Vancouver, B.C.
28 June 1988

(PROCEEDINGS RECONVENED AT 10:00 A.M.)

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this Tuesday, June 28, 1988.

(OTHER MATTERS DEALT WITH)

THE REGISTRAR: Delgamuukw versus Her Majesty the Queen at bar.
MR .GOLDIE: My lord, at the conclusion yesterday, I had made reference for request that there be produced the original of the National Topographic Series Map that the witness had referred to at page 7319. That's the page at which your lordship asked for the description of the map, and I asked for the original, and there was some discussion as between my friend and myself with respect to it.

I can enlarge upon that that my request is for the original of all of the topographic series maps which the witness has used in the course of his preparation of his evidence and the reason I want the originals is that the copies of some of them, not all of them because we haven't received copies of all of them, but the copies we have received of some of them are such that some of the writing on them is quite illegible.

THE REGISTRAR: I caution the witness you are still under oath.
MR. GRANT: My lord, I have been in the process of dealing with these maps that my friend is referring to. Maybe I can assist. I have arranged, because of Friday's request, for these maps to be -- Mr. Goldie, for these maps to be colour duplicated -- or Thursday's request it may have been, and there has been -- I'd hoped to have them by Friday noon. They are now back but they are in pieces and right now are being pieced together and, in order to piece them together, the originals have to be there. So the copies that are colour reproductions and I am hoping that they will be finished by early this afternoon and a complete set of them will be provided pursuant to Mr. Goldie's request yesterday which, on my quick review this morning, they were just delivered this morning before court, but in pieces. It appears that they -- the legibility problems that he's referred to are overcome by this form of

reproduction, so that they would be available this afternoon.

THE COURT: And they are here in town?

MR. GRANT: They are in town but the persons that are putting them together have to have the original in order to put them together. They are doing that right now.

THE COURT: There is no reason why Mr. Goldie cannot inspect the originals if he wishes?

MR. GRANT: Oh, at the same time, there is absolutely no problem with that.

MR .GOLDIE: I wasn't requesting copies, I was requesting production in court of the originals.

MR. GRANT: Well, and Thursday of last week, there was reference to these maps, and I haven't got transcript reference, but Mr. Goldie did request copies of these maps at that time and that's what we are -- and so pursuant to that request, we are providing him copies and we will --

THE COURT: It appears that Mr. Goldie this morning is asking for inspection of the originals. You say there is no difficulty in that regard.

MR. GRANT: It is a question of timing because I'd like the person to finish piecing them together.

MR. GOLDIE: Your lordship will appreciate that I want the production in court in case I come to the conclusion that there is a necessity of using the original and the examination.

THE COURT: Yes. All right, thank you. Mr. Rush.

MR. RUSH: Yes. Mr. Sterritt, we concluded the days' evidence by marking a document that's entitled the Data Sheets Topographic Survey, it is Exhibit 652. You also indicated in your evidence that in addition to using that document just found at tab 58 of volume 2 of your document book, you also used later in time another document which is a Summary Data Sheet at tab 59 called a Land Use Reference Data. Now, I wonder if you'd look to that tab, please.

MR. GOLDIE: My lord, before my friend continues with this, it was my understanding that we would deal with the question of Mr. Sterritt's qualifications, and I think it would be desirable to do that before he proceeds any further, that there is a question that is left in limbo at this stage and that is the capacity in which he is giving this evidence. And my friend introduced this examination yesterday by saying, I want now to turn to the methodology of your -- of what you have done. This is at page 7311

line 32:

"Mr. Sterritt, I would like now to turn your mind to the methodology used by you in the gathering of information".

And then when he tendered Exhibit 652, he said, I want that -- I tender that for the truth of the matter stated.

Now, clearly, the entries on that particular form are hearsay; clearly they reflect Mr. Sterritt's opinion of what he has been told, the distillation of what he's been told. There is a question now as to the status of that document which is affected by whatever capacity he is giving his evidence today. Now, when my friend adjourned on Friday, he said I want to give consideration to whether we will call Mr. Sterritt as an expert and he advised your lordship yesterday he was calling him as an expert. And it has always been my understanding that we would deal with the question of his status and the degree to which he is being qualified as an expert, not the capacity, but the extent to which he is to do things as an expert should be resolved before he continues his evidence, my lord.

THE COURT: Mr. Rush?

MR. RUSH: Well, my lord, I see no -- it is true that we are going to seek to qualify Mr. Sterritt as an expert. I don't necessarily feel that this is the right time to do that. The evidence that's being led now, if your lordship finds that there isn't a sufficient basis for expertise, I would lead anyway. And you may very well do it from a different light. But I intend to lead this evidence whether he is qualified or not, and I do -- I will be asking your lordship to qualify Mr. Sterritt and I had intended to -- I had hoped to be able to be in a position to do that now. I am not quite in a position to do that. There are some other preparations that we are making with regard to the area of expertise that Mr. Sterritt will speak to and I will do that when that's completed.

THE COURT: I didn't give you an opportunity, Mr. Macaulay, to make a submission on Mr. Goldie's motion.

MR. MACAULAY: I have no submission to make.

THE COURT: All right. Well, I think that it might be convenient to get this question of status out of the

way, but I am not disposed to interfere with Mr. Rush's conduct of the examination in chief. He tells me he is going to be coming to it I gather shortly. It will probably be best if I leave the timing of the qualifications he is tendering of this expert to a certain length of time. I think there is a problem about the effect of the evidence exemplified perhaps not quite clearly in the last exhibit yesterday afternoon, but I am not going to require Mr. Rush to tender the witness at this moment. I am going to allow you to proceed.

EXAMINATION IN CHIEF CONTINUED BY MR. RUSH:

Q Now, Mr. Sterritt, the Land Use Reference Summary sheet, is one such reference data sheet found at tab 59?

A Yes, it is.

Q Can you just describe what this indicates?

A Once again, the identification of the data sheet with a particular map name and national topographic series number appears on the top and the map scale used. There would be a number of sheets and they vary in number according to the amount of detail on a given map sheet, a number of sheets that would appear with each map and they would have a sequence of numbers from one on up to perhaps as high as 300.

Q There is a reference number column on the left-hand side, it is the first column. Is that the chronology of the numbers?

A Yes. And then the other columns, Topographic Feature; Simoogit, meaning chief; 'Pdeek, meaning clan, such as Fireweed, and so on. And then Gal Tsap referring to village. Going back to the topographic feature, I differentiated between the Gitksan name for the topographic feature and the type of feature that it was. So in the first -- in reference number 01, we have the name Xsaladamus which is a creek. It is owned by the chief.

MR. GOLDIE: Well, excuse me. Just to put things on a formal basis, I of course object to that evidence.

THE COURT: Yes.

MR. RUSH:

Q What's Xsaladamus? That's X-s-a-l-a-d-a-m-u-s. What does that refer to in your understanding?

A Xsaladamus is a creek that flows east into the Skeena, north of Gowahl mihle or Old Kuldo. Gitludahl, Pete Muldoe, referred to this creek in

his evidence as being the -- within the territory of Wiigyet, who is Kisgagas or Fireweed from the village of Kisgagas.

Q Now, all right. And is each of the names identified apparently as a Gitksan name? Are those names of topographic features as they run down from reference number 1 through to 23?

A Yes, they are.

Q And in some cases, I see for example under number 14, you indicate boundary, east; area, west, or a question mark under the column Simoogit, and why did you place those references in those columns?

A Well, Tas lax wii yip is a ridge -- is a timber ridge between Gwinageese River which flows north into the Nass and the Nass River which loops around and flows parallel to Gwinageese, Gwinageese River. The ridge is one that we flew over in the overview when we flew from Meziadan around to Kuldo. It is a ridge that is very near Swan Lake. And the next column is boundary area, and on the east side, there is a question mark. On the west side is Neek't which is -- who's from the House of Delgamuukw, and so coming across into the clan or 'Pdeek, then there is a question mark, and then underneath is Lax seel. The check mark is for Lax seel up above, and then Kitwancool is the -- goes along with the boundary on the east side, and the check mark is for Kispiox up above. So this indicates a boundary area.

Q All right.

A And the particular reason that this one is here is because of item number 2, 'Tsaphl gwiikw which is Groundhog Mountain on the Bowser Lake, map 16. It belongs to Geel from Kispiox, and that's a Gisgaast, and the village is indicated there in the last column.

Q You said item number 2?

A 22 I said.

Q 22, I am sorry. Now, were these summary sheets cross-referenced to anything?

A Well, these summary sheets were cross-referenced to the map sheet, Bowser Lake, and appeared -- also appeared within the field notes or original source of entry that I had.

Q All right. And where did the information that's on this summary sheet come from?

A It came from -- from my field notes, from journals, from hip pocket notes, and sometimes directly.

Q And these hip pocket --
A Not all of this would necessarily appear in a field book. Someone might inform me and I would go directly -- I might also make a direct entry onto one of these forms.
Q Now, the recordings that you made in the journals, field books and on the pieces of paper and information, where did that information come from?
A Came from the hereditary chiefs.
Q This Reference Data Sheet summary doesn't contain the name of the informant. There is no column as in the previous exhibit. Can you explain that?
A There simply wasn't space. I have my field books and other original sources. I did try to keep it up on the other form but, as I mentioned already, it became too large a burden with all the other duties that I had. I couldn't keep up to the single sheets and so my original notes were the -- indicate where the informant or hereditary chief who provided information.

MR. RUSH: All right. Are you able to say about how many of these summary sheets that you have prepared in this form?

THE COURT: I am sorry, when you say summary sheets, you mean documents such as tab 59?

MR. RUSH: Yes. He's referred this as a summary sheet but it is in fact -- no.

THE COURT: Land Use Reference Sheet.

MR. RUSH:

Q Yes. It is entitled Land Use Reference Data, but he has referred to it as a summary sheet.
A I think to the point that I stopped using these, I had entered somewhere in the neighbourhood of 600 features and, if you divided that by 23, you would come up with roughly the number. It is in the neighbourhood of that.
Q All right. Did others use these?
A Yes. After I had turned them over to Marvin George, he entered. He tried to keep a running sequence, so he would -- with the topographic maps that accompanied these, he would enter -- he would enter it in and keep the chronological sequence or numerical sequence running and so there would be entries by him; there are some by Glen Williams and Alfred Joseph and others also. And Alfred Joseph and Leonard George also used them.
Q You indicated that you used these Land Use Reference

Data sheets for a period of time. How long have you used these?

A As I recall, 1982 or 1983, I developed this format and used them for several years but then when I turned them -- I was very busy with my other duties and I turned them over to Marvin. I kept them up to a certain extent but it was Marvin who kept them up from information I provided him.

Q So you used these what, for several years?

A Several years, yes.

Q After 1982 or '83?

A Yes.

Q The information on this sheet, Mr. Sterritt, was it verified or corroborated through any other sources?

A Yes. I tried to cross-reference it with other informants to the degree that was possible at the time. But in terms of verification, this is an information gathering period and the verification of location and designation according to chief, clan or village occurred from 1986 on.

Q So there was a verification process from 1986 forward?

A Well, I attempted as much as I could at the time to verify but an intense verification process occurred from the beginning in 1986 and, in particular, when we -- when the court recommended another way of dealing with the boundaries of the hereditary chiefs, the territories of the hereditary chiefs, and we moved to the affidavit format.

MR. RUSH: Going to be asking, my lord, that this Land Use Reference Data sheet in tab 59 be marked as an exhibit?

MR. GOLDIE: My lord, I object to that. And I object to it on the basis that it is not evidence against the Province; it's never been communicated to the Province in any way, shape or form; it is totally hearsay; and, if it is tendered for the purpose of indicating methodology, then I think a blank sheet should be tendered until this witness' status is clarified.

THE COURT: I think it can be marked as -- I think as Exhibit 653 for Identification only and that can be spoken to again when the matter of the witness's status is clarified.

(EXHIBIT 653 FOR IDENT. - LAND USE REFERENCE DATA SHEET - TAB 59)

MR. GOLDIE: I would also ask for production of the balance of these sheets, my lord, that they -- at least to my knowledge, the only sheets that we have -- of this kind are found in a book which purports to be the basis upon which Geel's territory was developed and Lucy Namox's territory, and I asked for that during Mr. Sterritt's examination for discovery but we have not had the production of the original sheets. When I say original sheets, we have not -- there has not been listed so far as I am aware nor has there been produced sheets other than what are found in that book which consist of this one and one more. It was numbers 24 to 46 in that one. There may be one more in the Lucy Namox, but so far as the two or 300 that Mr. Sterritt has referred, I'd ask for those to be produced.

THE COURT: Any difficulty with that, Mr. Rush?

MR. RUSH: No.

THE COURT: I calculate there would be about 25 or 30.

MR. RUSH:

Q That's correct. Thank you.
Mr. Sterritt, what was the reason that you accumulated the information as you did in this form?

A It was to connect topographic features of -- a hereditary chief would refer to a place name and a feature and it was to connect those features with the house, the clan, the village as much as possible and the type of feature, and to provide a record of those features throughout the Gitksan and Wet'suwet'en territory.

Q All right. Now, you've made mention of your field books. Now, you kept information received from the hereditary chiefs in a field book, did you?

A Yes, I did.

Q And how did you record it in there? And I take it, perhaps before I ask that question, you recorded this information and field books over a period of time; is that right?

A Yes.

Q And is the way that you have recorded the information in the field books the same over that period of time or have they changed?

A It is basically the same. It's -- it reflects notes that I took of information or conversations with a hereditary chief.

Q Okay. Now, can you just tell his lordship how you used the field books in order to keep notes of your

discussions with hereditary chiefs? What were the situations in which you used that as a means of recording that information?

A To begin with, I attended feasts and, at the feasts, the hereditary chiefs sitting near me would talk to me about place names that they knew or that they -- that were part of their territory. They -- Gitludahl, Pete Muldoe in particular, spent a lot of time describing the Wiigyet territories to me in the feast and those are during the course of the feast as we sat at the table, and that is reflected in my notebooks. From time to time, I might ask a question and Pete would direct me to someone or Pete would go and talk to another person and that individual might call me to their table or come over and sit down or confirm that Pete was inquiring about.

Q Excuse me. Were these informal discussions during the course of a feast?

A Yes. They were -- I was there to attend the feasts, to observe the business that was being conducted, and it wasn't just territorial information that I was accumulating in the notebook. I also recorded feast information, the business that was being conducted in the feast, names that were being transferred on to young people or to new hereditary chiefs, or to members of the house. I recorded the -- if there were technical terms for different aspects of the feast that -- that I was informed about by the people who I sat with, I would record that. I also, as the house that was putting on the feast, contributed their goods, their Hawaal, or their money to the feast. I kept track of their Indian names as well as the amounts that they contributed, and sometimes the procedure was moving too fast and I could -- they were blanks but nevertheless the amounts were recorded. I tried to keep track of the -- the extent of the contribution of a house and their relatives.

Q What other situations apart from the feast context did you make recordings in the field books?

A I -- during the helicopter flights, I kept track of information in the field book. I met with hereditary chiefs on evenings or on weekends and I kept track of information during those discussions. If I travelled to a meeting and a hereditary chief accompanied me and pointed out a mountain or a creek

or point, I kept track even if it was one bit of information. I tried to keep in there.

THE COURT: Excuse me, Mr. Rush. Mr. Sterritt, you mentioned a few moments ago that you talked to hereditary chiefs at feasts and you said particularly Pete Muldoe and then you said another name.

THE WITNESS: Gitludahl.

THE COURT: You said both names?

THE WITNESS: Yes, his Indian name.

THE COURT: Thank you. Sorry, Mr. Rush.

MR. RUSH:

Q Yes. What's the nature of the recordings that you made? What was the content of the feast book -- excuse me, the field book?

A The main information is place names, topographic features, where -- where it was indicated boundary information, sometimes to explain the territorial information I was getting. The hereditary chief would also tell me something about the history of that territory, of that -- or of that house, and it would be reflected in my notes in a summary format or, in the case of David Gunanoot, to the extent that I could keep up to him, it is reflected in detail. And sometimes that information would be contained in detail if I could keep up to the information.

Q Did you sometimes make recordings after you had been given the information?

A Yes. I -- there are situations where I didn't have my field books with me and information was transferred or given to me and I -- as soon as I could, I got to my field book and entered it, and there is information also that was relayed to me that -- that had I simply stored in my mind, you know -- not a hundred percent of the information is in my field books.

Q Now, had you said that sometimes when you didn't have your field books with you, did you make a practise of trying to keep them with you at most times?

A Yes, I did.

Q And apart from recording of names and boundaries, places, detail about the ownership of the territory, did you keep other information pertaining to other subjects of the Gitksan or Wet'suwet'en culture?

A Yes, I did. Pete Muldoe and his sister Elsie Waiget sat beside me and they --

Q Sat beside you where?
A She sat right beside me in the feast hall and they provided information about the names of insects, about plants, about animals and the different stages or names for different stages of animal's growth, for example, the beaver or moose or mountain goat. Other persons told me about the way that you Sisatxw or prepare yourself for hunting or for difficult undertaking such as hunting or battle or even for situations like when we entered into discussions in the Constitutional Conference.

MR. RUSH: Sisatxw? Just excuse me, Miss Howard, I wonder if you have a spelling for that, please?

THE SPELLER: S-i-s-a-t-x-w.

MR. RUSH:

Q Now, was there other information of that kind or order that you kept in the field books?
A Yes. The notebooks were a catch-all for information that was being transferred to me by the hereditary chiefs.
Q Now, was there other ways in which you recorded information passed on to you from the hereditary chiefs about boundaries, place names or territories?
A Yes.
Q Apart from the field ones that you have mentioned?
A Yes. I also began a verification process of place names and boundaries and ownership and I did that on loose-leaf paper which I either sat down with the hereditary chief and obtained further information. I also found it, because of the time constraints and the demands of the court, important to make phone calls and get information and perhaps make repeated phone calls in a given day as I verified information.
Q Okay. Did you also use a means of recording information described as a journal of some kind?
A Yes. That was earlier. In the mid 70's, I kept a journal in an eight and a half by eleven size format in which I recorded almost any information that was being passed along to me by my uncle or my father or David Gunanoot or other hereditary chiefs, and that format, that included territorial information. It included -- for example, my uncle taught me how to make snow-shoes in the 70's and I kept a very detailed log of how that is done with diagrams and sketches and the technical Gitksan names for each stage of preparing snow-shoes and for the parts of

the snow-shoe.
Q All right. You said that this type of information and other information was recorded in these journals in the mid 70's. Perhaps I have asked you about this somewhat out of sequence. Did you keep these journals prior to the field books at the -- at the same time or at what time in relation to your recordings in the field books?
A The journals were prior to the field books.
Q And you said that it was later then that you recorded information on loose-leaf paper?
A Yes.
Q Is that right?
A That was after -- that was a process later than the field books or -- well, it became simultaneous to a certain extent with field books but it was a part of the verification process. When I say simultaneous, I mean I still keep my field books and I also do the loose-leaf notes.
Q All right. Now, you have mentioned your -- the heli flights and you have indicated that you made field trips and there were recordings that you made during the course of these field trips and, in some cases, you have indicated that these recordings were made in your field books. Did you keep video tapes of -- of your field trips or was that another way of recording information?
A When we did the first helicopter field trips, we tried to use videos. The first -- the first two or three trips we did videos and it was not a successful way of recording information.
Q What was the idea behind the use of the video?
A Well, one of the first ideas we had was we would keep a continuous running sequence of video shots as we flew to a location with the helicopter, and that barely worked at all because of the vibration of the helicopter, the noise within the helicopter which we couldn't filter out. Then also when we land at a site, we did panoramic views of sites.
Q Now, when you say we, who do you mean?
A Well, in this case, it was -- the first flight was to a mountain ridge near Tsaa Kee Aas which is French Peak on the map. It is between -- it is on the edge of our territory near Babine Lake.
Q It is called Tsaa Kee Aas?
A Tsaa Kee Aas, yes. And we landed there and we did a panoramic view of basically 360 degrees of the

features around us.
Q Would you just pause there? What flight was that?
A That was in either June -- it was around June 22, 1983.
MR. RUSH: All right. And is that a place where you passed by or landed during the course of the view that was taken?
MR. GOLDIE: Well, I am sorry, the difficulty with the repeated references to the view, it may be of assistance to your lordship, but I think it is contrary to the intention of that. That should be incorporated in the evidence which apparently is going to be relied upon as proof of title.
MR. RUSH: More for the purpose of citing your lordship rather than for the concerns my friend expressed. I think it is a convenient way for your lordship to find a location, a feature.
THE COURT: We didn't land at French Creek.
THE WITNESS: No, we didn't.
THE COURT: We wanted to, but we didn't. I am not sure that I have the import of your objection, Mr. Goldie.
MR. GOLDIE: Well, it is -- as I say, until the status of Mr. Sterritt is settled, I am assuming that at some point all of this evidence your lordship is going to be asked to accept as proof of title and when the witness says, as we flew over our territory or we flew to a certain feature which he later identifies or previously identified as within the territory, he is incorporating that particular -- he is incorporating the identification which took place on the view as part of his evidence. My submission --
THE COURT: Of his view?
MR. GOLDIE: And of your lordship's view.
THE COURT: As I understand the evidence, the witness is now telling us about a field trip he made by helicopter to French Creek on June 22, 1983.
MR. GOLDIE: Yes.
THE COURT: And explaining why it was found that video recording, particularly panoramic views from landings, were not successful.
MR. GOLDIE: And the reference to the view taken by the court is completely irrelevant.
MR. RUSH: Well, I don't agree.
THE COURT: I wasn't sure that he mentioned -- did he mention the view taken by the court?
MR. GOLDIE: I understood him to do so.
MR. RUSH: I asked him about it. I asked him if there was a

relationship of where that place was and of the view in order to assist your lordship about --

THE COURT: Yes, all right.

MR. RUSH: -- about a place.

THE COURT: As I take the evidence now, all the witness is doing is giving the evidence of the method used to collect information upon which I assume an opinion will later be expressed.

MR. RUSH: That's right.

THE COURT: And, in my view, there is that over-used word, I don't think that's objectionable.

MR. GOLDIE: No, I -- it doesn't matter where it was proven that the system of taking evidence was found to be objectionable. It is irrelevant to try and tie that in to a particular place that is in issue in this lawsuit.

THE COURT: I understood he was going to give me an example of why panoramic videos were not successful.

MR. GOLDIE: He was but then he was asked to tie that into the view taken by the court.

THE COURT: As Mr. Rush said, he is telling me where this attempt was made and citing me for -- I wouldn't want to use that term too often -- affixing me in a particular location. I think you can proceed, Mr. Rush.

MR. RUSH:

Q Mr. Sterritt, when you landed at certain points along the line of your field trip, on those occasions and take for example the one on June 22, 1983, did you utilize the video tape as a way of attempting to record information?

A Yes.

Q Were there problems involved in that?

A Yes. The problems -- there were several problems. The video -- the quality of the camera and the lenses that we had was not sufficient to cut through the haze so that features at a distance just didn't appear. There was too much haze. So in terms of later identifying features, they weren't useful. It was difficult to -- maybe it is more our problem than anything but to co-ordinate what the hereditary chief was identifying with where the pan was on the video, where the operator of the video was panning at a given time. Wind noise created a problem in terms of recording what was being said. We couldn't cut that out. So -- and it, at the same time as a back up, I was doing 35 milimetre still photos and

panning or I realized right away that probably would be important to completely pan at that location with the still photos, and it turned out on examination right after the first couple of trips that the still photos were much more valuable. They cut through the haze; the features were more distinct; I could place them in relation to notes that I was keeping.

Q All right. Did you then at some point cease using the video tape.

A I think we tried them for -- the videos for one or two more trips, and then abandoned that. And from then on, on a helicopter flight, I didn't bother -- I relied on my -- on a 35-millimetre camera to do the photo record of the features and of the territory because what we were trying to do was not just -- we wanted to identify features and have a photo record of them but also as much as possible a photo record of the entire territory.

Q Now, you have made mention of the field trips that you took using helicopters. Were you using a video camera to record features or boundaries or territories on occasions other than when you went on the helicopter flight?

A No. I don't recall a situation other than on those first flights that we used the video.

Q Did you use audio tapes during any of the heli flights?

A Yes, we did.

Q What was the effectiveness of that device as a means of recording information of the hereditary chiefs?

A We thought that it would be valuable but it wasn't. Once again, we encountered the wind noise and the noise in the chopper. On the ground, what proved to be the most valuable way was for me to -- or whoever was conducting the interview -- was to take notes, take photographs and relate what the hereditary chief was saying to the notes and the photo sequence.

Q Is it then the case that you, in respect of the heli flights, did you abandon the use of the audio tapes?

A Yes. We sometimes took a recorder along. We didn't necessarily use it, but we basically abandoned that approach.

Q All right. Now, you mentioned photographs. You took photographs of topographical features in the Gitksan and Wet'suwet'en territories?

A Yes, I did.

Q And did you -- well, perhaps I should just ask: Apart from the heli flights that you'd mentioned, were there other circumstances during which you took photographs of these?
A Yes. My family and I do a lot of hunting and, when I went out, I recorded features. I -- during the winter we snow-shoe'd or went skiddooing and I would get to areas that I may not have been able to get too easily by chopper or by foot and I recorded areas. And then in the Hazelton area, Hazelton Kisgagas, when I drove or used other means to get around, horseback, I also recorded or took photographs of basically panoramas of mountains, mountain ranges and creeks and so on.
Q Did you take photographs also during land field trips that you took by foot or by other means?
A Yes, I did.
Q And what was the purpose of these photographs? How did you use the photographs?
A Well, the intention was to -- was to record the features and corresponding Gitksan or Wet'suwet'en name; to have a historical record or a pictorial record of the Gitksan/Wet'suwet'en territories as completely as possible; to attempt to record on the photograph what the Gitksan or Wet'suwet'en name of that feature was for the benefits of future generations. Those were the prime purposes. To a certain extent I have been able to identify a number of features on photographs one way or the other and, when I say one way or the other, I have not applied every Gitksan or Wet -- or Gitksan names. In particular, others worked for intensely on the Wet'suwet'en side. I have not applied every name to every feature that appears in the photographs. I just kind of control points and also one of the intentions was to go back and sit down with the hereditary chief and review the photographs with them. That didn't necessarily happen. It became more a record than a photo review although I can do that to a certain extent.
Q When you say you did do that, what do you mean; that is to --
A I took the photographs, sat down with the hereditary chief and reviewed them to confirm that the feature that I had identified in my sketches and in the field was the feature that they were identifying on the photograph or they were identifying in the field

and to do that on the photograph.
Q And in respect of that, you said that were you able to do that in the case of all the information or the information that you received on the field trips?
A I didn't do that with every hereditary chief. As a matter of fact, I didn't do it rigorously. I did it with some of them.
Q All right. But accumulate these photographs in photographic three-ring binders?
A Yes, I did.
Q And did you index these?
A Yes, I did.

MR. RUSH: And I want to show you some of these photographs. Two of these have been entered as exhibits, my lord, volumes 1 and 5, I believe so --

THE COURT: Did I get my copies? Should I send for my copies?

MR. RUSH: Yes. Perhaps that could be done over the break, my lord. I intend to take Mr. Sterritt to the volumes and I am going to ask him to identify all of them. These are 2, 3 and 4, and I believe I have both a desk copy for your lordship and --

THE COURT: I have two or three volumes already.

MR. RUSH: You should have volumes 1 and 5.

THE REGISTRAR: You have 1 and 5, I believe.

MR. RUSH: And I am now handing to you volumes 2, 3 and 4.

THE REGISTRAR: Are those for his lordship?

MR. RUSH: Yes, that's right, and I'll have another copy for you. I will just get that now. Perhaps I could just take one of the volumes, maybe volume 1 which has been entered as an exhibit already.

THE REGISTRAR: It is downstairs.

MR. RUSH: It is. All right then, I think I can put volume 2 before Mr. Sterritt.

THE REGISTRAR: I can go get it if you wish.

MR. RUSH: That's all right. We can go with 2.

MR. GOLDIE: What volume is this?

MR. RUSH:

Q Two. Showing you a volume of photographs labelled Gitksan Territory Volume 2, Number 1-6, and there is a -- in the front of this volume what appears to be -- well, what is identified as a photographic index, volume 2. Do you recognize that, Mr. Sterritt?
A Yes, I do.
Q Okay. You scanned this volume prior to court today, have you?
A Yes, I did.

MR. GOLDIE: I hope so.
MR. RUSH:
Q And you have also looked at the other volumes, volumes 3 and 4?
A Yes, I have.
Q And you have reviewed volume 1 and volume 5 as well which are not present in court here but you have reviewed those photographic volumes prior to coming to court?
A Yes, I have.
Q And do those five volumes of photographs contain photographs which you took?
A Yes, they are.
MR. GOLDIE: This has been the subject of rather extensive admissions, my lord. I am not quite sure of what my friend's purpose is.
MR. RUSH: My purpose is that although they have been extensive, they haven't been complete and neither from -- complete from both sides, so my purpose is to introduce these photographs and unfortunately, I can't with the state of the admissions rely on the admissions as a complete way of proving the photographs.
MR. GOLDIE: Well, the admissions I think go all to the extent of admitting that he took the photographs.
MR. RUSH: Well, yours do.
MR. GOLDIE: Yes. I suspect that the authenticity of the photographs is not in question.
MR. RUSH:
Q Mr. Sterritt, in the front of the volume here, volume 2 that's before you, this is -- demonstrates an index. Did you prepare this index?
A Yes, I did.
Q And can you just express to his lordship what it is that the index is purporting to show if you take the, for example, page number 1 and the first page of the index of volume 2 and describe what it is that you are endeavouring to show by means of this index?
A The purpose of the index in the way it is laid out is so that a person can locate themself as they view the picture and know both where the photograph was taken from and what the photograph is taken of in relation to features that appear on the National Topographic Series of Maps.
Q All right. For example, under page number heading, you have, 1 and then photo number 1 and then map

reference 93M. Is that 93M reference to the National Topographic Series or the NTS series map?

A Yes, it is, and I also prepared a key that I thought would be with this. It may be with volume 1. But what the key shows is how the photo sequences are numbered on the page and, if you go to page number 18 and it is a page that faces you, then photo number 1 is in the upper left corner, photo number 2 is beside it to the right, photo 3 is in the lower left-hand corner, and photo number 4 is in the lower right; so that I maintained if there was four photographs on a page, I maintained that numbering sequence and that is indicated on a page that should be with the volume. So photo number 1 appears within map reference 93M which is the Hazelton map sheet.

Q Just if you will pause there, Mr. Sterritt. When you just now described the place on page 1 of the four photographs, you turned the volume of photographs on its side such that the three rings were at the top of the page and then you indicated moving from the left to the right and then back to the left and then to the right, the position of the photographs on the page. Is that the sequence that you followed when you put together the photographs?

A Yes, it is.

Q All right. Now, I am sorry I interrupted you. Would you go ahead, please, and discuss the index?

A Now, photo number 1 is labelled "Not Applicable" because it is the first -- when I loaded my camera, I clicked through until I got to number 1 on my camera numbering, and it's just a photo of the -- the sky actually and some mountains.

Q I think we can all confess to that error on occasion, Mr. Sterritt. What about number 2?

A Okay. Photo number 2 indicates A/B over Skeena River, Deep Canoe Creek. Now A/B is airborne, so I have taken this photograph from the helicopter and the approximate location of the chopper at that time is at the mouth of Xsu Wii Daxyan, Deep Canoe Creek, as it entered the Skeena River.

Q Xsu Wii Daxyan is 1386, my lord. All right, and number 3, photo number 3 which --

A Well, I should finish number 2.

Q Yes, go ahead.

A If you look at that, at photo number 2, then the view is north, that's what the N stands for, and

then in brackets, (view toward), and the labelling column means the view is north and then toward Kuldo Mountain. So if you had a 93M map at a scale of 1 to 250,000 before you, you could locate yourself at the junction of Deep Canoe Creek in the Skeena River and look north towards Kuldo Mountain on the map and know that this is the view that you have.

Q All right. And --

A Now, that -- all of those designations appear on the sheet that is in, I believe, volume 1, it should be in each one.

Q Yes, all right. Well, I am going to come to these in just a minute. Now, photograph number 3 on the photograph, index volume 2?

A It's -- that photograph is airborne over Deep Canoe Creek and in this case, the view is west up Deep Canoe Creek.

Q All right.

A And photograph number 4 is a -- is airborne in similar -- right in the same area and the view is north up the Skeena River at -- in fact that location is Xsi Agat.

Q Is what?

A Xsi Agat, the mouth of the canyon.

Q And on the photocopy of the photograph, Xsi Agat is spelled X-s-t- new word A-g-i-t?

A Yes.

Q I am sorry?

A I -- in order to -- as a way of identifying the Gitksan names, I photographed or, pardon me, Xeroxed the page of photographs and then labelled with Gitksan names the features and I did that in most of the photographs. I'd have to check whether I did it with all of them.

Q All right. Now, when did you prepare that index that you have made reference to?

A I completed the indexing that appears in the front of the binder in February of 1988.

Q And was there anything to accompany the index that you completed about the same time?

A Previous to this, I prepared, along with the assistance of Marvin George, I prepared a map. I put the flight lines in which a given helicopter reconnaissance trip was taken. I applied the flight lines and the photo stations at a location where we would land, and those all appear on the map, and there is a complete indexing to June or July of 1987

of those helicopter flights.
Q Is this conveniently described as the Flight Line Draft Map?
A Yes.
Q And I take it this Flight Line Draft Map contains all of the helicopter flights that you participated in and took photographs during the course of?
A What I incorporated on that map was the helicopter flights as well as to June of 1987 or July of 1987, any vehicle trips that I took.
Q Where you took photographs?
A Where I took photographs in the past few years.
Q All right. Why -- can you tell his lordship why it was that you prepared the index and the Flight Lines Draft Map?
A When we turned the photo albums over to the defendants, the Province, and the Federal Government, it was difficult for them to -- well, almost impossible for them to locate what the picture was of or where it was, and so I began to put together an index and the map. We put the map together right away and handed it over. But it needed further detail and the index that appears here was the further detail that was required. It was also so that future Gitksan or Wet'suwet'en persons who used the album will be able to locate themselves as well.
Q The photographs of the -- excuse me, the photocopies of the photographs that are contained in the books, can you say when those were prepared?
A In 1986 and possibly into 1987.
Q Okay. And was it you that put the labellings on the photocopies?
A Yes.
Q Now, in terms of the other volumes of photographs, was the index in respect of those other volumes put together in the same way you described as having been put together for volume 2?
A Yes.
Q And in terms of the relationship of the Flight Lines Draft Map and the index and photographs, how do they refer to each other, if they do?
A In the photo album, I tried to separate a sequence of photographs. For example, volume 2 -- I am not sure that this is the best example, but volume 2 number 1 would refer to a film.
Q Volume 2 number 1? Do you mean to say page 1?

A No, no, volume 2 number 1. I don't see it in this. Volume 1 might be the best one and maybe it is only in the original -- pardon me, my copy of the photographs.
Q Yes.
A I am not sure it was done here because these were prepared from my volume. But the sequence of photographs, a film, I considered to be a set and that -- that set would -- I think would appear on the flight lines map as a set.
Q I see. So there is a relationship between the photographs and the Flight Lines Draft Map, is there?
A There is, based on the negatives and the photo -- and the photo station, the area where we set down and conducted an interview on the ground.

MR. RUSH: Okay.
THE COURT: Convenient time to adjourn, Mr. Rush?
MR. RUSH: All right. Yes, my lord.
THE COURT: I should bring the other two volumes?
MR. RUSH: Yes, if you will, please.
THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED AT 11:15 A.M.)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: May I proceed?
THE COURT: Yes.
THE REGISTRAR: Did you want these volumes?
MR. RUSH: I will be referring to them in just a moment. Thank you. My lord, I'd like to mark the volumes two, three and four, if I may.
MR. GOLDIE: That's on the same basis, my lord.
THE COURT: Yes. All right.
MR. GOLDIE: I should say that when I get the nature of the notices to admit that we have I can be perhaps a little more precise.
THE COURT: Yes.
MR. GOLDIE: But we went through these in considerable detail, and it may be that there are some specific submissions that I have to make.
THE COURT: All right. So volumes two, three and four --
THE REGISTRAR: Will be 654.
MR. RUSH: All right. If I may exhibit --
THE COURT: 654 will be volume two, 655 will be volume three and 656 will be volume four, on the same basis as volume 22.

(EXHIBIT 654: Volume 2 of Photographs)

(EXHIBIT 655: Volume 3 of Photographs)

(EXHIBIT 656: Volume 4 of Photographs)

MR. RUSH: Well, my lord, it can't be precisely on the same basis, because a number of the photographs in both of those were identified by hereditary chiefs.
THE COURT: No, I mean the same terms they were marked when they were first marked.
MR. RUSH: I see.
MR. GOLDIE: I'm sorry. And maybe --
THE COURT: On the same basis as volumes one and five were marked at the time that they were marked.
MR. GOLDIE: Yes.
THE COURT: Since that time Mr. Rush has pointed out some witnesses have verified --
MR. GOLDIE: Yes, and it may -- yes, and it may be that a more extensive admission may be made depending on our -- or it may be there are some to which a specific objection is taken.
THE COURT: Thank you.
MR. RUSH: Now, could the first volume please be placed before

Mr. Sterritt.
THE COURT: Mr. Rush, it's been pointed out to me that volumes one and five were marked for identification.
MR. RUSH: Yes. Thank you for pointing that out to me. I would ask that they be marked as exhibits in the proceedings. I'm just now trying to find --
THE REGISTRAR: Volume number one is 377.
MR. RUSH: Excuse me?
THE REGISTRAR: 377.
MR. RUSH: Yes. Thank you.
THE REGISTRAR: And volume number five is 487.
MR. RUSH: Thank you. Well, it's 377 that I ask be marked as an exhibit in the proceedings. Similarly with regard to volume five, I'd ask that that be marked as an exhibit in the proceedings.
MR. GOLDIE: Well, in my submission, my lord, their present status is that they're not evidence against either defendant, but the witness says I took these photographs, and I say that they relate to this, this and this. That may be so. They may be photographs given geographic features, but they are not evidence of title or of anything that is alleged with respect to title at this point. There's a different standing with respect to those which have been identified by the hereditary chiefs. That comes into a different category, but at the present time, and given Mr. Sterritt's present status, any relationship of these to territory is a matter of hearsay.
THE COURT: Well, Mr. Goldie, what's the difference between this and the classic case of when we used to have criminal negligence causing death cases in the assize court where evidentiary rules are considerably stricter, and the first Crown witness would be a police photographer who would say I went to the location and I took a picture of Broadway and Granville, and this is a picture taken from east looking west and this is north and south. It's not evidence against anybody, it merely is evidence in the case.
MR. GOLDIE: Yes.
THE COURT: There is no qualification needed on the evidence. This witness says I took these pictures. This is what I label them to be. It may be he's quite wrong. Is it not evidence in the case notwithstanding the fact --
MR. GOLDIE: If I didn't say it I intended to say that. This

witness is competent to say I took that photograph.
THE COURT: Yes.
MR. GOLDIE: And I believe it's a photograph of that feature, period.
THE COURT: And isn't that some evidence which may later become evidence of title?
MR. GOLDIE: Yes, but not from the mouth of this witness as at the present time.
THE COURT: Can he say I took this picture and I call it this the same way the police officer says I took this picture and I call it Broadway and Granville?
MR. GOLDIE: Well, the note I made of what Mr. Sterritt said was that the photographs were taken with the -- refers to features on the N.T.S. maps. That's -- that's his opinion, and it's -- that's as far as it goes. It's not evidence of title. It's not evidence of anything.
THE COURT: It's not evidence of title.
MR. GOLDIE: Or ownership or jurisdiction. What it's evidence of is this is the person who took this photograph, and it's his opinion that it is a photograph of a particular feature just the same as the police officer at Broadway and Granville.
THE COURT: And that seems to me to be evidence in a case which may later be proveable of some fact in issue, or it may not.
MR. GOLDIE: Precisely, but and if that is the extent to which the document is being marked as an exhibit I am content to have it so marked.
THE COURT: All right. I think that's the basis at this point that it's admissible.
MR. RUSH: With respect, my lord, I don't agree. I don't agree it goes as far as what's been submitted here. I say it goes much farther than that in the sense that Mr. Sterritt also says I took this photograph during those certain heli flights and during those certain flights there were hereditary chiefs.
THE COURT: I'm not sure that evidence is admissible.
MR. RUSH: What they said may not be admissible yet. The fact that they were present at times when the photographs were taken, and many of those names, many of the chiefs who were present with Mr. Sterritt identified places with similar names and with similar geographic descriptions on maps I think again goes along the way of what your lordship has indicated as being some evidence of what it purports to show. Now, we got into this when we were saying that the

place of Smithers is a matter of opinion, and I remember having an interesting argument about that last June, and I think that Mr. Goldie's submission, at least in respect of some of the photographs, comes somewhat close to that, that it's an opinion. For example, that Mr. Sterritt would say that a photograph of Kisgegas Village is an opinion about the fact that it's Kisgegas Village. Well, with respect, my lord, that objection may have some merit with respect to a number of what these photographs demonstrate, but in respect of others I say it has no merit because of the wide knowledge of the existence of places that certainly should take these out of the category of opinion.

THE COURT: Well, I think this is the kind of discussion why the English are thinking of abolishing the --. I think that at the moment I have determined that these five volumes of photographs are admissible and may be marked as exhibits, and not as exhibits for identification, and it seems to me that that's as far as we have to go at the moment. You gentlemen may have at this moment a disagreement with the status of the photographs. I don't find it necessary to determine that issue at the moment, because other evidence may change the position that one or other or both of you take with respect to these exhibits, and I think I should hear the argument after we know more about it. I'm not persuaded at the moment that the picture being taken in the presence of hereditary chief adds anything to it. It might, but I don't think I can determine that yet. I'm having them marked as exhibits at the trial. They're evidence in the case, and the use to which they may be put is a matter I will hear argument from counsel in due course, I'm sure, which is a more convenient and useful thing than having the argument at present. So that means volumes one and five may now be marked by their respective numbers not for identification.

(EXHIBIT 377: Volume 1 of Photographs)

(EXHIBIT 487: Volume 5 of Photographs)

MR. RUSH:

Q Mr. Sterritt, I'm directing you to volume one, and

you've already made a reference to the way in which the index was prepared. In volume number one there is a tab separating volume -- the index from the first photograph, and I wonder if you can explain to his lordship what that tab which is identified as volume one number one indicates?

A That indicates a photo sequence that goes from page one to page 12, and is, as best I can recall, that would be the photographs, or the first set of photographs, or the film that took me from Mount or French Peak around to north of 'Wii t'ax, Gunanoot Lake, and --

THE COURT: I'm sorry, the name of the lake again?

A Gunanoot Lake.

THE COURT: Thank you.

MR. RUSH:

Q All right. If I can just ask you to look at the page one of this volume one has a contents page. What does that indicate?

A It indicates the photo or the helicopter stations that we used on June the 22nd, 1983. It gives a station, a triangle and a number, meaning station number one, which is located four miles north of French Peak at the 1788 meter elevation. And that would -- that appeared on the National Topographic Series map that 1788 meter elevation as a way of locating where we are. We indicated it here as a means of indicating where we were when we landed.

Q All right. Now, you have similar helicopter stations indicated in numbers one, two, three and four?

A Yes.

Q And various places, and then you have another date of June 23rd, 1983 showing what appears to be eight stations, is that right?

A Yes.

MR. RUSH: All right. Does your lordship have that on the front page?

THE COURT: Well, you have the only copy of volume one.

MR. RUSH: There ought to be two copies, one of your lordship's and one for the witness.

THE COURT: Well, that may be. We haven't got the volume one.

MR. RUSH: I'm just reversing the copies, my lord.

THE COURT: Thank you.

MR. RUSH: I'm just draw to your lordship's attention that in the witness' copy there doesn't appear to be an index. In my copy and in your copy there is such an

index. I'm not sure why that is so, but we'll try.
THE COURT: Madam Registrar should perhaps transfer the index to the court copy during the break.
MR. RUSH:
Q The photographs beginning on the second page which is marked page two, is this -- are these the photographs of the helicopter flight of June the 22nd, 1983?
A Yes. And those photographs are at the first station of that day north of French Peak.
Q And who's shown in the photographs on page two? It looks like the same individuals in each one of the four photographs. Maybe you could identify them in the upper left hand corner or photograph number one.
A Glen Williams, Ax gwin desxw, on the left.
Q Is he the gentleman with his hands in his pocket?
A Yes.
Q Yes.
A In the T-shirt.
Q And then moving --
A And then moving to the right of the picture in the Stanfield underwear shirt there, or sweater, that's Simgit giigeenix, Robert Jackson Sr., and he's from the House of Milulak. And then right behind him is Wag galwil, David Green. And the mountain peak in between Glen Williams and Robert Jackson Sr. is French Peak.
Q In which photograph?
A In the first photograph, the upper left corner.
Q All right. And which direction are you facing?
A We're facing south. Pardon me, looking into the picture you are looking south.
Q And it looks as though the three gentlemen have moved to another location in photograph two. Which way are you looking there?
A I've panned to the west, and the mountains behind Glen Williams, that is Saa Hahla Gyoot, and that on the map would appear as Thoen Mountain. T-H-O-E-N.
Q Okay. And the spelling for that here is S-A-A-H-A-H-L-A G-Y-O-O-T. And in the bottom left hand corner of photograph number three which direction are you facing?
A We are now facing the -- when you look into the picture you're looking west, and you're looking there at -- just in front of David Green you see a mountain coming up into the clouds, and that mountain is Daahl An Makhl, which is a mountain just

above Kisgegas. You're looking down the Babine River towards Kisgegas, and Kisgegas is down below Daahl An Makhl.

Q Is that -- to the right of David Green there appears to be a number of peaks there. Is that whole area the mountain you just referred to?

A No, it isn't. It's the first peak. And then there's a snowcapped -- you can see it kind of shaded, and then the next peak has snow on it, and it's approximately at the centre of the picture, and that is Tsim An Makhl, which is in the area of Kisgegas peak.

MR. RUSH: All right. So Tsim An Makhl. I'd like to get a spelling for that, Ms. Howard.

THE SPELLER: T-S-I-M A-N M-A-K-H-L-E.

THE COURT: I'm sorry. M-A-A-T?

THE SPELLER: M-A-K-H-L-E.

THE COURT: H-L-U.

MR. RUSH:

Q And the bottom right hand photograph, Mr. Sterritt.

A I have now panned and I'm taking a photograph farther -- it would be facing northwest from that station, and behind the hat of Robert Jackson Sr., the yellow hat, is the area of Tam Xsigintaayin, which is at the head waters of the Sicintine River.

Q Now, there is an indication of a name on the photocopy that accompanies page two, and that seems to be just behind the hat of Robert Jackson?

A Yes.

Q That's a further -- that's another name other than the one you've referred to, is it?

A Yes. There is -- the Sicintine River flows more or less north at that point. The Shelagyote or Shelagyote River flows south, and the area around the head of Shelagyote is known as An Gil Gilanous.

Q And that's -- there is a Gitksan name with an arrow pointing towards an area. Is that intended to indicate where the head waters of the Shelagyote are?

A Yes.

Q Tam Xsigintaayin is then closer to Robert Jackson's hat, is that right?

A An Gil Gilanous refers to one watershed and Tam Xsigintaayin refers to another. This is all within four or five miles of each other back in that area.

Q Okay.

A And Anxbinaawa is a mountain in the area of the arrow

on the photocopy.
Q Right. And the other name that appears on the photocopy, Mr. Sterritt, what is that one?
A That's Anxbinaawa. That's what I referred to, the mountain.
Q Now, if you'll just turn now to page three, photograph number one. Is this a new pan?
A Yes. It's the same location now looking more or less north, and right in front of the hat of Robert Jackson Sr. is a timbered knoll, timbered mountain, and that is Miinhl gwo good, Mount Horetzky. And then --
Q Now, I wonder whether, Mr. Sterritt, it's difficult for me, and probably his lordship, to determine which is Mount Horetzky.
THE COURT: I can recognize it.
MR. RUSH: Probably better than I, my lord.
Q Which is --
A It's almost mid picture.
THE COURT: Yes. Just below the rising --
A Yes.
THE COURT: -- In the picture?
A Yes. And then --
MR. GOLDIE: We have admitted a number of these, my lord. I don't know whether -- it would seem appropriate to me that we should file our admissions.
MR. RUSH: Well, as I said, my lord, I don't have admissions in respect of all of these photographs.
MR. GOLDIE: No -- well, that's quite right. We have specified the ones that we have not admitted, because the topographic details were not visible. We've had people go over these and endeavor to -- people who are experienced in the territory and who -- those that can be verified we have admitted. But, for instance, we have admitted all on pages one, two, three, four and five. It isn't until we come to page six there are a couple of photographs there in which the photographic -- the topographic details weren't sufficient to allow an identification. For instance, if your lordship looks at page six.
MR. RUSH: My lord, I don't have an admission from the defendant Canada on these.
MR. MACAULAY: I have instructions to admit at least what the Province has admitted, and we'll be admitting perhaps a few more.
THE COURT: Does the admission include the -- the description -- I should be addressing this to Mr. Goldie, the

description shown on the photocopy of the photographs?
MR. GOLDIE: No. It admits the description that is in the index.
THE COURT: Oh.
MR. GOLDIE: The admission is with respect to the volume we're looking at now, "This defendant admits the English language description of the photographs in volumes one, two, three and five as contained in the photographic indices sent to this defendant on February 25, 1988, and that the photographs in the said volumes were taken at the locations referred to in the said indices with the exception of those photographs listed on Schedule A." And then Schedule A lists the exceptions. And I was going to give your lordship an example on page six. If your lordship would be kind enough to look at page six. We say, "Photograph number two the topographic detail's not visible." That's a reflection of the information that we were given by an experienced helicopter pilot who was unable to say that the description in the index can be verified with respect to that photograph.
THE COURT: That's photograph number?
MR. GOLDIE: Two on page six.
THE COURT: Two on page six. Well, I can tell that's Kotsine Mountain just by looking at it.
MR. GOLDIE: You're ahead of the man we consulted who makes his living flying around that world.
THE COURT: All right.
MR. GOLDIE: As I say, I think I should file that, because the admissions for the most part cover most of the photographs.
THE COURT: Any reason why Mr. Goldie shouldn't file his admissions, Mr. Rush?
MR. RUSH: No. He seems to want to do that, and I certainly don't have any problem with him doing it. My ear may not have correctly heard this, but I thought my friend said volumes one, two, three, four and five?
MR. GOLDIE: No. There is a separate admission with respect to four.
MR. RUSH: Yes. All right. I don't have any problems.
THE COURT: All right. The admissions -- Province's admissions --
MR. GOLDIE: Well, I think what should be done, my lord, is that the notice to admit and the admissions pursuant there to should be filed as a single exhibit.

THE COURT: Yes. All right. The notice to admit will be Exhibit 657 and the admission will be 658.

(EXHIBIT 657: Notice to Admit)

(EXHIBIT 658: Admission)

MR. MACAULAY: Perhaps your lordship could reserve a number for our admissions.
THE COURT: All right.
MR. MACAULAY: Which they will be typed up now.
THE COURT: Exhibit 659 will be reserved for Mr. Macaulay's admission which will be co what with Mr. Goldie's? Coterminus doesn't sound right. Coextensive? It's the same admission as Mr. Goldie's, as the Province's admission.
MR. MACAULAY: It will go a little further.
THE COURT: All right. Goes at least that far?
MR. MACAULAY: Goes at least that far.
THE COURT: That number 659 will be reserved for Mr. Macaulay's admissions.
THE REGISTRAR: May I have them?
MR. GOLDIE: This is my only copy. I'll have to make copies for you.
THE REGISTRAR: Very well.
THE COURT: All right. Does that assist you, Mr. Rush?
MR. RUSH: Marginally.

Q Now, Mr. Sterritt, I want to ask you about your dealing with page three, and you had just commented on photograph number one, and with regard to photograph number two on page three there are Gitksan names there that you appended to the photograph -- photocopy of a photograph, is that right?
A Yes.
Q And those Gitksan names refer to what?
A On photo number two?
Q On page three.
A On page three. I think it's best to locate ourselves with reference to Mount Horetzky, and that's in the very centre of the picture. To the left is a range of mountains. To the left of Mount Horetzky and just behind is a range of peaks that run into the distance there. That's Gallix No'ohl Loobit. It's part of the boundary of Miluulak.
Q That is the first of the names running from left to right. It is indicated by an arrow, is that right?

A Yes. Yes. I wasn't looking there.
Q All right.
A Yes. And then barely visible at the right end of Horetzky, Miinhl gwo good, which is Lip skanisit, which is Kotsine Mountain. And then immediately to the right of that is a range of mountains. It's on the National Topographic Series as the Bait Range. And that is An skeexs, and the boundary of Miluulak runs up --

MR. GOLDIE: Well, your lordship has my objection on that.
THE COURT: Yes.
A An skeexs.
MR. RUSH:
Q That is the east boundary, is it?
A The southeast boundary.
Q All right.
A And Miinhl gwo good is the Territory of Wiiget.
Q Now, Mr. Sterritt, on the bottom left hand corner of the photograph you have Tomlinson Mountains, and that's in photograph number --
THE COURT: Three.
MR. RUSH:
Q Photograph number three. Do you have that?
A Yes.
Q Tomlinson Mountains, is that a range?
A Tomlinson Mountain, locally we call that series of mountains Tomlinson Range, but Tomlinson Peak is a mountain within that area. And very close to that under the cloud to the right is Luus Tsee'it, which is part of Nii kyap's territory.

MR. GOLDIE: Well, my lord, I've said a couple of times, your lordship has my objection, but I ask that the witness be -- confine himself to geographic features.
THE COURT: Is that not the right thing to do at this time?
MR. RUSH: All right. Yes.
THE COURT: Thank you.
MR. RUSH:
Q In the bottom right hand corner, photograph number four, it indicates David Green on Miinhl gwo good, which I take it to be Mount Horetzky. Is that right Mr. Sterritt?
A Yes, it is.
Q Have you then changed location?
A Yes.
Q And it indicates as well on the photocopy Atna Pass in the background, and I take it to be, and in relation

to Mr. Green's hat, where is Atna Pass?
A If you follow the top of David Green's hat along the timber and when it comes to the break where the mountains begin just in front of him, about half an inch to an inch in the picture, that break there is the area of Atna Pass.
THE COURT: Right up against the mountain?
A Yes.
THE COURT: On the shoulder of the mountain?
A Yes, it is. And then the mountain that begins there is the one I described earlier, Daahl An Makhl.
MR. RUSH:
Q Mr. Sterritt, are we when looking at this photograph, number four on page three, looking west?
A Yes. We're looking west towards the -- you see a peak not far into that range, it's quite steep, that's in the vicinity of Kisgegas Peak, and that is Tsim an makhl. And right where that peak, that pyramid that you can see comes down and joins the rest of the range that runs to the right is the area known as Gallii Xsi Yeesywit. On the map that would be at the head of -- near the head of Xsi Andap Matx or Goat Head Creek.
Q All right. Would you go to page four of the photographs. On the photocopy of the photograph number one there is a Gitksan name that looks to be Tsim Goohl Yip?
A Yes.
Q Does that have an English name?
A Right in front of the hat of David Green the -- not the peak, but actually between the peak of his hat and the symbol on the front of his hat is a little -- is a small hill. That is Tsim Goohl Yip. And there is no -- there's no identifying feature on any topographic map that I know of, but that is the Gitksan name of that area and that hill.
THE COURT: This is still on Mount Horetzky, is it?
A We're still located on Horetzky and we're still looking generally to the west.
MR. RUSH:
Q And the name on the right hand side of that photograph, is that known by an English name on the maps?
A Anxbinaawa is the mountain right at the edge of the photo, but I don't -- there is an English name for it and I don't recall it, and I don't have an index with this binder.

Q Okay.
A But if you looked I think it would be appear there that we're looking towards -- I can't recall it.
Q Now, Mr. Sterritt, I just direct your attention now to the bottom left hand photograph number three. There is a Gitksan name, what appears to be a Gitksan name there. Does that have an English name?
A No, there is not. That -- that whole general area in front of Robert Jackson Sr. and David Green is known as Lax An Hak, which refers to the feeding ground of the geese when they come down there. Haaxw being geese.
Q And the names that are located on the right lower photograph number four are -- the first name is Xsi yaga mahlit.
A That's Xsi yaga mahlit, and Xsi yaga mahlit -- well, the best way to describe where it is, the mountain range that is very distinct in the picture, on the right half of the picture is Gallix No'ohl Loobit, and there is no English name for that, but right down at the base of that is Xsi yaga mahlit, which is the Nilkitkwa River on the map.
Q Which river on the map?
A Nilkitkwa. That's N-I-L-K-I-T-K-W-A.
THE COURT: Sorry.
A N-I-L-K-I-T-K-W-A. And if you -- in that same photograph if you continue to the very edge of the photograph there's the beginning of a mountain there. That is Kotsine Mountain, the one that we landed on when we did the overview.
MR. RUSH:
Q All right. Please go to page five. You're still on Mount Horetzky here?
A Yes, we are. I should also mention that if the photographs were taken out and laid side-by-side they are a continuous panorama. They are overlapped so that you can see the features all the way along.
Q Are you talking now about page four or page five or both?
A Almost any given sequence of photographs in the albums if there is a photo location will generally create an endless panorama. In some situations like this it would be 360 degrees and it would be laid out. You can follow them. I just want to point that out.
Q On page five it looks like there was an attempt to match together the photographs one and two and then three and four. Is that the type of panorama that

you've referred to?
A Yes. Yes. If you moved photograph two in further on to photograph one you would have a panorama there, but in photograph one in the centre is a bald mountain, and that is Lip skanisit, Kotsine Mountain.
Q That's Kotsine?
A Yes. And you can see a couple of lighter portions of the picture, in the picture as you come down the centre of it, and that is the valley or the waterway of Xsi yaga mahlit, Nilkitkwa River. On the right hand side those peaks, that mountain range there that is An skeexs, and that is part of the Bait Range, and you can see an extension of that in photo number two. And, once again, we're still on Horetzky Mountain.
Q And in the bottom two photographs, three and four, another panorama?
A Yes. That's a photograph -- best to locate yourself by going to number four. That is the -- those are the Kisgegas mountains and so the photograph is -- the rest of the photograph and photograph number three are of the Tomlinson Range and the valley of the Babine River.
Q The valley of the Babine River is as you go over the ledge and midway through those photographs is that -- they're midway displayed in the back portion of the photograph?
A You see a tree in the left hand corner of photograph number four?
Q Yes.
A The top of the second tree in and the top of the first tree in that's where Xsi gwin Liginsxw or Babine River runs.
Q All right. Now, if you go, please, to page six. On page six, photograph number two, apparently it was not possible to, because of the details not being visible, to identify where that photograph was taken or what it depicts. Can you assist us there?
MR. GOLDIE: His lordship has already done so.
MR. RUSH: Well, we'll find out if he's right now.
A Well, with respect, your honour, in the first photograph is Kotsine Mountain. On the left hand side of the Bait Range you can see it. We took that photograph from Horetzky. We then moved around and landed on Djil Djila, which is the Driftwood Range, and we are some 15 miles east of Kotsine Mountain.

On this one that is Djil Djila there.
Q Where the helicopter is shown on photograph two is Djil Djila?
A Yes. And the direction you're looking when you look into the photograph is generally north, and the mountains in the background are part of Gallix No'ohl Loobit.
MR. GOLDIE: What's the English name for that?
A There is no English name for Gallix No'ohl Loobit.
MR. RUSH: That's spelled on the photograph G-A-L-L-I-X N-O-O-'-H-L L-O-O-B-I-T, and Djil Djila is D-J-I-L D-J-I-L-A.
Q With regard to photograph number three, Mr. Sterritt, on that page, page six --
A Here we're located on the southwest end of Djil Djila. The view is to -- towards Gallix No'ohl Loobit, and the area that's known as S'yuun, or glacier, in the background behind Robert Jackson.
Q That is behind his head or to the right of --
A Behind his head.
Q That's known as glacier, is it?
A The Gitksan know it as S'yuun, which means glacier.
Q All right. Thank you.
A Djil Djila is down on the left. Xsi Djil Djila Valley is in front of David Green down below him there.
Q You're referring now still to photograph number three?
A Yes.
Q And the direction that David Green is facing is the direction where the valley is located, is that so?
A Yes.
Q All right. Would you please now go to page seven. And this location is S'kutsil Knob, is that right?
A Yes. We're still on the Driftwood Range, S-K-U-T-S-I-L, Knob, and here we are looking west or southwest. Generally southwest.
Q Okay. The upper left hand photograph number one in the photocopy indicates this is the north side of An skeexs?
A Yes, that's the north end of the Bait Range.
Q Bait is spelled -- I thought it was B-A-T-E, but it's B-A-I-T?
A Yes.
Q Again, you have a panorama depiction on page seven, is that right?
A Yes.
Q Both in the upper and the lower photographs?
A Yes. And Kotsine Mountain is in the centre of

photograph number two there. And then on photograph number three is -- continues to be part of An skeexs as part of the second lake. Pardon me, on photograph number three the lake, and that is the area of Elmore Creek on the National Topographic Series map.

Q Where that lake is located?

A Yes. And that, once again, is a panorama of An skeexs --

Q Yes.

A -- From Djil Djila.

Q Yes. Now, if you'll go to page number eight. It appears in the -- that -- there appear to be three photographs that have been matched together in the top level, if you will, of the photographs. So we have broken here somewhat of your sequencing of one, two, three, four and we have five on this page. What does that matching indicate?

A Well, actually what you have is that little sliver of a photograph is cut off. It didn't fit in. And it fits right on the edge of the one, two, three, the third photograph. It was cut off to fit in here. And it's part of Djil Djila. The -- you can see the -- if you go to the far left of number -- photo number one you are looking at Kotsine Mountain, just the end of it, the northern slope which then leads into Gallix No'ohl Loobit, and then in the middle of coming through all three pictures is a series of meadows and a creek runs through there, and that is Xsi Djil Djila.

Q Is there an English name for that?

A Well, I think it's Condit Creek, C-O-N-D-I-T. And then the lower left -- the lower left photograph with the waterfall in the centre that's Xsi Djil Djila. That is a point -- we're now airborne and we're out east of Djil Djila and quite close to the Driftwood River, Sxan Togasxw, and looking back and taking that photograph.

Q That little piece in the bottom right in my photocopy it appears as though it's attached in the photo itself, on the right hand side of the photo, is that right?

A I'm not sure what you're saying.

Q The sliver, as you called it, on the photograph that -- in the photocopy is attached to the right hand side of the photograph?

A Yes, it is.

Q And that's on Djil Djila?
A Yes.
Q Please go to page nine. These are panorama shots on the two -- one and two and three and four?
A Yes.
Q And you have Djil Djila indicated cutting through photographs three and four. Is this the whole of that range Djil Djila, or is it just the photograph, or excuse me, the mountain in the middle of the photograph?
A Photographs number three and four are part of Djil Djila. It continues on out of photograph number four to the right. We're airborne over Xsan Togasxw, the Driftwood River, and looking west in photographs three and four. And in photographs one and two we're in approximately the same location, but looking north up Xsan Togasxw to Bear Lake. You can see Bear Lake on the edge, on the very left hand edge mid picture in photograph number one, and you can see a --
Q That's -- yes. All right.
A You can see parts of the Driftwood River coming down there in the left half of that photograph. And then in photograph number two we're looking at T'sim go'ohl yip. It's another area named the same as the other one that we were looking at from Djil Djila, but this one is near Bear Lake. Here it would be identified on the map as Tsaytut Spur. T-S-A-Y-T-U-T.
Q Where is that?
A Photograph number two. If you follow what appears to be -- could be B.C. Rail in the middle of the picture it goes straight up to the top. It points to the top. That range that runs almost half way across the picture from the left quarter to about midway, that ridge is Tsaytut Spur, and that is T'sim go'ohl yip.
Q That's the name that's given on the photocopy, is it?
A Yes. And then behind it is a white peak at the almost mid picture, some snow on a peak, and that is Tsim An Togasxw. And on a map that would appear in the area of Coccola Mountain or Coccola Peak, C-O-C-C-O-L-A, and Peteyaz Peak, P-E-T-E-Y-A-Z.
Q Okay. Now, if you'll go to page ten, indicated on the photograph number one is Dam Smaex. I think we know that as Bear Lake?
A Yes.

Q All right. I'd ask you, if you will, please, to look at photograph number four. Can you indicate what direction we're looking in?
A Here we're looking north, and we're looking towards the valley that's in the more or less the centre of the picture. Between the mountains is Xsi Gwin Gyila'a, and on the map that would appear as Squingula. S-Q-U-I-N-G-U-L-A.
THE COURT: Squingula Valley?
A Yes. And on the right hand side is -- the mountains that sweep up to the right, that is the far one in the --
MR RUSH:
Q That is to say the one in the distance?
A Actually there is -- on the right hand side there are three distinct, more or less distinct mountain features. The first one --
Q Moving from the right to the left?
A Yes. You would move from Tsim An Togasxw, and the next one is Saa Hahla Gyoot.
Q That's indicated --
A There's snow on it.
Q That's indicated as a named feature in the photocopy?
A Yes.
Q Does that have an English name?
A I can't recall whether it has or not, but the next one is Lax Anx Xsan. You can see it's shaded. It's a couple of little peaks at the northern extension of those -- of the mountains on the right, and that's Lax Anx Xsan.
Q Is there an English name on the maps for that one?
A No, there isn't. And if you continue down below those there is another mountain or another hill and that's called Gwi yoo. There is no English name for that either.
Q On the photocopy there is indicated the name for a feature that you have identified as Tam Gwaattii dawdit.
A Yes.
Q What does that refer to?
A Tam Gwaattii dawdit means a lake without ice. And it's on the map as Drift Lake, and it's in that area up through the valley there.
THE COURT: Is that one of those airstrips that we see in the centre foreground?
A In number?
THE COURT: Number four on page ten.

A No, there is no airstrip there. That's the reflection in the bubble of the helicopter.
THE COURT: Oh, all right.
A If we're looking at the same feature.
THE COURT: Yes, I'm sure we are. Should we adjourn, Mr. Rush?
MR. RUSH: All right.
THE COURT: Thank you.
THE REGISTRAR: Order in court. Court will adjourn until two.

(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)

THE REGISTRAR: Order in court. Delgamuukw versus Her Majesty the Queen at bar.
THE COURT: Mr. Rush.
MR. GRANT: My lord, before Mr. Rush commences, I have just delivered a Notice to Admit to both defendants. The only point is, and I -- they may wish to consider it, is this refers to the atlas which was marked already as an exhibit and its additional maps. Rather than having to repeat giving the maps that I have already delivered to the Provincial Defendant, to them with the Notice to Admit, I would be asking them to agree that the previous delivery of those maps, that they would accept those as being the copies of rather than attaching new copies to them just as -- as a -- in other words, there are several maps that have been delivered already with the atlas. Those are -- form part of the Notice to Admit. I have delivered all of those maps to the Federal Crown because they didn't have them in the same form as the Province, but I would be asking the Province to -- Provincial Defendant not to require delivery attachment of copies of the maps again to the Notice to Admit.
THE COURT: Is that the atlas that had the blueberries and the --
MR. GRANT: Yes, this is the blueberries and animal maps. All of them have already been delivered.
MR. GOLDIE: Well, if my friend is asking us to waive the requirement of the rule with respect to a copy of a document enclosing the Notice to Admit, I agree.
MR. GRANT: I agree.
THE COURT: Is that the document I have just had handed me here?
MR. GOLDIE: No. That, my lord, is the Notice to Admit with respect to the photographs.
THE COURT: Yes, all right, that we marked this morning.
MR. GOLDIE: And were given numbers this morning, yes.
THE COURT: All right, thank you.
MR. RUSH: Now, my lord, I am -- I am prepared to deal with the question of the qualification of Mr. Sterritt, indicated to my learned friends at the break that I would be willing to move to that at this time and I am prepared to do that.
THE COURT: Thank you. Do you wish to examine the witness further on his qualifications?

EXAMINATION IN CHIEF ON QUALIFICATIONS BY MR. RUSH:

Q I have one or two more questions, my lord. I should say that by way of the area of expertise, my lord, I am tendering Mr. Sterritt as an expert in the translation -- excuse me, description and mapping of the oral statements of the Gitksan and Wet'suwet'en hereditary chiefs and house members, about their house territories, boundaries and place names, and the transfer of these territories, boundaries and place names to one to 250,000 National Topographic Series Map. And I don't intend to ask too many further questions. I have canvassed Mr. Sterritt's expertise. Yes, excuse me.

Now, in addition to the questions, my lord, that I have already asked of Mr. Sterritt concerning his expertise, I want to ask one or two further questions and they are these: Mr. Sterritt, you have already testified that you worked in the field of minerals exploration for a period of 11 years, I believe?

A Yes, I did.

Q And in the course of that work and over that period of time I think you testified that you located certain features on the ground?

A Yes, I did.

Q And what were those features that you located?

A They were rock types, mineralized areas, sample locations of -- based on soil samples or silt samples, rock samples that we took in the course of assessing a given area that we were doing minerals exploration in. It ranged from prospecting to geochemical surveys and geophysical surveys. Geochemical surveys being the taking of silt, and soil samples for chemical analysis, and geophysical surveys being the application of geophysical methods such as an electric current through the ground based on two electrodes, and airborne surveys where you would have to determine locations on the ground as well.

Q And having done that, what did you then do following those locations?

A Well, ordinarily we used air photos and maps at a scale of one to 250,000 to locate where the sample had been taken, and we would locate that on a feature -- on the air photo or on the map and, subsequent to that, we would transfer the accumulation of information about rock features,

soil types and anomalous areas. We would transfer that information to maps at our base camp and at the end of a field season we would transfer that information on to other maps at a larger scale in the office in Vancouver.

Q And what percentage of your field work time was devoted to doing the work that you have just described?

A Out of the 11 years, in the first five or six years approximately 80 percent of my time was spent working on and with maps and carrying out this process that I have described.

Q And after that five-year period?

A It began to flip over. The earlier basis was 80 percent field work and map work, and about 20 percent administration and report writing. After that first five years, it flipped over to -- over a short period of time to become 80 percent administration and 20 percent field work, and involved the supervision of persons who were in the information gathering stage; in other words, the work I had been doing was information gathering and assessment of that information. Other people became involved in the information gathering and I supervised some of that work.

Q And they were involved in similar -- were they involved in similar types of work as you had previously been doing in the first five years of your experience in mineral exploration?

A Yes, they were.

Q And how did this field experience that you have described apply to the research which you subsequently did in determining the boundaries and territories of the Gitksan and Wet'suwet'en hereditary chiefs?

A It is almost identical. It's almost identical in the sense that I had to identify a feature based on a description of a hereditary chief. At first, I did that not necessarily in the field because we simply didn't have the means to get to the field. I was information gathering based on my experience and knowledge of a good part of the Gitksan and some of the Wet'suwet'en territory, and then it became information gathering in the field, and taking that information, locating it on a map, and then working with the information that I acquired or that others acquired and attempting to draw some conclusions

from that information.

MR. RUSH: And did you have a familiarity with the Gitksan and Wet'suwet'en laws and language, culture and society when you were doing that work?

MR. GOLDIE: Well, that's a leading question, patently leading.

MR. RUSH: What kind of familiarity did you have, Mr. Sterritt, with Gitksan and Wet'suwet'en society?

MR. GOLDIE: Surely the question is: What other knowledge do you claim to have that is of assistance to you as an expert.

MR. RUSH:

Q That's a good question. Mr. Sterritt, in terms of your knowledge, what other knowledge did you have that would assist you as an expert?

A The mapping of Gitksan and Wet'suwet'en features requires a knowledge of how the Gitksan and Wet'suwet'en features or Gitksan/Wet'suwet'en hereditary chief's name features. What I mean by that is a creek on a map could have a single English name over a 15-mile length of that creek and yet within that 15-mile length could have three different Gitksan names. So it required a knowledge that the names could vary. It required an understanding of the Gitksan language or required the assistance of an interpreter in situations in order to understand what -- what it was being relayed. It required an understanding of how mountains are identified and named because a single mountain -- what would be one mountain range on a map could have three or four different names. It required knowledge of how the Gitksan/Wet'suwet'en could own according to the house and crest system. For example, the Wolf, a Wolf house and a Fireweed house would have different territories and, if they were contiguous, there would be a boundary between them.

In some situations, a height of land could form a boundary between two hereditary chiefs but also one would have to be aware that a trail could be a boundary, that in some circumstances a boundary could cross a creek rather than run up and down it. And these are some of the areas that were important to the mapping of the features and of the -- ultimately of the boundaries of the Gitksan and Wet'suwet'en.

Q And how was this knowledge obtained by you?

A I obtained the information by conducting interviews

with the hereditary chiefs. The information was brought forward by the hereditary chiefs directly to me. They made a point of informing me and trying to teach me about these matters. And -- but generally through extensive interviews over a long period of time I gained this expertise.

Q And over what period of time was that?

A It ranges over a period of 15 years from 1973 until the present.

Q Okay. And when you were involved in your work with the mineral companies and mineral explorations, you indicated that you located certain features on maps. What kind of maps were they?

A They were different maps. The National Topographic Series is one set of maps that we used. If I recall correctly, about the turn of -- early into the 1960's, there was another series that were being used and I don't recall what they were, but basically the NTS series it's called, we use those, and then the companies that I worked for had draftsmen who prepared more detailed maps for company use on which detailed information was placed based on a given property, meaning a number of claims, minerals claims that were -- that the mining company owned and had assessed through detailed means.

Q And were maps of the kind that you have just described used over the 11 years of your work in mineral explorations?

A Yes.

Q And were similar types of maps used in relation to the information gathering that you did in respect of the hereditary -- the Gitksan/Wet'suwet'en hereditary chiefs?

A Yes.

MR. RUSH: Those are my questions with respect to Mr. Sterritt's qualifications.

THE COURT: Thank you. Mr. Goldie or Mr. Macaulay?

CROSS-EXAMINATION BY MR. GOLDIE ON QUALIFICATIONS:

Q Mr. Sterritt, would you state for his lordship again please just precisely what it is that you regard yourself an expert in?

A I am -- I have expertise in the mapping of Gitksan topographic geographic features on maps at various scales. I have an expertise in understanding how the Gitksan and Wet'suwet'en name and identify

features.

Q Then you say you are an expert in that?

A I consider myself to be an expert in that area.

Q Yes. Go on, please?

A The -- through my knowledge of how Gitksan and Wet'suwet'en people name features, I have an expertise in translating that information onto maps in order to come up with the features that would be contained within a house territory of a Gitksan or a Wet'suwet'en chief as well as the knowledge necessary to identify boundaries around a house territory.

Q What is the special knowledge required to identify a boundary?

A The understanding what a boundary is for a Gitksan house; that two isolated features, for example, a creek or several creeks and the intervening land that might encompass those creeks, what could be the boundary of a Gitksan or Wet'suwet'en house.

Q That knowledge of course is the same knowledge as the hereditary chiefs themselves?

A Yes. The hereditary chiefs have that knowledge as well.

Q And they have the knowledge of how they name features?

A Yes, they have, and that's -- they are the persons whom I learned that information from.

Q And they of course are the people who can identify features?

A Yes, and the hereditary chiefs have identified many of those features.

Q So that the skill that you possess and that they do not possess I take it is translating information given by them to you onto a map?

A Many of the hereditary chiefs have mental maps of their house territory. They are not skilled in the use of maps because of scale because a map contains a variety of information that makes sense to cartographers and map-makers, but the hereditary chief does not -- cannot appreciate perhaps what that information is, and I'll use an example --

Q Excuse me.

A Contour lines on a map --

Q Excuse me, Mr. Sterritt. My question was directed to your skill, and I am suggesting to you that your skill consists of your ability to translate information given by them to you onto a map. Isn't

that the sum and substance of your particular skill not possessed by the hereditary chiefs?

A Yes, that would be correct.

Q Now, with respect to that skill which I take to be the transformation of spoken or other information onto a map, this is the skill of a map-maker or a land surveyor?

A A map-maker or a land surveyor not familiar with the Gitksan or Wet'suwet'en culture or way of identifying features would find -- would have a very difficult time doing that job. For example, a mapper -- a map-maker as such would take information that is provided to them by other persons and simply draw on a map what is already provided, and they would -- they would be true to that but, in order to gather the information from hereditary chiefs and arrive at a -- as close an -- or an accurate representation of the territories of a hereditary chief and the features would have to be familiar with the culture and the way of naming.

Q Yes. I was speaking in more general terms that the transformation of information spoken or observed from the ground onto a map is the skill of a map-maker; is that not correct? I should have said transformation of that information onto a map accurately is the skill of a map-maker or a surveyor in general terms?

A Yes.

Q Now, I just want to be sure that I have understood some of your earlier evidence. I take it that your educational qualification which is relevant here is your course at B.C.I.T. on Mining Technician -- is a Mining Technician course at B.C.I.T.?

A Yes. I have a diploma in Mining Technology from B.C.I.T.

Q Right. Now, there is a course at B.C.I.T. on surveying but you didn't take that course?

A There is a Surveying Technology Programme and you come out with a diploma of Surveying Technology. There are a number of courses that are stressed in that technology. The programme that I went through included some of the courses that surveying technologists take.

Q What you might say elementary surveying?

A It may be identified as elementary but it is a two-year programme and you come out with the ability as a Mining Technician to be able to do -- or to be

able to use a transit and to use tables to do a proper survey of, let's say, mining claims or of diamond-drill holes in location to a given site, and certainly you don't end up with the advanced techniques involving other surveying methods that were developing at the time in 1965 and '66. I am talking about a lazor, I believe it is. I don't have the exact word, but there were new methods developing at the time and we didn't get involved in those but the surveying technology did.

Q The two-year course to which you refer is the Mining Technician's course?

A That's right.

Q And you required for that no previous work experience? There is no previous work experience required as a condition to entering that course, is there?

A No.

Q And your academic qualifications for entering the course was what, Grade 12 algebra and Grade 11 chemistry?

A Yes, except that I spent a winter in Vancouver upgrading my physics and algebra.

Q Yes. I am referring to the requirements for anybody to enter the course?

A That's right.

Q Yes. And the course includes geology?

A Yes.

Q But you don't classify yourself as a geologist?

A I am a Mining Technologist.

Q Yes. And there was -- there were courses with respect to the actual business of mining?

A Yes.

Q And there were six hours applied chemistry a week; is that right?

A Yes.

Q And drafting fundamentals, two hours a week?

A Yes. There was a drafting course.

Q Yes. And would I be correct in my understanding that there was -- that in the surveying course you were introduced to the business of map reading and map interpretation?

A I don't recall the exact -- I haven't reviewed the calendar of 1964, but yes, I think there was in surveying that there was -- that was part of the programme as well.

Q What might be termed a map reading component of that

course?

A How to -- how to take a map and to understand what's on it.

Q Yes, precisely. There is a map-making course at Camosun College, is there not?

A I don't know.

Q Now, you are not a B.C. Land Surveyor?

A No, I am not.

Q And as I understand what you have told me, the educational qualification that you received relates to map using in the sense that you were given an understanding of the conventional signs used on government maps?

A Yes.

Q You know what I mean by conventional signs?

A Well, there is a legend contained on a map and it has keys as to certain symbols which appear within the map.

Q Yes?

A So --

Q And the grid system?

A Yes.

Q And an understanding of scale?

A Yes.

Q What do you understand one to 50,000 to mean?

A One to 50,000 is a rough translation, is approximately one inch to -- pardon me, one mile on the ground equals a little over an inch on the map.

Q Yes. Well, the precise relationship would be one to 63,365. That would be an inch on a map equals a mile on the ground, would it not?

A That could be, yes.

Q Which is the larger, one to 50,000 or one to 500,000?

A Well --

Q Which is the larger scale I should say?

A In terms of scale, I often forget which way -- which is the designation, whether it is smaller or larger. Generally I use one to 50,000 as being the larger, the larger scale, because it's more detailed, but that may not be accurate, but I know how to translate from one to 250,000, from one to 500,000, down to one to 50,000. I know how to take an area within a one to 50,000 map and how to convert it into a larger map using a grid within that area.

Q Yes.

A And to convert it to a scale that would be

convenient to me or to whoever requires the map.

Q The larger the scale the more information you can get on the map; isn't that right?

A Yes.

Q And the one to 50,000 is a larger scale than one to 500,000?

A Well, if that's accurate, I mean, as a designation, that's right. You can get more detail in a given area on a one to 50,000 than you can on a one to 500,000 scale map.

Q And you used one to 250,000, didn't you?

A In the 1970's, the only money that -- I mean, it was my own money that I was spending and I could only afford to buy the one to 250,000 mile scale maps.

Q And you have done that throughout?

A I have referred to one to 50,000 from time to time. Yes, I have used that scale.

Q I don't recall seeing any maps produced by you one to 50,000?

A That's correct. In the last year, as I have verified information and checked it, I have referred to one to 50,000 scale maps.

Q Now, how do you determine distance on the map?

A There are several ways. One way is simply to apply the scale that's on the bottom of a map, transfer that to a piece of paper so that it is accurate with the map, and then measure the straight line distance between two features that you are mapping or that you are trying to determine. Another way is to use a wheel which is calibrated according to the scale of the map one to 50,000. You can adjust the scale and run the wheel across the surface. In this case, you can -- you don't have to go along straight line distances. You can run up a river and follow it and determine a distance closer to what would occur on the ground. Generally, a lot of the distances that I have used, unless I am trying to sort out a very specific feature amongst a number, I would simply use a straight line distance and the straight line measurement.

Q When you say the straight line measurements, using the scale at the bottom of the map?

A Yes, rather than the wheel. But I have resorted to using a wheel from time to time.

Q Do you recall what you did when you approved the metes and bounds description that Mr. Marvin George prepared with respect to the map which is appended

to the Statement of Claim, the latest Statement of Claim?

A I simply reviewed the metes and bounds.

Q You didn't verify the distances?

A No, I didn't. What Marvin George -- what I understand Marvin George did in that case --

Q Well, we can let him speak for himself later on. You used a topographic map, didn't you?

A Yes.

Q And that shows contours?

A Yes.

Q And you're fully familiar with vertical intervals?

A Yes, I am.

Q And you're able to determine the gradient or a slope of a feature from a map, are you?

A Yes. In my field work in -- with the mining company, a lot of the pace and compass work we did or chain and compass in order to transfer the -- to be sure that we had the right horizontal distance to identify where our points were, we had a conversion factor that we used for slope and converted the diagonal distance or the vertical distance to horizontal, and we had a -- when we did that, we had a small reference chart that we could use for different angles between of course -- well, any angle away from the horizontal.

Q That would have -- that solved the Algebraic problem that you would have had if you didn't have that little conversion factor?

A Well, it was much simpler but, when I did surveying with the transit in the field, I converted the vertical and the horizontal distances as well.

Q Yes, but the question I asked you was: Can you determine from a map with topographic features the slope of a feature?

A Yes, I can.

Q Yes, and you have done that?

A I have done that.

Q Yes.

A I have done sections of areas to try and determine -- from a plane survey, I have drawn lines across a series of features.

Q Yes?

A And using the -- by marking off on that straight line where the -- where the contours occur on that line and the distance between them transferred that information to the slope that you are referring to

and therefore come across with say a section of a mountain, a face-on view of a mountain or a hill or any number of features, and it will -- you can arrive at a fairly close determination of what that mountain should look like based on the line that goes across it.

Q Exactly. Everything that you have referred to is the sort of thing that is taught a soldier in his basic training, or maybe you are not familiar with that, but it is basic training in respect of map using and I referred my word map using to include topographic maps?

A I have not taken any soldier's training. I acquired these skills in the field and at B.C.I.T. and have developed those skills in the field.

Q I have here a pamphlet called An Introduction To Maps, and it shows conventional signs. That's the sort of thing that you are familiar with?

A I am not familiar with this pamphlet but the symbols that you are referring to in the pamphlet, many of those appear on any standard NTS map.

Q Right. At the bottom of that, below Conventional Signs, it says Contour Line, then it shows -- depicts exactly the process that you are talking about, that is, determining the gradient or slope of a feature by joining the lines -- equal contour lines and plotting the elevation from that?

A Yes, but as I say, I haven't seen this before.

Q No. Well, it's simply a pamphlet that is entitled An Introduction of Maps, B.C. Ministry of Environment. What I am getting at, Mr. Sterritt, is that all of the things you have described are the sort of thing that any user of topographic feature maps is familiar with?

A Well --

Q Scale, conventional signs, contours, orientation, the grid system. These are all matters that you have to become familiar with if you are even going to use a map intelligently. Wouldn't you agree with that?

A I think if you're going to use a map beyond simply referring to creeks, lakes and mountains on it, then you have to develop further skills, and I wouldn't say that any user of a map would have those skills.

Q I see. Well now, if I understand what you have done, you have in your identification of features and in the work that you have done and that you have

described to his lordship as part of your methodology, you have taken information given you and you have, what I call, extrapolated -- and by that I mean this: When Mr. Gunanoot talked about a big meadow, you didn't confine your consideration just to that meadow; you looked at it in a broader context. Would you agree with that?

A I think you should explain yourself further on that.

Q Well, I will put the question a little differently. The information that you obtained, and I will use the example that you gave yesterday which is a little fresher in our minds, of Jackson Flats, and you said that one of your informants indicated to you that that referred to a territory as well as a particular geographic feature?

A Yes.

Q That's what I meant by extrapolation of information?

A Oh, an informant -- I was provided with some information that connected feature or a name on a map with the name of Gal Tsaphl Hasii Yeeks.

Q I am going a step beyond that. On the map are the words Jackson Flats?

A Yes.

Q And that refers to a specific geographic feature?

A Yes.

Q And one of your informants indicated that it just wasn't that feature, it was the name of the territory or a territory?

A People -- hereditary chiefs would refer to the Geel territory at the head of the Skeena as Gal Tsaphl Hasii Yeeks. The specific area of Gal Tsaphl Hasii Yeeks is in the vicinity of Jackson Flats but the overall territory is sometimes referred to as Gal Tsaphl Hasii Yeeks.

Q What you did was you used your judgment in respect of the information that was given you going beyond the identification of a specific geographic feature of the NTS map?

A Are you referring to the name Jackson Flats?

Q Yes, I am.

A Well, no. I didn't use my judgment to do that in the sense that the Luus, Chris Harris, Steve Morrison also referred to the larger area of Geels as generally being Gal Tsaphl Hasii Yeeks, saying it was the territory of Gal Tsaphl Hasii Yeeks although the specific place name was within that territory.

Q All right. You were using -- you were using

information from a variety of sources to arrive at a conclusion as to the extent of territory which you designated with a given name?

A I didn't designate it with that given name.

Q It was your informants; is that right?

A Yes. They -- that's how they referred to that territory.

Q But they didn't draw any lines on a map, did they?

A No, not precise lines, that's right.

Q No. It was your judgment which is reflected in those lines?

A In parts of that territory, it is my judgment, and in other parts it is information provided by the informant.

Q Yes. And you're using judgment as to the extent of what they are describing because they are not drawing lines on the map; are they?

A No.

Q All right. Now, I suggest you also were engaged in the reconciliation of information. Would you agree with that?

A Could you explain what you mean by that?

Q Well, if you had information from one informant that either disagreed with or didn't quite jive with information from another informant, you used your judgment in reconciling that dispirit information?

A Sometimes it was difficult to determine exactly what feature was being identified and that could be a problem with either the interviewer, myself, or the person that I was talking do. And sometimes it may appear as dispirit information or through a process of discussion with different people could be the same and I have to sort that out.

Q Yes. You were -- that's what I meant when I said you were engaged in a process of reconciliation of information?

A Well, if that's part of the connotation or if that's the connotation then, yes, I agree with that.

Q And you were also engaged in the adaptation of information?

A What do you mean by that?

Q By that I mean you read historical materials, for instance, Barbeau Beynon?

A My primary source of information is the hereditary chiefs. It always has been. There are affidavits which support that, and I also consulted some historical information to see whether there might

have been references to who the -- let's, for example, say an explorer going through, who it was they met with, and I sought that out as a secondary source of information.

Q But that went into -- was a factor in the judgment that you applied as to where you put a line on the map?

A No. I can't say that it became a factor as to the judgment of where I put a line on a map. The hereditary chief's information did that. The presence of a hereditary chief in a given area helped, but didn't mean that a lineman on a map as a result of them being mentioned by an explorer.

Q I didn't suggest that. I said it was a factor in your judgment as to where the line went?

A You have to get more precise on that because it -- no, I can't say that it was a factor. It became supportive information, but the explorer could -- could have encountered a hereditary chief on the territory next to his and that wouldn't necessarily mean I drew a line further to the east or the west or north or south.

Q All right. Well, I didn't say it would necessarily, I simply said it was a factor which you took into account, otherwise, why would you bother your head about it?

A Simply to review the historical records. If they encountered a hereditary chief or if it encountered an Aboriginal person in, let's say, 1874, in a given area, was that person Gitksan, was that person Tahltan, or Sekani? And it was an element that I looked at.

Q All right. I am happy to use the word element. And it was an element which entered into your judgment, wasn't it?

A To a much lesser degree than the hereditary chiefs. The primary focus was the hereditary chiefs.

Q All right. And I suggest that you became involved to some extent at any rate in the interpretation of historical events?

A I familiarized myself with the historical record. The information of the hereditary chiefs sometimes to explain more fully about their territory, they told me about their history, and I also reviewed the written record.

Q Well, the example that came to my mind was in Mr. David Gunanoot's evidence. He talked about battles

with the Stikine and how that was resolved and how in his view that contributed do his territory. Do you recall that?

A Yes.

Q Didn't you use that in determining where you would draw lines on a map?

A In the collection of information over a period of time, I gathered information and I attempted to extrapolate where a boundary might be.

Q Yes?

A That was an information gathering period. In the last two years, I have gone through what I call a verification process where I have reviewed in greater and greater detail with the hereditary chief where that boundary goes and in many, many cases I found that my extrapolation based on a much lesser amount of detail and that based on the subsequent work that the boundaries that I had extrapolated subsequently would be moved to a more accurate location according to the mental map of the hereditary chiefs.

Q Well, you feel more confident in the last result than you do now with respect to the first result?

A Oh, yes, I do.

Q Yes?

A In the -- in the very first map that I did in 1977, I had some information and we came up with a general description of the external boundaries of the Gitksan and the Wet'suwet'en, and we have done -- gathered a lot of information since and, in the last two years, far more.

Q Yes, all right. But if I understand what you are telling me correctly, your -- the results that you took from tales of past battles, for instance, played a lesser part in your final effort because you are more confident that you have identified features according to what the hereditary chiefs have told you. Isn't that a fair way of putting it?

A The process that I engaged in with the hereditary chiefs in the past two years has built on increasing amounts of detail and much more accurate ability to locate where those features were, those features are, and also to locate boundary lines based on their knowledge along linear features, like creeks or rivers, as well as heights of land and trails and so on. And I have -- they are much more precise. They are a much better boundary.

Q Well, I don't want to get into that particular aspect because this is confined to your qualifications, and I was going to put to you that with respect to all of the things that I have gone through with you, you had no particular educational -- formal educational qualifications?

A I have probably -- I have in the past 15 years built, on the previous experience that I have with mapping and map identifying features and subsequent, have built a very strong expertise in doing the mapping that I have set out on the final map that will appear with my opinion summary.

Q Well, let me ask you one further question then: Do you now rule out the use of historical events in your latest map? Have you ruled out the use of historical events?

A The -- to the extent that a hereditary chief has provided me with information about the location of their boundary and that that boundary is located there because of historical events, I cannot rule that out. They themselves have identified the features and identified the boundary, and an example of that is that Xoo or Treaty Creek which flows into the Bell Irving River, that is a boundary area and there is historical events that led to that but the hereditary chief has identified that information for me.

Q My question was: You have ruled out your own judgment in relation to historical events? Is that what you are telling me?

A To a large degree, yes, I have attempted to map the boundaries as they have been told to me by the hereditary chiefs.

Q Now, I asked you if you were a B.C. Land Surveyor and you answered no, but are you familiar with the educational requirements of a B.C. Land Surveyor?

A No, I am not.

Q Do you know how long a B.C. Land Surveyor must article before he may write his final examinations?

A No. I couldn't tell you that.

Q I am instructed it is three years nine months before, including 12 months on the field, before the final exams may be written. That doesn't ring a bell with you?

A No.

Q Well, I want to direct your attention to the Land Surveyors Act and ask you a few questions about

that. Now, page 10, the present Land Surveyors Act begins, and I haven't included all of it.

A Which page?

Q Page 10, it is down at the lower right-hand corner, a typed page number, Mr. Sterritt. First, do you see the page with Section 35 on it, it is page 11? It is the next one. And it reads:

> "A person shall not be admitted as an articled pupil in land surveying until he satisfies the board of his knowledge of arithmetic, mensuration..."

What's mensuration, Mr. Sterritt, or are you familiar with that term?

A I am not familiar with that term.

Q

> "...algebra, plane and solid geometry".

Do you know what the difference is between plane and solid geometry?

A I don't recall what the distinction is between them.

Q

> "Plane and spherical trigonometry".

You are familiar with trigonometry?

A I have taken a course in trigonometry and the use of logarithms.

Q Do you know the difference between plane and spherical trigonometry?

A I don't recall.

Q

> "Elementary physics".

You are of course familiar with that?

A Yes.

Q

> "The use of logarithms"?

A Yes.

Q You have used logarithms?

A Yes.

Q And those are the requirements prior to articling. Now, in Section 40:

> "Except as otherwise provided in this Act, a pupil shall serve under articles for 3 years 9

months, including at least 12 months' service in the field in the Province."

And that may be shortend if the surveyor:

"...holds a degree of bachelor of applied science in engineering, or a degree in surveying, mathematics or the physical sciences from the University of British Columbia",

or equivalent, or:

"if he is a member in good standing of the Association of Professional Engineers."

You are not a member of the Association of Professional Engineers?

A No, I am not.

Q And the courses you took at the University of British Columbia were in arts, were they?

A Yes, English and History.

Q And the examinations are set out at Section 43:

"No article pupil in land surveying shall be admitted as a member until he has passed the examination set by the board in the subjects specified by the bylaws, which shall include (a) laying out and dividing land."

I don't understand you to have told his lordship that you have done that?

A No. The expertise that I have is in locating features on the ground and identifying the Gitksan and Wet'suwet'en name and in having an understanding of the Gitksan language or, where required, to have an interpreter assist me. These are requirements for something completely different.

Q Well, they are the requirements for a land surveyor?

A Yes, which I have an expertise in another area and these are requirements for a land surveyor. I have some of the skills or I learned some of the skills of a surveyor but I never did go any further than that and I didn't intend to at the time.

MR. GOLDIE: No. And of course therefore you have not passed the examinations in any of the items numbered A to H inclusive?

THE COURT: Perhaps, Mr. Goldie, you will let him just read those seven paragraphs during the short adjournment.
MR. GOLDIE: Thank you, my lord.
THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED PURSUANT TO AN ADJOURNMENT)

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.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Ready to proceed, my lord.
THE COURT: Yes, Mr. Goldie.
MR. GOLDIE:

Q Mr. Sterritt, would I be correct in my understanding that your survey experience, or your experience in the field generally, did not involve you in the determination of boundaries?

A The -- if you're referring to my experience in minerals exploration to the extent that I had to determine distinctions between two different rock types or mineralized zones and apply -- apply a certain amount of judgment as to where the -- the boundaries between those two rock types occurred, or locate them exactly, if the rock types were on surface or we had conducted diamond drilling and obtained accurate information through diamond drilling and bringing samples to the surface and then surveying down the hole, which I did, I used ways of determining the various depths in a diamond drill hole were, which way the core was going, the drill pipe, the drill stem, at what angle, how it varied from where we had anticipated that it would go, to the extent that sometimes I had to extrapolate and sometimes I had accurate information then I came up with, or the people that I worked with came up with a map that indicated boundaries between two different rock types or mineralized zones.

Q You're speaking there in terms of boundary as being a change in a geological structure from one to another?

A Yes.

Q Do you recall being examined for discovery on the 25th of February of 1987?

A I recall the examination for discovery, I don't recall the dates.

Q Well, I'm going to read to you questions 219 to 224 in volume one, my lord.

"Q Did any part of your work involve surveying?

A Yes.

Q And would you have undertaken survey work in both of the areas that you have identified in the claims area, namely Hazelton and near Morice Lake?

A That is survey as a general term. There

are many aspect as to surveying the answer is yes, but --

Q If you want to particularize the kind of surveying that you did please do.

A Used a transit and a plane table and pace and compass. Those are three different types of survey.

Q The object of this would be to fix the location either of a claim or of a particular feature?

A That is correct."

Do you remember being asked those questions, and did you give those answers?

A Yes, I did.

Q And they are true?

A Yes.

Q Question 223.

"Q And the results of that surveying would be included in the reports that you made to your employer?

A I should go back. It was to fix a feature, primarily a feature.

Q You were not involved then in surveying claims?

A No."

Were you asked those questions, and did you give those answers?

A Yes, I did.

Q And were those answers true?

A Yes, those answers are true. I did not survey, conduct a survey of a mineral claim. I did do some transit work of diamond drill holes, the location of diamond drill holes and a grid line that we had cut, and we were locating where that was on the ground.

Q Well, you were not chief of the party, of a survey party, were you?

A No, I wasn't.

Q Now, you refer to a plane table, and I think you've explained this in your -- in your evidence, and my recollection is you stated it was for plotting features on a plane or flat surface in a limited space, and I believe you used this room as an example?

A Yes.

Q And the experience in that regard that you rely upon I take it to be in volume 112, which is the transcript for June 20th, 1988 at page 7015. And at page 7015 you say at line 15, and this is 1964, that the logging was shut down for the fire season and you went out for a prospector who didn't know the area. And that would be an occasion when you would be using government maps?

A Yes, we used government maps there.

Q Right.

A But we didn't do any plane table surveys there.

Q No, I appreciate -- I should have indicated to you that I was going to review some of your general experience and then I'll come to the plane table.

A Okay.

Q And you say at line 23, "I went to work for Amax and went out to Xsi Andap Matx, north of Kisgegas." That wasn't the name that was known to the prospector or to you at that time, was it?

A It was known to me, but not to the prospector. It's on the map as Goat Head Creek.

Q Yes. Page 7016 you gave your experience in two further summers, and then you graduated from BCIT in 1966, is that right?

A Yes.

Q And I don't see anything in those summers with respect to plane table work.

A I assisted in plane table work at Galore Creek in 1962. I didn't do it myself, but I knew what the geologist who was doing the plane table work was doing, and I was the rod man at that time.

Q Yes.

A I -- as I recall I did plane table work on a tributary of Xsi gwin K'aat, Fiddler Creek.

Q Well, that was with Kennecott?

A No. Well, Galore was with Kennecott -- Kennco.

Q Yes.

A It was 1967 that I did some plane table work in --

Q For Amax?

A For Amax, yes.

Q All right. And you put it as helping to do plane table surveying. That's correct, is it not?

A In 1963?

Q No. I beg your pardon.

A Page 7017, line 25, answer, well, one of the other duties in the summer when I first worked for Amax was helping to do plane table surveying. Is that

1962?

A No. 1962 was my first summer with Kennecott.
Q Yes.
A 1964 was my first summer with Amax.
Q And was that helping to do plane table surveying?
A If I remember right some was done at Luu ska Tee'it, or near Tomlinson Mountain.
Q Yes, but you were helping?
A I was helping there, yes.
Q Yes. And, in fact, that is what you have done to the extent that you have used a plane table?
A No. I have done some plane table work.
Q Well, let me be sure that I've got this right then. It is used for the location of features within an area of about the size of this room?
A Oh, it could be several acres. It could be larger than that. What you end up with is a plane table with a piece of paper on it, and whatever scale you -- whatever area you want to survey within sight can be transferred at the scale that you would require to take all of that area on to a plane table.
Q Yes. And --
A So it could be a larger area than this room, but you could also do an area like this room.
Q Let me make sure I have your evidence correctly. Page 7017, line 29;

"A That is away of doing very detailed mapping right on the ground and using a plane table. A plane table is something a little bigger than this, about 24 inches by 24 inches. You put a piece of paper on it and then you have -- and you orient it north and south, and you have a survey instrument that lays right on it with a parallel line, and then the job of someone like myself or someone else was to go around with a stadia rod so you would get angles and distances...".

Now, just pausing there. Were you correct in giving -- is that -- were you accurate in giving that evidence?
A Which part?
Q Just what I've read to you.

A Yes. A person would go round and get -- use a stadia rod and you would get your distances and angles from that. You would orient -- you'd have to have a north arrow north and transfer the information based on a north arrow onto the map.

Q And you said someone like myself or someone else was to go around with a stadia rod. Someone like myself. You were talking about yourself as rod man?

A I was talking about someone like myself. I also did some of that plane table work.

Q I'll come to that, but the person who was operating the survey instrument on the plane table was taking angles, and then there would be distances done by a chain, is that right?

A You don't have to -- yes, you can use a chain, but you don't have to.

Q All right.

A With a stadia rod you don't have to have -- you don't necessarily use a chain.

Q And you could -- and then continuing.

> "...so you would get angles and distances, and you through the machine that was on the plane table you could then draw maps, and you would have a certain scale you would be using so you could -- well, you could map an area the size of this room quite easily, or twice as big quite easily."

What you mean by that is you can map on the plane table according to the scale what is within visual sight?

A Yes.

Q And the primary use for that was the location of features?

A Yeah. Well, you would -- from that you would be able to do contour lines, you would be able to identify where the geological features were. Yes, rock types, mineralized zones.

Q But your employer was interested in outcroppings. That was the kind of feature he was interested in, wasn't it?

A When you use the plane table you were interested in a map of greater detail than you could get from any existing --

Q Yeah.

A -- Government source.
Q Now, that's a far different proposition --
MR. RUSH: Excuse me. Did you intend to read the rest of the answer that you have just quoted except for the last sentence?
MR. GOLDIE: No, I'll read that.
Q And the last part of your answer was, "And I learned to -- I learned what the process was, and I assisted in doing that." You --
A Yes.
Q You were an assistant?
A Yes.
Q Yes. Thank you. Now, that's a far different process than a surveyor utilizes when he's establishing a boundary, isn't that right?
A A surveyor in establishing what kind of a boundary do you mean?
Q Well, a boundary using monuments and laying out, to use the words of the Land Surveyors Act, laying out and dividing land.
A Yes. A surveyor generally works in reverse. A surveyor takes a map, applies a line to it and then goes out and locates that line on the ground. And that is, yes, very much different.
Q Well, you say generally. Does that --
A Well, specifically too.
Q In unsurveyed territory when the surveyor is sent out, for instance to survey the mineral claim, he is not working from in the terms that you've just described, is he?
A Yes, he is. What happens is when you're doing a mineral claim is first of all the crew goes into an area using generally just pace and compass.
Q Yes. It's staked?
A Cuts a line as when you stake the claim.
Q Yes.
A And you blaze trees and set up monuments.
Q That's right.
A The surveyor comes along later and surveys what you have put onto the ground.
Q He surveys by determining what is on the ground accurately tied into the provincial system, isn't that correct?
A Yes.
Q Yes. Now, that's something far different than the description you've given us of your work on the plane table?

A They are two different techniques.
Q Yes. And the second one is much closer to what has been done in this case. Namely, the development of a metes and bounds description namely from monument to monument establishing a boundary?
A Well, the metes and bounds was established primarily because of the lis pendens that the hereditary chiefs wanted over the territory so as to identify which property -- which deeded land and lots would be affected by the lis pendens. And that process, it was a separate one from the process that I was engaged in.
Q Well, whatever it was, the one that is closest to mapping as a land surveyor would understand it is you've described as something done for the lis pendens, I'm not familiar with that at the present time, but the establishment of boundary lines is the work of a land surveyor, and that's not what you have done?
A It's -- it's part of the work of a land surveyor, but the hereditary chiefs over centuries have established their boundary lines, and the work that I have done is in relationship to the boundary lines that they have established, and they did -- they established those boundary lines without benefit of a transit.
Q The -- at page 7270, which is volume 113 -- 115. I'm sorry.

THE COURT: I'm sorry. The page number again?
MR. GOLDIE: It's page 7270, my lord.
MR. RUSH: I'd like to place the transcript in front of him.
MR. GOLDIE: Yes. By all means.

Q At line 32 Mr. Rush put this question to you.

"Q Now, Mr. Sterritt, in March of 1987 was a metes and bounds description of a Gitksan Wet'suwet'en territories prepared that reflected certain changes of the external boundary of the Gitksan Wet'suwet'en territories?
A Yes.
Q Was that description a part of the summary expert opinion report that was prepared at that time by you?
A Yes."

Now, in that question -- in that answer were you

referring to the lis pendens?
A I was referring to the fact that a metes and bounds was attached to the summary expert opinion report that I prepared.
Q Yes, but the metes and bounds was not done by you?
A No, it was not.
Q All right. Thank you. Well, did the map follow the description or did the description follow the map?
A The description followed the map.
Q And who prepared the map?
A I prepared much of the map, Alfred Joseph and Leonard George, and to a certain extent Glen Williams, but Marvin George drafted the map.
Q All right. Just one other point before I move on on this question. In your examination for discovery at question 301.
MR. RUSH: Volume, please?
MR. GOLDIE: Volume one.
Q

"Q Have you taken any courses at any educational institution in the history of native peoples?
A No, I haven't."

Were you asked that question, and did you give that answer?
A Yes, I did.
Q And it was true?
A Yes.
Q And it is true?
A I have over a period of time learned history from the Gitksan and Wet'suwet'en people. I have taken other courses in history, but I have not taken a course at any institution in Gitksan or Wet'suwet'en or other Indian history.
Q Now, Mr. Sterritt, when you looked at the Chris Harris map, and you've given evidence with respect to that.
A Yes.
Q You endeavored to relate what you saw there by tracing the natural features from a government map on to your tracing of the Chris Harris map?
A Say that again, please?
Q Well, let me put it another way. When you traced the Chris Harris map you added certain things to it?
A Yes.
Q And one of them was some of the natural features?
A Yes.

Q And you did that by overlaying a government map?
A Underlaying a government map.
Q Or underlaying a government map. But the natural features were copied from a government map?
A Yes.
Q And that is something that anybody with patience and familiarity and -- patience and tracing paper and some familiarity of map reading could do?
A Yes.
Q And you did the same thing with the trapline maps?
A No. That was a different -- that was a different process because of the scale of the trapline maps was different, and they had to be transferred as best I could to the scale that I was using.
Q That, again, is a process which is quite a common one for map users?
A For -- well, I think I would distinguish between map users and people familiar with map work.
Q It's not map making though, is it?
A Well, I disagree with you on that. What the result is regardless of -- of the transfer process becomes a map.
Q Yes. Well, transferring the line from one map to another of different scales is surely not map making?
A It's part of a map making process.
Q Well, then I take it that the maps that you were speaking to at the time I objected to your evidence are the product in part of history, genealogy, anthropology, these are all factors which have taken been into account and come into play, and the information you have received from the hereditary chiefs?
A In order -- no. I have -- in terms of anthropology I can't speak on that.
Q Well, history?
A History, genealogy, in order to determine why a given person appears on a map or in a given area, and whether or not they are part of the house that own that area I have had to resort to -- I have done some genealogical work.
Q Yes.
A And in order to try and trace back or project forward who the proper owner is of that territory, and I have relied on the statements of the hereditary chiefs as to ownership of that area, but sometimes it was necessary to review the genealogy to

determine a connection between that person and the house that -- that owned that territory.

Q And in respect of that you did not apply any of the practical skills that you learned in the mining camps?

A Well, that's a different analysis. I didn't do any genealogical work when I worked for a mining company.

Q No. That's precisely my point. That you in respect to the extent that historical and genealogical matters are reflected in the maps that you were speaking to in your evidence earlier there is nothing in your education of a formal character or in your practical experience in the mining camps that is reflected in those maps to the extent that you contributed to them?

A No, not from the mining camps, but the buildup of expertise can occur on the ground in a unique and special situation, and that's what I did.

Q Let me ask you a couple of questions about hereditary chief, because I believe that his lordship made reference to that. You held the name that you now hold when you were examined for discovery in 1987?

A Yes.

Q And I take it that you didn't have to, if may use the word, pass any tests when you took that name?

A No. Gitludahl, Pete Muldoe, and Dinii or 'Niisgimiinuu, Alvin Weget, felt they wanted to pass that name along to me.

Q Yes. So that whoever invited you to accept that name, and your subsequent acceptance of it, didn't examine you with respect to your knowledge of the history of the house or the history of the Gitksan people or your knowledge of territories or the like, they were satisfied that you had sufficient knowledge?

A The hereditary chiefs are evaluating individuals all the time, and determining in their own minds the qualifications of an individual to take a name, and to -- and whether to take a hereditary chief's name. In terms of the House of Gitludahl I was adopted into that house. I have not undergone the rigorous historical education similar to the type that Tenimgyet, Art Mathews Jr. described when he was on the stand. There is a very rigorous process whereby a person learns their house histories. I am familiar with some of the house histories of Gitludahl. Since I took the name I have learned

more, but I do not have, and it will take some time to acquire, the detailed and indepth knowledge of the histories of Gitludahl.

Q You were -- you were not a Gitksan until your adoption in 1974 then?

A Yes, by blood I was related to a Gitksan person, my father, but I became -- when I was adopted by Gitludahl, Moses Morrison, I was considered Gitksan at that time.

Q Yes, sir.

A I have been considered since birth an Indian person by the people of our area. I was raised in that way. But in terms of being adopted into a house that occurred in 1974.

Q Yes. I want to refer you to volume two of your discovery at page 823.

Q Do you have any knowledge of Gitksan and Wet'suwet'en laws which suggest or require that when ownership and jurisdiction is in question only the person who claims that ownership and jurisdiction can speak?

A What I have been told by the hereditary chiefs is they must speak to that. I can't.

Q Mr. Sterritt, I know what you have been told. I'm asking you about your own knowledge of Gitksan and Wet'suwet'en laws. Do you understand that?

A I understand that you were asking me about my knowledge of Gitksan and Wet'suwet'en laws.

Q All right. Now, from your knowledge has Gitksan and Wet'suwet'en laws got anything to do with the directions given you by the hereditary chiefs that you are not to answer questions about their title and jurisdiction?

A They have -- you have to ask the hereditary chiefs.

Q No. I am requesting you of your own knowledge. If you don't have knowledge say so.

A I have a limited amount of knowledge.

Q I want you to speak from that limited amount of knowledge.

A From that limited amount of knowledge I am not sure whether that is part of the law or why they did that."

Were you asked those questions?

A Yes.
Q And did you give those answers?
A Yes. The hereditary chiefs --
Q Excuse me. And are those answers true?
A Yes, those are the answers I gave. And the hereditary chiefs had instructed me that I could not speak on their histories or their laws, because they themselves were the -- had to speak to the details. And there was instructions that I was given. The -- I was in a double bind. The court was ordering me to speak and they were ordering me not to. I respected that it created a problem.
Q You stated that you didn't have very much knowledge?
A In the context that was described by Art Mathews Jr. where he himself went through a process of over a period of four months of learning the histories of his house, yes, I didn't have much knowledge, but I have a knowledge of the histories of the Gitksan and Wet'suwet'en. And I am getting more information or more detail about the histories of the house that I belong to. In the case of Nii kyap, David Gunanoot, he had told the same histories to me over and over. There is a situation where I did have more detail, but I was under an order from the hereditary chiefs not to speak it. They themselves wanted to be examined and come forward and deal with their own histories and laws.
Q And you don't know very much about the history of your own house, do you?
A I don't know all there is to know, but I'm learning more about the history of my house. I do know something about it, yes.
Q I'm going to refer you to your examination for discovery at question 973. Question -- and on page 105 you say -- now, I should say, my lord, that this is a reference to a paper that the witness -- you say quote --.

MR. RUSH: Sorry. What is the page?
MR. GOLDIE: 172, question 973.

"Q On page 105 you say, 'What is the evidence of title today. Our house

histories exist today. We know what they are.' Would you give me the house history of Gitludahl, please.

MR. GRANT: If he knows it and if he is authorized to give it.

MR. GOLDIE: I would like you to enlarge, please, Mr. Grant, on what you mean if he is authorized to give it?

MR. GRANT: All I'm saying is if this is one of the areas that the chief says he is not allowed to speak on he can say that.

MR. GOLDIE: I want to make that perfectly clear I do not accept the proposition that the plaintiffs can dictate the area of questioning in this examination. If the witness refuses to answer the question on the basis that he is being forbidden to that is something which I don't accept.

Q Now, Mr. Sterritt, what is the history of the House of Gitludahl that you said existed in September 8th, 1983?

A I referred to a history of Gitludahl and I don't know it.

Q You don't know it?

A No."

Were you asked those questions, and did you give those answers?

A Yes, I did.

Q And they are true?

A They were true. I have learned more about the history of Gitludahl since then.

Q Since February of 1987?

A Well, before that I knew some of the history about Gitludahl, and now I know more about it.

MR. RUSH: I think in fairness to the witness the next question should be read.

MR. GOLDIE:

Q This 976, my lord.

"Q You say that under oath, Mr. Sterritt, that you don't know the history of the House of Gitludahl?

A I don't know the detail of the history of Gitludahl."

You were asked that question, and you gave that

answer?
A Yes, I did.
Q And the answer is true?
A Yes.
Q Today?
A I know more of the detail today, and I am continuing to learn about the histories of Gitludahl.
Q And I suggest you know no more about the history of any house?
A Repeat that question, please.
Q I suggest to you that you know no more of the history of any house than you know that of Gitludahl?
A Oh, but I just pointed out to you, Mr. Goldie, Nii kyap, David Gunanoot, I would guess in the neighbourhood of six times has told me his -- a part of his history.
Q When did Mr. Gunanoot die?

MR. RUSH: Well, before that question is answered maybe Mr. Sterritt hasn't completed the answer to the last question that was posed to him, and if he has more to say I think he should be allowed to say it.

MR. GOLDIE: Well, carry on, please.

A Nii kyap, David Gunanoot, started talking to me in the mid seventies, and he always sought me out and sat me down and he talked to me about both the adaawk, the histories of Nii kyap, Ant'imahlasxw, which are the stories that he had learned. And some of his adaawk he repeated to me in the neighbourhood of five or six times. So have other hereditary chiefs in the course of trying to explain something about their territory, or have also told me some of their history, but it would be untrue to say I don't know anything about the history of the other houses.
Q When did Mr. David Gunanoot die?
A He died in the fall of 1987.
Q So he was -- all right. Now, I'm going to read you question 980. Well, I'm going to start at 977, which follows the question that my friend asked me to read. Question 977.

"Q What did you mean when you stated in December 1983, 'Our house histories exist today. We know what they are.'?
A Our refers to the Gitksan and Wet'suwet'en people.
Q If you want to tell me what those histories are that are referring to

proceed.

A I can't tell you. I know they exist. The hereditary chiefs know them.

Q But you don't?

A I don't know the house history of Gitludahl.

Q Do you know the house history of any house?

A No. You mean the detail of it? I don't know. I know very little. The hereditary chiefs are the ones that must answer that."

Were you asked those questions, and did you give those answers?

A I did, and --

Q And are they true?

A I did, Mr. Goldie.

Q Excuse me. I want an answer to that question. Are they true, the answers that you gave?

A To the extent that the hereditary chiefs had instructed me not to speak I was under -- I was under -- I had a problem there, and I could not speak to them.

Q Are you under any restriction today?

A The hereditary chiefs who have come to court have related portions of their history, or in some cases more. I'm assuming that the instructions that I was given then they have not been lifted, but I think that there is -- I think there is a difference. I think that I could refer in a general way to some of the histories.

Q So the way out of the double bind that you perceived yourself to be in was to plead ignorance in 1987, an ignorance which you say you don't have today; is that a fair way of putting it?

A Well, I -- Mr. Goldie, in the previous question that I answered I pointed out to you that I didn't know all of the detail, and I didn't say -- in that earlier question that was reminded to you by Mr. Rush I pointed out that I knew some of the histories, but I didn't know all of the detail that was necessary to tell them, and that was the situation.

Q Mr. Sterritt, the question I put to you was that in order to escape the double bind that you described you pleaded ignorance which you now say you don't have, is that right?

A As I pointed out, I qualified my -- the points I was making at the time in response to that other question in the examination for discovery.
Q All right. I'm going to read one further question, 981.

"Q But you have informed yourself -- when you drew the outline of the boundaries on the map you have informed yourself of the matters from the chiefs?
A Chiefs said where the boundaries are
Q Yes. And you transcribed that boundary, did you?
A That action doesn't translate into house history necessarily."

Did you -- were you asked those questions, and did you give those answers?
A Yes, I did.
Q And are they true?
A Yes. That I have spoken to that same question earlier today, it's a similar question.
Q Yes, but you -- you say now that history is an ingredient of the house boundary?
A Well, what I said in that question there is that the action of drawing the boundary didn't necessarily translate directly to history, but the hereditary chiefs in ending up with a territory, house territory at some point, particularly in the external boundaries there may have been a historical development, a historical event that led to that boundary being where it was, but the action that I took in receiving information from the hereditary chiefs, and then being told about a boundary or drawing a judgment about where the boundary went between two points, that itself isn't a factor of history -- isn't necessarily a factor of history.
MR. RUSH: My lord, in fairness to the witness I think my learned friend should ask the witness -- should ask the witness about the next three questions he posed in discovery.
MR. GOLDIE: My friend can do that in re-examination, my lord.
Q The -- Mr. Sterritt, you have stated, if I understand you correctly, that historical events are reflected in what the chiefs told you?
A Yes.
Q It is not necessary for you under those circumstances

to have knowledge of those historical events?

A I -- in terms of the process that we engaged upon in the past year of hereditary chiefs doing affidavits of the territories it isn't where they define their boundaries, and they define their territories, it isn't essential that I have detailed knowledge about their histories to locate those features and to define a boundary.

Q By the way, we have had a number of affidavits delivered recently, about a week ago. They contain the metes and bounds descriptions. Are you responsible for the descriptions in those affidavits?

A The descriptions in the affidavits arise out of a process. I wouldn't necessarily describe those as a metes and bounds. They are a written description of the boundary. But let me tell you how they are arrived at.

Q No. I just asked you if you prepared them.

A I'm partially responsible for them to this extent, I prepared a first written description, I passed a copy of that along to Marvin George or Richard Overstall to assist with the written description. What we dealt with in doing those descriptions is the -- a detailed metes and bounds which would be meaningless in terms of the mental map of the hereditary chief, or in terms of sitting down with him would be meaningless to him, and perhaps to you, and I -- as well as opposed to the mental map that the hereditary chief had, and so I had to move to a middle ground, and I relied on the assistance of Richard Overstall and Marvin George to come up with the eventual description that was in there. And what I also did was went through a number of drafts. I reviewed the first draft with the hereditary chief who would be signing the affidavit, and went over it a number of times to see whether the description was what he understood the boundary to be, and in some case went over it many times where the chief pointed out that the area, either a feature or the area that was within the house territory as he knew it was accurate or not, and if it wasn't he corrected me and I moved from there, but it was that kind of process. So I can't say that I completely prepared the description in the affidavit. I had assistance with that.

Q The three people including yourself went through a

process of juggling and adjusting?

A Well, the hereditary -- I mean, there was the definition that was necessary for Marvin George to be able to map what was in the affidavit, and there was the necessity for the hereditary chief to know what was in the affidavit.

MR. GOLDIE: I have no further questions.

THE COURT: All right. Thank you. Will you have some cross-examination, Mr. Macaulay?

MR. MACAULAY: I'll consider that over the adjournment, my lord, if I may.

THE COURT: We'll resume then at ten o'clock tomorrow morning.

THE REGISTRAR: Order in court. Court will adjourn until 10:00 a.m..

(PROCEEDINGS ADJOURNED TO JUNE 29, 1988 AT 10:00 a.m.)

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

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Peri McHale, Official Reporter
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