VANCOUVER, B.C.
April 13, 1989

THE REGISTRAR: Order in court.
THE COURT: You're alone today, Mr. Jackson.
THE REGISTRAR: In the Supreme Court of British Columbia, this Thursday, April 13, 1989. Calling the matter of Delgamuukw versus Her Majesty the Queen at bar. I caution the witness, you're still under oath.
MR. JACKSON: Mr. Grant will be here momentarily, my lord.
THE COURT: All right. It's not his birthday, is it?
MR. JACKSON: Not to my knowledge.
THE COURT: All right, thank you.
MR. JACKSON:

Q When we ended the day yesterday, my lord, Mr. Brody had identified some differences he had observed in the approach of the Wet'suwet'en and the Gitksan at the hearings of the McKenna McBride Royal Commission, and we had reviewed a number of the Wet'suwet'en hearings. I want to turn now to the Gitksan hearings. Mr. Brody, could you turn to tab 19 of volume 3. This is a meeting of the Royal Commission with the Old Kitsegukla Band. It says Nash, N-A-S-H, Station on Tuesday, April 20th, 1915: "Mrs. Malcolm, the Chief" -- I'm going to read, my lord:

"Mrs. Malcolm, the chief, addresses the Commission as follows:
I want to say a few words right before the two Governments, and I am pretty glad because I have seen you here today. It is because I want to say a few words that I am not going to say anything crooked. God is in heaven, and he is watching us, and he is a witness to everything I am going to say. I want to tell you about all the troubles we have been having about this land, here and in Old Kitsegukla. The one thing that makes it pretty hard for us is because the Government grabbed all our forefathers' land. Here is our foundation here that God put us on and he stops there - God stops there, and it is our foundation. God gave us this land and we must stay right on this land all the time. As I heard it in the Bible that God was telling the people in the world that no man can chase the other tribe into a different place and get the land for nothing. That is not in the Bible, that is the reason we signed our petition,

it is because the land is gone."

Pausing there for a moment, Mr. Brody, do you know what that reference to the petition is?

A I know only that a petition was got together, I think in 1908, and signed by many chiefs in northwest British Columbia and was presented -- or I think was intended to be presented in Ottawa, and the petition required some fuller recognition of the people's hereditary lands.

Q Okay. Continuing:

"That is the reason we signed our petition, it is because the land is gone. All the people here was telling you today that all the land that belongs to them, and of course I don't blame them, because the land belongs to them all right. Our forefathers have left nothing behind but a little piece of land. When a man dies he gives us the land, and we stop on that land all the time. A few years from now my uncle died here, and before he died he told me what 'all this land is yours and you stay on this land all the time', that is why I am telling you today that you two governments are going to be a witness as to what we are saying, and I wish you people would help us in regard to our land."

Could you comment on what significance you draw from those statements from your perspective as an anthropologist?

A Well, first of all, this says something about how the chief, I think it's Malochon, M-A-L-O-C-H-O-N, feels about the whole land question, I mean that's self-evident. From a cultural point of view, that's tremendously important. Here is a member of Gitksan culture, a member of Gitksan society trying to affirm her individual and presumably her culture's rights to their territories, and I'm almost very struck by the fact that here she's trying to affirm it in front of witnesses, which of course is a very important part of the Gitksan system of authority, the affirming of ownership in front of witnesses, and in so far as my opinion is to do with the way in which Gitksan-Wet'suwet'en and frontier cultures meet and deal with each other, I'm struck by the fact that in asking the Provincial and Federal governments to be

witnesses Mrs. Malochon -- or Chief Malochon is seeking a parallel authority to her own with which to negotiate a problem.

Q If you could refer back to tab 14 of volume 3, and could you just review that document and explain to the court what it is in reference to?

A This is a summary of exchanges I think between Indian Agent Loring in Hazelton and A.W. Vowell, who is Superintendent of Indian Affairs at that time in Victoria, and Loring is signalling to Vowell his growing anxiety in 1908 about the degree of tension that's beginning to prevail as Loring --

MR. GOLDIE: Isn't all this self-evident, my lord? The letter speaks for itself.

THE COURT: Well, it's not a letter, is it -- or is it?

MR. GOLDIE: Yes. My recollection --

MR. JACKSON: It's an exchange.

THE COURT: I haven't seen it.

MR. GOLDIE: It's a duplicate of a letter.

THE COURT: I haven't got past the first page. I see, it's a letter confirming some exchange of telegrams.

MR. GOLDIE: Yes.

THE COURT: Let me just read it. Who is -- do we know who the sender is?

MR. JACKSON: Yes, my lord, as I understand, it's the Indian Agent Loring.

THE COURT: It's Loring, is it?

MR. JACKSON: As Mr. -- it refers to Superintendent of Indian Affairs in Victoria. I was seeking to expedite matters by not reading it into the records, my lord.

THE COURT: I've read it now. What do you want to ask the witness about?

MR. GOLDIE: Well, he was asking the witness to say what it was all about.

THE COURT: Surely not.

MR. JACKSON:

Q Mr. Brody, having looked at that, let me ask you first, is that a reference to the petition which you talked about in the evidence of Mrs. Malcolm?

A I believe it is, yes.

MR. JACKSON: What significance do you draw in that document from your perspective?

MR. GOLDIE: Well, my lord, it doesn't matter what his perspective is. The -- whether it's an anthropologist, an archaeologist or who, what, the document speaks for itself.

MR. JACKSON: My lord, the document speaks for itself on one

level. I am asking Mr. Brody to comment on that which is not self-evident, I'm not asking him to comment in ways which contradict the document, which turn it on its head, I'm asking him to comment in the context of which he's approaching his opinion, which is one of change and continuity.

THE COURT: I think I have to hear the answer before I can rule on the objection. It may be, as Mr. Jackson has suggested, that from the perspective of an anthropologist this has some significance transcending its ordinary meaning.

A Well, part of the task of an anthropologist is to seek the context in which things happen, statements are made and so on, and this helps me understand the context in which the 1909 Commission took place, which we talked about yesterday, and it's very important from that point of view, and it says something about the extent to which an Indian agent becomes anxious and the kinds of responses he has available to him when becoming anxious. I'm not sure on this point I have much more to say than that.

MR. JACKSON:

Q I would like to refer you specifically, Mr. Brody, to the statements made by Indian Agent Loring as to the closing of navigation.

A Well, of course, this is reminiscent of the events at Kitsegukla in 1872, my lord. I forgot to give you those dates yesterday afternoon, I'm afraid. 1872 was the burning of Kitsegukla.

THE COURT: 1872?

A 1872. And shall I give you the other dates now while we're here?

THE COURT: Yes, all right.

A 1884 was the Youmans, Y-O-U-M-A-N-S, episode.

THE COURT: That's Kitwancool Jim?

A No. Kitwancool Jim was 1888, my lord. The 1884 was the murder of Youmans, the trader.

THE COURT: Oh, yes, 1884, yes, thank you?

A And Kitwancool Jim was 1888, as I think I said.

THE COURT: Yes, all right. And the burning of Kitsegukla?

A 1872.

THE COURT: 1872, thank you.

A This reference here in the 1908 document to the closing of the river is very reminiscent of course of the events of 1872.

MR. GOLDIE: Where is the reference, please, which relates to the closing of --

THE COURT: It's the middle of -- two-thirds of the way down the first page; "navigation closed".
MR. JACKSON: Yes, my lord. I would also refer your lordship to the last paragraph, the last two sentences:

> "The surplus of the white population has departed by the lost steamers, and navigation is closed."

MR. GOLDIE: That refers to the steamers, does it not?
THE COURT: Yes.
MR. GOLDIE: Yes. There were no steamers in 1872.
THE COURT: There weren't?
MR. GOLDIE: No.
THE COURT: Not by then?
MR. GOLDIE: Not to my recollection, my lord. The steamers flourished there after and were closed down by 1912 or 13, when the railroad started. I can check that point.
THE COURT: Well, I suppose they had boats on the --
MR. GOLDIE: Oh, yes. There was constant traffic in canoes.
THE COURT: Yes.
MR. JACKSON: Mr. Brody, could you turn to tab 20. And tab 20 is the transcript of the proceedings of the Royal Commission meeting with the Gitanmax Band on April 21st, 1915. And if your lordship could turn to page 3 --
THE COURT: Before we forget, Mr. Jackson, do you want to mark those other two documents?
MR. JACKSON: What I was going to do, my lord, for convenience of Madam Registrar, when I got through this series of documents was retrospectively deal with a number of documents.
THE COURT: All right, thank you.
MR. JACKSON:

Q If you can turn to page 3 of that document, and a Mr. Holland is addressing the commission, and I will refer to -- read from the document:

> "You heard what the Chief said a while ago - we don't want no reserve at all, we want to get our own land back. You want to ask us questions which are not in our petition at all. We did not sign our petition for Reserve at all - we signed it for our own land. The Reservation is not so good for us at all - it is no use for us. They fenced all around so we can't do any business outside the reserves. We are just tied up in the Reservation,

and that is the reason we signed our petition that we don't want anymore Reserves for the whole of the Skeena nation."

And that quote, Mr. Brody, again from your perspective, could you comment on that?

A Well, this indicates very clearly that the anxiety that's been accumulating in the area is to some considerable extent centred on the question of reserves, the problem of confinement. The chiefs, as we have seen, are, through these years, very unhappy about the loss of their territories to settlement and other claims on them, and the reserve is associated in their mind with an attempt to deprive them of their hereditary territories and this -- the submission is an example of a Gitksan protesting against such confinement.

Q My lord, there are at -- this particular extract and a number of extracts are set out in Mr. Brody's report at page 149 over to page 155. I will -- however, that's for your lordship's reference, I will in fact refer to a number of other ones in the original document.

THE COURT: Yes, um-hum.

MR. JACKSON: Mr. Brody, could you turn to tab 23. This is proceedings of the Royal Commission meeting with the Glen Vowell band on April 23rd, 1915. This is tab 22, I said 23, tab 22. And towards the bottom of the page, as you see, my lord, the chief: "We are not free men".

THE COURT: Yes.

MR. JACKSON:

Q

"The chief: We are not free men inside the reservation at all. I want to ask you a very short question. I want to find out if some of the Chiefs of the Skeena River sold this place to the government.

The chairman: I don't know that any of the chiefs had anything do with it - this reserve was set apart for this tribe so that the white man could not come in and gobble it like they have in other parts of the country. We have nothing at all to do with this claim that you set up for all this land outside the reserve. If we set off additional lands for you, that does not or will not interfere

at all with your claim. That claim, by memorials, has been laid before the Dominion Government and they have passed an Order In Council that the matter shall go before the Exchequeur Court. That is one of the highest courts in Canada, and the Judges of that court will decide what the rights of the Indians are. They have not only done that, but they have agreed to employ lawyers and pay them to look after the rights of the Indians, and if the Indians are not satisfied with the judgment of these Judges of the Exchequeur Court then they can appeal to the Privy Council in England, so that there can be no doubt but that justice will be given to the Indians. With respect to this claim we have nothing to do with that and there is no point wasting time telling us about it."

MR. GOLDIE: Please read on.
MR. JACKSON: My friend's --
MR. GOLDIE: No, I'm asking my friend --
THE COURT: I'm reading on, Mr. Goldie.
MR. GOLDIE: The transcript reference is incomplete.
MR. JACKSON: I will complete it, my lord.
THE COURT: All right.
MR. JACKSON:

Q "We have heard this claim made over and over again by the Indians of B.C. and we have told them all the same as we are telling you. Nearly all the Indians we have met have asked us for additional lands, and we have given a good many of them a good deal, and it is only in this district where the Indians say they don't want any more reserves. In other places they have been glad to get the lands that we have given them and are benefitting very much from what we have done."

I'm happy to oblige Mr. Goldie, my lord. Mr. Brody.

MR. GOLDIE: Please continue.
MR. JACKSON:

Q Could you again from your perspective comment on that exchange between the chief and the Commission?

A Well, I -- from my point of view and again looking at the interface between Gitksan-Wet'suwet'en people on the one hand and the representatives of authority -- of the white authority on the other hand, I see this wish to reassure, this wish to tell people, in so far as it's possible to tell them, that they don't need to worry, their rights are going to be looked after, justice will be done, and they shouldn't understand a particular thing like the establishment of reserves or the provision of extra lands to their reserves as in conflict with their enduring claim to or use of their traditional territories. It's this positive message within an event or a process that many of the people perceive as negative that strikes me here.

Q Mr. Brody, could you turn to tab 23. This is the scene of the Royal Commission, a meeting with the Kuldoe, K-U-L-D-O-E, Band on July 13th, 1915. And if you would turn to the last page of that, page 5, there is an exchange there between William Jackson and the Commissioner, which I will read, my lord:

> "WILLIAM JACKSON: What is moving this world?
> MR. COMMISSIONER MCDOWALL: You will have to go to a wiser lot of men than the Kuldoes to find that out - but you will have to move with the world. If you don't you will be wiped out.
> WILLIAM JACKSON: Who gave us the land - it was God. We heard it and all we know is that you people are taking away our land. This is our land - our own. No one can go into one house and serve as boss in the other house.
> THE CHAIRMAN: We are sorry that you have not seen fit to answer our questions, and all that remains to be done is to wish you Good Bye."

Again, I would ask your comment on that exchange from your perspective as an anthropologist?

A And again what strikes me is the nature of the messages that are imbedded in this exchange. There's first of all a statement from the Commissioner of a kind of inevitability about the process, that is to say that it is the movement of the world that will have people living in reserves or have people living in the way that the new authorities require, and

there's also a threat if they don't go along with the ways of the world, then as Commissioner McDowall says, "You will be wiped out". This goes to the sorts of things that one also finds in the Loring papers we referred to earlier on, and into much of what Father Morice has documented as having said. I think you also refer to much of that earlier on in this evidence. And he goes to these guiding assumptions, the assumption that it is right and proper and inevitable that people who roam around, as Indians as tribal peoples, should become settled peoples with Christianity in one place. It's an assumption that's so completely taken for granted at the time that it finds an expression of this sort, "You will have to move with the world, this is the way the world moves", and it's accompanied here at least and often in the case of Father Morice, as I think we saw yesterday morning, with threats of one kind or another. If you don't become Christians you will die of new diseases, if you don't accept this new land arrangement you will be wiped out, and this is consistent.

MR. GOLDIE: Excuse me. That isn't what the commissioner said, my lord. He said "If you don't move with the world".

THE COURT: Yes.

A And this is consistent with what many Gitksan-Wet'suwet'en people say today about their experience of various officials and authorities who came from the south into their territories. They say they were told that if they didn't do as they were asked then it will be so much the worse for them.

MR. JACKSON:

Q Mr. Brody, in terms of the -- you mentioned the Loring papers, and at an earlier point in this chapter, my lord, a number of the documents are set out upon which Mr. Brody relies in terms of this cultural and historical development of the -- of reserves. Mr. Brody, I would like to refer you just to several of those documents. If you could turn to tab 11, and my lord, inadvertently -- tab 11 is a two-page document. Your lordship's copy and my friend's copy, and indeed my copy --

THE COURT: Which one, please?

MR. JACKSON: -- didn't have the second page. Tab 11 of volume 3.

THE COURT: Thank you. All right, thank you.

MR. JACKSON: In fact, my lord, this is quoted in the report and it's quoted in some fullness in the report. I just

wanted to -- and it may be helpful actually to refer your lordship to page 141 of the report, where the document is set out, and I just wanted to read it to Mr. Brody and have him comment on it. Page 141 of the report, December 31st.

THE COURT: Who's the author of this?

MR. JACKSON: This is a letter, my lord, from -- it's a report of Agent Loring.

THE COURT: Thank you.

MR. JACKSON:

Q Dated December 31st, 1913. And on page 141 of your opinion, Mr. Brody, you say -- quote from this document the words of Agent Loring:

> "Hunting and trapping are fast becoming less of an occupation with the Kitsons (i.e. Gitksan), and exclusive of those north of Kispiax and they aim in a larger degree to the up-building of homes and bettering their lot by suiting opportunities to that intent. Likewise are the Hagwilgets getting into preferring that trend with when occasions offer. Many of them are freighting and working at a general remunerative rate, and they will continue to make it all round progress at the ratio the Bulkley Valley gets inhabited with the desirable class of farmers."

Now, perhaps I could also refer you to tab 12. Tab 12, my lord.

THE COURT: Thank you.

MR. JACKSON: This is Agent Loring's report for December 31st, 1915, and the middle paragraph Agent Loring says:

> "During the long and dreary winters the Indians are still keeping up, by way of diversion, the old custom from visiting from village to village,in a cycle, and this is about all that remains yet from bygone days. But it is plainly noticeable that those of more intelligence, with family and homes to look after and with other interests at stake, are fast dropping out of that line."

Taking those two statements as illustrative, what comments do you have to make in the context of what you were saying before?

A Well, these are just two examples of how deeply imbedded in Loring's view of the Indian issue in his

area is the notion that only benefit can come from abandoning the old customs and settling into the new ways of what I suppose can summarily be called reserve life. His equation between intelligence and giving up the old days is very striking. There's another document that comes to my mind, I think a 1908 letter of Loring's that makes an equation between progress and fencing in land and becoming a farming and so on. It's -- it's an obvious point, but it's an important one, I think.

MR. GOLDIE: My Lord, my friend appears to have omitted the second page.

MR. JACKSON:

Q Yes. I noticed that. I will find that for my friends and for your lordship. Perhaps, my lord, perhaps it would be appropriate to deal with the matter of the exhibits. Perhaps I could just ask you this question first, Mr. Brody. Could you review tabs 5 to 15 just very briefly and I would like you to identify them as documents in the Loring papers upon which you have relied for the purposes of your opinions expressed in this chapter of your report?

A Through 15, do you say?

Q Yes.

A I don't think in my copy number 15 is from the Loring papers.

Q No, you're right. It's through 14, it's through 14, 5 through 14?

A All those are, going through quickly, all Loring documents, yes.

Q My lord --

A They're only a small proportion of the immense -- it's this immense archive.

MR. JACKSON: My lord, I had marked tab 1 of Exhibit 993, which was a minutes of the conference of July 1909, tabs 2 and 3 are commission evidence, they are of course already in evidence, but maybe it may be convenient for your Lordship to have them marked as tab 2 and 3.

THE COURT: Yes, all right.

MR. JACKSON: And tab 4. Documents 5 to 14 are and can perhaps compendiously be referred to as the Loring documents.

THE COURT: Sorry, Loring starts at 5?

MR. JACKSON: 5 to 14.

THE COURT: Just a moment.

MR. JACKSON: And tabs 15 to 23 are the proceedings of the Royal Commission of Indian Affairs, McKenna McBride Commission with the Wet'suwet'en and Gitksan.

THE COURT: All right. 15 to 23, yes, all right. Are the Loring documents archival?
MR. JACKSON: Yes, my lord.
THE COURT: Thank you.

(EXHIBIT 993-2 to 993-4 - Commission evidence)

(EXHIBIT 993-5 to 993-14 - Loring archival documents)

(EXHIBIT 993-15 to 993-23 - Royal Commission Proceedings)

MR. GOLDIE: I was going to ask my friend on what basis he's tendering these, my lord. I'm referring to all of the documents in this.
THE COURT: Yes.
MR. JACKSON: For the present purposes, my lord, they are tendered as the basis upon which Mr. Brody is filing his opinions. Your lordship will in due course be addressed by counsel on the general question of the admissibility of documents for a purpose beyond that.
MR. GOLDIE: Well, I think my friend has to state for what purpose he's tendering these. I mean the argument that your lordship will hear is one thing, but the question is for what purpose is the document being tendered today, for what purpose are we to take these documents when we come to consider the cross-examination of Mr. Brody.
THE COURT: Well, my understanding is they are being tendered as documents that Mr. Brody has relied upon in preparation of his report.
MR. GOLDIE: Does he take them -- is he taking them to be true in respect of the matters that are stated therein?
MR. JACKSON: My lord, the question of whether these documents go in for the truth of the contents thereof is a question which is at large, has arisen in the course of every witness to date, and it is one which, as I understand, is the subject of -- will be the subject of argument.
MR. GOLDIE: My friend doesn't understand the point that I'm making.
THE COURT: Well, I'm not sure he doesn't, Mr. Goldie. I think I do, and I think your friend does, but I can only speak for myself. I think you're opposing a term, Mr. Goldie, that hasn't been opposed on all the other documents to be dealt with on this basis.

MR. GOLDIE: I'm not sure it hasn't, my lord. From time to time questions have arisen and counsel have stated for what purpose --
THE COURT: Oh, yes.
MR. GOLDIE: -- they're being tendered.
THE COURT: And we have the purpose.
MR. GOLDIE: The purpose doesn't really carry us very far at all. The purpose is that they were referred to by Mr. Brody in his report.
THE COURT: Yes.
MR. GOLDIE: But is the purpose to supply the facts upon which his opinion is founded, that's the question.
THE COURT: Well, that, with respect, is a different question, is it not, from the one you posed a moment ago. I think the answer to that question is yes, they do provide the facts or some of the facts, they're including facts upon which his opinion is based. I do not think they are -- they could be received at this time except under some archival category as proof of the truth of the facts stated in this. He's accepted them as true for the purposes of his opinion, but I wouldn't think that would be -- your friends would be precluded from arguing that some of the facts stated in them are not necessarily true.
MR. GOLDIE: Well --
THE COURT: I don't think it's a question of saying that the document is in for all purposes. It's in for the purpose of showing what he relied upon and to the extent he relied upon it. I would think he would be saying it seems to be -- to be ad item, he thought they would be true, that doesn't mean he agrees.
MR. GOLDIE: He may not agree with everything that's in them.
THE COURT: Yes.
MR. GOLDIE: But if these documents are tendered for the purpose of demonstrating the facts upon which he founds his opinion, then he is accepting the truth of them. He's saying "Those are the facts upon which I express my opinion".
THE COURT: Well, perhaps.
MR. GOLDIE: And if my -- it would be open to us, if we cared to make it, that the document isn't even admissible unless it is proven, unless the fact is proven or at least it is tendered, subject to argument that it will be proven. An expert is not at liberty to express an opinion on something which is not a fact. Now, the documents are admissible if we don't take an objection to them under the general rubric that they are

archival, but the next question that arises, and it arises only with respect to an expert, is does -- are they tendered for the purpose of the -- of providing the court and the counsel with the fact upon which the opinion is based. That's the basis of my concern. Why should I waste my time cross-examining the witness.

THE COURT: Yes.

THE COURT: If he doesn't rely on it.

MR. GOLDIE: If he doesn't accept these as facts.

THE COURT: Yes. Well, the late Walter Williston invented a word called interfluent, which he thought was a very useful word. I think there are many dimensions to this problem. I think there may be a difference between these documents, which in the one sense are action documents, they're things that happened, compared with an article published in a learned journal, and it seems to me that there may be something in a document that a witness accepts and relies upon as part of the basis for his opinion, but which also contains other material that he doesn't either rely upon or he doesn't accept. I suppose the latter is mutually inclusive; if you don't accept it, you don't rely upon it. I don't think we're in a situation where because a document is in evidence that it's conclusive, I don't think we ever have that situation anymore, although one should never speak in such confident terms. I think -- I think this document is -- these documents are in evidence -- I guess I have to be called away to take a call, which I'm sorry, I think we'll keep them waiting. I think that if it is useful to have it marked for any other purpose I mentioned, and perhaps I think it should be so marked. I think that in cross-examination counsel can find out if they wish what parts of each document the witness has relied upon, and I think it follows that he must be taken to have accepted the truth of those -- the parts that he replied upon, but I do not think that that precludes the parties tendering the document, and this has arisen on both sides of the equation, are precluded from saying "Well, I accept that, the witness accepted that and replied upon it and I don't agree with something else", and I think that is how we should proceed. I'll be glad to hear counsel further as soon as I can return.

THE REGISTRAR: Order in court.

(SHORT RECESS TAKEN AT 11:50 AND RESUMED AT 11:55)

THE REGISTRAR: Order in court.
THE COURT: Well, my apologies.
MR. GOLDIE: Well, I had a -- realizing your lordship was about to leave I felt it best to defer.
THE COURT: I'm grateful, Mr. Goldie. Do not feel restricted in any responses you wish to make.
MR. GOLDIE: The only comment I wished to make, my lord, is to leave it to cross-examination to determine which of these -- which each one of these three books of documents is now to be determined to be relied upon by the witness and which he rejects is not only onerous, but it promises a far greater time requirement than we're presently allotted.
THE COURT: But is it not -- is the scope of the inquiry not limited by the fact that its reliance is with respect to the report, if there's anything in the document that doesn't relate to the report then obviously it isn't being used for that purpose.
MR. GOLDIE: Well, I'll give your lordship two examples.
THE COURT: Yes.
MR. GOLDIE: Two documents of exactly the same character, one is a transcript of evidence given by Gitksan, the other is a transcript of evidence given by Wet'suwet'en.
THE COURT: Yes.
MR. GOLDIE: The one, as I understand the report, is to be accepted as a true statement of what the witness not only said but what the witness intended, the other is to be read entirely differently. It does not seem to me to be appropriate to have left to argument the proposition at some later date that this document is to be marked one way and this document is to be marked another way. The -- there's another example that the Loring papers, letter under tab 12, and there's only one page of it, the Loring says:

> "The Indians' general health still continued to be very good, and they are more animated with a cheerfulness than formerly upon the point in the question of land."

Are we to be told that that's not evidence? I don't want to be bothered asking the witness if he accepts the fact that Loring's observation was a correct one. Then he goes on, Loring goes on to say:

> "In a recent instance thereof a certain Reverend gentleman of the so called Indians' rights association had heralded his coming."

Well, are we to be told that that's not evidence, that can't be used as evidence, that there was a missionary who was talking to the people on land rights? Does he reject that statement while accepting the earlier one, that Mr. Loring correctly reported the -- that his observation and his observation can be taken as a correct statement and from which deductions can be drawn?

THE COURT: Well, let me put the shoe on the other foot. I'm not going to point my finger at you, Mr. Goldie, because I don't remember, but certainly Mr. Mackenzie and Mr. Willms have been putting a great many documents in cross-examination.

MR. GOLDIE: Yes.

THE COURT: Of this general description, they may all have been learned papers, but I don't think so, I just don't remember. Let's assume they are the same description, is the same. Do your friends not have the same problem in -- that you've just described; is this not a part of the matrix of problems with which we're faced in this case?

MR. GOLDIE: I don't think so, my lord. We are talking about a specific class of document which carries with it the right to be admitted by agreement as archival. Now, beyond that it is said to be a question of argument, and I -- when somebody tenders an archival document under the circumstances that we have here, I don't think it is appropriate to leave it to argument or to cross-examination. Now, a learned paper, if the witness says "I accept" -- and is an expert, and the witness says "I accept that", that's one thing. If he says "I reject it", that's another thing.

THE COURT: Well, if he rejects it, it doesn't go in.

MR. GOLDIE: It doesn't go in.

THE COURT: But if he accepts it then --

MR. GOLDIE: It becomes his opinion.

THE COURT: It becomes a basis for his opinion, but only to the extent that if it is related to the opinion he has expressed.

MR. GOLDIE: That's correct.

THE COURT: What you're saying, and it seems to me that you are raising the problem of a slightly different colour, you're saying if it's an archival document that if it

goes in it goes in for all purposes.
MR. GOLDIE: It's at large, unless it is tendered on a restricted basis. If I tender an archival document and I say this is tendered for the purpose of demonstrating the state of mind of the writer, then we know where we stand. The question that your lordship raised with respect to the documents that Mr. Willms and Mr. Mackenzie were talking about, at least this is as far as my recollection goes, went to the threshold question of admissibility. But we're beyond that, and the idea that at some later date when this witness is gone my friends can stand up and say well, this document was not tendered for the purpose of anything more than the second paragraph. As to that, it's true and is available for all purposes.
THE COURT: Well, I don't see how your friend can be heard to say that, even if he says it, unless he's made that qualification at the time.
MR. GOLDIE: Well, that was what I was, in a long-winded sort of way, my lord, this is what I was getting at.
THE COURT: Yes. Well, subject to being persuaded otherwise, it would be my view that if it's an archival document and if it's admissible for that reason it's admissible for all purposes, unless it's -- unless it is qualified in some way at the time it's tendered. Do you disagree with that, Mr. Jackson?
MR. JACKSON: My lord, this matter, as your lordship's correctly pointed out, has come up in the context and the course of other witnesses. Your lordship will recall both in relation to Dr. Daly and Dr. Skip Ray, when they were referring to the journals of Mr. Brown, this issue of whether or not everything Mr. Brown says is admissible for the truth of what he says or whether it is part of the data, the background material which a historian or an ethnographer or a cultural anthropologist looks at and makes assessments. This is an issue which has come up, and your lordship's comments that an archival document goes in for all purposes, it is our submission it does not go in for all purposes relating to the truth of the contents therein. Your lordship said unless qualified, and perhaps what Mr. Goldie has done is to raise this question, particularly in the context of the Loring documents, as to how those should be qualified. I would anticipate asking Mr. Brody some questions relating to the concerns of my friend, and they may go some way to satisfy my friend and to avoid his having to prepare a cross-examination

which is unnecessary. It may satisfy your lordship also in terms of the nature of what the documents are going in for in the case of this particular witness. But I think we are into a situation where we do have to look at classes of documents in the context of how they're being relied upon, and it is a thorny issue, and that was one of the reasons why it was suggested that because this does overarch a number of witnesses, that it was appropriate to address the issues at large in the context of the submissions.

THE COURT: I'm conjuring up all sorts of difficulties, which is a dangerous thing to do, but reverting to the St. John's case, I have never understood that the comparables that the appraiser puts in his report are admitted to prove the truth of those facts, that is that another piece of property, a certain location, certain dollars and this other piece of property at a similar location sold for something else. They're only in to show the basis upon which the expert reached his conclusion, the value of the subject property, and I have been proceeding blissfully along, as blissfully as one can be in these circumstances, more or less with that in mind, but when there's a document there I look at it to see whether it supports the opinion and makes the opinion credible or incredible as the case may be, but if it's an archival document and it's admissible on its own two feet, if it has two feet, then it may be there's a different consideration that I haven't frankly addressed my mind to.

MR. JACKSON: It is a question, my lord, which counsel for the plaintiffs have under consideration. The intention is to address your lordship on that and other precise points relating to this whole question. We have proceeded at this stage on the assumption that matters would proceed without there being a full argument on this point, which of course is critical both from the defendant's point of view in terms of certain documents they wish to tender as part of their defence, it is also of importance of course to the plaintiff's case.

THE COURT: All right. Well, I am reading the history of Alexander, and he couldn't untie the knot so he cut it, so I think I have to do the same. I think I have to say that, subject to the argument I will hear in due course, that these documents will go in for the limited purpose I mentioned before, in connection with

the St. John's case. But I'm going to reserve on the question of what effect it has by reason of them being archival, and therefore enjoying a life of their own and a special kind of admissibility, but I don't -- I'm not able without the argument with which I've been threatened to rule on that matter now, and I think that I have to leave it to counsel to do what they have to do in these circumstances, either for you, Mr. Jackson, to put qualifications on documents if you think they should be admissible, or the purpose for which they are being tendered is sought to be limited, and I think Mr. Goldie is going to have to deal with the matter, awkward as it may be, in cross-examination. I can't really do any better than that at this stage.

MR. JACKSON: Thank you, my lord.

THE COURT: Thank you.

MR. JACKSON: Mr. Brody, if you could, before getting to the specifics, and I want to return to the document Mr. Goldie, you know, has alluded to, could you explain to the court how as an anthropologist you treat documents such as the Loring documents, and how do you approach them as the source or a basis for your research and findings?

MR. GOLDIE: Well, I say with respect that that's too broad a question, my lord. He wants to address it to the question to this letter under tab 12, how he treated that letter. I think that would be of assistance, but I think we should have the second page of the letter.

MR. JACKSON: My lord, I would like to deal with the general methodological issue, which I think will be of assistance to your lordship, and I will come to the specifics.

THE COURT: Yes, all right.

MR. JACKSON: At a later point. Mr. Brody?

THE COURT: If you can answer that question.

A I go to the Loring documents with two concerns, and they provide two kinds of information to me. First of all, there are things which Loring says he has seen himself, and if there's no reason for supposing from the context of the letter that he couldn't have seen them, for example the date of the letter fits in with what he says he's seen, then sometimes his accounts of what he's seen are very helpful as evidence of what was there. I have in mind here, for example, Loring's comments on the salmon runs. He very often says the salmon are running well now. And you look at the date

of the letter and see it says May 15, and I think that's interesting salmon are running early that year, some such thought. So sometimes it's a case of finding in the documents firsthand information of the day that I feel on the basis of looking at the letter and so on I can trust as a true fact. I also go to Loring's documents to find what Loring thought, what his point of view was, and in this case what interests me is not whether what he says did or didn't happen so much as that he said it or the way in which he said it. So those are two different kinds of use that I made of the Loring papers.

Q If we could look at tab 12, and perhaps just go through starting from paragraph 2, the one which I read to you and the one which I understand is in your report where it says:

> "During the long and dreary winters, the Indians are still keeping up, by way of diversion, the old custom of visting from village to village, in a cycle, and this is about all that remains yet of bygone days."

How, as an anthropologist, do you take that; upon what do you rely, upon what do you not rely?

A Well, there's two propositions here that immediately strike me. One is that the Indians are keeping up the custom of visiting from village to village, and I notice the letter's written December 31st, winter is the time I know from other sources when there is much visiting and often important feasting. I know also from other sources that at this period, 1915, there was a great deal of feasting going on, though I'm inclined to think that this is further supporting evidence of an opinion that states, among other things, that in 1915 the feast is being practised. The second proposition, namely that this is about all that remains of bygone days, I know to be inconsistent with other evidence from various sources, and I therefore am disposed to view this as useful in understanding Loring's point of view rather than as a corroboration of facts. But that's -- that brief is all I think I can say now about those two.

Q In terms of sources which you say that statement, that this is about all that remains yet of bygone days, what sources would that be inconsistent with?

A Well, we have Barbeau Beynon archive in 1923, which

gives us a picture of life a few years later, and because it's recording an oral history gives us a picture of life in the years running up to the 1920's. McKenna McBride in 1915 may provide some insites into this question, what the people themselves have to say now about what was going on in that period may be helpful, other archival sources here, for example correspondence that pertains to wildlife problems of this period, conflicts of interest, territories and culture and so on can be helpful here.

Q If I can turn to the next sentence:

> "But it is plainly noticeable that those of more intelligence, with family and homes to look after and with other interests at stake, are fast dropping out of that line."

A This I'm interested in as an indication of Loring's point of view, his -- I think I said his assumptions interest me, and this is suggestive to me of some of the assumptions that he is making.

Q The next sentence, paragraph:

> "The Indians' general health still continued to be very good, and they are more animated with a cheerfulness than formerly upon the question of land."

A Well, the two statements there, the first about the Indians' health, I'm disposed to accept as a matter of fact, because I know that Indian agents at the time had as part of their task the continual monitoring of people's health, and I imagine that Loring would have been in close communication with those who would know best about their health, the local doctor and possibly missionaries. As to the second statement there:

> "They are more animated with a cheerfulness than formerly upon the point in the question of land."

I'm first of all given some difficulty by the sentence, I'm not really clear what it means. If it means that people are more satisfied about the land rights issue in December 1915 than they have been in previous months or years, then I feel a need to go to other sources to see whether or not this is part of a general picture of the people's attitudes towards the

land rights question in late December 1915.
Q And would one of those sources be the McKenna McBride transcripts we have?
A Well, if I'm not mistaken, the McKenna McBride hearings were in the summer of 1915, and this is late December 1915. So this might be Loring's assessment of how the McKenna McBride Commission has brought about some greater cheerfulness, but I really am unsure without going to other --

MR. JACKSON: I have one further question and perhaps we can take the break, my lord.

THE COURT: Yes.

MR. JACKSON:

Q The last paragraph which Mr. Goldie read in a recent instance:

> "In a recent instance thereof a certain Reverend gentleman of the so called Indian rights association had heralded his coming."

How do you take that statement and how do you treat it in your perspective as an anthropologist in viewing these documents?

A I'm going to have to make a general observation about the Loring documents here, and that is that Loring's English often makes it very difficult to know exactly what he's saying. He, in the course of his career, shifted more and more towards elaborate grammatical constructions, this may have something to do with his German background and something to do with his isolation in Hazelton, I don't know, but by 1915 -- and it gets, I might say, far far more startling in 1918 and 19. His writing is really opaque, and I don't know what to say quite --

Q Well, Mr. Goldie, as I recall in his commenting on that, raised the question are we to take that as a fact. My question to you, Mr. Brody, is in reviewing this document do you take that to be a fact or not?

A Well, I'm inclined to take it -- I'm inclined to see a fact inside this sentence, as it were, namely that there was a Reverend gentleman, I presume a man of the church, who has said that he is coming through the Indian Rights Association. But I would be -- if this was of importance to my opinion, I would be very eager to find out a little more about who this was and what this all is about.

MR. JACKSON: Thank you.

THE COURT: I can't wait to see the second page to see if it says what I think it says.
MR. JACKSON: Thank you, my lord.
THE COURT: All right, thank you.
THE REGISTRAR: Order in court. This court will recess.

(PROCEEDINGS ADJOURNED)

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

_____
Graham D. Parker
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED FOLLOWING SHORT RECESS)
THE COURT: Mr. Jackson?
MR. JACKSON: My lord.
Q Could you turn to tab 6, Mr. Brody, of volume three. And just going to read -- it's a letter from agent Loring, January 19, 1894:

"General Remarks.

With regard to peace, the maintenance of order, temperance and morality among the Indians of the latter division, the service of the Rev. Father A. I. Morrice, O.M.I. cannot easily be overestimated.

As a compliment to his good work, we had last year the visit of the Right Rev. A. Dontenwill, O.M.I., D.D., bishop of New Westminster, B. C. Through the seemingly irresistible magnetism of his charming personality, the latter gentleman caused the destruction by fire of those ceremonial paraphernalia, which still bound the inhabitants of two villages to the customs and ideas of prehistoric days and prevented them from entering into the spirit of full civilization."

As an anthropologist, how do you approach that document in terms of sources of information upon which you rely or source is of information relative to your report?
MR. GOLDIE: With glee.
A It says something to me about the relationship between the Indian agent and the Catholic missionary, between Loring and Morice, it says something about a visit by Dontenwill in 1893, given that the date at the top is 1894 and he says "last year", so the matter of Dontenwill's visit to the area is something that I take as usefully evidenced by Loring's remarks here, and the rest of the remarks tell me all sorts of things about Loring and raise the question did they or did they not destroy lots of paraphernalia by fire? The answer to which I can perhaps be helped with by going to Barbeau-Beynon, and I think there are descriptions of this or a similar occasion and also people's recollection of similar occasions can be helpful here.
MR. JACKSON:
Q This process you have just described of looking at the document in context, of referring to other corroborative sources, is that part of your standard

methodology in approaching documents of this kind?

A It's part of what every social scientist has to devote a lot of time to, is the careful looking at documents, the placing of them in context and so on.

Q Thank you.

My lord, I would like to turn to chapter 14, page 179 of the report. Mr. Brody, would you explain to his lordship why you have looked at traplines as part of your inquiry into change and continuity amongst the Gitksan and Wet'suwet'en?

A In Gitksan-Wet'suwet'en territories in northwest British Columbia, many disputes have arisen in this century over the use of wildlife resources, over what was hunted, how it should be hunted, when it should be hunted, by what methods it should be hunted, and there is an important meeting place here therefore between Gitksan and Wet'suwet'en culture on the one hand with its way of thinking about and using wildlife resources and the territories those resources depend upon, and the ways in which newcomers to the area think about and make use of resources, wildlife resources, and the areas they depend upon. And the advantage of looking at the trapline issue and the trapline registration story lies in the way in which it provides a cultural geography of this series of conflicts, disputes, clashes of interest, over wildlife and the territories where the wildlife is to be found.

Q At page 179 you say at the beginning of your chapter,

> "In 1925-26, the provincial government began to administer the trapline registration system. The background to this legal and administrative measure goes back to disputes over wildlife, beaver trapping, hunting and frontier land use in the early part of the century. White settlers and trappers along with various officials of provincial and federal agencies, repeatedly complained that the Indians did not observe existing game laws or generally hunted and fished without regard to the long term well-being of their prey. Indians or their representatives and agents protested against the inappropriatness or injustice of game laws made by newcomers' governments."

Could you turn to tabs 25, 26, 27, and 28 and --

MS. KOENIGSBERG: Volume?
MR. JACKSON: Volume three --
Q Are they the sources upon which you rely for that statement?
A I think so, yes.
Q Tab 25, my lord, is a circular letter from Duncan Campbell Scott, deputy superintendent general, department of Indian affairs, circular letter to all Indian agents in Manitoba, Saskatchewan, Alberta, British Columbia and the Yukon, dated July 14, 1919; document tab 26 is a letter from Mr. Vowell, superintendent of Indian Affairs of British Columbia, May the 8th, 1908; and document 27 is a special report on trapping authored by George Pragnell, inspector of Indian agencies for British Columbia dated September 12, 1923; and tab 28 is a letter from the same inspector Pragnell, to the chairman and members of the provincial game board of the Province of British Columbia, dated August 21st, 1924.
Could you turn to tab 28, Mr. Brody, this is the letter from Mr. Pragnell in his capacity as inspector of Indian agencies to the provincial game board, and in it he says:

"Gentlemen: At the request of your chairman, I am writing the following memorandum upon the subject of trapping in connection with Indian affairs in hopes that some solution of the matter acceptable to all may be arrived at. This memorandum is not in any way an attempt to dictate any policy to you, but is merely the result of 12 months' investigation into the matter arrived at by travelling and questioning of Indians and whites all over the interior of B. C., more particularly with reference to the hinterland north of the Grand Trunk from west of the cariboo road."

If I could just go down to the next paragraph:

"As a result of these investigations, as far as I am aware, the unanimous opinion is that the present method is not fair and right and in this I am bound to concur if only for the fact that feeling runs very high in the matter and I am afraid that unless the regulations are altered, serious trouble may ensue, even to bloodshed. It

must be understood that the principle issue is over the trapping of beaver and that the necessity for a settlement is more urgent amongst those Indians who subsist principally or entirely on trapping and hunting, such as those north of the Grand Trunk and west of the Fraser River. There is no criticism of the present regulations, except insofar as they are not, rightly or wrongly, understood or agreed to by the Indians in general and are entirely contrary to their centuries-old customs and laws, being at the same time largely taken advantage of by dishonest and trouble-making whites."

If you on could turn to page 3, a third of the way down the page -- I apologize my lord again for the staples --

THE COURT: That's all right. I will catch up to you.

MR. JACKSON:

"After having talked the matter over more than once with your chairman, Mr. Black, and other interested authorities, there seems to be three possible methods of adjustment, though of course other solutions may occur to you gentlemen.

One, firstly, the block system or Indian trapping reserves.

Two, registration of each individual line.

Three, issue of permits through the Indian agents for each individual line. One. Number one which I call the block system is that which the Indians themselves are on the whole most favourably disposed towards and it would probably be the easiest to gather data on and subsequently control by game wardens or other authorities. It consists of setting apart blocks of land for Indian use alone. I should suggest that this be done by registration through the Indian agents of each band's trapping grounds. It is probably that there could be fairly easily ascertained and geographical boundaries fixed, as each band has from ancient customs, used a certain area, the individual family or territory having its set line within that area. All internal disputes, if any, could then be adjusted by the chiefs and Indian agents in council. This system is somewhat after the style as followed in setting a

apart grazing area or timber berths, game or forest reserves. I myself am of the opinion too that this would lead to the avowed object of the game board for the preservation of the fur trade in B. C., and I am sure that were the Indians sure of his hunting grounds, he would be careful to maintain its productiveness for his own benefit, much more so than the white trapper who is not absolutely dependent on this mode of living. It would also be much easier to check in the matter of trapping out of season or unprime fur so that the band could be held responsible instead of scattered individuals. It would also mean that not more were trapping that area than it could well stand having in view its preservation. This would also save yearly adjustments anyway as far as the Indians are concerned."

If you could just turn to page four, very bottom paragraph:

"I can only emphasize the fact that I am speaking on behalf of the what were, after all, the original inhabitants of B. C., who as a whole, perhaps to their own is disadvantage, received the white man's invasion in a friendly manner and who cannot well argue his own case when exposed to the more intelligent claims of the white man."

If you could then go to the next page and page five, the paragraph beginning finally:

"Finally, my claim, whilst it may seem so, is not in the interests of the Indians alone. I do not, nor does the Indian, wish to exclude the white trapper. He merely wishes to preserve what he considers his own and that which has been and is his means of livlihood but he wishes to exclude, as all fair-minded men will agree with him, that mean person not worthy of the name of a man who will, under the shelter of a technical point of law, rob him of his very existence."

Now, having regard to those passages, are they the source of your statements in paragraph one? Do you

have any further comments on that document in the context of the inquiry you undertook into the inter-relationship between --

A Pragnell's document here, his report, is a very important one for me, partly because it is based, as he says in here somewhere I think in a passage you haven't read out, that he did visit the area in which I am interested in this opinion. It's important because it's the first attempt, as far as I know, to establish what might be the outlines of a trapping or trapline registration system, and it's very striking that in this first attempt what is advanced as perhaps the best possible solution, is an acceptance of Indian established presence on the land and a trapline registration system, which is consistent with that presence, and administered insofar as is possible, according to ancient custom.

So, at the beginning of the trapline registration conflict, here on the Department of Indian Affairs side, is a man with real experience advancing a scheme which recognizes the Indian system of authority and land use.

Q You -- was a trapline registration system implemented?

A Yes, in 1925-1926, a trapline registration system is implemented.

Q Could I ask you for the purposes of your inquiry, what were the significant components of that system?

A Well, it established individual traplines, in other words, traplines would be owned by individuals as a sort of limited right to use the land for trapping. It sought also to establish an annual recording and monitoring procedure -- this was very important, in all ideas of traplines at this point -- it also established an inheritance system that would be from father to son, a patrilineal inheritance of traplines, and other detailed provisions, which I shan't go into for the moment.

THE COURT: Excuse me, was there no registration prior to that time?

A No, my lord, not in -- not to my knowledge.

MR. JACKSON:

Q At page 179 of your opinion, Mr. Brody, the last paragraph, you say:

> "The provincial government system, as set up in 1925-6, would seem to be sharply at odds with Gitksan and Wet'suwet'en ideas and institutions

of land use and ownership."

Could you explain that statement?

A Yes, you can see here the beginning of what was going to be a very long, complicated and at times impassioned collision. The idea that a trapline would be held by an individual goes against Gitksan-Wet'suwet'en law, which establishes quite clearly that territory and hunting rights belong to groups. Secondly, the fact that implicit in trapline registration as it was designed in '25, '26 was the possibility of an individual alienating his right to a trapline, goes against Gitksan-Wet'suwet'en ideas also. According to trapline registration provisions, the holder of a trapline could sell his trapline to another trapper, as a matter of individual decision. This is at odds with Gitksan-Wet'suwet'en laws about transfer of territory. And the patrilineality of trapline registration of course goes against the laws of inheritance in the Gitksan-Wet'suwet'en systems.

Q At page 180 of your opinion, second paragraph, you say:

"In practice, this hypothetical collision was minimized during the early years of the registration system. The reasons for this were several fold."

Could you identify those reasons?

A Well, first of all, there could only be a collision where there was pressure on the Indian users of the land to register their traplines and in areas beyond the settlement or trapping frontiers, there would not be the likelihood of any such collision. And that would be true for much of the northern territories of the Gitksan-Wet'suwet'en area. It would not be true for the southern territories to anything like the same extent.

Q Page 180, the bottom of the page you say:

"Second..." This is the second reason why collision was minimized... "Indians who did register were given to understand that in registering they were increasing..." You have underlined increasing "...their rights to their lands."

Could you explain that statement?

A Yes, it seems from documents of the day, and from what people say about trapline registration now, that when Gitksan and Wet'suwet'en were approached by local officials, and encouraged to register their lines, they were told not to worry about possible loss of rights that this might seem to imply, but were assured, on the other hand, that registration would increase their rights in the land. They were assured, it would seem, that trapline registration would enhance their defences against the incursions into their lands of the day.

Q Could I refer you to tab 29 of volume three. I apologize for the quality of these documents, my lord. This is a letter from Mr. Ditchburn, the chief inspector of Indian agencies, to all Indian agents of the Province of British Columbia, 27th of January, 1923. And in the letter inspector Ditchburn says:

> "As the Indians of British Columbia are making requests for large areas of land to be set aside for what them is trapping grounds, it is apparent they are understand that they are liable to lose their hunting rights unless these areas are specially allocated to them, and I am of the opinion that you should endeavour to set to rest their fears and point out to them that so long as they trap and hunt consistently, they need have no anxieties in this regard."

Could you also turn to tab 30 of volume three, which is a letter dated February 16th, 1926, from Mr. Collison, Indian agent, and in this letter Agent Collison says -- this is somewhat of an ordeal, my lord, to read this:

> "Shortly before Christmas a deputation from Gitlaxiamix, Greenville and Kincolith, made a special trip to interview me with regard to trapline regulations recently enacted by the provincial game conservation board. A strong protest was made against issuing trap licences to white trappers covering grounds in the Nass District until the land question was settled. They had been informed that these regulations had been brought about by the Indian department to

offset the land question. It was explained to them that the regulations were issued by the provincial government and were not intended to interfere with their hunting rights but rather to protect their hunting grounds outside the limits of their present reserves from encroachment by white trappers and others. The Indians insisted that they could not accept them until the land question was finally settled. It is to be hoped that this attitude will not result in conflict with white trappers who are already taking advantage of the regulations by filing applications for traplines on lands claimed by the Indians on the Upper Nass."

Are those two of the documents upon which your opinion stated at page 180 is based?

A Yes, they are. The first one is dated 1923 and shows that even in anticipation of a registration system, there was the view that Indians had to be reassured that registration wouldn't interfere with their rights. And the second one indicates that Indian agents are already, in 1926, having to reassure people that this is indeed the case.

Q At page 181, of your --

I should point out, my lord, that both the Ditchburn and the Collison documents are cited in Mr. Brody's report at pages 180 and 181.

The bottom of page 181 you say, again dealing with the views that you have stated that collision was minimized in the early years:

"Third, Indians were told in many cases by those whom they thought they could most trust amongst the white officials in their area, if they did not register they would lose all their lands."

Upon what is that opinion based?

A This is based upon my conversations with elders in the Gitksan-Wet'suwet'en area, and came as a result of my asking them why they registered or why their predecessors had registered traplines, and again and again I was told that they had done so because they had been, as it were, threatened, they had been told by Indian agents and by other white officials in the area, that if they didn't register, then all their lands would be lost, and that registration was a

necessary defence against the intrusions we have been talking about.

MR. GOLDIE: Are there any notes of these interviews?

MR. JACKSON:

Q Are those interviews reduced to any notes?

A No, this is something that I heard over and over again.

Q The fourth point you identify --

MR. GOLDIE: Your lordship will understand the nature of an objection I make to that then?

THE COURT: Yes.

MR. JACKSON:

Q The fourth point at page 182, and you say in your opinion, "Fourth, Gitksan and Wet'suwet'en inheritance of lands was often continued despite the registration systems emphasis on patrilineality."

THE COURT: Where did you find that?

MR. JACKSON: Page 182, my lord, of the opinion, the first full paragraph.

THE COURT: Thank you.

MR. JACKSON:

Q Could you explain that statement, Mr. Brody?

A Early on in trapline registration, it became evident to the agents and wildlife officers in the field, that the system as designed just didn't fit in with Gitksan-Wet'suwet'en arrangements and that within the design of the system was a formula for considerable conflict. They very quickly sought to minimize this conflict, especially in relation to the patrilineality problem, by registering not individuals but whole groups, and one sees in the trapline documents of the day and on maps that were kept in Indian agents' offices, the expression, "and company", it will say, "Thomas Wright and Company." And this is a way of avoiding the trapline registrations' emphasis on individual ownership or individual trapping rights and patrilineal inheritance. If the whole company is registered, then who it's handed on to can be followed according to the people's own rules.

Q If I could just stop you at that point, could you refer to documents 32, tab 32 and tab 33, perhaps tab 33 is the one you should direct your attention to. This is a letter from Inspector VanDyk, who as I understand is the inspector of the game department of the Province of British Columbia, addressed to Dr. Brown.

MR. GOLDIE: I think he was an official of the provincial police

when they were charged with the responsibility to enforce game laws.

MR. JACKSON: Thank you, Mr. Goldie. I am obliged.

Q Addressed to Dr. Brown, Indian agent. And inspector VanDyk states -- this letter is dated April 21st, 1937:

> "In reply to your favour of the 25th of April, 1937, I beg to inform you that band registration of traplines was introduced by the game department as a means of covering unclaimed and unregistered territory until the Indians, through their Indian agents, made application for their respective areas within such blanketed areas."

Mr. Brody, have you reviewed trapline maps which refer to company registration?

A Yes, I have.

MR. JACKSON: My lord, Exhibit 718, 719 and 720 are maps which were released to the plaintiffs yesterday and which are --

THE COURT: I remember them.

MR. JACKSON: -- and which are being used at the moment and we will endeavour to have them back in court shortly after the lunch break. I would at that point be referring the witness to those maps.

THE COURT: All right.

MR. GOLDIE: My lord, I say only that the next paragraph of that letter is a necessary part of the opinion that is stated. But I won't press that point.

THE COURT: All right. Thank you.

MR. JACKSON:

Q Mr. Brody, page 183, you state, middle paragraph:

> "In fact government letters, memoranda and reports from the 1920s and '30s, and the recollections of today's Gitksan and Wet'suwet'en elders, reveal immense confusion over the meaning and purpose of trapline registration."

Now, could you explain that statement, the sources of confusion, perhaps?

A We have already identified the sources of some of the confusions. A trapline registration system is put in place, Indian individuals or groups register within it, as they register they think they are increasing

their rights to the land, many of them are encouraged to think that, many are encouraged to think that by registering they are going to be better defended against the kinds of change they most fear, they are encouraged to believe there is nothing about trapline registration that need get in the way of their custom, their patrilineality and so on, their matrilineality and so on, but on the other hand the officials of the day are, naturally enough, believing that they are putting in place a whole new set of legal arrangements. At the same time, there are two agencies at work here, on the white official side, there is the Indian agent whose job it is to represent the Indian point of view, and provincial wildlife officers, whose job it is to put in place a provincial system.

Q Could you refer to tab 34 of volume three. This is a letter from Mr. Ditchburn, Indian Commissioner for British Columbia, to a Bryan, with a Y, Williams, the game commissioner of British Columbia, dated January 6th, 1932. And the letter starts:

> "In a letter addressed to you from this office on the 29th ultimo, in partial reply to your letter of December 21st ultimo, it was indicated that a further letter would be sent bearing upon the complaints made against Mr. Indian Agent Harper Reed by you and your officers in connection with difficulties in obtaining the satisfactory registration of Indian traplines in the Stikine Indian agency. This letter is sent therefore in accordance therewith."

Do you know the background of this letter from your own inquiries, Mr. Brody?

A I know some of the background. I know that Harper Reed was an Indian agent in the Stikine area and he is a man who came into conflict with other officials and to some extent with his superiors, because he sought to ensure that Indian hunting areas were protected against incursions by white trappers, and he came into considerable conflict I believe with provincial authorities.

Q If you could turn to page 3 of this document, the second paragraph:

"The agent..."

And I take it this is a reference to Mr. Reed,

"...has from time to time appealed for closer attention from the officials of the game department. Presumably, this is why he is blamed for not working in co-operation. It is respectfully submitted that there can be no co-operation where there is no apparent operation. The agent can not be reasonably be expected to co-operate with officers who are neither properly equipped nor informed in regard to the work of investigating conflicting claims of the areas in dispute between Indians, settlers and fur traders. Agent Reed could not be expected to co-operate with men like Const. Webster. "

MR. GOLDIE: I take it my friend is reading this for the truth of the matters stated?
MR. JACKSON: I will be asking Mr. Brody to comment on this, on the basis upon which he relies upon this document, my lord.
MR. GOLDIE: Well, this is not even in the claims area. Now, are we supposed to deal with this kind of thing in the cross-examination?
MR. JACKSON: My lord, this is being submitted as part of the background to the ongoing, the statement Mr. Brody made, was that there was a misunderstanding. That there were not only misunderstandings as between provincial officials and Indian persons, approaching them in terms of trapline registration, but there was sources of confusion both within the bureaucracy, as it were, between provincial and federal officials.
THE COURT: What's its relevance if it doesn't relate to the territories in question?
MR. JACKSON: My lord --
THE COURT: In any event, they may have had a different misunderstanding in the territory in question.
MR. JACKSON: I was going to ask Mr. Brody whether or not what is revealed in this document is something which he has any knowledge of in relation to Gitksan-Wet'suwet'en territories, my lord.
THE COURT: That would be, I think, a useful place to start.

MR. JACKSON:

Q Mr. Brody, the comment, the statement I just read, "The agent cannot be reasonably expected to co-operate with officers who are neither properly equipped nor informed in regard to investigating conflicting claims for the areas in dispute", is that something which does apply within Gitksan-Wet'suwet'en territories?

A Just give me where that came from?

Q Page 3, page 3 of the document.

A Whereabouts are you on it? The third paragraph?

Q The second paragraph. "The agent from time to time."

A Second paragraph.

Q It raises, as I understand, the question of co-operation between Indian agents and the game department.

A Well, I have always been told, and always -- and many times got the impression from the documents, that those working for the department of Indian Affairs on the one hand and those working as wildlife officers on the other hand, came to the issue from two very different points of view, and found it very difficult to co-operate, especially at this period of trapline registration.

MS. KOENIGSBERG: I wonder, my lord, that kind of statement is difficult to deal with and --

MR. JACKSON: I am not going to pursue it.

MS. KOENIGSBERG: My friend says he is not going to pursue it, for which we are grateful, but I would go back and ask if the witness is going to give evidence, even about Mr. Reed, and he has made inquiries and he knows certain things about Mr. Reed, it would be helpful to have it, to have the sources of that. They are not in the book.

THE COURT: I think we will take you up on your offer and allow you to proceed.

MR. JACKSON: My offer of not proceeding, my lord.

THE COURT: Yes.

MR. JACKSON:

Q Mr. Brody, at page 184 of your report, you state:

> "But the most striking and anthropologically revealing confusion lies in the presumed meaning of the word trapline."

Could you -- perhaps I will read on:

"In translations of discussions of 'hunting' and 'trapping' that could be found for the 1920s and 1930s and in the memory of persons old enough to recall the period, an elision was effected between the the words 'trapline' and 'hunting territory.'"

Could you explain that?

A Yes, again and again one sees in the documents, and one finds in interviews, that people talk about hunting territories and traplines, as the same thing. So they don't use the word trapline always to mean the trapline that may or may not have been registered according to the provincial scheme, they use it rather to mean their hunting territory as a whole. And this is the elision I am referring to here. I might say that I say here that this is evidenced in the memory of persons old enough to recall the period but it's also striking in the everyday conversation of younger persons too.

Q There -- if you could refer to tab 36 of document book three.

MR. GOLDIE: Is my friend withdrawing the document under tab 34? He is moving on, I should say.

MR. JACKSON: I wish to consider that over lunch, my lord.

THE COURT: Yes, all right.

MR. JACKSON:

Q This is a -- can best be described as a bundle of documents, my lord, which can be referenced as trapline dispute between Amos Williams and Phillip Johnson. Could you provide us the context for these documents, Mr. Brody?

A In the 1920s, and perhaps before then, but I don't know the historical depths of this, there is evidence of an ongoing dispute between the Houses of Malii, and Gwoimt, about a particular territory. And in 1927, arguments about whether or not Malii or Gwoimt had a proper claim to this territory were heard by Mr. Hyde, who was then the Indian agent at Hazelton. In these documents, there is a transcript of at least some part of what the persons involved said to Hyde in 1927, and they refer to, in their statements to Hyde, siisw, and in Gitksan law siisw is when a piece of territory is handed from one house to another in compensation, usually for a murder. That's the simple background to it, I think.

THE COURT: May I inquire, please, are these archival documents?

MR. JACKSON: I am advised, my lord, that these are documents out of trapline files.
THE COURT: Not archival then?
MR. JACKSON: Not archival.
MR. GOLDIE: Well, I am instructed that they are archival documents, they are a copy of an extract from B. C. Indian Commissioner correspondence file re law enforcement and Game Act, re Luke Fowler, Jacob and Wallace Morgan, Steven Morgan, Amos Williams, Phillip Johnson, Jean Baptiste, Baptiste Francis, John Derrick et al and there is a R. G. 10 reference, which is the record group 10, and the -- there have been a bundle of documents marked as Exhibit 2 on the examination of Mr. Wale, Freddy Wale, is that -- cross-examination on the affidavit in this case. What is in the book appears simply to be a recent re-typing of that, of parts of the document, that's correct. It's -- what has been marked is a much more extensive one than that.
THE COURT: All right.
MR. GRANT: Possibly I can clarify, I do not have Exhibit 2 on the Fred Wale commission, I was counsel on that, but there was a document, a bundle of documents tendered as an exhibit in that commission, and I do concur with Mr. Goldie that these are a transcription of some of those documents. However, there is a question between the parties as to which documents are archival or not and I have not compared these ones with that particular Exhibit 2. So I think it's still open if these are archival from the plaintiffs' position or --
THE COURT: All right. Thank you.
MR. GOLDIE: Well, all of them came -- our copy comes from the Public Archives of Canada, Record Group 10.
THE COURT: Well, I am going to try and expedite this by saying that as matters presently stand, I am going to treat them as archival and they can go in if you want them to go in, Mr. Jackson. And it's my preliminary view, although I haven't heard from counsel, that there has been a dispute, and archival -- there is an archival record of it, I would be disposed to rule that an expert in this kind of anthropology would be entitled to express opinions about it.
MR. JACKSON: Thank you, my lord. What I would like to do at this point, the maps have arrived and I think it might be appropriate before the break to just have the -- 718 is the map. I think I may, owing to the fragile nature of this, I may have to lay this out other

than --
THE COURT: What are you going to ask the witness to do?
MR. JACKSON: I am going to ask him to look at this map and identify for the court, whether this is a map he has looked at and whether it indicates the registration of traplines.
THE COURT: And the exhibit number is?
MR. JACKSON: 718, my lord.
THE COURT: Thank you.
MR. JACKSON: This, I understand, is an exhibit to Mr. Boys' commission evidence, my lord.
MR. GOLDIE: Well, that's right, but it may be one of those that was produced in this court.
THE COURT: Yes, it's Exhibit 718 here.
MR. GOLDIE: Yes.
A That's the one.
MR. JACKSON:
Q Could you identify any of those corporate --
A We start at the bottom of the map, that would be the southeast corner here, if I am not mistaken, and run along the bottom we can see Wright, Henry and Company, Wright, Thomas and Company, Brown, Alex and Company, Jack, Tommy and Company, Blackwater, Walter and Company, and there is a Loring, Tait, Jack and Company and then going up now to the north towards the northwest --
THE COURT: I am not sure this is necessary. The document's in.
MR. JACKSON: Yes, my lord.
THE COURT: Do you wish to mark it otherwise? Do you wish him to look at some other ones?
MR. JACKSON:
Q Have you also looked at Exhibits 719 and 720, Mr. Brody?
A I believe I have, yes.
MR. JACKSON: I am reluctant to take them out and subject them to the same treatment, my lord.
THE COURT: All right.
Shall we resume at 2 o'clock?
MR. JACKSON: That would be convenient, my lord.
(Proceedings adjourned for lunch)

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

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED AT 2:00)

THE REGISTRAR: Order in court.
THE COURT: Mr. Jackson.
MR. JACKSON: Your honour. If I can advise you and my friends that I will be pulling tab 34 from document book 3.
THE COURT: All right, thank you.
MR. JACKSON: 34. Mr. Brody, if I can just take you back to page 182 of your report, in relation to your statement there that --
THE COURT: I'm sorry, Mr. Jackson, what page?
MR. JACKSON: Page 182, my lord.
THE COURT: Thank you, yes.
MR. JACKSON:

Q In relation to your statement there that the Gitksan and Wet'suwet'en heritance of land was often able to continue despite the registration system's emphasis on patrilineality, was there a further comment you wish to make regarding that statement to supplement the answer you gave this morning?

A Yes. There's a consideration that I didn't manage to deal with this morning. The patrilineality of the trapline registration system means that sons are expected to inherit their father's territory or trapline; expected, that is to say, by the Provincial officials and others who might be administering or monitoring the trapline registration programme. And it was possible under Gitksan and Wet'suwet'en law for the matrilineality of their system, that is to say inheritance through the mother's line, to take place in spite of an appearance of patrilineality, and this is through two laws, the Gitksan law, Amigwot, A-M-I-G-W-O-T, and the Wet'suwet'en law, Negedeldes, N-E-G-E-D-E-L-D-E-S. These are laws that pertain to when a -- might we call caretaking, that is to say the son can take care of the father's territory for awhile but not inherit it. These caretaking rules created the possibility for two quite different understandings of what's happening to be taking place simultaneously.

Q And you talked this morning regarding the group registration and the registration of traplines in the language of a company, and could you also at this point refer to tab 41 of document book 3?

A 21, did you say?

MR. JACKSON: 41. This is a letter from F.R. Butler Commissioner, Office of the Game Commission, Vancouver, to a Mr. Jeckell, controller from the Yukon

Territory, "Registration of Traplines".
MR. GOLDIE: Is this tendered as an archival document?
MR. JACKSON: I will have to review that matter, my lord, I'm not clear from my own copy whether it is. Perhaps Mr. Brody can advise me.
THE COURT: It couldn't be, could it?
MR. GOLDIE: I don't -- it's not a document that as far as I know comes from the archives, but I can't say with any certainty.
MR. JACKSON: I'll endeavour to clarify that for my friend's benefit.
THE COURT: Thank you.
MR. JACKSON:

Q Mr. Brody, who was Mr. Butler?
A Mr. Butler was an employee of the Provincial Government in its wildlife office and had been an employee I think since 1910 or thereabouts, and he is the man who was one of the key figures in designing the trapline registration system that was put into effect in 1925, '26.
Q And this letter seems to -- perhaps I will ask you, does this letter review the basic contours of that registration system?
A Yes. This letter appears to be written to an official in the Yukon Territory explaining to him the nature of the registration system that Butler had been involved with.
Q Could you turn to page 2 of that letter under item 6, the very bottom of the page, where Mr. Butler says:

> "A few years after the trapline regulations were put into effect, it was found that it would be more satisfactory in respect to certain Indians to allot a large extent of territory to a particular Indian Band, or Bands. Generally speaking, this policy has been followed, but in recent months complaints have been emanating from members of these Indian Bands in regard to other members encroaching on their particular trapping territory within the Band Registration."

Was that one of the documents upon which you came to a conclusion regarding a group registration?
A Yes.

MR. JACKSON: Could you now return to page 184 of your report. You had just started to explain the nature of the dispute regarding Amos Williams and Phillip Johnson.

Could you revisit that and just set out for the court the nature of that hunting ground dispute which is reviewed in tab 36 of document book 3?

MR. GOLDIE: Well, my lord, we're -- we didn't get finished with this. This is obviously a typing, and unless my friend is prepared to produce a photocopy of the document, and I'm quite happy to have him undertake to do that, I don't see how we can even look at a document which is obviously typed in very recent days. It looks as if it's been done on a word processor.

MR. JACKSON: I'm content to give my friend that undertaking, my lord.

MR. GOLDIE: And that undertaking will cover the letter which is referred to at the top of the page, a copy of this letter has been forwarded to the Indian Commission for B.C. in Victoria, and that --

THE COURT: Um-hum. What document are you talking about, I'm sorry?

MR. GOLDIE: Tab 36, my lord. It purports to be typed on a page of -- a page of a document.

MR. JACKSON: I think you might find --

MR. GOLDIE: And I should say, it is not a complete copy either of that page.

MR. JACKSON: I can advise my friend that in tab 38 I think he will find the Commissioner's answer to Mr. Mortimer's letter, so we will in fact get to that in due course, but I am prepared to give my friend an undertaking to provide the originals of the material which is set out in tab 36.

MR. GOLDIE: I should say that I haven't finished saying what made -- firstly, the page as typed is not a correct typing, so that's --

THE COURT: Which page are you talking about, Mr. Goldie?

MR. GOLDIE: The first page under tab 36, my lord. It's not a correct copy of the actual document itself.

THE COURT: I see.

MR. GOLDIE: So that's the number 1 reason why I want a photocopy of the original.

THE COURT: Yes. You have that, have you, Mr. Jackson?

MR. JACKSON: No, but I --

THE COURT: I mean you have access to it.

MR. JACKSON: Yes. My friend has a copy in his file, perhaps he could --

MR. GOLDIE: Yes, I do. Mine is considerably marked up.

THE COURT: All right.

MR. GOLDIE: Secondly, on the copy that is -- on the typed copy there's reference to a letter forwarded to the Indian

Commissioner. What is omitted is the request of Mr. Mortimer to the -- to Mr. Perry that he would greatly appreciate his personal opinion and advice. Now, that is on the copy that went to Mr. Perry. Mr. Perry is the person who is identified I think at tab 38. And then secondly, there is the letter from Mr. Perry addressed to the Secretary of the Department of Indian Affairs commenting --

MR. JACKSON: I can advise my friend that's tab 37, my lord.

MR. GOLDIE: What we require is the original of the document that was under tab 36.

THE COURT: All right, thank you. Mr. Jackson.

MR. JACKSON: I would presume, my lord, a photocopy will be produced, will be identical to the photocopy in Mr. Goldie's file.

MR. GOLDIE: Well, I would be glad to furnish that to my friend except that it has a number of my comments written on it.

THE COURT: Yes.

MR. JACKSON:

Q Mr. Brody, could you set out the nature of the dispute between Amos Williams and Phillip Johnson as you understand it from a review of these documents?

A I think I said just before lunch it starts with a sisxw, S-I-S-X-W, from Malu and Gwoimt of a territory, and an argument then follows within Gitksan society about the proper application of sisxw laws, and I've been given to understand by persons involved that there are rival interpretations of this law, some saying that a transfer of property under these circumstances is for life, others saying it is until the grief associated with the events has subsided, which could be of course much less or much longer than life. That is, in terms of Gitksan law, the background to the dispute, as far as I know. The dispute then in 1927 comes before Indian -- the Indian agent at Hazelton, and the parties to the dispute try and tell him their version of the events, that is they present him, so to speak, with parts of the relevant adaawk, using him at least as a witness.

MR. JACKSON: On page 185 --

MR. GOLDIE: I'm sorry, I didn't catch that last answer, my lord. I wonder if the witness would repeat it again?

A Using him at least in part as a witness.

MR. GOLDIE: To whom is him?

A Agent Hyde.

MR. GOLDIE: That's your interpretation, not --

MR. JACKSON: My lord, perhaps the witness could continue. Mr. Brody --

MR. GOLDIE: Well, my point, my lord, is we're dealing with documents, we're dealing with an event in which the witness has no personal knowledge, and if he's going to give an interpretation it should be confined to that which he places it in some anthropological context, if any, but when he characterizes the Indian agent in a certain way he's going beyond his competence and what he can do as a witness.

MR. JACKSON:

Q My lord, the point here is not to characterize the Indian agent in the context of how the Indian agent understood his own role, the point here is to provide a context for the way in which Gitksan people dealt with an issue relating to the inheritance, ownership of a particular territory. The point I wish to get to, my lord, is set out at page 185 of Mr. Brody's report, and I will get to it directly. Mr. Brody, you set out at page 185 a statement made by Abel Oakes, and I want to read it to you and invite your comment as an anthropologist on this matter:

> "Since the death of Moses Gwoim (Gwoimt)in 1912 Amos Williams has said that he (Amos) thinks the trapline should be returned to the original owners. According to Indian law, a trapline given as a peace offering because of a killing stands forever. He says Amos Williams told him that the hunting ground had been held long enough by Moses Gwoim and his descendants and that it should be returned."

A Do you want me to comment on that?

Q Yes.

A Well, in relation to the trapline question, perhaps the most striking thing about this passage is the lesion between trapline and hunting territory or hunting ground. Abel Oak is reported having said according to Indian law a trapline given as a peace offering, four lines to the bottom and then two lines to the bottom of the quote he then refers to it as the hunting ground, and this is a good example of the way in which the term "trapline" and the special hunting ground are used interchangeably.

MR. JACKSON: And at page 186, having reviewed that extract and a number of other extracts, or all of which I should

point out, my lord, are statements made by Gitksan persons.

THE COURT: Are these statements all in tab 36?

MR. GOLDIE: Yes.

MR. JACKSON: Yes, my lord.

THE COURT: Yes, all right, thank you.

MR. JACKSON:

Q You say:

> "What do these short extracts from the account organized by Indian Agent Mortimer reveal? First and foremost, that, as far as the Gitksan are concerned, their way of establishing and then adjudicating rights to territories is all that counts. The question for them is whether or not the disputed territory was transferred in perpetuity when a murder was committed - that is, according to Gitksan laws of sisxw. To answer that question, they consult one another's historical records - the oral testimonies so important to the system - and hope to find an accord. In the 1930's, therefore, Gitksan jurisdiction was what mattered to the Gitksan - and they sought to have this witnessed in whatever way they could."

And that is your opinion based on your review of these documents?

A Yes.

MR. GOLDIE: My lord, you have my objection of the witness making any characterization of Mr. Hyde.

THE COURT: Yes.

MR. JACKSON: My lord, as I understand it, characterization is not of Mr. Hyde.

MR. GOLDIE: It is. It is characterizing him as a witness.

MR. JACKSON: From --

MR. GOLDIE: It's not the witness, he's the adjudicator.

MR. JACKSON: He's being characterized, my lord, as a witness from the perspective of the Gitksan, that's my point.

MR. GOLDIE: He has no personal knowledge of that, my lord. That may be his opinion.

THE COURT: Well, I'm still working, and I may be way behind the times, but I'm still working on the St. John's rule. I think what the witness has done is he's taking what he understands is a record of an event of recent history and he is saying that from an anthropological point of view I think this event carries this

significance. I don't think that if in the course of that opinion he characterizes a participant either as a witness or an adjudicator or in any capacity as really the significance of the opinion, or as they say in the law of libel, the sting of what he is saying, and for that reason it seems to me that what the witness is doing is something that, subject to the objection, he should be allowed to do. I'm not going to be very concerned with what characterization he attaches to a person long since deceased, I think what I'm anxious to know is from an anthropological point of view what does this all mean, and that, as I have said, is subject to the objection.

MR. JACKSON:

Q Yes, my lord. Mr. Brody, tab 36 at the beginning is a copy of Agent Mortimer's letter to the Indian Commissioner for British Columbia in Victoria. Could you turn to -- well, perhaps before we turn to the response, what is it Mr. Mortimer is seeking advice on in that letter?

A Indian Agent Mortimer is confronted with a dispute between chiefs which he takes to be serious and is fearful of making a mistake in his judgment, and on the basis, I assume, of his experiences in the area, is anxious about the outcome of a possible error, indicates here quite clearly that the dispute is of many years standing and wants advice as to how best to deal with the matter.

Q Could you turn to tab 38 -- tab 37. This is a letter from Mr. Perry, who is the Assistant Indian Commissioner for British Columbia, to the secretary, Department of Indian Affairs in Ottawa dated October the 4th, 1932. And if you go to the third paragraph, Mr. Perry says:

> "My experience as Indian agent in the North country for many years brought me into contact with scores of similar cases, and I'm afraid it will take several years to break down the resistance of the Northern Indians to the statutes and regulations which challenge their own vaunted claims to right of possession and ownership of the country and resources."

And if you would comment on that from the perspective of someone who is reviewing the issue of changing continuity in Gitksan and Wet'suwet'en society in the

area of a trapline and hunting territory?

A This letter is dated 1932, trapline registration was introduced in 1925 after seven years in the northern part of the province, as that says here. Officials involved note that the Indian system of what I would take to be authority and ownership is still being followed by the people themselves, and this is making it difficult for the trapline registration programme to have the dimensions that were intended for it.

Q If you could turn to tab 38. This is Mr. Perry's response to Agent Mortimer, which bears the same date, October the 4th, 1932, as his letter to the Secretary in Ottawa. And if you would go to the first page of that letter, the fourth paragraph down where Mr. Perry says to Indian Agent Mortimer:

> "The sort of dispute now going on should, in my opinion, be discouraged by our officials, by refusing to recognize any fictitious claims made by the Indians and not supported by either Dominion or Provincial Statutes.
> Of course, in connection with the registrations of Indian traplines, care should be taken to register the ground for individual Indians who are recognized as being most reasonably entitled to trap and hunt in the territory to be assigned to them. This is, admittedly, sometimes, as in the present case, difficult to determine."

And if you would turn to the second page of the letter, the second paragraph on page 2 of the letter, Mr. Perry continues:

> "In view of the foregoing, it is considered that the Indians should apply for the registration of their traplines and be shown by yourself as Indian Agent that it is futile for them to expend all their energy in the pursuit of something that is not feasibly obtainable. If they were to exert the same amount of energy in endeavoring to obtain something that is attainable, they would ultimately get farther and obtain greater satisfaction. They cannot expect the Governments of the country to change all their laws and regulations just to satisfy an isolated instance of tribal vengence that has not --"

THE COURT: "Revenge", isn't it?
MR. JACKSON: "Revenge", thank you, my lord.
THE COURT: Yes.
MR. JACKSON:

> "Of tribal revenge that has no support either in law or in civilized perspective. The sooner these Indians are convinced that the laws of the Governments take precedence in their relations to Indian tribal custom the better it will be for everybody."

And again from your perspective as an anthropologist, could you comment on that letter?

A Yes. This is the letter from head office to the field, so to speak, the response to the Indian Agent's anxiety about the possibly dangerous consequences of a failure to resolve the dispute, and the recommendation is get them to register their traplines. But imbedded in this document is the confusion, the sort of double message that I was trying to draw attention to before lunch. Somehow inside the trapline registration process there is, on the one hand, a wish to put a stop to the Indian system of doing things, in this case the Gitksan authority, but on the other hand there's a concern to register traplines to which the Indians have a claim according to their own customs. And I imagine that for the Indians who are registering there could well be quite a confusion here as to what really is going on and quite a good deal of confusion between the Indians' understanding and the officials' understanding, and if the Indians are being told "Well, tell us who this land really is and we'll write it on our documents", and really is they are meaning according to your laws, then there is an acknowledgement in the registration process of Gitksan law, and yet behind this acknowledgement we can see from the documents there is an intention to put a stop to the application of those laws.

MR. JACKSON: Mr. Brody, could I refer you to tab 39 of document book 3.
THE COURT: What's the name? That's -- Oh, Ackerman, is it, A-C-K?
A A-C-K-E-R, I believe, my lord.
MR. JACKSON: My lord, this is an extract from a file referred to as the Johnny David trapline dispute, and it is an extract from the evidence of Mr. Les Cox, a sworn

statement made in the course of an inquiry held under the Wildlife Act of British Columbia.
THE COURT: Do you know when?
MR. JACKSON: January the 26th, 1982.
MR. GOLDIE: Mr. Cox is alive, is he not?
MR. JACKSON: Yes, my lord.
MR. GOLDIE: What possible basis can this be admitted?
THE COURT: Well, as far as I can see, only on the St. John's principle.
MR. GOLDIE: Well, the St. John's principle isn't suggesting that the value of such and such a house is -- the objection was that the opinion was based upon hearsay, the hearsay being the records of the office in which the appraiser got his numbers from.
THE COURT: Yes.
MR. GOLDIE: There wasn't any issue taken with the fact of those numbers. The numbers in themselves were simply the basis of an opinion.
THE COURT: Well, is the analogy not taken this far that, accepting the St. John's principle for a minute, and there the way you describe it is it not a failure for the proposition that someone forming an opinion can collect his information from a variety of sources without each of them having to be called and saying as a result of that, that amalgum of information, I have this opinion.
MR. GOLDIE: Well, he has an opinion that has nothing to do -- it's an opinion with respect to this piece of property here, it's not an opinion with respect to the other pieces of property. And yet what we're hearing is an opinion with respect to the other pieces of property. The Indian Agent Mortimer thought this, here's what they were doing. It's as if the expert was being asked to say whether the opinion of one of the comparison properties was properly arrived at. This -- I don't know what Cox has said, but I do know that something said in 1982 by somebody who is alive, well, and presumably could be called, and on which this witness is going to comment goes far beyond the issue -- any issue in this lawsuit, or the matters which my friend said he was qualified to comment on.
THE COURT: Well, I have not in my thinking assumed that the purpose of the examination was to prove the rights and wrongs of this particular dispute, but for the witness having examined the dispute would be giving an opinion on the process and the anthropological consequences of the process. But I don't -- I haven't a clue what Mr.

Cox says and I --
MR. JACKSON: That is exactly the point which I'm using, my lord.
MR. GOLDIE: As I understand, he's giving his version of something -- of the resolution of the dispute.
THE COURT: Well, if he is I wouldn't pay much attention, because I don't really care, and I don't say that in in any disrespectful sense to the participants, I don't really care who came out ahead in that dispute. I'm sure in most adjudication processes someone's happy and someone is unhappy, and seldom that they're both happy, although sometimes they're both unhappy. But that doesn't seem to me that matters, and if he's going to say Johnny David won or lost and that's a terrible shame, I don't really care, and I'm not going to pay any attention to that, but if he has anything to say about the process, then I think he's entitled to say it.
MR. JACKSON: On the next page, half-way down the page, somebody's underlined the word:

> "Unfortunately, there was two few native people who could speak and understand and write in the English language and there were no Game Wardens that I am aware of that could speak and understand and write in the Native language."

Well, what -- he's speaking about -- he said:

> "Johnny David is well known to me. He had a sawmill he and his son Moses worked a sawmill in the Knockholt area."

And so on.
THE COURT: I'm not going to be very impressed by the minutia of that kind. I will be listening or recording and trying to remember only those things that he says about the process, and if he uses this as the basis for an opinion that sometimes these problems, these matters are made more difficult because of a lack of Gitksan or English, I think that's a proper matter for him to comment on. It may not -- the truth of that fact may not arise just out of this evidence, it may arise from the whole corpus of evidence, which is gaining larger parts all the time.
MR. GOLDIE: It's got nothing do with the St. John's principle on that basis.

THE COURT: Perhaps not, but I'm not -- I'm not sufficiently convinced of that that I would exclude it.

MR. JACKSON:

Q Mr. Brody, if you could turn to tab 39, page 131, about two-thirds of the way down the page, starting with "The disputes that are":

> "The disputes that are arising now are coming as a result of more of the older people passing on to their just reward and younger people trying to carry on it with what they understood was their rights. Other problems -- my problem over the years was to try and determine who was right and who was wrong. If that was possible and as a result we kept close contact with the Indian Superintendent as a matter of fact no traplines during my sojourn as District Game Warden traplines were not transferred. With that is Indian traplines were not transferred without the approval of the Indian Superintendent even in those cases the Indian Superintendent that I would call often have meetings with the people. Now, some of you in Morrice Town will recall there were meetings at Morrice Town meeting at Hazelton, at Haigilgit, at Kispiox all of these places they had meetings with places with the people that had a claim on the traplines. Most of this was brought about a person being deceased someone dying and the selection of the new head man was very important at that time. Unfortunately, there was too few Native people who could speak and understand and write in the English language and there were no Game Wardens that I am aware of that could speak, understand or write in the Native language. So these were the problems. I don't know of any Indian Superintendent who could either. So undoubtedly there was some problems. However, we tried to make sure that as did our understanding of it was that the line would pass at least with and stay within the clan to which it belonged. Now, in recent years we have come to know that there were other arrangements made where certain people were special Chiefs, certain privileges were given to him to trap in an area and the Indians, the Native people would tell us that those were special privileges to that person only for his lifetime. That is something

that we didn't know, we assume that persons have the right of that trapline and could pass it on to his -- to the people in his Clan. This has been done for many years."

And that was the point at which I stopped, my lord.

MR. GOLDIE: Well, you see, my lord, that exactly illustrates the problem. We don't know the period that he's talking about, we don't know what he is referring to by recent years, we don't know to whom he's referring to. It is a statement plucked out of context that may have an entirely different meaning. If we could put dates and do all of the things which Mr. Cox would be expected to do if he was giving evidence here, and how any opinion, whether according to the St. John's principle or otherwise, could be founded upon something which is in itself so imprecise, I don't know.

THE COURT: Well, there's no doubt that I'm stretching the St. John's principle out of recognition, and it may be that what we ought to be -- it may be that your question of the witness, Mr. Jackson, is to put that set of assumptions or hypotheses to the witness, and if assuming those facts does he have an opinion as an anthropologist, it would be a permissible way to proceed.

MR. JACKSON:

Q That's appropriate. Assuming what Mr. Cox said there were to be true, Mr. Brody, what conclusions would you draw from that?

A I've tried to identify in the course of talking about traplines the way in which the officers in the field responsible to the administration of traplines tended often to accommodate, knowingly or unknowingly, the Indian view of things. So whatever the regulations might say, when a line was registered, often it was being registered by people who thought their system was being registered. What Mr. Cox says here is of importance to me because he was the officer in the field from 1948 to sometime in the 1970's, so he was the key man at the interface between the trapline registration system and the people who were registering their lines or having problems and disputes that he had to cope with, and it's clear to me that Mr. Cox was a man who was aware of an Indian system and who was sensitive in many ways to it. I'm not trying to use what Mr. Cox says here to go beyond

a continuation of my understanding of what I called the geography of the cultural encounter.

MR. JACKSON: Mr. Brody, could you turn to tab 42 of document book 3. This is a letter dated February the 6th, 1975 from Conservation Officer McLeod to Chief Johnny Mack, Chief Councillor, Moricetown.

MR. GOLDIE: Excuse me, before you go on, is there any way we have of dating these statements of Cox? Did you tell us anything beyond 1982, is there a month or --

MR. JACKSON: Yes, my lord. The hearing was -- transcript proceedings are from January the 26th, 1982.

THE COURT: Well --

MR. JACKSON: I understand my friend has the transcript.

THE COURT: In tab 40 there is an interview with Cox, 1987 --

MR. JACKSON: That is not the document which we're referring, my lord.

THE COURT: Yes, all right. When do you say this tab 39 evidence was given? Wait a minute, that was given --

MR. GOLDIE: That was January.

MR. JACKSON: That was January the 26th, 1982.

MR. GOLDIE: It was the month I was concerned about, my lord.

THE COURT: Yes, all right, thank you.

MR. JACKSON:

Q The whole of that document was disclosed to the plaintiffs by the defendants in preparation for cross-examination of Johnny David last year, my lord. If you could look at tab 42, Mr. Brody, the third paragraph Conservation Officer MacLeod says to Chief Mack:

> "We would like you to obtain a Band Resolution stating that this transfer is officially approved by them and send this to us. If we are to follow the crest system of inheritance it will be up to the Band Councils to decide who should rightly be on these traplines. They are the ones who know and this will help to keep situations under control."

And could you also turn to tab 43 of the document book. This is another letter from Conservation Officer McLeod. This one is to a Mr. McIntyre, who's the District Real Estate Officer from the Department of Indian and Northern Affairs in relation to the Seymour Tom and Company Trapline, and Mr. McLeod says:

> "My records show no official transfer of this line

from Seymour Tom to Henry Isaac. I cannot find any reason why August Pete was removed from this line but we do know he was placed on a line of his own in another area.
Mr. Sam Pete was in to see me the other day and we had a lengthy discussion of the matter. It would appear that his claim is based on Native Clan inheritance; he is related to Seymour Tom.
I am in the process of organizing a meeting with all the people involved on this line to see who actually have a claim to the line. Hopefully we will be able to accomplish something.
I think you can appreciate that the native people wish their traplines to be transferred on the Old system rather than our system. To this end we are working with the Band Councils to administer the lines."

And if you could turn also to tab 44, which is a letter written by Mr. McIntyre, it would seem in response to Mr. McLeod's letter, and this is dated March the 4th, 1975, in which Mr. MacLeod after the appropriate salutations goes on to say in paragraph 2:

"The question as to whether or not traplines should be transferred according to local custom or by the often conflicting common rules of inheritance is indeed somewhat of a problem. Many Indian people, including those identified above, feel strongly about their right of inheritance and the Administrator of Estates of our Department is somewhat compelled to treat trapline rights as an estate asset has supported their inheritance position. On the other hand, the custom of Clan oriented inheritance which more or less begins in your area and prevails westward has to be considered. I suppose involvement with Band Councils and/or Native clan spokesmen is a fairly conclusive method of dealing with these transfers, yet I cannot help but wonder what the end result might be if an individual heir, who became disinherited by the workings of the clan method, took his case to a court of law."

Now, bearing in mind those three documents from the 1970's, what conclusion do you draw as an anthropologist in relation to the issues under

discussion in this chapter of your report?

A What I think I'm finding here is the persistence of the peoples' wish to have their system shape how land is administered, that is to say their ideas of ownership and authority or the ideas they're seeking to maintain in spite of many many years of contrary pressures, and throughout a period which was beset, as I said earlier today, with many confusions and mutual misunderstanding. Trapline registration begins in 1925. In 1975 people in the Gitksan-Wet'suwet'en area, anyway, are still asserting their forms of inheritance and land ownership, despite 50 years of a contrary policy administered by Provincial officials.

MR. GOLDIE: Well, I object to that last statement. There is no evidence of 50 years of contrary policy. That's precisely the reason why this witness should not be allowed to comment on documents of this kind which are perfectly understandable on their face.

THE COURT: Thank you.

MR. JACKSON:

Q Mr. Brody, could you turn to document tab 45. This is a letter from Mr. Ackerman, Regional Conservation Officer, and it seems to be a circular letter to all staff in the Skeena region on the subject of transfers of native traplines to "non-Native status". It reads:

> "Sr. C/O Fraser sent you the attached January, 1981 memo which instructed you to follow certain procedures when a Native proposed to transfer his trapline to a non-Native. These procedures were endorsed by myself and the Band Councils in the region. It was an attempt on our part to abide by the wishes of the Native people that their traditional traplines maintain 'Native' status by giving the Band Councils first option to purchase any Native line available for sale."

We go to the third paragraph:

> "You are therefore instructed that effective immediately, our instructions contained in the January, 1981 memo are cancelled. If a Native wishes to transfer his trapline to a non-Native you are to process the transfer in the normal fashion. If there is any opposition to this procedure by the Band Councils, you are to inform them that the Fish and Wildlife Branch is taking a

'strictly legal' stand on this issue."

Again, could you give the court the benefit of your comment as an anthropologist on that document.

MR. GOLDIE: Well, my lord, I object because the document is perfectly understandable. There is -- if your lordship requires assistance in interpreting this document, then there's no need for all of the lay witnesses we've had, there's no need for counsel or a judge, all there is need of is Mr. Brody.

THE COURT: Well, I don't have any difficulty with the letter, but I'm not sure that I wouldn't be assisted by an anthropological opinion on the consequences of such a policy or such a decision.

MR. GOLDIE: Well, the consequences are spelled out. A native has challenged the informal procedure.

THE COURT: Yes.

MR. GOLDIE: And as a result there is going to be a strictly legal stand. Now, what could be clearer than that.

THE COURT: Well, nothing could be clearer than that from a legal -- strict legal rights point of view, but there may be anthropological consequences that transcend the immediate parties to the dispute, and that I think is a proper subject for an anthropological opinion.

MR. GOLDIE: Well, I say, with all respect, my lord, that the anthropological consequence is the same as the ordinary consequence. In 1981, as a result of a challenge by a Native who apparently, anthropologically speaking, decided the old way wasn't his way, the law is to be administered as it is on the Statute books. Now, what the consequences are of that, your lordship is in the position as well as anybody else to come to your own --

THE COURT: I'm not sure about that part of it. You see there could be -- when Hal Laycoe brought his hockey stick on Rocket Richard's head, I know he got five minutes for drawing blood and there was a riot in Montreal for three nights in a row.

MR. GOLDIE: Anybody who attended that hockey game in the forum would know that would be a foreseeable consequence.

THE COURT: I'm wrong, it wasn't the hockey stick, it was -- the player didn't get suspended for life, I think he was suspended for the rest of the series. I think there are consequences that extend beyond the immediate parties of the dispute, and I think it may be that there is something that the anthropologist can tell me that doesn't spring out of this letter to me which is

clear as far as it goes. I think you can answer the question, Mr. Brody, please.

A The issue that I've been trying to get at and all that I've been saying about traplines is a struggle over the laws. There are two systems of law, and they're meeting and contradicting one another, bypassing one another, and I feel there's a great burden on me now to provide complex anthropological explanations of this letter, which I don't feel up to, but I think very simply spoken, this is showing that in 1981 this struggle over the laws continues, and I know from my anthropological work in the area that there are ramifications of this going through many Gitksan and Wet'suwet'en houses, the question of what is the law saying how does our law, our Gitksan, our Wet'suwet'en law apply to this other law is the subject of much confusion, much conversation and many attempts at reconciliation.

MR. JACKSON:

Q If I could refer you to page 187 of your opinion report, the last paragraph, you say:

> "The evidence available shows, therefore, that registration of traplines has been a deeply confused and confusing process. Two different cultures met in this issue and yet succeeded in misinterpreting or bypassing one another's central intentions. Provincial authorities believed they were establishing a regulatory system under their jurisdiction; they believed that their cultural systems were being established at, and were extending, a northern frontier. Gitksan and Wet'suwet'en authorities believed that they were defending or consolidating their cultural system in opposition to extension of the newcomers' frontier."

And that is your opinion based upon the materials which you have set out in this -- this chapter?

A Based also upon my extensive field work in the area, yes.

MR. JACKSON: Thank you. I would like to mark, my lord, tabs 25 to 33. Tab 34 will be deleted.

THE COURT: I'm sorry, what were they, 25 to 33?

MR. JACKSON: To 33. Tab 34 will be deleted. I am also deleting tab 40. And I would like to have tabs 36 to 39, and 41 to 45 marked as the next exhibits.

THE COURT: Yes. All subject to the objection of Mr. Goldie.
MR. GOLDIE: Well, the non-archival documents are being tendered for the truth of the matters therein stated.
MR. JACKSON: No, my lord, that --
MR. GOLDIE: The witness has adopted the statements made and he said "This is the basis for my conclusion, that there is -- my conclusion that there is confusion." There is no other way in which these documents can be tendered.
THE COURT: Well, these are -- these are government documents which your friend can put in against you, they may hurt him, but they're your documents.
MR. GOLDIE: Absolutely. But what I'm saying is they can't -- if my friend is using them in the manner that he has, they go in. There's no -- there's no hanging issue with respect to non-archival documents.
THE COURT: It seems to me it's a matter of law, not a matter of my ruling that it is or it isn't.
MR. GOLDIE: Absolutely.
THE COURT: It's a matter of law.
MR. GOLDIE: Yeah.
MR. JACKSON: Yes, my lord.
THE COURT: I'll estrange myself from pronouncing on it, because I'm going to hear an argument.
MS. KOENIGSBERG: It is my position, I have a mere technical problem with some of these tabs. Tab 42, 43, and 44 are all documents which apparently come from the A.G.B.C. list, but which I do not find referred to in the witness' actual report in support of this point, and my problem is one which may seem obscure but presents a problem for cross-examination. It would be helpful to know if in fact these are documents which he did rely on in coming to the opinion which he came to in this report or if there's something he's seen afterwards that he is now adopting.
THE COURT: It seems to me that's a matter that can be cleared up in cross-examination.

(EXHIBIT 993-25 to 993-33 - Letters, file extracts of trapline disputes)

(EXHIBIT 993-36 to 993-39 - Letters, file extracts of trapline disputes)

(EXHIBIT 993-41 to 993-45 - Letters, file extracts of trapline disputes)

THE COURT: I have a terrible confession to make too, it wasn't the way I put it. Rocket Richard put his stick down on Hal Laycoe, it was Rocket that --
MR. GOLDIE: I thought you were talking about Maurice.
THE COURT: Maurice Rocket Richard.
MR. GOLDIE: Wasn't it Maurice who --
THE COURT: Yes.
MR. GOLDIE: Hit --
THE COURT: Maurice was the Rocket.
MR. GOLDIE: Yeah, not Pocket Rocket.
THE COURT: Henri. It was 30 years before this happened.
MR. JACKSON: When I've been in Canada maybe another 20 years I can join in with your lordship's and my friend's comments. I feel at a disadvantage.
THE COURT: It was a wonderful riot anyway.
MR. JACKSON: Is it convenient to take the afternoon break?
THE COURT: Oh, yes, certainly.
MR. JACKSON: Yes.
THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED AT 3:00)

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

_____
Graham D. Parker
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED FOLLOWING SHORT RECESS)

THE COURT: Mr. Jackson?
MR. JACKSON: Yes, my lord.

Q Mr. Brody, I would like to refer you to chapter 13, Kisgagas?

A Give me a page number.

Q Page 163, K-I-S-G-A-G-A-S. Mr. Brody, what are the bases for the opinions you express in chapter 13 of your opinion report?

A I made a series of visits to Kisgagas. Kisgagas lies some 14 miles from Hazelton at the end of an extremely difficult road, and I travelled there by road in spring and had the opportunity of looking at the evidence of the ancient village there. In particular, I saw a great collection of salmon storage pits, I was shown around the old houses there and taken on a visit to the church, which doubled up as a school, and I was given an explanation of what life was like there by persons who had lived there.

At the time of my first trip there, I was extremely struck by the evident former size and perhaps importance of the place, the sheer number of the salmon storage pits had a great deal of cultural significance, the graveyards that I was shown were very striking indeed, especially the upper hidden graveyard where there were old grave houses hidden, as it were, in the woods, and I began to ask a whole lot of questions about Kisgagas, in my mind at first, and how big was this place, how important was it. When I was there on my first trip there seemed to be only two permanent residents, had a very strong feeling of being abandoned, so I looked into other possible sources of information. I went to the adaawk and I went to historical records, I inquired of historians what information there was, I looked at Indian -- the annual reports of the Department of Indian Affairs and I came up with some basic statistics about population. I discovered that in 1891, according to the official reports, there were about 300 people living at Kisgagas on a permanent basis. I followed the course of these population statistics through decades, roughly decades, and arrived at a population of approximately 65 in 1929 and then talked to Gitksan people who had lived at or used Kisgagas about the developments there since the 1930s and tried to get a sense of its continuing de-population and I thought --

I think at that time what I was doing was putting together a profile of a part of the Gitksan territory or Gitksan cultural system, that had fallen into a sort of dis-use. Kisgagas is really a very, very striking place for an anthropologist, it's a haunting place for an anthropologist, because there is so much evidence of human habitation and because it is mainfestly a highly productive place, it seems an ideal salmon fishery.

I returned to Kisgagas for two more trips in the fall of the year, I believe in late summer and early September, the time of year is important because I went during the sockeye salmon run and far from finding an abandoned place, I then found a place that was humming with activity. There were many families camped there, using cabins there, there were many children there, for example, playing on the rocks by the river, there were people canning fish, smoking fish in the smokehouse, and there were people dip netting, for sockeye principally. I then was there a bit later in the year, goat hunting, and passed through Kisgagas on my way to the mountains with the hunters. We stayed there overnight I think going both directions, and again there were people there now fishing the end of the salmon runs, with set nets in the canyon there. And I had the opportunity of going high into the mountains above Kisgagas into the territories that lie sort of beyond it, if one were looking at it from the Hazelton direction, hunting for groundhog and goat, and got a sense of productivity, the importance and the nature of those territories. I continued talking to people about Kisgagas and tried to come to a sense of its place, not in some previous epoch of Gitksan life, but what was then the present day, 1985-'86, it would have been. And when I looked at the numbers of people who were there during my later trips, it struck me that -- and talked to people about how much salmon they were getting from the Kisgagas canyon fishery, it struck me that Kisgagas, although full of abandoned houses, although replete with Gitksan memory, and even nostalgia, I might say, was nonetheless part of the living tissue of the culture, if only because it yielded up all these fish, because it was so important to so many individuals, because it was a part of people's life, history, culture and economy. And that led me to think about the way in which one can easily be deceived about the

meaning of a place.
THE COURT: What year were you there, please?
A '85, 1985 and 1986, my lord.
THE COURT: Thank you.
A I made several attempts to get there and failed at other times. I am only relying here on the successful journeys to Kisgagas. And the failure being to do with the road.
MR. JACKSON:
Q You referred to an adaawk, is that the adaawk part of which you set out on page 163 and 164 of your report?
A Yes, I found this use of the Guuhadk adaawk in Thomas Wright's commission evidence, and I excerpted here, I am afraid it's rather difficult to follow, but it's very suggestive of the way Kisgagas is located in the Gitksan scheme of things.
MR. JACKSON: As Mr. Brody said, that's set out in commission evidence, my lord.
Q Could you turn to chapter 11 of your opinion report, Mr. Brody?
A Again, it helps if you give me a page.
Q Page 132. This chapter is headed "mixed messages", could you explain to the court what you mean by mixed messages?
A When I looked at and thought about the interviews I had carried out in Gitksan and Wet'suwet'en country, I was often struck by the fact that two very different kinds of things were being said to me: People were presenting themselves, their history, their lives in two different and rather contradictory ways. On the one hand, people would make a point of describing cultural and economic and social loss that they had experienced. For example, my Wet'suwet'en interviews of Johnny David and Basil Michell and Ann Michell, I was told about the loss of their villages, lands, about many of the things that have come up in the course of discussing Wet'suwet'en life here and in my opinion.

Similarly, in interviews with Gitksan, there would be a great deal of emphasis that they would place on what they had lost. At the same time, the interviews had a sort of optimism to them and there was a lot of emphasis on the strength and vigour of their system, emphasize on their belief in it, the truth of it, their lands and so on. Vigorous descriptions of how people spent their time being Gitksan-Wet'suwet'en in their own terms. This is what I mean by the mixed

message, that in interviews and conversations one is hearing two very different kind of thing. That's what I mean.

Q As an anthropologist, how do you come to terms with interviews which have that duality to them?

A Well, first of all I would like to say that my experience here isn't peculiar to working in the Gitksan and Wet'suwet'en area. I had the same experience working in northeast British Columbia and indeed in the high arctic, perhaps most strikingly in the high arctic, where by the normal criteria of cultural strength, people's system is extremely vigorous, and even there my interviews with elders would produce similar kinds of mixed messages, and I think there is a very simple point to be made that in most cultures old people regard it as part of their job to point out what's not right. They are, as it were, the institutional conservatives. This is a feature of social and cultural life, very broadly.

In the case of the Gitksan-Wet'suwet'en system, I think this feature of cultural life, this conservatism of the elders, this need to point to that which is not right, is intensified by the cultures themselves. In Gitksan-Wet'suwet'en culture, the self respect and standing of a chief depends upon upholding the respect owing to the name that the chief holds. There is a law that we have referred to quite a few times in the course of this evidence that centres on compensation, therefore, I think that what one's seeing in the case of Gitksan-Wet'suwet'en, is people trying to get recognition and compensation for their loss, and so feeling obliged to focus particularly extensively and intently, upon that which has been lost. It's a matter of pride. It's a matter of the respect owing to the name, to have damage done to them, acknowledged and compensated.

Q And you have said that this was a feature, this mixed message was a feature of your own interviews with the Gitksan-Wet'suwet'en?

A Yes, in my interviews with the chiefs I felt often that I was being used somehow as a person before whom they would lay their requests -- I was going to say demand, that would probably over-state it -- their request that loss be acknowledged and compensated in so far as they saw me as a representative of the a society that had caused the loss and had failed to compensate. And yet once they had gone through, as it

were, that necessary procedure, that necessary application of their system, they would then tell me about many things or show me many things that were not to do with loss but they were to do with the more obvious vigour in the system.

Q Was Martha Brown one of your informants?

A Yes, I spent a good deal of time with Martha Brown. I visited her often and went with her to her family, one of her family fishing places in Glen Vowell and to one of the smokehouses there, and talked to her about all these matters. I won't say I talked to her, she talked to me about her sense of loss and so on, and she also talked to me about the fishery, the smokehouse, berry patches and the parts of her life that I was able to watch her enjoying.

Q Did you observe the, what you have referred to as the mixed messages, in your interviews with her?

A Yes, it was a characteristic of, I would say, of interviews or conversations with almost any high chief.

Q What did you observe when you were at the fish camp?

A I saw Martha Brown who was then Kliiyem lax haa, receiving fish that had been caught by her grandsons, cleaning those fish with her daughter and a grandson, filleting fish, putting them in the smokehouse and related activities.

MR. GOLDIE: Have you any notes of the interviews to which the witness is referring?

MR. JACKSON: There are two interviews with Martha Brown in tabs 18 and 19 of volume one of the book of documents.

Q Mr. Brody --

MR. GOLDIE: You have -- are these the ones that are being referred to?

MR. JACKSON:

Q Were there any other interviews which you had with Martha Brown?

A Many conversations I had with Martha Brown for which I don't have notes. The available material on Martha Brown, if I remember rightly, comes from the transcripts of the film work, she was somebody whom I was able to film at work, and I think there is -- now I am dredging around in my memory a bit -- there is some conversation with her that was recorded then about her lands in the Kispiox Valley, about farmers she had dealings with, about berry picking, and of course there is the activity at the smokehouse. The tape recorder doesn't pick up those activities in any

obvious way.
Q Mr. Brody, in terms of your observations of Martha Brown, and your interviews with her, how do you locate those in the context of change and continuity in relation to Gitksan-Wet'suwet'en?
MR. GOLDIE: My friend's referring to tabs 18 and 19?
MR. JACKSON: No, my lord, I am talking about Mr. Brody's interviews, observation, with Martha Brown, and at her fish camp.
MR. GOLDIE: Well, tab 19 is Mrs. Brown dressing fish, which I assume is at the fish camp?
MR. JACKSON: Perhaps I can clarify that.
MR. GOLDIE: Well, I want to be sure that the question is directed to the sources that we have.
MR. JACKSON: Mr. Brody has identified a number of sources, my lord, two of which are in the form of interviews in the document book. But he has referred to other sources which are not reduced to writing.
Q Mr. Brody --
THE COURT: What is the -- is Ms. Brown still alive?
MR. JACKSON: No, she died.
MR. GOLDIE: In 1987, I think. She gave, of course, extensive commission evidence.
THE COURT: All right. Thank you. I think to solve the problem, perhaps you better find out from the witness first then what it is that he is relying on for whatever evidence it is that you are going to ask him for, so that there will be as much certainty about that as possible.
MR. JACKSON:
Q In addressing the issue of change and continuity in Gitksan-Wet'suwet'en societies, in the context of your work with Martha Brown, what are the sources of your work with Martha Brown, other than what is set out in the field interviews, tabs 18 and 19?
A As I said, I visited Martha Brown many times, I suppose I could try to count them up in my mind, but I would often drop in on her. We had many discussions about -- free-ranging discussions, and what anthropologists would call non-directional interviews, that went here, there and everywhere, and I spent time seeing how she lived and going with her to visit her family at Glen Vowell.
Q And the sources --
A And then, of course, the film work which has been recorded.
Q Did you also review her commission evidence?

A Yes, I did.
Q And on the basis of those reviews and on the basis of your observation, do you have any further comment in relation to the issues you have addressed in your report relating to change and continuity?
MR. GOLDIE: Well, we know what Mr. Brody is about to say, my lord, because it's in his report. He purports to tell us that what Mrs. Brown said in her evidence is not really what she said.
MR. JACKSON: That is not my question to Mr. Brody.
MR. GOLDIE: I know it's not your question but I know what the answer is going to be to your question.
MR. JACKSON: If Mr. Goldie would allow the answer he would find out.
MR. GOLDIE: No, my lord, I have a submission to make on this.
THE COURT: Let me first ask Mr. Jackson, what is it that you are seeking to examine this witness about? Because it's more than somewhat irregular to ask a witness to comment on the evidence of another witness.
MR. JACKSON: No, I am not asking him to comment on the evidence of Martha Brown at commission. I am asking him to comment on the -- all the work he has done as part of his research, using all the sources he has used in relation to Martha Brown, and if my friend would prefer, the commission evidence could be excluded from that. I am asking Mr. Brody not for an opinion that Martha Brown did not mean what she said in her commission, that was --
MR. GOLDIE: That's just in the report.
MR. JACKSON: That was not my intention.
THE COURT: What are you seeking to ask him about Martha Brown? She was examined, there is a transcript, she was -- I think she was videotaped, we know what she looks like, we know what her ambience was, why are you asking the witness to talk about that?
MR. JACKSON: I am trying to have the witness address, my lord, the -- what he saw and what opinions he draws relating to the role of Martha Brown in the context of her family, in the context of her house, in terms of the issue of change and continuity in relation to Gitksan society.
THE COURT: Well, I'd be much happier if that kind of examination was not directed at a person who has already been thoroughly processed as a witness in this trial. No matter how you approach this question, it has the earmarks of trying to qualify or in some way explain her evidence, which has to really stand on its

own. If the witness has a theory about the changing continuity of Gitksan culture or Wet'suwet'en culture, subject to any comments counsel have, I would be happy to hear what he says about that. But to relate it to Mrs. Brown it seems to inevitably invite the kind of objection you have, which seems to me to be awkward to deal with because it's such an unusual procedure. Do you have to have the evidence you are seeking from the witness to Mrs. Brown --

MR. JACKSON: No, my lord. I can direct the question more generally in terms of the --

Q The body of interviews that you have conducted with people of Mrs. Brown's generation, the elders of the Gitksan and Wet'suwet'en peoples --

A Well, perhaps you could state the question to me again because it's quite hard for me to keep up with the exact nature of the question.

Q My question is: In the context of a chief, such as Kliiyem lax haa, Martha Brown, or any of the other chiefs you have interviewed in the course of your work with the Gitksan and Wet'suwet'en, how do you evaluate, in the context of change and continuity, the evidence which you -- words you have heard in the context of change and continuity?

MR. GOLDIE: Well, again my friend is excluding from that any evidence that has been given?

MR. JACKSON: Yes, my lord, I am.

THE COURT: All right.

A On the basis of talking to many chiefs, then I would say also on the basis of not just chiefs but on the basis of talking to persons who held names that were not senior names, not senior names and younger persons, again and again I found that there were great shifts, losses, adaptations, on at least the surfaces of things, but I would also say I found, in many regards rather to my surprise, that the basic institutions of Gitksan-Wet'suwet'en society, that is to say, their ideas about law, inheritance, territoriality, their ideas about the basic relationships between people and people, people and land, people and the supernatural world, these basic ideas were very strongly held and supported in persons who had deviated from these laws, who had broken the rules, tended to be fiercely criticized. And I also noticed that elders were very concerned to pass on what they believed to be the proper Gitksan and Wet'suwet'en ways to the next generation.

MR. JACKSON: Those are all the questions I have of Mr. Brody. My lord, there are some other matters which I would like to address in the report. At page 210, of the report, the first full paragraph, I wish to delete.
THE COURT: The so-called barricades agreements?
MR. JACKSON: Yes. Having regard to your lordship's ruling in relation to the evidence of Mr. Morrell, I would withdraw that paragraph.
There are a number of matters my friend, Mr. Grant, brought to my attention, I wonder if we might break for a few moments and I could complete this matter.
THE COURT: All right. How long do you want?
MR. JACKSON: Five minutes would be fine.

(PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING RECESS)

MR. JACKSON:
Q Mr. Brody, I am showing you your document headed "List of Barbeau-Beynon files relied upon by Mr. Hugh Brody." Are those the Barbeau-Beynon archive files from which you -- which you have reviewed for the purposes of preparing your opinion report?
A I gave a list to Mr. Grant first thing this morning of the ones that I relied upon and I assume this is a -- this is the typed-up list and, yes, it looks like the right numbers, 68 -- yes. Yes, this is it.
MR. JACKSON: A copy of this has been delivered to my friends, my lord.
THE COURT: Yes. All right. 994.
MS. KOENIGSBERG: I wonder if I could have a clarification, if that is -- put it this way -- a collection of those which are mentioned in the report or are they in addition thereto?
MR. JACKSON: This is a list which -- Mr. Brody, perhaps you should answer.
A I believe yesterday I was asked to identify all the Barbeau-Beynon files upon which I relied for my opinion, and that includes those that are not mentioned in the footnotes in the report.
Q If also includes those that are mentioned as well?
A Yes.
MR. JACKSON: Inclusive.
THE COURT: 994.

(EXHIBIT 994: LIST OF BARBEAU-BEYNON FILES REVIEWED AND RELIED UPON BY HUGH BRODY FOR REPORT)

MR. JACKSON: I would like you to turn to volume one of the book of documents that we -- if volume one could be put before the witness, madam registrar?
A number of the -- of Mr. Brody's field notes have already been marked as exhibits, my lord, and I would like to file the rest.
Q Mr. Brody, having reviewed tabs 2 to 42 of volume one, are those the field notes of interviews upon which you have relied for the purposes of your opinion?
A These are all notes of mine, yes.
THE COURT: All right. 990-2 to 42.
MR. GOLDIE: Ad nauseum, it is objected to.
THE COURT: Subject to objection.
What about the rest of this book, are they in?
MR. JACKSON: Yes, the rest of the book.
THE COURT: They are all in, are they?
MR. JACKSON: 61 has already been put in as an exhibit by my friend, my lord.
THE COURT: 44, 45, 46?
MR. JACKSON: Yes, those were all marked.
THE COURT: All right.
MR. JACKSON: 63, 64 and 65, my lord, although they are already in evidence, I think have already been marked for your lordship's use of reference.
THE COURT: All right.
MR. JACKSON: My lord, I would request that cross-examination of this witness commence tomorrow morning. We are prepared to start earlier if that would be your lordship's wish.
THE COURT: How are we -- you're finished, are you, Mr. Jackson?
MR. JACKSON: Yes, I am.
MR. GOLDIE: We can certainly use six minutes, my lord.
THE COURT: Let's use the six minutes then. Is there any special reason why we shouldn't?
MR. JACKSON: Yes, I did want to discuss certain matters with Mr. Brody this evening before he commences cross-examination, given there are only six minutes from the normal break hour.
MR. GOLDIE: He can do so providing he gives me the usual undertaking that he won't discuss the topic that I raised in the cross-examination to date.
THE COURT: You mean in the next six minutes?
MR. GOLDIE: Yes, I won't be able to get very far.
THE COURT: You have no difficulty with that, have you?
MR. JACKSON: No, my lord.
THE COURT: All right. Mr. Goldie?

CROSS-EXAMINATION BY MR. GOLDIE:

MR. GOLDIE:

Q Mr. Brody, throughout your report you use the words "whites" and "Indians"?

A Hm-hmm.

Q I assume by whites you mean non-Indians?

A Yes.

Q How do you define Indians?

A I would think it varies according to the context. I think perhaps we would have to look at the context. Sometimes I use the term "white" in a very general anthropological sense to mean Euro, European or western culture, in the context of European and western culture. I would have to look at the context.

Q How do you define Indians though, how do you use Indians in your report?

A If I am referring again to the Indians as a whole, I am using it in a very general anthropological sense.

Q Would you tell me what that is, please?

A That would be the aboriginal peoples of the area at issue so I am talking about the Indians of northern Canada, aboriginal peoples of northern Canada, the Indians of -- I can't remember, the Americas, I would be talking about the aboriginal peoples of the Americas.

Q When does a person cease to be an Indian?

A As I am sure you are aware, there is a gray zone between persons who are clearly Indian and persons who are clearly not Indian. Again, it would depend on context, I think.

Q Well, in the context of this case, when you speak of the Gitksan and the Wet'suwet'en, and then you use the word "Indians" when you are talking about the relationship with whites on the frontier and things of that order, when does a person cease to be a Gitksan?

A Well, there is a gray area between the Gitksan and persons who are not Gitksan. I would have to go to context, I think. There are persons whom the Gitksan insist are Gitksan by virtue of inheritance, the Gitksan law itself provides a definition of the Gitksan, I would think, I would have to ponder that a bit, and there are persons who choose to define themselves. This is a persistent question in anthropological theory, a question of self-definition.

Q Well, the Gitksan, as I understand it, can adopt

somebody that would otherwise be described as white, is that not correct?
A That's right, yes, here is an application of Gitksan law.
Q And that person thereby becomes a Gitksan?
A According to Gitksan law that person does, yes, and depending on my context I might well be including them in my account or I might not be including them in my account.
Q Well, do you include adopted white people as Indians in your account?
A Depends on the context.
Q What context? Give me an example of the context that you do and the context that you don't?
A It would be easier for me if you give me an example from my opinion.
Q I just see the word Indian.
A Well, I would see it in context I think.
Q I see. For instance, are you a member -- do you have a chief's name, are you a member of a house?
A No, no.
Q But a Gitksan man who marries a white woman, their children are non-Gitksan; is that correct? Is that your understanding?
A I think that varies from case to case in my understanding.
Q There is no law that is applicable generally, it is just a case by case --
A As I understand Gitksan law, the child of a white woman who has not been adopted as a member of Gitksan culture, has to be adopted or, as it were, remains to be adopted into the society in order to acquire membership according to the laws.
Q All right. So when I read your report and I see the word "Indian", it may or may not refer to somebody who is not, by blood, an aboriginal person?
A We would have to look at the context, the bits of the report that you are reading, I think.
Q That's what I say, I have to stop and think each time I run across the word "Indian", what you mean by it?
A I would think sometimes you wouldn't have to stop and think. I think the context would be fairly clear.
Q A couple of minor points, on page 77, you say in the first line, "In the 1920s, the French anthropologist, Marius Barbeau, conducted numerous interviews in northeast British Columbia."
A Northwest British Columbia.

Q Northwest Thank you. Why do you describe him as French?
A Well, I have always understood that he grew up and was educated in France and was primarily French speaking.
Q Does it -- do you intend to indicate by that that he carries with that a certain, I will call it, intellectual baggage, arising out of his birth place and his education?
A I know nothing about Barbeau that goes to that question. I don't know what his intellectual baggage was. For example, I don't know whether he received anthropological training within the French tradition of that period. That would be the kind of thing I would need to know.
Q He was in fact a Francophone, he was born in Ste. Anne De Beauce, Quebec, was he not?
A You know more than I do about his biography.
Q You didn't bother looking up anything about him when you used the word "French"?
A No, I didn't look anything up before using the word French.

THE COURT: Should we adjourn, Mr. Goldie?
MR. GOLDIE: All right, my lord.
THE COURT: I think, Mr. Jackson, there is an awful lot happening here these days and I think I have to start at 10 o'clock. We are going to be here Saturday anyway. 10 o'clock, please.

(PROCEEDINGS ADJOURNED TO FRIDAY, APRIL 14, 1989 AT 10 O'CLOCK 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.

Wilf Roy
Official Reporter