:
Q -- Of Kliyem Lax Haa?
A Yes.
MR. RUSH: All right. Mr. Sterritt, could you fold that up. May that be the next exhibit for identification, please.
THE REGISTRAR: Number 687 for I.D..
THE COURT: Yes. 687.
THE REGISTRAR: Yes, my lord.

(EXHIBIT 687 FOR IDENTIFCATION:
Draft Map - Kliyem Lax Haa Territory)

MR. GOLDIE: Excuse me, my lord, if I understood the witness correctly he said Walter Blackwater identified for him the name of a stream in the fall of '87, but this map seems to have written on it -- perhaps not the one before the witness -- the name that he gave us. It is identified as being tendered with -- yes. I'm pointing out to him some handwriting on the lower left hand corner of the map outside the area, but unless my note is incorrect I thought that was what he identified as the name given him by Mr. Walter Blackwater, and if so the dates don't seem to match. I wonder if my friend could clear that up. Either clear my misapprehension up or the addition to the map.

MR. RUSH:

Q In handwriting at the bottom of this map not contained within the black boundary shown on the map is a feature that is identified as Xsi Gwlal Txemsem.

A Xsi Gwlal Txemsem. That's X-s-i space G-w-l-a-l space T-x-e-m-s-e-m.

Q All right. And then to the left of that printed name is what appears to be a hand printed name. Do you see that?

A Yes, I do.

Q All right. And what is that name that appears there?

A That's is Xsi Maxhla Biluust Maawxs. X-s-i space M-a-x-h-l-a space B-i-l-u-u-s-t space M-a-a-w-x-s.

Q And what's there at the end of that?

A That is AKA, and I think it's AKA for Xsi Gwlal Txemsem. X-s-i space G-w-l-a-l space T-x-e-m-s-e-m.

Q And can you assist us with respect to that identification of that feature?

A Yes, I can.

Q Walter Blackwater cannot read maps, and he had told me that there's a creek -- well, first of all there's an area -- a mountain area called Maxhla Biluust Maawxs. M-a-x-h-l-a space B-i-l-u-u-s-t space M-a-a-w-x-s. And I tried to determine -- I had a good idea of where the mountain was. And then Albert Tait told me about that mountain as well. Walter Blackwater identified a major creek in this area. And the name on the map for this creek, on the topographic map, is Muckaboo Creek. M-u-c-k-a-b-o-o. I drew not a final conclusion, but made an assumption that Muckaboo might be related to Maxhla Biluust. That was the Anglicization of the Gitksan name. So I asked Walter if that could be Xsi Maxhla Biluust Maawxs, and he said, "Yes, it could be." So I worked with Walter on this, and had a great deal of difficulty narrowing down that that was the actual creek. I would show him a map, he would -- he couldn't relate to map scales or anything. He would suddenly be veering off, and so what I did is I asked him to walk from seventh cabin, and I asked him what the name of that creek was, and he said that it is -- the creek at seventh cabin is Silgim Ba'ad Txemsem. That's the name of the creek above the word Niist.

Q On this map?

A On this map.

Q Which is in front of you, Exhibit 687, I think.

A Yes. Now, seventh cabin is located on this creek that Mr. Goldie has identified with this writing of Xsi

Maxhla Biluust Maawxs. Seventh cabin, I know where that is, and it's right at the M of Silgim Ba'ad Txemsem.

Q What did you conclude from that information?

A Then I said, "Okay, Walter, walk me to Maxhla Biluust Maawxs", because I've learned through the process that the creek usually comes off the mountain of that name. So he walked me up the river. We got to eighth cabin. Here's where I once again had quite a bit of difficulty. Eventually he described -- he said there's a very low pass that you go over that is next to or at Maxhla Biluust Maawxs. He said when you go over that and down into a very broad valley and a long creek flowing down to the main Nass -- and he indicated that to me in Gitksan -- he said that is Xsi Maxhla Biluust Maawxs. Now, that took me awhile. I mean, working that out probably took several sessions, because I was doing other things as well, but several sessions it was eventually resolved that the creek above is Xsi Maxhla Biluust Maawxs. Now, that creek is on the map as Konigus Creek. K-o-n-i-g-u-s. That's why that's there. It's part of the state of information at the time, and later I narrow that down.

Q All right. Mr. Sterritt, Xsi Maxhla Biluust Maawxs, as it's written in the map that's in front of you, is I take it from your evidence, not located at the place where that is written?

A That's correct.

Q It's located, on the information you received from Mr. Walter Blackwater, at a point that is marked on the map as Konigus Creek?

A Yes.

Q And now by map I'm here referring to the NTS government map?

A Yes.

Q Is the Konigus Creek marked with a Gitksan name on the map that's in front of you, 687?

A Yes.

Q And what is that?

A That is Luu Silgim Ba'ad -- well, the Luu isn't there. Silgim Ba'ad Txemsem. It's S-i-l-g-i-m space B-a-'-a-d space T-x-e-m-s-e-m.

Q And I take it that name is incorrectly placed on the map that's before you?

A Yes, it is.

Q And where should that be.

A It should be on Muckaboo Creek. M-u-c-k-a-b-o-o.

Q And Muckaboo Creek previously where Xsi Maxhla Biluust -- give us the name -- is that --
A That's right.
Q That is Muckaboo Creek?
A Yes.
MR. GOLDIE: So these two names are switched?
A Yes. The handwritten Gitksan name and the printed Gitksan name on the upper creek, they should be switched.
MR. GOLDIE: And that switching took place in the fall of 1987, is that right?
MR. RUSH:
Q Now, Mr. Sterritt, in terms of the writing that appears on the map at Muckaboo Creek, can you tell the court when it was that you were instructed by Mr. Walter Blackwater about that feature?
A Well --
Q Or at least when you deduced that the feature was in that place? Subsequently you learned it was incorrect, but can you give us a date when you came by that information?
A I think I learned that there was a creek by that name considerably earlier than that, and as to where it was located I thought I had it, but I realized that there was something missing. How much sooner, like how long after I learned about the name of the mountain that I learned about the name of the creek I can't say, but I would say about two and a half, three years ago.
Q So is this 1985, '86?
A Yes. I think about then.
Q Now, can you say when you received information from Mr. Blackwater that led you to conclude at that time that Muckaboo Creek went by the name that's written there?
A In the fall of '87, perhaps in the early months of '88.
Q All right. Well, if this map was attached to the -- as I'm instructed, was attached to the interrogatory response of Kliyem Lax Haa in January of 1987, January 27th of '87, does that help in determining when you came by the information that is contained on this map and written there?
A Well, the information on this was prior to that.
Q Yes, can you determine about when it was?
A You mean all of the information or the information we are talking about?
Q No, just the information to that one feature, the one

1 creek you're discussing?
2 A You mean Muckaboo Creek?
3 Q Yes. This name here that's handwritten on.
4 A Oh, I think that I was -- I think about three years
5 ago I was drawing -- making a judgment call that
6 Muckaboo and Xsi Maxhla Biluust Maawxs may be the same
7 creek.
8 Q I see. All right.
9 A And -- but we're also -- the common usage of these
10 creeks in this area, or the main features by Walter
11 Blackwater is the prefixes Ba'ad Txemsem. There's
12 about six different Nass Rivers, or what they call
13 Nass Rivers in the area, and I was trying to sort that
14 out as well, but I had also come to a conclusion that
15 this -- that this was a creek in the area.
16 Q That is Xsi Maxhla Biluust?
17 A Yes, in the area. And it was Muckaboo Creek, but that
18 was not right. I mean, I've explained that already.
19 Q All right. Then in the latter part of 1987 or the
20 early part of 1988 Mr. Walter Blackwater was able --
21 instructed you --
22 MR. GOLDIE: Well, excuse me. I object to the word instructed.
23 The process doesn't lend itself to that word.
24 MR. RUSH: Well, I don't know why not.
25 MR. GOLDIE: No. The technical objection is that the question
26 is a leading one by the use of that word.
27 MR. RUSH:
28 Q When did you learn, Mr. Sterritt, the information that
29 Mr. Walter Blackwater passed on to you that Xsi Maxhla
30 Biluust was at Konigus Creek?
31 A In the fall of 1987.
32 MR. RUSH: Can that be the next exhibit, please, for
33 identification. It is?
34 THE REGISTRAR: Yes. 687.
35 MR. GOLDIE: I wonder if the witness could assist us one step
36 further. That is, can he identify the author of the
37 handwritten material on the map?
38 MR. RUSH:
39 Q There is handwriting on the map, is there?
40 A Yes.
41 Q And can you just identify the names that are on the
42 map?
43 MR. GOLDIE: Just who the author is.
44 MR. RUSH: Well, there may be more than one author.
45 MR. GOLDIE: All right. Thank you.
46 A The handwriting that appears as a reproduction along
47 with the print --

MR. RUSH:
Q Yes, that's the question.
A -- I would say is the printing of Marvin George.
Q Is all the handwriting on there apparently that of Marvin George?
A No. I've -- on the lower right corner of mine the name Kliyem Lax Haa is my printing. It's in red pencil on this.
Q That's not on the photo reproduction of it?
A No.
Q All right. Thank you. Mr. Sterritt, I want to show you a map now stamped "Draft Copy" and identified in the upper right hand corner number two, Territory of Luutkuudjiiwux Madii Lii. And Luutkuudjiiwux is spelled L-u-u-t-k-u-u-d-j-i-i-w-u-x, and Madii Lii, M-a-d-i-i new word L-i-i.
THE COURT: M-a-d-d-i?
MR. RUSH: M-a-d-i-i L-i-i.
A Yes, I do.
Q All right. And do you know who drew this map?
A Yes.
Q Who?
A I did.
Q And there are features that are labelled on this map in Gitksan. Is that printing that you put on this map?
A Yes, it is.
Q All right. And the area that's contained by the black line that's shown on this map, can you tell us what area that is?
A It's the Territory of Luutkuudjiiwux east of Hazelton on the north side of the Suskwa, S-u-s-k-w-a, River.
Q All right. And the features that are identified in Gitksan, and arrow directing to certain features that are shown on this map, can you tell us who provided you with information about those features?
A Percy Sterritt, Steve Robinson, Ben Mackenzie, David Green, Mary Moore, my father, Neil B. Sterritt. I think that's about it.
Q And can you give us the place where this information would be contained in your notes, and the dates approximately when it was provided to you?
A Percy -- most of that material would be in my field books. It would appear in the white binder maps. It would -- some of it could be in topographic sheets.
Q Okay. And the holder of the name Luutkuudjiiwux?
A Ben Mackenzie.

Q All right.
A It also appears in loose-leaf notes from 1979.
Q All right. Now, Mr. Sterritt, were changes made or adjustments made to that boundary?
A Yes. The -- the map that is here reflects a -- a misunderstanding on my part based on how we name creeks and mountains, or creeks in relation to mountains. The information I had originally was accurate and -- but there was an area that I had difficulty resolving, and I made an assumption here that I was later informed was incorrect.
Q All right. What was that?
A The name is Xsa Hahla Gyoot'm Andoo'o. That's X-s-a space H-a-h-l-a space G-y-o-o-t-'-m space A-n-d-o-o-'-o. Now, Andoo'o always means on the other side of the mountain, and if there's a creek that name then there's usually another one without that, because it's the main one on this side -- on the other side of the mountain. There are three Xsa Hahla Gyoots. There's Wii Xsa Hahla Gyoot. That's W-i-i space X-s-a space H-a-h-l-a space G-y-o-o-t. That means the big Xsa Hahla Gyoot. There's Gwiis Xsa Hahla Gyoot. G-w-i-i-s space X-s-a space H-a-h-l-a space Gyoot. And that means the small Xsa Hahla Gyoot. And then there's the one on the other side, the Xsa Hahla Gyoot'm Andoo'o. So there is three of them. When I put this together I assumed that this was Nichyeskwa Creek. N-i-c-h-y-e-s-k-w-a.
THE COURT: E-s-k-w-a?
MR. RUSH:
Q That's as it's labelled on this map?
A It appears on topographic maps as that, because it was on the other side and came from that general range of mountains that that should be Xsa Hahla Gyoot'm Andoo'o, the one on the other side. On reviewing my earlier notes with Ben Mackenzie --
Q When did that review occur?
A During 19 -- sometime late in 1987, as well as meeting with and talking to Arthur Ridgedale.
Q Is he a hereditary chief?
A Yes.
Q And also talking to Walter Wilson who owns the territory on the north side of Thoen Mountain, T-h-o-e-n, I realized that Luutkuudjiiwux does not go over on that side and on the north side of Thoen Mountain, Thoen Mountain being Hahla Gyoot. H-a-h-l-a space G-y-o-o-t.

THE COURT: I'm sorry.
A H-a-h-l-a space G-y-o-o-t. And that -- and that Xsa Hahla Gyoot'm Andoo'o was in fact Denison Creek. D-e-n-i-s-o-n.
MR. RUSH:
Q Denison being a creek that's named on the topographic map?
A Yes.
THE COURT: You assumed that it wasn't Denison?
A That's right.
THE COURT: Yes.
MR. RUSH:
Q Now, did that review result in an adjustment of the boundary in this territory?
A Yes, it did. The boundary followed the height of land north of the Suskwa River rather than going over the height of land.
Q Were other adjustments made as a result of further information you received about that territory?
A Yes. If you follow the western --
THE COURT: I'm sorry, Mr. Rush, but we can hear the other adjustments after the break.
MR. RUSH: Yes.
THE COURT: Thank you.
THE REGISTRAR: Order in court. Court will recess.

(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 PURSUANT TO AN ADJOURNMENT)

THE REGISTRAR: Order in court.
THE COURT: I wonder if I might intrude for a moment, Mr. Rush, just to say that with some embarrassment I think that it will be very difficult to sit next Monday morning. There is going to be a ceremony in the Court of Appeal to welcome at least Madam Justice Southin and Mr. Justice Toy and perhaps myself, and there are a number of other matters I want to look after. I would like, if it is convenient to counsel, not to sit Monday morning but to resume at 2:00 in the afternoon. Will that be difficult for anyone?
MR. RUSH: Yes, there is no difficulty with that.
THE COURT: Would counsel prefer to start at two rather than take the whole day off?
MR. RUSH: Yes, I think we prefer to start at two.
THE COURT: Yes, all right. I should mention in addition a very delicate subject that I am most reluctant to embark upon, but I am told there is some possibility of a strike of B.C.G.E.U. on Monday. A letter has been received from counsel for the B.C.G.E.U. saying that there will be no picketing at the courthouse, at least where there is only -- where the building is only used for courthouse purposes. There will be some variations of that in locations where the courthouse is used for other purposes as well. But for the purposes of this case I can tell counsel that I am informed by counsel for the B.C.G.E.U. that there will be no picketing at this courthouse. All right, thank you. I should add, unless the Supreme Court of Canada in the meantime delivers judgment on an appeal that was argued last April that changes the lot. Thank you.
MR. RUSH:
Q Now, Mr. Sterritt, you mentioned Art Risdale. What house is Art Risdale in?
A In the house of Luutkuudjiiwux.
Q Is he a chief of that house?
A Yes, he is. Do you have the number for that?
THE REGISTRAR: Number 43 on the plaintiff's list.
MR. RUSH: 44.
THE REGISTRAR: I have 43 on mine.
MR. RUSH: Mine is 44 but in numerical sequence it should be 43, if you can figure that one out. My list says 44.
THE COURT: I am not going to try.
MR. GOLDIE: That's Monday morning gone.
MR. RUSH:

Q Now, Mr. Sterritt, would you have a look at 9A, please, and if you can tell us if the changes that you are instructed about are reflected in the boundary description that's shown on that overlay?
A Yes, they are.
Q All right. Now, you received information about this boundary that you have described as adjusted in the manner that you have described from the chiefs you have indicated. Can you just tell us what period of time it was that you received that information?
A Leading to the adjustment?
Q Yes?
A The fall of 1987 and through into the spring of 1988.
Q Early spring of '88?
A Yes, I believe so, and that would be from Art Risdale, Mary Moore, I think I talked to Percy Sterritt again about some areas there.
Q And you indicated you had that conversation with Ben McKenzie?
A In 1979.
Q In '79?
A Yes.
MR. RUSH: All right. May this be the next exhibit, please, for identification?
THE COURT: Yes.
THE REGISTRAR: That will be 688 for identification.

(EX. 688 - DRAFT MAP - TERRITORY LUUTKUUDJIIWUX AT MADII LII)

MR. RUSH: If you will just pause, my lord, I -- this map was a map drawn by Mr. Sterritt and the names placed on it by Mr. Sterritt. That's directly identified and I don't think need to be identified.
MR. GOLDIE: I agree with that.
THE COURT: All right. 688.
MR. RUSH:
Q Now, Mr. Sterritt, I want to show you another map that's labelled Schedule C and the name Luutkuudjiiwux in the bottom right-hand corner and stamped draft copy. Can you identify the area that's outlined in black on this copy, please?
A Yes, I can.
Q And what is that area, please?
A That's the territory of Luutkuudjiiwux on the west side of the Skeena directly opposite Hazelton.

1 Q All right. Was the area that's encompassed by the
2 black line drawn by Marvin George on the basis from
3 information that you provided to him?
4 A Yes, it is.
5 Q And is that information that you provided to him
6 information you received from hereditary chiefs?
7 A Yes.
8 Q And which hereditary chiefs are the chiefs?
9 A From Ben McKenzie.
10 Q Just pause a second. If you will just step off the
11 witness stand and just point out to his lordship the
12 area where this territory is located on 9A?
13 A Hazelton is located right here and the territory
14 that I am referring to is immediately west.
15 THE COURT: Yes.
16 MR. MACAULAY: It is 30B on the overlay, my lord.
17 THE COURT: Yes.
18 MR. RUSH: Well, let's not confuse two things, my lord. The
19 area that I was asking Mr. Sterritt to point out is
20 the area on overlay map 9A which as I understand this
21 map provided by Mr. Macaulay is not necessarily that
22 which is on 9A.
23 THE COURT: Oh, no.
24 MR. RUSH:
25 Q Now, Mr. Sterritt, you indicated information was
26 received by you from Ben McKenzie Senior. By anyone
27 else, please?
28 A Yes, by Mary Johnson -- oh, I should go back. I am
29 sorry, I am confusing the recent work and the earlier
30 work.
31 Q I am here referring to the earlier work, please?
32 A Yes. Joshua Campbell.
33 MR. GOLDIE: You are still including Ben McKenzie as part of
34 that?
35 MR. RUSH:
36 Q You are still including Ben McKenzie as part of your
37 earlier information?
38 A Yes.
39 Q And Joshua Campbell?
40 A Joshua Campbell.
41 Q Yes?
42 A Fanny Smith, and that would be material that appears
43 in my field books. I know I talked to Art Mowat and I
44 think there may be entries in my field books with Art
45 Mowat or an entry.
46 Q Are there topo maps with reference to this territory
47 or topo dates I should say?

A Yes, I think there will be some.
Q Now, was this boundary adjusted at later time as a result of information you obtained?
A No. This boundary remains the same with a minor interpretation on the north -- northern boundary towards the west and it is simply an interpretation of height of land. It is very minor.
Q And was that interpretation one that is from information that you received?
A No. It was based on resolution of the height of land based on topographic maps. It is very minor but there was no change based on this map.
Q There was no change based on new information?
A No change based on new information.
Q All right. Now, may I ask you to look at overlay map 9A and if the information you received from the hereditary chiefs is reflected in the boundary description as shown on that overlay?
A Yes, it is.

MR. RUSH: Thank you. May this be the next exhibit, my lord, as for identification?

THE COURT: Yes.

THE REGISTRAR: 689 for identification, my lord.

(EX. 689 FOR I.D. - DRAFT MAP - TERRITORY LUUTKUUDJIIWUX)

MR. RUSH:

Q Now, Mr. Sterritt, I want to show you another map and it is marked in the bottom right-hand corner Wii Minosik, W-i-i new word M-i-n-o-s-i-k. Again, it is stamped draft copy. I wonder if you can identify this for me, please. What does this show?
A This shows a territory on the south side of the Babine River just east of the village of Kisgagas.
Q And does that area show -- does that area abut on the Babine River?
A Yes, it does.
Q Now, you received information from hereditary chiefs in respect of this area?
A I -- yes.
Q Can you just describe who it was that you obtained that information from?
A The person who I talked to about or one of the persons was David Green.
Q All right. And is the information that you obtained from him contained in your field notes?

A Yes, it would be in my -- one of my field books.
Q And can you give us a date when that occurred?
A I would think in the period about 1983 or '84.
Q Now, was there anyone else that you talked about with respect to this area in that time frame I am talking about?
A Yes, and well prior to that in terms of geographic information, the place names. I am trying to recall -- David Gunanoot -- I can't remember the others. There are several others who provided the same information about the main creek in this territory, but that's all I can remember right now.
Q All right. Subsequently, were you given information from hereditary chiefs about the territory in this area?
A Yes.
Q All right. And who instructed or who told you about that?
A Robert Jackson.
Q Yes?
A Well, actually Robert was one of the people who gave me information earlier and also further information later. Robert Jackson Senior, Joshua McLean, James Morrison, Sam Morrison I think. That's all that I recall at this time.
Q All right. Now, Robert Jackson Senior, the information that he provided to you on a later occasion, is that contained in the loose-leaf notes?
A Yes.
Q And would that be in 1987?
A Yes, I believe so.
Q And in terms of James Morrison, the information he provided to you, is that in the field books or in the field notes -- or the loose-leaf notes?
A I think it will be in my loose-leaf notes.
Q And about when?
A 1987, fall of 1987.
Q Joshua McLean, that is the information you received from him in loose-leaf notes?
A Yes.
Q And is that in the early part of 1988?
A It is in the spring of 1988, yes.
Q Did you receive any further information from David Gunanoot about this area?
A Yes, but -- well, David died in the fall of 1987, and I don't recall if I had any discussions about this area with him in mid 1987.

Q Now, as a result of the information you received from Robert Jackson Senior, James Morrison and Joshua McLean, what did this lead you to conclude about this area?
A Well, this map represents insufficient information and an extrapolation on my part. The information of the people you have just mentioned all is that it is the territory of Nii Kyap and also an adjustment of the boundary was necessary, and the detailed information of that comes -- appears in the notes with Joshua McLean who is a member of the House of Nii Kyap.
Q Now, this area is indicated as Wii Minosik's. The subsequent information led you to conclude that this area was that of Nii Kyap?
A Yes.
Q In terms of the description that is shown on this map, did your information -- your subsequent information lead to any adjustments in terms of the boundaries as it is delineated there?
A Yes, it does.
Q And what changes occurred as a result of that?
A The creek on the right-hand side of the territory labelled Xsi matsi ho'ot ando'o, X-s-i space m-a-t-s-i space h-o-'-o-t space a-n-d-o-'-o. On the topographic maps that is Thomlinson Creek, T-h-o-m-l-i-n-s-o-n, and that is the boundary of Nii Kyap.
Q And who?
A And -- between Nii Kyap and Axtii dzeek, A-x-t-i-i space d-z-e-e-k. And so there should be an adjustment there coming up to the height of land at the head of that creek. There is actually a tributary near the head of that creek that it departs from and then goes up to the height of land and then basically follows the height of land west to go down from the height of land to the head of a creek that appears on the topographic map as Shegisic, S-h-e-g-i-s-i-c, and there is a lake at the head of that which is called Dam xsi geetsik. Now, on this map there is -- well, I will spell Dam xsi geetsik. D-a-m space x-s-i space --
THE COURT: I am sorry, D-a-m?
THE WITNESS: Space x-s-i space g-e-e-t-s-i-k. Now, that's a larger map -- I mean, a larger lake. That is not located properly. That should appear on the small lake almost directly south about six inches from that lake. And that lake is at the head of Shegisic which

is what appears on the topographic map. And then the boundary runs down Shegisic Creek. In Gitksan, that is Xsi getsit, X-s-i space g-e-t-s-i-t. The boundary runs down Shegisic Creek to the Skeena River and then up the Skeena River to the Babine River and then back up the Babine River to Thomlinson Creek, the mouth of Thomlinson Creek.

MR. RUSH:

Q Now, I'd like you to look at 9A and ask if 9A reflects the adjustments about which you were instructed?

A The territory is on the south side of the Babine and follows that line and, yes, that does reflect the changes.

THE COURT: What is the purple line?

THE WITNESS: The map that is in front of me goes like so and that represents that.

THE COURT: Yes, thank you.

MR. RUSH:

Q And was this map drawn by you?

A No.

Q It was drawn by Marvin George?

A Yes.

Q Because of information that you provided to him that you had received from hereditary chiefs?

A Yes.

MR. RUSH: Now, may this map be marked as an exhibit for identification, please?

THE COURT: 690.

THE REGISTRAR: 690 for I.D.

(EX. 690 FOR I.D. - DRAFT MAP - TERRITORY WII MINOSIK)

MR. RUSH:

Q I'd like now to show you a map, Mr. Sterritt, that indicates -- let's, if you will, just -- yes, this is labelled Schedule C and is marked in the back side in the lower right-hand corner, Haaxw, H-a-a-x-w, and stamped draft copy on the face. Do you recognize what this map depicts, Mr. Sterritt?

A Yes, I do.

Q And can you tell the court what it is?

A It's a territory of Haaxw, H-a-a-x-w, on the east side of the Skeena just north of Kispiox village.

Q All right. And who drew this map?

A I don't recognize the printing. It may be the printing of Marvin George but I don't recognize it,

and also the lines, but I think it is Marvin George but I am not positive about that.

Q Was information that you received from a hereditary chief or more than one hereditary chief information that is contained on -- in the depiction of the area that's shown on that map?

A Yes.

Q And can you tell us which hereditary chiefs gave you information about this area?

A Yes. My father, Neil Sterritt, said that he had been talking to Thomas Wright, and that Thomas Wright told him that Haaxw, H-a-a-x-w, had territory between Xsa'ansi mitsitkw which is spelled X-s-a-'-a-n-s --

THE COURT: I am sorry, X-s-a?

THE WITNESS: '-a-n-s-i space m-i-t-s-i-t-k-w, and Xsan sisook, X-s-a-n space s-i-s-o-o-k, and I made a record of that.

MR. RUSH:

Q Where would that be found?

A It's in a field book, one of my more recent field books.

Q Can you give us an approximate date of that?

A I think in probably 1984, 1985.

Q All right. Thank you.

A I talked to Martha Brown, that's the former plaintiff, Kliyem lax haa, and asked her because she had been married to a former Haaxw, H-a-a-x-w, about this and she said, yes, Haaxw had a cabin in that area and that he did trap in that area. And I made an assumption that based on the territory described to my father by Thomas Wright and what Martha had said, that there was an area here that belonged to Haaxw.

Q And the information that you had received from Martha Brown, what date would you put on that?

A About the same time, almost -- I would say within weeks, if not less, of the time that my dad talked to me about Thomas Wright's information.

MR. RUSH: And -- all right.

MR. GOLDIE: '84, '85?

THE WITNESS: Yes.

MR. RUSH:

Q Now, subsequent to that, you had further discussions which led to adjustments?

A Yes.

Q Or a change in this area; is that right?

A Yes.

Q And who did you have those discussions with?

A I talked to Abel Brown and Abel is from the House of Gutginuxw.
Q That's 14 on the plaintiff's list. Yes?
A Whose territory surrounds this area, and asked him if he knew anything about that. And he said that Haaxw, H-a-a-x-w, had a fishing site along the Skeena within that area and was in that area, had a cabin, but that he did not own the territory in that area. And so he had fishing rights there and may have, with the permission of the house, done little more than that but he did not own that territory. And as a result, I adjusted that area to reflect that it was the territory of Gutginuxw and that there is a fishing site in that area belonging to Haaxw.
Q And does map -- overlay map 9A show that that area is the territory of Gutginuxw, that is to say, the area that's depicted in the small draft copy map in front of you?
A Yes. I should add that I -- the map doesn't necessarily reflect that Haaxw has a fishing site in that area.
Q The map that's in front of you?
A But there has been evidence of that house. No, the adjustment that was made subsequently. But there has been evidence about Haaxw owning fishing sites within that area.
Q Now, the discussion that you had with Abel Brown, when did that occur?
A In the spring of 1988.
Q And is that recorded in a field book or in a loose-leaf note?
A It is in a loose-leaf note.
Q And would that be in early or late spring of '88, can you recall?
A Late spring, I think.
Q All right. And what name if any does Abel Brown have?
A His name is Anda ap, that's A-n-d-a space a-p.
Q Okay. And in terms of the information that you were provided, does map 9A accurately reflect the boundary in territorial ownership in that area that's shown in the small draft copy?
A Yes, it does.
Q Thank you.
A I should mention that I think I also had a discussion earlier with Abel and he seemed puzzled by it and that will appear I think in a field book about

the same time that I talked to Martha and my father. And when I discussed it with him later, he said, no, I -- I have thought about this and it is in connection with the fishing site on the river.

Q That's when you said Abel, that's Abel Brown; is it?

A Abel Brown, yes.

MR. RUSH: All right.

MR. GOLDIE: My lord, there never was a map delivered with an interrogatory response and this is the first time we have seen this particular document. I wonder if my friend would be good enough to identify the authorship of the printing in the middle of the map Delgamuukw Haaxw because that appears to be added in pencil. If the witness is aware of it.

MR. RUSH: The witness has indicated he thinks it is the writing of Marvin George but I don't think his evidence goes beyond that, and that similarly is my understanding. I cannot confirm that it is Marvin George's writing.

MR. GOLDIE: I thought that his uncertainty related to the drawing of the map, but it includes the whole thing then.

MR. RUSH:

Q I think that was your evidence, was it not, Mr. Sterritt, that it not only included the depiction, the black line, but as well the handwriting that's contained within the black line?

A Yes.

MR. GOLDIE: There seems to be a piece torn off the bottom of that map. I wonder if my friend has any knowledge of that?

MR. RUSH:

Q I have none. Do you have any information, Mr. Sterritt, about what appears to be a line -- a torn line on the bottom of this?

A No, I don't.

MR. GOLDIE: Are you --

MR. RUSH: May that be an exhibit for identification, please?

THE COURT: Yes.

THE REGISTRAR: To be identification number 691.

(EX. 691 FOR I.D. - DRAFT MAP - TERRITORY HAAXW)

MR. RUSH:

Q Now, Mr. Sterritt, I am going to show you another map that is marked or labelled Schedule C, Gwagl'lo is the handwritten name in the bottom right, G-w-a-g-l-'-l-o, on the map stamped draft copy. Do you recognize what is shown in this map, Mr. Sterritt?

A Yes, I do.
Q And what do you understand the area contained by the black line on that map to be or to represent?
A This is a map based on limited information of the territory of Gwagl'lo.
Q Gwagl'lo is a Gitksan hereditary chief?
A Yes.
Q And that is number 17 on the plaintiff's list. Mr. Sterritt, perhaps you could tell us something of the information -- early information received concerning this?
A Yes. I had talked to Stanley Williams in 1980 or '81. I think there is information from Eli Turner and Ken Harris about this territory. That would be more topographical information. I talked to David Milton. I don't know whether I mentioned Ernie Hyzims already, that's H-y-z-i-m-s.
Q Kept recordings of the discussion you had with these people?
A Yes, that will appear on my very early notebooks and also I think on some loose-leaf notes from very early, as well as in topographic sheets and on the white binder maps. And this map represents extrapolations that I made from information that I had. I should also mention that I did a helicopter flight to the area in the summer of 1983 with Ernie Hyzims and David Milton, and that appears in my field book.
Q Now, you obtained information about this territory on a subsequent date that led to adjustments in the boundary that's shown on this map; is that so?
A Yes. I -- last winter, the winter of 1988, I drove to the area three times with Stanley Williams and Gideon Johnson, and Ernie Hyzims.
Q Why did you do that?
A Because I wanted to get further detail on the territory. I was following up on the request of the lawyers that I do more detailed work on each of the territories. I wanted to check out some information that I had and also see what further information there was to obtain.
Q And where did you drive on those occasions?
A See the north end of the map there is a -- the writing Miinhl dekwit, M-i-i-n-h-l space d-e-k-w-i-t, and there is a road that runs south from the east side of that hill approximately a mile and a half. There is a road that goes much farther but in the winter we could only get so far due to the depth of the snow. I

1 think we went about a mile and a half south of there
2 and from there we were able to see features in almost
3 all directions that -- from that site that helped me
4 to map this territory much more accurately and we
5 identified boundaries quite accurately.
6 Q And who was it that identified those boundaries to
7 you?
8 A Ernie Hyzims who's Gwagl'lo, Stanley Williams,
9 Gideon Johnson helped on the first two days, but the
10 reason that I went three days in a row was because the
11 weather was poor and the clouds were rising and
12 falling and we couldn't see some of the higher
13 features, and on the third day we were able to with
14 Ernie Hyzims.
15 Q All right.
16 A Ernie Hyzims and a subsequent interview with Chris
17 Mark.
18 MR. GOLDIE: Chris who?
19 THE WITNESS: Chris Mark.
20 MR. RUSH:
21 Q Now, you are leaving those three motor trips into
22 the area that you indicated, and you're talking about
23 information you received from Ernie Hyzims and Chris
24 Mark on a subsequent occasion; is that right?
25 A I think it was on the same day but it was back in
26 Kitseguecla on the same day. These notes, probably
27 some of them, may appear with Ernie Hyzims but I think
28 where they appear is in the notes of Stanley Williams
29 because I just kept everything in there so I think
30 that you will find Chris Mark, Ernie Hyzims, Stanley,
31 Gideon Johnson all in that set of notes.
32 Q Were there any other discussions that you had with
33 other chiefs that help you confirm topographic
34 features, boundary points in this area?
35 A Yes. I talked to Gideon Johnson's wife in that
36 period. I talked to Eli Turner; I talked to David
37 Milton, and that's all that I recall right now that I
38 talked to to obtain further detail in this area.
39 Q And that's all in the same time frame, is it?
40 A Yes, yes.
41 MR. RUSH: All right. And as a result of those discussions,
42 what did you come to understand to be the place of the
43 boundary on this territory?
44 MR. GOLDIE: Before Mr. Sterritt answers that question, can he
45 tell us the date of the discussions on the third day
46 of the three-day trip?
47 MR. RUSH:

Q I think your recollection was winter of 1988. Can you be more precise than that? Is it in 1988, January, February?
A I think it is February.
Q All right.
A Yes. You see the name Gwis Gyen, G-w-i-s space G-y-e-n.
Q This is the name on the map that's in front of you, the draft map copy in front of you?
A Yes. If you come straight down below to the heavy border, there is a creek there that comes in, flows south to the border. That border is actually -- underneath there is the Kitseguecla, K-i-t-s-e-g-u-e-c-l-a. That creek Xsan gokhl, X-s-a-n space g-o-k-h-l --
THE COURT: I am sorry, X --
THE WITNESS: X-s-a-n space g-o-k-h-l. Directly opposite where that creek comes in on the other side of a line is a creek entering or flowing north into the Kitseguecla River which appears on this map -- the Kitseguecla River appears on this river as Xsi giist, X-s-i space g-i-i-s-t. The name of that creek on the south side of the Kitseguecla River is Andoosdahl xsan gokhl, A-n-d-o-o-s-d --
THE COURT: S-t?
THE WITNESS: S-d-a-h-l space x-s-a-n space g-o-k-h-l.
MR. RUSH:
Q Now, is that feature a name shown on this map?
A The feature is on this map but the name is not.
Q This is a name you learned subsequently and is in the place where you have just indicated?
A Yes.
Q All right.
A And then Ernie Hyzims pointed out a hill to the west while we were there called An liginsxw, that's A-n space l-i-g-i-n-s-x-w.
Q Does -- is that shown on this map?
A It is the contours about an inch away from the word Wii which is written approximately three inches left of the Kitseguecla River. There is three words there, Lax wii yip, L-a-x space w-i-i space y-i-p, and you can see a contour which demonstrates a hill. That's the mountain or the top of the hill that I referred to just now. And Ernie said that the boundary runs from the end of the creek that I described behind that hill and then down to the main creek on the left which is labelled Xsi sii yuun or Sii yuun, S-i-i space

y-u-u-n. It goes down to that. And that appears on the topographic map as Kitsuns Creek, K-i-t-s-u-n-s.

Q That's not written on this map?

A It is not.

Q Well --

A Well, the boundary then runs up Xsi sii yuun in a southerly direction to another creek called Xsi tsim an makhl and, on this map, Xsi tsim an makhl is not located properly. It is spelled X-s-i space t-s-i-m space a-n space m-a-k-h-l. In fact, the boundary follows the correct creek but it is labelled in the wrong place, up to timber line and then runs around the mountain called Sganis mehlasxw, that's S-g-a-n-i-s space m-e-h-l-a-s-x-w, and around to the tributary of the creek of Hanamuxw, H-a-n-a-m-u-x-w, Olive Ryan or -- pardon me, Joan Ryan, which I described when we talked about her territory either yesterday or the day before. There are other changes. The southern area that extends on, there is a gap. The territory of Guxsan, G-u-x-s-a-n, intervenes and then there is another territory which is Lax seel, L-a-x space s-e-e-l, or the Frog Tribe from Kitseguecla of which Ernie Hyzims is responsible which is south of there, and it is part of the reason for my extrapolation or interpretation as you see it here at the time. And that territory from the information I got is also further defined to extend and that I should mention is under the name of Duubisxw, D-u-u-b-i-s-x-w. It appears in the affidavit of Stanley Williams, and Stanley and Ernie assisted me in defining this area in much more detail, and it runs all the way to the west and connects up with the Eagle territory very close to the name that appears on this map at Haakasxw, H-a-a-k-a-s-x-w, and there are a number of adjustments in that area as well but, in any event, for the territory of Gwagl'lo, Ernie Hyzims, the -- what I have described is the boundary that appears on 9A and is the proper boundary.

Q I wonder if you'd just go to 9A for me and point out the Gwagl'lo territory as it is reflected on this map?

A The village of Kitseguecla is right in here and directly south is the territory of Gwagl'lo as I have just described it.

Q And the territory of Guxsan?

A And it comes in and intervenes in between the piece that came down like so and extends all the way out to Sganis mehlasxw, S-g-a-n-i-s space m-e-h-l-a-s-x-w,

and comes back, and the territory of Duubisxw runs all the way up to the Eagle territory that I described yesterday. It is a fairly complex area that was sorted out with this work that was done with Ernie Hyzims, David Milton, Stanley Williams, Chris Mark, Gideon Johnson.

Q And --

A And Herb Wesley.

MR. RUSH: Does --

MR. GOLDIE: Herb, I am sorry, I didn't catch that.

MR. RUSH:

Q Herb Wesley. Does map 9A reflect the information which you had received from those chiefs you have just mentioned with regard to the territories of Gwagl'lo, Guxsan and Duubisxw?

A Yes, it does, and I should add the name Eli Turner.

MR. GOLDIE: You had given that.

THE WITNESS: And Gideon Johnson's wife.

MR. RUSH:

Q All right. Names that you have given, are those names of Gitksan hereditary chiefs?

A Yes.

MR. RUSH: Thank you. Now, if I can have this marked as the next exhibit, my lord, for identification?

THE COURT: 692.

THE REGISTRAR: 692 for identification.

(EX. 692 FOR I.D. - DRAFT MAP - TERRITORY GWAGL'LO)

MR. RUSH: Mr. Sterritt, in respect of the maps which I have shown to you and have been marked as exhibits, that is to say the 1 to 50,000 and the 1 to 100,000 scale maps, some of which were exhibits attached to answers to interrogatories, what can you say about the accuracy and completeness of those maps?

MR. GOLDIE: Well, on the basis of the evidence we have heard in the past two days question the witness' qualifications or ability to answer that question.

THE COURT: What you are asking the witness to do I think, Mr. Rush, if I understand you correctly, is to state whether in his view the maps accurately reflect the information that he received and which he has described to us. Is that what you are asking?

MR. RUSH: Well, I think, yes. I mean, there are clearly two periods that he received information as an earlier period and a later period and in respect of the information as a whole of recognizing the two periods.

THE COURT: Actually my point isn't right. What you are really asking is whether as a result of this process Exhibit 9A accurately reflects the information he has collected. Isn't that what --
MR. RUSH: Yes.
THE COURT: Anything wrong with that, Mr. Goldie?
MR. GOLDIE: No. That's all right.
THE COURT: Thank you.
MR. RUSH:
Q Now, the process that you have described in respect of the maps that I have just indicated, Mr. Sterritt, what can you say about the way in which overlay map 9A reflects the information that you received?
A Map 9A is a reflection of a much more intensive process with the hereditary chiefs where I was able to review and update the early information -- earlier information that I had and also to have them enter into a process in which they were able to describe accurately their territories, and map 9A accurately describes the information that I gathered over a period of time and checked between the period of December of 1986 and 1988.
Q And includes the names that you referred to?
A The hereditary chiefs.
MR. GOLDIE: My lord, I don't know that it needs to be said but I think it's perfectly acceptable for the witness to say, in my opinion the information that I gathered is accurately found on map 9A. I don't think it's within his qualifications to state anything about the quality of the information he received. In other words, so far as if that answer is intended to express an opinion on whether the quality of the information is any better in 1988 than it was before, I don't think he is entitled to express that. But I accept his opinion with respect to the fact that the information he's received is accurately found on map 9A.
THE COURT: Well, I have heard witnesses express opinions about confidence level that could be placed upon the date upon which they base their information. I think in this case that may be a problem because he is -- that would involve in part assessing the credibility and, in that respect I don't mean honesty, but the general credibility of the information source, but I think the witness can answer the question that Mr. Rush is posing but it's subject to, if I may say so, fairly obvious qualifications. I think you can finish the wrap-up question if you wish, Mr. Rush, subject to

those qualifications.

MR. RUSH:

Q Mr. Sterritt, you did not speak to each and every one of the internal territories that's shown on map 9A; is that correct?

A That's correct.

Q And the territories that you have not spoken to, indeed all the territories that are shown on map 9A, do they result from an affidavit having been prepared by a hereditary chief?

A Yes.

Q And do you understand -- do you understand that the mapping of 9A reflects the affidavit of the hereditary chief?

A Yes.

Q All right. And so far as your information goes, does 9A reflect in respect of not only the maps that I have referred you to in the last day and a half, the 1 to 50,000 and the 1 to 100,000, does 9A reflect in respect of the internal territories the information that you obtained with respect to the internal territories and boundaries of the Gitksan hereditary chiefs?

A Yes, it does.

THE COURT: We will adjourn, Mr. Rush.

MR. RUSH: Thank you.

THE REGISTRAR: Order in court. Court will adjourn until 2:00 p.m.

(PROCEEDINGS ADJOURNED AT 12:34 P.M.)

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

TANNIS DEFOE, Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO LUNCHEON RECESS)

THE REGISTRAR: Calling Delgamuukw versus Her Majesty the Queen at bar, my lord.

THE COURT: Mr. Rush.

MR. RUSH: Thank you, my lord.

Q Mr. Sterritt, having gone through the process which you've described in court in the last few days, can you tell the court some of the problems which you encountered in obtaining accurate and complete information about the ownership of territories, and the place names and boundaries of the chiefs?

MR. GOLDIE: Well, my lord, that's a leading question. It implies that he has received accurate and complete information, and that will be one of the decisions that your lordship will have to make. If my friend is

prepared to ask the question tell us some of the difficulties you have had in obtaining information I withdraw my objection.

THE COURT: I think that's what you asked the witness to respond to, isn't it, Mr. Rush?

MR. RUSH: That's what I asked him to respond to. And as you've heard in Mr. Sterritt's testimony, of course, he is looking at the information from a point of view of its completeness or --

THE COURT: Yes.

MR. RUSH: -- Its accuracy.

Q Mr. Sterritt, can you address some of the difficulties you experienced?

A Yes. Early on one of the difficulties was my grasp of the Gitksan language. I had been away from the area for sometime and when I came back I had to really fine tune my ear by listening closely to what was being said, and getting hereditary chiefs to explain it closely to me, and also to build on the information I had so that I understood what the words were. And that certainly evolved partly from the ability to write the language, trying to standardize as much as possible a system of writing and understanding the subtlety between the words so I was getting what a hereditary chief was saying to me. In that I should also say that the -- there were times when the hereditary chief spoke to me as though I fully understood the language and I had to slow them down or get assistance to make sure that the information -- that I could get the information more accurately.

Q And by assistance do you mean the assistance of a translator?

A Yes.

Q Okay. Now, did you experience or encounter problems in respect of the identification of topographic features?

A Yes, I did. The -- for example, the mountain in front of Hazelton is Roche De Boule, R-o-c-h-e space D-e space B-o-u-l-e on the map, topographic map, but the hereditary chief would -- I got the name Stekyoodenhl, S-t-e-k-y-o-o-d-e-n-h-l, from a hereditary chief.

THE COURT: I'm sorry. How did you end up? Was it A-h-l?

A S-t-e-k-y-o-o-d-e-n-h-l.

THE COURT: Oh, H-l. All right.

A The -- in terms of just determining who was where on that mountain I had to understand that there was actually -- in the area that we ordinarily call Roche

De Boule there were actually four different names, and that there were four different parts to that mountain, and --

MR. RUSH:

Q With different names?

A With different names, yes. The area that is on the map of Hagwilgyet Peak is Stekyoodenhl, which I already spelled.

Q Yes.

A The area to the west of Hagwilgyet Peak is Stakhaiyt. S-t-a-k-h-a-i-y-t. There is a small peak in -- lower and in front of the two that is part of the mountain that is Haihl Guuhl Stekyoodenhl. H-a-i-h-l space G-u-u-h-l space S-t-e-k-y-o-o-d-e-n-h-l.

THE COURT: I'm sorry. S-t-e-k-y-o-o?

A D-e-n-h-l. And then there's a further area farther to the southwest which is Tass Lax Wii Aatxwit. T-a-s-s space L-a-x space W-i-i space A-a-t-x-w-i-t. And I use this as an example of -- of not just -- I would over time pursue a technique of asking for the separate parts if there were separate names and trying to establish that distinction.

MR. RUSH:

Q May I just ask you to pause on this example. Was Roche -- what was the relationship of the name Roche De Boule to the other four names you gave me?

A It -- locally those four names encompass the area of Roche De Boule.

Q Okay. And did you encounter any difficulties with regard to the identification of ground features?

A Generally I had been out on a good part of the territory prior to the work that I did in gathering information so I was able to locate some features, but it was important to have -- to establish a greater knowledge about the specifics of the topographic features in areas so that I could relate a feature that the hereditary chief might be talking about to a feature that we both could establish and identify. And the more accumulative the information that I had the more affective was the resulting research, the resulting information that I got. And, therefore, the helicopter flights and the other trips that I took even without a hereditary chief, but to an area where I would personally identify the landmarks in that area so I could go back and talk about them, were all useful to the work that I eventually did in terms of ground features or topographic features.

Continuing on with the name difficulty. There's a creek, Stenstrom Creek, which flows into the Kiteen River, S-t-e-n-s-t-r-o-m, which over the length of it has three different names and it's only about 15 miles long at the most.

Q That is three different Gitksan names?

A Three different Gitksan names.

Q Is Stenstrom a Gitksan name?

A No, it's not. And it's not derived from a Gitksan name. I was earlier under an impression that there was one name for the entire river and that several tributaries of this river or creek were the other names, but Stanley Williams at one point made it very clear to me what the difference was. And I believe those notes appear in -- they do appear in my loose-leaf notes of the last year and a half.

Q All right. Now, were there problems which you experienced with regard to hereditary chiefs or other people who were providing you with information?

A Yes. The problem -- the main problem that I encountered was that most of the hereditary chiefs could not read a map, could not work with a map, and the mental map of their territory that they had in their head was difficult to get transferred for my purposes onto a map. As I mentioned, Walter Blackwater, I sat down with a map with him and pointed out a site that we both knew like seventh cabin, and with a sweep of his hand he was all over -- describing spots all over, but he -- in other words, I realized he couldn't read the map, but he thought he was following certain features, and far from it. He was identifying features for me, but I had to develop techniques, as I did with Walter in that case, of walking through the territory as we sat there in order to identify features. And this was all part of the technique, I guess methodology, that evolved as I did this work with witnesses or hereditary chiefs.

Q And in terms of the way features were described to you did you encounter difficulties in that respect?

A I'm not clear on your question.

Q Well, were there ways in which a feature or a topographic landmark was described which made it difficult for you to understand what it was that was being referred to?

A Yes. The name that was given to me could be descriptive of the mountain -- of -- say we'll use a mountain as an example, and the example is a mountain

called Na'ahl Taada. That's spelled N-a-'-a-h-l space T-a-a-d-a. That's a mountain up the Skeena River near the Sustut River. That means a notch like a -- or like a branch tree, a forked tree or a notch in a rock. And there is in that range a peak called Notch Top Peak which that -- which that -- which would derive from that name, but, in fact, not only is the peak Na'ahl Taada, but the range extending a little ways north and quite a ways south of there is also known as Na'ahl Taada.

Q So in that example Na'ahl Taada was describing the range?

A Yes. And the problem that I encountered in that was the location of the creek which is derived from that name, Xsi Na'ahl Taada. X-s-i space N-a-'-a-h-l space T-a-a-d-a. Would it flow off of the peak, Notch Top Peak, or would it flow off from the end of the range. And it turns out that it does flow off the south end of that range.

Q And, again, were there difficulties that you encountered in respect of recall?

A Yes. A person could be knowledgeable about an area and have a fairly detailed knowledge, but it required the triggering perhaps of one name to -- or the mention of one name that I might have received from someone else to spark a whole number of other names, but in the first instance when I might have talked to the person they might not have been able to recall any names. It was when I was able to -- if I had information from another hereditary chief and mentioned that I had heard there was such and such a creek, lake or mountain in that area then the hereditary chief or witness would come up with that information.

Q And in terms of language, and I don't mean translation language, but the way features or boundaries were described, was there any difficulty that you experienced in the language?

A Yes. A problem that I had to watch for was the word trapline, because trapline had insinuated itself into the language of the hereditary chiefs, and on one occasion, or on a given occasion a hereditary chief could be talking using the word trapline in describing an area and really be referring to the hereditary or the traditional territory, the boundaries or visa versa, they could have been describing it, or alternately they could have been describing a

1 trapline. And I had to sort that out. I had to ask
2 questions and see whether they were talking about a
3 trapline or whether they were talking about a
4 traditional territory. I couldn't make assumptions
5 about that.
6 Q Now, Mr. Sterritt, I want to ask you now about the
7 preparation of the territorial affidavits. You were
8 involved in that process?
9 A Yes.
10 Q And can you just describe how the process was
11 initiated and what role you played?
12 A Well, just to go back, the -- the base maps that were
13 attached with some of the interrogatories were
14 prepared for the use of the -- at the instruction and
15 for the use of the lawyers, and for use with the
16 hereditary chiefs, and were never meant to be used in
17 court. The pressures of court and the time pressures
18 resulted in their being used to help -- to try to help
19 in the demands that were coming through with the
20 interrogatories. The lawyers had asked me and Alfred
21 Joseph and Marvin George to do a much more intensive
22 review of the existing information, and checking, and
23 also leading up to the court, or the recommendation
24 that the way to deal with part of the problem, or part
25 of the evidence -- the problem of hearsay evidence.
26 If I had come in to do the boundaries it would be
27 subject to hearsay, and that affidavits was a solution
28 that was offered by our legal counsel to the court.
29 And Richard Overstall, Marvin George, myself and the
30 lawyers developed an affidavit format by which the
31 hereditary chiefs would provide the evidence about
32 their territories -- the hereditary chiefs and
33 witnesses would provide evidence about their
34 territories.
35 Q And that decision was taken in the summer of 1987, I
36 think, you've told us in your earlier testimony?
37 A Yes, it was.
38 Q And what was your particular role following that
39 period in terms of the drafting of affidavits?
40 A My task was to take all of the accumulative
41 information that I had to that time and review it,
42 bring it all together and review it and to prepare a
43 first draft -- a draft of the territory for review by
44 the hereditary chief.
45 Q Now, was this in respect of all of the territories
46 or --
47 A All of the Gitksan territories.

Q All right. And who was involved with the Wet'suwet'en territories?
A Richard.
Q In the same way?
A Richard Overstall and Marvin George and translators. I also had the assistance of a translator as well whenever I needed one.
Q Was Alfred Joseph involved in this process?
A Yes. Alfred Joseph, Marvin, Richard Overstall and myself.
Q All right.
A Even though Richard and Marvin were doing the Wet'suwet'en affidavits I sought the help of Marvin George as well, and Richard from time to time to assist me in the development of the affidavit.
Q All right. And you've expressed how the first draft came into being. And what followed from that? What process did you follow?
A I -- one of the main criteria of the affidavits -- well, there were two considerations. The consideration was the need to map; put the information on a topographic map by Marvin George, and the mental maps that was in the minds of the hereditary chiefs, and my job was to develop the first draft and get down the existing information that I had and then to review that with the witness or hereditary chief who would be signing that affidavit.
Q And then what process did you -- did you follow with the hereditary chief?
A I sat down with the hereditary chief and went around the description that I had made in the first draft to determine whether I was accurate or whether -- and whether it was complete. And in that process the hereditary chief followed the description and informed me whether I was close to the territory, or dead on, and what adjustments had to be made. And from that point on the adjustments based on what the hereditary chief advised resulted in changes to the affidavit, and eventually a final affidavit that was as the hereditary chief described the territory.
Q All right. And where did these adjustments appear as you were advised from the hereditary chief?
A The -- well, sometimes it resulted in -- well, the same kind of process we went through over the last couple of days, where if my information was incomplete or inaccurate then the hereditary chief gave us a more accurate definition of where the boundary went; if it

1 went up or down a creek, or along a mountain top, or
2 departed from that description. Might go along the
3 trail -- boundary might go along the trail. I thought
4 earlier it went along a creek right beside that that
5 was next to the trail.
6 Q In those cases the information was recorded in
7 loose-leaf notes?
8 A Oh, yes.
9 Q And was there any other means in which the information
10 was recorded?
11 A The majority of the information was located or was --
12 ended up being in notes or sketches that I would make.
13 And in sitting next to the hereditary chief I found it
14 very useful to try and sketch a creek or series of
15 creeks and see whether -- if the hereditary chief or
16 witness understood what I was drawing if they could
17 show me variations. Or if there was a series of
18 mountains, if I sketched that, whether they could
19 identify the changes of those that appeared there.
20 There were other changes that simply went into the
21 draft and came out as a subsequent draft. Not all.
22 Q These were written on the draft?
23 A On the draft, yes.
24 Q And then the change was made and the new draft was
25 created?
26 A Yes.
27 Q Okay. Now, did you have the assistance of others?
28 You've mentioned translators. Were there any other
29 people involved in this process?
30 MR. GOLDIE: He has mentioned Overstall and Marvin George.
31 MR. RUSH: Yes.
32 A Yes. Once I got it -- well, even with the first
33 draft, but as soon as I had a description that was
34 becoming closer to what the hereditary chief
35 understood and knew his boundaries to be I then turned
36 a copy over to Marvin George who would take the
37 language that I was using and convert that more to --
38 closer to a description that he could map. In other
39 words, he would -- if he had difficulty with the
40 language that was being used by the hereditary chief
41 he would do a separate draft that was more technical
42 and turn that back. That would come back to me and
43 then I would review that with the hereditary chief to
44 see whether he still understood what was being said in
45 terms of metes and bounds. And sometimes both Marvin
46 and I would enlist the help of Richard Overstall in
47 that as well to try and have this balance between an

1 affidavit that could be translated by a translator to
2 a hereditary chief in Gitksan or Wet'suwet'en and one
3 that could be mapped by Marvin.
4 Q And you mentioned that translators were involved to
5 assist you?
6 A When a translator was necessary, yes, we had
7 translators to help.
8 Q Were the lawyers involved?
9 A Yes, they were.
10 Q Now, some of the affidavits which have been filed as
11 exhibits with the court refer to a number of
12 territories. Why did one hereditary chief such as
13 Stanley Williams speak to more than one territory?
14 A The -- the hereditary chiefs preferred to choose
15 someone like Stanley or Pete Muldoe or Walter
16 Blackwater to do the affidavits for them and to
17 describe their territory for them. They were
18 knowledgeable. It was a decision that they made
19 that -- that someone like Stanley or Walter should do
20 that. The -- there could be other people in the house
21 who could do an affidavit, but they were -- they were
22 quite busy with other duties. And also they were
23 aware of the vast knowledge of people like Stanley
24 Williams and Walter Blackwater, Pete Muldoe.
25 Q Now, were you involved at all with the preparation of
26 the drafts of the Wet'suwet'en affidavits?
27 A No, I was not.
28 Q Okay. Now, as far as you are aware with regard to the
29 Wet'suwet'en affidavits, Mr. Sterritt, is it your
30 understanding that Mr. George will draft an affidavit
31 showing the internal boundaries of the Wet'suwet'en
32 hereditary chiefs?
33 A A map?
34 Q A map of the --
35 A Yes. That's my understanding.
36 THE COURT: You mean something like 9A?
37 A Yes.
38 MR. GOLDIE: Sorry. I want to make sure I got the witness note
39 correct. That he would draft a map or has drafted a
40 map?
41 MR. RUSH:
42 Q That Mr. George will draft a map in which will be
43 depicted the internal boundaries of the Wet'suwet'en
44 territories?
45 A Yes. I understand that he will do that. The
46 affidavits of the Wet'suwet'en have just been
47 completed, and Marvin will draw a map similar to map

9A for the Wet'suwet'en now that he has all that information.

Q Now, Mr. Sterritt, I want to ask about another area about which you have touched upon in your testimony, and this deals with fish caches or pits. Now, are you aware of there being pits described as fish caches within the Gitksan and Wet'suwet'en territories?

A Yes, I am.

Q And can you just tell the court where these are located?

A They are depressions in the ground along the Skeena River, on the banks of the Skeena River between the area that I live in at -- opposite the Village of Hazelton to Temleham, T-e-m-l-e-h-a-m, and continuing on up the river, as I have seen them, as far as Gitangas and along the Babine River at Kisgegas. K-i-s-g-e-g-a-s, and Gitangas, G-i-t-a-n-g-a-s. The pits that I have seen are very close to where I live at Temleham. Both --

Q Where is it in relation to Hazelton?

A Approximately a mile and a half south of Hazelton on the west side of the Skeena.

Q All right. Is there a name for the area where these pits are located?

A That is Temleham.

Q And how do these pits appear to your eye?

A The pits near where I am are fairly shallow. They are a depression, and have the appearance now of being more or less filled in. And there's grass and leaves and so on in them. Sometimes willows growing out of them. Continuing on up to the Skeena --

Q Yes, that's what I -- you've identified depressions like this. You have seen these depressions elsewhere?

A Yes, I have.

Q Whereabouts on the Skeena?

A In several locations, but in particular Xsin Djihl. X-s-i-n space D-j-i-h-l. That is a creek locally known as Caribou Creek. That flows west into the Skeena above Kispiox. It's on the map, the topographic map, as Utsun Creek. U-t-s-u-n.

THE COURT: U or B?

A U-t-s-u-n. And there the depressions are much deeper and much larger than the ones in the area of my home.

MR. RUSH:

Q How many did you see there?

A In the neighbourhood of 15 or 20.

Q And they're deeper?

A They're deeper and larger.
Q And to what depth do they go?
A The ones in the area of my home are 18 to 24 inches deep. These ones are 30 to 40 inches deep. And continuing on up the Skeena to a place known as Tsuwinhl Geets. That's T-s-u-w-i-n-h-l space G-e-e-t-s.
THE COURT: Sorry. Last word again?
A G-e-e-t-s. There are a number of depressions there. I don't recall the number.
MR. RUSH:
Q That area, is that close to a village site?
A Well, that name in itself is a settlement area of the House of Gwoimt. G-w-o-i-m-t. And it's approximately 15 miles farther up the Skeena from Utsun Creek. U-t-s-u-n. And then there's another village just downstream from Kisgegas on the Babine River.
MR. GOLDIE: Are these occupied villages or village sites, my lord?
MR. RUSH:
Q There are people living at Kisgegas?
A Yes, there is.
MR. GOLDIE: I know there was people living at Kisgegas. He was talking about something altogether --
MR. RUSH:
Q Is that right, are you talking about something different than Kisgegas in that last example?
A Anlaga Simdeek. That's spelled A-n-l-a-g-a space S-i-m-d-e-e-k. A village site just below Kisgegas and a member of the House of Gwoimt. Freddy Vale has a cabin there. He lives there. And it's an old village site. In that area there are fish sites. The place that I mentioned at Tsuwinhl Geets, T-s-u-w-i-n-h-l space G-e-e-t-s, there is no houses or cabins there at this time. That's an old village site.
MR. GOLDIE: I think, my lord, that the witness should state the source of his information, because he's not been qualified to offer an opinion of an archeological character.
MR. RUSH: Well, that particular piece of information has already been provided by James Morrison in the evidence.
Q But, Mr. Sterritt, just in respect of your knowledge of the -- of there being a fishing site -- excuse me, an old village site at the locale you've indicated, what is the basis of your knowledge?
A Henry Wright took me to the Village of Anlaga Simdeek,

A-n-l-a-g-a space S-i-m-d-e-e-k, in 1979 and described where the houses were. He had seen them there when he was a young man.
Q All right.
A And where a fallen totem pole was.
MR. GOLDIE: Is Henry Wright a living witness?
A Henry Wright has been dead for about six years.
MR. RUSH:
Q I direct your attention to the depressions that we had been talking about earlier which -- about which I thought you were going to address yourself in respect to the area around Kisgegas. Have you seen similar depressions in that --
A Yes. There is an area on the north side of the Babine River approximately one mile east of Kisgegas that is like a mine field. There is a tremendous number of depressions, fish caches.
Q What did you see there?
A There are over a stretch of approximately half a mile or even more the ground is dug up and there are very large fish caches, fish pits, which to me indicates a more recent --
MR. GOLDIE: Excuse me. Yes.
MR. RUSH:
Q Well, if you can just -- I'm just at this point interested, Mr. Sterritt, in what it is you saw. How deep were these pits?
A Okay. Some of them -- some of the pits were, I would say, were close to four feet deep.
Q Okay.
A And at least four feet -- in the neighbourhood -- in the neighbourhood of four feet in diameter.
Q How many pits did you see in that area?
A I never counted them myself, but I've seen -- my estimate would be at least a hundred.
Q On how many occasions have you been to that area and observed those pits?
A I've hunted in that area for a long time and seen them each time. I've probably been there -- well, I should say at least half a dozen times. And I also took an archeologist to those sites.
Q Who was that?
A Sylvia Allbright. That's spelled A-l-l-b-r-i-g-h-t.
Q Okay. Now, Mr. Sterritt, did you see any pits that resembled those that you saw in the Kisgegas area in any other locations?
A Yes. At Gitangas. They weren't nearly as many in

1 number, and they were somewhat shallower than the ones
2 at Kisgegas. I think I saw four or five in that area.
3 Q And Gitangas is spelled G-i-t-a-n-g-a-s?
4 A Yes.
5 Q And when did you see them at that location?
6 A In 1985.
7 Q Okay. And in relation to the pits that you saw at
8 Kisgegas can you just describe visually what it is
9 that you saw at Gitangas?
10 A At Gitangas, as I say, they were shallower. They were
11 in the neighbourhood of 18 to 20 inches deep. They
12 were not as wide. I would say they were possibly 30
13 inches wide. And they were full of leaves and debris,
14 and some of them had willows growing out of them.
15 Q Okay. And in terms of visually -- visual comparison
16 between those at Gitangas and those close to your home
17 at Temleham how did they compare in size?
18 A They were similar.
19 THE COURT: We saw these pits at Slamgeesh and Old Kuldo, didn't
20 we?
21 A Yes. We also saw them there.
22 THE COURT: We didn't see them down south in the Wet'suwet'en
23 country, did we?
24 A I wasn't on that trip. I've been down in that area,
25 but I myself haven't seen any down there.
26 THE COURT: Yes. All right.
27 MR. RUSH:
28 Q All right. Mr. Sterritt, I want to turn your
29 attention to another topic now. It's a question of
30 logging. And I think your earlier evidence indicated
31 that you were involved in the logging industry as a
32 young person?
33 A Yes, I was.
34 Q And I think you indicated different areas where you
35 were involved in logging principally on the east side
36 of the Kispiox River, is that right?
37 A The east side of the Skeena River.
38 Q All right. And can you tell his lordship what
39 techniques of logging were involved by you when you
40 were engaged in the logging -- the logging practices
41 that you were involved in at that time?
42 MR. GOLDIE: Well, my lord, I don't recall the witness stating
43 in his earlier evidence that he was other -- engaged
44 other than as an employee, so I assume he's being
45 asked to state what his employer did in the course of
46 or what he did in the course of his employment.
47 THE COURT: Or what he saw in the course of his employment.

MR. GOLDIE: Or what he saw in the course of his employment. That's right.
THE COURT: All right.
MR. RUSH:
Q More importantly, Mr. Sterritt, what did you do when you were engaged in the logging that you were involved in as a younger person?
A Well, when I was very young I participated in hand logging. I helped to fall trees with a cross cut saw, with an axe, and to -- the main nature of my father and my grandfather's business was making cedar poles, which meant removing the bark from the poles -- from the cedar trees and limbing them. And I participated in all those activities from a fairly young age. Until when I was about 14 or 15 I was working at that. And that time it was hand logging. I was -- I drove a horse. Helped to skid logs by horse. I helped to hand load logging trucks. We didn't have any loaders in those days. We had what we called skidways, which were simply a way of getting the logs up onto the truck by hand.
Q All right. In terms of the cutting that you were involved in did you yourself do the cutting of trees?
A Yes, I did. It was a selective logging process.
Q What does that mean to you?
MR. GOLDIE: Instead of applying names to processes, my lord -- I mean, he gave evidence of this back in June the 20th. He described how his father and his grandfather owned a cedar pole camp, and his uncle owned a cedar pole camp. He worked in that during the summertime. And he identified the work he did. We learned to peel the bark off the pole, using horses to skid the logs or poles, and so on, but at no time did he suggest that he had any responsibility for the things he was doing other than at the direction of somebody.
THE COURT: Well, I haven't understood the question to be going beyond that today. Have they, Mr. Rush?
MR. RUSH: There's no question Mr. Sterritt was not involved in management, or he was not an employer, and he didn't have the broad terminological descriptions that might be in the mind of an employer. I'm asking Mr. Sterritt what he did, and he applied a term of selective process to it. I'm sure there is actual things that he did that lead him to that description. That's what I'm trying to get at.
THE COURT: Is it repititious?
MR. RUSH: I'm not trying to go into all of the technique of

skinning a cedar tree and what you do with a cedar tree. I'm more interested in terms of what he did in respect to cutting the tree and what this forest looked like after he had done it.

THE COURT: I think you're entitled to do that.

MR. RUSH:

Q It's the process that you were involved in, if at all, Mr. Sterritt. When you were in the bush in doing the cutting that you say you were engaged in, what did you actually do when you were involved there?

A The forest that we were cutting were cedar trees, and only certain cedar trees, because some of the cedar trees weren't mature enough to -- large enough to make a cedar pole, or they were rotten and would be a waste of time to fall them, so we selected the right kinds of cedar trees and felled them and peeled them and skidded them out of the bush.

Q Were these trees that you selected of a particular size and dimension?

A The length varied from, I remember well, that we were doing from 25 feet to as large as 75 and 80 feet.

Q These --

A That's in length.

Q Length. And the width?

A Well, the diameter at the butt for a 25 foot pole would be in the neighbourhood of 16 inches, and for an 80 foot pole would be anywhere from three feet to four feet.

Q Right. Now, Mr. Sterritt, the areas that you were involved in this logging activity when you were a young person, are these areas that you have been to since that time of your early years?

A Yes, they are.

Q And how frequently have you been to those areas since that time?

A With the exception of the times that I was either out of the country or out of the province for a period of time at least once a year every year since then, and often three or four times a year.

Q All right. And in terms of the areas where you were involved in the logging that you described has there been logging since that time in the same areas?

A Yes, there has.

MR. GOLDIE: My lord, what is the relevance of all this?

THE COURT: I don't really know, and I'm not sure that I would have any way of knowing.

MR. GOLDIE: Well, I'm equally in the dark. I thought I

understood when this evidence was first led it was the normal character of what the witness has done in his past. Going into it again, and evidence with respect to other logging which has taken place there -- I don't even know if it's his father or his grandfather or his uncle who has done further logging.

THE COURT: Well, I have to assume that Mr. Rush is going to have the witness describe something that he has seen, and which counsel thinks is relevant.

MR. GOLDIE: Well, I wish to record my objection with respect to relevance, because I really do not wish to get into for purposes of cross-examination logging practices or what has gone on there since 1960, the summer of 19 -- well, he went to work for a mining company in the summer of '64, but in the fifties he was there as a youngster. And if it becomes relevant to go into the logging that has gone over that place over the last 30 some odd years then we've got a rather large area opened up that I fail to see has any connection with territories.

THE COURT: I'm harbouring some hope that it wouldn't be necessary to open up some of those areas.

MR. GOLDIE: So do I.

THE COURT: I don't think there is anything that's happened at the moment I can stop. Maybe he will tell me these are areas he logged selectively in the fifties that have now grown over and don't appear to be logged now. It seemed to me if they had been logged since then the evidence isn't going to be of much assistance. At least at the moment I don't see how it could be of much assistance. I'm not sure I have any grounds of which I could stop counsel. Counsel must have, I'm sure, a plan.

You may proceed, Mr. Rush.

MR. RUSH:

Q Now, those areas that you've referred to, Mr. Sterritt, where you've been involved in logging, you've been to those areas and can you tell -- that is since, and can you tell his lordship what you've seen when you've passed through those areas since that time, 1961 or through to '64, the last time it was you were there logging?

A The same areas that we logged in the early sixties and fifties have been logged by different methods since then and are pretty well bare. The areas have been logged off almost -- well, all up and down the Skeena in the area that we logged in those years.

Q When you mean -- what do you mean bare? This is the question.
MR. GOLDIE: What he stated, logged off. What else can you --
THE COURT: Nearly bare.
MR. RUSH: I'm interested in knowing what Mr. Sterritt thinks nearly bare is.
A There is nothing left. The area in terms of being an area to provide shelter to animals or to hunt in, there is damage there in terms of the -- to creeks.
MR. GOLDIE: I object to this evidence, my lord.
MR. RUSH: I don't know why. If the witness can say from his visual observation about a creek that he saw in 1961 and he sees the same creek in 1985 and he says that the creek is damaged to his eyes I don't think that that's in the slightest bit objectionable. If the witness hunted there in 1961 and tried to hunt there again in 1981 and he couldn't find a moose certainly that is relevant to the question of damages. That's what this evidence is aimed at, the question of the amount of destruction or damage which has occurred in that area about which this witness has specific knowledge from his own activities there over a number of years.
MR. GOLDIE: Well, I thought at one time the issue of damages was not going to be heard by your lordship.
MR. RUSH: The quantification of damage was not to be heard by your lordship.
THE COURT: Well, the trouble I have with it, I guess, is really one of management. Depending on site specificity some areas would be barer than others depending on how long ago they were logged. And unless we're down to pretty fine detail will it be much assistance? I have no doubt there is no shelter for animals as soon as you finish clear cut logging. I'm not sure what the situation is 15 years later or five years later, I just don't know, but in the absence of a lot of detail is it evidence that I'm going to be able to make any use of?
MR. RUSH: Well, how -- it's our position you need evidence of loss. Mr. Sterritt at this point cannot give this evidence about other areas in the -- in the territories of the Gitksan Wet'suwet'en chiefs. This is an area we have specific knowledge about. Your lordship heard the evidence about -- similar evidence from Pete Muldoe. You've heard it from Henry Alfred.
THE COURT: I've heard lots of evidence about clear cut logging. Yes, indeed.

MR. RUSH: But not just clear cut logging. Clear cut logging in the abstract may be a neutral factor, but what has had to result from the clear cut logging, in my submission, is relevant to you. And it's true it may be that in 15 years after the logging there may be different considerations at play, but this man -- this witness knows what considerations are at play now.

THE COURT: Does he know when the logging he's describing took place?

MR. RUSH: I don't know. The first step, in my submission, was to determine if what he saw there and what he could determine the condition of the land to be, and I will pursue with him, if he knows, at what time he noticed that the trees in that area had been cleared off.

THE COURT: Is this going to be a major item of evidence, not in importance, but in duration of time? Are you planning to take some considerable time in this?

MR. RUSH: I'm not intending to spend a lot of time on this, but I think he -- if your lordship wants a specific time reference I can assure you I probably wouldn't be more than ten minutes, if that's helpful.

THE COURT: All right. Well, I'm going to take the afternoon adjournment. I think I'll allow you to proceed, Mr. Rush. I think the value of the evidence is somewhat circumscribed by, or limited by the area you're talking about when the logging took place, how the logging was done, and all these things. I don't think it matters who did it, although it might. I leave that for you. All right. I'll take a few minutes.

THE REGISTRAR: Order in court. Court will recess.

(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 PURSUANT TO AN ADJOURNMENT)

THE REGISTRAR: Order in court. Mr. Rush.

MR. RUSH:

Q Thank you. Mr. Sterritt, would you identify please a little more precisely the areas where you have observed the clear-cutting to have occurred on the east side of the Skeena River?

A There is a creek that appears on the map as Sediesh, S-e-d-i-e-s-h, and my father had a cabin about a mile and a quarter south of that creek along the road there and we logged from there for some time in the very early 60's and the late 50's. There is a bench east of there well up and in that area. About four miles east of there, there is a couple of lakes and that area was clear-cut logged. It was logged and all the trees were taken off of that area. It was an area

that we had logged in the late 50's and into the very early 60's for some time.

Q All right. I wonder if you'd just step off the witness stand and go over to the overlay map 9A and just show where that area is located?

A Kispiox village is right here. The Skeena is under this black line that extends north. This area that I am talking about is about 12 miles to 15 miles upstream from Kispiox on the east side of the Skeena.

MR. GOLDIE: Whose territory?

THE WITNESS: That's the territory of Gutginuxw. Do you have a number for that?

MR. RUSH: It's been given already. 14.

THE REGISTRAR: Yes.

MR. RUSH:

Q Now, Mr. Sterritt, do you know when it was that this clear-cutting occurred in that area on the bench up above Sediesh Creek?

A I made a trip into that area in 1967 and it had been clear-cut or they were beginning to cut it then and it was cleared or was logged after that.

Q All right. And in respect of that area, were there any impacts that you observed?

A Well, while we were logging there in the early 60's, we used to go -- the people that I was with, we'd go out hunting at night and picking berries in the evenings, and also we would hike in that area and there was a few small fish in the lake up there, and we would swim up there and also fish. After the logging -- and there was game in the area, there was moose there.

Q Other game?

A It was a trail -- a route that we also took to go goat hunting up in the mountains there. But after the logging was done, it was done in a way that you could hardly walk across the area because of the fallen trees and the trees that were left there, and because it was just a broad plain, a big area where there was no game in there then.

Q All right. Now, were there other places farther north from Sediesh Creek where you observed clear-cutting to have occurred?

A Yes. Later than that, on the north side of Sediesh Creek, S-e-d-i-e-s-h, is an area where we picked berries and hunted which was one of the first places I ever went hunting with my grandfather and my father, and that area was logged during the 70's, and the

moose and the berry area were damaged by the machinery that was used to log the area.

Q What observations did you make in that respect?

A Well, it was not a solid stand say of hemlock or spruce; it was mixed jack pine, some spruce, and there was poplar and birch in that area and the poplar and birch were run over by the equipment, knocked down, so it was simply left there and it was leaning, it was on the ground, and also the smaller jack pine that was in the area was left as well and was laying on the ground or leaning, and generally it was a mess.

Q And when you say the smaller jack pine, what size diameter would the butt of a smaller jack pine be that you are referring to?

A Eight inches, 12 inches. Not much larger than that.

Q And did you observe any other impacts in that particular area, that second area north of Sediesh Creek that you have identified?

A Well, as I mentioned, it was an area where we had picked berries and had gone into a lot and that the berry areas that we used to go to were run over by the equipment that went through there to log in the logging areas.

MR. RUSH: All right.

MR. GOLDIE: Is this the father or grandfather's show? I have been trying to follow.

MR. RUSH:

Q The area that you are referring to north of Sediesh Creek, was that an area where your father operated a logging operation?

A No. We did not log on the north side of that creek in that area. We were -- there is -- the next creek is named Sterritt Creek.

Q The next steepest creek north of Sediesh?

A Yes, and there were several people logging in that area; James Morrison, Peter Barney Robinson. There were just the two of them, and my dad and I went in to help them to log there. They were logging cedar poles and we went in and helped them there. And by then my father had bought a small bulldozer, a D4, and we helped to skid out some of the poles for them.

Q All right. Now, you mentioned an area north of Sediesh Creek, Sterritt Creek, north of that. Has there been -- did you observe any clear-cutting in that area?

A Yes. That area was logged a little later and it was an area that when I first went home actually in the

late 70's, my two sons and myself and my father and some others used to go into that area.
Q To do what?
A To hunt and camp because we went up the mountain in that area, too, took the kids, my nephews and so on up hunting and hiking. And that area was logged then. It was logged in a similar manner to the area just north of Sediesh Creek. It was different -- it was heavier stand of hemlock and cedar and that was all cleared right off. As a matter of fact, we did help James Morrison and Peter Barney to skid some of their poles but there was an area farther east of there up a little higher that we logged cedar poles in there for a while.
Q This is north or south of Sterritt Creek?
A Just south of Sterritt Creek.
MR. GOLDIE: North of Sediesh?
THE WITNESS: And north of Sediesh.
MR. RUSH:
Q And can you advise the court about impacts that you observed in that area as a result of the logging that you have seen in the 70's?
A Well, it was higher up on the hillside and the effect was that the creeks, when -- in heavy rains or in floods in the spring, the creeks were causing a lot more damage downstream from that area as they -- when they were in flood than they had prior to the logging that the clear-cut logging, and then it occurred when we were logging the area.
Q When you say damage, what do you mean?
A They took out the bridges, lot more material was coming down in the creeks, silt and boulders, and that kind of damage.
Q Is this damage that, as you call it, what you have seen?
A Yes.
Q What about north of Sterritt Creek, farther north of Sterritt Creek in the area that you have been describing now? Has there been clear-cut logging in that area since the time that you were logging there as a younger person in the early 60's?
A Yes.
THE COURT: I thought that's what he was telling us, north of Sterritt Creek.
MR. RUSH:
Q I had the impression it was just north or on Sterritt Creek in my --

A Just -- we helped James Morrison and Peter Barney Robinson to do some logging right around Sterritt Creek and just on the north side. We logged farther up the creek and on the south side and then farther north up the river. Up the Skeena River we also logged.
Q And what area is that?
A It is at a place -- there were several locations. It was at a creek that's on the map as McCutcheon Creek, M-c-C-u-t-c-h-e-o-n, and that's Xsuwil lax neeks, X-s-u-w-i-l space l-a-x space n-e-e-k-s, and we logged there for two or three years. That is probably in a straight line five miles north of Sterritt Creek.
Q How far is it from Kisgagas?
A Oh, it is approximately half ways between Hazelton and Kisgagas. It would be about 25 miles.
Q And since the time you were there logging, did you observe any clear-cutting in that same area?
A Yes. Now that area is -- and it was done in the last -- within the last ten years and there is -- it's similar to the area just north of Sediesh Creek in that it's mixed jack pine, hemlock, and birch and poplar, and the logging done in that area, a lot of trees knocked over and leaning, a lot of the trees that they weren't going to log. And in that area also the trees are more decadent, they are older, and there are big piles of trees that are fallen and skidded to the landing and then just burnt. They are not hauled in. And I mean, when I say big piles, I mean a lot of the -- I have been told by a logger who logged there --
Q Well, not what you have been told; just tell us what you have seen?
A Well, if I made an estimate, it would be that for every seven loads of logs that are -- that are brought to the landing by the skidders, two to three are burnt; two to three loads are burnt at the landing.
Q Have you seen logs burnt there at these landings?
A Yes, I have.
Q The areas where these logs are taken from, what visually do they look like?
A It is hillside; they were forested areas, and now they are pretty well cleared right off.
MR. RUSH: And are you able to say what impacts -- environmental impacts in that area or habitat impacts, any impacts that you have observed?
MR. GOLDIE: Is this now or at the time of the logging?

MR. RUSH:
Q I would ask Mr. Sterritt to direct his attention to the time that you made your observation about the clear-cutting and after that?
A Can you repeat the question again?
MR. RUSH: Just if you can advise us as to what the impacts, if any, that you have observed as a result of that clear-cutting?
MR. GOLDIE: I repeat my concern, my lord. If he saw logs being burnt, he was observing at the time the log was being undertaken. My note is that that was within the last ten years. I think if there is going to be an environmental impact statement made that he ought to tell us what he saw at the time and, if he's been there recently, what he's seen now.
MR. RUSH: The witness has said that he's been in that area every year for a considerable number of years and Mr. Sterritt may have made observations two years ago, five or seven years ago, and may have made them last week.
THE COURT: Well, I think he is entitled to say what he saw but I think Mr. Goldie is entitled to know when he saw it.
MR. RUSH:
Q Yes, I agree with that.
A The logging that I am describing -- that I have just finished describing has occurred over the last three years and this year, and the burning that I have described has occurred in the past -- over the past three years and this year, and there are swamp areas within the main -- the timbered areas where the -- where there are moose or have been moose habitat, and -- but the moose rely on the surrounding forest and the swamp areas, and the moose -- I have gone -- I mean, I have gone by the areas and there are no tracks of moose there or any moose in those areas. That's in the area of Shewilaba Creek and north of McCutcheon Creek. Shewilaba, S-h-e-w-i-l-a-b-a, I think.
THE COURT: S-h-e-w --
THE WITNESS: -- i-l-a-b-a.
THE COURT: Thank you.
MR. RUSH:
Q Is Shewilaba the next creek north of McCutcheon?
A Yes, the next main creek.
Q And the observation --
A The next larger creek.
Q And the observation or lack of observation of the moose tracks, when was it that you made those?

A Last fall.
Q Now, are there any other areas on the east side of the Skeena north of McCutcheon Creek where you have made observations about the nature of the clear-cut logging in the area?
A Well, there is clear-cut logging on the area just north of Salmon River. Actually that's the local name. On the map it is Shegunia, S-h-e-g-u-n-i-a. When I say on the map, I mean the topographic map.
Q Now, that's not north of McCutcheon Creek?
A No.
Q That's closer to Kispiox, is it?
A Yes. It is only about ten miles north of Hazelton, and that has all been logged over the last four to five years.
Q Four to five years?
A Yes.
Q Have you ever done any hunting in that area?
A Yes, extensively, and the plan was to log the entire area --
Q Well, just if you can --
A -- of that flat.
Q If you can concentrate on what you have seen?
A Well, it's large jack pine flat and it's an excellent deer area and also an area where the local people go to cut wood because it is a jack pine flat.
Q Do you cut wood there?
A Yes, I do. And the logging that took place on either side of the road has been very extensive. It has seriously limited the deer habitat from what it was and I, in order not to eliminate entirely the deer habitat, I went to the Forestry and told them that because people are -- it is an area for everyone to cut wood and also very important deer habitat, that they should not log any more of it. They have logged portions of it but there has been an effect on the deer so far.
Q What impact have you noticed on the deer?
A They -- I used to be able to go there and get a deer quite easily, and I have hunted there for the last three years and have not been able to get one, although that doesn't mean there aren't deer there but it is much harder to shoot a deer in that area.
MR. GOLDIE: This is the area four to five miles from Hazelton, is it?
MR. RUSH:
Q Kispiox?

A It's about ten miles out of Hazelton along the Skeena River.
Q Mr. Sterritt, you have mentioned a number of times that you have gone hunting for moose and now you have indicated deer. To what extent do you and your family rely upon deer or moose for food?
A We eat moose meat at least twice a week and I haven't -- I haven't gotten a deer in the last few years but moose or goat meat and moose meat. We eat wild game and fish probably four meals out of the week at a minimum.
Q And how long have you been eating moose and deer with the frequency that you have indicated although you have said that deer you haven't had in the last few years?
A I, with the exception of the years that I was away, pretty well all my life. When I was younger we ate goat meat, moose meat, sometimes bear meat, and deer meat and fish almost every day of the week, and there was time not long after I got married that we ate deer meat, that's when I lived in Vancouver, almost every day of the week.
Q You ate deer meat in Vancouver?
A Yes. I hunted a lot and we ate deer meat almost every day of the week. It was partly because of my economic circumstances, I was going to school then and just didn't have any money, and also that's what my wife and I ate.
Q All right. I want to ask you, Mr. Sterritt, about road building. Can you comment at all about the extent of road building on the east side of the Skeena River north of Kispiox in the areas where you have indicated the clear-cutting occurred and where you have made observations about the impacts of the clear-cutting?
A Yes. My father first started to log on the east side of the Skeena before a road was put in to the area. That was at a creek called Xsugwa mahlit, X-s-u-g-w-a space m-a-h-l-i-t. That is approximately 17 miles north of Hazelton on the east side of the Skeena. And I went in with him once or twice before the road -- a road was put through, and what precipitated the road at the time was a large slide on the Babine River upstream from Kisgagas which blocked the salmon from going to the Babine Lake to spawn. So the Department of Fisheries and Oceans pushed a road through in a matter of months and the road that went

in was simply an -- almost a dirt trail, it was pushed in so fast, and the major problem that occurred was that it opened the area to people from anywhere in B.C. to go into an area that we had been -- well, our family and other families from the area had been picking berries in, hunting in, working in, for a long time, and I am not referring to in the hundreds of years since, but the previous 15 or 20 years. As well, some cedar pole logging going on in that area before a road was in and trapping and berry picking and hunting. The effect -- one of the effects at the time was that it opened up prime moose habitat to any hunter who wanted to drive in there, and what I saw was an -- almost a slaughter of the moose in that area.

Q Now, how did you make observations of that?

A Anyone who wanted to drive in could drive in and shoot moose, there were so many moose in the area.

Q Did you see that?

A The observation -- it was the kills that I saw and the people hauling moose out of there. It was a situation that I saw on other -- in other areas where roads were pushed in and no consideration was given to the present pressure or harvest of animals by the local people or on the effect of just opening up an area.

Q In terms of the areas that you have identified as being places where the clear-cutting has occurred, what can you say about road building in those areas?

A In the last two years the existing or the road that was put in some years ago.

Q That is the one you have just been describing?

A The one I described.

MR. GOLDIE: This is the federal department road, is it?

THE WITNESS: Yes.

MR. GOLDIE: Can you tell us when that was put in just to be of assistance to me?

THE WITNESS: 1952, '53.

MR. RUSH: That's in the evidence already.

MR. GOLDIE: May be but I'd like to know from this witness.

THE COURT: '52 and '53?

THE WITNESS: Yes, over that period.

MR. RUSH:

Q Yes.

A In the last two years the road has been straightened and widened to be I think -- looks to me like a hundred foot -- well, let me say a 66 foot

right-of-way, roadway, and a ditch, and straightened as I say to make it easier to get bigger equipment into that area to haul out logs, and the damage that I have seen is -- where the road -- well, all along the road, but it's gone through a property that belonged to my father, and I mean a piece of property that he acquired, and also the logging has gone on on either side of that road and it is increasing as the road extends up the Skeena valley there.

Q In terms of road building, are you aware of any road building activity that has occurred through the village of Kisgagas?

A Yes. When the Department of Fisheries and Oceans went past the village of Kisgagas en route to the slide, the village was -- the houses were there and it was full of all of the belongings of the people who had lived there and would still return there to trap and to fish from time to time.

Q Had you been to the village and --

A Yes.

Q -- seen the village in that state?

A Yes.

Q Was this road, was that on the north or south side of the Babine?

A On the south side.

Q Was there -- where was the village site?

A On the north side.

Q Was there access to that site?

A There was a bridge across the river and a trail to the north side. The village was literally emptied of the belongings and the artefacts of the Gitksan people who lived in that village and owned the ceremonial regalia, rifles, clothing, almost anything that could be carried away was taken away by the workers who went by that village.

Q Was there ever -- was there any road building in the -- through the village on the north side?

A Yes. Prior to 1967, I think about 1965, a road was -- larger bridge was put in at the old bridge site and a road was built ten miles east up the mountain beyond Kisgagas.

Q And did that road -- building of that road have any impact on the village that you observed?

A Further destruction.

Q In what sense?

A People who could then drive into the village and take what still remained in the village which was of,

you know -- it was what people had already picked over but still people would take that and also some burning of buildings and from people who were -- who would go there and camp and party, and generally -- and also the removal of gravestones, were taken away.

Q And what was it that you observed to indicate that kind of removal of gravestones and the burning that you talked about?

A Well, I had seen -- I had seen a gravestone in Hazelton that had been taken from there that disappeared after that. It was in someone's possession. I saw -- well, the bell from a church that was there was removed. The damage -- the burning to one or two of the buildings that was there, I saw that not long after it happened to one of them. And well, that's -- those are the main things.

Q You mentioned -- what was the period that you observed that the burning of dwellings or things at Kisgagas occurred?

A 1967. I was there in 1967.

THE COURT: Is this the location where there is the deserted church with the lettering on the --

THE WITNESS: Yes, it is. Yes.

THE COURT: Thank you.

MR. RUSH:

Q Now, Mr. Sterritt, are there cabins or dwellings located at the village of Kisgagas?

A Yes.

Q Where are they located?

A There are still four buildings on the north side of the Babine at Kisgagas and there are a number of houses on the south side of the river opposite village of Kisgagas. There is, I believe it is, six or seven.

Q All right. And who has a house on the south side?

A My father.

Q Yes?

A Robert Jackson Senior, Joshua McLean, James Morrison, Billy McLean, and there are a couple of smoke houses there as well.

MR. RUSH: All right. And --

THE COURT: Well, they are not all together, are they? I seem to recall there was only two. Are there some a little distance away?

THE WITNESS: On the south side of the Babine River, they are spread along within -- well, from the one on the east to the one on the west, it wouldn't be more than 200 yards. You wouldn't be able to see them from the

Kisgagas side because they are off away from the clearing. The two that we could view from Kisgagas were near the clearing and then there is some on either side of that.

THE COURT: Yes, all right. Thank you.

MR. RUSH:

Q You indicated your father has a cabin in Kisgagas. Does he have another cabin north and east of Kisgagas?

A Yes.

Q Have you been there?

A Yes, I have. I helped to build that cabin.

Q And what's that cabin used for?

A It is a cabin that he used to trap from and to hunt mountain goats and moose.

Q And is that the way this cabin is used today?

A Yes, it is. It is a cabin that he shares with Robert Jackson Senior, the two of them built it.

THE COURT: Where is this cabin, please?

THE WITNESS: It's north-east of the village of Kisgagas up on -- up at -- just at the timberline.

MR. RUSH:

Q I wonder if you could step down from the witness stand and point out to his lordship just where that cabin is located?

A The village of Kisgagas is right here and the cabin is located ten miles almost directly east of Kisgagas up in the mountain here. The Babine River runs in this direction. It is right in there.

Q And Robert Jackson Senior is from the house of Miluulak?

A Yes.

MR. RUSH: Madam registrar, would you show Mr. Sterritt please the Volume 2 of the document books, his document book?

THE REGISTRAR: Exhibit 9. Oh, these are the ones at the back.

MR. RUSH: Tab 70.

THE REGISTRAR: 70, my lord. It is the ones that aren't marked.

MR. RUSH:

Q Mr. Sterritt, I am referring you to Volume 2 of your book of documents and it's found at tab 70 of this volume and I wonder if you can identify the photograph -- the top photograph of the two that are on that page?

A Yes, I can. That is the cabin of my father's at Kisgagas on the south side of the Babine.

Q Okay. And is that cabin in use today by your father and your family?

A Yes. He has been out there for part of the summer

with his sons.
MR. RUSH: Okay. Now, although this may be somewhat out of sequence, I am going to ask Mr. Sterritt to identify himself in the lower of the two photographs at tab 70.
MR. GOLDIE: He did.
MR. RUSH: He did.
MR. GOLDIE: Months ago.
MR. RUSH: Excellent. Now, Mr. -- I am going to ask if that tab be marked as the next exhibit, please.
THE REGISTRAR: Be Exhibit 693.
THE COURT: I am sorry?
THE REGISTRAR: Number 693.

(EX. 693 TAB 70 - BLACK BOOK VOL. 2 - TWO PHOTOGRAPHS)

MR. RUSH:
Q And please refer to tab 72, Mr. Sterritt?
A Yes.
Q Can you identify the photographs for us, please? The top one first?
A Yes. That's the cabin of my father's and Robert Jackson Senior.
Q Is that the one that you pointed out as being approximately ten miles east of Kisgagas?
A Yes, it is.
Q Do you know when that photograph was taken? Obviously during the winter, but what year?
A As I recall, it is in the winter of 1985.
Q All right. And the lower of the two photographs?
A Yes. That's a -- there is a lake just west of that cabin and this photograph has been taken from close to the cabin towards that lake. That is Billy McLean and Joshua McLean, both from the House of Nii kyap, on the skidoos and the mountain in the distance is -- pardon me, that's Daahl an makhl.
THE COURT: I am sorry?
THE WITNESS: D-a-a-h-l space a-n space m-a-k-h-l.
THE COURT: 694.
MR. RUSH: Thank you.
THE REGISTRAR: 694.

(EX. 694 TAB 72 - BLACK BOOK VOL. 2 - TWO PHOTOGRAPHS)

THE COURT: Convenient to adjourn, Mr. Rush?
MR. RUSH: All right, thank you. Tab 72.
THE COURT: All right, thank you. Ten o'clock tomorrow morning. Thank you, madam reporter.

THE REGISTRAR: Order in court. Court will adjourn until 10:00 tomorrow morning.

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.