(PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Order in court.
THE COURT: Koenigsberg.
MS. KOENIGSBERG:

Q We were talking about the impacts of European civilization in terms of the economic impacts or opportunities available and taken by the Gitksan and Wet'suwet'en from beginning in, let's say, the 18 -- early 1800's with trapping, bartering; moving through the decades in the 1880's we begin with the canneries. And the canneries as a major source of wage employment for these people persisted for 50 or 60 years; is that correct?

A Until the -- until the mid-60's I think. Mid-1960's.

Q So maybe 70 years or -- 70 or 80 years even?

A But there is a complaint by the old people that much of the money that was earned in that five or six weeks in the cannery season was treated as easy come, easy go, and then the people who'd stayed behind had to -- the burden of helping look after these people once they got home.

Q Okay.

A And there was again the reliance on the other options within the local area.

Q Yes.

A Wage, jobs, as well as the land.

Q But we wouldn't put the canneries into the fleeting opportunities category, would we?

A Well, it was -- it was regular. It was five to six weeks every summer. Yes.

Q And for some people more than five to six weeks?

A For very few. For the majority it was just at the height of the season of the sockeye runs.

Q And it persisted as a means of earning income for approximately 80 years?

A Yes.

Q And would you agree with me that it would account for a substantial portion of their income for those who participated in it?

A Of their cash income. Yes.

Q Yes. And we've talked about the packing and freighting industry and it, for a much briefer time, 20 years or so, was available as an economic opportunity which was taken advantage of?

A It wasn't a much briefer time. It went on to some extent for a period of 40 years I think.

MS. KOENIGSBERG: Okay.
THE COURT: What would you equate that period with? When did it start and when did it end?
THE WITNESS: From the 1860's to after the turn of the century.
THE COURT: Yes. Thank you.
THE WITNESS: With varying degrees of frequency depending on the -- what there was in the way of economic development, temporary economic development, by outsiders in the region.
MS. KOENIGSBERG:
Q And logging, beginning in the late 1800's, 1890's, we have the use of the forest for other than personal use?
A Yes, but it wasn't logging as we know it in the last 50 years, say.
Q Oh, but for the last 50 years, it's logging as we know it?
A Particularly in the last 30 years.
MS. KOENIGSBERG: Okay. And in the 1890's we have references to being involved in the hauling of cord wood, the cutting of firewood, for an income?
MR. GRANT: Just a moment. I don't -- my recollection of that was there was a cutting of cord wood, but my friend is -- if she's relying on the reference of the letters, that -- it was not indicated that that was for income.
MS. KOENIGSBERG:
Q Well, let me ask the witness: Do you imagine that they're hauling cord wood for free?
A I think they were probably hauling cord wood for cash and for barter. They would be -- they would be paid by -- part of the cord wood was used for fueling the steam boats that came up the river as far as Hazelton.
Q And --
A But that was a brief period of about less than 20 years.
Q Yes. And the railway construction beginning about 1908?
A I don't know the exact date, but somewhere around there. Yes.
Q And persisting off and on, intensively in the early part of the 1900's, and then persisting as one much smaller area for employment?
A Well, employment in the railway has been -- there's been a few jobs now and again. There's certainly been an interaction with the train crews in terms of selling and bartering fish until fairly recently.

1 MS. KOENIGSBERG: But the major interaction with the railway
2 would be wage labour, would it not?
3 MR. GRANT: When?
4 MS. KOENIGSBERG:
5 Q Throughout.
6 A No, I would say it would probably be about 50/50. The
7 interaction between the fishing sites and the train
8 crews was of considerable importance to the family
9 economies.
10 Q You mean when the railway was actually being built?
11 A No, after the railway was functioning and right up
12 until the more recent phases of rationalization in the
13 last 20, 30 years.
14 Q Okay. Would you --
15 A Some people have told me that they still had good
16 relations, and they still do with a few, but the
17 trains are on such tight computerized schedules now
18 they're unable to develop that relationship which they
19 had when the train was on the siding in the past with
20 the crews who would then bring in sometimes produce
21 from other native groups on the other side of the
22 Rockies or they would simply exchange for people's
23 garden produce somewhere else up the line, and
24 sometimes it was a straightforward cash transaction.
25 Q Okay. Would you agree with me that, to the extent
26 that Gitksan and Wet'suwet'en people could earn their
27 living in wage labour, that they were not reliant then
28 for earning their living on their relationship with
29 their chief and their house?
30 A No, I wouldn't agree with that.
31 Q Traditionally, as it has been described to us and as
32 you have described it, the house structure and
33 function was with the chief as the delegator of who,
34 where, and when, resources would be harvested --
35 A Uh-huh.
36 Q And if you'll let me finish my thought and then I'll
37 ask you a question -- and then to that extent we would
38 see those people in the house as being reliant on
39 their relationship with the chief to earn their
40 livelihood; is that correct?
41 A I've lost you. The first part -- I'm sorry, I lost
42 the first part of your question.
43 Q To the extent that the chief is the one who gets to
44 say --
45 A Yes.
46 Q -- who, where, and when resources are going to be
47 harvested for the house of which he's chief, then the

1 people --
2 A Yes.
3 Q -- in the house are -- rely on him for their ability
4 to earn their living?
5 A Well, it's his -- the chiefly functions include, not
6 just the allotting of people to use rights on the
7 land, but mobilizing and assisting in all aspects of
8 the economy, helping to get jobs and overseeing the
9 sort of collective economy where the funding and the
10 goods coming in from the different spheres are, in a
11 sense, redistributed through the person of the chief.
12 Q Yes.
13 A Whether it's from the cash sector or from the
14 traditional subsistence sector.
15 Q Yes. But would you not see any diminution in
16 authority of a chief if the chief doesn't have to be
17 relied on for the cash?
18 A I think the crucial factor is not the changes in
19 economic possibilities over that time period, so much
20 as the changes in administrative structure, the
21 overall social authority of the chiefs, the boarding
22 school system, the education in general; those social
23 factors have had quite a detrimental effect on the
24 authority of the hereditary chiefs --
25 Q So --
26 A -- and the elective council system, of course.
27 Q So you would agree with Adams then that the chiefs'
28 authority has been undermined by the missionaries'
29 influence, and --
30 A The elective councils and the education process, and
31 so on.
32 Q And the taking over of other administrative functions?
33 A Yes. Yes.
34 Q Yes. Would you say that -- would it be your opinion
35 that the economy and the changes in how people earn
36 their living and to whom they're beholden to earn
37 their living has had little or no impact?
38 A It's had some impact. Yes.
39 MS. KOENIGSBERG: Okay. Could we now go back to Mr. Tomlinson,
40 and I'd like to deal briefly with the feast.
41 THE COURT: 21?
42 MS. KOENIGSBERG: 21.
43 THE COURT: Yes.
44 MS. KOENIGSBERG:
45 Q Before we just move right into Mr. Tomlinson, I would
46 like to try, if I can, to summarize, at least for the
47 purposes of discussing the feast, your -- some of your

1 opinions about the feast. And is it fair to say that
2 it's your opinion the feast function for the
3 Gitksan-Wet'suwet'en cannot be viewed in terms of the
4 giving away of property, and that it is a competition
5 and that it involves both competition and the giving
6 away of property for the purposes of status?
7 A It -- well, it involves all those features, but the
8 emphasis that is generally placed by anthropologists
9 on the giving away of enormous amounts of goods in
10 order to increase the status of the host, I think that
11 is erroneous, at least as it pertains to these
12 peoples.
13 MS. KOENIGSBERG: Yes. And you are discussing on page 527 both
14 Codere, Goldman and Levi-Strauss, and you say --
15 THE COURT: I'm sorry, where are you now?
16 MS. KOENIGSBERG: On page 527.
17 THE COURT: Of?
18 MS. KOENIGSBERG:
19 Q Of the -- it's the second volume of Mr. Daly's
20 opinion, 527. You're commenting on Levi-Strauss, in
21 particular, toward the bottom. You quote him as
22 saying:
23
24 "...the function of the feast is:
25
26 '...finally to surpass a rival in
27 generosity, to crush him if possible
28 with future obligations which it is
29 hoped he cannot meet so as to take from
30 him his prerogative, titles, rank,
31 authority and prestige.'"
32
33 And then you say:
34
35 "This, clearly, is not the function of
36 feasting, at least among the Gitksan and
37 Wet'suwet'en."
38
39 A Yes.
40 Q And you would say it would, even if we didn't take as
41 quite extreme a view of it as Levi-Strauss, that the
42 property exchange, or the giving away of property in
43 generosity, is not to crush or in any way place the
44 rival -- a rival in obligation?
45 A Well, it -- it throws down the gauntlet to the rival
46 to a certain extent, but what is happening, as I see
47 it, is that all the chiefs have one status, but they

all live up to it to different degrees. And if one -- if one of the chiefs acquits him or herself very well, then it's encumbant upon those that are beholden to them to reciprocate when it's their turn to feast, in a like manner. But there are definite limits on what it is polite and proper to -- what level you should go to.

Q And it's your view that --

A But the levels are so high that it's rather difficult, under present conditions, for people to exceed them.

Q It's your view that the reciprocation is the hallmark of the feast?

A My view is that in the overall nature of transactions between the kinship groupings and the feast, reciprocation prevails, while there is sometimes very bitter competition within the house groupings over such things as the succession to names.

MS. KOENIGSBERG: Okay. Can we turn then to Mr. Tomlinson?

THE COURT: Yes. Can we stop for a minute? Who are Levi-Strauss referring to here?

THE WITNESS: He is referring to the -- the Kwagulth material or the Kwakiutl material basically that was collected by Franz Boas at the end of the last century. And he hasn't done work in the area, but is a very famous cross-cultural analyst and structural anthropologist.

THE COURT: Yes. All right. May I just ask, this view that -- reciprocity or competition, call it whatever you want, is the characterization that you have put on the feast, is it?

THE WITNESS: No, the whole notion of reciprocal relations is common to the analysis of the institution which anthropologists call potlatch. It's based on the type of gift-giving that we were describing the other day, the giving of the gift and the reciprocating and what does it signify. But then the emphasis which many of the scholars place on this relationship is that it becomes highly competitive, so it's only gift-giving and reciprocal in name, but not in practise.

THE COURT: Is it your perception that that's how the Gitksan and Wet'suwet'en view their feast?

THE WITNESS: My view is that they see their feasts as primarily from the perspective of paying back, getting out of debt, so they can clear their name. That's the way it is usually described.

THE COURT: I thought I'd been listening to the evidence, but I didn't hear that in any of the evidence of the witnesses that I've heard. It was mentioned from time

1 to time, but that's a foreign concept so far as I view
2 the evidence.
3 THE WITNESS: Well, it was almost like a litany in my -- the
4 way things were explained to me in the community, and
5 it's quite -- it's the basis on which the feasting is
6 described by people like Philip Drucker and Homer
7 Barnett who worked earlier in the century.
8 THE COURT: Are the anthropologists talking to the real people
9 then, or am I just not hearing what they're saying,
10 because they put the feast on the basis that you have
11 a feast when you have something important to decide or
12 when you have a debt to pay in the sense of a funeral
13 or a chief's name, a chief to be chosen, or a name to
14 be conferred?
15 THE WITNESS: That's all part of it.
16 THE COURT: But there wasn't any suggestion that -- at least, if
17 there was, it was a very minor part in the great body
18 of evidence I heard about feasts, this idea of
19 competition and reciprocity and getting out of debt.
20 In my mind it was hardly mentioned.
21 THE WITNESS: This is the anthropological analysis in the
22 literature, perhaps that's the difference, but the
23 feasting is occasioned by certain crises in the life
24 cycle, and then various business is decided in the
25 course of the events that are mounted, including
26 announcements of names and who's going to use
27 territory and so on. But it's all done in a way which
28 gets the family out of debt and sets the accounts
29 straight so that they don't have to worry for the next
30 period of time. They're redressing all their
31 obligations. And people stand up and they say "I'm
32 giving these gifts to so and so because they were kind
33 enough to drive my husband to the hospital when he was
34 sick." These are all -- these types of obligations
35 come into the paying off of the debts. They're
36 incidental to some of the important business, such as
37 who obtains the name, but they're all an integral part
38 of what goes on there.
39 THE COURT: Well, that's not the way you put it a moment ago, in
40 my view, is that the overall prospect of reciprocity
41 prevailed.
42 THE WITNESS: I see that as consistent.
43 THE COURT: Well, I'll have to review the evidence in that light
44 because that's not the way I've been understanding it.
45 It may be that it's there and I just haven't taken the
46 right ore out of that ground, but I'll look at it
47 again. I don't think we should have an argument now.

1 MR. GRANT: I won't raise anything.
2 MS. KOENIGSBERG:
3 Q Mr. Daly, the descriptions of the feast that the Chief
4 Justice has heard, and you have read the transcripts
5 and you've heard his brief summary of some of the
6 things that were said, are accurate descriptions of
7 what goes on in the feast today, would you agree?
8 A The --
9 Q Important business to be done?
10 A The descriptions in the transcripts?
11 Q Yes.
12 A Yes, I wouldn't quarrel with what any of the chiefs
13 have said there.
14 Q And they are describing the feast today as a place
15 where they carry on business, and the business that
16 they carry on is the taking and affirming of their
17 lineages, taking their names and affirming their
18 lineages as hereditary chiefs?
19 A And doing it before witnesses.
20 Q Yes. And affirming their authority among themselves
21 to the territories?
22 A Yes. But it's all done in -- vis-a-vis the various
23 groups that they are linked to by blood and by
24 marriage.
25 Q Yes.
26 A And these links are reaffirmed and reiterated and made
27 note of through the giving of money or gifts or doing
28 services for that group, and then they in their part
29 reciprocate, and there's this back and forth
30 throughout the transactions that occur.
31 Q Yes. And today we hear the discussion of paying for
32 the name as the major amount of money that goes into
33 the feast?
34 A Well, paying for --
35 Q Is that an accurate --
36 A Paying for the name is -- it's explained in terms of
37 the obligations of the father's side when someone dies
38 are to immediately provide all the expense money for
39 funeral and coffin --
40 Q Yes.
41 A -- and clothing, and so on. And that's the -- that's
42 the first act, so to speak. Then the host, the
43 matrilineal kinship grouping of the person who is
44 deceased, in paying for the name, they are repaying
45 the funds which have been advanced to them by their
46 father's side. That's the way that the --
47 Q Yes, but when we hear what we have heard and what we

1 have seen in the feast books, is that relatively large
2 amounts of money, relative at least to the amounts --
3 other amounts of money which are contributed by the
4 people who contribute money at the feasts, are by the
5 person who's taking the name, and that is described as
6 paying for the name or demonstrating how important the
7 name is, and how committed the person is, by the
8 payment of a large amount of money for the name?
9 A Well, paying for the name is -- yes, it's the -- the
10 encumbant to the name is expected to pay the most or
11 almost the most.
12 Q Yes.
13 A But paying for the name also involves the
14 contributions by the rest of his house group.
15 Q Yes. And the whole house or many members of that
16 house contribute money as support for the taking of
17 that name?
18 A They do, and they go up to the front of the room
19 mother by mother -- mother and children, and then
20 another mother and her children.
21 Q And then out of the money that is put in by the house,
22 the first part off, and I don't mean to -- I don't
23 purport to be a specialist in the procedure, but a
24 substantial sum is paid to the persons on the father's
25 side who took care of the funeral expenses?
26 A Yes, and all the various and sundry expenses are taken
27 care of.
28 Q And then monies are distributed to other persons,
29 guests of the --
30 A For various reasons. For various reasons, but there
31 is a major payment to all the other full chiefs who
32 are paid for having come there to witness the business
33 of the house, the taking of the names, and the
34 description of who's going to be using which portions
35 of territories.
36 Q And --
37 A And so on.
38 Q And who pays and who gets paid are how you look at the
39 kinship relationships; how you see the kinship
40 relationships in the feast?
41 A Yes. It's a very graphic presentation of the
42 grouping, intergroup relationships.
43 Q Yes. And part of the reciprocity that you describe
44 and that you hear about, is that whatever is paid in
45 this feast, whatever is given, for instance, by the
46 father's side, is reciprocated in that feast, and then
47 in subsequent feasts persons who have contributed

1 should get back what they have contributed?
2 A They should get back, yes, but they -- the actual
3 return is very hard to measure, and it's generally --
4 that's the ideology; that it all evens out.
5 Q Yes.
6 A But it never does all even out. There's roughly a --
7 it's perceived as going this way and going that way.
8 And if people are net receivers of returns from a
9 feast, over time their opinions are not listened to
10 that much because they don't reciprocate.
11 Q And to the -- sorry.
12 A It's all right. Sorry.
13 Q To the extent it's not evened out, if that were a
14 pattern, then an anthropologist might come along and
15 say there's design in that not evening out, and some
16 people are putting money in -- are giving away a lot
17 of property in order to demonstrate that they are the
18 most important or have the highest rank; is that
19 correct?
20 A Well, some anthropologists might say that, but it gets
21 evened out because of the social pressure that this is
22 something that is shaming to the other chiefs.
23 Q Yes.
24 A And who does this person think he or she is that they
25 can get away with this slap on the -- in the face of
26 all their fellow chiefs.
27 Q If one --
28 A They live in small communities face-to-face and
29 there's always frictions, but they have to learn to --
30 they have to live with each other over time, so there
31 are various constraints on keeping people within a
32 certain level of giving.
33 Q To the extent that that social pressure works to keep
34 things relatively reciprocal today, is that a change
35 from the past?
36 A No, I think that's a constant feature, and where it
37 has broken free into a big rivalry between one or two
38 or three or four of the chiefs out of a possibility of
39 maybe over the whole region of a couple of hundred,
40 this is, as I've argued, is associated with the
41 trading possibilities around the forts at specific
42 points in the nineteenth century. And those are the
43 most interesting theoretically for anthropologists.
44 The whole institution becomes painted by the example
45 of these extreme, bloated, power potlatching
46 situations where vast amounts of goods are given away,
47 and then anthropologists, who are not from the area,

they see this as a major form of redistribution of an economic redistribution of goods; that this is the sort of culmination of the whole year's produce that is brought to the feast like a market-place and distributed back and forth. And that is not common with --

Q You say that sort of thing did take place among the Gitksan-Wet'suwet'en?

A I say it took place mainly on the coast around Fort Rupert and Fort Stikine, the Metlakatla-Fort Simpson area, and I made mention of Chief Legaix of the eagles.

THE COURT: Can we have the spelling of that?

THE WITNESS: L-e-g-a-i-x.

MS. KOENIGSBERG:

Q Shall we turn to a historical account, the Tomlinson journal, just now Exhibit 901-21, page 253, is the -- sorry, page 254. On the right-hand side of the page it's Monday, November 2nd of, we think, 1874. They've left Port Essington, and if you just skip down to about a third of the way down that column we see "We reached Kitwingah..."

Do you see that?

A Yes.

Q Okay.

"We reached Kitwingah, as I have said, on Thursday evening. This is the first village on the river where the Nishkah language is spoken, and as we have now arrived at the border of a large district inhabited by seven tribes all speaking the Nishkah language, but differing from the coast tribes in disposition, habits, and pursuits, and yet very much under their influence on some points,"

And just stopping there, it would be your understanding that the Nishga language would be the language type that was being spoken in the Gitksan villages at that time? He's referring to the seven Gitksan villages, is he not?

A Well, if he's coming from Port Essington he has been coming from the Coast Tsimshian dialect of the language and he obviously observes that the Gitksan are speaking closer to -- a language closer to the Nishga.

1 Q Yes. And he certainly is speaking of -- he's reached
2 Kitwanga, and he's now speaking of the seven tribes,
3 referring to the seven villages of the Gitksan? From
4 your recollection, or do you recall from reading this,
5 that is what he's -- who he's referring to?
6 A I believe so, yes.
7 Q
8
9 "I think it right to digress a little and
10 give some account of an event which happened
11 last spring, and has, so to speak, changed
12 the face of affairs.
13 There is a custom prevalent among all
14 the North-West Indians of giving away
15 property. It is true that among so many
16 tribes the mode of acquiring and
17 distributing and the occasions for giving
18 away the property may and often do differ,
19 but the principle is the same everywhere,
20 viz., pride, ambition, and self-exaltation.
21 Among the Nishkah-speaking tribes this
22 custom prevails to a great degree. Among
23 the Nishkahs every man, even those of the
24 lowest grade, has practised it, and, so long
25 as the practice is indulged in, there can be
26 no real improvement socially, morally, or
27 religiously."
28
29 If I stop there there's no question between us
30 that Mr. Tomlinson is -- Reverend Tomlinson is a
31 missionary, and one of his missions is to bring
32 Christianity and stop the things that he thinks are
33 morally repulsive to that?
34 A Yes.
35 Q And that's his point to view. Going on:
36
37 "That this may be apparent let me instance a
38 case -- and it will not be an exceptional
39 case, which occurs once or twice a year, but
40 such a case as is frequently recurring. An
41 active man who has had a run of success,
42 both in his fur-hunting and fishing
43 operations, and has thereby become possessor
44 of property to the value of one or two
45 hundred dollars, determines to have a giving
46 away of property. Having formed this
47 determination, he first seeks for some

1 circumstance -- the death of a relation, the
2 naming of his child, or to take another name
3 himself, which he can make the ostensible
4 cause for his doing so."
5
6 And if we stop there. That's his interpretation
7 of what he observes?
8 A It is his very ethnocentric interpretation.
9 Q Yes.
10 A Of what is happening.
11 Q Yes. He is observing this and interpreting it
12 according to his point of view?
13 A Yes.
14 Q
15
16 "Next he counts up the amount of property
17 last given by a man in his own station.
18 This amount he feels bound to exceed. To
19 accomplish this he often exchanges his
20 canoe, guns, clothes, etc., for blankets,
21 cotton, food, elk and marmot skins; in
22 addition, he borrows all he can from his
23 relations and others. Next he calls in the
24 aid of the medicine men, who perform their
25 various incantations and invocations, and
26 translatings of spirits. These devil rights
27 are interspersed with dancings and other
28 revelries. At the conclusion of these
29 orgies a feast is given, and after the feast
30 the property is distributed. Some few of
31 the blankets, etc., are all given away
32 whole, but the majority are torn into strips
33 and distributed, and thus the giving away of
34 property ends. The immediate results of
35 such a step are, that, whereas the man and
36 his family were comparatively comfortable
37 before, now they are obliged to go about
38 wrapped in dirty blankets. Moreover, there
39 are sure to be ill-natured persons to sneer
40 at him because he did not do this or that
41 which somebody else did, and thus the
42 pleasure which he expected to derive from
43 the gratification of his pride is destroyed.
44 Moreover, as soon as he has succeeded in
45 making a few dollars again, those from whom
46 he borrowed begin dunning for payment of
47 what he borrowed, and though, by Indian law,

1 he is entitled to receive back all that he
2 gave away, still, as there is no set time
3 for this, he is obliged to keep account of
4 it and be continually asking for it. If he
5 falls sick he is sure to be pestered by
6 application from those from whom he has
7 received property at various times for
8 repayment, and those who owe him property
9 endeavour to keep out of the way. When he
10 dies there is sure to be quarrelling,
11 disputing, and sometimes fighting among
12 those who succeed him."
13
14 And that ends this instance which he says is not
15 rare. He has described there, would you agree with
16 me, a potlatch as we --
17 A Well, I don't know. It's hard to say what he's
18 describing there. It's so ethnocentric and so loaded
19 and freighted with moralistic terms, and it is a
20 construction which is very distant from the native
21 point of view. And if he drew this conclusion from --
22 anyway where did he observe this? This is a
23 diversion, isn't it?
24 THE COURT: Kitwanga.
25 MS. KOENIGSBERG: He says "among the Nishkahs", and he has just
26 told us that he's arrived in Kitwanga and there are
27 seven villages of the "Nishkah-speaking" --
28 MR. GRANT: Well --
29 THE WITNESS: It's difficult to tell whether this is -- he's
30 referring to the coastal Nishga people or whether he's
31 referring to the people of Kitwanga, who had their
32 ties to the Nishga.
33 MS. KOENIGSBERG: Well, when we read it, do we really have
34 difficulty determining that he's talking about a feast
35 that took place in the area --
36 MR. GRANT: Well --
37 MS. KOENIGSBERG: This is cross-examination, Mr. Grant.
38 MR. GRANT: I know it is.
39 MS. KOENIGSBERG: Where it says:
40
41 "We reached Kitwingah, as I have said, on
42 Thursday evening. This is the first village
43 on the river where the Nishkah language is
44 spoken, and as we have now arrived at the
45 border of a large district inhabited by
46 seven tribes all speaking the Nishkah
47 language, but differing from the coast

1 tribes in disposition, habits, and pursuits,
2 and yet very much under their influence on
3 some points."
4
5 He then says:
6
7 "I think it right to digress a little and
8 give some account of an event that happened
9 last spring."
10
11 He does say there the custom is prevalent among
12 North-West Coast Indians --
13 MR. GRANT: Oh, well --
14 MS. KOENIGSBERG:
15 Q -- but then he says, "among the Nishkah-speaking
16 tribes this custom prevails to a great degree."
17 A But it doesn't say whether this is the -- the people
18 of Kitwanga who he's visiting or it's something that's
19 come to mind of an experience he had among the Nishga
20 in the Nass Valley.
21 MR. GRANT: My lord, I refer you to the -- at page 255, and I'm
22 very concerned about the implication my friend is
23 making, or interpretation, and I understand that
24 she -- about 12 lines up from the bottom, in the same
25 sentence, he refers to the "Nishkahs" and the
26 "Kitiksheans" on the second column of page 255:
27
28 "I mentioned before that the Nishkahs
29 exercise a considerable degree over the
30 Kitiksheans."
31
32 Now, I'm not -- of course, I don't know what the
33 witness -- I don't know whether that "Kitiksheans"
34 refers to Gitksans or not, but clearly this -- this
35 person, Tomlinson, did make distinctions between the
36 "Nishkah" and the "Kitiksheans", and I think it's
37 unfair to interpret that he is talking -- that he
38 refers to those seven villages, that is, the ones that
39 are part of this case, as "Nishkah".
40 MS. KOENIGSBERG: Have you read this entire passage?
41 MR. GRANT: The journal?
42 MS. KOENIGSBERG:
43 Q I wasn't speaking to you, Mr. Grant.
44 A I haven't read the entire passage. I read part of it
45 during the -- one of the earlier breaks.
46 MS. KOENIGSBERG: I'll leave for the moment whether this refers
47 to the Nishga people -- the Nishga-speaking people

that he's just referred to in the previous paragraph, and we'll go on a bit. And I would ask you to read the entire passage down to where he leaves the area, and then perhaps you could just advise us --

THE COURT: Where does he leave the area?

MS. KOENIGSBERG: He leaves the area, I'm sorry to say, not until page --

THE COURT: 281, leaving at 9:00 a.m. the next morning?

MS. KOENIGSBERG: -- 287. He goes on -- he leaves the area of the Gitksan and Wet'suwet'en --

THE COURT: Yes.

MS. KOENIGSBERG: -- on page 287 and --

THE COURT: Yes.

MS. KOENIGSBERG:

Q -- there's a lot of discussion backing and forthing about this. If Mr. Daly would be so kind as to read this, and then, if it is your opinion that he is not referring to the people we --

A Well, there is a qualification that the boundaries, the influence of the coast, of course, as I mentioned, did affect some of the -- some of the social relations in the western villages such as Kitwanga and Kitwancool in that time period, but I'm not sure on as to where -- what he is actually referring to in this account, which actual village.

Q Yes. He could be referring to a Nishga village very close to Kitwancool?

A Yes.

Q He's right in that area?

A That could be Gitlamdamkx.

Q Yes.

A G-i-t-l-a-m-d-a-m-k-x, I believe.

MR. GRANT: I would ask that of course the witness be given the opportunity of reading from the beginning to where my friend refers to because it's a "Journal of a Tour on the Naas and Skeena Rivers".

THE COURT: He can read it all if he wishes.

MS. KOENIGSBERG:

Q Yes, I was really trying to cut down his reading, but not cut down his understanding.

In any event, Mr. Tomlinson's pre-exercised about this type of potlatching, and he is among the Gitksan people at -- physically, as he tells us this?

A Yes. But this is the same with the truck-stop in Hazelton. This is the way the non-native people talk about it today, exact -- almost the same words.

Q Things haven't changed?

A Things haven't changed.
Q Did you understand, Mr. Daly, that I had asked if you would read the whole of this and then advise us tomorrow if you are --
A Yes.
Q -- confirmed in your opinion that it couldn't apply to the Gitksan?
A I understand, and I'll do so.
MS. KOENIGSBERG: Okay. Now, there's another part dealing with feasting and it's on page 283. It deals with feasting and customs that you've referred to.
THE COURT: 283?
MS. KOENIGSBERG:
Q 283. He's continued on and gone -- visited a number of the villages, and here he has started -- if you start just on the bottom of the first column of the page, he says:

> "Rising with the break of day, we started for the Kishgagass, reported to be about thirty-five miles higher up the Skeena. The river here is not navigable for canoes, but there are two paths, or trails, as they are called in this country. The one on the same side as the village only reaches about half way; the other reaches the whole distance, but is more winding, so that the first is generally chosen at starting, and the river crossed by means of a canoe or raft kept for the purpose. Accompanied by a Kishpiyoux Indian, who kindly volunteered to show us the way, we left, intending to cross the river, seven miles higher up, on a raft which we learned was moored there. On reaching this spot we were doomed to disappointment, for, though the raft was there, it was so firmly imbedded in the ice that it was useless to attempt to cut it out. As the ice was still too thin to warrant our crossing on it, we decided to push on some ten miles farther, in hopes of finding a canoe which was reported to be beached there, or, failing this, to build a raft on which we might cross the river. With this intention in view, we had travelled about three miles, when, finding a sheltered spot, we lit a fire and prepared

our dinner. Just as we were about to start again, we were hailed by some persons on the other bank of the river. From these we learned that the canoe was not at the place we had been led to believe we should find it. We also learned that the Kishgagass Indians were just about to start on a visit to the Indians at the Forks, and I was advised to await their arrival there. On hearing this, we decided to turn back. Of course it was a great disappointment, but even this was overruled for much good, as will be seen from what follows.

We did not reach the village until late..."

Now we're going back to the Forks --

MR. GRANT: Well, no, I don't think so because the description before is, in the previous column almost across, my lord, is "We reached the Kishpiyoux just before dark." So it's unclear from this whether he went back to Kispiox or back to the Forks.

MS. KOENIGSBERG: I'll take Kispiox or the Forks, and I can't remember -- I, at one time, had this path memorized, but --

THE COURT: Where do you say they got somewhere just before dark?

MR. GRANT: My lord, if you look right at the left-hand column you see that paragraph "Next day, Wednesday" on the left column?

THE COURT: Yes.

MR. GRANT: Then seven lines down "We reached the Kishpiyoux just before dark."

THE COURT: Yes.

MR. GRANT: So clearly it appears that he left Kispiox for Kisgagas, and whether he returned to Kispiox or not is unclear.

THE COURT: All right. That's a possibility.

MS. KOENIGSBERG: Yes.

THE COURT: All right.

MS. KOENIGSBERG:

Q

"We did not reach the village until late, and when we did we found the orgies of the medicine men just begun. At these

1 seasons no one is allowed to move out of
2 their houses, so that it was impossible to
3 call them together for a service. All night
4 long the drumming and the rattling, the wild
5 singing and howling, were continued. I have
6 no desire to describe these horrid rites
7 further than that the person being initiated
8 into the mysteries of the medicine work --
9 after a certain amount of incantations,
10 drumming, rattling, and singing has been
11 performed over him -- is supposed to become
12 temporarily mad and unconscious of, and
13 unaccountable for, his actions. He
14 generally goes stark naked, and a dog is
15 brought to him, which he kills, skins, and,
16 grasping the carcase in his hands, with loud
17 yells he darts from the house, followed by
18 the whole troup of medicine men. This is
19 the signal for all in the village to hide
20 themselves, as he may bite any one he finds
21 uncovered. He enters each house with yells,
22 grunts, grimaces, and gestures as diabolical
23 as he can make them. At first he did not
24 enter the house where we were. On his second
25 turn round the village, however, he came in.
26 At his approach all in the house, except
27 myself and party, fled and hid themselves in
28 the corners. We continued sitting in our
29 seats; he had not the dog with him this
30 time. He planted himself in front of me (he
31 was quite naked), and began howling,
32 hissing, spitting, and distorting his
33 countenance and working his limbs. I
34 watched him very closely. Once he fixed his
35 eyes on me -- it was but for a minute, but
36 it was sufficient for me to see that, with
37 all his efforts to dethrone reason and make
38 himself a demon, he had not succeeded, but
39 was still a sane man. I think he must have
40 perceived that I read him through, as he
41 cast down his eyes, and, though towards
42 evening he entered the house again, holding
43 the dog in his hands and tearing its flesh
44 with his teeth, he did not again approach me
45 or look at me."
46
47 And if we end there, there are discussions in the

1 literature of dog-eating ceremonies?
2 A Yes.
3 Q And they did take place, if Tomlinson is to be
4 believed, in this area?
5 A Yes, it was sort of the edge of the distribution.
6 Q I'm sorry, I don't follow.
7 A Of the cultural distribution or the cultural area in
8 which this activity took place reached to -- the
9 Gitksan area was sort of on the edges of it.
10 THE COURT: Reached to the edges from where?
11 THE WITNESS: I mean it was found by early -- and recorded, by
12 early anthropologists on the -- this part of the
13 world, the south coast, and certainly in the middle
14 coast, and just on the fringes of the north coast, the
15 Skeena drainage system, and to a little bit in the
16 Tlingit country.
17 MS. KOENIGSBERG: Would you --
18 THE COURT: More prevalent in the south and central coast?
19 THE WITNESS: Yes.
20 THE COURT: Thank you.
21 MS. KOENIGSBERG:
22 Q And the actual description that Mr. Tomlinson gives us
23 here, leaving aside his reactions to it, is
24 identifiable as a dog-eating ceremony?
25 A It's part of a cult procedure in a set of ceremonies.
26 Q Yes. And it is connected to the power and authority
27 of the medicine men in the communities?
28 A It's connected to the winter dancing complex. It's a
29 spiritual renewal process that people engaged in in
30 the -- after the growing season had ended and the
31 spirits of the land were considered to come down out
32 of the mountains, and people who wanted to gain power
33 would engage in various activities to tap into this
34 source of power.
35 Q Yes.
36 A And would, in a sense, become possessed by some
37 spirit. And this walking on coals and dog-eating
38 thing was -- were some of the manifestations of it.
39 Q And would the purpose, from the point of view of the
40 person who was going through these rituals, be to
41 obtain power in order to exercise some form of
42 authority over his neighbours?
43 A No. Basically it was -- it was rather an
44 individualistic thing. Anyone could engage in this
45 activity, and it was considered to be part of -- part
46 of your overall building of authority, but also your
47 ability to heal other people. It was associated with

1 Shamanism.
2 MS. KOENIGSBERG: And when we view the missionaries' and
3 subsequently the Indian agents' attempts to outlaw the
4 potlatch, and to stamp it out, is it fair to say that
5 it was their view that the activities resulted, the
6 feasting activities and the ceremonies that they
7 sought to stamp out, resulted in the people being
8 deprived of well-being, physically.
9 MR. GRANT: Well, my lord, my friend is now commenting on
10 legislation that occurred in the 1870's and asking if
11 that was the reasoning behind that legislation.
12 THE COURT: I don't think she's asking that, and I think that,
13 without going into conventional matters, I think she's
14 asking an anthropologist if what she's proposing or --
15 if that view was held by the legislature, was it one
16 that had any anthropological source or justification
17 or understanding. That's how I would have taken the
18 question.
19 MR. GRANT: Well, if that's what's intended, then it's not
20 objectionable.
21 THE COURT: Have I stated your purpose, Miss Koenigsberg?
22 MS. KOENIGSBERG: Yes, I -- the witness has commented that
23 activities by Indian agents or legislation in the
24 instance of Section 48 of the Indian Act, but even
25 leaving that one aside, he has commented on the
26 missionaries and so on stamping this out, and I wish
27 to explore with him if what they saw was responsible
28 for that.
29 THE COURT: Well, I think you can pursue the matter. I thought
30 your question was one that could be asked of an
31 anthropologist. It wouldn't be one you could have
32 asked say of an ordinary person or a lay person. It
33 may be that some better definition is possible.
34 MS. KOENIGSBERG: I'll try again.
35 Mr. Tomlinson has described a feast. If we leave
36 aside exactly geographically where it occurred, I
37 think after you read it you'll agree with me that he
38 believes it's a going concern among these people
39 whether he saw -- what he's describing is one that
40 took place precisely with this people. Can you agree
41 with that?
42 MR. GRANT: Is this the earlier reference?
43 THE WITNESS: Well, I don't know whether -- whether he saw what
44 he saw or not. He saw what he -- what looked like a
45 terrible aberration of civilized behaviour.
46 MS. KOENIGSBERG:
47 Q Yes.

1 A And the anthropologist would want to sit around and
2 see how the situation really worked and what was
3 actually going on and the relationships between people
4 and the system of meaning that was at work there. And
5 it's very impressionistic about -- I mean, it's
6 obvious that this is the -- an aspect of the winter
7 dance ceremony in this instance that you've been
8 reading from the description of the dog-eating.
9 Q Yes.
10 A But the -- the sort of analysis of what he saw is so
11 couched in his moral outrage and his own cultural
12 training, as well as his ideological position as a
13 missionary, that it's difficult to really get at the
14 reality. So if you're asking me to comment on the --
15 on the policy implications for whether these people of
16 the cloth and various administrators were seeking to
17 improve the -- improve the life of the people, of
18 course they were seeking to improve the life of the
19 people. That was their motivation. But there's two
20 cultures at work here. The people themselves
21 perceived something quite different in relation to
22 what they were practising and whether it was civilized
23 or not in their terms.
24 Q Yes. It's the difference between an anthropologist's
25 view, if we were reading that account, and the
26 missionary's view, that -- the missionary's there for
27 a purpose. He sees something he doesn't like. He
28 certainly doesn't like the result, and he wishes to
29 stamp it out. The anthropologist wishes to understand
30 it, in terms of its own meaning, and judge it only in
31 terms of its own meaning?
32 A Basically, yes. Yes.
33 Q And when the anthropologist, you yourself, come to
34 something like this, your reaction is not one to say
35 "It happened." "It didn't happen." It is to address
36 the belief system?
37 A It's not just the belief system. It's the social
38 components as well, you know, society and culture.
39 Society deals with the combinations and recombinations
40 of people on the ground in groupings, and the system
41 of making -- or the making of this meaningful, as well
42 as the material culture that people make, the things
43 they make and why they make them, the way they
44 formulate their customary way of doing things, that
45 all comes under the rubric of the culture, the life
46 which is the way of -- the perspective of life which
47 is inculcated into the people's heads in the course of

1 their upbringing and their association with one
2 another in the society. And we deal with both of
3 those aspects.
4 Q And is that the system of meaning?
5 A It's not just the system of meaning, it's the latter,
6 the culture aspect, the kinship structure of
7 interrelations. That's more the sociological side.
8 Q Yes. You're interested in why the person is eating a
9 dog, or why the other people in the room are running
10 away, and --
11 A Yes.
12 Q -- the missionary is affronted at the eating of the
13 dog?
14 A His sensibilities are affronted. Yes.
15 Q And perceives that the people that are running away
16 are frightened?
17 A Yes. Yes.
18 MS. KOENIGSBERG: Okay.
19 THE COURT: Are you -- have you an opinion on what Reverend
20 McDougall saw here, assuming that he described what he
21 saw, whether that was a feast?
22 THE WITNESS: Oh, I don't think it was a feast. It's quite
23 clear it wasn't a feast. This was one of these what I
24 called Shamanic --
25 THE COURT: Yes.
26 THE WITNESS: -- seasonal ceremonies. And they are --
27 they're -- they continue on parts of the British
28 Columbia coast today, without the dog-eating. That
29 was very -- but these things were put together on --
30 high on the agenda of the missionaries when they were
31 pressing for the outlawing of some of the traditional
32 forms of interaction, ceremonial interaction.
33 THE COURT: What about the one you described earlier about
34 tearing up the blankets? Would you categorize that as
35 a feast?
36 THE WITNESS: That's -- that's a feature of a feast because the
37 blankets were quite often torn up into strips and they
38 would be rewoven back into blankets again for use in
39 your feast, from your -- the receiver's side, so there
40 was always a dismantling and a reassembling of the --
41 particularly the goat hair blankets that preceded the
42 trade blankets.
43 THE COURT: So in order to understand all this and get a
44 comprehensive view, you got to first define your
45 terms. If it isn't a feast in the sense we've been
46 talking about, well then it's an aberration or it's
47 something different than a feast?

1 THE WITNESS: Well, in reading -- when the anthropologist reads
2 these historical documents with some training in the
3 culture area, you get some clues as to what's probably
4 going on.
5 THE COURT: This might have been initiation into some fraternity
6 or secret society?
7 THE WITNESS: Yes. Yes. It was a secret society; secret in
8 the sense that the non-initiates were not to
9 participate.
10 THE COURT: All right.
11 MS. KOENIGSBERG:
12 Q And as an anthropologist of this area, having studied
13 this area, did you understand that the persons in the
14 secret society wielded a certain amount of power or
15 respect, if I can put it that way, --
16 A Oh, yes.
17 Q -- in the community?
18 A Yes.
19 Q And that that aspect appears to be -- to have
20 disappeared from this area?
21 A Oh, I don't think it's disappeared. It's -- because
22 it is -- has been -- it has been disapproved of for so
23 long that these things are very -- very much
24 undercurrents in the society, and outsiders like
25 myself get glimpses of them, but they're not made
26 explicit. But they haven't -- they haven't died out,
27 and the influence of these sorts of activities is
28 still felt. And it's also -- to the extent that
29 people will talk about it, they say "Well, this is --
30 today this is part of really feeling good and being
31 Indian. This is something that's at our core." So
32 it's viewed as something we do in vis-a-vis the
33 outside non-native world, but it's not readily
34 revealed to outsiders because it's considered to be
35 wicked and heathen, and so on.
36 Q Mr. Tomlinson goes on to discuss his activities among
37 these people and others to try and stop the kind of
38 potlatching, which he describes where the tearing of
39 the blankets, tearing up of the blankets, occurs; do
40 you recall that?
41 A Yes.
42 Q And he's had varying success?
43 A Yes.
44 Q In some villages it would appear that some of the
45 people are prepared to -- either appear to not be
46 potlatching, or not to potlatch, and in some he meets
47 strong resistance?

1 A Yes.
2 MR. GRANT: Well, can my -- I'm just concerned where my friend
3 is referring to, for my own edification. Is she
4 referring to this particular journal?
5 MS. KOENIGSBERG:
6 Q Yes. It's apparent through that journal.
7 And you would agree it's apparent through that
8 journal what I just said?
9 A Yes, I would.
10 Q And ultimately, in terms of on the surface at least,
11 that kind of potlatching was effectively stamped out?
12 A Well, I don't know what kind you mean really.
13 Q Where people beggar themselves.
14 A Well, I'm not sure that this was a beggaring example.
15 I have to read it over tonight, but even if it were,
16 there are still -- I don't know how to answer that
17 one.
18 Q What was described by Mr. Tomlinson, if it went on, is
19 not apparent in the feast as we see it today, as it's
20 been described today?
21 A No, that's right.
22 Q Is that correct?
23 A Yes.
24 Q And what --
25 A But some of the features that are there make sense in
26 light of what I've seen --
27 Q Yes.
28 A -- in -- about the potlatching or the feasting at the
29 present time.
30 Q Yes. And particularly the rules he says that should
31 be ongoing, but which he says are not? He says the
32 rule is there should be reciprocation. He says -- but
33 that it doesn't occur. He says the rule is that you
34 should have -- you are demonstrating your wealth, but
35 that in fact what happens is that you beggar yourself
36 and your family?
37 A Well, I have to -- I'd like to study that just to
38 really see if that's what he's saying. This was
39 something that all up and down the coast the
40 missionaries were saying that people impoverished
41 themselves and were left penniless and with no shelter
42 from the rain.
43 Q Yes.
44 A But it totally ignores their whole safety net of their
45 kinship grouping.
46 Q Yes.
47 A Which has been brought out in various studies in the

1 last 20 years.
2 Q Do you imagine that the missionaries never saw any
3 persons destitute?
4 A No, I'm sure they saw people that looked like they
5 were destitute, but did they follow them around for
6 the next few days and find out what happened to them?
7 MS. KOENIGSBERG: Okay. I'd like to look at then --
8 THE COURT: Miss Koenigsberg, if you're leaving that subject or
9 changing to something else --
10 MS. KOENIGSBERG: Changing to a different document, yes.
11 THE COURT: If I was talking about the Ayatollah, I might be
12 afraid to ask this question, but is there any
13 relationship between this Shamanistic exercise that
14 has been described, and the nax nox; that is, I'm told
15 a part of the feast today, where I was given some
16 descriptions, nothing approaching this, but -- which
17 were not that different in a general sense?
18 THE WITNESS: There is a rough similarity to the extent that
19 they deal with the psychic power of persons, but the
20 example that is given here in this document is
21 considered generally to be a foreign importation or a
22 recent arrival in the region around the time of
23 contact, whereas the nax nox power is something quite
24 integral to the culture and the system of authority of
25 the chiefs of the Gitksan and to the authority of the
26 Wet'suwet'en chiefs, although it's called something
27 else.
28 THE COURT: Thank you.
29 MS. KOENIGSBERG:
30 Q If we can look at another report of a Mr. Loring, this
31 one is for July 1894, following Mr. Tomlinson's
32 efforts by some 20 years, on the right-hand side of
33 the page, page 159, toward the top, we look at -- he
34 is dealing with the particular villages that we're
35 concerned with, and in the second full paragraph he
36 says:
37
38 "The general progress made by all the above
39 mentioned bands, from year to year, is
40 remarkable, especially during this last
41 year. The houses built of late are all of
42 the modern kind, and their furnishings
43 correspond. It is pleasing to note that no
44 potlatch was given in any of the villages
45 during last winter, as heretofore, and the
46 custom is given up for the future. Instead
47 of the former, the Indians are having

1 memory-feasts in honour of those departed by
2 death during the year. These feasts differ
3 from the potlatch mainly in this respect,
4 that no wilful waste of property is
5 practiced, and they are merely confined to
6 eating, serving up tobacco and smoking."
7
8 A That sounds like the feast described by William Brown
9 in 1826. People would come in and exchange food and
10 have some speeches and reciprocation and then go home
11 again.
12 Q Do you think Mr. Loring is describing something that
13 really happened, that is, that the kind of potlatch
14 that was described, however luridly by Reverend
15 Tomlinson, was abandoned by the native people as they
16 became increasingly Christianized, and they
17 substituted, not wishing to give up the actual
18 feasting, the -- a form of the description given by
19 Mr. Loring, that is, something more akin to feasting
20 as we would think of it with ceremonies as we've heard
21 about them?
22 A I would see it as a -- the administrative decisions
23 and the general economic circumstances would both come
24 together to make it difficult for the power
25 potlatching to continue in the overall general region
26 however far it extended inland. And it wasn't, I
27 don't think, a substitution of that, of the present
28 type of feast as we know it, for a power potlatching,
29 but a reduction of the scale, and the imbalances of
30 the nineteenth century which were the consequence of
31 these -- the flows of goods through the trading. So
32 it was going back to a modified form of what was at
33 the core of their culture already.
34 MS. KOENIGSBERG: I think you've agreed with me that it is
35 quite possible that the feast and its manifestation,
36 as described by Mr. Tomlinson, changed as a result of
37 all of the forces on the culture, the missionaries,
38 Christianization, economic reasons and taking away of
39 administrative powers as the chief's powers were
40 diminished or altered over time; is that fair?
41 MR. GRANT: My lord, I stand to object here because the whole
42 foundation of my friend's question is that the feast,
43 quote unquote, the first excerpt of Tomlinson is a
44 description of the Gitksan, and that's exactly what it
45 was agreed the witness would review the transcript
46 for. Also, he indicated, and I think the evidence
47 thus far has been it has some aspects of a feast, but

he had difficulty determining it, and I think that he should have the chance to make that review before answering this question, if my friend's question is going to be premised on that. She's now going to the assumption which the doctor could not agree to earlier and wanted an opportunity to review.

THE COURT: Miss Koenigsberg?

MS. KOENIGSBERG: Well, I'll ask him to make the assumption. I don't think he had any difficulty making the assumption when we talked about Mr. Loring's description and --

THE COURT: Which one was Mr. Loring again?

MS. KOENIGSBERG: I just -- we haven't marked it, I'm sorry to say. I just read it out. We had many Mr. Loring letters.

THE COURT: Yes.

MS. KOENIGSBERG: This is the report of 1894 in which he says "It is pleasing to note that no potlatch was given in any of the villages during last winter..."

THE COURT: I thought Mr. Grant was comparing this to something else Mr. Loring had said previously.

MS. GRANT: No, Ms. Koenigsberg said that -- to contrast this with Tomlinson's feast description which --

THE COURT: Sorry, now I'm losing it because -- I think it's my fault. I think I'm confusing Tomlinson with McDougall.

MS. KOENIGSBERG: Yes, you are, my lord.

THE COURT: Am I? Well, then I know what you mean.

MR. GRANT: So I'm saying it was agreed after some exchange that Dr. Daly could review the Tomlinson journal to see if that feast was relevant to the Gitksan.

THE COURT: All right.

MR. GRANT: And he said he had difficulty even determining if that description was with reference to a feast. Now she -- now the witness --

THE COURT: Mr. Grant --

MR. GRANT: I'm sorry, my lord.

THE COURT: Mr. Grant, I now have my own compass pointed straight and I can now perhaps make more sense if I hear the question again.

MR. GRANT: Okay. Thank you.

THE COURT: I was having trouble following the objection because of my own error, and now I don't remember what the question was.

MR. GRANT: Okay.

MS. KOENIGSBERG: Well, probably to get that straight we'll have to go back a question, which was answered.

1 THE COURT: Thank you.
2 MS. KOENIGSBERG:
3 Q The question was began -- the line of questioning
4 began by looking at Mr. Loring's letter in which he
5 says, and this I note is 20 years after Mr.
6 Tomlinson's account of the feasting, which he was
7 objecting to. And Mr. Loring says:
8
9 "It is pleasing to note that no potlatch was
10 given in any of the villages during last
11 winter, as heretofore, and the custom is
12 given up for the future. Instead of the
13 former, the Indian are having memory-feasts
14 in honour of those departed by death during
15 the year. These feasts differ from the
16 potlatch mainly in this respect, that no
17 wilful waste of property is practiced, and
18 they are merely confined to eating, serving
19 out tobacco and smoking."
20
21 And my question to the witness was could Mr.
22 Loring there be talking about the difference between
23 the potlatch as it was described, however luridly by
24 Mr. Tomlinson, and the kind of feasting that we hear
25 about today, albeit it's had some evolution over the
26 last almost hundred years?
27 A Well, there's another twist in the --
28 Q Before we lose the Chief Justice, Mr. Daly, you
29 answered that question that you thought so and then
30 elaborated somewhat; is that fair?
31 A I'm sorry?
32 Q I believe you gave an affirmative answer to my
33 question, was Mr. Loring likely talking about the kind
34 of potlatch that Mr. Tomlinson had been talking about
35 and that that kind of potlatch had been replaced or
36 substituted or had evolved into the kind of feasting
37 we hear about today?
38 A Well, that may have --
39 MR. GRANT: Just a moment. That's the objection where I object,
40 my lord --
41 MS. KOENIGSBERG: You didn't object there.
42 MR. GRANT: -- because what I'm stating is that Miss Koenigsberg
43 is referring to the Tomlinson description, which it
44 was debated as to whether that related to the Nass or
45 the Gitksan. My recollection, and I stand to be
46 corrected, is that Mr. Loring was the Indian Agent for
47 the Babine Agency, not for the Nishga, so his

1 comparison when she -- in the question, the comparison
2 that Miss Koenigsberg is asking him to make is -- it
3 is crucial to determine whether Tomlinson is talking
4 about a Nishga event, a Nass event, or a Gitksan
5 event.
6 THE COURT: Well, there's not much doubt about this, that this
7 1894 report deals with the Gitksan --
8 MR. GRANT: That's the Gitksan.
9 THE COURT: No doubt that deals with it.
10 MR. GRANT: No, it's the question -- she is making a comparison
11 with Tomlinson, which was the very debate we had
12 earlier, was this Nishga or was it Gitksan, and that's
13 where the witness wished an opportunity to review.
14 THE COURT: All right. Well --
15 MR. GRANT: And that's where I object because the assumption is
16 there and the witness has been unable to determine the
17 very foundation of the question.
18 THE COURT: Well, perhaps the witness can tell us if he has any
19 way of knowing what Mr. Loring would be talking about
20 when he uses the word potlatch?
21 THE WITNESS: Well, I --
22 MS. KOENIGSBERG:
23 Q Giving away of property, is what Mr. Loring says, and
24 that's what I'm referring to, yes, the potlatch, which
25 is the giving away of property.
26 A I believe he's referring to -- he, in a sense, is
27 talking to Tomlinson because there's -- he was
28 suffering at this period, as he did throughout his
29 tenure as an Indian agent, suffering from criticisms
30 by the missionaries for not stamping out this wicked
31 institution of the potlatch, or the feast or whatever
32 you want to call it, but the -- what he was answering
33 in his -- in a lot of his writings was the charges of
34 a nature such as we have in the other document by
35 Tomlinson as to what the nature of the institution
36 was. So he was -- would say well, our people are not
37 doing that anymore. They're doing something a bit
38 different.
39 Q Yes. And just to clarify slightly --
40 A And he had to do this because it was being reported in
41 the -- even in the local newspapers that these feasts
42 were being given, and then I think it was about 1919
43 in the Omineca Herald they talk about the Grand Trunk
44 Railway advertises that they're going to put on a
45 special train to bring people in from Burns Lake to
46 Moricetown for a potlatch. And these things, they did
47 incense the priests throughout that period and the

other missionaries.
Q Well, if we can not get tripped up on whether we call it a potlatch or a feast, and if we can distinguish between feasting ceremonies where property is given away and that is the hallmark of that feast, and those which -- of which that is not the hallmark, can we see a -- can we accept that that's the distinction that Mr. Loring is making in 1894 in this document?
A He may be.
Q He seems to be by his words, is that fair?
A Well, he seems to be by his words. Yes.
Q And, however, Mr. Tomlinson may have dressed up the account of the feast. The hallmark of the feast he was describing and to which he so strongly objected was the giving away of property.
A Tomlinson?
Q Tomlinson in the journal.
A Yes. The excessive giving away of property.
Q Yes. And so can you confirm for me that the missionaries and the Indian agents appear to have been successful in stopping or stamping out feasts in this area at least where the giving away of property was the hallmark?
A I don't think we've established that the Gitksan and Wet'suwet'en were engaged or heavily engaged into giving away of -- giving of power potlatches.
MS. KOENIGSBERG: You would agree with me that Mr. Loring thought so?
THE COURT: It seems to me the difference he knew is the inclusion by the witness, and excluded from your question, Miss Koenigsberg, was of this very excessive giving away of property. I think giving away has always been a part of the feast, and what Tomlinson was complaining about in one sense was excessive giving away of property, was it not?
MS. KOENIGSBERG: I would certainly say so, and I would assume that the excessiveness where persons are -- appear to be beggared, is what Tomlinson was particularly affronted by and, as he perceived it, and what Mr. Loring is concerned with because he's not concerned obviously with giving away food to feed people in a feast, at least that much giving away, I think we can assume from this document.
THE COURT: Well, with that qualification I think they're both saying the same thing.
MS. KOENIGSBERG:
Q Is that correct, Mr. Daly?

1 A Yes, and that's also what the chiefs believed too,
2 believe and believed, that you don't give away
3 excessively because this will create an enormous upset
4 in the social -- a rip in the social fabric.
5 Q Can we assume, from the historical record that we've
6 just looked at, the combination of Mr. Tomlinson and
7 Mr. Loring here, that the excessive giving away of
8 property, at least the excessiveness as perceived by
9 the Indian agents and the missionaries, was stopped,
10 and that some other kind of feasting became apparent?
11 A It was certainly stopped on the coast, but to what
12 extent it occurred in the hinterland, I'm -- I don't
13 think we've established that it was a prevalent form
14 of feasting in the Gitksan areas.
15 Q You wouldn't quarrel with the fact that Mr. Loring is
16 saying that that kind of thing is going on in the
17 Gitksan areas?
18 A No, but I put it in the context of the immense
19 pressure he was under from people like members of the
20 church for not suppressing this whole institution.
21 Q Yes.
22 A Because it was impeding the process of turning the
23 native people into Christian farmers.
24 Q Yes. That may be his reason for taking any action,
25 but he's taking the action because there is -- the
26 area over which he has authority, which is the
27 Gitksan-Wet'suwet'en area, is -- has this kind of
28 activity going on, as far as he is saying?
29 A Well, he's writing a report and it's just like the
30 Jesuits writing back to France from New France, they
31 have to justify their actions, and obviously the
32 churches have been complaining to the authorities that
33 this -- this institution has not been suppressed. And
34 he is trying to justify that -- the situation that
35 well, our people -- they may still be feasting, but
36 they're not -- they're not doing anything to
37 contravene the sensibilities and the good taste of the
38 church men.
39 Q Okay. You're saying here that Mr. Loring when he says
40 that "no wilful waste of property is practiced" in
41 relation to these feasts he's speaking for effect?
42 A No, he's not speaking for effect. He's speaking from
43 his heart, given the conditions under which he was
44 working.
45 Q But we're not to take it that he means that -- that he
46 in fact observed and was dealing with those kinds of
47 feasts?

A It's very hard to say because a lot of the things, such as destruction of coppers or destruction of blankets, could be interpreted by outsiders as a wanton waste of property when they have an integral meaning in terms of the type of relationships that go on in a feast. And they're not wanton destructions of property when you understand the whole context.

Q So you don't -- you can't agree that the feast has undergone, from the historical record, and from your observations, that the feast has undergone fundamental change over time?

A It has -- there's been a fundamental consistency over time and there has definitely been a fundamental change between the feasting of the nineteenth century, particularly in the main trading areas along the coast, and the type of feasting that they do say in the areas of like the Nass today.

Q But for the Gitksan-Wet'suwet'en you say there has been no fundamental change?

A Well, I'm sure there's probably a few feasts of that nature along the western fringes of the region, but for the most part, no. And people like Jeff Harris say that when a chief is overstepping the bounds of the limits of what one chief should -- how the one chief should behave in terms of the etiquette towards his or her fellow chiefs, he says that while you're acting like so and so, one of the big names from the coast, one of the despotic chiefs of the nineteenth century, and that is a term of negative sanctioning to try to bring people back down to size. It's part of the whole moral tone in the feasting in Kispiox. So there is a consciousness in the people's minds that what was going on in the coast was something which was not Gitksan and was not the way we do things.

MS. KOENIGSBERG: Do you recall when I was cross-examining you I think yesterday --

MR. GRANT: My lord, if my friend's moving into another area which -- I just wonder how long she intends to be.

MS. KOENIGSBERG: I hope two more questions.

THE COURT: Yes. Yesterday?

MS. KOENIGSBERG: Yesterday. It's Volume 191, and before the organizers have a fit, could we mark the --

THE COURT: Yes.

MS. KOENIGSBERG: -- Loring.

THE COURT: This is 901-27.

THE REGISTRAR: Exhibit 901-27.

(EXHIBIT 901-27: Loring report dated July 1894)

MS. KOENIGSBERG: Yes, that's the Loring report of July 1894.
MR. GRANT: Same terms as the other historical documents, my lord.
THE COURT: Yes.
MS. KOENIGSBERG: And it's in the 1895 sessional papers.
THE COURT: Oh, is it?
MS. KOENIGSBERG: Yes.
THE COURT: Thank you.
MS. KOENIGSBERG:

Q Page 12464. It happened to be in response to my suggestion to you that they don't trap in the same way anymore, and down about line 6 your answer was this:

> "These issues are -- are concerning their land and what's happening to it and how they can't carry on with their hunting and trapping, and their fishing is being interfered with. It's a litany that's gone on right back since the early settlement period. As well as the -- people haven't turned their back on the land. If they had, I'm sure they wouldn't be carrying on with all of this feasting. If they were just living in little villages, it would -- and existing on the basis of wage labour, and transfer payments, and welfare and so on, there would be no -- I could see no necessity for continuing."

And I suggest to you you meant feasting, continuing feasting?

A Yes.

Q Yes. And I would suggest to you that another reason for the continuation of feasting has been suggested by John Adams in his monograph on the potlatch, and I would refer you to page 12. You'll get one of your own, Mr. Grant, so you don't have to stand with the witness to look.

A I've practically memorized page 12.

Q I figured you probably had. And about midway down he says -- well, the first full paragraph:

> "The Indians of British Columbia have signed away very little territory over the years -- mostly to the railroad or to the

1 Highway Department -- and have never signed
2 a general treaty with the Government. They
3 are now claiming practically the whole
4 extent of British Columbia of which the
5 Gitksan claim approximately the area
6 registered with the Game Warden, together
7 with whatever land within that general area
8 is still registered to White trappers. As
9 sources of revenue today the lines are
10 almost worthless, but the land-values they
11 symbolize, especially timber and mineral
12 rights, are considerable. Interest in these
13 rights is intense, and provides more than
14 sufficient reason for the Indians to
15 continue feasting to maintain the rights
16 among themselves. That the potlatch
17 survives today in a state of considerable
18 complexity is undoubtedly due to its value
19 in the Natives' eyes as a means of
20 furthering their land claims against the
21 government, but it is also a touchstone of
22 Indian identity in a world increasingly
23 dominated by the Whiteman's values."
24
25 Would you disagree with that as a reasonable
26 explanation of why the feast continues today with the
27 complexity that it has?
28 A I would disagree. I think it is a very ethnocentric
29 non-native view. For one thing, he's referring to the
30 traplines as traplines. He's not even talking about
31 the territories of the chiefs and what their
32 significance is even in terms of the feasting. He is
33 imputing a set of motives to the people which is quite
34 consistent with his own society, but is quite foreign
35 to the way people regard their land and their
36 obligations in their -- their kinship obligations in
37 their communities.
38 Q You're unaware that the Gitksan people ever defined
39 the territory that they were claiming in their land
40 claim by the boundaries of the traplines, registered
41 traplines?
42 A Am I unaware of what?
43 Q That they ever claimed the area of the Gitksan by the
44 boundaries of the traplines that are registered?
45 A Well, I know that they -- they -- people generally
46 equate trapline to territory.
47 Q Yes, but were you aware that they made such a claim?

1 A A claim for their traplines?
2 MS. KOENIGSBERG: A claim for the -- a land claim to the
3 government, the boundaries of which were defined with
4 reference to registered traplines.
5 MR. GRANT: I don't -- I know what my friend is referring to. I
6 just think she should -- I don't think what she's just
7 framed up is correct, if she's referring particularly
8 to that map series, which you are aware of, my lord,
9 and I don't want to say more. I don't want to
10 prejudge the question, but I think I know what she's
11 referring to, but it's not -- I don't think that it
12 was -- the claim was made with the government, as
13 she's saying.
14 THE COURT: Well, if the witness says "No, I didn't know
15 anything about that." and it turns out that that's
16 not the basis for it, well, then the answer is of no
17 significance. If he says "No, I didn't know about
18 that." And it turns out that is what happened, then
19 the answer may have some significance. So I don't see
20 how you can be hurt by it. It will be a matter of
21 argument at some time, I suppose, whether that map is
22 based upon trapline boundaries or not.
23 MS. KOENIGSBERG: Well, I'm not only of course referring to the
24 trapline, I'm referring to -- and I've forgotten the
25 exhibit number -- but the petition.
26 THE COURT: Yes. To Mr. Buchanan?
27 MS. KOENIGSBERG: Yes.
28 THE COURT: I think -- I think the witness can tell us whether
29 he knows of any such claim or such definition of a
30 claim.
31 MS. KOENIGSBERG:
32 Q Yes. I'm sorry, can you -- were you aware of such a
33 one?
34 A In -- is this recent or long ago?
35 Q 1975.
36 A No, I'm not aware of it. I know back in 1915 in the
37 McKenna-Mcbride commission they were demanding that
38 the land question be settled and they had in their
39 minds their chiefly territories.
40 Q That's your interpretation of the McKenna-McBride --
41 A Yes.
42 Q And so your first concern was that he seems to be
43 wrong in his interpretation of that being a reasonable
44 explanation for the --
45 A The motives to which he imputes the actions by the
46 chiefs and the people is very much out of keeping with
47 my experience in the way people interact on these

1 questions.
2 Q Yes.
3 A And I know you've put all these things on -- in about
4 the statements of newsletters and so on, but those
5 things are quite foreign to the way people think about
6 their land and their relations to one another in
7 relation to that land. Also, John Adams came to this
8 conclusion in the course of doing his doctral
9 dissertation, and he was investigating a series of
10 propositions of ecological anthropologists, people who
11 were arguing that the function of the potlatch was to
12 redistribute the produce of the land among the people,
13 and it was basically an economic redistributive
14 system. So in assessing this he found that this was
15 not its primary feature, and was looking for -- this
16 is a sort of a side-line comment in that it's not
17 developed and taken up in the rest of his work, but it
18 is something that would help him out in his general --
19 his general thesis that he was building, that it was
20 actually -- that the type of relations that were --
21 that go on in the feast demand a constant readjustment
22 of population to resources rather than resources to
23 population.
24 Q Yes. Are there any other reasons you disagree with
25 it?
26 A Well, it seems to me that the feasting has never
27 stopped, and throughout the period it has gone on one
28 way or another. And if you take the -- just the
29 newspaper accounts in the region and the writings of
30 Marius Barbeau, he talked about how the --
31 Q Well, I don't mean to unnecessarily cut you off, but
32 we have talked about this, and I would simply ask you
33 if you would accept the proposition that he isn't
34 saying and didn't say anywhere in his monograph that
35 feasting stopped, but he is saying that one of the
36 explanations for why it is vibrant today, and there he
37 is speaking in the 60's, one reason was the land
38 claims, that is, the need to affirm their rights as
39 they saw them in the feast hall?
40 A Well, the question of the land settlement is crucial
41 to the whole -- to the whole question of feasting. If
42 the people thought that they had no chance of
43 continuing on with their life on their lands --
44 Q Yes.
45 A -- there would probably be no feasting.
46 Q Yes.
47 A But this is not to say that the -- the implication of

this statement is that there's some -- some very sectional interests at work that will just mount something that will dazzle the outside world and pretend that we're being Indians so that we can settle our -- we can have an argument to settle our land question, and I think that does a severe injustice to the ongoing living culture of these peoples.

MS. KOENIGSBERG: If you interpret Mr. Adams as saying that the reason that they're doing it is false, that they are -- that they are making something up that they don't otherwise do in any way, then your interpretation of him would be correct, right?

MR. GRANT: I don't understand that question, my lord.

THE WITNESS: No.

MR. GRANT: I don't know how the witness can answer that.

THE COURT: What Miss Koenigsberg is saying is that if this was -- the feasting was false, fraudulent, a sham, then what the witness is saying would be correct.

MS. KOENIGSBERG:

Q That you would be imputing fictional motives to these people?

A Yes.

Q But you don't -- those are not his words, are they?

A No, those are not his words, but if this were the proposition that feasting was somehow reconstituted for the purposes of land claim actions, then I think I would have been able to sense something of this in the events that have occurred, that I have attended, but people were acting in -- out of the way they had been trained and out of their hearts. And I have been in some instances as an anthropologist where people are -- they stop all the time and reflect on what they're doing and talk to the audience and show the significance, and so on, and there's -- there's very little of that. The feasting follows a whole procedure. When someone passes on, immediately everyone knows what to do by virtue of their kinship relations with that person.

Q Yes.

A And the whole thing gets going underway and huge cauldrons of soup were made, and so on.

Q Yes.

A It's just it's ingrained. It's deeply ingrained in the culture.

Q But its functions can change?

A It's functions can change. Yes.

MS. KOENIGSBERG: Those are all my questions, my lord.

THE COURT: Thank you.
MS. KOENIGSBERG: And if anything still turns on it, I have asked Mr. Daly to review the Tomlinson --
THE COURT: Yes.
MS. KOENIGSBERG: -- journal, and to advise us if he feels that it can't bear the --
THE COURT: Yes.
MS. KOENIGSBERG: -- interpretation I have suggested and, if so, I would like to ask him a couple of questions about that, but otherwise I'm finished.
THE COURT: All right. Thank you. And the page 12 --
MS. KOENIGSBERG: Can we mark --
THE COURT: -- of Adams will be 901-28.
MS. KOENIGSBERG: Yes.
THE REGISTRAR: Yes, my lord.

(EXHIBIT 901-28: Page 12 of John Adams' monograph on the potlatch)

THE COURT: Yes. All right. Thank you. Mr. Willms, did you have an estimated time of confinement or completion or whatever you call it?
MR. WILLMS: My lord, at the present my target is the luncheon break on Friday --
THE COURT: Oh, all right.
MR. WILLMS: -- to complete.
THE COURT: All right.
MR. WILLMS: But I will -- one thing I would appreciate, I know that your lordship cannot sit tomorrow night.
THE COURT: I could sit until five o'clock.
MR. WILLMS: All right. Well, I was thinking --
THE COURT: Let me think.
MR. WILLMS: I was thinking about maybe Friday morning, if necessary.
THE COURT: Yes.
MR. WILLMS: If that would be agreeable to everyone, and we can -- we don't need to decide that right now.
THE COURT: All right.
MR. WILLMS: But perhaps --
THE COURT: I think that would be convenient to me. I think perhaps five o'clock is too tight, but I can sit an extra half hour tomorrow afternoon, and I could sit -- we could start early on Friday morning, if that would make a timely completion more probable.
MR. WILLMS: Thank you. Well, one thing I should, my lord, in light of what your lordship advised the other day, I can't sit until 4:30 tomorrow night, 4:00 is it, but I

don't think -- I think I'm talking in the realm of perhaps an extra hour.

THE COURT: All right. Well, let's tentatively say we'll start at nine on Friday now. I'm sorry, you were going to say something Mr. Grant?

MR. GRANT: That's what I wanted to clarify, my lord, what you meant by earlier Friday.

THE COURT: Unless somebody wants to change it, we'll start at nine o'clock on Friday morning, and we'll hope that Mr. Willms can finish sometime during Friday in regular hours. Thank you. Thank you, madam reporter.

THE REGISTRAR: Order in court. Court will adjourn until ten am.

(PROCEEDINGS ADJOURNED TO MARCH 2, 1989 AT 10:00 A.M.)

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

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Tanita S. French
Official Reporter