Vancouver B.C.
January 16, 1989.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia, Vancouver, this Monday, January 16, 1989. Calling Delgamuukw versus Her Majesty the Queen, my lord.

THE COURT: Excuse me, Mr. Grant.

MR. GRANT: Yes, my lord.

THE COURT: I would like you to dispose of a matter here. I have read the two letters, one from Miss Albright to Mr. Overstall dated June 2, 1986 and one from, quote "Richard" close quote, which I assume is Mr. Overstall, to Miss Albright, dated December 19, 1986 for both of which privilege has been claimed. The letter of June 2, 1986 is the kind of exchange which might be expected between a client and a consultant during the course of preparing a report for litigation. The letter is not relevant to any matter of substance or to the credibility of the witness except perhaps to demonstrate her independence, and I think it properly falls within the classification of documents which should be protected from disclosure as part of the solicitor's brief. I think the letter of December 19, however, is one that must be produced to defendants' counsel as it deals with substance and organization of the report in what may or may not be meaningful. Having decided that it must be produced, it is probably better that I say no more about it as other evidence and the later submissions of counsel may give it a different complexion from what I might say about it now. I return the documents which Mr. Rush handed to me for this purpose and there will be an order for production accordingly of the letter of December 19, 1986. Thank you. Give those to Mr. Grant, please.

THE REGISTRAR: Very good.

THE COURT: Thank you. Mr. Grant?

MR. GRANT: Yes. My lord, I wish to wish you a happy new year. This is the first time I have seen you since the new year.

THE COURT: You too, Mr. Grant, and all your friends.

MR. GRANT: Thank you. I would like to call as the next witness, my lord, Miss Heather Harris. Would you come up and take the stand.

HEATHER HARRIS, a witness called on behalf of the Plaintiff, having first been duly sworn, testified as follows:

THE REGISTRAR: Would you state your name for the record, please, and spell your last name.
A Heather Anne Harris, H-a-r-r-i-s.
THE REGISTRAR: Thank you. You may be seated.
MR. GRANT: My lord, Miss Harris is tendered as an expert witness on Gitksan kinship and social structure including as part of that the research formatting and development genealogies. My lord, just so that you appreciate what is meant, the evidence will show that kinship, quote unquote, means in anthropological terms how people are related. And social structure means the major institutions and organizing principles of a society. And thirdly --
THE COURT: Sorry, what is social structure again?
MR. GRANT: Major institution and organizing principles of a society. And of course -- and genealogies are charts that diagram kinship. Now, before proceeding I can just advise your lordship that in this case a summary opinion was delivered to the defendants in late January, early February 1987. Answers in lieu of a Rule 28 examination arising out of that opinion were delivered to the defendants in May of 1988. And there was an amended summary opinion which incorporated those answers.
MR. GOLDIE: Some.
MR. GRANT: Incorporated some of those answers delivered November 1988.
MR. GOLDIE: And dated April 1988.
MR. GRANT: Yes. It was dated April 1988. It was delivered in November 1988, but that summary opinion, all of the material in there was either in the February -- the January '86 opinion or in the answers of May 1988. Now, I'd like to provide to the court, and I have already provided to my friends, a volume one of the document -- a document binder of Heather Harris. And this can be the exhibit copy here.
THE REGISTRAR: Thank you.
MR. GRANT: And I will now proceed to examine the witness on qualification, my lord, and I will be making reference to some of these, particularly the curriculum vitae. Can the witness have that, please.

EXAMINATION IN CHIEF BY MR. GRANT (Re Qualifications):

Q You can just leave it for a moment. Miss Harris, you are married to David Harris?
A Yes.
Q And how long -- when were you married?
A 1982.
Q And David Harris is a Gitksan man?
A Yes.
Q And you have two children of that marriage?
A Yes.
Q And how old are your children?
A Five and a year and a half.
Q And you reside in the Village of Kispiox?
A Yes.
Q And your own birth date was September 23, 1953?
A Yes.
Q And I'd like you to refer to tab one of the document book. And you have seen that document before --
A Yes.
Q -- at tab one? And that is your curriculum vitae?
A Yes.

MR. GRANT: And in review of this, my lord, there is some date correction. I will just review them for your lordship and my friends. Under Douglas College it should be not January 1st but January 1975 to December 1977, not December 31, 1979.

THE COURT: Should be '77?

MR. GRANT: Yes. And not -- and the day of course is not really correct. Simon Fraser instead of April 1987, that's a typographical error and should be January 1977.

MR. GOLDIE: To?

MR. GRANT: To April 1980. All right. And on page two, work experience, the second section should be January 1982 to April 1982.

MS. KOENIGSBERG: Sorry, I didn't get that.

MR. GRANT: January 1981 to April 1981. And on page 3 under genealogical reference --

THE COURT: There is a problem with the next one, too, isn't there, January '82 to April '81?

MR. GRANT: That's the one I was referring to, my lord.

THE COURT: Oh, I am sorry.

MR. GRANT: It's January of '81 to April of '81.

THE COURT: On the --

MR. GRANT: The first one is all right.

THE COURT: Okay. All right. Thank you.

MR. GRANT: And page 3, the third entry under genealogical research says May 1984 to the present. That should be

1 May 1984 to March 1988. And there is no date under
2 the last entry, and that should be July 1988 to the
3 present.
4 Q You have reviewed this curriculum vitae and subject to
5 the corrections I have made now on the record, this
6 is -- this reflects your background?
7 A Yes.
8 Q Okay. Now, you graduated from Burnaby South high
9 school in fine arts in 1971?
10 A Yes.
11 Q And after that you worked at different jobs over the
12 course of the next four years, is that correct?
13 A Yes.
14 Q And then you returned to school by going to Douglas
15 College which is a junior college, from 1975 to 1977?
16 A Yes.
17 Q Is that correct? And the courses listed, the five
18 courses under Douglas College, if you can look at
19 those, in what field are all of those courses?
20 MR. GOLDIE: Well -- all right.
21 A Sociology and anthropology.
22 MR. GRANT:
23 Q Are those all of the courses that you took at Douglas
24 College?
25 A No.
26 Q Those are -- that is all of the courses that are
27 relevant to your expertise, is that right?
28 A Yes.
29 Q Okay. And then after completion at Douglas College
30 you went to Simon Fraser University?
31 A Yes.
32 Q And you did a major there?
33 A Double major in sociology and anthropology.
34 Q Okay. And there are 14 courses listed under at Simon
35 Fraser and once again, are those all the courses that
36 you took there?
37 A No.
38 Q And what field are those courses in that are listed
39 there, the 14 courses?
40 A Anthropology and sociology.
41 Q And then you went from 19 -- September 1980 to
42 September 1983 to Carlton University in Ottawa?
43 A Yes.
44 Q And if you go to the next page, there are seven
45 courses listed there. Can you explain what you were
46 doing at Carlton?
47 A Doing graduate work on the Masters of Anthropology

program.
Q And have you -- and you had a -- the last entry there is your Masters Thesis?
A Yes.
Q What was that thesis or what is that thesis in?
A It's on Gitksan kinship and genealogy.
Q And have you completed that thesis?
A No.
Q It indicates there that you studied under John Cove. That's Dr. John Cove?
A Yes.
Q And Dr. Prattis. That's Dr. Ian Prattis?
A Yes.
Q And who else did you study at Carlton?
A Dr. Bruce Cox and Dr. Derek Smith.
THE COURT: Did you take a degree at Simon Fraser?
A Yes, I did.
THE COURT: That's a B.A.?
A Yes.
THE COURT: In sociology and anthropology?
A Yes.
MR. GRANT:
Q And are you still working on your thesis?
A Yes, I am.
Q Now, I'd like to focus on some of the courses that you took at Simon Fraser and have you explain some of the work you did there and if necessary, you can refer back to courses you took at Douglas College. But for brevity I will start with the Simon Fraser course, but if you think it's relevant you can refer back to the other course. Now, first of all, there is a course at Simon Fraser in introduction to world ethnography. What did you study in that course? That's the second one listed, my lord, in the curriculum vitae.
A That was an introduction to different types of societies throughout world organized into by their broad categories, bands, tribes, chiefdoms, that sort of organization.
Q Well, when you say bands and tribes, are those two different concepts in anthropology?
A Yes, they are.
Q Can you explain them?
A They are different types of social organization. From an evolutionary perspective, bands, societies are the simplest kinds of organization. They are composed of small groups of people moving over a territory and the membership of the band may change over time. Usually

the peoples will meet together at their most economically productive time of the year and then they may make marriages and change membership with other related bands and travel the rest of the year together.

Q Can you with reference to any North American aboriginal group give the court an example of what an anthropological view as a band organization?

A Certainly. All of the peoples of the plains in northern interior of Canada would be band societies. The Cree, the Chipewyan, and so on.

Q And then you refer to tribes. What are -- is that a different type of organization than bands?

A Yes.

Q In anthropology terms?

A Yes. Tribes are a little more highly organized. Some people would call the West Coast peoples or the Iroquois peoples tribes. Others would see them as being a slightly different type of organization. Partly because when you look at a large area like the West Coast or the several peoples that make up the Iroquois, there is various types of organizations within that, and within the discipline there are some variety of definition when it comes to a word like tribe.

Q Well, what would -- can you -- what would be the difference between a tribe and a band?

A They would be a more highly organized type of people with --

Q The tribe you are referring to?

A Yes. The tribe. With a definite territory.

Q Uh-huh.

A And a more structured composition. They would be more likely to remain in the same groups throughout the years such as in a village situation, which would be found among West Coast people and Iroquoian peoples.

Q Now, was that the first time you had studied world ethnography?

A No. No. That's a component of the very first introductory anthropology course that I took, social and cultural anthropology at Douglas College.

Q But the one at Simon Fraser, was it more advanced?

A It was a second year course.

Q I see. Going to number eight under Simon Fraser course, sociological anthropological research. Can you explain what that course was about and what you studied there?

A Yes. That was a methodology course where you learned the different social science methodologies. Everything from the most structured, which would be experiment, laboratory type experiments, to the most unstructured, which would be the participant observation.

Q Now, you have talked about two methods: participant observation and laboratory experiments, and suggest that there are some most structured and the least structured. Is there a different kind -- are there other methodologies other than those two --

A Yes.

Q -- in the field of anthropology? Can you explain what some of the others are?

A Sample surveys. Taking a representative sample of the group that you are interested in studying and examining the characteristic that you are interested in for that sample group. That would be one method. Or you could observe behaviours of a group of people without participating. Just straight observation. That would be another method.

Q How would you do that? Can you explain what you would do in an example of how that would be carried out?

A Well, you wouldn't involve yourself in their activities. You would just sit as an outsider and observe what people were doing without participating in what they are doing.

Q Okay. I'll return to that. You did further courses on that in your postgraduate work?

A Yes.

Q Is that right? I'll return to --

MR. GOLDIE: I am sorry, further courses in methodology, is that it?

MR. GRANT: I am sorry. Yes, further courses in methodology.

Q Now, number nine is Canadian ethnic minorities. And what did you study in Canadian ethnic minorities that has a bearing on your evidence here?

A In that course we studied many different ethnic groups that are found in Canada including native peoples.

Q And was there any particular native peoples that you studied or did you study native peoples all across the country in that course?

A I can't remember the specific peoples that we studied, but what's generally done in the course of that type is that you take representative groups. You take one example from different areas. The West Coast, the northern area, the Inuit, the interior peoples, the

plains peoples. That's the way it's usually approached.

Q You have referred a couple of times already to the West Coast. Does that -- what groups group or groups are you referring to when you refer to the West Coast?

A When I refer to West Coast or West Coast peoples or it's sometimes called Northwest Coast or Pacific Northwest, what I am referring to is a culture area and that's a concept within the field of anthropology that groups similar types of societies. Societies that have the same basic features. For the West Coast that would include the people from the Tlinget in the north down to the Salish in the area where we are now, and sometimes people extend that as far down the coast as northern California. But most commonly people are referring to mainly what covers the current West Coast of British Columbia. And these peoples have basic features that are similar such as a reliance on salmon as the major economic resource and a heavy reliance on cedar in their material culture.

Q And are the Gitksan or the Wet'suwet'en or both within this culture area in anthropological terms?

MR. GOLDIE: I object to that, my lord. That's not part of her qualifications. It's part of the opinions that she may offer.

MR. GRANT: Well --

THE COURT: I didn't get the question, I am sorry?

MR. GRANT: I was asking if the Gitksan and the Wet'suwet'en are part of this culture area. My position, my lord, is I am not asking the witness in this culture area as an anthropological term. I asking her this to demonstrate her knowledge in the field of anthropology. It's not to -- I am examining her knowledge in the field of what she is talking about. So, for example, I could be asked -- if I was asking about a culture area in the east coast of North America, I would be asking her something similar. But I am trying to bring it more home to what we are talking about here in terms of her knowledge of the West Coast.

THE COURT: Well, without going too far into the opinion for the purpose of qualifications, is it fair to say, Miss Harris, that you treated for the purposes of your research the natives the Northwest Coast as a cultural group?

A As members of a culture area.

THE COURT: Cultural area?

A You can't say they are members of a cultural group, but members of a cultural area. There are several cultures that make up the culture area and they do have some similarities.

THE COURT: We are very much into the opinion, aren't we?

MR. GRANT: Well, no. I say we are not, because what I am seeking here, for example, she said she has described -- I am only asking her what the culture area is and she said it stretches from the Tlinget to the Salish.

THE COURT: Yes.

MR. GRANT: Okay. So all which presumably are along the coast. I have asked her and I -- maybe I can rephrase the question. I am asking her where were the internal area of the sub cultural area. I am getting into what her knowledge is of the field of anthropology. I am not going to use the term of the culture area in terms of her opinion, my lord. It's an anthropological term and I will be examining her on her knowledge on the field.

THE COURT: Well, I have got an objection that I have got to deal with. Unless somebody can persuade me --

MR. GRANT: Well, let me rephrase --

THE COURT: -- it seems to me I have got to say that the evidence sounds very much like opinion evidence.

MR. GRANT: Well, maybe I will rephrase the question.

THE COURT: All right. Thank you.

MR. GRANT: And see where we can go.

Q You have described this culture area as stretch from the Tlinget to the Salish and it's --

A Yes.

Q I think you have called it the Northwest Coast Culture Area is what it's known as. How far inland do anthropologists view this culture area as expanding on the coast of British Columbia?

MR. GOLDIE: Now, my lord, it's not a question of how far other anthropologists think or don't think. The question now is what is her field of study. And it's a very easy and direct way of asking that, rather than asking what do anthropologists think or don't think.

MR. GRANT: Well, with respect, my lord, having reviewed the --

THE COURT: Well, what do you need this for, Mr. Grant?

MR. GRANT: Well, my friend raised -- my friend made clear last week that he is objecting to her qualifications. Last Wednesday when he advised the court of that, that was my first understanding of where he sees the narrow issue.

THE COURT: I understand what your friend says is that he would be objecting to some part of the evidence. I didn't understand him to say that he was objecting to the witness giving any opinion, he said although it may come to that, but I don't have any forewarning of that. It seems to me, however, that if we have to draw a line somewhere, and I think we do, then what you are asking the witness is for her views on cultural areas and that is not a matter that goes to qualifications. That's not what she studied. That's a conclusion she has reached.

MR. GRANT: Well --

THE COURT: Or that's a conclusion she's reached as to what other experts in her field have concluded.

MR. GRANT: It's evidence of what her knowledge is of the anthropological fieldwork. Miss Albright was extensively cross-examined, my lord, on the very types of issues that is a -- to what anthropologists she has read and what she has done and everything like this.

THE COURT: Oh, I think she can be asked about that. But I think you have stepped slightly over the line.

MR. GRANT: I appreciate your point.

THE COURT: And there is an objection and I have to deal with it. This is not to say that this witness couldn't give this evidence once her qualifications are straightened out.

MR. GRANT: Okay. Thank you, my lord.

Q Now, now you also refer to taking courses at Simon Fraser on Indians of the Pacific Northwest?

A Yes.

Q And what Indian groups -- group or groups did you study in that course?

A That course included all of the groups found in the West Coast culture area and more specifically I studied the Tsimshian and the Kwagulth and the Bella Coola.

THE COURT: I am sorry, Tsimshian and --

A Kwagulth.

THE COURT: What we call Kwakiutl?

A Yes, that's right.

THE COURT: Our pronunciation is obviously different.

MR. GRANT:

Q And you said the Bella Coola?

A Yes.

Q Now, in the course of that work in that course, did you -- are there references or anthropologists that you studied who -- anthropologist's anthropological

1 works that you studied on different authors with
2 relevance to the north coast, northwest?
3 A Yes. Philip Drucker's work are commonly used in
4 courses of that type that cover the West Coast culture
5 area. I read several of his. Viola Garfield talks
6 about the Tsimshian speaking peoples. Boas.
7 Q That's Franz Boas?
8 A Yes. Franz Boas wrote many volumes on the Kwagulth as
9 well as some on the Tsimshian peoples. Some Barbeau I
10 read at that time. Many others.
11 Q Now, can you tell -- can you explain who Franz Boas
12 was? And what --
13 A Well, Franz Boas is called the father of anthropology
14 because he really pioneered the discipline. And he
15 wrote many, many volumes from information that he had
16 collected, and as I have mentioned previously he
17 particularly wrote about the Kwagulth.
18 Q And in what year did he write, I mean what year was
19 he --
20 A He did his research from the 1890s to the early part
21 of the century. I am not sure when he did his last
22 fieldwork, but certainly he was among the Tsimshian
23 speaking peoples in the 1920s.
24 Q And then you refer to -- well, I am not sure if you
25 did refer in the context of this course to Barbeau?
26 A Yes, I did.
27 Q Yes. Okay. And can you explain to the court who
28 Barbeau was and his representation in the
29 anthropological field and when he did --
30 A Yes. Barbeau is probably the most highly esteemed of
31 the Canadian anthropologists and he did extensive work
32 among the Gitksan. He did fieldwork over a four year
33 period from 1920 to '24 among the Gitksan.
34 Q And have you read his work?
35 A I have read much of his work.
36 MR. GOLDIE: I beg your pardon?
37 A I have read much of his work.
38 MR. GRANT:
39 Q And was he associated with anyone else who did work
40 with him?
41 A Yes. His research assistant was William Beynon.
42 William Beynon was Tsimshian who I believe his father
43 was a missionary. So he was well educated in the ways
44 of Europeans as well as being a member of the
45 Tsimshian culture.
46 Q And then you mentioned Viola Garfield as one of the
47 persons you referred to?

A Yes. She writes about the Tsimshian speaking peoples. She writes about the Nishga and the Gitksan secondary and mainly concentrates on the Coast Tsimshian.

THE COURT: Is that Garfield?

MR. GRANT: Garfield.

THE COURT: Thank you.

MR. GRANT: Viola, my lord.

THE COURT: Yes.

MR. GRANT:

Q And what era did she write in and -- or did she do her research on that? What time period approximately?

A The thirties to the fifties I believe.

Q And you mentioned Drucker?

A Yes.

Q That was Philip Drucker?

A Yes.

Q And what does he -- did he write about that --

A The general overviews of the coast peoples, the features of coastal societies and the delineation of the groups. The Tsimshian, from the Haida, from the Tlinget, and so on. And the sub groups within each cultural area such as Gitksan Nishga and Tsimshian within the Tsimshian speaking peoples.

Q Now, you mentioned in this course the Indians of the Pacific Northwest that you studied the Tsimshian and the Kwagulth and the Bella Coola. Did you study either the Gitksan or the Wet'suwet'en in that course?

A The Wet'suwet'en wouldn't be included because they are not members of the West Coast culture area, but the Gitksan were included among the Tsimshian speaking peoples.

Q Okay. What is the -- taking each of these four authors within the anthropologist's world, what is their -- are their reputation?

A They are all highly renowned in their field. Their works are widely read in the field of anthropology.

Q Then the -- I'll combine these next two courses that I am going to ask you about. Classical sociological thought and contemporary sociological theory, number 12 and 13 under Simon Fraser. And if you wish to refer back it appears -- well, I will leave it to you about whether any of the Douglas College courses apply to it. Can you explain what you studied in those two courses, classical sociological thought?

A Yes. Classical sociological thought was entirely composed of the reading of Marx in the original and --

THE COURT: Reading -- ?

A Marx, Karl Marx, his Theories of Society and Contemporary Sociological Theory was the most prominent. Three theorists in sociology which is Marx, Durkhiem and Weber --

MR. GRANT:

Q Just a second. Durkhiem?

A Yes.

Q And Weber?

A Weber. Weber, W-e-b-e-r.

THE COURT: How do you spell the second one, please?

A Durkheim, I believe. And the contemporary sociological thought was an upper level -- an upper level course that was a continuation of social theory that I had been introduced to at an earlier date in lower level courses taken at Douglas College such as introduction to social theory.

MR. GRANT:

Q Now, these courses on social theory and sociological theory, do they relate at all to theory of anthropological theory?

A Yes. Yes. The disciplines of anthropology and sociology are so similar. That's why they are generally combined. Disciplines in most universities, it's hard to be sure where one stops and another begins, because they are so intimately related.

Q Okay. Well, did you study different schools of thought in anthropological theory as part of these courses?

A Yes. Definitely. The theoretical perspectives, the social anthropology course that I took at Douglas College was particularly concerned with the different schools of thought within the discipline of anthropology.

Q And can you -- what are those schools of thought?

A Well, the earliest school is of the Boasian type and the particularists, and they didn't theorize so much as record in many volumes the details of the society as they found it and as the members of the society saw it. And then as the anthropology as a discipline developed, then different schools of thought arose.

Q And what are those schools of thought?

A Well, in the sort of next stage of the development of anthropology, most anthropologists would do fieldwork among peoples who had not been previously studied and then they would have their theories of why these societies were as they were. The evolutionary perspective was common in this period which would

1 probably run from the, oh, the twenties to the fifties
2 or sixties and in more recent years a fairly popular
3 school of thought has been the Marxist framework which
4 has to do with small scale societies being integrated
5 into the world capitalist systems and that's the kind
6 of work you would find with Andre Gunder Frank and
7 Terray.
8 MR. GOLDIE: And who?
9 A Terray. T-e-r-r-a-y, I believe.
10 MR. GRANT:
11 Q And did you study Andre Gunder Frank?
12 A Yes, I did.
13 Q And why was his -- what areas did he study as
14 examples?
15 A He's from Latin America and he was particularly
16 concerned with that part of the world.
17 THE COURT: How did you spell the other name, please, Terray?
18 A T-e-r-r-a-y.
19 MR. GRANT:
20 Q And where does Terray study?
21 A He's from France and I believe his area of interest
22 was Africa.
23 THE COURT: Gunder Frank, one word or two words?
24 A Two words.
25 MR. GRANT:
26 Q Now, when you -- have you covered the schools of
27 thought of anthropological theory?
28 A Uh-huh.
29 Q Yes. When you talk about Boas, Barbeau, Garfield and
30 Drucker, are these persons from one or more of these
31 different schools of thought?
32 A Well, Boas and Barbeau are certainly from the earliest
33 school of thought, the particularists as they are
34 called, who describe cultures as they find them and
35 don't draw as many conclusions as the later
36 anthropologists would have. Drucker and -- what
37 was -- Garfield?
38 Q Yes.
39 A Drucker and Garfield, although they wrote at a later
40 time, they too were inclined to a considerable degree
41 to record the details of a society. And to me that's
42 why they have been most useful for my work. An
43 anthropologist that was most concerned with theory
44 would have emphasized other writers of that period,
45 but they were the most useful to my work.
46 Q Now, number 14 under Simon Fraser is North American
47 native peoples, and what did you study in more detail

in that course?

A That course was more concerned with the current situation of native peoples in North America. It began with a description of the culture areas and the groups found within the culture areas in Canada. It says North America, but it was Canada that the professor chose to concentrate to in that course. And the basic cultural features of those societies were described and the history, how it is that some groups were not where they were to begin with in aboriginal times because of the influence of Europeans and how some groups had become extinct, and then the rest of the course concentrated on the current situations such as the economic situation, the educational situation, legal situation, and so on.

Q Now, why I have held back on it, and I will now refer to as number four, which is a course on kinship and I would like you to explain what you studied in that course and the different -- well, first of all, maybe you can explain to the court what kinship is.

A Kinship is simply --

Q In anthropological terms.

A -- simply how people are related. There are three basic systems of relationship throughout the world which is the matrilineal, patrilineal and bilateral systems. Virtually all systems of kinship throughout the world and throughout history have fallen into one of those categories, but there are many different sub types. In that course we studied many of the sub types and the systems of kinship terminologies. The basic text that we used are standard within the field which was Roger Keesing and Robin Fox.

THE COURT: Fox?

A Fox. Yes.

MR. GRANT:

Q And the -- when you say throughout the world there is the three systems, for example, let's take our system, the Anglo-Canadian. Does it fall into one of these: matrilineal, patrilineal, bilateral?

A Yes. It's a bilateral system with a patrilineal bias.

Q Can you explain what you mean by that just so the term we can understand?

MR. GOLDIE: Well, what is the point of this, my lord? This again is conclusion. I see nothing to do with -- if she says I studied the systems, doesn't that take us as far as we wish to be taken at this time?

MR. GRANT: All I am asking -- all I'm enquiring on is I thought

it would be easier -- I am asking her to explain the systems and I thought it would be easier if she exemplified them rather than just explain them in the abstract for comprehension. That's all, my lord. And that's the only reason I am asking that question in that way.

THE COURT: I don't think it's necessary, Mr. Grant, for the purpose of qualification.

MR. GRANT: Fine.

Q You said that you studied different terminologies, terminology of kinship, and you have already referred to those three basic systems. What other types of terminology would you have studied in the kinship study course that are relevant to kinship studies?

A Some of the systems of kinship terminologies break down the possible broad areas into more specific categories such as one of the bilateral systems is the Hawaiian system kinship terminology. Is that what you mean?

Q Well, yes. You were just asking about -- is there general terminology that you use for different types of relationships in kinship?

A I am sorry, I don't know what you mean.

Q Okay. I will rephrase the question. Let me ask you this: Can you explain in some more detail what you studied within the kinship course, what areas you studied?

A Well, certainly a large component of it is genealogy. You have to know how to construct genealogical diagrams to be able to study kinship. So the standard anthropological system of notation in genealogical diagrams is a large part of a kinship course.

Q And what is genealogies?

A Genealogies are charts or diagrams of actual incidents of kinship or of theoretical systems of kinship.

Q And what is meant by social structure?

A Well, social structure is the major institutions and major features of a society such as the system of organizing economic relations, political system, educational system, family system, etc.

Q In this kinship course did you study social structure?

A Yes. But it wasn't emphasized because it was assumed at that level that you fully understood social structure from other previous courses within sociology and anthropology.

Q Okay. Can you explain what matrilineality, patrilineality and bilaterality are?

A Yes. Matrilineality is a system of kinship whereby people are related through women; patrilineal is a system whereby they are related through men; and bilaterality is a system whereby people within a kin group are related through either men or women.

Q Okay. Now, you've described kinship as a system -- as how people are related. Are there different kinds of relationships that are studied in kinship?

A I am not sure I know what you mean.

Q Okay. Well, you would study, for example, those with whom you are related by blood?

A Yes.

Q Okay. And is there a terminology you used for that?

A Yes. People with whom you are related by blood are called consanguial kin and the other major category are affinal kin which are people to whom you are related by marriage.

Q And is there any other category of kin relationship?

A Yes. There can be classificatory kin.

Q And what does that mean?

A People who are not related by blood or by marriage specifically but are called by kinship terms for other reasons.

Q Can you give an example of that to explain it?

A Yes. Commonly wherever clan systems are used, which would be in North America and in Australia, if a person is travelling and they are from a member of, say, the Wolf Clan, and they are travelling to another place, they will be welcomed and taken care of by members.

MR. GOLDIE: Excuse me. My lord, this is entirely irrelevant to the question of qualification. She was asked is there another term. She is embarking upon a description which embodies an opinion.

MR. GRANT: I asked her to explain what she meant by classificatory kin by exemplifying it.

MR. GOLDIE: Surely there is a definition in the discipline that can be given.

THE COURT: I rather thought, Mr. Goldie, that's what she was doing.

MR. GRANT: Yes.

THE COURT: But we are still -- we still have the same problem, though, Mr. Grant. And you are having this witness give me a lot of -- a lot of learning within a special discipline from a person who hasn't yet been qualified.

MR. GRANT: Well --

THE COURT: Isn't this evidence she should give after she is qualified?

MR. GRANT: Yes. But, my lord, the reason I am -- it's two -- I say it's two sides of the same coin is is that I don't wish to sit down and complete the qualification without you having an opportunity to observe how -- what this witness understands about her field of anthropology.

THE COURT: Well, the definition, the legal definition is the legal qualification for opinion evidence is a person who by reason of special training or study or experience is better able to inform the court on a specialized area than one who isn't. It isn't a question of degree, how learned is she. It's a question of is she learned and has she been exposed to the kind of training or experience that would entitle her to be classified as a person who can give opinion evidence. It may be, for example, that a person who has taken a PhD in a narrow field might be a complete fool but would nevertheless be entitled to give an opinion. Unless the -- unless the foolishness of the person is demonstrated in the qualifications and we are not in that situation here. But it's really just a question of has the person been exposed or has the person exposed herself to the kind of learning that entitles her to speak of matters about which she doesn't necessarily have personal knowledge? Is it any more difficult or complicated than that?

MR. GRANT: Well, I would say not, except that the position my friend took last week was such that my reading of what he set out was much different than that and I wish to be able to -- and in order for you to know whether she has been exposed to that learning, I am only asking her to explain some of the basic terms to demonstrate to you her knowledge and that was something that you will take into account in determining if she is qualified particularly on the kinship and social structure which is the area to which she is now explaining. That her knowledge in that area which is where I understand there is some challenge --

THE COURT: I don't think that I can pass upon the extent of her knowledge or the wisdom of her knowledge. I am limited at this point to finding out is she a person who for any of the reasons mentioned is entitled to give opinion evidence. And it seems to me that from what your friend said before, now I don't have his words stamped indelibly on my memory, but it seems to

me that the attack is not going to come on the general qualification of the witness, but in relation to the particular kind of evidence she is going to give. Now -- but I am --

MR. GRANT: Well, my understanding --

THE COURT: I am in the dark both about the subject matter of the evidence and the details of it. But I think -- I think that you have to meet your friend. All you have got to do is show that she has the kind of training, experience, and has been exposed to the kind of learning that permits her to give the kind of opinion you want her to give or the kind of expert evidence you want her to give, and it doesn't matter how -- or it doesn't matter what particular degree of learning she has. That's a matter that can only be determined at the end of the case, not as a matter of qualification.

MR. GRANT: Well, I wish to be sure that she can be qualified in the areas which I wish to qualify her and that's the only focus on which I am really broaching it. But I have your point.

THE COURT: I have heard the opinion. I gather she is going to be giving genealogical evidence.

MR. GRANT: Evidence on genealogy, kinship and social structure and that's where I am moving now. And as I move closer to that area of asking her about her knowledge or her training in that field, that is where I think my friend moves to his feet more readily.

THE COURT: Well, your friend says that you are limited to this point, and I think I agree with him, you are limited at this point to showing what her learning experience or learning exposure has been in this area. Not how good or how bad an anthropologist she is.

MR. GRANT: No, I agree.

THE COURT: We will come to that later.

MR. GRANT: I agree with that. And I am saying I am only trying to demonstrate her learning exposure.

THE COURT: I don't think you can pull yourself up by your booth straps, Mr. Grant, and say because she is -- she should be qualified because she -- because she is good at what she does. I can't rule on that at this time.

MR. GRANT: No. But my lord, this is the point that I take is that I asked the question -- where all this raised was I asked the witness about different kinds of kin and she has described the consanguial, the affinal and the classificatory. She explained that consanguial was by blood and the affinal was --

THE COURT: The law, Mr. Grant, in relation to family law.

MR. GRANT: But classificatory kin, when she came to the third point, what that means -- I only asked her what it meant is where my friend objected when she explained by example. And I say there is nothing magical about the witness saying it's defined as X or an example is Y. The witness is explaining to the court what is meant by that term which shows her knowledge in the field. That's all I was asking about.

THE COURT: Well, these things are exceedingly difficult and I must say I find it awkward, but I tend to think that your friend is right, that you are adducing evidence now that goes not to qualifications but to the opinion of the witness, and I think I have to confine you to qualifications. You should be asking the witness what she studied and what her experience is in these areas rather than what they all mean.

MR. GRANT:

Q Going on to the second page of your curriculum vitae, I would like you to refer to some of the courses that you took in your postgraduate work, and I will ask you about the courses on economic system and modes of production. And what was that course of study? What did you deal with in that course?

A That was a theory course and it was mostly the readings of the Marxist anthropologists.

Q And then you studied anthropological methods and what was that course?

A That was a methodology course which involved reading a lot of the experiences of anthropologists during their fieldwork as well as studying the types of methods that could be used to gather information.

Q Now, what did you -- can you give examples of who or what you studied in that course?

A I can remember reading Rappaport -- gee, I can't remember a lot of the authors, but they would --

Q Who was Rappaport?

A He wrote a book called "Pigs for the Ancestors," and --

Q What relevance did that have to anthropological methodology?

A Because he described some of the problems he encountered in gaining the confidence of the people he studied and some of the physical problems involved in doing fieldwork, the logistical problems, the best ways to gather information.

Q Did you study statistical methods in that course?

A No. No.
Q Did you study participant observation as a methodology in that course?
A Yes. That was -- that was the method that was emphasized most.
Q Okay. And what is participant observation --
A That's the --
Q -- in the anthropological world?
A That's the method that's most commonly used in the field of anthropology whereby the anthropologist goes to the culture understudy and joins in daily activities and observes people's behavior, records the observations.
Q Now, you dealt with contemporary problems in anthropology in this course, that's number three?
A Yes.
Q What was that course about?
A I forget. That's a course that deals with the specific issue and I can't remember what the issue was now.
Q Okay. We will return to that. Then you studied North American ethnography?
A Yes.
Q And what was that?
A That was a more in-depth ethnography course and because it was taught by professor John Cove, he wholly concentrated on West Coast societies which are his area of interest.
Q And then you did directed readings. Is this part of your work for your masters thesis?
A Yes, it is.
Q And who did you read that would be relevant to your subsequent work in the research here in the directed readings course?
A I read Boas and Barbeau. MacIllwraite, Margaret Stott. Many others.
Q What is MacIllwraite? What did he study? You have already referred to who Boas and Barbeau are. Who's MacIllwraite and what did he study?
A MacIllwraite wrote a very large work on the Bella Coola.
Q And did he -- in the course of that work that you studied, did that deal with kinship and social structure?
A Yes, it did.
Q Okay. What about Stott?
A Stott.

Q I think Margaret Stott?
A Stott.
Q Stott?
A Yes. She also wrote about the Bella Coola and she described their kinship and social structure and their religious and ceremonial systems.
Q And just referring to these earlier writers, that is the writers that you have reviewed earlier, this is Boas, Barbeau, Drucker and Garfield, did any of them in their writings that you studied deal with kinship and social structure?
A Yes. Yes. Certainly Boas does. And Viola Garfield. Specifically with the Tsimshian for Garfield. That's her main emphasis.
Q Now, just before going back to your work on this study or how you gained your experience in the field, I'd like to ask you about your background. Now, you worked in 1980, '81 as a teaching assistant at Carlton, and what did you do in that course?
A That was an introductory sociology course and I particularly concentrated on native peoples of Canada because the professor was not from this country and not familiar with that area at all.
Q Okay. And it describes what you did in that course. You assisted in the preparation of lessons, etc., as described in your curriculum vitae?
A Yes.
Q And then you describe in January 1981, April 1981 you did a continuing education course in anthropology, and can you explain in some detail what you did in that course?
A Yes. I designed this course to be general introduction and overview to West Coast societies. So it includes descriptions of the main groups found within the culture area and the sub groups, the social organization, the varieties of kinship systems, economic systems and so on.
Q And when you say the North West Coast, did you -- in the course of a preparation of the work in that course did you deal with the Gitksan?
A Yes. Definitely.
Q Okay. And then the next work that you did that seems relevant in the chronology to this report is your genealogical research with the Tribal Council. And was that the work you did which culminated in the report that you prepared for this case?
A Yes, it was.

Q Okay. And what did you -- what did you do in terms of your study, and that's from 1984 to 1988?
A Well, I began by trying to read the relevant literature that was available and I also -- I also talked to several elderly researchers who had been working for the Tribal Council for some time and had a good understanding of the social structure of the Gitksan and from them I got to understand some of the basics and to see some of the misunderstandings that I had about Gitksan culture when I first came into it just armed with my reading of the literature which more commonly would describe the Tsimshian peoples generally. And I could see the differences between some of the actual features of the society and what the literature had written about when generalizing to all the Tsimshian speaking peoples.
Q When you --
A And --
Q Just if I may interject. When you said you read the relevant literature, who did you read?
A Mainly Barbeau.
Q Okay. And what work of his or work that was his, can you explain to the court?
A Well, the most useful is "Totem Poles of the Gitksan."
Q That I believe is 1929 publication?
A Yes. And I also read many volumes of his unpublished works.
Q And what did those volumes of unpublished works consist of? What was the type of information in them?
A There was one set of oral histories that also had small pieces of information that were concerned with kinship relations that he described who related these oral histories and little bit of information about them. And then I read some of the files, too, which had just about everything imaginable, including quite a bit of information about kinship genealogy.
Q These are Barbeau's files?
A Files, yes.
Q Okay. And those are the -- are those the files that I think have been indexed by Dr. Cove?
A Yes.
Q Okay. Then you said you talked to elderly researchers, who were those people that you talked to?
MR. GOLDIE: What is this? What's the point of that?
THE COURT: Are you going to ask the witness what they told her?
MR. GRANT: I am asking -- well, I am going to ask what she did after that in terms of if she said that influenced

1 her. I am not going to ask at this stage, given your
2 lordship's comments, that what they told her at this
3 point in time, but I am going to ask her what --
4 THE COURT: Mr. Grant, I am just at a loss as to know how we are
5 ever going to get through this trial if it takes an
6 hour and ten minutes and we haven't qualified an
7 expert yet. I have never heard it taking more than
8 ten minutes before in my life.
9 MR. GRANT: Well, my lord, I had anticipated it would only take
10 ten minutes as well, but my learned friend has
11 raised -- I believe it took half a day with Miss
12 Albright.
13 THE COURT: I know it did. And the whole of Miss Albright's
14 evidence took interminably long and it's not finished
15 yet. This isn't a Royal Commission.
16 MR. GRANT: I am not -- I agree. But if -- my lord, if -- I
17 reviewed last night or yesterday the transcript in
18 which my friend for the first time indicates his
19 challenge to this witness' qualifications. I had
20 anticipated that this witness' qualifications would
21 not be in issue and if that had been the case I would
22 have taken ten minutes. But it's not the case. And I
23 can only -- I can only guess given the
24 cross-examination of Miss Albright where my friend is
25 going. And if that is what the approach that the
26 defendants wish to take regarding these expert
27 witnesses, then I see no alternative but to go into
28 detail on direct-examination as to her qualifications,
29 my lord, because I don't want to come back to it on
30 re-examination.
31 THE COURT: It's got to be dealt with in brought strokes. It
32 can't be dealt with in detail. It seems to me it
33 does. Otherwise we are hearing the evidence.
34 MR. GRANT: I am trying to deal with it in the broad strokes.
35 MR. GOLDIE: Well, then, my lord, what has the identity of her
36 informants got to do with qualifications? If it's --
37 if it's a submission of my friend that talking to
38 informants is a qualification, we have got that.
39 THE COURT: Mr. Grant, I am of the view that at the moment this
40 witness has been exposed to enough learning that
41 subject to what your friend says I think she can give
42 opinion evidence.
43 MR. GRANT: In the areas that I have described.
44 THE COURT: Well, yes, at the moment that's my viewed. But I
45 haven't heard your friend. But it seems to me that in
46 order to try and put some reasonable - and I hope that
47 I can stress that word adequately - restraint on the

length of time it takes to do anything in this case, I think I should call upon your friend and if it's necessary, while this may seem untidy and disorganized, it may be that I will have to give you a chance to pursue the matter further. But I think we are all in a mind set that nothing can be done expeditiously in this case, that everything has to go on interminably, and I am saying I am getting to the point where I simply have got to start doing things a little more expeditiously and a little more briefly and that applies to both sides of this question.

MR. GRANT: Well, my lord, I am -- given what you have said about what you have already heard, I need ask her no further questions.

THE COURT: I don't think you do.

MR. GRANT: And I agree, and I just want to say, my lord, that I am -- I concur with your concerns about the length of time.

THE COURT: Let's take the morning adjournment and I will hear your friend in the cross-examination when we return.

(PROCEEDINGS ADJOURNED PURSUANT TO MORNING RECESS)

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

Laara Yardley,
Official Reporter,
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED AT 11:30 a.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Goldie.

CROSS-EXAMINATION BY MR. GOLDIE ON QUALIFICATIONS:

Q My lord. Mrs. Harris, do you consider yourself to be an anthropologist?
A Yes.
Q Of the same stature as Dr. Cove?
A No.
Q You are still his student, are you?
A Yes.
Q You consider yourself to be a qualified genealogist?
A Yes.
Q A genealogist is not an anthropologist, I take it?
A That's right.
Q Nor is a genealogist entitled to express opinions with respect to social structure?
A Not necessarily.
Q Um-hmm. That's the scope of the anthropologist?
A Yes.
Q Is this the first time you've done field work in respect of what the anthropologist call a primitive society?
A Yes.
Q In fact, you haven't done anthropological field work of any kind, prior to your work for this lawsuit?
A That's right. The work I began was before there was a lawsuit.
Q Yes. In May of 1983?
A Yes.
Q Or --
A '84.
Q -- 1984?
A Yes.
Q A lawsuit was contemplated then, was it not?
A No.
Q You didn't know about that?
A No.
Q When did you learn of the lawsuit?
A About six months later.
Q All right. There are a number of subdivisions of a very broad field of anthropology; is that correct?
A Yes.
Q And the one that you are interested in is cultural anthropology?

A Yes.
Q The -- within that category, there are a number of disciplines, are there?
A I don't know what you mean by "disciplines". Within the --
Q Within cultural anthropology --
A Yes.
Q -- there are a number of disciplines within that field or that scope of study?
A I think they usually are referred to as specializations.
Q Yes. Let's use that word then. Do you know how many there are, currently, recognized specialties within the field of cultural anthropology?
A No, I don't.
Q Although there is some interrelation, it's generally accepted that no one person is an expert in all of the specialties?
A Absolutely.
Q And indeed, within one of the so-called specialties, there will be further subdivisions of specialization?
A Yes.
Q Have you commenced any process of specialization?
A My specialized areas that I have studied have been West Coast societies, and particularly, the social and economic systems.
Q Can you tell me what ethnography is?
A Yes. Ethnography is the description of cultures, they can be general and describe all aspects of the culture, or more specific and just describe one aspect of the culture.
Q And what is ethnology?
A Ethnology is -- it's the field of the -- can we go onto another question, please.
Q Well, there is a difference between the two, is there not?
A Ethnology -- I don't know.
Q Well, is it not the comparative study of documented and contemporary cultures, and I emphasize the word "comparative"?
A Yes.
Q All right. Whereas ethnography is the study of the culture of a single tribe or society?
A Yes.
Q Which of those two do you consider yourself qualified in?
A The study of the single culture.

Q Yes. In -- do you remember your responses to the Rule 28 questionnaire that was sent to you on behalf of the defendants?

A Do I have that in my document book?

MR. GRANT: It's not in that book.

MR. GOLDIE:

Q I'll show you. Do you remember responding to --

A Yes.

Q Yes, all right?

A Yes. I don't remember that particular question, which one that was.

Q Well, I haven't gotten to a question yet. I'm going to -- I'm going to ask you to refer to tab 3, and you'll see there the affidavit that you swore with respect to your answers.

MR. GRANT: Well, it's a statement, not an affidavit.

MR. GOLDIE: Yes, thank you.

MR. GRANT: It wasn't a sworn affidavit.

MR. GOLDIE:

Q Thank you.

And some of your answers, not all of them, are set out here, and I want to refer you to page 8 and the bottom of the page, question 24:

> Q "Please describe your formal training in anthropology, including identification of the courses studied and taught at Carleton University."

You state you have a double degree -- you have a Bachelor of Arts with a double major. And you say:

> "Kinship (genealogy) was a component of several undergraduate courses I took including Introductory Anthropology I and II, Ethnology, and People of the Northwest Coast."

And you say:

> "As well, I took a course wholely pertaining to Kinship with Professor Steve Sharp. I am currently writing a Masters Thesis in Anthropology at Carleton University under Professor John Cove. My thesis is wholely concerned with Gitksan kinship and social structure. When I attended Carleton

University I completed graduate level courses in Northwest Coast Ethnology."

In the CV which -- or curriculum vitae which you were examined on this morning, these courses appear to be in ethnography. Which were they?

A I believe it was -- the course was called Introduction to World Ethnography.

Q Ethnography?

A Yes.

Q You were aware of the difference, were you?

A I'm sorry, I'm looking at the wrong one. Yes, North American Ethnography.

Q Yes?

A That's the correct title of the course.

Q So that was an overview course --

A Yes.

Q -- of a variety of individual societies?

A Yes.

Q And the same thing applies to the course at Simon Fraser, which you make reference to as ethnology in your answer to the Rule 28 application --

A Yes, yes, it's supposed to be ethnography.

Q And these were both survey courses?

A The lower level one at Simon Fraser was more particularly a survey course, and the graduate level one was one in which students had an opportunity to deal in more depth with their particular areas of interest.

Q In other words, the one at Carleton, North American Ethnography, allowed you to select the particular tribe or society that you wished to investigate?

A Yes.

Q And which did you select?

A I wrote two papers in that course: I wrote one on the Bella Coola and I believe the other was on the Nisga'a.

Q The Nisga'a?

A Yes.

Q Yes, thank you. Could I suggest to you that until you have completed field work to the satisfaction of those instructing you, you cannot say you are a qualified ethnographer?

A Most anthropologists don't do field work anymore, most just do library research.

Q Well, my question to you was, until you have completed field work to the satisfaction of those competent to

pass on it, you cannot say you are a qualified ethnographer with respect to the Gitksan society?
A Yes.
Q Now, ethnography involves the observing of the society and the evaluation of the observations; is that correct?
A Yes.
Q And your genealogical tables reflect your observations of that society?
A Some of them, yes.
Q Yes, all right. I want to just follow through one other matter here.
Your CV this morning, or the curriculum vitae this morning, indicates that you were at Carleton University from September 1980 to September 1983?
A Yes.
Q Is that correct?
A It doesn't reflect very accurately. The course work takes one year and I actually attended at Carleton during that year, and then I worked on my thesis for some time and then I took a break, and now I am again registered at Carleton to try and complete my thesis.
Q Yes. Have you completed the residence requirements --
A Yes.
Q -- for an MA.?
A Yes, I have.
Q And that was one year?
A Yes.
Q And that's when you were actually physically at Carleton?
A That's right.
Q Right. So it would be more appropriate to say that while you were continuing registered -- you continue to be registered at Carleton, you have been in residence there one year?
A That's right.
Q Thank you. And during that year, you were a teaching associate in a course in sociology --
A Yes.
Q -- as you described to his lordship?
You advised his lordship that you were married to a Gitksan, a Mr. David Harris?
A Yes.
Q And he holds a chief's name?
A Yes.
Q And is an heir to a head chief's name?
A Yes.

Q What is his occupation?
A He is not currently employed because he was injured at work, but he was working for Westar Timber.
Q And you hold a minor chief's name?
A Yes.
Q And you say you've paid for your name?
A Yes.
Q And you became a Gitksan by adoption early in 1984 before you embarked upon this research?
A Around the same time.
Q About the same time?
A Yes.
Q And you regard yourself as a plaintiff in this action as having the same interest in its outcome as the other members of your house?
A Yes, I suppose you could say that.
Q Well, that's what you said in your response to the Rule 28?
A Yes.
Q Yes, thank you. Your sources of information for the purposes of your genealogical charts -- or indeed your evidence, was -- were Gitksan elders?
A Yes.
Q And did your reliance upon what you were told by them extend to reliance upon adaawks?
A I'm sorry, I didn't --
Q Well, you relied upon what they told you?
A Yes.
Q Yes. Did they tell you of adaawks?
A Yes, they did.
Q And the contents of adaawks?
A Yes, they did.
Q Did you rely upon that in forming the opinions which you've expressed in your report?
A To a very limited degree, just small aspects of it.
Q Do you accept the truthfulness of an adaawk as an anthropologist?
A Generally, yes.
Q For the purposes of expressing the opinions you have expressed in your report?
A Yes.
Q That is not a common feature of anthropologists, is it, the acceptance of myths as containing literal truths?
A It's becoming so.
Q It's not common though, is it?
A It's not common though, no.

1 Q No. I want to ask you to look at -- under tab 2 of
2 the book in front of you. This is an extract -- and
3 I'm sorry, my lord, I don't have -- I don't have a
4 facing page. I can supply that, but it is an extract
5 from the International Encyclopaedia of the Social
6 Sciences. Are you familiar with that work?
7 A Yes, I am.
8 Q Yes. It is sort of a well-known, common reference
9 work, is it not?
10 A It's used all the time.
11 Q Yes. And this is a description of ethnography, and
12 the author is Mr. Harold Conklin. Have you heard of
13 his name?
14 A Yes, I have.
15 Q And in the second paragraph on page 172, the second
16 sentence, and I'm going to read it to you:
17
18 "An ethnographer is an anthropologist who
19 attempts -- at least in part of his professional
20 work -- to record and describe the culturally
21 significant behaviours of a particular society."
22
23 Do you accept that?
24 A I'm sorry, I --
25 Q Sorry, it's under tab 2.
26 A Yes.
27 Q Page 172, which is the first page.
28 A Right.
29 Q The second paragraph.
30 A Um-hmm.
31 Q And second sentence.
32 A Oh, I'm sorry. Okay.
33 Q Do you see the sentence?
34 A Yes, I do.
35 Q Do you accept that?
36 A Yes.
37 Q And then at page 174 -- well, let me go to 175 under
38 the heading "Techniques".
39 MR. GRANT: Sorry, what page?
40 MR. GOLDIE:
41 Q 175. The first sentence I wish to refer you to is --
42 first two sentences:
43
44 "Instruments for gathering, storing,
45 retrieving, rearranging, expressing, and using
46 field data while still in the field have
47 multiplied with technical developments. Tape

recording, cinematography, photogrammetry, aerial mapping, and the use of computers in text and demographic analysis are only a few of the frequently employed technical developments in the treatment of ethnographic data."

That's stating what is now commonplace, is it not?
A Yes.
Q And then if you go down to about a third of the way down that page beginning with the sentence, "In everyday conversations."

"In everyday conversations between field worker and informant, for example, attention to and use of such verbal techniques as the following have been used profitably, although not always with equal success: recording and using natural question and comment frames (i.e., the ways in which information is normally solicited and transmitted in the local language); noting and using question-response sequences and implications; testing by intentional substitution of acceptable and incongruent references."

Just pausing there. Did you use that technique?
A No.
Q "Testing by paraphrase," what about that technique?
A Yes.
Q "Testing by reference to hypothetical situations," what about that?
A Yes.
Q

"Testing by experimental extensions of reference; and testing by switching styles, channels, code signals, message content, and roles (by reference or impersonation)."

What about that?
A I don't think so. If I understand what they are saying.
Q I see.
MR. GRANT: There is two methods my friend has referred to there in that last question.
THE COURT: She said she doesn't use them anyway.
MR. GRANT: That's what I'm referring to, the last part, first part or both?
THE WITNESS: Both.

MR. GOLDIE:

Q It would be very difficult for you to adopt any testing technique, would it not, if you were questioning a head chief who was aware of your status as a holder of a minor chief's name?

A Yes. That's why I use the method that was testing by paraphrase.

Q Um-hmm?

A I would repeat back to the chief his -- "Is this what I understood you to say?"

Q Um-hmm?

A And commonly do that.

Q And you accepted whatever answer you got from that?

A From them, yes.

Q Right. And I take it you have not tested your conclusions by any form of computer assisted analysis?

A No.

Q And I take it from your earlier answers that you've had no experience prior to this report, in the evaluation and reporting of observations of ethnographic significance?

A Just within courses. That was part of research and methodology courses.

Q Thank you. One of the documents we received from Mr. Grant on Friday last appears to be a paper on how to go about preparing a genealogy. I have just the one copy of this. I want you to identify this as something which you had?

A Yes, I did.

Q And this was given to you by Dr. Cove?

A Yes.

Q It appears to be dated June the 5th, 1984. That would be almost immediately -- about the time you started your --

A That's right.

Q Yes. And you read it through at the time?

A Yes, I did.

Q And have you followed the instructions that he has laid out here for the gathering of your observations?

A Not entirely.

Q I might just ask that --

THE REGISTRAR: Is this to be marked?

MR. GOLDIE:

Q No. I just want his lordship to see that. Oh, I'm sorry, there is an extra copy here.

Mrs. Harris, I want to refer you to page 12, the second paragraph:

"Data collection will almost certainly be done by interviews. The design of those schedules should consider using both structured and unstructured items, as in the Census and Household Survey. Data storage, retrieval, and analysis will be enhanced by using structured items as much as possible."

I take it from your answer that the data was not obtained in a manner that allowed it to be stored, in the computer sense?

A It would have been.

Q But it wasn't?

A No, it wasn't.

Q So there is no question of retrieval?

A No, that's right. It was not done.

Q Right. And the analysis of that was to be done by Dr. Cove?

A No.

Q Who was to do the analysis?

A I don't understand. At no time was it -- this was not instructions from Cove, this was suggestions.

Q All right.

A He was not working for the tribal council, he was just hired to write this paper to suggest -- he was hired to write that before I was actually hired. It was just suggestions for whoever would do the genealogies.

Q But he would be competent to undertake the analysis?

A Yes, if it was done.

Q Yes. And he -- has he done so?

A No.

Q Are you the only person who has undertaken the analysis?

A Yes.

Q Has he reviewed your report?

A I don't know.

MR. GRANT: Well, my lord, I wonder here. I stand to object on the same basis. Does this go to qualifications? I mean my friend is now getting into the substance of her report, he has asked about whether or not Dr. Cove has done analysis. What does that have to do with the qualification of the witness? It may go to the weight of her report and the weight of her opinions, but I object.

MR. GOLDIE: I just want to be sure that the report has not been the subject of review by a person who is an acknowledged anthropologist.

THE COURT: All right. Well we have it that it has not been the subject of review by Dr. Cove.

MR. GOLDIE:

Q Yes. And I am instructed that Doctor Rigsby has been -- has done both genealogical and kinship work on the Gitksan. Has he reviewed your report?

A No.

Q Has anybody reviewed your report?

A Just the lawyers.

Q All right.

Now, I want to just have your confirmation that you are not a member of any learned society?

A No.

Q Nor have you published any paper in the field of anthropology?

A No.

Q And the importance of publication in a learned journal is that it is subject to comment by referees; is that right?

A Yes.

Q And whose comments are often published with the paper?

A Right.

Q Now, a genealogy is a graphic depiction of the use of a particular set of kinship rules?

A Yes.

Q And that's what you've done?

A Yes.

Q Have you ever heard of Teresa Durlach, D-U-R-L-A-C-H?

A Yes, I have.

Q Isn't her paper on the relationship systems of the Tlinget, Haida and Tsimshian, and one of the foundation papers of -- in the field of kinship of this particular society -- of those three societies?

A Yes, I've read it.

Q Beg your pardon?

A I've read it.

Q Yes. I don't see it referred to in your report?

A Because I didn't specifically refer to it. I only listed as references those I specifically referred to.

Q What about George Peter Murdoch, "Social Structure"?

A I've read that.

Q Yes. That, too, is another one of the standard works?

A Yes.

Q Yes. I understand you say in your report that there is no completely appropriate anthropological term for wilp. Is that your belief?

A Yes.

Q Doesn't Professor Murdoch describe what you describe as a wilp, as a sib?
A Possibly. I would have to review that.
Q Um-hmm. Would you agree with me that the making of direct observations such as you have made in your interviews, can be done by any intelligent person properly instructed?
A I suppose that's true for anything.
Q Now, you excluded from your study the Kitwancool; is that correct?
A No.
Q You've excluded from your report the Kitwancool?
A Yes.
Q And the reason you gave for that was that they are not plaintiffs?
A Right.
Q Is that a scientifically acceptable reason?
A No. But I didn't mean it in that light. To draw conclusions for the Gitksan, including all of the villages except one, would be scientifically acceptable.
Q All right. Do you know what the phrase "ethnological present" is?
A Yes.
Q What is it?
A I'm laughing because I was admonished by the lawyers for using it all the time. It's when you refer to the past using the present tense.
Q Yes. But it goes a little further than that, isn't it. It is an attempt to characterize a primitive culture apart from the distortions introduced by Europeans?
A Not necessarily. Depends on the period in which you are -- the period you are describing.
Q Beg your pardon?
A Depends on the historical period you are trying to describe.
Q Well, isn't ethnological present used by anthropologists as a means of describing the society that they have studied before the distortions caused by Europeans?
A Sometimes. Sometimes it isn't.
Q What is yours?
A My opinion?
Q Yes. Your report?
A It describes a current situation and it sometimes describes the past.

Q Yes. And in order to describe the past, you require some skills, do you not, in identifying the particular feature and evaluating its effect? Isn't that the specialty known as aculturation?
A Yes.
Q Um-hmm. And you don't have any experience in that?
A It's the main topic of study throughout an entire course of anthropological study.
Q And this is the first time that you've sought to apply it?
A In the field, yes.
Q Yes. Now Dr. Cove will be called to give evidence in this case, I take it?
MR. GRANT: I object, my lord, that's --
MR. GOLDIE: Well, I just want to have my friend's confirmation of that.
MR. GRANT: I am not in a position to say yea or nay to that. Given discussions the court has had at the pre-trial, it is something we are looking at in terms of shortening the trial.
MR. GOLDIE: That concludes my cross-examination.

CROSS-EXAMINATION BY MS. KOENIGSBERG ON QUALIFICATIONS:
Q Miss Harris, in your report you cover information related to the Gitksan social structure and kinship in addition to the genealogies, and in particular, you cover and describe clans, houses, wilnadaahl, marriage patterns, residence patterns, inheritance and adoption?
A Yes.
Q That's the complete list of the topics?
A Yes.
Q And on page 1 of your report, you say that you -- the primary source of the information for your report on those topics are hundreds of interviews with elders?
A Yes.
Q And you arrived personally in this particular community in 1983?
A No. 1982, I believe.
Q 1982?
A Yes.
Q And you would rely exclusively on what the elders told you with regard to anything that happened before 1982?
A No.
Q On what else did you rely?
A It depends if you are talking about the recent past or the ancient past.

1 Q Let's begin with recent past?
2 A In the area that I studied, I examined records --
3 Q Yes?
4 A -- written records such as the band lists for the very
5 recent past.
6 Q Yes?
7 A And the 1920s and '30s Indian census records.
8 Q Yes?
9 A And the 19 -- or 1881 and '91 census and church
10 records.
11 Q Yes?
12 A I had those.
13 Q Okay. And would all of those written records that you
14 referred to, relate specifically to the genealogical
15 information?
16 A The ones I just listed did.
17 Q Yes. Because as you point out in your report, the
18 written records don't provide house information?
19 A Right.
20 Q And so to the extent that we understand the social
21 structure in relation to the house, and the meaning of
22 the house in relation to the rest of the social
23 structure, you did not rely on written records?
24 A Well, I read the anthropological literature pertaining
25 to the area.
26 Q And what was that?
27 A I've read things written by Cove and Adams.
28 Q Yes?
29 A And there is more -- it's more common to find things
30 written about the Tsimshian in general, like Viola
31 Garfield, and I read Barbeau and Beynon.
32 Q Yes. The particular group that you were studying had
33 been studied with regard to kinship and genealogies
34 before you?
35 A Yes.
36 Q And in particular, Dr. Adams?
37 A Yes.
38 Q And Doctor Kasakoff?
39 A Right.
40 Q And you did read those?
41 A Yes, I did.
42 Q And they are not part of your reference list, is that
43 correct, except with the reference of Dr. Adams' 1986
44 work?
45 A Yes.
46 Q But the earlier work, and in particular, the data that
47 were collected by Dr. Adams and Dr. Kasakoff in 1965

1 through 1967, did you rely on that?
2 A No, I did not.
3 MR. GRANT: Well, there is -- Adams is referred to in her
4 references in the 1973 publication as well as Adams
5 and Kasakoff.
6 MS. KOENIGSBERG:
7 Q Okay. The data that underlies those reports?
8 A Like the field notes?
9 Q Yes?
10 A No, I did not see them.
11 THE COURT: You didn't see them or you didn't refer to them?
12 THE WITNESS: I didn't see them.
13 MS. KOENIGSBERG:
14 Q With regard to -- you were certainly given information
15 by the elders with regard to clans?
16 A Yes.
17 Q And houses?
18 A Yes.
19 Q And the wilnadaahl?
20 A Yes.
21 Q And marriage patterns?
22 A Yes.
23 Q And residence patterns?
24 A Yes.
25 Q And inheritance?
26 A Yes.
27 Q And adoption?
28 A Yes.
29 Q Do you go beyond in your description of that
30 information -- rather than any conclusions that you
31 might draw, do you go beyond what the elders told you?
32 A I'm not sure if I understand what you mean by "in the
33 description of that information"?
34 Q Well, let's -- it is difficult to know. Let's take
35 the example of the topic, "House, Lineage, Related
36 Houses and Clans," that's topic number one, I
37 believe --
38 A Yes.
39 Q -- in your report? You describe and say -- make the
40 statement that wilp has two meanings, that -- I'm
41 paraphrasing here -- that of physical long house and
42 that of group matrilineal persons?
43 A Yes.
44 Q That information you obtained from informants?
45 A Yes.
46 Q The elders? And you say such things as, "to be
47 Gitksan, one must be a house member." That's

1 information that you would have received from the
2 elders?
3 A Yes.
4 Q You say that historically it was possible to lose
5 Gitksan citizenship by banishment?
6 A Yes.
7 Q That was information given you by elders?
8 A Yes.
9 Q You say, in fact, that the elders say that a house is
10 a family, and that the family members are related
11 through their mother?
12 A Yes.
13 Q You state specifically in your report that that
14 information was given to you by elders?
15 A Yes.
16 Q And you say the house is the land holding unit and is
17 the focus of an economic and residential -- I can't
18 read my own writing.
19 A Yes, I do.
20 Q And elders gave you that information as well?
21 A Yes.
22 Q In reporting that kind of information as you do, did
23 you go beyond what the elders told you, or doesn't
24 that information come from your interviews?
25 A The majority.
26 Q With the elders?
27 A The majority of it comes from the interviews with the
28 elders, but I have used other sources in certain
29 areas.
30 Q Could you give me an example?
31 A Well, particularly when I talk about the division and
32 amalgamation of houses, some of that information was
33 related to me by the elders and some of it I obtained
34 by reading several hundred oral histories.
35 Q Yes. That there are divisions and were divisions and
36 amalgamations of houses, certainly, and many examples
37 certainly would be contained in the information given
38 to you by the elders?
39 A Yes.
40 Q And you would be able to read oral histories and find
41 examples of that as well?
42 A That's right.
43 Q Is that what you mean?
44 A Yes.
45 Q Now, I would like to just refer to participant
46 observation, which was another method that you used in
47 coming to information which is in your report?

1 A Yes.
2 Q In fact, it is the only anthropological method which
3 you employed. That which you did would come under
4 that heading?
5 A No, not really. Certainly I did library research and
6 after I had gathered the genealogical information, I
7 did really rudimentary statistical analysis, just
8 counting up the incidence of this feature or that
9 feature.
10 Q Okay. Dealing with participant observation, then, you
11 describe it as your main tool?
12 A Yes.
13 Q And you say that you were in a unique position, as in
14 fact you are not only an observer, you are a member of
15 the culture?
16 A Yes.
17 Q Is not a well-known problem in anthropological
18 literature with participant observations, something
19 which is perhaps casually known as "going native"?
20 A I don't know if it's very common. I don't think it
21 is.
22 Q It is commonly described in the literature as a
23 problem which can flow from participant observation?
24 A Some people consider it a problem and others consider
25 it an advantage.
26 Q Yes. What it means is that you become so involved in
27 the culture that you lose your objectivity, that's
28 what's described as "going native"?
29 A Objectivity is relative.
30 Q Yes, it is, isn't it?
31 A Yes. For either culture.
32 Q And one way that a social scientist would describe
33 objectivity is being able to separate that which you
34 observe from that which you have as a preconceived
35 notion?
36 A Yes.
37 Q And is it not true that it is standard anthropological
38 good methodology, to employ as many means as possible
39 to objectify the data that you are collecting?
40 A In sociology, possibly. That's one of the main
41 differences between the two fields, but commonly in
42 anthropology, anthropologists try to get as intimately
43 involved in the society as possible to get less
44 reaction. The advantage of participant observation is
45 that it is the least reactive methodology.
46 Q Yes. But there are ways of describing your
47 observations which will assist in objectifying them,

1 isn't that so?
2 A Yes, I suppose literal recordings, writing down every
3 word people say and then analysing them.
4 Q Or writing down that something was told you rather
5 than the low level inference that you've observed?
6 A Yes.
7 Q And in describing what you have observed as a
8 participant observer, if you wanted to ensure that
9 someone else coming along would be able to restudy and
10 replicate what you had observed and reported, you
11 would need to define your terms, that would be one way
12 to ensure that you appeared to be objective, isn't
13 that right?
14 A Yes. If replication was the objective.
15 Q Yes. And replication is one of the few ways that one
16 can be certain -- or at least more certain that what
17 was observed and recorded by one anthropologist, was
18 valid?
19 A Replication applies more to the more statistically
20 oriented and structured kinds of methodology.
21 Obviouly, in participant observation, you can't
22 replicate whatever activity or event or occasion that
23 occurred where the observations were made. But the
24 way replication would occur with participant observa-
25 tion, is that a similar kind of situation could be
26 observed.
27 Q Let me take -- let's go to an example and explore just
28 briefly the importance -- or lack of it, of defining
29 your terms, and quantifying wherever possible, what it
30 is your conclusion is. You have a topic that you
31 report on in your report called "Adoption", and in it
32 at page 3, for instance --
33 MR. GRANT: That is at tab 2 of my book, if you wish to refer to
34 it.
35 MS. KOENIGSBERG:
36 Q You summarize, if I can say that, some of the
37 conclusions that you've come to as a result of
38 reviewing your genealogical charts and what they show
39 with regard to adoption?
40 A Yes.
41 Q And there are really two observations or conclusions
42 that you have come to: One is that the genealogies
43 indicate that adoption into a house -- and I'm not
44 going to try to pronounce the word -- but it's a
45 particular kind of adoption, it's not common. That's
46 one conclusion that you've come to?
47 A Yes.

1 Q And the second is that adoption is always of
2 individuals, not of groups?
3 A Yes.
4 Q And those are conclusions which you came to as a
5 result of reviewing your genealogical charts and what
6 they show with regard to adoption?
7 A Well, yes, as well as the fact that the elders make
8 these statements.
9 Q Elders made these statements to you?
10 A Yes. But you can see that evidence on the genealogies
11 as well.
12 Q Yes, all right. Now, you haven't told the reader
13 here, what you mean by "adoptions are not common,"
14 have you?
15 A In the report I believe it does.
16 Q And can you tell me where? It begins on page -- we
17 are dealing with the particular kind of adoption, that
18 is the adoption not of a child to be raised, but
19 adoption into a house?
20 A Right, right. What was the question again?
21 Q What do you mean by "not common"?
22 A I guess I'm referring to another.
23 MR. GRANT: This is -- I refer to the top of page 74, it appears
24 that the witness does describe it.
25 MS. KOENIGSBERG:
26 Q What I'm getting at here is if I knew that there were
27 a hundred houses, and I knew that there were 50 -- or
28 of 60 of those houses, they had never experienced the
29 kind of adoption that you are describing, that would
30 be one way, and I described those numbers. That would
31 be one way of defining what you meant by "not common".
32 I don't say it's the only way, but that would be one
33 way?
34 A Um-hmm.
35 Q In this report, have you told us what you mean by "not
36 common," such that the reader would be able at a later
37 time to come back and say, "Well, by 'not common' it
38 means it only happens 50 percent of the time or 30
39 percent of the time or 20 percent of the time," or
40 whatever?
41 A What I was thinking of, is I believe it's in the -- my
42 interrogatories where I was asked a question along
43 that line and I addressed that issue in that I said
44 that I listed the number of houses -- I forget how
45 many there were now -- that were adoption -- where
46 adoptions were significant to the composition of the
47 house. That's the related area, but I haven't

1 specifically said in the paper how many houses have
2 adoptions.
3 Q Do you know?
4 A I could count them on the genealogies. I don't know
5 off the top of my head.
6 Q Yes. And would "not common" mean to you, when you use
7 the word "not common", did you have an idea of numbers
8 in your mind?
9 A What I'm really referring to is Adams' works.
10 Q Yes. You go on to say that he got it wrong, but
11 that's coming back to what you meant by "not common"?
12 A Okay.
13 Q Did you have a number in your mind?
14 A No, I didn't have a number in mind. I just meant as
15 opposed to Adams' conception, which he says that they
16 are common and that they significantly affect the
17 structure of houses, and I say they are not and do not
18 significantly affect the structure of other houses,
19 other than the ones listed in the interrogatories.
20 Q It is true, is it not, that in Adams' work, there is
21 nearly always --
22 MR. GRANT: Well, my lord --
23 MS. KOENIGSBERG: -- a number?
24 MR. GRANT: Now, with respect, my lord, we are now well into the
25 evidence of the witness and her opinion report, being
26 cross-examined on that evidence and contrasting
27 another anthropologist with this witness. If my
28 friend is by that saying that -- she is comparing two
29 experts, what does this have to do with
30 qualifications?
31 THE COURT: I suppose you are trying to demonstrate methodology,
32 I guess, Miss Koenigsberg?
33 MS. KOENIGSBERG: Yes. And I'll have four points in submission
34 as to why, in my submission, this witness is not
35 qualified to give the evidence, and this court should
36 not admit substantial parts of this report, and I will
37 tell your lordship that that does not apply to the
38 genealogies themselves or the back-up data that went
39 to make up those genealogies, but to conclusions which
40 are based upon things that she was told which, it
41 would be my submission, the court has already heard
42 the evidence in any event. And that on the basis of
43 her qualifications she is not qualified to make those
44 conclusions, and in particular, the -- what I would
45 submit is the failure to quantify or define in any
46 way, substantial terms. In my submission that goes to
47 qualification.

1 Now, we've launched into John Adams here and I
2 don't mean to go any further with it than that. She
3 has said that John Adams said something and she is
4 responding to it. My only point is that we don't know
5 what she means and she hasn't told us in this report.
6 THE COURT: I have very much doubt, Ms. Koenigsberg, if Mr.
7 Grant was asking the questions, Mr. Goldie would be
8 objecting.
9 MS. KOENIGSBERG: Well, I would hope that I might do an adequate
10 job of objecting to Mr. Goldie's objection if he did,
11 if we were into the issue of qualifications. I don't
12 belabour it beyond -- I think we've fully covered the
13 major point that we haven't got a definition in the
14 report of what is meant by "not common", and I can go
15 on to deal with the other brief points that I had on
16 objectivity.
17 THE COURT: Thank you.
18 MS. KOENIGSBERG:
19 Q You would agree with me that if one were concerned
20 about objectifying, being able to demonstrate to
21 someone else coming to the community that your
22 conclusions are valid, that one of the ways that you
23 can do that is (a) to define your terms in such a way
24 that everybody knows what's in or out of any group
25 that you are classifying. Would you agree with me?
26 A I'm not sure I know what you mean.
27 Q Well, it would be important if I wanted to know
28 whether you were accurate that adoptions are not
29 common, to know what you meant by "not common"?
30 A Yes.
31 Q And that in order for you to define that objectively,
32 you would have to have some form of quantification.
33 I'm not talking about some fancy statistical method,
34 counting will do?
35 A It's very common in the field of anthropology to not
36 be statistical.
37 Q Yes. But my question to you is, that if you wished to
38 demonstrate objectivity to satisfy someone that your
39 conclusions were accurate, you would have to define
40 your terms and you would have to quantify, at least at
41 the low level of counting up. In other words, if we
42 were dealing with adoptions, it would be helpful to
43 know what houses you were counting, how many houses
44 you were counting, and how many adoptions of whatever
45 type had occurred in that house, in each house?
46 A That's one method but it's not the one I've chosen.
47 Q Well, it would be difficult to know what you meant by

1 "not common" otherwise; isn't that right?
2 A You could look at the genealogies.
3 Q Yes. But then you would have to count them, wouldn't
4 you?
5 A It's relative.
6 Q Well, is it your position that one's impression
7 without counting is as valid as the actual count?
8 A Yes. As long as it's an accurate impression.
9 Q And how would you test for accuracy?
10 A Well, you could count, I suppose.
11 Q Is there any other way?
12 A Well, I think it's obvious.
13 MS. KOENIGSBERG: Those are all my questions, thank you.
14 THE COURT: Thank you. How long will you be in your submission,
15 Mr. Goldie?
16 MR. GOLDIE: About ten minutes, maybe less.
17 THE COURT: All right. Perhaps we should go ahead then.
18 MR. GOLDIE: My lord, my submission is that Mrs. Harris is fully
19 capable of placing before your lordship her
20 genealogical charts and in describing how she created
21 them and to be cross-examined with respect to their
22 validity as depicting what she has told. In my
23 submission, she is not qualified to discuss what has
24 been called the social structure of the peoples.
25 There are no standard qualifications that she has for
26 that. The -- her level of education has not reached a
27 point where she can be accorded the status of an
28 expert. Her field experience has not been supervised
29 and -- or subjected to the comments of those qualified
30 for that purpose. She has no membership --
31 THE COURT: But that's common in opinion evidence in trials,
32 isn't it, Mr. Goldie? We have witnesses come in all
33 kinds of litigation and give opinions about all sorts
34 of things, some highly credible, some totally
35 unbelievable, but the fact that the opinion that's
36 being expressed has not been defended before a panel
37 of like-minded learned people has never been a
38 qualification for giving expert evidence.
39 MR. GOLDIE: No. But in this particular case, her thesis is
40 going to be the subject matter of her report. A
41 thesis is always defended.
42 THE COURT: Defended as a thesis but not as expert evidence.
43 MR. GOLDIE: But there was an opportunity -- there was an
44 opportunity in this case for it to be subjected to
45 that kind of expert scrutiny. This is important,
46 because Mrs. Harris' field work is the first she has
47 ever done. She has no membership in learned

societies, no publications which have exposed her views to those who are qualified. Her methodology does not, in my submission, conform to known standards which are designed to ensure objectivity. I -- so far as her genealogical charts are concerned, as Mrs. Harris has said on a couple of occasions, you can tell from the charts. Well that's -- that's all that's required. They express whatever she is entitled to express, namely the transmittal of information which she has gathered. But to go beyond that and to talk about pre-contact times or anything like that, is obviously the work of somebody who has got qualifications beyond hers.

We have had a great deal of evidence in this case about many of the topics that Ms. Koenigsberg read to her, adoption, wilnadaahl, all kinds of things. In fact, I don't think there was one that she mentioned that isn't the subject matter of evidence from what might be termed a primary source. So there is no -- she can add nothing, in my submission, to the information which she has got which is not contained in her tables.

THE COURT: You mean the genealogical tables?

MR. GOLDIE: Beg your pardon?

THE COURT: You mean her genealogical tables?

MR. GOLDIE: Yes.

THE COURT: Yes.

MR. GOLDIE: There may be a number of criticisms with respect to those tables, but that's -- that will be the subject matter of cross-examination.

The field of ethnography requires not just the recording of observations which Mrs. Harris has done and which she has recorded in her tables -- or her charts, but it is the objective evaluation of that data. And I -- my submission is that if that is to be done, it should be done by somebody like Dr. Cove who we were told sometime ago would be called as a witness. If that is the case, why should we be concerned about asking Mrs. Harris to extend her work beyond her primary task of gathering the tables. That's my submission, my lord.

THE COURT: Thank you.

MS. KOENIGSBERG: I think I'll be about five minutes.

THE COURT: Yes, all right, thank you.

MS. KOENIGSBERG: There were four points upon which I would base a challenge to Miss Harris' qualifications to anything other than the genealogical charts: They are her

1 demonstrated interest in the lawsuit, making her a
2 biased-by-implication witness or expert; her lack of
3 expert qualifications -- and I say that this combines
4 with the interest which she has -- and that lack of
5 qualification is in relation to never having had her
6 work, such as the application of anthropological
7 methodology to the field, subjected to minimum
8 standards and judged to pass. That is done either by
9 submitting a Masters thesis and having it accepted, or
10 writing for scholarly journals and being published.
11 We combine that, in my submission, with the
12 failure to use objective means of communicating
13 conclusions such that they can be tested, and in my
14 submission, that demonstrates the frailty of the court
15 admitting this kind of evidence. And admitting this
16 kind of expert to give evidence when one has to assume
17 a bias because of the interest involved. This witness
18 is a plaintiff too, she does not employ the means
19 available to her as a trained person to dissuade the
20 mind from the bias.
21 And fourthly, and most importantly in my
22 submission, there is almost nothing in her report
23 which is new or which this court has not already
24 heard. I could take your lordship, but I won't,
25 through all the evidence that we have heard, for
26 instance, on the subject of adoption. We have heard
27 something like in excess of 15 witnesses give us from
28 general rules to very specific rules on adoption, its
29 occurrence, its frequency of occurrence, its meaning
30 in the culture. And in my submission, to admit this
31 expert or this person as an expert to come and tell us
32 what that means, is to say that the court is incapable
33 of rendering it coherent. And in my submission, it
34 should not have been led or heard if it was not
35 capable of being rendered coherent to the court.
36 On every topic, whether it's the meaning of the
37 word "wilp", or the matrilineal kinship structure of
38 the house, we have heard the evidence from primary
39 source, and in my submission, the only basis upon
40 which a court ought to admit expert evidence, to
41 discuss the same topics, is when that evidence is not
42 capable of understanding by the court. It meets, in
43 summary, neither the test of necessity, nor
44 trustworthiness, both of which, in my submission, are
45 necessary, in order to admit expert evidence.
46 And lastly, and in summary, although I've already
47 said it. If it's not going to add anything in terms

of an understanding of the very topics, other than another voice that says, "Yes, this is what the informants told me," when the informants have already told the court the same thing, it's unnecessary in the extreme.

THE COURT: Thank you. I'll hear you at two o'clock, Mr. Grant.

MR. GRANT: Thank you, my lord.

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

(PROCEEDINGS ADJOURNED AT 12:30 p.m.)

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

Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.

(PROCEEDINGS RESUMED PURSUANT TO LUNCHEON ADJOURNMENT)

THE COURT: Mr. Grant, I don't need to hear you on the question of genealogies. Your friends concede that point. I have to tell you that I am troubled by the point raised by your learned friends, particularly by Miss Koenigsberg, that the report on social structure and perhaps particularly such things as adoption and house membership and that sort of thing has all been covered by direct evidence of persons with personal knowledge and that the suggestion is - and this I am at a disadvantage - that the report is really recapitulation of many things that I have already heard. And that fact together with the somewhat sparse experience and qualifications of the witness leads me to seriously question whether this is opinion evidence that should be found to be admissible. Before I hear from you, however, it seems to me in fairness that I must give you an opportunity, if you wish, to supplement your evidence in chief in this regard, because at the time when I stopped you I didn't have a clear picture of the precise nature of the objection that was promised to me and I was proceeding in part on the authority of the well-known dictum that in the land of the blind the one-eyed man is king. But it seems to me that your friends' objections take them beyond that, and if you think that you should supplement your evidence in chief on qualifications, well, then by all means I think you should feel free so to do.

MR. GRANT: If I may have just one moment, my lord.

THE COURT: Do you want a moment to consider that, Mr. Grant?

MR. GRANT: Yes, I would.

THE COURT: All right. Let me know when you are ready. I won't be far away.

MR. GRANT: Yes. Thank you.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Grant?

MR. GRANT: Yes, my lord. I do wish to ask a few more questions about this.

THE COURT: Thank you.

EXAMINATION IN CHIEF BY MR. GRANT (Re Qualifications) Cont'd:

Q Miss Harris, in the course of your research on Gitksan -- on the Gitksan kinship and genealogy and

Gitksan social structure, how many elders did you interview?

A Over 200 people.

Q And you referred to -- you were referring this morning to the fact that you read some of Barbeau?

A Yes.

Q As part of your research for this. How many of the adaawk or oral history of Barbeau did you read in that of that work?

A I would say over four hundred.

Q Okay. And in your report you refer to Adams?

A Yes.

Q And Kasakoff?

A Yes.

Q And can you explain to the court who they were?

A Yes.

Q Or who they --

A Adams and Kasakoff are husband and wife who came to do research among the Gitksan about -- I guess it's been 20 years ago now. And Adams produced a book from his research concerned with social structure and Kasakoff produced a thesis concerned with marriage patterns.

Q Of the Gitksan?

A Yes.

Q And have you read -- you have read both of those?

A Yes, I have.

Q And in those materials they make reference to what they relied upon?

A Yes, they do. They -- Adams says right in his preface that he relied upon the 1881 census, the 1921 and '31 Indian census records and church records, all of which I too have examined.

MR. GOLDIE: I don't think that's an exhaustive answer.

MR. GRANT: Of Adams.

MR. GOLDIE: Of what he said in his preface.

MR. GRANT:

Q And have you -- is there -- well, just a moment, Mr. Goldie. Have you -- is there -- do you recall if there were other references that he referred to?

A Yes, he did interviews as well.

Q Yes. And did -- did you refer to other census besides those three?

A I had the 1891 census available to me that was not available at the time that Adams did his work.

Q And did you endeavor to obtain I believe it was the 1901 census?

A Yes, I did. But it was denied to me by the Federal

Government.

Q Now, do you know has anyone done as extensive interviews, that is interviewed as many Gitksan persons in studying Gitksan social structure and kinship from the material that you have read and reviewed, has any other anthropologist done that?

A Never.

Q Now, what kind -- or when a cultural anthropologist does fieldwork about kinship, what do they -- does -- do they learn about social structure from a study of kinship?

A Kinship is the organizing principle of all small scale, what anthropologists often call primitive societies. And without understanding kinship you can't understand social structure because of the intimate connection between the two, because kinship dictates social forms in small societies.

Q Can you explain that by example what you mean?

A The basic organizing unit of the Gitksan economic unit, political unit is the house and that is the kinship unit.

Q And over what period of time then did you do your study -- have you done your study of Gitksan kinship and social structure?

A I began in May of 1984 and the research continues to this day for other purposes.

Q And as a result of your research, your fieldwork and your -- well, let me ask you this: One of the questions that you were asked was methodology. Mr. Goldie put your -- if you refer to -- well, you don't have to refer to it. I can refer to it. It's I believe under tab 2. He asked you about testing by paraphrase, and you explained that and that was one you used, one of the methods that you used. And then he asked if you accepted whatever answers you got and you said, "I accepted that answer from that chief." Did you rely on information for your conclusions where that information was only provided or that piece of data was only provided by one person?

A No. Most of the separate pieces of information such as this person was married to this other person would have been discussed repeatedly by many informants. Certainly every -- virtually every person known was married and would therefore be discussed in the context of their own house and their spouse's house at the very least, but many people were discussed many, many times by different informants as well as being

1 found in the written records.
2 Q If, for example, one informant told you about an
3 adoption that occurred some time ago and none of the
4 other informants provided you with that information
5 about that adoption that occurred some time ago, did
6 you make reference to that particular adoption in your
7 genealogy -- in the charts?
8 A I wouldn't feel free to put something in that hadn't
9 been confirmed.
10 Q Okay. And did you -- would you rely on that?
11 THE COURT: Mr. Grant, doesn't this relate to the genealogy
12 which we don't have a problem about?
13 MR. GRANT: No. But it comes to the conclusion and I was just
14 going to come to that, yes.
15 THE COURT: All right.
16 MR. GRANT:
17 Q And would you rely on that piece of data for your
18 conclusions on social structure where it was
19 unconfirmed?
20 A Certainly not.
21 Q Can you refer to tab 2 of the white book, Mr. Goldie's
22 book, and the first page, page 172.
23 THE COURT: Of tab?
24 MR. GRANT: Tab 2.
25 THE COURT: Thank you.
26 MR. GRANT:
27 Q Mr. Goldie referred you to the sentence about:
28
29 "An ethnographer is an anthropologist who
30 attempts - at least in part of his professional
31 work - to record and describe the culturally
32 significant behaviours of a particular society."
33
34 Now, I'd like to go to the next sentence which states:
35
36 "Ideally this description, an ethnography,
37 requires a long period of intimate study and
38 residence in a small well-defined community,
39 knowledge of the spoken language, and the
40 employment of a wide range of observational
41 techniques including prolonged face-to-face
42 contacts with members of the local group, direct
43 participation in some of that group's activities,
44 and a greater emphasis on intensive work with
45 informants than on the use of documentary or
46 survey data."
47

Is that an accepted concept in anthropology and the study of ethnography?
A Yes.
Q And you agree with that?
A Yes, I do.
Q Do you speak Gitksan?
A No. I have a limited understanding and have a certain amount of vocabulary. I can follow some conversation, but I don't fluently speak it.
Q Okay. Other than that comment about knowledge of the spoken language, is there -- does that description apply to your methodology?
A Absolutely.
Q You were asked about the use of computer analysis I believe out of the Cove paper. There was a reference to analysis. Why did you not use computer analysis?
A I think a lot is lost. I don't have the skills, for one thing. But it could have been done with others hired to do it, but I think a lot is lost. An awful lot of the institutions and terminologies and a lot of the aspects of Gitksan society are -- they have to be seen in context. A lot of words like the word Wilna daahl has many meanings, a variety of meanings. There is a clear delineation. There is limits to the meaning, but it is a term that is used to mean different things at different times. And because of a lot of the institutions having that kind of variety of meaning depending on the context, it's not that they are unclear, they clearly know what they are meaning, but to try and fit that kind of information into computer studies doesn't work very well and an awful lot can be lost in an analysis.
Q As a result of your research and work, have you been able to form opinions on the relative stability or survival of the Gitksan social structure?
A Yes.
Q And are those opinions reflected in your report?
A Yes, they are.
Q And have you been able to form opinions about the social structure of the Gitksan in the past as a result of your research?
A Yes, I have.
Q If you -- you gave -- you indicated that you were an anthropologist. That's one of the first questions that I did not ask you. Mr. Goldie did, though. And then you described the subdivision. Would it be correct to say that you are an ethnographer?

A Yes.
Q You were asked by Miss Koenigsberg about whether or not you could separate -- whether you had any method to separate that which you observed from your observations and your research from preconceived ideas.
A Well --
Q Did you separate your observations from preconceived ideas?
A I certainly did, because I was familiar with the works of John Adams. I had read John Adams long before I ever met anyone who is Gitksan or had ever been in their territory and I had nothing to judge by and I believed everything that Adams said. But after I started to investigate the society firsthand, I found that there was an awful lot of problems with his work. My results directly contradict an awful lot of the important conclusions that he reached.

MR. GRANT: Thank you, Miss Harris I have got no further questions.

MR. GOLDIE: My lord, I have one thirty-second submission to make.

THE COURT: Yes.

MR. GOLDIE: The answer that the witness gave that she has formed opinions on such things as stability of the society are matters which are going to be addressed to you in argument. She is not -- she is assuming the role of the court in expressing those opinions if she is going to express opinions such as reflected in those questions that were put to her by my friend. She in that sense -- and I emphasis the evidence that relates to her relationship to the society, she is an advocate if she expresses those as opinions.

THE COURT: I am not sure I understand that, Mr. Goldie.

MR. GOLDIE: Well, she is an advocate in this sense, my lord. She is a member of the society. She is a Gitksan. She has an interest in the outcome of the lawsuit. She is not content to tabulate data which she has obtained and which might not -- might be difficult to obtain under ordinary circumstances, but when she goes beyond that she is an advocate and in my submission that is the very -- she is answering the very questions that your lordship will be requested to make conclusions on at the end of the trial.

THE COURT: Well, if the stability of the society is in issue and that sort of a question has to be either a prediction or a forecast, why is it not a proper

1 matter for opinion evidence?
2 MR. GOLDIE: It may be, but not from this witness.
3 THE COURT: Well, that goes to the question of interest.
4 MR. GOLDIE: Yes. Exactly.
5 THE COURT: Well, that troubles me greatly. But considering
6 cases like Phoenix and Metcalfe and perhaps others, it
7 seems to me that the court really doesn't have the
8 right to say I won't hear a witness on that ground.
9 In Phoenix and Metcalfe you'll recall the Court of
10 Appeal said the court had no right to say I won't hear
11 counsel as a witness because he has an interest in the
12 case. It's shocking -- I shouldn't say shocking.
13 It's a surprising result. But I take from that that
14 the law at the moment is that the court doesn't say I
15 won't hear a witness that may have something that is
16 otherwise admissible to say because of association or
17 possible bias in the case. That's a matter, I gather,
18 of weight.
19 MR. GOLDIE: Well, my recollection of that case, and it's pretty
20 faint, is that that was the only source that they had
21 to provide that opinion. Now, my understanding --
22 THE COURT: No. With respect, the problem was that both counsel
23 in the middle of the trial decided they were both
24 going to give evidence.
25 MR. GOLDIE: Yes.
26 THE COURT: And the learned trial judge said, well, I don't
27 think I can hear you, and declared a mistrial. The
28 Court of Appeal said he had no right to do that.
29 MR. GOLDIE: Well, my recollection is that they -- one of them
30 at any rate considered himself to be the only witness
31 capable of giving -- of informing the court.
32 THE COURT: That's a possibility.
33 MR. GOLDIE: In this case we have I don't know how many
34 witnesses, expert witnesses - I have lost track of
35 them, but one of them at any rate that has been
36 mentioned a number of times is clearly somebody who
37 has got the training and I assume the lack of interest
38 to be qualified as an expert. That's Dr. Cove. And
39 why we need be -- why we need be bothered by this
40 witness' conclusions in this circumstance is in my
41 submission a matter that your lordship can take into
42 account in determining whether the witness is
43 qualified to express those opinions.
44 THE COURT: Anything else? Miss Koenigsberg?
45 MS. KOENIGSBERG: I would like just to respond briefly to the
46 mention of whether the Phoenix and Metcalfe case
47 should govern this particular instance and it would be

1 my submission that there I don't know that the lawyers
2 were giving evidence as experts and were being sought
3 to be qualified as experts.
4 THE COURT: No.
5 MS. KOENIGSBERG: But it would seem to me that that in fact is
6 the very issue here. If the nature of the evidence
7 that this witness is going to give is on social
8 structure and related information, that is other than
9 the tabulation of genealogical information, that is
10 the case. It's essentially evidence in the nature of
11 hearsay which is otherwise inadmissible, unless this
12 witness can give it as an expert and her interest
13 undermines in my submission the basis and the logic
14 for admitting expert evidence. And it's that combined
15 with the problem of, if I can say it, the preference
16 for impression versus counting, if I can just put this
17 that way, very briefly, that underscores the fragility
18 of that evidence. In other words, it makes the
19 reliance on her -- or paying attention to her interest
20 totally emphasized rather than de-emphasized. And it
21 doesn't really, of course, go to the issue of whether
22 it's repetitive evidence or not. But which I will
23 submit is still the difficulty.
24 THE COURT: Well, if a party gives evidence and happens to be
25 qualified to give opinion evidence on the subject
26 matter of the case or an issue in the case and could
27 have been qualified to give opinion evidence in any
28 similar case brought by or against strangers, do you
29 say that the interest of the witness is enough to
30 disqualify someone who otherwise would be qualified to
31 give opinion evidence?
32 MS. KOENIGSBERG: Depending on the circumstances I would submit
33 yes and I would submit -- we are dealing obviously
34 with sort of a combination of the best evidence rule
35 or some aspect of necessity and trustworthiness and
36 whether you -- if we are -- and if we are dealing with
37 non-hearsay. So if we are dealing with a party who as
38 this -- as Miss Harris is and we are dealing with a
39 person who has gathered evidence and let's say that we
40 would accept the qualifications as an expert to gather
41 that evidence, then in my submission you would admit
42 it subject to its frailties, but you would admit it
43 because it meets at least the necessity test.
44 THE COURT: Well, surely the necessity test depends not upon who
45 can give the evidence but the need of the court to
46 have the evidence, doesn't it?
47 MR. GOLDIE: That's right.

1 THE COURT: But not the need to have it from a particular
2 witness, surely.
3 MS. KOENIGSBERG: Well, in my submission it really goes to
4 whether the court should relax the rule. It's -- one
5 must always admit evidence which is difficult to
6 accept because of its frailties only when you can't
7 otherwise hear the evidence. If you have an
8 alternative which is less frail in my submission
9 you -- that's necessity in this particular instance in
10 my submission. And our difficulty is, well, three- or
11 four-fold in this particular instance and we are
12 fortunate in this case in that first of all, the
13 genealogical information as information is not
14 objected to. Secondly, the meaning of that in terms
15 of kinship and social structure is addressed by a
16 number of the other witnesses who at least on paper
17 would appear to be qualified and certainly Dr. Cove
18 would appear to be. And so we are going to be able to
19 hear that to the extent that it's necessary to hear
20 it. But in my submission we are also dealing with
21 another real serious difficulty here and that is even
22 on social structure if one were to take the
23 conclusions, the statements that are made by this
24 witness, they are statements that have been made by
25 the witnesses, the elders, the chiefs in this
26 courtroom. I have no doubt that the witness has
27 spoken to more of them and she may have a number of
28 other witnesses who have said similar things. Just as
29 we have heard those very issues. Is the relationship,
30 the operative kinship relationship in this society a
31 matrilineal one? We have heard that one from a number
32 of witnesses, and we have heard evidence in support or
33 in derogation of that particular proposition and it's
34 my submission that we can go through this report and
35 for every topic that she addresses we have heard from
36 at least one witness and in most cases more than one
37 that opinion or that description of this society
38 expressed. I have gone through the exercise of
39 looking for it. Not to be able to document it in
40 every instance, but to isolate the topic and to
41 determine if we have heard that evidence before. And
42 I don't say that -- I can't address the court on how
43 absolutely accurate, but I don't believe that there is
44 a topic that we have not heard, including the
45 description of the social structure, and in that
46 instance in my submission, my lord, relaxing every
47 rule for the admission of expert evidence just should

not be done.
THE COURT: Thank you. Mr. Grant?
MR. GRANT: Yes. Thank you, my lord. Well, I want to say firstly that I am quite surprised because of my friends' submission regarding the interest of this witness. We have dealt with this. It was all argued out with Mr. Sterritt. And the parallels are this, my lord. Nobody, not Dr. Cove, nobody has done what this witness here has done, which is to do that analysis of the kinship structure of the Gitksan. That's the first point. Nobody had done what Mr. Sterritt did. Both were members of the community. The Gitksan community. Mr. Sterritt's research was not reviewed by anyone else, that is by some cartographer or some outside person. And also as with this witness, some of the evidence that Mr. Sterritt alluded to, that is the boundary evidence, in fact to avoid the question of hearsay that is the foundation upon which the experts' opinion is based must be somehow before the court, all of the evidence upon which Mr. Sterritt relied was before the court for his opinions and he was qualified. So firstly I say, my lord, and I concur strongly with you that -- and the analogy I would say would be a doctor in a medical malpractice suit. And a doctor in a medical malpractice suit may well give evidence including opinion evidence that what he did was right. Now, the fact that he is a party may go to the weight of it, but it certainly doesn't go to the admissibility as to his opinion at that time as to what he did was right. Now, that deals with the question of the, quote, interest on that this person is a member.

Now, I also endeavored to canvass, and of course this is why your lordship made a ruling last a year in November of '87, that this witness could be subject to a Rule 28 examination, because she was in a unique position and this was argued by my friends, the Provincial defendants at that time and successfully. She was in a unique position because of her work on the genealogies to be subject to a Rule 28 examination. And that --

THE COURT: That was with relation to genealogy, was it not?
MR. GRANT: Well, my lord, no. The questions went way beyond genealogy. They went from everything from -- they even canvassed witchcraft as I recall. Something which the witness --
MR. GOLDIE: Refused to answer.

1 MR. GRANT: No. Which the witness said was not her field.
2 MR. GOLDIE: No. That's not correct.
3 MR. GRANT: She said --
4 THE COURT: I don't think I passed on the questions that were
5 going to be asked of the witness as I recall.
6 MR. GRANT: No. In fact --
7 THE COURT: I think I dealt with them on the basis of genealogy.
8 MR. GRANT: Well, actually no, my lord. There was an objection
9 to a series of questions and then you ruled that those
10 questions as well should be answered in February or
11 March of this past year.
12 In any event, what I see as the more serious
13 concern for your lordship and what I would like to
14 address is: Do you need this evidence? Will this
15 assist, this opinion? And I'd like to briefly deal
16 with that.
17 It's my submission, my lord, that the fact that
18 you have heard in certain circumstances maybe three
19 chiefs describe adoption in their house, for example,
20 or marriage -- how marriages are exogenous, and I am
21 not concerned about the fact that the system is
22 matrilineal. I am not concerned with the fact that
23 houses are central component of the system, because I
24 agree, I concur to a degree with my friends that that
25 evidence is before you in such amplitude that it's not
26 necessary. But let me take an example, and this is
27 where it goes, to the society and the structure, the
28 Gitksan social structure and its survival. One of the
29 questions in dispute here, my lord, is whether or not
30 the Gitksan society has maintained itself since
31 contact to date. This is raised in the defence and --
32 it's raised in the statement of claim that it has.
33 It's raised in the defence that it has not.
34 Now, one chapter of Miss Harris' report deals with
35 the vision and amalgamation of houses and it goes to
36 the issue not of whether you have heard a few examples
37 of this in evidence where houses have been divided and
38 amalgamated, but what it goes to is how in the social
39 structure the division and amalgamation works and why
40 it's important to the survival of the society. And,
41 my lord, ultimately it goes to answer one of the
42 issues raised on enumerable occasions by my learned
43 friends which is why did we have in October of '84
44 these number of plaintiffs and now in May of '87 we
45 have these number of plaintiffs? What is the
46 reasoning for these different house groups? And I
47 submit, my lord, it is of assistance and that this

1 witness notwithstanding she is a member of the
2 community is trained as an ethnographer. And the fact
3 that she hasn't done her doctorate or her masters
4 thesis to date only goes to weight. But that it is of
5 assistance to your lordship to have an anthropological
6 opinion that the -- as to what the social structure
7 is. I say -- I dare say, my lord, that that evidence
8 will not be lengthy. That's not the point. But that
9 it is of assistance to you to assist you in your own
10 analysis of the evidence that you've heard as to an
11 opinion of a person who last canvassed the social
12 structure more extensively among the Gitksan more than
13 anyone else. And I say it's not up to my learned
14 friend to say Dr. John Cove is up to this -- can give
15 this evidence or anybody else. It must be a decision
16 that the plaintiff's counsel makes as to the scope of
17 the evidence, and I am certain I can predict that the
18 challenge to Dr. Cove would be because he has not done
19 the fieldwork relating to kinship and social structure
20 that this witness has done. This is the best witness
21 to present this evidence to you. And I submit that
22 that evidence is germane. It is relevant and my
23 learned friend certainly doesn't disagree with that
24 because he says that the stability of social structure
25 is an issue that you must decide. But it's not that
26 this witness is going to make the argument. What she
27 is going to bring to it is an ethnographic analysis of
28 the research she did. And it's not sufficient just to
29 say here is a binder of 50 genealogy charts. Now
30 let's all make something out of this. It's a -- it's
31 a professional expertise of what the social structure
32 is. And it's my submission, my lord, that that is
33 relevant, it is of assistance, and also, of course,
34 with respect to the breadth of the scope of the
35 marriage laws. For example this witness talks about
36 violations of the marriage laws and the extent of
37 those violations and that's relevant evidence for you
38 that you have not heard. You have heard examples, but
39 not how -- is this basically the system fallen apart?
40 Is it fallen apart in one respect or is it basically
41 cohesive as it was before? And ultimately of course
42 you will be the one to make those rulings and
43 conclusions, but the opinion of an anthropologist in
44 the field should assist.
45 THE COURT: Mr. Grant, are you tendering this witness under
46 Section 10 or 11 of the Evidence Act?
47 MR. GRANT: Eleven. But having said that, my lord, as you may

1 recall in the fall, and that's the question I think --
2 I believe, although of course I wasn't at the
3 pre-trial last Friday, that you raised this with
4 respect to other witnesses and plaintiff's counsel are
5 considering it, but I -- I am intending to tender her
6 report and examine her, but to abbreviate the
7 examination of her the summary report is filed -- it's
8 not filed as an expert, of course, but it's no -- one
9 of the tabs for your lordship as with the other
10 witnesses. And the reasoning for that is to shorten
11 down her examination, her direct-examination in court.
12 THE COURT: All right. Thank you.
13 MR. GRANT: Those are my submissions.
14 THE COURT: This witness presents the usual difficulties for the
15 reasons which have been described in the submissions
16 of counsel. I think it is very much a borderline
17 case, but I think that I ought not to refuse to hear
18 the evidence, notwithstanding the misgivings I have
19 about the qualifications of the witness, which are not
20 intended in any way to be a reflection on her, but
21 merely because it is presumably important evidence,
22 and in a case such as this it might have been better
23 to have it from a witness who does not have an
24 interest in the outcome of the proceedings and who
25 perhaps has more experience than she does in the field
26 of it. Those, I think as Mr. Grant has said, are
27 matters that go to weight. And I think that I should
28 hear the evidence, particularly because of the very,
29 very extensive survey which she has done and which I
30 think the court should have the benefit of hearing
31 about. And for that reason I am going to allow her to
32 give opinion evidence on genealogy and the kind of
33 ethnography that counsel have been talking about. As
34 I say, I think this is very, very close to the
35 borderline, but following my practise in this case
36 varying if at all on the side of admissibility rather
37 than otherwise, I will hear the evidence. Are you
38 ready to proceed, Mr. Grant?
39 MR. GRANT: Yes, my lord. Probably, my lord, before I start I
40 can ask that tab one of my document book being the
41 curriculum vitae with the corrections I referred to
42 this morning be marked as the next exhibit.
43 THE COURT: Yes.
44 MR. GOLDIE: And those corrections apply to the same CV which is
45 an exhibit and an appendix to the report?
46 MR. GRANT: Oh, the -- the -- my friend refers to another CV
47 which was in the report given to them in November. It

is not in the copy which is at tab 2, because this CV here has been updated and it's at tab one. So that CV is not there.
THE COURT: The other CV you say is not before me?
MR. GRANT: It's not before your lordship. My friends have it and they may wish to in due course.
THE COURT: All right. What's the next exhibit number, please?
THE REGISTRAR: Next Exhibit is 851. Is that tab one?
MR. GRANT: Tab one of the black book.
THE REGISTRAR: 851.

(EXHIBIT 851: Tab 1 of black book - Curriculum Vitae of Heather Harris)

EXAMINATION IN CHIEF MR. GRANT:
Q Now, I'd like to ask you, you already have indicated in evidence and at the time that you were asked about your qualifications that in the preparation after being hired to do this work, you were -- you canvassed the written material and then you spoke to certain researchers. And what was the next step of what you did in terms of this research? First of all, maybe you could tell the court what you were asked to do and then how you went about doing it?
A My instructions were extremely limited. I was told to do genealogies and this was before there was a court case, and the original purpose was -- membership was the main purpose to be -- when they first had in mind to have genealogies done.
Q That is whether a person was Gitksan or not Gitksan?
A Yes.
Q And so what was your first step and what did you initiate doing?
A After what you just mentioned, reading the literature and speaking to some researchers who were working at the Tribal Council, then I began the interviews. I had hoped that I could get a nice list of houses and just fill in the members, but I found that people couldn't give me a precise list of houses. People would name houses and I would be confused sometimes about which were houses and which were not. And so --
THE COURT: Sorry, they couldn't give you a list of the houses or they couldn't give you a list of the members of the houses?
A No. They couldn't give me a list of the members -- or of all of the houses, of the names of all of the houses. They couldn't give me a clear list that

didn't overlap or didn't leave out anybody. There was no single person that could do that. And I found out why as I proceeded through the research.

MR. GRANT:

Q And why was that?

A Because of the fact that houses change over time in that populations rise, which if a population rises to the point where a house can't function comfortably, it eventually divides. And in other cases population declines which, of course, has been a serious factor in recent years where epidemics struck the native populations of North America and there was some very serious drops in numbers of different groups, including the Gitksan. And in those cases when a house was hit by severe population decline, sometimes they would amalgamate. So two houses that were related historically would amalgamate and function as one unit for a period of time. They may eventually reconstitute themselves, but for a period of time in their history two houses may function as one unit.

Q Can you give examples of two houses that amalgamated to function as one unit?

A Yes. The house of 'Wii Muugi'ulsxw and Xhliiyemlaxha.

THE COURT: I am sorry, the first one?

MR. GRANT:

Q 'Wii Muugi'ulsxw?

A Yes. Was once one house and they divided, and then the house of Xsaxgyoo also separated from them, but as time passed and their population declined Xsaxgyoo and 'Wii Muugi'ulsxw merged again.

MR. GRANT: You have those names, my lord. They are on the plaintiffs' list, actually, those three names.

THE COURT: No. Well, I don't have it here. But more important, does Madam Reporter have it?

MR. GOLDIE: Doesn't she refer to that example in her report?

MR. GRANT: Yes, she does.

MR. GOLDIE: Perhaps if she gave the page number.

MR. GRANT: I will be coming to that.

Q Referring you to tab 2, page -- page 81 and 82. I am sorry, page 82 there is a description of the Xhliiyemlaxha house and 'Wii Muugi'ulsxw. That's the second full paragraph?

A Yes.

Q Firstly, you recognize this document at tab 2. This is your summary opinion report?

A Yes, it is.

Q Now, again talking generally, can you continue on with

1 your description of the house, of your research, and I
2 am taking you through one file afterwards. You can
3 just give the court a brief quick overview as to what
4 you did.
5 A Yes. So I didn't have a -- I didn't begin with a
6 clear and precise list of what houses existed, but I
7 had an idea who some of the chiefs were of what some
8 of the houses were. So I began with some of these
9 chiefs and particularly I began with ones that I knew,
10 because it was easier to go to someone I knew well and
11 ask questions which were poorer questions, silly
12 questions from their point of view, because I was so
13 ignorant about the society. And so I began with
14 people I knew and I would start with the house chief
15 and begin to ask him questions that would fill in the
16 house membership.
17 Q Yes.
18 A I would start with the chief as eco (phonetic) which
19 is an anthropological term which means the person from
20 whom you are beginning the genealogy, the central
21 focus point of the genealogy. And I would ask that
22 person who was the chief: Who are your brothers and
23 sisters? Who is your mother and father? And so on.
24 Q Yes.
25 A After I had followed all the possibilities to the end
26 of what was -- what was logically possible with a
27 matrilineal genealogy, I would then ask: Are there
28 any other members in your house? And if they would
29 say yes, then I would go through the same process
30 trying to fill in that branch of the house.
31 Q Okay. What do you mean when you say that branch of
32 the house? What do you mean suggests as more than one
33 branch of the house? Can you explain that to us?
34 A Yes. In some of the houses the precise biological
35 relationship between all members of the house is not
36 known by people who are living, and so as you can see
37 on the genealogical charts some of the houses will
38 have several groups, anywhere from two to I think
39 maybe six is the extreme. And they are matrilineal
40 groups that are not connected on the diagram because
41 the biological connection between the lineages was not
42 known.
43 Q Now, is that question of having studying genealogy as
44 part of your anthropological work in studying kinship
45 where you end up with two groups that are not
46 biologically known, is that a feature that's dealt
47 with by anthropologists, is it a common feature, a

common problem?
A I'm not sure if I quite know what --
Q Well, you've described that some of the genealogies show two branches with the biological connections not known?
A Yes.
Q When you study -- when anthropologists study genealogies and they are studying a unit, there is an anthropological term for what you would call this house?
A I don't feel that I have seen any anthropological terminologies that adequately describe a house. The units I was talking about within a house where the relationship is known between those biological members, that can be adequately described by the anthropological term lineage.
Q Yes.
A That's commonly used in the literature. But the members of a house can be composed of several lineages and I don't think there is a term that adequately describes what the Gitksan describe as a house.
Q Okay.
THE COURT: Shall we take the afternoon adjournment.
MR. GRANT: Maybe we should take the break now.
THE COURT: Thank you.

(PROCEEDINGS ADJOURNED PURSUANT TO AFTERNOON BREAK)

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

Laara Yardley,
Official Reporter,
United Reporting Service Ltd.

1 (PROCEEDINGS RECONVENED AT 3:15 p.m.)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Mr. Grant.
5 MR. GRANT:
6 Q Now, you were describing, I believe, your research
7 process, and you just explained what you did in your
8 initial interviewing process with chiefs, and what did
9 you do -- did you change your research methods and how
10 did you -- did your research methods evolve?
11 A Yes, I did change them some. I found that a lot of
12 the chiefs are elderly, some of them don't speak
13 English or speak it poorly, and most of them were men.
14 And as I went through this process, I started to
15 discover that women were more commonly the keepers of
16 this kind of knowledge and made better informants.
17 And I also found it was better to go to a younger
18 person in the house who it was easy to communicate
19 with, for me, to get the basic part of the genealogy,
20 which would be the younger people in the family that
21 were well known to her, and then save the more
22 difficult questions for the chief, so that I didn't
23 exhaust the elderly person. Because it can be an
24 exhaustive process to ask questions of someone through
25 a translator, and many of the chiefs were easily tired
26 because they were very elderly or even ill. So I
27 would save the hard questions for the elderly person.
28 Q I refer to you page 107 of tab 2, pages 107, 108 and
29 109.
30 THE COURT: I think I know how they feel.
31 MR. GRANT:
32 Q You looked at those three pages?
33 A Yes.
34 Q And you prepared this list. This is the list of
35 persons that you did interview in the course of your
36 research?
37 A There are a couple that were interviewed for the
38 purpose of genealogy by Neil Sterritt and a couple by
39 Don Ryan, but the majority were directly interviewed
40 by me, and the notes for -- I have the notes from the
41 interviews that I didn't do myself.
42 Q And those notes are in your files?
43 A Yes.
44 Q Which you provided to me and have been delivered to
45 counsel for the defendant?
46 A That's right.
47 Q Now, so the vast majority of these persons are persons

that you had seen, at least on one occasion, or on several occasions?
A That's right.
Q Possibly rather than having her go through it, my lord, that -- I ultimately will want to tender the entire report as an exhibit, but possibly we should mark Appendix B as an exhibit now if my friends are going to take objection to me filing the entire report.
THE COURT: All right.
MR. GOLDIE: Well, I think our objection has been overruled.
THE COURT: Well, I think it has. I suppose that doesn't preclude you from raising a fresh one. Might there not be another objection?
MR. GOLDIE: Oh, I'm not sure about that. But I think -- I think the objection with respect to the issue of her opinions on social structure have been overruled.
THE COURT: All right.
MR. GOLDIE: And unless my friend wants each page marked as an exhibit, I really don't see the utility.
THE COURT: Let's leave it to the end, Mr. Grant, and we will see whether we need to mark them separately.
MR. GOLDIE: I think --
MR. GRANT: I'm prepared at this stage, the witness has identified this as her summary report, to have the entire thing marked as an exhibit, because I'll be referring to, as I say, certain parts of what she describes.
THE COURT: All right.
MR. GRANT: That's tab 2.
THE REGISTRAR: Tab 2 be Exhibit 852.
THE COURT: No, we are not going to mark it.
MR. GRANT: I see.
THE COURT: If there are problems later you can have it marked separately.
MR. GRANT: Oh, I see. Just not mark the tab at all.
THE COURT: Oh, are you tendering the whole --
MR. GRANT: Yes, I was. In light of the comments I was going to tender the entire tab now as the next exhibit because I've been making reference to it. It's easier.
THE COURT: What do you say to that, Mr. Goldie?
MR. GOLDIE: I thought my friend was going to go through the whole thing and then tender it as an exhibit.
THE COURT: Yes. Let's do it that way.
MR. GRANT:
Q All right, fine. That's fine.
Now, what I would like to do at this stage, if

you have -- yes, your copy is in the same tabs. You prepared notes, you took notes or did drafts of genealogies as you did this work; is that right?
A Yes.
Q And you accumulated these in files that reflected what -- what you ultimately put into files reflecting certain of the houses that you were dealing with?
A Yes.
Q That is, you endeavoured to keep each little bit of notes in relation to a house so that you would have them in some cohesive organization; is that right?
A Yes.
Q Now, can you tell the court over -- you've now described this interviewing process. Over what period of time did the interviewing process take place?
A From -- I probably started the interviews around June of '87 -- I mean, pardon me, of '84.
Q Yes?
A And continuing right up until the report was done and after that.
Q That is the initial report of January of '87?
A Yes.
Q And then you worked through after that report --
A Yes.
Q -- on interviews?
A Yes.
Q Okay. Now, as part of your research work, did you attend any feasts, Gitksan feasts?
A Yes. I've attended, I would say, about 50 feasts.
Q Okay. And over what period of time, from when to when are you talking about attending 50 feasts?
A From, I would say, from 1983 until -- I'm trying to think the last feast I went to. A month ago or so.
Q Until the present time?
A Yes.
Q Okay. Now, did any of your observations at feasts assist you in your research on kinship and social structure and the genealogies?
A Yes, yes. One of the things that's graphically displayed is the clans. At a feast, one clan hosts the feast and the other two are seated, and there are separate tables for the clans. And the houses are also demonstrated to a certain degree by the seating at the tables. In some cases, one house is seated at one table, in other cases, related houses are seated together, and that indicates the wilnadaahl.
THE COURT: Would you explain for me again, briefly, please, the

difference between a wilnadaahl and the wilksiwitxw?
THE WITNESS: Yes. The wilnadaahl is the speakers, the persons speaking, that is their house and other related houses within their clan. So if the person who is speaking is a wolf, their wilnadaahl are other members of the wolf clan and they usually would be referring to people of other related houses besides their own house. The wilksiwitxw is the house of their father who by definition, because of the exogamous marriage rule, is of a different clan.
THE COURT: Yes, all right.
MR. GRANT: Now, I would like to refer you now to tab --
THE COURT: I'm sorry, the wilksiwitxw is the house of the father or the clan of the father?
THE WITNESS: The house.
THE COURT: The house, thank you.
MR. GRANT: I'm sorry, my lord.
THE COURT: That's all right.
MR. GRANT:
Q Can you go to tab number five, and just to advise your lordship of the approach I take to -- I've taken one of the files of the witness, and this tabs 5 through 31 and actually 32 and 34 are related as well, relate to the file of the witness relating to the Kliiyem lax haa genealogy. The documents that my friends referred to last week and which were delivered to them, are notes of each of these different house groups plus some of the Kitwancool notes and some Wet'suwet'en notes, but I just wanted to have the witness explain the methodology through taking one sample file, and we've chosen this one at random.
Can you refer to tab 5 which seems to be a form, and explain to the court where the form came from and how you used it?
A When I first started working at the tribal council, previous researchers had used a similar form to gather information about chiefs, and I changed it somewhat so that it was more appropriate to my genealogical research. There was very few changes, just questions that I didn't think were relevant for genealogical research that I left off of the previous form. And I started out doing the research at a slightly more structured fashion than I eventually did, and this was one of the things that I used when I first started doing the research. When I would go to the chief, I would fill in these specific questions on this form, that would be one of the first things I would do.

Q And that's in fact -- this form represents an interview on August 21st, 1984, with Martha Brown?
A Yes, it does.
Q And you -- what you are suggesting is that you didn't use these forms later on?
A No.
Q And what -- what was the difficulty with using the form?
A I found that structured interviews are just problematic with Gitksan elders. It's hard to keep them on one topic, you have to be very patient, because it would be considered outrageously rude to demand that they stop speaking about one topic and return immediately to the topic at hand, which, when you have a structured format like this, you are attempting to elicit precisely this, this and this question as found on the form. But what I found is to eventually get all of this information, may take much longer than you would ordinarily expect to ask these few questions, because they would tell me related information at the same time, and I would have to listen to that to not offend the informant.
Q Now, did you take notes of all of the related information -- or all the other information there was though not directly connected to kinship and social structure?
A Not absolutely all. Oh, that was -- I'm sorry, I was not listening to the question.
Q That was not related -- did you take notes -- when, for example, you interviewed a witness such as Martha Brown, did you have that experience, that she would go off to other topics?
A Yes.
Q Did you take notes of all of the topics that she discussed?
A Not all of the topics.
Q Okay. Did you take notes of when she discussed topics that were unrelated to kinship and social structure?
A No, I didn't.
Q Did you take notes when she discussed topics which were related to kinship and social structure?
A Yes, I did.
Q Now, I would like you to turn over the -- is this in the sequencing of the Kliiyem lax haa file, that group of documents which were in your file on the Kliiyem lax haa house, would this be chronologically the first of your documents from your review of the file?

A Yes, this is probably the first interview I did, with Martha.
Q Okay. If you can turn over to tab number two, and now can you explain what that is?
A Well, this is also from an interview with -- or from two interviews, actually, with Martha Brown.
MR. GRANT: Tab 6, I'm sorry. My lord, I may just -- these documents are -- and I referred to -- have numbers in the very top, handwritten, that I just put as a convenience.
THE COURT: Yes.
MR. GRANT:
Q But it is -- number 2 is there but it's, of course, tab 6.
A This was a first attempt at doing a genealogical diagram for the House of Kliiyem lax haa from two interviews that I had done with Martha Brown.
Q By the way, before we go further, was there a period of time where you did interviews and did not keep notes of those interviews?
A Yes.
Q In the early stages of your work?
A The original notes from the interviews that occurred on August 21st and 28th, those weren't kept as were some of the other research notes that I had been keeping at the beginning of my research, because what I was doing -- and that's so in this case of this document we are looking at right now -- is I would transmit that information onto a genealogy and I would continually update them. But I was instructed after I had been doing research for a few months, that I should keep all my research notes after the action was begun.
Q This was a discussion with counsel, legal counsel?
A Yes, yes.
Q Okay. So go on to explain -- could you just sort of give the court some idea of what that represents, just --
A These are Martha's very immediate relatives: her two husbands, she was married twice, her brothers and sisters, some of her sister's children, Martha's children, grandchildren, and one great-grand child. And her predecessors that she told me about in these interviews, her mother, father, mother's second husband, her mother's brothers and sister, grandmother, great grandmother, great-great grandmother, and so on.

Q Okay. And the use of triangles and circles, was this a standard that you set or was this sort of how anthropologists do genealogies?
A This was standard anthropological format for genealogical diagrams. I eventually made some minor alterations to the standard system, but --
Q Such as what?
A The standard system for indicating a deceased person is a slash.
Q Yes?
A And I found that when people were looking over my shoulder at the diagrams I was doing, that they -- it upset them, because we are talking about their dearly beloved deceased relatives.
Q Right?
A And they just didn't like this slash through the symbol that represented someone they dearly loved, so we used something that was not so offensive to them which was just a little dot in the centre, after that. So that was a variation from the standard system.
Q Okay. And the triangles are males and the circles are females?
A Yes.
Q Okay. And then you have these filled in circles and triangles. And what does that -- and the arrows going back and forth. What does that represent?
A On this one it indicates the inheritance of the house chief's name Kliiyem lax haa through several people within the house.
Q Okay. Now, going to the next tab -- oh, and I should ask you this: Both on this tab, is this in your handwriting?
A Yes, it is.
Q And then at the top you have ASS under tab 6. What does that refer to?
A It's short for "assimilated". As I gathered more information and I would transmit the information on this one plus other information I had gathered onto a more updated version of the genealogy, then I would put this into a dead file. I would write "assimilated" on it and put it into a dead file.
Q Okay. And in fact, the files you provided to me were the compilation of primarily the dead file of the house? That is the house --
A Yes.
Q -- file of the material you assimilated?
A Yes.

THE COURT: So that means the material on this tab 6 was assimilated onto something else?
THE WITNESS: Onto the next one that we find here, yes.
THE COURT: All right.
MR. GRANT:
Q And then going to tab 7, you find the living arrangement in the House of Kliiyem lax haa, the informant, Martha Brown. Now, what does this signify? Again, this is your notes?
A This is one of those pieces of related information that was volunteered to me by Martha. This is -- this square signifies the traditional style of Gitksan house in pre-contact times in the early contact period; the large cedar dwellings, long houses as some people call them. And the -- at the bottom part of it you see two little lines and that represents a doorway, and so this would be where you would enter the house, this would be the front of the house facing towards the river, and where I have these chiefs names Kliiyem lax haa, Eeliist, Hawaaw', Wii'mugulsxw, those are the corners of the house in which those chiefs and their immediate relatives would reside.
Q Okay. Now, Eeliist, is that name also a name referred to -- well, who holds that name today?
A Jim Angus Junior.
Q Okay. Is it also known as Wii eelast?
A Yes.
Q Okay.
Q What about Hawaaw' who holds that name today?
A That's Alice Wilson.
Q And Wii 'mugulsxw?
A Art Wilson.
Q And Kliiyem lax haa?
A Eva Sampson.
Q She received the name after Martha Brown's decease?
A Yes. That's Martha's daughter.
THE COURT: Wii 'mugulsxw was who?
THE WITNESS: Art Wilson.
THE COURT: Art Wilson, thank you.
MR. GRANT:
Q Now, what did this diagram have to do with -- why did you record this data?
A Well, because I think it's important to preserve those pieces of information, and it also has considerable significance in that it indicates the residence, the actual physical residence pattern within the house. And I think that the inclusion of Eeliist is

significant in this, because Eeliist has a slightly different origin than does Kliiyem lax haa, Hawaaw' and Wii 'mugulsxw. And this diagram represents a period in time which was the fairly recent pre-contact period, because Martha told me -- at the time she told me this information, she told me that Wii eelast was more closely related to the northern wolves, the Houses of Luus and Gyolugyet, and that he moved down to Kispiox before any of his other relatives did, so Kliiyem lax haa as another member of the wolf clan, welcomed Eeliist into his house, and so for a time, Eeliist resided with Kliiyem lax haa. So this diagram represents a certain period in the history. This arrangement, living arrangement wouldn't always have been precisely like that in another period in history, it was different.

Q And did you review other anthropological, like the Barbeau material, with respect to Wii eelast and Kliiyem lax haa?

A Yes.

Q Did you --

A They refer to Eeliist as Ksemgaahl in Barbeau because those are two chiefs names in the same house.

Q Okay.

MR. GOLDIE: Can we have the spelling of that.

MR. GRANT: Ksemgaahl?

THE WITNESS: K-S-E-M-G-underlined-A-A-H-L. It means female rat.

MR. GRANT:

Q It means what?

A Female rat.

Q Refer you now to tab number -- well, maybe I should, just before going to that. On tab 7 --

THE COURT: Mr. Grant, I have another problem now, probably my own fault, but I can understand how it's necessary for this witness to get conduct of these interviews for the purpose of forming an opinion, but the way this is all coming in to me is just plain, unadulterated hearsay, and it seems to me that we ought to have some recording of recognition of the use to which this evidence can be put.

MR. GRANT: Well --

THE COURT: You see this is a statement that Martha Brown told her about how they organized their long house, which runs completely in the face of the ruling I made on admissibility of history. Now this wasn't a -- this wasn't a basis of your friends' objections to the

evidence, and indeed, they are not objecting now, but maybe they've given up.

MR. GOLDIE: Well, I was under the impression that there was a general objection to hearsay that was made a long time ago.

THE COURT: Well, I think that's probably right.

MR. GOLDIE: And I don't recall that we have been making that objection, but I haven't been here all the time, so --

MS. KOENIGSBERG: For what it's worth, my lord, I had understood that when I objected to the witness being able to give the evidence to the extent that it was just a repetition of the evidence that we've heard, I had anticipated that we would be listening to this as it comes in and --

THE COURT: But even the other evidence I heard has been largely confined, or if it wasn't, I confined it notionally, to that which was evidence which came from a deceased person and was in the nature of a history. And I think that in one of my rulings I made mention of the fact that general history is admissible but not the details. Now, I'm getting -- I'm getting very, very specific evidence here that isn't historical, it's just plain hearsay, and is it being tendered, Mr. Grant, as a basis for an opinion that can conform to the rulings I made on hearsay?

MR. GRANT: Well, maybe there is a couple of factors that aren't quite clear. One is that Martha Brown is deceased, but --

THE COURT: But she was --

MR. GRANT: She was not deceased when she was interviewed by this witness, no.

MR. GOLDIE: Nor when she gave evidence.

THE COURT: Nor do I understand the witness to be saying that Martha Brown told her that these statements came in in the way of history. It seems to me that she is just -- the witness is now just repeating the stream of consciousness discussions that she had with Martha Brown. And it may be, as I say, that it's admissible for the purpose of forming a general opinion on social organization, but I would like counsel to tell me if I'm -- I'm in error in treating it as not being admissible as proof of the truth of what she is telling me.

MR. GRANT: Okay. Well, it's a couple of points. Number one, my lord, is that this witness, of course -- I referred her to -- asked if she had seen this elsewhere, and she referred to the Barbeau material. She has

1 described to you that she has read these 400 --
2 THE COURT: Yes.
3 MR. GRANT: -- adaawk. That's one point. The other is that
4 I -- maybe I should have paused before starting on
5 this, but my purpose here, my lord, is to use -- be
6 precise, use an example of the material that she
7 documented. This witness has explained that she did
8 not record or keep all of the stream of conscious --
9 all of the discussions she had with any particular
10 elder. What she did keep was the material that was
11 relative to her research on Gitksan kinship and social
12 structure. And that's -- in fact, you just
13 anticipated my next question. When I went back to the
14 tab I was going to ask her if this had -- this
15 information had to do with that Gitksan kinship and
16 social structure. And all I'm setting out -- and of
17 course I have absolutely no intention of going through
18 any or all of her files, but just to take one as an
19 example to see the underpinnings of her opinion.
20 THE COURT: You see, the other evidence that I've heard of
21 declarations made by deceased persons was evidence
22 that related to title. Is there a similar exception
23 for social organization?
24 MR. GRANT: Well, to the extent that social structure and
25 kinship are tied in -- that genealogy and social
26 organization are interconnected in the anthropological
27 field, my lord, I would submit that there is. Because
28 how else, otherwise, and in similar parallel cases,
29 such as the Calder case, where you have opinion
30 evidence, or the Australian case where you have
31 opinion evidence given by anthropologists about the
32 social organization, there is absolutely no way of
33 them giving those opinions without formulating them
34 from their work. I would submit it is like the
35 situation that I think that is always used about the
36 real estate agent and the fair -- you know, what's the
37 fair market value, that you don't have to call in
38 everybody that -- on that market value, and that's
39 where I submit that this is relevant.
40 I concur and I agree and don't intend to go into
41 evidence or statements made by other persons to the
42 witness that do not relate to the opinions of this
43 witness. But I submit that it has to be, otherwise, I
44 would submit, my lord, that the -- well, how else can
45 anthropological evidence ever be admitted in court,
46 because the foundation for much of it is one of two
47 sources: You go and read what all these

anthropologists have written, that's one source, or else you -- and then form an opinion, or else you go and do field work.

THE COURT: Well, that may be. I'm on the very threshold of this problem. But I wouldn't have thought it would be competent for the party tendering the opinion to adduce the details of the underlying research. If the defence want to challenge it, perhaps. But as I say, I'm groping at the moment because I haven't had to deal with this for a little while. But I have serious misgivings about hearing a lot of evidence about what informants told the witness about matters that don't fall within the clear classifications that have been established as exceptions to the hearsay rule. One of them, it seems to me, is title, and another one is history.

MR. GRANT: And I believe genealogy is also another one.

THE COURT: Yes, probably genealogy.

MR. GRANT: Genealogy.

THE COURT: I think probably in genealogy, but --

MR. GRANT: And I would submit that this ties to genealogy to the extent that --

THE COURT: Who is living in which corner of the building doesn't tie into genealogies, does it?

MR. GRANT: No.

THE COURT: And that's just an example we are at.

MR. GRANT: Well, the point is this is the residence, the organization we are talking about. The genealogy we are talking about is wilp or house, is the physical house, and there is the membership, and unfortunately they interconnect.

THE COURT: Is there -- I don't recall, is there a section on this in Millirrpum?

MR. GRANT: On the genealogies?

THE COURT: Yes -- no, no, on anthropology?

MR. GRANT: My lord --

THE COURT: They heard anthropological evidence but I doubt if they heard this kind of detail, and the trial only took 17 days.

MR. GRANT: Well, my lord, maybe I can canvass --

THE COURT: Including argument.

MR. GRANT: Pardon?

THE COURT: Including argument.

MR. GRANT: Well, as you said earlier, my lord, we are saving the hard questions for you at the end, I guess.

THE COURT: Well, I'm happy to hear it. I shouldn't put it quite that way. I'm prepared to hear it but I want to

1 make certain that I am not leading anyone into any
2 misapprehension about the use of this evidence. And
3 if counsel can assist me in some way by drawing lines
4 around this evidence, I would be glad to hear them.
5 But at the moment, I am disposed to let you go ahead,
6 but with the caveat that as presently advised, I don't
7 think it's really admissible to prove anything except
8 as foundation for the -- whatever opinions the witness
9 is going to express. And as to them, as I say, I have
10 some doubt about whether this is evidence that you can
11 lead. It seems to me that what you've been telling
12 me, "I interviewed 400 people and I made certain
13 observations and as a result of that, this is what
14 I -- this is my opinion." But to tell me all of the
15 things that the 400 people told her, it seems to me,
16 is both unnecessary and probably inadmissible.
17 MR. GRANT: Well basically, my lord, I should be clear. I am
18 trying to deal -- I see that notwithstanding the
19 success this afternoon, that I have to deal with the
20 issue of weight, and one of the things that I wish to
21 deal with is the methodology of the witness. And the
22 approach that I have taken is to take one sample, that
23 is one group that she studied, and have her explain
24 what she did so that you can see the process. I am
25 not intending, of course, to do that with all of them.
26 THE COURT: All right. Well, as I say, I'm going to allow you
27 to proceed with the caveat that I've expressed.
28 MR. GRANT: Yes.
29 THE COURT: And with the invitation to other counsel to assist
30 me if there is anything they can suggest on this
31 matter that would be of assistance to me as we
32 proceed.
33 MR. GOLDIE: Well, perhaps I should defer what I have to say,
34 but the objection that was being made to repetition
35 was being made to repetition of evidence which is
36 already under an objection, because it has been let in
37 on the basis of reputation, and it is -- it is subject
38 to argument, as I understand it, with respect to both
39 necessity and trustworthiness. Now, the objection --
40 THE COURT: That's the evidence about title.
41 MR. GOLDIE: Yes. And -- but this is exactly the same sort of
42 thing. The witness said, "This is what Martha Brown
43 told me it was like in pre-contact times."
44 THE COURT: Yes.
45 MR. GOLDIE: Now, we said you don't need to hear that from this
46 witness, you don't need to hear that kind of detail
47 because you've already heard it and it is subject to

an objection. And speaking for myself, I regard what she is saying now as subject to that objection, and one further step removed, because Martha Brown gave evidence. It was -- I think she gave some evidence that related to this, I know she gave evidence with respect to seating, and she has given that -- she was cross-examined on it. But we can't cross-examine this witness on what Martha Brown -- the accuracy of Martha Brown's recollection. And as far as methodology is concerned, if that's the purpose of it, then all it is required to be said is, "That I interviewed Martha Brown and I used the information she gave me." And this document doesn't speak to the truth of the matter at all, if that's what it's -- if it's to demonstrate methodology.

THE COURT: Well, I think with respect, that expresses my present view, Mr. Goldie, that it isn't necessary for me to hear all the evidence that the witness gathered, nor is it necessary even to go through a typical case, although I'm not sure that I would stop you from doing that. You see I'm troubled by -- the concern I have is that it seems to me this could be done in five minutes, that she could say, "Here was my method. As a result of that, this is the opinion that I have reached," and leave it to your friends to challenge the basis for the opinion, if they wish. But I am very reluctant to give a direction of that kind without giving counsel every opportunity to tell me why that isn't the way we should proceed.

And I'm going to take advantage of this break in the evidence to adjourn now. I have a matter that I have to attend to at four o'clock and it would be better to adjourn now than in five minutes time. So I'll be glad to hear counsel on this matter tomorrow.

THE REGISTRAR: Order in court. Court stands adjourned until 10:00 a.m. tomorrow morning.

(PROCEEDINGS ADJOURNED AT 3:55 p.m.)

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

Toni Kerekes, O.R., R.P.R.