VANCOUVER, B.C.
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(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia, Vancouver, this Monday, February 27, 1989. Calling the matter of Delgamuukw versus Her Majesty the Queen at bar.
I caution the witness, you're still under oath.

RICHARD DALY, Resumed:

THE COURT: Mr. Grant.
MR. GRANT: Thank you, my lord. Dr. Daly -- I'm sorry. Could you have volume 2 of your report in front of you, please.
THE REGISTRAR: M'hm.
MR. GRANT: I'm referring, my lord, to page 522, which is the Chapter VIII, The Feast.
THE COURT: I'm sorry. The page?
MR. GRANT: It's page 522. It's the beginning of tab 8 at your book.
THE COURT: Thank you.

EXAMINATION IN CHIEF BY MR. GRANT CONTINUED:
Q Doctor, I'd just like to refer you, and I'm going to read a sector which will save us, I believe, a fair amount of time, my lord. The second paragraph on page 522.

> "The feast is a multi-faceted ceremonial institution in which, through the public giving and receiving of objects, relationships that simultaneously that have to do with law, morality, kinship, economics, politics and the psychic and spiritual, are reaffirmed according to the style and tempo of the Gitksan and Wet'suwet'en cultures. This is the tempo of nature and society, by which one generation succeeds another, the tempo according to which the lands and fishing sites, the names, crests, histories, laws and traditions of the two culture are legitimized for yet another generation."

This is your conclusion based on your research; is that right?
A Well, that's part of it.
Q In part?
A It's this whole --
Q I will go on. I will go on. That's in part. You go on to state;

"Holding a feast allows a House group to settle its affairs, repay its debts and publicly present its history, land boundaries and succession to title for ratification by its peers. In feasting, the House minimizes the weaknesses, and stresses its strengths; nevertheless, its members' primary motivation (as the writer has both been told..."

This is through your interviewing; is that right?
A Yes.
Q "And as he has observed for himself in the feast hall." These are the nine feasts that you have observed?
A Yes.
Q

"Lies not in competition with other Houses, but rather in their obligation to live up to the name and tradition of their own House, to strive to fulfill their social obligations in a manner which is at least consistent with the prosperity and well-being exhibited by previous generations of House leaders. The main arena for competition is not between descent groups, but rather is more frequently found within them, centering upon the question of succession to high names and the associated rights and duties. The existence of this internal competition attests to the continuing vitality of the feast and the cultures of which it is a part."

That, again, is part of your conclusions with respect to the feast?
A Yes.
Q You then state;

"Both within the community and between communities and peoples the feast entails formal and diplomatic relations which emphasize the highly decentralized nature of decision-taking. Feasting is informed by a set of laws and procedures with which members of the Gitksan and Wet'suwet'en societies are socialized, and which their leaders are expected to learn in detail. The ceremonial exchanges emphasized in the feast reiterate the principles of sharing and and reciprocity around which much of the body of Gitksan and Wet'suwet'en law is formed."

And you then state that;

"Each House group, or each set of historically-linked Houses within any one clan, can effect public affairs only by means of its own members' demeanor and example. Public behavior is not only witnessed and remembered but also comprises the historical record which is passed down through the memories of succeeding generations. As one Gitksan chief has said, 'I cannot go over to my neighbour's territory and tell him what to do. I can only stand on my side of the boundary, look into his eyes, and tell him my history'..."

And that's from the interview with James Morrison located at Exhibit 894(30).

"This reliance upon history, decentralized power, and an overarching body of laws and beliefs is central to a full understanding of the feast system."

And that quotation from your report that I've just read summarizes your conclusions and opinions with respect to the nature of the feast and its interaction with the economic -- social economic system of the Gitksan and Wet'suwet'en; is that right?

A Yes.

Q Now --

THE COURT: Well, actually have you perhaps understated that

last sentence? Couldn't you substitute the feast system for culture there?

MR. GRANT: You mean replace the word feast system by culture, my lord?

THE COURT: Yes. Perhaps I'm --

A But culture, I think, is -- encompasses other aspects of life such as procedures concerning hunting and fishing, and so on.

THE COURT: I see. All right.

A Material procedures in relation to tool making and many -- there are many other things that aren't directly -- are only indirectly linked to the feast.

THE COURT: All right. Thank you.

MR. GRANT:

Q Now, doctor, at page 525 you state in the middle paragraph;

> "There is a considerable academic literature on the subject of the potlatch feast of the North Pacific coast."

And this applies to literature both to the potlatch at the coast, power potlatching, and the feast; is that right?

A That's right.

Q

> "This literature abounds with hypotheses about the significance and function of the institution. Much of this literature does not do justice to the practitioners' own evaluations of, and behaviour in the feast."

And you're talking here of the Gitksan and Wet'suwet'en feast; is that right?

A From my experience of the Gitksan and Wet'suwet'en, and my reading of other feast accounts.

Q Okay.

A There's a confusion between the large scale what I call power potlatching of the nineteenth-century with the form of regular social interaction that are referring to the lifecycle of the people within each of the societies along the coast and the adjacent interior, and that's what I call feasting.

Q

> "As a result the internal complexity and the elaboration of the basic logic of the system

of feast-giving is poorly understood by outsiders to the culture."

And that's a conclusion you've reached from your analysis -- observations and analysis of these other authors; is that right?

A That's right.

Q Now, on page 525 you refer to Marcel Mauss. You've already referred to Philip Drucker in Chapter I, which we've referred to earlier. On page 526 you refer to Franz Boas, you refer to Rosman and Rubel, and you refer to Manning Nash. On 527 you refer to Codere, C-O-D-E-R-E.

A You missed Ruth Benedict on page 526.

Q Yes. Thank you.

A And did you mention Homer Barnett up at the top?

Q Of 526? No. And then on the next page is Levi -- Levi-Strauss?

A Levi-Strauss.

Q And then on page 528 you refer to Suttles, Vayda and Piddock, and then you refer to John Adams who wrote the publication The Gitksan Potlatch?

A Yes.

Q And from page 528 through to page 533 --

A I didn't mention Beynon, 1945 Feasting in Kitsegukla, because it's a detailed description of the process. These are more theoretical summaries of what's going on.

Q Okay. From page 528 to page 533 you discuss Adams?

A Yes.

Q Now, I'd just like to -- I understand that you would like to modify a sentence on page 533?

A Yes.

MR. GRANT: This is at the top of the page, my lord.

A It may be a bit picayune, but it's not quite accurate the way it reads now.

MR. GRANT:

Q Okay. Can you just indicate the modification? Which sentence in the modification?

A It's about half-way down the first paragraph after Charles Smith.

Q Yes. It would be Charles Smith temporarily took the name of Axtii Hiix to strengthen and protect the house and its territories and carry forward its history and traditions?

A That's right.

THE COURT: I'm sorry. I don't find that. 523 did you say?

MR. GRANT: 533, my lord.
THE COURT: 533.
MR. GRANT: I'm sorry, I --
A Five lines down from the top.
THE COURT: Oh, yes.
MR. GRANT: My lord, start at the beginning of that line. In the present century, his paternal grandfather, Charles Smith temporarily took. Cross out all the way along to the and then put the name of Axtii Hiix, cross out Tenimgyet House, to strengthen and protect, and cross out the House and its territories, and cross out all of the next line right up to carry forward.
THE COURT: I'm sorry. I haven't got that. In the top paragraph on page 523 I found Axtii Hiix.
MR. GRANT: Do you find Charles Smith?
THE COURT: Yes.
MR. GRANT: Put temporarily took.
THE COURT: Instead of had himself adopted?
MR. GRANT: Yes.
THE COURT: Temporarily took.
MR. GRANT: Can you write it in there.
THE COURT: The name Axtii Hiix.
MR. GRANT: The name of Axtii Hiix. Cross out Tenimgyet House.
THE COURT: Yes.
MR. GRANT: Leave in to strengthen and add and protect the House and its territories and.
THE COURT: Yes.
MR. GRANT: And then delete -- just cross out that whole line up to carry forward. So cross out it at a time when it had few members and possibilities to.
THE COURT: Delete that to carry forward?
MR. GRANT: And to carry forward.
THE COURT: The rest of it stays the same?
MR. GRANT: The rest of it stays in.
THE COURT: All right.
MR. GRANT: Now, my lord, with respect to the -- I don't intend to read the analysis of these other authors, but I would note for your lordship that I would emphasize that the reference to Adams starting on 528 to 533 and then the conclusion of Dr. Daly in the middle paragraph of 533 I would just note for you to refer to.
THE COURT: All right.
MR. GRANT: Because Adams is one of the authors that describes a potlatch and makes some analyses. And I think a reading of that indicates in many significant parts Dr. Daly and Dr. Adams agree, but there's some

1 distinctions where they don't agree and Dr. Daly
2 explains that.
3 Q I will not ask you about that, doctor. I think it's
4 self-explanatory in that section of your report.
5 Now, I'd like to turn you to page 537 and 538, the
6 next starting with the Baxmaga or --
7 A Hed'nsimgan.
8 Q That's the Wet'suwet'en term?
9 A No. They're boat Gitksan terms.
10 Q Hed'nsimgan, The Pole-Raising Feast. You state;
11
12 "Most of the remainder of this chapter
13 describes and analyzes a Gitksan feast. It
14 is a generic feast informed by the people's
15 descriptions and by the writer's
16 participation in pole-raising events. The
17 feast outlined is the pole-raising, which
18 culminates generally a whole life-cycle of
19 feasting for a generation of chiefs in a
20 House. In its essential features the
21 Gitksan pole-raising does not differ from
22 the comparable institution among the
23 Wet'suwet'en."
24
25 And that's what you have done with respect to --
26 A Yes. I would like to qualify that a little bit.
27 Q Yes.
28 A The pole-raising is a culminating feast of a chief,
29 and not every chief is in a position to achieve -- to
30 fulfill these obligations. In the past it included
31 building a whole new house for the incumbent new
32 chief, putting up the pole, having the internal house
33 posts carved with the crests of the house, and so on.
34 But today it is -- obviously people don't live in the
35 big houses, multi-nuclear family units, but this is
36 the aspect that stands for that whole complex of
37 culminating the cycle of feasting.
38 Q So there's modification from a feast for the raising
39 of a whole house to a feast for the raising of a pole?
40 A Yes.
41 Q To that extent, when you say a generic feast you're
42 describing it that way because it's not a description
43 of one of the particular feasts you attended?
44 A I saw one of these feasts.
45 Q Yes.
46 A And I think I explained in order to understand it I
47 asked certain feast specialists to take me through the

whole procedure of any pole-raising feast, what were the important and necessary transactions, because they all pointed out that there were lots of other sideline transactions or things peculiar to that historical event or that family's obligations and paying back schemes, and so on. But the bare bones of the institution, that's what I was looking at.

Q Okay. I just refer you to page 539, that first paragraph, my lord. You state;

> "Raising a crest pole is a testament to the present prosperity of a House and its political fortunes in the community. In the past, a whole generation of leaders, the chief and counsellor chiefs, would throw its total resources into the pole-raising. Years of outstanding House business would be settled and witnessed by the greater community. The pole would stand for two or three generations, a monument not only to the predecessor being commemorated, but also to the industriousness of the generation that raised the pole. The same ethic prevails today. Today, as well as in the past, the raising of a pole and the associated feasting is the crowning event in the cycle of feasts a chief can be expected to host during his lifetime. This feast incorporates the main activities and transactions found in less elaborate feasts into a complex settlement of accounts, both spiritually, materially and socially on behalf of a whole generation of chiefs of the host group."

And this is your conclusion with respect to the relation of the pole-raising feast as you have summarized just before I quoted that to you?

A Yes.

Q And with that modification that not necessarily every chief will do it, every successor will do it?

A That's right. Actually relatively few manage to carry it off in any one generation.

Q Then on page 540, 541.

THE COURT: Do I get the impression, Dr. Daly, that there's a great escalation of activity in connection with carving and raising poles at the present time?

A Well, there's more poles being raised now than 50 years ago, because it was effectively suppressed, the whole feasting and potlatch complex. There is a debate in the community about whether the granting of monies by the government to reconstitute old poles is actually legitimate or not. And some of the guests that go to pole raisings that have been financed by such grants are very critical that this isn't the way it's supposed to be done. So people are able to gather the wealth and show the strength of their house with the assistance of grants, which is not considered to be the right way of doing it, but some families are determined and they do put up poles with their own -- under their own steam without any assistance.

THE COURT: What's the actuation for the obvious activity in carving pools at Kitwancool? Are they for export, if I can put it that way?

A No, no. It's just that over virtually the whole northwest coast area it's one of the areas -- one of the few areas where poles remained standing after the onslaught of social pressures from administrators and people from the churches. The people of Kitwancool refuse to cut them down and use them for firewood.

THE COURT: Yes.

A And it has become a centre of -- people now getting into a position with their houses are growing again. They've lost population and they're trying to regain the standing that their houses had in the past, and using the poles is one part of that.

THE COURT: Are all those poles being carved at Kitwancool to be erected locally, that is in the area of the Kitwancool chiefs?

A Not all of them. Most of them are family poles in the general Gitksan area.

THE COURT: In the Gitksan area?

A They do occasionally raise a pole for someone else, the Nass, and so on. A few of them are commercial poles for banks and institutions in other parts of the world.

THE COURT: All right. Thank you.

A And those don't have the family crests. They're a generic type of pole.

THE COURT: A commercial pole?

A Yes.

THE COURT: All right.

MR. GRANT:

Q Now, if I could just refer you to page 540 and 541.

You say;

> "The raising of a House crest pole is at once a memorial to a generation of House leaders and a periodic renewal of the dynamic relationship between the people and their land. Putting the elaborately carved pole into the ground renews the bond between the group and the land by focussing the will and desire, the labour and wealth of a whole generation of House chiefs on their crest poles. This is what the chiefs mean when they say that the power of the generations is suffused into the pole each time it is raised. The power of the generations that in the conscious mind of the host chief, flows as if from the dead to the living, from the living to the pole, and back into the territories. The power of the House group, its collective will and energy is in this way seen as the force which revitalizes the land and empowers it to sustain yet another generation. The ceremonial act of raising the pole, then, is a reaffirmation of what in other circumstances would be called ownership and control, both of people and land. The phenomenon of reincarnation is integral to this cyclical endeavor to renew the land and its owners down through the generations. Deceased holders of high names reincarnate, their spirits returning usually to the babies of their own line of succession, to help out their descendants and maintain the House's human prosperity."

And this is your conclusion with respect to the significance of the pole?

A Yes. What I'm doing here is explaining the logic of the system in the minds of the chiefs.

Q In other words, the significance of this event. That could be outwardly describing when you describe all these things that happen, but the significance that happened as seen by the chiefs and participants?

A That's right.

Q We then go on just to state at the bottom of that page;

"A crest pole stands usually for two or three generations, if it is well cared for, as a monument not only to the generation of chiefs being commemorated, but also to the industry of the generation which raised the pole. With the passage of time, the pole will lean, and eventually topple. It will fall back to the earth, and rot away, following naturally the cycle of life, death and rebirth. A new generation of House leaders will then, when they have judged the time to be ripe, take the decision to raise another pole, and with it, the names of their predecessors."

Now, doctor, you researched the pole, the whole question of poles as part of your work with the R.O.M. as well as your work with the Gitksan and Wet'suwet'en; is that right?

THE COURT: I'm sorry. Your work with?

MR. GRANT: The Royal Ontario Museum. R-.-O-.-M-.

Q That was work you did before you were requested to do any work about the Gitksan or Wet'suwet'en?

A Yes.

Q Based on that research when you were preparing material for the material that was there, and pieces of poles that were there, as well as your work with the Gitksan, can you comment as to when poles were -- how long poles have been used by the Gitksan and Wet'suwet'en?

MR. WILLMS: I object, my lord. The foundation that from your research at the R.O.M. in my submission that doesn't do it. If the witness read somebody who talked about how old poles are he should say that. If there is some archeological evidence that he referred to about totem poles he should say that, but in my submission that kind of foundation there can be no opinion, historic opinion based on that. I object.

THE COURT: Your friend's right, isn't he, Mr. Grant?

MR. GRANT: Well, yes, but I think that the day that Ms. Sigurdson was here whe took a different approach to this, which is that what I'm trying to do is to raise the opinions with this and ask him why, and Ms. Sigurdson commented once when I switched over to another subject and said could you please go back to that. I don't think there's magic in -- I mean, in trying to deal with the topic, my lord. I'm trying to

1 get the opinion out and lay the foundation. I agree
2 that what I have said is not sufficient and I would
3 ask him why he says this thing, but I would like to
4 ask him what he says --
5 THE COURT: I think it should be the other way around.
6 MR. GRANT: Okay.
7 Q Can you advise what you've looked at both in your work
8 with the Royal Ontario Museum and any subsequent
9 research which is a foundation for your opinion such
10 as longevity of the poles?
11 A I've looked at some of the ships captains logs. I've
12 talked to -- to Bill Reid, the carver. I've talked to
13 Peter McNair and Richard Inglis of the Provincial
14 Museum in Victoria. George McDonald in Ottawa. John
15 Cove at the Carlton University. I've read various
16 accounts of -- I've read the Barbeau totem pole books
17 and the Gitksan Totem Poles of Barbeau. I have talked
18 to people in the Gitksan community about the
19 technology. I've talked to George McDonald about
20 experiments conducted by archeologists with non-metal
21 tools for the felling of trees and the blocking out of
22 crests, as well as the attempted hollowing of logs for
23 canoe building.
24 Q And John Cove, amongst other things, indexed the
25 adaawks or oral histories recorded by Barbeau and
26 Beynon?
27 A Yes. And he noted the occurrence of totem poles being
28 mentioned in the course of the adaawks.
29 Q Okay. And George McDonald, does he in his report on
30 the Kitwanga Fort. Or in any of his other researches
31 on the coast, refer to totem poles, that you can
32 recall?
33 A I think he does in the volume edited by Roy Carlson on
34 the Indian Art of the British Columbia Coast. And
35 Wilson Duff adds to the discussion as well on the
36 whole question of the ancientness of the meanings of
37 the iconography, as does Bill Holm, who's a specialist
38 in the design, and he's a non-native carver himself.
39 Q But he's published -- Bill Holm has published books?
40 A He published --
41 Q Northwest Coast Indian Art Form?
42 A There is a book by himself and Bill Reid which is sort
43 of a standard book on the northwest coast design
44 components.
45 Q Okay. And what is your conclusion as to the
46 utilization of the Gitksan poles based on the --
47 MR. WILLMS: My lord, there is one fact in that whole long list

that was cited, and that is the ships captains note of the totem pole. All the rest is something that somebody else told the witness. If the witness is going to give his opinion based on that then so be it, because there is that fact there, but I would ask my friend to define the area that he is asking for the opinion, whether it extends up the river as well and that's where the ship captains went.

MR. GRANT: My friend knows fully well that the ship captains didn't go up the river. Dr. Daly has referred to Bill Holm and Bill Reid's publication, my lord. He has referred to Wilson Duff, who is deceased.

Q Which publication of Wilson Duff, or publication or publications?

A The World is Sharp as a Knife. I believe it's a collection of essays in honour of him right after his death. There's discussion in that volume, as well as the Roy Carlson one. It's -- the title slips my mind. It's in my cited bibliography. 1983 I think it came out. I've cited something from Carlson's introduction.

Q The Prehistory of the Northwest Coast in Indian Art Traditions of the Northwest Coast 1983?

A I think it comes from a book. The title of the book is in there.

Q Indian Art Traditions of the Northwest Coast.

A That's the name of the book, yes.

THE COURT: This collection of essays includes some of the writings of Wilson Duff himself?

A It does.

THE COURT: Well, Mr. Willms.

MR. WILLMS: My lord, I'm saying there's a fact there. The witness can go ahead and give his opinion on that fact.

THE COURT: It's a matter of one which you may find you may be able to add something to the strength or weakness of the opinion in cross-examination, so let the universe unfold, let the --

MR. GRANT: Thank you, my lord.

A These writers feel that the poles really couldn't really have developed in the short time of contact. There's so much juxtaposition of meaning and form, and so on, and that in an art tradition it takes quite a long period of time for this thing to gel. That's on one level. The question of whether poles could be made without iron tools, my understanding from Gitksan chiefs is this was one of the issues at the occupation

of the Little Oliver Creek last winter when one of their last areas where a special kind of cedar tree was grown in the back of the swamp just where the creek -- just before the creek joins the main river. It's fairly swampy, and at the back of these swamps I've heard in another context as well it's a place where the wind does not get to the cedar trees. They grow very dense with straight grain. The roots are particularily good for making baskets and for weaving up the curved boxes, and these are also the best, easiest trees for carving. So this was one of the things which was on people's minds when they were trying to stop the logging in that little valley. Joyce McDonald, unfortunately it was a personal observation or personal communications back in my days at the R.O.M., was telling me about experiments they did which is a common practice of --

MR. WILLMS: My lord, I object to this. This is far beyond anything this witness can give evidence about. He's giving evidence about the fact of what was done, not about his opinion. He said he talked to this person. That's fine. That's the basis of his opinion.

MR. GRANT: Well, I think it's valid for you to know what was told to him not for the truth of that being told, but to consider the weight of his opinion, my lord.

MR. WILLMS: Of course it's for the truth of what's being told. If it wasn't true the witness couldn't have come to the opinion he's come to.

THE COURT: If he didn't think it was true the witness wouldn't have adopted it. McDonald, of course, is a living person, or is he?

MR. GRANT: Yes, he is.

THE COURT: It's a question whether it falls within the St. John rule or not.

MR. GRANT: Well, that's right. I mean, that's the position that I take is that the thesis that my friend is laying ground work for here is a thesis which would make it interminable and impossible for an anthropologist to give evidence.

THE COURT: We've already reached the first level --

MR. GRANT: No, no.

THE COURT: -- In the approach to these matters.

MR. GRANT: That's why I said and impossible.

THE COURT: And impossible. All right.

MR. GRANT: Because if we have to go to every person upon which an expert relies we come right into the St. John's principle, and I say that --

THE COURT: Well, I'm going to let you proceed subject to the objection. I'm not sure there is any judicial authority on the question of whether the St. John rule can be qualified in these kind of matters by published opinions or whether one can go to personal communications. I'd like to consider that. I think Mr. Willms is going to argue, without authority I might add, for the published opinions only being the source of this kind of information. I'll want to consider that, but I think -- I think I'll hear what you want -- what the witness thinks he can properly say to answer your question subject to your objection.

MR. GRANT: Okay.

Q Doctor, yes, you were describing what Dr. McDonald told you regarding in terms of the use of the --

A Well, their conclusion was that it was possible to carve -- to make carvings in poles and to fell big trees with the non-iron tools. At the same time people point out, Wilson Duff is one of them, that there is a certain amount of iron which is always found along the coast. They're quite convinced archeologically as well as from the oral record from drifting in from the Orient and possibly being traded down from the Aleut and Inuit from the iron using people in Siberia. There is also the annealing of copper by pounding, and in the adaawks there are discussions of people using these copper tools for carving. On the historical front from the documentation the traders of the late seventeen-eighties, between 1787 and 1790, began to describe here and there the carved nature of the house fronts, the poles at the front of the house through which you entered, which is a part of the whole symbolic thing about going into the history of the house you're entering its adaawk, you're entering its whole tradition by going through the pole through one of the figures. These are described in relation to the Nuu-Chal-Nuth or Nootka people. One example by a man called John Boit, B-O-I-T, was the mate for Robert Gray, one of the Boston traders, and it's the Village of Clayoquot, which they subsequently burned. Part of their trading techniques was to fire on or burn the village and then say if you don't trade with us we'll do this again. So he was describing the houses, and the house -- there were house front poles in that description. Within a year or two there were beginnings of sketches being made by Europeans. I

think the man's name was Bartlett. Around 1790 or '91 he sketched a house frontal pole in the Haida areas. It's -- the record is unclear as to whether they were free standing poles at that time or not. And there certainly was a florescence of pole raisings in the nineteenth-century.

Q Within the Gitksan area there was -- well, I'll come back to that.

Can you turn to 543, please. You state here that -- you comment that;

> "The art lover may be appalled at the sight of a totem pole rotting back into the floor of the rainforest, or the accounts of House poles which as reported by Marius Barbeau were used, with the approval of the missionaries of the day, to keep the flood waters of the Nass River out of people's potato patches. In its dismay, the art-loving portion of the public forgets that its perceptions are informed by their own literate, written down tradition of materially tangible artifacts. It frequently fails to see the living culture, for the culture is alive and confident of its roots and its pedigree. It allows its material artifacts to rot down and rejoin the cycle of death and rebirth, knowing that it can recombine the principles of design and the specific cultural components so as to give voice to the tradition yet again, for the new generation. The Northwest Coast culture has retained the ability to combine images and narratives that express an ancient heritage, which still renders it immediate today."

Now, then you go on, doctor, to -- and, of course, you saw that demonstrated in the Gitksan pole-raising literally?

A Yes.

Q You go on to the bottom of page 544 to just state what you have done.

> "The sources for the substantive material in the following account are my interview notes, the transcripts of evidence by

Gyologyet, Antgulilbix, Gwaans, Gisdaywa, my experience as a guest at several Gitskan and Wet'suwet'en feasts and at the 1986 pole-raising of Guxsan in Gitsegyukla, and the pole invocation ceremony of Hanamuxw in the work area of the carver, Earl Muldoe, at Hazelton in April, 1987. The documentary sources of the greatest assistance have been the William Beynon notebooks of the 1945 pole-raising ceremonies and feasts at Gitsegyukla, which were also recounted by Gwaans in her evidence. As well as the accounts and explanations given by Drucker, and Barbeau's publication on Gitksan totem poles."

A M'hm. I forgot to -- part of my assessment of the age and continuity of poles was an interview I had with Earl Muldoe, which is among my interviews, and his assessment of the old techniques of burning and chipping with adzes which he was researching before he carved a pole for Gitludahl, which is the name his father now holds. Which is a perfect traditional system, too. He's a professional carver, but the father's side always carves the chief's pole. In this case it just worked out right. And, again, in the case of the Gwaans pole, the father's side of Gwaans was a frog, and Earl Muldoe is a frog so it's by extension the same side is doing what they're supposed to do.

Q And Andy Clifton is a carver, is he?

A He's a carver too.

Q And he's a member of the House of Hanamuxw?

A Yes.

Q Now, what I'd like to ask you about this, and I'm not going to ask you about the description in detail, but you describe what you relied on and you referred to. In the balance of this chapter where you describe the feast do you merely transpose what those witnesses and written accounts are to form a generic feast or have you done something more? Have you interpreted it or --

A Well, I've described it as they explained it to me, and I went over it and over it with them subsequent to the interviews.

Q Yes.

A But then I've gone on to comment and analyze it.

Q Okay.
A But the substantive material I'm trying to be as accurate as they have explained it to me.
Q In terms of your description?
A Yes.
Q Okay. On page 551, my lord, and I'm not going to, of course, go through the description, but I will -- not to say that it shouldn't be gone through by your lordship, but there's a comment there part way down you state, of the middle paragraph;

> "The feast is not an old, fragile, family heirloom, and the Gitksan are not a nostalgic, backward looking people. They are proud of their heritage and yet practical in anticipating their future in the developing high-tech world. The feast accommodates wage work, technological change and various residential and educational changes, yet its basic reciprocal nature remains constant."

That's your conclusion based on your observations and research?
A Yes, it is.
MR. GRANT: I would only refer you, my lord, to the top paragraph at 556 starting at "In other words" in which Dr. Daly talks about the method of tets, T-E-T-S, and the development of it, that it's not merely over simplified, but goes back and forth.
And at page 595 to 598, my lord, is a summary of the feast transactions. Now, in order to -- in these three pages --
THE COURT: 595?
MR. GRANT: 595.
THE COURT: Yes.
MR. GRANT: Through to 598, section VIII.10.
THE COURT: Yes.
MR. GRANT:
Q Dr. Daly, you have summarized all major transactions or all transactions which occur in the feast that you have provided more detail description in the earlier part of the chapter; is that right?
A Yes, all of the main transactions.
Q All of the main transactions. Now, I'd like to refer you to page 598.
Now, you state;

"According to oral histories..." --

The very bottom of the page, my lord.

"The oral histories of the Gitksan and Wet'suwet'en Houses, this system of reciprocity, with its kinship, ceremonial, political and economic facets, has been practiced in time immemorial."

And that is your conclusion?

A Yes.

Q I should say that is your conclusion as well as the fact that it is recorded in the oral histories?

A Yes.

MR. WILLMS: My lord, that's meaningless without a definition of what time immemorial means.

THE COURT: I have a pretty good idea of what time immemorial means.

MR. WILLMS: Well, I would like to know how many millennium that is, my lord.

MR. GRANT: I'll leave it to my friend to ask in cross.

MR. WILLMS: Well, my lord, that's an opinion that's been given and I'm suggesting without a definition of the term the opinion --

THE COURT: Mr. Willms may decide not to cross-examine, Mr. Grant. I think he's entitled to know if you have a handy reference, doctor, what you mean by time immemorial.

A I think I mean here back into the mists of time. It's perhaps not very scientific, but I don't think we have time to argue it out.

MR. GRANT:

Q You would say pre-contact?

A Certainly pre-contact, yes.

MR. GRANT: I would just refer your lordship to pages 600 through to 601, starting the middle paragraph on page 600 right half way down, page 601.

THE COURT: Yes.

MR. GRANT:

Q I just state at the bottom -- would refer you, doctor, to the bottom of page 601.

"The activities carried out by the host constitute formal approval of new incumbents to positions of responsibility in the

1 kinship system through the generations. The
2 transactions are also registered in the
3 brain, and on paper, as economic accounts
4 between Houses, the shifting of the fulcrum
5 between credit and debt."
6
7 And that is a conclusion that you have reached as
8 well?
9 A Yes, from my observations.
10 MR. GRANT: I would note, my lord, page 604, that full paragraph
11 on page 604, but I won't refer Dr. Daly to it, and
12 just to highlight for your lordship, and also the
13 middle paragraph on page 606. And I'd like to go to
14 page 609.
15 THE COURT: 609.
16 MR. GRANT: Yes, just a moment, I may have -- yes, 609.
17 Q You state there, Dr. Daly, the bottom paragraph;
18
19 "Feasts consume a significant part of the
20 fruits of social labour, but they also
21 produce a social incentive for further
22 production. They are an essential feature
23 of the Gitksan and Wet'suwet'en system of
24 exchange. The feast is an institution which
25 allows for the periodical discharging of
26 debt and the consequent refreshening of the
27 communal credit system between Houses.
28 These are societies where the ethic of the
29 community safety net prevails. Nobody must
30 be allowed to starve, but at the same time,
31 nobody who eats only what others provide can
32 hope ever to become a leading citizen. The
33 ability to give food is the basis of status,
34 security and wealth."
35
36 And that's your conclusion on the feast?
37 A Yes.
38 Q Doctor, maybe I could have the green -- the green
39 volume, please. Tab 87, my lord. And it would be the
40 page just before page 12. Okay. William Brown there
41 states, "Because they have recourse...". This is --
42 THE COURT: I'm sorry. Whereabouts, please?
43 MR. GRANT: Two, four, sixth line down, my lord.
44 THE COURT: Yes.
45 MR. GRANT:
46 Q "Besides they have recourse to means which would not
47 do with us." This is with reference to the Atna. Do

you have the page?
A Yes, I do.
Q "For instance as on their arrival at a village they ascertain if they do not know previously who have furs and the amount of them on which they go to that persons lodge, blow a" --
A Parcel.
Q "A parcel of swans down upon his head, which is reckoned a mark of great honour, both amongst the Carriers and Atna, and then commence dancing and singing a song in his praise, afterwards they make him a present and retreat him with something to eat."
THE COURT: Treat him.
MR. GRANT:
Q "Treat him with something to eat. When he according to the custom of his country makes them in return a present of his furs, which if not equal to what he has received he adds surplus robes and dried skin, dressed skins to make up the value."
Now, this is -- is this part of a ceremony that would --
THE COURT: I don't think that's dressed robes?
A Dressed skins I think it is. It's the old form.
THE COURT: I see. D-R-E.
A The first S is written with the loop, and the second one in a conventional way.
THE COURT: I see. All right.
MR. GRANT:
Q Is this analogous to the temporary debts that goes on at the feast?
A It is very analogous when the host is sending out his representative to invite guests to a feast the same procedure occurs, or when someone is making an official visit to another chief.
THE COURT: I'm sorry. What do you mean by the Atna in this context?
A In this context the Atna are the Gitksan. It's a bit confusing, because there is an Athabascan people of that name farther to the north.
THE COURT: Does he mention the word Atna here?
MR. GRANT: Yes, he does, my lord, right in that quote Atna. In a reading of the entire document it's obvious he's talking about going over, I believe, to the two villages to the northwest, which would be Kuldo and Kisgagas, and then he also talks about villages down closer to the forks, and those are the Atna he's referring to.

THE COURT: Yes. All right. Thank you.
MR. GRANT:
Q Now, I'd like to go over to page -- I believe I referred you already to the page right after page 17 where he talks about the feast, and that you've read that report -- the report of the feast by Mr. Brown?
A That's after page 17?
Q I'm sorry.
THE COURT: Yes. You've read the bottom of page 17 plus one as I have it.
MR. GRANT: Yes. Just a moment, my lord.
THE COURT: I went there, which I believe is Hazelton, the first time in 1823. He's read all that.
MR. GRANT: The page after page 19, or actually page 19, my lord.
THE COURT: Yes.
MR. GRANT:
Q The very bottom, third line from the bottom, this is after he talks about the importance of leather. He says, "Consequently skins of an inferior quantity" --
A Quality.
Q "Inferior quality is more likely to satisfy them providing they get them to" --
A Cheaper.
Q "Cheaper. With the Babines it is different. The leather they buy is not for present use, but to be put carefully" --
A Part.
Q "Part until death of relation when each skin is cut into three or four pieces and given away as presents at the burning of the body or when they make the grand feast finally to deposit the bones and ashes then the skins are given away whole. It being considered on these occasions as of great importance to have fine large white skins it is therefore very seldom that a Babine finds fault with the price, but the quality, as he will readily give ten beaver skins for a large prime skin where he will not give half for one that is small or inferior."
And you in your analysis of that description of the feast is consistent with the other ethnographic material?
A Yes.
Q Thank you.
A It also shows the vibrancy of the feast at the time of contact.
Q Okay. Going to page 612. You state at page 612;

"The Houses and clans of the Gitksan and Wet'suwet'en demonstrate day by day the reciprocal nature of their social relations and the importance of giving, such that others may prosper. They feast together and break their respective wealth, as the law demands, so that again and again, now and in the future, dem helda kwadiksxw: it will come back many times over."

And that's your conclusion regarding the feast and its interaction in the system?

A Yes.

THE COURT: Is that what that collection of words means, it will come back?

A It will come back many times over, yes.

MR. GRANT:

Q Now, just one reference, doctor. Tab B of your report, this is where you refer to Professor Wallace and his conclusions as to the relations between hunting grounds and plowed fields?

A Yes.

Q And you've relied on that as part of -- it's a basis for your opinions --

A Yes.

Q -- Regarding that.

MR. GRANT: Thank you, my lord. I, of course, would want to tender this report as the next exhibit, or as the exhibit that it has been reserved as.

THE COURT: Yes.

MR. WILLMS: My lord, I made some objections on the very first day, and I can repeat it again, but I object to the marking of this as an exhibit. It's inadmissible in my submission, but I made the objection on the first day, and I don't think I need to repeat it.

THE COURT: I think we should deal with that matter at two o'clock. I have some considerable confidence that we will finish the appeal this morning. The division I'll be sitting with has another case at two o'clock. If there's any difficulty I will let the Court of Appeal Registry know and you might check there before you make your final plans for the afternoon. Thank you.

THE REGISTRAR: Order in court. This court will adjourn until 2:00 p.m. this afternoon.

THE COURT: Oh, just one thing. Mr. Willms, I don't know if you're in a position to make your estimate of how long

you'll be. I think you should make plans as best you can to try our very best to finish this week. I'm prepared to sit late every night this week except Thursday and Friday.

MR. WILLMS: My lord, I should advise, Ms. Koenigsberg will be taking the first cross-examination and then I'll follow, and our present plans indicate that we should finish this week, but --

THE COURT: With regular hours or with extra sittings?

MR. WILLMS: Well, I think it's a little early to say.

THE COURT: Well, I'm happy to make up the lost morning, and I'll be guided by what counsel suggest in that regard. Thank you.

THE REGISTRAR: Order in court. Court will adjourn.

(PROCEEDINGS ADJOURNED TO 2:00 p.m.)

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

_____

Peri McHale, Official Reporter
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1 (PROCEEDINGS RECONVENED AT 2:25 p.m.)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Well, I suppose I should have anticipated that
5 trying to get five judges together is going to take
6 two-fifths longer than it should.
7 MR. GRANT: My lord, before my friends commence cross-
8 examination, I would like to deal with a couple of
9 matters. One is the filing of Exhibit 665 (a) which
10 is the affidavit of Victor Jim, a translation
11 affidavit relating to Johnny David.
12 THE COURT: Yes, all right.
13 MR. GRANT: That's been delivered to my friends already.
14 THE COURT: What number will this be?
15 MR. GRANT: Exhibit 665 (a). And it would go in with the
16 territorial affidavit of Johnny David sworn on July
17 13th, 1988
18
19 (EXHIBIT 665 (a) - Translation Affidavit of Victor Jim
20 with respect to Johnny David)
21
22 MR. GRANT: Secondly, the affidavit of Victor Jim with respect
23 to the translation of the Irene Daum affidavit. That
24 would be Exhibit 678 (a).
25 THE COURT: And how is that spelt?
26 MR. GRANT: D-A-U-M, my lord.
27 THE COURT: Yes.
28 MR. GRANT: Her territorial affidavit is Exhibit 678.
29 THE COURT: Thank you.
30
31 (EXHIBIT 678 (a) - Translation Affidavit of Victor Jim
32 with respect to Irene Daum)
33
34 MR. GRANT: The next thing, my lord, is with respect to Exhibit
35 895, this is the William Brown 1826 report. Subject
36 to this comment, my lord, which is taken directly out
37 of Trigger, "Natives and Newcomers", which the
38 witness, Dr. Daly, referred to at tab 3, Trigger
39 states:
40
41 "The historical records can be interpreted
42 only when the cultural values of both the observer
43 and the observed are understood by the historian."
44
45 And I want to state by that that we do not -- the
46 plaintiffs do not take the position that that
47 document, merely because it is an ancient or

1 historical document, automatically should be assumed
2 to be relied on for the truth of its contents.
3 Subject to that, I, after further review and
4 consideration of my friends' position, I take the
5 position that Exhibit 895 can go in for the truth of
6 its contents as acceded to by the defendants. And
7 subject to the proviso that we take a position that
8 this document here and the references to it by Dr.
9 Daly and possibly other witnesses are an
10 interpretation, and historical documents must be
11 considered in light of the cultural values of the
12 observer and the observed.
13 THE COURT: All right. Thank you.
14 Mr. Willms, you had a submission to make this
15 morning or you seemed anxious to make one, but it's
16 between you and Miss Koenigsberg who is first.
17 MR. WILLMS: My lord, what I wanted to submit in respect of
18 marking the report of Dr. Daly as an exhibit, is that
19 in my submission the report as an exhibit is
20 inadmissible. The reasons are, first of all, that
21 when you read the report it is an interwoven mixture
22 of argument, of non-expert inferences from the facts,
23 findings of fact and statements of inadmissible
24 hearsay, and scattered throughout that are the true
25 opinions anthropological opinions. And it's my
26 submission, my lord, relying on cases such as
27 Sengbusch v. Priest, Emil Anderson number one and two,
28 Quintette Coal, which are all in the book of
29 authorities that I handed up to your lordship, and in
30 addition, your own decision in Mazur v. Moody, that
31 that -- this report entrenches beyond the
32 boundaries -- the appropriate boundaries of expert
33 opinion evidence and is therefore inadmissible.
34 That's the first ground, my lord
35 The second ground is a repetition of an objection
36 that I made to Miss Albright's report insofar as it
37 relied on oral histories. Oral histories, as your
38 lordship may be aware, is a matter which will be --
39 will likely require a ruling later on in the trial as
40 to their admissibility. But it is the plaintiffs'
41 position that insofar as experts reports are based on
42 oral tradition or oral histories, they are
43 inadmissible. That's the second ground.
44 The third ground, my lord, is this: Whatever
45 merit participant observation has as a method of
46 anthropology, it is my submission that to be
47 admissible in court the observation must take place

before the commencement of the action. And that whereas in this case the observed are the plaintiffs in the action, there is no possibility whatsoever for any other party to duplicate or replicate the work of the anthropologist. And I draw a distinction, my lord, I don't say participant observation as a method of anthropology renders an anthropological opinion inadmissible, but I say that once it's all done, after the commencement of an action where the observed are the plaintiffs in the action, that it is impossible to duplicate and is therefore impossible to test by other anthropological means, that is the same means, in terms of truth or accuracy. And so I suggest and submit that it's inadmissible for that reason as well.

THE COURT: Miss Koenigsberg. Thank you, Mr. Willms.

MS. KOENIGSBERG: I agree with Mr. Willms on all three counts and I don't think I have to elaborate.

THE COURT: Mr. Grant?

MR. GRANT: Well, Mr. Willms indicated this morning that he would rely on what he stated last Monday, and I assume that what he has restated is effectively that reliance, and it's based on that I am prepared to deal with it.

Now first of all, my lord, with respect to the question of participant observation, that based on the evidence of Dr. Daly, it is not only acceptable, it is the preferred method of anthropological research. In fact, he stated --

THE COURT: You mean participant -- participant observation is the preferred?

MR. GRANT: Yes.

THE COURT: I don't think that's your friend's point. I don't think you have Mr. Willms objection. Participant observation, if it was conducted by an independent researcher or anthropologist outside the context of the action.

MR. GRANT: Right. Well maybe I'll deal with that first point.

THE COURT: I take it part of your submission, Mr. Willms, is that not only was it conducted -- this research was conducted after the commencement of the action but it was commenced -- it was undertaken under contract with the party.

MR. WILLMS: Well -- and your lordship hasn't seen the contract because my friend didn't file it, but there is the same kind of contract here and same kind of exchange of correspondence as to what Dr. Daly should be looking for.

1 THE COURT: Yes. Thank you, Mr. Grant.
2 MR. GRANT: Now, my lord, I have tendered a brief of
3 authorities, some of which are loose, and first of all
4 to answer the question my friend raises, I refer to
5 your own decision in this action on March 29th, 1988,
6 which is loose in the front. There are three
7 authorities which are loose in the front of my set of
8 authorities.
9 THE COURT: An elegant way to describe one of my judgments, Mr.
10 Grant? Yes.
11 MR. GRANT: The decision was quite tight, my lord, it was the
12 binding machine that wasn't.
13 On page -- this was with regard to Heather Harris
14 in which Heather Harris in her report stated she was
15 in a unique position to analyse the genealogies. And
16 you stated at line 17 on page 3:
17
18 "As I stated to counsel at the conclusion of
19 argument in this matter, I have no doubt
20 genealogical evidence may be relevant at this
21 trial and further that the Defendants are unable
22 to obtain facts and opinions on the same subject
23 by other means. This is because of the unique
24 position of Ms. Harris and because the Defendants
25 are unable to retrace her steps as the Gitksan
26 people are, in effect, Plaintiffs in this
27 action represented by counsel."
28
29 Therefore, what you've ruled was that she would be
30 obligated -- you rejected the suggestion that
31 anthropologists had the same information because
32 genealogy is not a static science. Now in other
33 words, my lord, you relied on the rule which my
34 friends relied on regarding Heather Harris.
35 Now let us look at Dr. Daly. At the end of
36 January 1987, over two years ago, they received Dr.
37 Daly's summary opinion. They made no similar
38 application. They've clearly had anthropologists
39 retained to investigate these matters for themselves,
40 they found no difficulty.
41 In November -- in August of 1988, the report that
42 is before you was delivered. At that time, as you may
43 recall, Dr. Daly was assumed to be called in November.
44 My friends have had since August of 1988 to bring
45 on a similar application. Rule 28, my lord, as you
46 found in your decision in this case, and as is
47 explained in other cases dealing with the rule, allows

1 an opening and it allows the opening into an expert's
2 evidence in these circumstances, where an expert's
3 evidence cannot be tested or determined by other
4 means.
5 My friends received the Heather Harris report --
6 summary report at the same time as Dr. Daly's. They
7 took -- made the decision to call Heather Harris on
8 the Rule 28 and you ruled accordingly. So they have
9 now had since -- since March -- since January of 1987
10 to bring on a similar application, and in March of
11 1988 you made it clear that you were sympathetic to
12 that position, if they had a problem about getting the
13 details independently.
14 With respect, my lord, they also have had
15 interrogatories of 64 plaintiffs which presumably they
16 have been able to give to their experts, and if they
17 needed further they could do it. They've had full
18 discovery, they have had full cross-examination at
19 trial of all the witnesses, and I submit that there is
20 no foundation whatsoever for them to say that when a
21 person is retained by a party after the trial
22 commences to do anthropological research, that that
23 person's opinions should not be accepted by the court.
24 It flies in the face of the -- of a practice that I
25 submit is regular and is normal in the course of
26 litigation.
27 The other point is that Dr. Daly, as I recall in
28 his evidence, explained he was retained to do the
29 work. He went off and he did the work using his
30 anthropological approach.
31 THE COURT: Mr. Grant -- I am going to stop you, Mr. Grant.
32 I think there is much merit in the submission Mr.
33 Willms has made and I think I would accede to it in
34 ordinary litigation, but this is not ordinary
35 litigation; it is far, far from it. I think that the
36 only thing that I can do in this case is to admit the
37 report into evidence, but with this caveat: That I
38 think it is possible that after cross-examination I
39 will have a higher view of the weight to be given to
40 the evidence or I may end up having the view that the
41 evidence or some of it has no weight at all. But I do
42 not think I can even reach that conclusion at this
43 time, and I think that because this is such
44 extraordinary litigation in the court that unpalatable
45 and probably objectionable as such would be in
46 ordinary litigation, it is a course that I should
47 follow here and I propose to have the report marked as

an exhibit.

If it turns out on careful review after listening to the cross-examination and considering all the evidence that I have heard and have yet to hear, I reach the conclusion that it cannot be given any weight, then such will be the case. But I do not see anything being resolved in this problem and I think for that reason we should proceed as I have indicated. The report and the other documents will be marked as exhibits for the purposes which may be mixed, that had been described just this afternoon and during the course of Dr. Daly's examination-in-chief. So they will carry the numbers that are assigned to them.

MR. GRANT: My lord, the only other point I wanted to make was with respect to the comment about oral history. And in your own argument -- or in the course of argument by Professor Jackson in July of '87, both Mr. Goldie and Professor Jackson and you relied on this as part of the foundation of your decision. I indicated that there would be anthropological evidence about the interpretation of oral history. We are at that point with Dr. Daly, that is part of his evidence.

THE COURT: And that's one of the reasons why I am going to allow the report to be marked.

MR. GRANT: Thank you, my lord.

THE COURT: But that doesn't say that at the end of the day it will be taken with full weight.

MR. GRANT: Sorry?

THE COURT: That entitled weight, that remains to be seen.

MR. GRANT: Or that certain parts --

THE COURT: Oh, I'm sure there will be some parts, I'm sure Mr. Willms -- I suppose he says it's totally inadmissible but I doubt if he would say there is not anything in this that's admissible. The witness' own observation, for example, in part would be -- would be the part -- what he actually saw and heard would be -- what he saw could well be admissible if he heard waters rushing or fish crying, then that would be admissible.

MR. GRANT: Yes, my lord.

THE COURT: Okay. Let's proceed into the cross-examination

RICHARD DALY: Previously sworn

THE REGISTRAR: You are still under oath.

THE COURT: Miss Koenigsberg.

MS. KOENIGSBERG: Thank you, my lord.

CROSS-EXAMINATION BY MS. KOENIGSBERG:

Q Mr. Daly, your primary tool of research as has been

1 discussed here, was participant observation in coming
2 to the conclusions that you came to; is that correct?
3 I use "primary tool" advisedly.
4 A Well, it's certainly a crucial tool, but the
5 documentary sources are also very important and the
6 work of other people in related fields.
7 Q Yes. The participant observation which you conducted
8 was from July of 1986 until sometime in 1988?
9 A Yes. In relation to this case. But the -- I'm still
10 engaged in work in that area so it's really -- it's
11 ongoing.
12 Q Yes. Between July of 1986 and when in 1988 did you
13 complete what you would call the participant
14 observation which formed the basis -- or one of the
15 primary tools for this report?
16 A It was the spring of -- spring of '88, roughly April,
17 May period.
18 Q Just so we are clear, in writing the final draft, if I
19 can put it that way, of your report, did you rely or
20 review any of the trial transcripts which occur --
21 which may have taken place since May of '88?
22 A Well, my report was submitted in August, so -- I don't
23 recall -- I think the last transcripts that I read
24 over were somewhere around the point of Pete Muldoe
25 and Solomon Marsden.
26 Q Okay. So at least the very last of the spring
27 sitting?
28 A Yes, yes.
29 Q The participant observation which took place between
30 July of '86 and the summer or early summer of '88, was
31 your living among the Gitksan and Wet'suwet'en and
32 observing their societies and interviewing them in the
33 course of your living there; is that correct?
34 A Yes. And participating in some of their activities.
35 Q Yes.
36 A And social events.
37 Q Okay. And of your participant observation, you
38 recorded some of what you observed and heard,
39 specifically, we have 27 interviews of, I believe, 34
40 or 35 persons, and two documents which are notations
41 of -- concerning feasts; is that correct?
42 A There is -- well, there is one document concerning the
43 events in Burns Lake.
44 Q Yes. That was the All Clans Feast?
45 A Yes. Now there is -- there is that body of notes with
46 Mary McKenzie and Pearl Trombley which was, in effect,
47 a series of interviews.

1 Q Yes. And those are part of the 27 interviews?
2 A Yes, yes.
3 Q I'm sorry, 27 persons and I believe there are 35
4 interviews. You had more than one interview with
5 several people?
6 A Yes.
7 Q You did not record numerous other interviews or
8 discussions that you had which you have classified as
9 informal?
10 A I did -- well, I record them directly into the
11 computer, that's the -- that's the problem with the
12 evidence on that front. Many things in the course of
13 formulating my thinking came directly in as I was
14 inputing the arguments, and I tried to indicate that
15 here and there.
16 Q All right. But the kind of notation that we would
17 think of as a specific recalling of what you were
18 observing, we find evidenced only in the 27 -- or
19 the -- I'll call them the 35 interviews and the notes
20 of the feast?
21 A Well, part of the problem is it's the same situation I
22 had when I was doing my doctoral dissertation, that I
23 wasn't -- I agreed with the people not to take notes,
24 so I had to remember all the events I had been engaged
25 in and put it directly into the work that was under --
26 on the go at the time.
27 Q Did you keep a journal?
28 A No, I didn't.
29 Q It sometimes is the practice of anthropologists
30 conducting field work to keep daily journals?
31 A Sometimes it is, yes. There is some debate on the
32 subject, quite a bit today as to whether you should
33 keep a journal or wait until you've been there for
34 awhile and get the lay of the land so that you know
35 what is effective data to collect.
36 Q And after a certain period of time, it would then be
37 advisable to keep a journal?
38 A In some situations, yes. I've never worked that way
39 but some anthropologists do.
40 Q When you recorded -- made your notes of the feasts --
41 and would your chapter on feasts be a good example of
42 your recording what you observed directly into the
43 computer?
44 A Yes.
45 Q So what you recorded and what we see directly in the
46 report in Chapter 8, for instance, is, if I can put it
47 this way, is a distillation of your observations, and

1 if I can put it this way, the cultural baggage that
2 you carry with you as a result of your experience and
3 education in anthropology?
4 A I think -- well, yes, it was a very organic process.
5 And as I got more information on the feast, I fed it
6 into -- that chapter was germinating right from the
7 pole raising I went to and the subsequent interviews
8 and then other -- the other feasts I attended.
9 Q And just --
10 A And then as I worked over it I would sometimes find
11 that I -- there was an area which was very opaque and
12 I would get on the telephone and talk to one of the
13 participants as to what was actually meant in that
14 circumstance.
15 Q Okay. And when you would do that, let's take the
16 example of you observing part of the culture at work,
17 so to speak, and you would have -- I suppose you would
18 find some aspect of it puzzling so you would phone and
19 get some information to assist you in clarifying, you
20 did not make notes of that?
21 A No. I keep it in my head and then I would try to
22 confirm it with somebody else and then see if that
23 made sense the next time I was in the feast situation.
24 Q Okay. And so that I can understand how we -- how we
25 are to appreciate the -- let's take Chapter 8 or any
26 other part of the report -- again, it becomes a
27 distillation of what you observed, what you were told
28 by a variety of people, and your conceptual
29 background?
30 A Yes. A filtering through of the -- I suppose
31 anthropological training.
32 Q Right. And that anthropological training would be
33 made up, as you have told us, of your anthropological
34 formal education?
35 A Yes.
36 Q Your experience in the field, in particular with the
37 Iroquois?
38 A Yes.
39 Q And the ethnohistorical work which you had done before
40 and which you were doing as you were participating in
41 the culture?
42 A Yes.
43 Q And when I use the term "cultural baggage" -- and I
44 don't mean that pejoratively in the least -- it is
45 that which forms the filter for you to distil what you
46 are seeing and observing?
47 MR. GRANT: Well just a moment. I -- my friend has coined this

phrase "cultural baggage" and I am not certain -- now she is asking him a question about what it is. I object. I don't know what my friend means by "cultural baggage". I think she should endeavour to use a clearer term.

MS. KOENIGSBERG:

Q I thought I was being an awfully good anthropologist by saying what I meant by "cultural baggage", but I'll back up if my friend is having trouble with this.

And when I use the term cultural baggage, Mr. Daly, I'm referring to your cultural baggage, the filter through which you distilled information, and that was made up of your education, your experience as an anthropologist, your ethnohistorical reading in the subject. Now, I'm leaving aside all your entire life which makes up your general cultural baggage and I'm directing my question to those things which you brought to bear specifically on the problem of -- of your informed discussion of this particular culture?

A Well, I don't think you can make that clear a distinction, because the cultural outlook of the anthropologist is part and parcel of his or her upbringing in the society. And then on top of that you've got your professional training in comparative cultural understanding, and you try to divest yourself as much as possible from assessing things from comfortable terms that you've grown up with and try to do it much more consciously in a comparative sense. So my -- I did grow up on the B.C. coast and I am familiar with the general attitude towards native people, some of which I grew up with and subscribed to, and these have changed and filtered with my professional training. So both of those things are in play in the course of assessing the data as I gather them.

Q Okay. Then can we agree -- and I don't say I'm going to repeat "cultural baggage" throughout this cross-examination -- but can we agree that you brought to your thoughts as expressed in the report about the Gitksan-Wet'suwet'en society, your upbringing, your education, your experience as an anthropologist and the ethnohistorical work that you did before and during? I don't mean to short-change anything, I'm trying to get at the concept of how we end up with what's on the page?

A Yes, I think that's correct.

Q Okay.

1 Now, you were aware that the time period during
2 which you were conducting your participant observation
3 took place during the preparation for and during a
4 part of this trial; is that correct?
5 A Yes.
6 Q And you were participating with the Gitksan and the
7 Wet'suwet'en by attending their functions during that
8 time, and did you attend commission evidence as well?
9 A No, I didn't attend any of the commission. But I also
10 found when I was out in the community there were a lot
11 of people who were not very aware of the court action
12 or they had heard about it and didn't really know what
13 it meant. These were, admittedly, they are people
14 without high names in the houses, but there were
15 people of all gradations of involvement in the
16 process.
17 Q Yes. Did you assist or participate in preparing any
18 of the witnesses to give their commission evidence?
19 A No, I didn't.
20 Q Did you participate or assist in preparing any of the
21 witnesses to give their evidence at trial? Let me be
22 specific, but I don't mean to exclude anything. You
23 interviewed Mary McKenzie extensively and she assisted
24 you in interpreting the feast. And Mary McKenzie was
25 called as a witness, she was the first witness in the
26 trial and she gave extensive evidence of the feast,
27 and I would like to know if you had any input into
28 that evidence?
29 A Well, I got -- I went -- when I went into the
30 community I -- of course it's a common practice, I
31 asked around, who are the specialists that I should
32 get in touch with that would be able to give me an
33 overview of the feasting system, and Mary McKenzie,
34 Olive Ryan and Mary Johnson, the first three ladies
35 who were eventually called, they were all names that
36 came to the forefront. Everyone I asked, they were
37 three of the people, and Solomon Marsden was another
38 one. So I mean you get directed to the people in the
39 know and I suppose that's part of the thinking of
40 counsel on who to call, the people who are expert in
41 certain areas.
42 Q You took notes, for instance?
43 MR. GRANT: Just a moment. Let the witness finish.
44 MS. KOENIGSBERG:
45 Q I'm sorry. Were you not finished?
46 A No. I mean the trial was going on and I was still
47 collecting information, so I attended parts of their

1 testimony in Smithers and it was just part of a whole
2 learning process. But I was there as a collector, not
3 directing the operation, so to speak.
4 Q Through my question I was attempting to understand if
5 you had -- for instance, when you took notes of your
6 discussions with Mary McKenzie, did you review those
7 notes with her before she gave her evidence?
8 A Well, I reviewed my first notes to the extent that I
9 had a terrible time with the spellings, and -- of
10 words, and I was sure -- the first time 'round I was
11 at sea with the -- a lot of the concepts, so I went
12 back to her and to her daughter, Pearl Trombley who
13 had had some training in transcription of words. So
14 we had a lot of discussion on trying to get the
15 concepts cleared but neither of us at that point knew
16 that she was going to be a witness.
17 Q So as far as you know, you had no direct --
18 A Not direct.
19 Q -- input into her evidence at trial?
20 A No.
21 Q Okay. You did attend the trial at Smithers from time
22 to time?
23 A Yes, yes.
24 Q And you did participate with the people who also were
25 attending the trial and some of the demonstrations
26 that took place, specifically to attempt to persuade
27 the Chief Justice to stay in Smithers for the rest of
28 the trial?
29 A Yes. I was wondering if that would come up. I was
30 even handed a drum but I didn't beat it. But it was
31 part of the participant observation.
32 THE COURT: So was I.
33 MR. GRANT: Handed the drum, my lord?
34 THE COURT: Well, it was pushed in my face.
35 MS. KOENIGSBERG:
36 Q And at the end of that demonstration outside the Chief
37 Justice's chambers, you came into the courtroom with
38 the observe -- with other persons who had
39 participated?
40 A I didn't march into the courtroom with drums and
41 banners. I came in on my own. I thought that was --
42 there should be room for a little bit of professional
43 objectivity. But this sort of engagement is part of
44 the -- Mr. Whyte, whose work I mentioned I think on
45 the first day, he was -- actually came very close to
46 being arrested when he was doing his work in Boston,
47 for stuffing ballot boxes which was part of the

process he was studying.
But it's -- it's part of the whole rapport you build up. Of course there are limits to -- he also started discussing the morality of these questions but it's trying to get an insider view, a handle on how people view things.

Q One of the things that you were concerned with was how did the people that you were studying view the trial process?

A Yes. Yes.

Q But you haven't given us any opinions about that?

A No, I haven't.

Q When you attended in Hazelton -- and I'm now speaking of the -- beginning in July of '86, that's when you came to stay for --

A Yes. I had that initial reconnaissance trip for about ten days in April.

Q What you were asked to bring, if I can put it that way, with you to deal with the contract that you were going to fulfil, was your background as an anthropologist, correct?

A Yes.

Q At page 29 of your report, that's in volume 1, you deal with one of the constraints, if I can put it that way, on an anthropologist, and it's -- it's contained in the statement of ethics. At the top of the page, Section 1:

> "Relations with those studied:
> "In research, an anthropologist's paramount responsibility is to those he studies. When there is a conflict of interest, these individuals must come first. The anthropologist must do everything within his power to protect their physical, social and psychological welfare and to honour their dignity and privacy."

And you not only agree with that, you adhere to it in conducting this research; is that correct?

A Yes. It's part -- it's consistent with the ethics committees in terms of work with human subjects and the social sciences in pretty well all the universities in Canada. I've had to go before them in applying for grants -- which have not been successful but not because of the ethical consideration -- but it's basically to guard the dignity and the privacy of the people that you are studying, not to misuse any

1 information.
2 So quite often -- or usually, you are expected, if
3 you are going to publish your findings, to ensure the
4 anonymity of the people who are giving you the
5 information. You change the name of the location and
6 the people's names. And occasionally -- I know a
7 field worker in Britain, and the only way she could
8 disguise the factory she had worked in was to change
9 her name through publication. So anyway, there is an
10 attempt to guard the anonymity of the people.
11 Q That particular aspect of that ethic was a bit turned
12 on its head, if I can put it that way, in this
13 particular contract of yours, where you were being
14 asked by the native people themselves in the form of
15 their tribal council, to study them and to report on
16 that for publication or for the court?
17 A Well, you could put it that way but that wouldn't be
18 my interpretation. Because if you go in with an axe
19 to grind of any sort, whether it's from your own
20 personal background or the bent of your training, you
21 are going to get very skewed results. That's why I
22 stated that I didn't do a great deal of reading
23 beforehand, but I read as problems came to mind and I
24 wasn't able to understand what was going on. So I
25 don't think it's right to argue too closely that I was
26 going in as a hired gun to be the spokesman for these
27 people, because if I had done that, all sorts of
28 things would have -- I wouldn't have seen them and the
29 anomalies which come up, which they are quite often
30 the most interesting parts of what you have to
31 incorporate into your theories.
32 Q Well, regardless of the safeguards that you may have
33 put on the matter in your mind, as you have described,
34 you were in fact asked to come to Hazelton by the
35 tribal council and study these persons for a
36 particular purpose. That's fair, is it?
37 A No. Actually, Richard Lee and myself were asked to do
38 a report -- actually, Richard Lee initially and then
39 the two of us. It was at our urging that we -- that
40 it be based on actual field investigation.
41 Q Okay.
42 A It was suggested initially that we could then do it
43 from our comparative analysis from a distance, and we
44 didn't think that that would be a valid assessment of
45 the note -- given the scope of the project.
46 Q You had some correspondence with the tribal council
47 regarding your terms of reference, if I can put it

that way, for your work, and I'm showing you a document which is a letter dated February 6th, 1986, from Richard Overstall to Dr. Lee, and there is a second letter from -- it doesn't actually say who it is from. It's -- we have just received one page of it, but it's on the letterhead of the University of Toronto and it's to Mr. Richard Overstall and appears to be in response to the February 6th letter.

And my lord, perhaps I will just follow Mr. Willms, what I came to appreciate is an excellent idea of providing a binder, an empty binder with tabs, and as we go and actually mark the exhibit, it could be put in the binder.

THE COURT: All right. Thank you.

MR. GRANT: My lord, if it will assist my friend, I see the situation that arose. The second page -- and I -- in the disclosure letter I made clear that the balance of this March 11th letter was, in my view, privileged. But I realize that what happened by deleting that is I deleted the authorship. This March 11th letter was from Richard Lee and I can advise my friends in the court of that.

MS. KOENIGSBERG: Okay. Well, we'll see what the witness knows about it and then I don't think we should have any difficulty.

THE COURT: All right. I'm sorry, I would rather sit right through but there is a matter that I can't avoid dealing with and I think I better go and deal with it right now. Can we have a very short adjournment.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AT 3:05 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.

1 (PROCEEDINGS RESUMED PURSUANT TO SHORT RECESS)
2
3 THE COURT: Ms. Koenigsberg.
4 MS. KOENIGSBERG:
5 Q Mr. Daly, we were -- just before the break we were
6 looking at these letters setting out the terms of
7 reference for your research, and the first one is
8 February 6th, 1986 from Mr. Overstall to Dr. Lee. Did
9 you see that letter? And it's, I assume, without it
10 being blacked out. Don't concern yourself with that
11 part.
12 A Yes, I did. Yes, I did.
13 Q And did you review before you determined what your --
14 what shape your proposal would take did you review the
15 copy of the Chiefs' statement of claim and the
16 Province's statement of defence and the Chiefs' reply
17 that were sent to you by Mr. Overstall?
18 A I didn't. Professor Lee may have. I didn't go over
19 them until we were in Hazelton in April, April of '86.
20 Q Oh, before you began participant observation in the
21 ten day period that you were --
22 A Yes. Actually the participant observation began then.
23 The main body, of course, was when I moved out.
24 Q Okay. The questions which are set out by Mr.
25 Overstall in this letter are on pages one through
26 five. And did you address in your proposal those
27 questions? I don't know there is much profit in
28 actually reading them out loud.
29 A Yes, we did. But in the course of the work it did
30 change somewhat.
31 Q What changed? I mean, in terms of questions that you
32 set yourself to answer?
33 A Well, it became increasingly obvious to me that what I
34 wanted to portray was an overall sense of the economy
35 rather than the more ecological focus which we had
36 agreed to initially. So I did discuss this with Mr.
37 Overstall, and he told me to go ahead and we'll see
38 what the results are. He didn't find it in
39 contradiction with the contract that we had -- that we
40 had signed.
41 Q And then if we look at the letter of March 11th we
42 just have -- we have the first page there.
43 A Yes.
44 Q Were you aware of the contents of this letter? It
45 doesn't show that it is from Mr. Lee, but Mr. Grant
46 has advised that indeed it was.
47 A Yes. Yes, I was aware of this.

1 Q And did you have any input into this letter?
2 A Yes. This letter was written after we had -- the two
3 of us had a discussion on what we thought should be
4 done.
5 Q Okay. And you also had a couple of conversations with
6 Mr. Overstall in the interim?
7 A We had one -- I believe one telephone conversation
8 with him in the interim from the Department of
9 Anthropology at the University of Toronto.
10 Q And in it, if I can summarize, you say that you agreed
11 to examine documented data, and I'm just reading from
12 the third paragraph, available in the Hazelton area,
13 in Toronto, Ottawa and elsewhere on the subject of the
14 unique quality of the Gitksan Wet'suwet'en eco-system
15 territory?
16 A Yes.
17 Q And had you been directed to documented data?
18 A At that point I don't think we had. But you mean by
19 Mr. Overstall?
20 Q Yes, or anyone on behalf of Mr. Overstall.
21 A No.
22 Q We had just found out from him that there was a
23 library, that the tribal council had been pulling
24 together a lot of documentation for purposes of
25 research.
26 Q And you had discussed with Mr. Overstall by the time
27 you wrote the letter of March 11th, 1986 that you
28 thought that the interviewing of the people, your
29 participation in the community, should be a larger
30 part of your project than had been initially suggested
31 to you by Mr. Overstall?
32 A Yes.
33 MS. KOENIGSBERG: Could we mark then these two letters, my lord.
34 THE COURT: You want those separate tabs?
35 MS. KOENIGSBERG: I think they could go in as one tab.
36 THE COURT: All right. What is the next exhibit number, please?
37 THE REGISTRAR: 901. Shall I make the book 901 and tabs 901
38 dash?
39 THE COURT: 901. This will be tab 1.
40
41 (EXHIBIT 901-1: Two letters)
42
43 THE COURT: I take it at this time you weren't talking about a
44 two year participant observation --
45 A No. We were supposed to have our package completed
46 within six months, and the whole -- the whole package
47 was geared to a six month project.

1 MS. KOENIGSBERG:
2 Q You understood, did you not, at the time that you were
3 first asked to do this that the trial would be
4 starting sometime earlier than it did; is that fair?
5 A I don't -- I don't think we discussed when the trial
6 was going to be starting. It was just that we -- it
7 had to be done as fast as possible.
8 Q Now, just --
9 A We complained bitterly why didn't you give us a year
10 or two's notice in advance.
11 Q Earlier or just before the break you mentioned, and
12 when I was asking you about the amount, the number of
13 notes, the documented record of your participant
14 observation, you mentioned that frequently it is the
15 case that you can't take notes, that the persons who
16 you're talking to don't wish you to record what they
17 say.
18 A Yes.
19 Q Did I understand you correctly? You did, however,
20 have permission to take notes, did you not, from the
21 people that you were --
22 A From the people I interviewed, yes. Yes.
23 Q And was it ever suggested to you during the time that
24 you were in Hazelton conducting your research that you
25 should not take notes?
26 A It was -- I was told by a number of the chiefs not
27 to -- they didn't want any tape recording. They said:
28 We've had a certain amount of tape recording and
29 what's on there that will have to stand. It's the
30 whole -- the attitude that they have toward their
31 history and knowledge being very esoteric, belonging
32 to their group, their house, and some cases they share
33 it between two or three houses, but they feel that the
34 word will get out in the community that they are
35 spilling the beans in relation to someone else's or an
36 area that other people feel that my informant would
37 have no right to speak about. So it's -- it's a
38 sensitive area about --
39 Q In this particular instance you were aware that a
40 considerable amount of tape recording had been done of
41 many people in the community?
42 A Yes, yes. And I tried to review a fair amount of
43 that -- that material. But, again, you know, your own
44 personal experience always adds something, a degree of
45 poignancy to the data that you're collecting that you
46 don't just get by reading transcripts and commissions.
47 Q Indeed, in your report you note that you don't think

that a researcher who doesn't participate and live in the community could appreciate the actual economy of the Gitksan Wet'suwet'en?

A Yes. I think that the degree to which a researcher lives in the community is reflected in the -- in the accuracy of the writings they do, the reports or publications they do about that society.

Q I'd like, if I can, to summarize briefly your perspective or approach of -- to the answering of the questions which were posed for you by the tribal council for the purposes of your report. And I've divided them into three, just so that you know that I'm going to include more than one. The one that I first refer you to, was it your perspective in approaching this contract with the tribal council that first you were to view this culture as you found it, '86 to 88, and I know that the dates weren't set out for you, but as you found it viewing it?

A In 1986, yes.

Q Secondly, that you were to review it in the context of the ethnohistorical record and select from that record the relevant parts to your opinion?

A Yes.

Q And, thirdly, that you were to apply your anthropological orientation, I won't use the word Mr. Grant doesn't like, to making the culture comprehensible to the court on the basis of your observations and your background?

A Yes.

Q And that would be the Gitksan Wet'suwet'en society, and your orientation would be as the Gitksan Wet'suwet'en perceive it and live it?

A Yes. And, of course, there's always a degree of translation, because I knew I was producing a report for this -- this case, and just as I don't have any knowledge of the law I know many of the people involved in this process don't have that much knowledge of anthropological perspectives or the native perspective as an anthropologist may understand it after living in a community for a certain period of time.

Q Okay. I'd like --

A So there is always this question you're working, you're studying in one culture, you come from another culture, and you have your professional training mediating it, and all those things have to be reflected in the explanation you make at the end.

1 Q Okay. I'd like to deal specifically now with
2 participant observation as a tool in the methodology
3 of anthropologists. And at page 30 of your report you
4 make some comments on that. And I'll just read this
5 part that I'm going to refer you to so everybody
6 doesn't have to turn to it if they don't want to.
7 This is in a section when you're discussing
8 participant observation. You say in the first full
9 paragraph;
10
11 "Despite the fact that he or she works with
12 human subjects and their social relations -
13 as opposed to the more readily objectifiable
14 subjects of natural science - it is my view
15 that the conclusions which the
16 anthropologist draws seek to be both
17 scholarly and scientific; that is, subject
18 to tests of validity by other members of the
19 profession."
20
21 That is your view?
22 A Yes.
23 Q And you would subscribe then to the analogy of the
24 natural sciences to the extent that you can take from
25 the methodology of that and implant it into
26 anthropology?
27 A Yes. Of course, when you're dealing with human
28 subjects involved in a natural historical process the
29 situation that any subsequent field research
30 anthropologist faces when they go to check up on the
31 work that someone has done before is different, but
32 there is generally contours that are discernable and
33 some things that a previous worker may have said which
34 are perhaps over systematized or generalized without
35 specific information that a subsequent researcher can
36 bring to light. It's never a complete replication.
37 You can't hold all the factors constant, but there are
38 general -- general features that run through it and,
39 of course, you're filtering it against similar types
40 of societies in other parts of the world as well as
41 within that general ethnographic region.
42 Q And in the arsenal of anthropologists there are a
43 number of tools that they at best bring to bear to
44 objectify as much as possible within the context of
45 human beings and social relations which they're
46 studying -- what they are studying?
47 A Yes.

1 Q And quantification we've heard of would be one way
2 that one could bring some objectivity?
3 A Yes.
4 Q Yes. And at page -- you were asked about one aspect,
5 one small aspect of this by The Chief Justice during
6 your evidence, and that's found at volume 187, page,
7 I'm sorry to say, 12096.
8 THE COURT: Oh, of the transcript. All right.
9 MS. KOENIGSBERG: Volume 187. The Province will kindly loan me
10 for your lordship their copy.
11 THE COURT: The page again?
12 MS. KOENIGSBERG: It's page 12096.
13 Q And you had just been talking about a particular -- I
14 think probably the purification rights of hunters and
15 how that fits into the culture as you saw it, and that
16 The Chief Justice asked you the question, and that
17 begins at the top of the page, my lord.
18
19 "Doctor, as a scientist don't you need a
20 control group before you can draw this kind
21 of conclusion? We have an example of the
22 Baker Lake case where the aboriginals were
23 said to be starving and they had to be
24 brought into Baker Lake. My old uncle went
25 out every fall, he always brought back a
26 deer. Do you have anything for comparison
27 or as a scientist and anthropologist, do you
28 not need a control group for the -- to draw
29 the conclusion I think you are reaching
30 here? How do you test the accuracy, the
31 reliability of this theory?"
32
33 Your answer was.
34
35
36 "Well, it hasn't been my -- I haven't set
37 myself that task of testing the reliability.
38 Normally the anthropologist is interested in
39 finding out the logic of these systems of
40 belief and practice, customary life, and to
41 present -- to show how the whole thing holds
42 together and is a very viable way of life
43 itself. But the actual testing of its
44 scientific efficacy and its freqeuncy, is a
45 different matter. Sometimes this is
46 undertaken, like the great hunt for the
47 Sasquatch, there is a lot of anthropological

work going on to try to verify those stories."

And would you confirm that, in fact, your perspective here was to determine and make comprehensible the logical consistency of the system as a whole rather than testing its validity?

MR. GRANT: Well, before -- my friend has quoted this section, my lord, and as you may recall this question was not dealing with the "system as a whole" as my friend is saying, but specifically with the efficacy of sesatxw as a method for proving skills of hunting. And that's what the question was about and that's what the doctor was answering. If my friend wishes to question him on that I think that's fair, but to take that answer which focused on that and ask him -- and suggest it applies to another theory I suggest it's unfair.

MS. KOENIGSBERG: My lord, I don't, unfortunately, feel very assisted by Mr. Grant's objection, and I think it is a fair question, and I think the witness can answer it and qualify it in any way he wishes.

THE COURT: Well, all Mr. Grant is saying is that the answer was given in a narrow context and your question's in a broad one. But, Mr. Grant, I really think this witness will be able to deal with that question if it makes a difference.

MR. GRANT: Well, so long as it's clear she is asking this question not in the context of what that answer was. That's all my concern was.

MS. KOENIGSBERG: I believe I prefaced my question, my lord, by pointing out the context of the answer and asking him if you could generalize.

THE COURT: You may proceed.

A I think that you test the reliability of the, what I call the logic of the system, in a variety of ways. And ideally the more -- the more you use the more well-rounded and well-founded your opinion is. But my argument would be, and I have in the back of my mind a lot of discussion about the validity of quantification per se as a research technique, but until you're immersed in the culture and the perceptions and how the social structure fits together in the society you don't really know the details which it would be interesting to quantify.

Q Yes.

A And at the same time we're verifying the logic of the system in reference to that type of society, that type

of complexity in other situations, and within the general culture area.

Q Is it fair to say that you did not set yourself the task of quantification as a verification tool, that you relied on other tools and really summarized what those tools are?

A Yes.

Q Your education and experience?

A That's right.

Q And so on. Are you familiar with a book called the Anthropological Research The Structure of Inquiry by Pertti Pelto? I just show it to you and ask you if you're familiar with it? You'll have to ignore the tabs.

A I have heard of it. I'm not familiar with it.

Q Have you heard of Mr. Pelto?

A Yes.

Q And he is a reputable anthropologist?

A I really don't know very much about him.

Q You certainly took courses in anthropological methodology?

A Yes.

Q And Mr. Pelto's book was not one which you happened to study?

A No.

Q Well, I'm going to read some --

MR. GRANT: What's the date of this book, my lord?

MS. KOENIGSBERG: -- Some parts.

THE COURT: Do you know the date of it?

A 1970.

MS. KOENIGSBERG:

Q I have excerpted from this book some aspects dealing with defining anthropology and problems with anthropological methodology, and I'm going to go through them paragraph by paragraph and ask you if you can agree with them. Beginning with in chapter two at page 29. I'm sorry. That begins the subsection and that is where he's discussing science. He goes on to page 30 and in the last full paragraph before the next section which is headed "Anthropology and Problems of Methodology" he attempts a general definition of anthropology in relation to the natural sciences, a topic which you have discussed. And he says;

> "The position taken in this book is that anthropology can usefully be considered a science. That is, to paraphrase my earlier

1 definition, anthropology involves the
2 accumulation of systematic and reliable
3 knowledge about an aspect of the universe
4 (man and his behavior), carried out by
5 empirical observation, and the interrelating
6 of concepts referable to empirical
7 observations."
8
9 If we just stop there, you wouldn't have any
10 quarrel with that, would you? I'm going to go on and
11 finish the paragraph I just --
12 A No, that's all right. I agree.
13 Q
14 "A comparative cross-cultural study of human
15 behavior, involving marriage, circular
16 dwellings, and great numbers of other
17 elements of behavior" --
18
19 There he's referring to circular dwellings,
20 because he spent a page or two talking about a
21 particular problem with circular dwellings and their
22 definition, but he goes on to say;
23
24 "And great numbers of other elements of
25 behavior and products of behavior, is a
26 feasible enterprise. However, we need to
27 look closely at some reasons why progress in
28 the accumulation of an extensive, useful
29 body of anthropological theory appears to be
30 extremely slow and uneven."
31
32 Now, stopping there, and before we get to the very
33 last line where he gives us his opinion about the
34 accumulation of useful anthropological theory, you
35 would agree that a comparative cross-cultural study of
36 human behavior involving the factors he lays out there
37 is a feasible enterprise?
38 A Yes.
39 Q And in fact you undertook such an enterprise?
40 A Yes.
41 Q And would you agree that anthropological theory as it
42 has progressed has had an uneven history?
43 A Well, that's a very broad general statement. I mean,
44 the history of ideas in any science is very uneven and
45 very contentious. That's how knowledge moves forward
46 through the contention of ideas and testing of one
47 another's work, and so forth.

1 Q Okay. We can go on then to Anthropology and Problems
2 of Methodology, and I'm going to actually take you
3 through the bottom of this page and the entire next
4 page and just the very top of the third page. He
5 says;
6
7 "From the point of view on the nature of
8 science and scientific method adopted in the
9 preceding section, all anthropologists are
10 'doing science' whenever they are actively
11 engaged in accumulating raw data or in
12 putting together generalizations based on
13 observational data in a search for
14 systematized and reliable knowledge about
15 human behavior."
16
17 You would certainly agree with that, wouldn't you?
18 A Yes.
19 Q
20 "It is beyond argument that anthropologists,
21 like all scholars, are trying to be
22 systematic, and that they are generally
23 favourably disposed toward reliable
24 information rather than error and
25 falsehood."
26
27 You would agree with that statement?
28 A Yes.
29 Q
30 "The conflict begins when we take up the
31 subject of the effectiveness of particular
32 methods of research and scholarship."
33
34 Would you agree with that, there is conflict?
35 MR. GRANT: I think you should finish that paragraph. It
36 explains what he's saying there.
37 MS. KOENIGSBERG:
38 Q Well, would you agree with that statement?
39 A I'd like to see what else he says in the paragraph.
40 Q Well, let me ask you this before we go on, and we
41 certainly will go right through it, that's why I told
42 you before that we would go right through it.
43 A Well, he's made a general statement and, of course,
44 when you get to the specifics you always come to the
45 problems.
46 Q Yes. Isn't that just what he's saying, as soon as we
47 take up the subject of which particular methods of

1 research or which combination you'll run into
2 controversy?
3 MR. GRANT: Well, my lord, I object, because I requested that my
4 friend allow -- that's an introductory, general
5 sentence which is modified presumably by the rest of
6 it. The doctor has not seen this before. I think
7 it's only fair if my friend is going to ask about the
8 first sentence that she allows him to look at the rest
9 of the paragraph. I object to the question, because
10 obviously it's a partial statement that he's making,
11 it's the argument of this author, and he explains what
12 he means later in the paragraph presumably.
13 MS. KOENIGSBERG: Well, I have to admit I'm quite puzzled as to
14 why that's a difficult question, but we are going to
15 go on and -- perhaps we'll just go on.
16 THE COURT: All right. Well -- and I think unless you have --
17 unless you want to argue the matter --
18 MS. KOENIGSBERG: My lord, I don't think we need to take up time
19 arguing about it.
20
21 "It is in the area of canons of evidence and
22 the believability of anthropological
23 research results that we find our focus of
24 controversy."
25
26 Just stopping there for a moment. Mr. Daly,
27 you're aware of the controversies, famous
28 controversies in anthropology over what different
29 researchers have found in visiting the same places?
30 A Which ones are you referring to?
31 Q Well, we'll get on to the Lewis Redfield controversy
32 which is discussed here about Tepoztlan.
33 A The more famous one nowadays is the Margaret Mead --
34 Q The Margaret Mead, that's right. You're aware of
35 those, and they're famous, and they're the subject of
36 much controversy?
37 A You'll have to refresh my memory on the Redfield. I
38 know a bit about the Margaret Mead.
39 Q It's nicely summarized here and that's why I've chosen
40 to spend so much time on it.
41
42 "Those outside the field which say that
43 anthropology is not a science probably
44 intend to say that anthropologists accept
45 generalizations about human behavior on the
46 basis of evidence that will not stand up to
47 close logical scrutiny. Further, these

1 outside critics can probably make a strong
2 claim that anthropologists frequently
3 present a prima-facie case for a proposition
4 and then move on to some other area of
5 study, leaving the generalization to be
6 debated pro and con in a speculative manner,
7 rather than proceeding with careful
8 examination of empirical evidence. That is,
9 anthropologists are lax in their
10 theory-building habits."
11
12 Stopping there. Was that something that you were
13 aware of that was the focus of your studies when you
14 were going through anthropology?
15 A What specifically?
16 Q That there are critics both inside and outside the
17 area of anthropology, critics particularly in the
18 natural sciences, who would say that theory building
19 is lax among anthropologists, that they tend to
20 generalize and go on and leave the speculation about
21 the data?
22 A No. I would -- of course it goes on, but I think it's
23 common in all fields of natural and social sciences.
24 Q So you wouldn't quarrel --
25 A It's not unique among anthropologists.
26 Q You wouldn't quarrel that it's a problem for
27 anthropologists, you would say it's a general problem
28 in the scientific area particularly in the social
29 sciences. Going on.
30
31 "One well-known instance of theoretical
32 debate in the anthropological litrature is
33 the Oscar Lewis - Robert Redfield
34 controversy about life in the Mexican
35 village of Tepoztlan. Redfield had studied
36 the community in the 1920s and described the
37 people as living in harmony with their
38 universe. Seventeen years later, Oscar
39 Lewis and his associates studied the same
40 community and reported a quite different
41 picture. Lewis summed up the differences
42 between the two research reports in these
43 words.
44
45 'The impression given by Redfield's study of
46 Tepoztlan is that of a relatively
47 homogenous, isolated, smoothly functioning

and well-integrated society made up of a contented and well-adjusted people. His picture of the village has a Rousseauan quality which glosses lightly over evidence of violence, disruption, cruelty, disease, suffering and maladjustment. We are told little of poverty, economic problems, or political schisms. Throughout his study we find an emphasis upon the cooperative and unifying factors in Tepoztecan society.

Our findings, on the other hand, would emphasize the underlying individualism of Tepoztecan institutions and character, the lack of cooperation, the tensions between villages within the municipio, the schisms within the village, and the pervading quality of fear, envy and distrust.'"

He gives a citation there of Oscar Lewis, 1951, page 428 to 429.

A It comes back to me now.

Q "Redfield replied", and in fact this is all contained in Oscar Lewis' book on --

A Yeah. That's right.

Q

"Redfield replied with an admission that

'...Lewis established the objective truth of certain of the unpleasant features of Tepoztecan life. He has shown that more than half of the villagers did not own land at the time that he studied the community; that many were in serious want; that stealing, quarreling, and physical violence are not rare in Tepoztlan....It is true that the two books describe what might almost seem to be two different peoples occupying the same town.' (Redfield, 1960:134.)

He adds, however, that:"

And that's Redfield.

"'The greater part of the explanation for the difference between the two reports on this matter of Tepoztecan life and character

is to be found in differences between the two investigators...I think that it is simply true that...I looked at certain aspects of Tepoztecan life because they both interested and pleased me.'"

And that's still in the same response by Redfield, 1960, page 135. You now recall the debate?

A Yes.

THE COURT: I'm sorry, Ms. Koenigsberg. Mr. Grant, you mentioned something about having to adjourn early today?

MR. GRANT: I had asked for your lordship's indulgence if we could adjourn five or ten minutes early.

THE COURT: Is this a convenient time to adjourn?

MS. KOENIGSBERG: If I could finish off with the question, yes, it would be, my lord.

THE COURT: All right.

MS. KOENIGSBERG:

Q Would you agree with me, in particular with reference to this particular controversy, that it is not that unusual that two qualified anthropologists could go to the same community, albeit at different times, and allowing for the differences in times come away with two different and fundamentally different descriptions of a social institutions?

A Well, subsequently the students of both of these gentlemen studied the same general area in Mexico, and the relative merits of their two theses became -- became much clearer. Redfield wrote from what is known as the instructional functionalist school of thinking where you disregard the historical context.

Q Yes.

A And Oscar Lewis was working from a different perspective, that you look at the society under investigation as a unit within a greater whole which is -- it's directly affected by the course of history. These are two different perspectives. The one gives you a picture at a specific slice in time of the structures and the functioning of the institutions as though it were stopped in time. The other stresses the social process and the change of institution. Both approaches are necessary. And as this argument was played out it then informed the research of all their subsequent students, just as the present debate over the work of Margaret Mead is doing. And I think that -- well, I come down on one side on that one

because of some of the findings that have come to light. I actually -- although there are many things I don't like about Margaret Mead I think that she has been unfairly attacked, because most of the resources that are used to debunk her field work are data that were collected in the American colony of Western Samoa in the 1950s under conditions in the post war conditions at an American base where the social conditions had changed considerably, and this was being compared with her work in the late twenties and the early thirties. That's another issue.

THE COURT: Is the 17 year gap between these two observers relevant?

A It is somewhat relevant, but the conditions were pretty consistent over the area. There was more -- more influence of a modern market economy impinging on the village, peasant village society, of course, later on.

MS. KOENIGSBERG:

Q You would agree that Redfield's response, of course, was taking into account that he was reading Lewis' account after Lewis had done it 17 years after Redfield had done it and didn't attribute the difficulities to time, but to approach?

MR. GRANT: Well, my lord, I don't know how the witness -- there's an excerpt from Redfield that speaks for itself. Redfield obviously wrote it.

THE COURT: Why don't we pursue this matter more closely if counsel wish tomorrow morning.

MR. GRANT: Thank you.

THE REGISTRAR: Ten o'clock.

THE COURT: Ten o'clock.

THE REGISTRAR: Order in court. This trial will adjourn until 10:00 a.m. tomorrow.

(PROCEEDINGS ADJOURNED UNTIL FEBRUARY 28, 1989 AT 10:00 a.m.)

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

Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.