Vancouver, B.C.
March 2, 1989.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia, Vancouver, this Thursday, March 2, 1989, calling Delgamuukw versus Her Majesty the Queen at bar, my lord. I caution the witness you are still under oath.

RICHARD DALY, resumed:

THE COURT: Miss Koenigsberg.
MS. KOENIGSBERG: My lord, one or two small housekeeping matters. Mr. Grant had requested that I provide a copy of what is now 901-25, the sessional papers where the top of the page had been -- some of the writing had been obliterated by the binding.
THE COURT: Yes.
MS. KOENIGSBERG: And I have now provided copies and copies that can be read.
THE COURT: All right. Thank you.
MS. KOENIGSBERG: If they could be substituted.

CROSS-EXAMINATION BY MS. KOENIGSBERG (Cont'd):
Q And the small matter that was left from my cross-examination had to do with the interpretation of Reverend Tomlinson's journal. Have you had an opportunity, Mr. Daly, to review the journal?
A Yes, I have.
THE COURT: What number is that, please?
THE REGISTRAR: 21, I believe.
MS. KOENIGSBERG: 901-21, I believe.
THE COURT: Yes. Thank you.
MS. KOENIGSBERG:
Q And are you able to say whether from the context of the journal the Feast which is referred to on page -- and described on pages 254 and 255 and Mr. -- by Reverend Tomlinson is referable to the Gitksan people?
A It's referable in the sense that he states in the course of that passage that the Nishga people were having a deleterious tutelary affect on the Gitksan.
Q Yes.
A But it doesn't locate the actual incidents that he's describing here where it actually occurs. It had occurred the previous fall I think he said. And it just comes to mind when he is describing his -- what

1 happens when he gets to Kitwanga at that time. He's
2 talking about something that occurred previously.
3 Q Yes.
4 A And -- and the whole -- it's very much on his mind,
5 because it seems from the whole context that Reverend
6 William Duncan had asked him to undertake this trip at
7 this time, because it was -- it is the season of --
8 that these winter dance ceremonies are beginning and
9 they begin from the mountains and then work out a bit
10 later to the coast. So they start shortly after the
11 frost. And then they are being practiced on the coast
12 by -- well, at least before Christmastime.
13 Q There is no doubt in your mind that when he describes
14 that Feast he believes that that is representative of
15 what is going on in the Gitksan community?
16 A Well, it's hard to say what he really perceives. He
17 sort of merges what an anthropologist would see as a
18 number of different ceremonies and a number of
19 different social institutions into a whole body of
20 savage customs. So it's quite difficult to see
21 specifically what he is referring to as an evil
22 institution in among one people or the other. But he
23 basically feels that all these things are occurring
24 all over the region, yes.
25 Q Yes. And if you look at page 255 on the right-hand
26 column, for instance, he has just completed the --
27 THE COURT: I am sorry, whereabouts?
28 MS. KOENIGSBERG: Page 255, my lord.
29 THE COURT: Yes. All right.
30 MS. KOENIGSBERG:
31 Q Completes the description of a Feast in detail and
32 then begins his discussion that:
33
34 "Such a custom clearly strikes at the root of any
35 real improvement."
36
37 And then over onto the next column he says, about the
38 eleventh line down he says:
39
40 "For several months I was aware of the turn
41 matters had taken, but it was not until last
42 spring when some from all the Kitikshean
43 tribes --"
44
45 That's Gitksan, am I correct?
46 A Yes.
47 Q Okay.

" -- when some from all of the Gitksan tribes were congretated at the Naas fishery, that from information derived from various sources I felt it to be my duty to call all the chiefs together at Naas and address them on the subject, contradicting many such statements as that forbidding the giving away of property at Metlakahtla and Kincolith was merely a local rule, and did not necessarily affect a man wishing to become a Christian elsewhere."

From that statement and his consequent discussion of the results that occurred at that meeting, that is that all the principal men and chiefs threw off their masks of seeming adherence to the Christian ideal and said that they were going to go ahead with the custom, in his mind he was describing the Gitksan along with the Nass people, is that correct?

A No, I don't -- that's not -- my reading is that this was a pernicious set of customs which the church saw they had to deal with in the influential culture of the Nass, because it was affecting these people who are variously call brush Indians or stick Indians who came from the Interior and would make their -- their civilizing that much more difficult and lead to -- I mean they certainly had the interest of the people at heart, but they saw the development administrative structure as leading to a lot of perhaps violence if it -- if some of these customs could not be eliminated first and tried to sort things out in the Christian manner. So they were thinking along the lines of their -- the administrative present and future.

Q You don't doubt that he aimed his sermons on this subject to the Gitksan people chiefs when he knew that they were congregated at the Nass fishery?

A Well, I don't know what he did when he was at the Nass fishery, but he certainly aimed his sermons when he was on this trip against the winter dancing ceremonies.

Q No. I am sorry. The part that I just read to you --

A Yes.

Q -- places him --

A On the Nass.

Q -- on the Nass at the time that the Gitksan chiefs are congregated there for the fishery?

A For the fishery.

1 Q And he aims his sermon at them by his recounting?
2 A Well, I think he aims his sermon at the whole body, at
3 the gathered people there. They were the hosts, the
4 Nishga hosts, and the Gitksan who would have come down
5 from the Interior to participate in the fishing.
6 Q But from his recounting here --
7 A Well, he's recounting it specifically about the
8 Gitksan, because he is now in the -- he is writing
9 from the Gitksan area.
10 Q Yes.
11 A And obviously assumes that it's the same situation in
12 both places. But I think he's unfounded in his
13 assumptions.
14 Q Okay. So you assume that it's not necessarily true
15 that the Gitksan people were participating in the
16 feasting where the throwing away of the -- or wasting
17 of property from the missionary's point of view?
18 A Oh, they were wasting property, but it wasn't in the
19 context of the feasting. They were wasting property
20 in the context of the winter dancing which was quite
21 competitive, and there are instances of it in the
22 course of what they observed and what was happening in
23 Kispiox and Hagwilget, for example, when they came
24 through. But I don't -- I don't think that can be
25 tied to the -- this whole complex of relationships
26 between houses and clans which I've termed feasting.
27 It's something that is part of -- Drucker lays this
28 out in his "Cultures of the North Pacific Coast" and
29 his earlier book from the American Museum of Natural
30 History about the nature of the movement of this
31 institution into that area and how it quite often was
32 mistaken for potlatching, because it did have this
33 competitive giving away and destruction of goods
34 associated with the spirit possession activities.
35 Q Okay. Just so I have it clear, you are not quarreling
36 that Tomlinson is describing an activity whether it
37 was a potlatch, a Feast or a winter ceremonial where
38 the wasting from his point of view of property was
39 going on and that he's describing that as occurring
40 among the Gitksan people and he wants to stamp it out?
41 A Well, the description he's given in my opinion
42 occurred on the Nass. Who was there and who was
43 giving it and who were the guests I have no idea.
44 Q Just my -- lastly -- last. Even when we were
45 discussing Mr. Tomlinson and then Mr. Loring and the
46 follow-up of Mr. Loring, I believe one of your answers
47 about why Mr. Loring would have written in his annual

1 report that the wasting of property was going on or
2 had been stopped but had been going on among the
3 Gitksan people, I believe you said he was pressured by
4 the missionaries and that came directly from Tomlinson
5 I think you started off saying. What would be your
6 source for that evidence?
7 A Well, there is a book on Metlakatla and on the
8 activities of William Duncan. There is innumerous
9 references to this whole debate in the local
10 newspapers for the area. I read through the Ominica
11 Herald and there are a number of other papers. And
12 various -- I found reference to it on various little
13 articles, little mentions in the historical records.
14 Q In your list of references would there have been
15 anything that was referable to that?
16 A It's not -- it wasn't central to what I was getting --
17 trying to get at the overall structure and
18 persistence. I didn't -- I didn't cite a great deal
19 of that historical material that I had reviewed.
20 Q Is it an inference that you've drawn from a book about
21 Duncan and Metlakatla as well as your reading of
22 newspapers?
23 A And my reading of the recent biography of Father
24 Morrice as well and Father Morrice's book on the
25 History of the Tribes of Northern British Columbia.
26 You can draw these inferences from a number of
27 sources.
28 Q You have --
29 A As well as Barbeau talks about how the feasting was
30 carrying on persisting in 1919, 1920 in Kispiox. And
31 there was a pressure on Mr. Loring to -- by the
32 missionaries to actually stop it. And he gives an
33 instance of a policeman being sent there to put an end
34 to the some Feast that was going on, and the people
35 invited him in and they paid him money as a witness to
36 the events that were occurring there.
37 Q That's in Barbeau?
38 A That's in Barbeau, yes.
39 Q At which --
40 A Oh, it's in the -- it's in the Barbeau-Beynon files
41 among all the massive documentation.
42 Q Okay. And is it from that evidence that you infer
43 that Loring would have written something that he
44 didn't necessarily mean?
45 A Well, you know, when you are assessing these
46 ethnohistorical texts, you have got to try to work out
47 motivations of the person who is writing. That's part

of the whole exercise. So, yeah, that was -- it was an inference from this sort of thing and it builds up cumulatively.

MS. KOENIGSBERG: Those are all my questions.

THE COURT: Thank you. Mr. Willms?

MR. WILLMS: My lord, I have -- before I get started perhaps we could mark the binder as the next exhibit number.

THE COURT: Okay.

THE REGISTRAR: Exhibit 902, my lord.

THE COURT: 902.

MR. WILLMS: 902.

THE COURT: Thank you.

(EXHIBIT 902: Gray binder)

CROSS-EXAMINATION BY MR. WILLMS:

Q Dr. Daly, who told you not to make any notes of what you observed while you were with the Gitksan and the Wet'suwet'en people?

A Nobody told me not to make any notes. But a number of the people I interviewed were very hesitant about me writing things down and they wouldn't -- they wouldn't give me any instances of the institutions that we were describing about how it worked and what the rules were and how people would break the rules and how it would be -- how the rules would then be used to deal with the breaking of rules. These sorts of things. Because people -- it's a small community and people are afraid of being treated as gossips.

Q Well, putting you --

A So the same people knew that I was going to be rendering an opinion in relation to the case, so they were very careful about what they were saying or else they would say, "I'll give you examples as long as you don't write." So that was my guiding principles.

Q I want you to put your interviews to one side and who told you --

A I wasn't talking about any interviews. I was talking about my general approach.

Q Who told you not to make notes of what you saw?

A Nobody did.

Q All right. Now, I am showing you -- and this is an extract. My lord, this is a different extract from the Pelto material which has already been put in as Exhibit 901-8, but I would like to refer -- and the pages that I've put before you, Dr. Daly, from the Pelto Anthropological Research, the Structure of

Inquiry, are pages 90 to 94 which deals with participant observation. And I can't recall, but did you say that you had reviewed this book before or you were aware of Dr. Pelto?

A I am aware of the book. It's still a basic reference book, but I haven't -- I haven't read this for quite a long time.

Q Yes.

A For a hundred years.

Q I won't read through -- starting at page 90 in the middle of the page, Dr. Pelto quotes from Malinowski over -- you'll see if you go to page 91. I don't want to read that quote, but at the bottom of page -- bottom of that quote, at top of page 91 he cites Malinowski. And I think you said in your evidence in chief that Dr. Malinowski was known for his work on participant observation?

A Yes.

Q Now, on page 92 towards the bottom, and this is at the bottom, it's the last paragraph on the page and Dr. Pelto says this:

> "The anthropological fieldworker needs to become aware of his own strengths and weaknesses in observational style. He should practice observing and recording events in order to discover his observational biases and to develop more systematic techniques of recall."

Pausing there, did you practice observing and recording events in this case?

A In this case, no, I didn't, not in this case. I did in relation to my doctoral work.

Q Yes. He carries on, Dr. Pelto carries on:

> "He should find out for himself how extensive his note taking must be to ensure accuracy of recall."

Now, just starting with this case, did you do that for this case?

A I certainly did it in my interviews in Akwasasne reservation and Six Nations reservation in Ontario and I found I could recall up to three or four days of events pretty accurately, because I would go back and check later on.

Q All right. Is your memory --

A And it grew, too, as the time went on. I got so I

1 could recall the sequence of events for even longer
2 periods. At the beginning one day was about all I
3 could handle.
4 Q Okay. Is your memory of people, times, dates and
5 actions so accurate that it's not necessary for you to
6 make a note?
7 A Well, I have noted in my -- in my interviews more or
8 less a couple of occasions where I didn't note down
9 the actual date, but --.
10 Q How many people spoke at the Burns Lake Feast?
11 A Oh, I don't know how many people spoke at Burns Lake
12 Feast. It wasn't relevant.
13 Q What was the date of the Burns Lake Feast?
14 A April 4th and 5th, 1987.
15 Q And how many people attended?
16 A Oh, there were about four or 500.
17 Q You didn't -- was there a count taken?
18 A I don't know.
19 Q Not by you?
20 A Not by me.
21 Q And it's the case, it's fair to say, Dr. Daly, that
22 most of your recollection of the Burns Lake Feast is
23 your impression after speaking to James Morrison in
24 the parking lot?
25 A That was my impression of the whole sequence of
26 events, the speeches and the dancing and then the
27 actual all clan Feast at the end which went late into
28 the night on the second day.
29 Q Now, on the next page of Dr. Pelto's work in
30 talking -- this is page 93, and I am in that first --
31 the first full paragraph on the page, the third line:
32
33 "A constant danger is the overly quick leap to
34 abstraction. Primary reporting of concrete events
35 and things in field work should proceed at as low
36 a level of abstraction as possible."
37
38 Just stopping there. You agree with that, don't you?
39 A I agree with that, certainly. And that's why I say
40 that if you are going to engage in the -- in the
41 building of mathematical models of social relations,
42 you've got to be emersed in the local level, low level
43 abstraction, the day-to-day lives of the people for a
44 significant period of time or you start building a
45 model which is -- perhaps does injustice to the data
46 that you have before you.
47 Q Dr. Pelto carries on:

"Thus, observational statements such as, 'The two men were very hostile toward one another' or 'The building was rather dilapidated' are overly general statements, which may seem perfectly adequate to the fieldworker at the time he writes them, but which may well be difficult to interpret in later months when the fieldworker sits down to sort out and analyse these notes."

Now, that's an accurate proposition respecting participant observation, isn't it?

A Yes, I agree with you.

Q Now, I wonder if Exhibit 894-6, these are the July 1986 interview notes with Alfred Joseph. It's in a multi-tabbed book, my lord. And --

THE COURT: What tab number?

MR. WILLMS: It's at tab 6 of the --

THE COURT: Yes.

THE REGISTRAR: It's the blue book, my lord.

MR. WILLMS: The blue book.

THE COURT: Yes.

MR. WILLMS:

Q And I think you've already identified, Dr. Daly, this is one of your interviews with Alfred Joseph?

A Yes.

Q And can you please turn to page four of this interview and you'll see you are noting down -- you make a note in the left-hand column "Alfred," and I take it that's when Mr. Joseph started to speak, you are quoting from Mr. Joseph there partway down the page?

A Yes.

THE COURT: You are on page four?

MR. WILLMS: I am on page four, my lord.

THE COURT: Yes. Thank you.

MR. WILLMS:

Q And this is the quote:

"Another thing the people who went to the coast were usually the ones who put out the least at the Feast. The stay-at-homes usually gave more. It's a question of attitude -- "

And I can't read -- what's the next word?

A "Motivation."

Q

" -- attitude, motivation, the heart and mind of the person makes him/her decide to give freely or to hold back. Stay-at-homes were always gathering stuff bit by bit for feasting. The cash worker tended to grab it, to spend it or to save it. It didn't go into the pot in the Feast."

Now, just pausing there, Dr. Daly, what exactly was it that Alfred Joseph told you went into the pot at the Feast on this interview?

A This interview was about the nature of the seasonal round of economic activities at the -- in the early part of this century and the -- and the experience of the people of Alfred's parents' and grandparents' generation engaging in cash activities and non-cash activities.

Q Is that an answer to my question? What did he tell you went into the pot at the Feast?

A He said that meat went into the pot, dried fish, berries, cash. And the source of the cash was to some extent the proceeds from fur trapping and from factory work or from cannery work, but for the most part the cash was the savings of the older people who didn't go to the coast, who stayed at home and used money from selling chickens' eggs and whatever -- their savings, their day-to-day local savings. That was what went in.

Q And he told you all of this in July 1986 and you remember it even though you didn't make a note of it?

A Well, he told me in July 1986, certainly. It wasn't all in this interview. It was some of it before. I was canvassing him to see whether he knew anything about this area before I did this interview and I've talked to him on many occasions since.

Q Now, just going back to your note here. What stuff were the stay-at-homes gathering according to Alfred Joseph in July of 1986? What did he tell you was the stuff?

A Let's see. It was -- I think he described that in more detail in a later -- one of these -- one of these examples. But he said the stuff would be in terms of commodity goods, it would be gifts that would be given as special marks of esteem to the host -- to the guest chiefs and those days it would be fishing rods and mackinaws and rifles. Maybe a suit of clothing or a jacket. Something which would be useful but also have a little bit of luxury aura to it and they start

1 building these things up. They are always building up
2 these things.
3 Q He told you all of this in July of 1986 and you
4 remember it even though you didn't make a note of it?
5 A Yes. Because he told it to me more than once.
6 Q Now, carrying on with that particular note, I take it
7 you are still quoting from Alfred Joseph. He said --
8 A You see, I can refer -- I remember -- I know some
9 of -- many people he referred to and I have been in
10 their houses and there is a continuity with what he
11 said and what I see mounting up in the back wall of
12 their living room, for example.
13 Q I am not challenging that Dr. Daly. I just want to
14 know what he told you, that's all.
15 A Okay.
16 Q In July of 1986 from your notes. Now, I carry on:
17
18 "I was in Babine in the 50s. Stay-at-home
19 trappers were the back bone of the Feast."
20
21 Now, just pausing there, Dr. Daly. What kind of
22 animals did the stay-at-home trappers trap and how did
23 they trap them according to Alfred Joseph?
24 A Oh, he didn't explain that.
25 Q You didn't ask him either?
26 A I didn't ask him, no. I mean you have to be very
27 careful when you're interviewing. If you stop to
28 get -- get substantive clarification, quite often the
29 interview will go off the topic and you don't get the
30 general overview. What I would do would be to explain
31 what sort of information I was interested in and let
32 the person just talk and then I would go back for
33 clarification on different points later on.
34 Q All right.
35 A It works better that way because especially with the
36 older people, they know more or less what they want to
37 say and if you break them -- break into what -- their
38 flow, you can very easily get off topic on to many
39 other fields.
40 Q You continue on with your note of what Alfred Joseph
41 is telling you and you say:
42
43 "The log contractors who had money tried to come
44 up from their low Feast names using their cash."
45
46 Now, does that mean that -- did you ask him whether
47 that means they were trying to buy a higher name?

A Yes. He said that, of course -- he said you can't buy higher names. But some younger people at that time were putting a lot of money into the pot in the feasting with a view that this would help them to attain to be good contributors, then the elders would look on them as good candidates for taking these high chiefly names.

Q Alfred Joseph told you that in July of 1986 and you remember that by looking at your note?

A Yes.

Q All right. Now, over onto the next page you say this at the top of the page, quoting again from Alfred Joseph:

> "That the elders said our feasting stays at one level all the time. It's steady. The amounts stay the same. But theirs, the log contractors and -- "

A With money.

Q

> "with money is up and down and upsets the balance. It's not right."

Now, what do you mean by up and down? Did Alfred Joseph tell you that it was hundreds of dollars, thousands of dollars, tens of dollars?

A Well, this is -- this is obviously a shortcut of -- I couldn't write everything he was saying. He referred to a couple of instances where people who were pole contractors or had certain sudden windfall profits in furs from the Ootsa Lake area had put inordinate amounts of money into the pot in the Feast. He didn't give me any actual figures. There was no numbers to play with. And this had created very bad impression in the community.

Q Did elders feasting -- I mean from reading this you would conclude that there was two types of feasting taking place. Elders feasting and log contractors feasting. Is that what you meant?

A No. That's not what I meant.

Q Our feasting stays at one level. "The amount stays the same, but theirs, the log contractors," you are not talking about two types of feasting there?

A No. I am talking about contributions.

Q I see. Now, just completing this top paragraph, the

quote from Alfred Joseph you say:

"These people -- "

Presumably log contractors,

" -- splurged on the Feast when they were in the money beyond the status of their names. That was not honourable."

Now, just pausing there, Dr. Daly, what did splurged mean? Did Alfred Joseph tell you what splurged means?

A Alfred Joseph -- what's in brackets is my understanding of what he told me at that time in this part of the interview. I wasn't writing. I was summing up in my head the anecdotes that he was giving.

Q So you can't quantify splurged?

A No. I can put it in some context and give a comparison, but I can't quanitify it, no.

Q Now, turning back to Dr. Pelto on page 93. Carrying on from where I left off, Dr. Pelto talks about the language of observation in fieldwork, and says this:

"The following paired comparisons of (hypothetical) field-note entries illustrate some differences between over-generalized reporting and notes that preserve the sense 'evidence' on which descriptive generalizations are based."

And, Dr. Daly, if you review the examples one through four, please, and I'll give you -- I have one question.

A Yes.

Q It's a fair statement, is it not, that when we review your interview notes they fall generally under the category of vague notes rather than concrete notes?

A No, I wouldn't say that.

Q Even though you have just explained to the court how "stuff" had much more meaning than you wrote down, that "pot" had much more meaning than you wrote down, that "splurged" had more meaning that you didn't explore, that's not a vague note?

A No. It's because I was -- I was always filtering this against other utterances by other members of the community and my observations in visiting people's homes and sitting in the Feast. Mary George, for

example, talked about this same thing at great length in the interviews that had been done in the early '80s. Those elders' interviews that were discussed the other -- raised the other day. She gives a number of very graphic examples what is the proper way of doing things and the difference of opinion between young people and old people and what the norms and standards are. Especially in the period of the 1930's.

Q You will agree with me that another anthropologist who picked up this particular note wouldn't know what "stuff" meant, wouldn't know what "pot" meant and wouldn't know what "splurged" meant?

A Oh, yes, they would, because if they were an anthropologist dealing in this general cultural area, they would have a fairly good idea of what it meant. They would probably want more data, of course. But there would be an over -- general understanding of what I was going on about.

Q Yes. A general understanding. They might want something a little more concrete?

A They might want something more concrete, yes.

MR. WILLMS: My lord, can that be Exhibit 902-1?

THE COURT: Yes.

(EXHIBIT 902-1: Document entitled Anthropological Research, the Structure of Inquiry. by Pertti J. Pelto)

MR. WILLMS:

Q The next document, the extract I am going to show you is from a book called "My Old People Say" by Catharine McClellan. First of all, have you read this work or heard of this work?

A I have heard of it. I haven't read it.

Q You are aware that Professor or Dr. McClellan is a well respected anthropologist?

A Yes. Since she works in the area of Athapaskan studies.

Q And that would be generally Wet'suwet'en as well, Athapaskan/Wet'suwet'en?

A No. She worked in the Yukon, I believe.

Q Now, in this extract --

A She still works in the Yukon.

Q -- Dr. McClellan discusses conduct of fieldwork starting at page nine. And just to give you the dating of her fieldwork, you'll see right under

1 Conduct of Fieldwork she carried it out in the summers
2 of 1948 and '49 and in the winter of '50 and '51 and
3 then she describes how she did her fieldwork, if you
4 turn to page eleven. And you'll see on page eleven
5 and after discussing the Inland Tlingit at the top of
6 the page that first -- that second paragraph down she
7 says:
8
9 "As my fieldwork progressed I took more and more
10 notes verbatim."
11
12 And then just skipping the rest of that paragraph and
13 carrying on at the next paragraph:
14
15 "My method is to take all my notes in pencil,
16 adding in ink as soon as possible after an
17 interview the general circumstances and anything
18 else of importance that I was not able to record
19 at the time."
20
21 And just pausing there, that's a pretty good practice,
22 isn't it, for taking field notes?
23 A Oh, it depends on the context. When you are working
24 with informants or with a community that notes that
25 your findings are going directly into the public
26 domain, you have to be as sensitive to the whole
27 question of how to -- how can you maintain some
28 anonymity and some respect of their inner secrets
29 which is part of the whole ethics of being an
30 anthropologist. So this exercise I was engaged in
31 this time was quite unique. And I had had some
32 training in this approach because of the strictures
33 put on me by the Iroquois when I was working with
34 them.
35 Q Just carrying on then. And I take it what you are
36 saying there is that it's -- it's a good practice for
37 some and not a good practice for others?
38 A It's a very good practice. But if there are no ways
39 of protecting the -- protecting the people that you
40 are interviewing, if everything you are collecting is
41 going into the -- into the -- into the public, then
42 you obviously as you are going to violate your ethical
43 principles as an anthropologist to do that. So I had
44 to do the best I could without such notes. It is --
45 it is a good -- a good procedure to write everything
46 down, if you can guarantee that it's not going to fall
47 into the hands of the general public. And that's one

1 thing you have got to guarantee to any granting body
2 who is going to finance research.
3 Q But you knew that the purpose of your research was
4 that it was intended to fall into the hands of the
5 general public?
6 A Well, I knew that it would be exposed to the public,
7 so I had to be very careful about the sensibilities of
8 the people I was collecting information from.
9 Q Wasn't that the purpose of your research, to obtain
10 data that would be exposed to the general public?
11 A Yes. And that's what I have tried to do.
12 Q So it wouldn't do any good to hold information back,
13 would it?
14 A Well, if -- if I wanted to add my name to a whole
15 roster of non-natives who have -- who have done injury
16 to the cultures by exposing the inner most secrets and
17 problems of people's lives and taken information which
18 is the people consider to be their own family
19 property, then I would say yes, that --.
20 Q You are not saying that you received some information
21 during your research which you consciously decided not
22 to incorporate into your report, are you?
23 A Anthropologists do this all the time. You get -- you
24 get an understanding of how the rules really work by
25 the way people talk about each other and you are not
26 going to put in -- in any of your published work you
27 are not going to put in this sort of detail about what
28 people say about each other, but it's extremely
29 important for helping you to understanding how the
30 rules work, how the whole body of morality and
31 customary law actually operates, and how it is used
32 and manipulated and redefined and so on. So you try
33 to find some sections of your work where this can be
34 explained to show how the process works. But in many
35 of the instances it's just unethical to put that on
36 the record.
37 Q Now, just skipping down to that last paragraph on page
38 eleven, on the left-hand column you'll see that Dr.
39 McClellan said:
40
41 "In 1948 and 1949 Dr. Libby and I shared in the
42 writing of ethnographic events from memory and in
43 keeping a daily journal which supplemented our
44 formal notes."
45
46 Now, you did not keep a daily journal, did you?
47 A No, I didn't.

1 Q There was absolutely nothing preventing you from
2 keeping a daily journal to describe each day's events,
3 was there?
4 A Just the general stricture that I have already
5 outlined with you.
6 Q And I am going to suggest to you, Dr. Daly, there was
7 nothing to prevent you after observing an event from
8 immediately recording it at the time of the event or
9 as soon as practicable after the event had occurred.
10 A Well, I think that falls under the same -- same
11 rubric. People would not have been as free with me
12 had they known that everything I was hearing was going
13 to be committed to paper in that direct form. That
14 they said, "We want you to understand our system, but
15 the best way is just don't write. You listen to what
16 we have to say and when you get the lay of the land
17 then we -- then we'll see where we go from there." And
18 that's more or less the approach I took.
19 Q And just finally dealing with the interviews, there
20 was nothing to prevent you from recording all of the
21 conversations that you heard formal or informal
22 immediately after the interview and away from the
23 person that you interviewed?
24 A You mean behind their backs?
25 Q Yes. That's what I mean. Nothing stopping you from
26 doing that?
27 A That is unethical.
28 MR. WILLMS: My lord, if that could be Exhibit 902-2.
29 THE COURT: Yes.
30
31 (EXHIBIT 902-2: Extract from book entitled "My Old
32 People Say" by Catharine McClellan)
33
34 THE COURT: Doctor, you are not suggesting that this lady,
35 perhaps Dr. McClellan and Dr. Libby, were doing
36 something unethical?
37 A No, certainly.
38 THE COURT: It was your particular circumstances?
39 A They weren't involved in these type of circumstances
40 that I had to work under.
41 MR. WILLMS:
42 Q I am showing you the first page from your PhD thesis,
43 "Housing Metaphors: A Study of the Role of the
44 Longhouse in the Persistence of Iroquois Culture," and
45 Appendix A at 285. Now, this is your doctoral thesis?
46 A Yes.
47 Q And could you turn to page 285 which is Appendix A and

here you say: "Explanation of Interview Data Used in This Study." And just going down to that second paragraph you said this:

> "Sensitive to general antipathy toward anthropologists and their work, the writer did not try to use a tape-recorder, or to take on the spot notes. Indeed, he was asked by some of the traditional people, not to do so if he had any such intentions."

Now, just stopping there. That's the same as this case, isn't it?

A Yes.

Q Well, here's how you dealt with it there:

> "As a result he -- "

That means you, right?

A Yes.

Q

> " -- would discuss and observe for relatively short periods of time, and then immediately record the contents of the interview, following the chronology of the discussions."

Is that unethical, Dr. Daly?

A No. But it wasn't going into the public domain. The data that is there, these are nom de plumes about the people that I interviewed. The actual data went to my committee. They observed it. They have it in their files, but it's not -- it's an attempt to maintain the anonymity of the people and the views that were given.

Q And so because this was a court case you did it differently than you did it with the Iroquois?

A Slightly differently, yes.

MR. WILLMS: My lord, 902-3.

THE COURT: Yes.

(EXHIBIT 902-3: Document entitled Housing Metaphors: A Study of the Role of the Longhouse in the Persistence of Iroquois Culture by Richard Heywood Daly)

MR. WILLMS:

1 Q In your reference list to your report, which works in
2 that reference list describe doing fieldwork and
3 making notes the way you did it here as being
4 appropriate?
5 A What do you mean reference list?
6 Q Well, you have got a reference list at the back of
7 your report?
8 A I have a cited bibliography.
9 Q Yes.
10 A That's the title I cite in the text of the report.
11 Q Yes. Is there anyone in that reference list, any
12 anthropologist who describes doing fieldwork the way
13 that you've done it here as being an appropriate
14 method of anthropological fieldwork?
15 MR. GRANT: May the witness have an opportunity to look at it,
16 my lord?
17 THE COURT: Yes, certainly.
18 MR. WILLMS: Certainly.
19 A Well, it's not cited in the -- in any of these works.
20 But Anthony Wallace has used the same methods I do on
21 the last page, page 691.
22 MR. WILLMS:
23 Q What's the name -- you say it's not in your reference
24 list, but he's done the same thing?
25 A Yes.
26 Q What's name of the book?
27 A There is no book. I have talked to him about it
28 personally face-to-face.
29 THE COURT: Anthony Wallace?
30 A Anthony C. Wallace.
31 MR. GRANT: My lord, the bibliography is at tab -- cited
32 bibliography is at tab five, the blue book, for ease
33 of reference.
34 THE COURT: Thank you.
35 A I have also discussed the same thing with Eleanor B.
36 Leacock in her --
37 MR. WILLMS:
38 Q Dr. Daly, let's stay away from your personal
39 conversations --
40 A -- seminar in City College, New York.
41 Q Let's stay away from your personal conversations with
42 any of these individuals and just stick to what they
43 wrote. If you can give me a reference to something
44 that somebody wrote for publication and exposure to
45 other anthropologists suggesting that the method of
46 fieldwork you did here, similar fieldwork, is
47 appropriate. That's what I am interested in.

1 A Well, this has been -- this has been the subject of a
2 lot of discussions at the American Anthropological
3 Association and it's -- for many years as the head of
4 the ethics branch was Professor David Aberle who was a
5 quite well-known anthropologist and from the
6 University of British Columbia. Again, they are all
7 working papers, but this is a problem which is
8 constantly under discussion. The whole question of
9 ethics and verifiability of the data.
10 Q On -- I am going to move to a different topic, my
11 lord, and do you -- do you have your report in front
12 of you, Dr. Daly?
13 A Yes.
14 THE COURT: Which volume?
15 MR. WILLMS: I guess it's in Volume 1, page 13.
16 Q Now, page 13 of the report, my lord, you say on page
17 13 in the second line in that paragraph:
18
19 "As well, both peoples maintain that they have
20 lived side by side for a very long time. (Many of
21 the oral histories of the two peoples speak of a
22 large sprawling, original village site
23 (Temlaxamid/Dizkle) somewhere near the confluence
24 of the Skeena and Bulkley - see, for instance,
25 Barbeau-Beynon."
26
27 No date.
28
29 "'Temlarh'am, The Land of Plenty on the North
30 Pacific Coast', and Jenness."
31
32 Now, before -- I want to turn to Jenness in a minute,
33 but before I do, what do you mean by a very long time?
34 A I mean in the ancient past. It's -- at the present
35 level of scholarly studies it's impossible to tell.
36 But we can -- we can try to correlate data from
37 different fields to get some approximation of
38 complexities of the social and economic organization
39 in the past. The archeologists tried to do this and
40 the linguists tried to do this and so on. So it's
41 deliberately vague because it's impossible to pin it
42 down to any specific date.
43 Q Because it could be a thousand years? Perhaps?
44 A I think with the -- from the archeological dating
45 which has been done about the complexity of the tool
46 kit, if you like, it would probably be from somewhere
47 between four thousand and two thousand years ago.

Q All right.
A Roughly.
Q So that's a very long time, four thousand to two thousand years ago, we can insert that?
A Roughly, yes.
Q All right.
MR. GRANT: This is the place you are referring to?
MR. WILLMS:
Q Yes. That's what I was talking about.
A But that's not -- that's not drawn from the sources that are cited here. That's drawn from my knowledge of the -- what the archeologists have found to date.
Q Now, could Exhibit 847 be placed before the witness. That's 13, 847-13, my lord. And Dr. Daly, this is the reference to Jenness that we find at page 13 of your report, is that correct?
A What was it, page 4 --
Q 476?
A 476.
Q I just want to confirm, this is the Jenness that you're talking about as Jenness 1943?
A That's right, yes.
Q All right. And you cited page 476 and I'd like you to look over 477 where Jenness says this, after discussing the traditions of the Carrier and it's the middle paragraph on the page beginning: "I have examined." Do you have that?
A Yes.
Q

> "I have examined the supposed site of Dizkle, and Harlan I. Smith, archeologist of the National Museum of Canada, has visited the traditional site of Temlaham. In neither place did we discern any traces of a permanent settlement. One may reasonably doubt, therefore, whether the two villages, glorified by similar legends, ever held the prominent place that tradition assigns to them, if indeed they ever existed outside the fertile imaginations of the Indians."

Now, were you aware that Miss Albright, the archeologist, called as a witness by the plaintiffs, was unable to find archeological evidence of Dizkle?
A Yes, I was. But I wanted to see what I actually said on page 13. That citation is simply that it has been noted by Jenness among others that the people say there was an original village site somewhere near the

1 confluence of the rivers. And that's what -- that's
2 what this citation confirms.
3 Q That -- the oral history said that?
4 A Yeah. Not that there was -- there was a -- it doesn't
5 say that there was an archeological basis for it.
6 Q No. In fact, so you are just saying that's what the
7 people say. You are not saying that that's what
8 really happened?
9 A That's right.
10 Q Now, do you assume in your report that what the people
11 say there is true? I mean -- or does that affect your
12 report at all?
13 A Well, the quality of life of what I would say is a
14 tribal society based on a hunting gathering cycle,
15 annual cycle, with heavy reliance on a crop, which is
16 very much like an agricultural crop, from my reading
17 of the archeological records seems to have been in
18 place in that general period including the finds at
19 Moricetown and Hagwilget Canyon.
20 Q Well, let's back up, though, Dr. Daly. You already
21 acknowledged that Miss Albright, an archeologist
22 called by the plaintiffs, gave evidence in this case
23 and you knew that, that she couldn't find Dizkle?
24 A That's right. But she did discuss, I believe, the
25 findings of Ames in the Hagwilget Canyon and it had
26 done some work there too, which have a tool profile
27 which is similar to the same time period farther down
28 river at Kitselas and Prince Rupert harbour and to
29 some extent in Moricetown.
30 Q Maybe I can put the question this way: Does the
31 prehistoric existence of Dizkle make any difference to
32 your conclusions at all? Whether it existed or not
33 does it make any difference to your conclusions?
34 A I don't know that it does. But it certainly is part
35 of the living culture today and it's -- it's -- it
36 links the continuity of the peoples' perceptions of
37 their rootedness in the area with the general findings
38 of the archeology as far as we can draw conclusions
39 from it at the present time.
40 Q Just dealing with the oral histories, one thing that
41 you know as an anthropologist is that "where oral
42 histories refer to the distant past, they must be
43 handled with a good degree of reserve, for experience
44 shows that the historical and mythical merge
45 inextricably beyond a certain point." That's your
46 anthropological experience, isn't it?
47 A That's right.

1 THE COURT: Where did you read that from, Mr. Willms?
2 MR. WILLMS: My lord, the reference to that is Sapir.
3 THE COURT: Oh, I see. All right.
4 MR. WILLMS: It was only if Dr. Daly wasn't going to agree that
5 everybody knows that.
6 THE COURT: Thank you.
7 MR. WILLMS: And I was going to place Sapir before him, but
8 that's Exhibit 881A-4, my lord, that comment is made
9 by Sapir at page 395.
10 Q Now, furthermore, Dr. Daly, oral traditions frequently
11 reflect contemporary social and political conditions
12 as much as they do historical reality?
13 A Some oral traditions do. You have to look into the
14 quality and the type of oral matter that you are
15 dealing with. Certainly, if you are getting old
16 people to talk about their life's experience, they
17 tend to read in features of the present the time when
18 they are doing the telling into their accounts of the
19 past. Or if it -- if you're getting one side of a
20 quite angry dispute, you must get two or three sides
21 of it to get some overall picture, because people will
22 colour the facts to serve their ends. But when you're
23 dealing with the type of oral tradition that we have
24 here, it's the different -- it's quite a different
25 matter. It's not the reminiscence of people and their
26 remembrance of things past.
27 Q But isn't it the case that even if cultures such as
28 this one where there is a strong desire to preserve
29 the integrity of oral histories, that the stories may
30 unconsciously be reworked from generation to
31 generation?
32 A That's always the danger, but there generally are some
33 checks built into the system such as with the Gitksan
34 and with the Wet'suwet'en, there is specific songs and
35 histories are known by very few. They are not known
36 by -- in detail by everybody. They are taught in a
37 very specific way to successors. They must follow a
38 definite system of remembering and relating the events
39 when they go through them. And they are being
40 witnessed by others who have overlapping knowledge in
41 the Feast hall. So there are certain number of checks
42 and balances that the system provides.
43 Q But those checks and balances that you have just
44 described, Dr. Daly, show that in the culture there is
45 a strong desire to preserve the integrity of the oral
46 history. Those are all indicia that there is a strong
47 desire to preserve the integrity of the oral history,

1 correct?
2 A What was the word you used?
3 Q Well, I'm -- the items that you have just mentioned
4 such as witnessing, retelling the story?
5 A Yes. The system of checks.
6 Q The system checks?
7 A On what is important for each family to remember from
8 its past.
9 Q And I'm suggesting to you that even when there is
10 evidence of that strong desire to preserve the
11 integrity, that the stories may unconsciously be
12 reworked from generation to generation. That's
13 accepted, isn't it?
14 A There may be. It's something you have got to be
15 guarding against when you are examining the matter all
16 the time certainly. Or trying to figure out how the
17 system deals with this -- this very problem.
18 Q And even if you have that, that strong desire to
19 preserve the integrity, with the checks and balances
20 oral histories supply a valuable information about the
21 not too distant past, isn't that the case?
22 A That's what some people say.
23 Q Well, you accept that, don't you?
24 A In general I would, but I think in this culture area
25 it's quite unique. It's quite -- it's quite a --
26 well, unique is the word. And everyone has been
27 dazzled by it who has studied the area in the last
28 hundred years. And also it's been subject to quite
29 good fieldwork by Barbeau and his assistant Beynon in
30 collecting versions of the Gitksan and the general
31 Tsimshian materials.
32 MR. WILLMS: My lord, I am going to turn to a new point and this
33 would be an appropriate time to take the --
34 THE COURT: I can't come back until 11:30.
35 MR. WILLMS: Well, then I'll --
36 THE COURT: Put in another five minutes.
37 MR. WILLMS: I will press on, my lord. It's an exhibit, my
38 lord, that I don't think --. No. Exhibit 888. I
39 have to admit I don't know which tab that is, but it's
40 the Trigger reference, my lord.
41 MR. GRANT: It's tab three of the blue book, my lord.
42 THE REGISTRAR: Yes.
43 MR. WILLMS: Oh. Thank you.
44 Q And Dr. Daly, could you turn to page 167 of the
45 Trigger article. And there was a statement that was
46 put to you at the bottom, the beginning of the last
47 paragraph on page 167, and the statement was this:

"The small populations of tribal societies, and their general lack of concern with the inheritance of private property, tend not to produce the systematic variations and oral traditions that are useful for evaluating their historical authenticity."

And my note was, you were asked whether that statement was true for the Gitksan and Wet'suwet'en and you said no.

A Well, part of the reason is there is a vast number of tellings of these accounts and in some cases the person who was the informant was not the legitimate teller. So there are -- but there are enough tellings that you can get the general sense of the important features as that house group, or that Wil' na t'ahl, the group of houses consider is their history and their story of their migration and what is meaningful to them about the spiritual events and wars and other things that have occurred to them over time.

Q Just starting with that as a general proposition, would you accept that as a general proposition?

MR. GRANT: Which, what's said here?

MR. WILLMS: Yes.

THE COURT: As a general anthropological conclusion is what you are asking?

MR. WILLMS: That's right, my lord.

Q Or is Dr. Trigger misstating the general proposition, too?

A I think he's misstating the general proposition somewhat. I am not sure that he has ever done much work on the question of land tenure and how it feeds into the cultural preoccupations of different societies.

Q Well, Dr. Trigger did a lot of work in among the Huron and the Iroquois as well, didn't he?

A Yes. But it's ethnohistorical work. He's very masterful at that work. He's extremely good.

Q Yes.

A But it's not -- it's not the work of being emersed in a living culture.

Q Ethnohistory includes the recording and evaluation of oral histories?

A It -- it makes use of recorded oral histories. It doesn't -- it's not -- the recording of them and developing the context in which they're told, all

that, that's a different aspect of subject.
Q Now, the one difference that you noted with the Gitksan and the Wet'suwet'en in respect of this general statement is that although there may be a general lack of concern with the inheritance of private property, when you investigated the Gitksan and Wet'suwet'en in 1986, you learned that they were very concerned about the inheritance of private property?
A Well, private in the sense of kinship group property, not private personal property.
Q Do you accept the proposition that Dr. Trigger puts a little further down that page that -- or just carrying on:

> "The recording of oral traditions as well may be suspect. The few committed to writing in eastern Canada prior to the late nineteenth century were done in an extremely cursory fashion and from poorly identified sources."

And then he says this:

> "Some of these oral traditions appear to have been heavily influenced by White historical narratives, missionary propaganda, and even anthropological publications."

MR. GRANT: "At least."
MR. WILLMS:
Q Now, putting the words "at least" in front of "some," if that makes any difference, is that an accurate general anthropological proposition?
A For that region around the Great Lakes, yes, it's quite accurate.
Q And so you know, for example, that there are oral traditions that have been influenced by white historical narratives?
A Yes. But there are also the formal presentation of history which validates social relations and reiterate the people, the core of their very cultural identity, it's being -- it's a -- it's a unit of the culture which is very distinct and clear cut and it has been recorded for the Iroquois at least very consistently for -- since the days of Lewis Henry Morgan in the early part of the nineteenth century. And accounts in the late nineteenth century were very full indeed of -- they were collected in the language and later

translated by members of the Iroquois community for the Smithsonian Institution. So some of it is very accurate. Others -- others it's -- that deal with other peoples in the region are very shoddy.

Q It's not geographic. There are some North West Coast legends which are influenced by white history and also white stories?

A Well, what do you mean by the legends? What's the context?

Q Well --

A I am very much opposed to this collecting so-called Indian legends like bedtime stories all out of context that doesn't show anything about the culture that they come from and make the native people look like imbecilic six year olds.

THE COURT: Can we adjourn now, Mr. Willms, please.

MR. WILLMS: Yes, my lord.

(PROCEEDINGS ADJOURNED PURSUANT TO MORNING RECESS)

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

Laara Yardley,
Official Reporter,
United Reporting Service Ltd.

1 ⊥h2 R. Daly (for plaintiffs)
2 (PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
3 THE REGISTRAR: Order in court.
4 THE COURT: Mr. Willms.
5 MR. WILLMS:
6 Q Dr. Daly, we were just turning from what Dr. Trigger
7 said about oral histories being influenced -- oral
8 traditions being influenced by missionaries, white
9 historical narratives, and athropological
10 publications. And I put -- I put before you -- and
11 this is a doctorial thesis entitled "The Text and
12 Context of Tilingit Oral Tradition". And in this
13 thesis the author devotes a whole chapter -- and I've
14 put that chapter in, pages 123 through 142, all
15 dealing with a Russian fairy tale that had been
16 adopted into Tlingit oral tradition. Just starting --
17 are you aware of that kind of borrowing into oral
18 traditions?
19 A Yes.
20 Q So that it's not surprising to you?
21 A No, it isn't. I'm not -- I don't -- I've never looked
22 at this before, but it's not uncommon.
23 MR. GRANT: My lord, if my friend -- if my friend is going to
24 question him on this document, I'd like him to have an
25 opportunity to look at this.
26 THE COURT: You can't do that. What do you mean? Shut the
27 trial down while he does it?
28 MR. GRANT: I think my friend clearly has many areas to cover.
29 THE COURT: I don't think so. If the witness gets in trouble,
30 by all means, but we're nowhere close to that yet.
31 MR. WILLMS: And, my lord, I put the whole --
32 THE COURT: When I say "in trouble", I mean if he's having
33 difficulty.
34 MR. GRANT: Right. I understood that.
35 MR. WILLMS:
36 Q At the beginning of this chapter on the Russian fairy
37 tale in Tlingit oral tradition, the author says this:
38
39 "Most comparatists" --
40
41 This is on page 123.
42
43 "Most comparatists and folklorists today
44 seem not as concerned with problems of
45 direct influence, borrowing and migration as
46 in earlier periods of scholarship."
47

1 Just pausing there, does that statement apply to
2 anthropologists as well? Was there a period in the
3 past when anthropologists were concerned with problems
4 of direct influence, borrowing, and migration in
5 reviewing oral traditions and has that concern faded?
6 A It's a hard question to answer in general terms.
7 It's -- in the past there was more ready willingness
8 to not investigate something which was obviously a
9 borrowing from another culture. It was considered to
10 be impinging on the pristine nature of the society
11 that you were studying. But these days there's a much
12 more detailed textual analysis of everything which is
13 a living part of the culture no matter where it came
14 from and how the parts integrate.
15 Q Now, the author carries on in this paragraph:
16
17 "But now and then a classic migratory
18 situation affords itself, and a story comes
19 to light, the uniqueness of which is best
20 illuminated by a traditional
21 historical-geographical approach."
22
23 What the author does is he goes through the rest of
24 this piece comparing the Russian fairy tale to the
25 Tlinget oral tradition to conclude that they're the
26 same. But you're aware that some of the
27 anthropologists that you relied on in writing your
28 report had done the same thing with Tsimshian oral
29 tradition?
30 A You mean comparing with foreign influences?
31 Q And also comparing a classic migratory situation which
32 is unique and can be assessed in a traditional
33 historical-geographical way?
34 A I'm not -- I'm sorry. I'm not very clear on --
35 Q All right.
36 A -- what that actually means.
37 Q Let me put the particular case to you. One of the
38 references in your report is to the "Wolf-Clan
39 Invaders From the Northern Plateaux Among the
40 Tsimsyans by Marius Barbeau"?
41 A Yes.
42 MR. WILLMS: And you know that Dr. Barbeau using Tsimshian
43 informants constructed the origin of the leading wolf
44 clan at the beginning of wolf-clan invaders?
45 THE COURT: I'm sorry. What did he do again? Using Tsimshian
46 informants --
47 MR. WILLMS:

1 Q Using Tsimshian informants he worked back to the
2 origin of the wolf clan. Are you aware of that or do
3 you recall that?
4 A Yes, he did. He did to the best of his ability.
5 Q Yes. And what he did is he used references in the
6 oral history to a passage under a glacier down the
7 Stikine River. He used a reference to sea otter
8 hunting when the people coming down came to the coast,
9 and he used a reference to noxious fumes to conclude
10 that that particular migration story may not be much
11 older than 200 years?
12 A I find his actual interpretations of the adaawks are
13 out of kilter with what the adaawk histories have to
14 say themselves, and this is also borne out by a lot of
15 the scholars who have worked in earlier times.
16 Wilson Duff did an assessment of his -- his work in
17 the -- I believe it was in the early sixties, where he
18 points out what a brilliant field worker Barbeau was
19 in terms of collecting data and getting things written
20 down from the culture and collecting material culture
21 at a time when it was under severe attack by
22 administration and church and so on.
23 Q What work is that?
24 A It's an article of about 1964, '65.
25 Q It's not cited in your references?
26 A Not in my reference list. And he refers back to a
27 previous assessment by Phillip Drucker in about
28 1948 -- I think that was in the Academy of Sciences --
29 who had done a similar assessment of Barbeau in
30 relation to the dating of the phenomenon of the totem
31 poles.
32 MR. WILLMS: Well, let's just stick with what's in your
33 reference list. And what is in your reference list is
34 wolf-clan invaders of the Northern Plateaux. And
35 could Exhibit 849-25 be put before the witness,
36 please? It's Exhibit 849. It was a book that was
37 marked during Ms. Albright's evidence, my lord.
38 THE REGISTRAR: 849.
39 MR. WILLMS: And it's 25.
40 THE COURT: 849A?
41 MR. WILLMS: Not 849A, my lord, just 849.
42 THE COURT: Tab 25.
43 MR. WILLMS:
44 Q Tab 25. Now, just to identify this, this -- this is
45 the title page and the forward to it, but you've read
46 this before and this is what you're citing in your
47 reference list, isn't it?

A Yes.
Q And Dr. Barbeau starts off -- and if you can turn to -- it's page number 3 in the upper right-hand corner, where Dr. Barbeau describes the monograph that he is embarking on here, including a listing of the histories that he's recorded. And he says this under "Presentation":

> "This monograph bears upon the southward migrations of the native tribes of Alaska and the northern Rockies. It is the third in a series meant implicitly to cover the territories of the Denes, Tlingits, Haidas, Tsimsyans and Kwakiutls, in the light alone of the Tsimsyan adaorh"...

And it's spelled a-d-a-o-r-h.

> "... traditional 'true' narratives - as I have recorded it, from 1915 to the late fifties, among the thirty or so nations of the Tsimsyans: the Tsimsyans proper of the seacoast, the Gitksans of the Upper Skeena River, and the Niskaes of the Nass River."

Just pausing there, what Dr. Barbeau is doing here or what he's purporting to do is by using Tsimshian informants to construct a migratory monograph, correct?
A No. He was -- he was collecting the histories of the crests that were very much in evidence on the material objects that he was collecting from museums, including totem poles and talking sticks and masks, Amhalayt head-dresses and so on. And in the course of doing that he found that there were these narratives that -- that backed up the understanding and the meaning and the importance of these crests to the community. After collecting this body of material over a period of 40 years, then he began to do these sorts of correlations.
Q Yes. But the information that he took was Tsimshian informant information?
A It was, yes.
MR. WILLMS: And --
THE COURT: In that context --
MR. WILLMS: I beg your pardon?
THE COURT: In that context you include Gitksan and

Wet'suwet'en -- sorry -- Gitksan and Niskaes as Tsimshian informants?

MR. WILLMS: I do it in the sense that Dr. Barbeau does there.

THE COURT: Which has given Tsimshian the extended meaning to include both Niskaes and Gitksan.

MR. WILLMS: Yes. And he does say "Tsimsyans, the Gitksans of the Upper Skeena and the Niskaes of the Nass". And your lordship, of course, has heard evidence that there's now southern Tsimshian, a new language. But whether there's four or three --

THE COURT: Yes.

MR. WILLMS:

Q -- it's Tsimshian informants.

And you're aware, are you not, of the oral histories among the Tsimshian of the wolf clan coming down from the plateau?

A Yes.

Q The Stikine plateau?

A Yes.

Q Now -- and that is what?

A That is some of them. Some of them seem to come from other directions too.

Q Well, I just want to stick with this one because that's what Dr. Barbeau analysed here. And if you turn to page 8 of Dr. Barbeau's -- now, I better -- sorry, my lord. The page number is 7 at the top and the number in the right-hand corner is 14. And what Dr. Barbeau is purporting to do here, Dr. Daly, is take part of the story of the passage of Doubtful Chief under the glacier, which he found in a number of renditions of the history, and try to date it. That's what he's attempting to do here, isn't it?

A Yes.

Q And the way that he attempts to do it with the passage under the glacier is described in that paragraph at the bottom of page 7 or 14 in the corner:

> "The passage is familiar enough in the traditions of the eagle and wolf clans not to be a mere episodic patter in a folktale devoid of historical contents. Experts -- the late John Muir, explorer and geologist, the late Forrest A. Kerr, and George Hanson, geologists versed in the formation of the Stikine region -- all accept the Indian narrative as a fair indication of what the Stikine Glacier must have been at one time

not so long ago when the Indians were confronted with it in their drives down this river. It has now receded a very short distance from the Stikine River, perhaps less than a mile, after having somewhat pushed it out of its course."

Now, just pausing there and turning to the top of the next page, I won't read it to you, but what Dr. Barbeau does from that is in his first reference to time, he dates that arch from perhaps 200 to 400 years ago based upon the geological evidence that he's referred to and the explorer that he's referred to. That's what he does? I'm not asking you whether you agree with it.

A Yes. That's what he does.

Q That's what he does. And that is to do something like that is an appropriate method, is it not, to an estimate, to date an oral history?

A Yes.

Q Now, when he goes to page 11, typed 11, written in 18 up in the upper right-hand corner, he then deals with the reference in the tradition to sea otter hunting at the bottom of the page. And he says this:

"The reference in this glacier tradition to sea-otter hunting, after the Chiefs Hill fugitives had reached the salt water and joined a coast tribe, is another detail suggesting a historical date. Intensive sea-otter hunting developed only after the Russians and other sea traders began to press the natives, from the Aleutian Islands down to the Tlingit country, into their service; that is less than two hundred years ago."

Now, once again Dr. Barbeau has looked for something in the historical record to compare the oral tradition with, correct?

A Yes. That's right.

Q And it's appropriate to do that, to search the historical record in an attempt to date the oral tradition?

A Yes.

Q Now, finally, at the top of the next page he draws in the third comparative and says this:

"The passage under the glacier may not be much older than two hundred years. For the wolf fugitives no sooner had crossed the Tlingit country, and entered the Nass River to the south, than they experienced a fantastic cataclysm, which deeply impressed itself upon tribal memories. They were smothered by poisoned fumes and thrown back by a volcano in full eruption."

Once again pausing there, that's another appropriate historical tool to use to date oral history?

A Yes, it is.

Q And you're aware, are you not, that there -- of the Tseax, T-s-e-a-x, eruption on the Nass River in the late 1700's?

A Probably around early 1700's.

Q Well, I think we had a geologist date it 1770 in this trial.

A Well, I was under the impression it was in the first half of the eighteenth century.

Q But that's another appropriate comparison?

A Yes.

Q Are you aware of any direct historical evidence that would contradict Dr. Barbeau's dating of the origin of the wolf clan coming down the Stikine River to about 200 years ago?

A Well, you put me at a bit of a disadvantage. This isn't an area that I have particularly researched. But there are -- there are -- there's an assertion which is cited by many scholars by -- from the work of Phillip Drucker that these -- the origins of this clan of the wolves is very ancient. They talk about the -- the sun didn't come out for a very long time. The conditions were very grey and misty and dripping wet and so on. There's also the fact that many of the adaawk that are here are in a very abreviated and shortened form, and what little experience I've had in talking to elders, they quite often telescope what could be very long periods of time in one sentence. If they -- the intervening time had nothing of a recallable importance for their clan or their house group, then they'll dismiss it within a -- with one sentence, and there may be a huge amount of time has gone by. And we get some indication of that, of the complexity. We've heard Art Matthews on the stand. I

read his transcripts. And he was saying that their adaawk for public consumption are concise, and when we tell them within our house, they're very detailed and take hours and hours and they're full of instructions and details meant for the training of the family and how to live.

MR. WILLMS: That's not direct historical evidence. My question to you was are you aware of any direct historical evidence which would contradict Dr. Barbeau's dating of the origin of the wolf clan to about 200 years ago?

MR. GRANT: Well, my lord, I object at the phrasing of the question, because if my friend is referring to the passage under the glacier, as he said before about 200 years ago, that I agree, but Dr. Barbeau even here before he gets to that talks about a series of other events. And when my friend says this is the origin, I don't believe from my reading of this that that's what he's saying. He is talking about this particular passage under the glaciers 200 years ago, which is how my friend framed it the last time, but not necessarily origin.

MR. GRANT: It doesn't matter to me. I mean it's entitled the "Tahltan Origin of the Wolf Clan", but -- but it's the passage under the glacier and the volcano that I'm interested in. I don't want to argue with my friend about what Dr. Barbeau's talking about.

THE COURT: Well, you're asking the witness if he's aware of any --

MR. WILLMS: Direct --

THE COURT: -- direct historical evidence of that kind --

MR. WILLMS: Of that kind.

THE COURT: -- which bears on this question of the origin of the wolf clan.

MR. WILLMS:

Q Or documentary.

A You mean alternate volcanic evidence, that sort of thing? That hasn't been --

Q What I understand --

A By historical records you mean written documents about the authenticity of the adaawks or what?

Q No. I mean something like what Dr. Barbeau has done. Dr. Barbeau has taken a glacier and put that into, I suppose, where the Stikine Glacier was a couple of hundred years ago during the Little Ice Age. He's taken the volcano, and we know that there's an eruption. There was an eruption in the eighteenth century along the Nass?

A Yes.
Q And he's also taken the sea otter hunting. He's taken what I might call his assumptions of those three historical facts and used those to date the tradition. Now, I am -- my question to you is are you aware of any similar historical facts which would contradict that dating?
A No, I'm not.
Q Now, another work that you referred to and relied on in preparing your report was "Raven Clan Outlaws on the North Pacific Coast"; is that correct?
A Yes.
Q And in fact we've put in -- or in your evidence, earlier evidence, selected histories from raven clan outlaws were put into evidence, correct?
A Yes.
MR. WILLMS: My lord, maybe before I forget, I would like to mark the Dauenhauer, the section on the Russian fairy tale.
THE COURT: That will be 902.
THE REGISTRAR: - 4.
(EXHIBIT 902-4: Text and Context of Tlingit Oral Tradition - R.L. Dauenhauer)
MR. WILLMS: Thank you, my lord.
MR. GRANT: My lord, I checked with my friend's colleague and I'm not sure if it's listed by the provincial defendant or not. I don't believe it's published. It certainly hasn't come to my attention before and I've requested a copy of it before -- before completing the redirect so I have a chance to review it. Subject to that --
MR. WILLMS: Yes. There's no problem with that, my lord.
MR. GRANT: I presume it's not being put in for the truth.
THE COURT: No. We have enough trouble with our own fairy tales.
MR. WILLMS:
Q I'm putting it in the same way my friend's putting his in, my lord. I'll take whatever he's asking for. What I've put before you, Dr. Daly -- and perhaps you can confirm that this is the first page from "Raven-Clan Outlaws" and then there's the table of contents and then once again Dr. Barbeau has a monograph at the beginning before he actually goes into the oral traditions?
A That's right.
MR. WILLMS: Correct? My lord, maybe we could mark that right now.

THE COURT: 902-5.

(EXHIBIT 902-5: Raven-Clan Outlaws on the North Pacific Coast - M. Barbeau)

MR. WILLMS: Thank you.

THE COURT: We've had this before.

MR. WILLMS: Only an extract, my lord. This is a fuller -- it was marked earlier as Exhibit 849-26, but only two pages of it were marked.

THE COURT: Yes. All right.

MR. WILLMS:

Q The -- if you turn to page 4 of the monograph, Dr. Daly, and it's -- fortunately here it's 4 in typing and 4 in handwriting in the upper right-hand corner. You'll see that in the monograph Dr. Barbeau is referring -- and I'm down in that last paragraph, not in the footnote:

> "The Kanhaades from time immemorial had been one of the exogamic moieties or halves in a social order brought over from Siberia by the remote ancestors. One half or moiety intermarried with the other. The opposite moiety, devoid of a general name in Alaska, lately assumed, among the Tsimsyans alone, that of the wolf or Larh-Kibu ('On-the-Wolf). To this day the Tlingits never have systematized its name or crest, nor have the Haidas at any time admitted into their own ranks the wolf as a clan emblem. If the two main moieties in Alaska, the Yukon, and northern British Columbia have become known to us as ravens and wolves, it is merely due to cultural changes under the influence of the white man."

Just pausing there, you know in this monograph Dr. Duff is now reviewing once again among -- sorry -- Dr. Barbeau is reviewing once again among Tsimshian informants origin stories and other stories, but origin stories respecting the wolf clan and the raven clan? Those are the stories that he lists?

A Those are the stories that he lists, certainly, but he didn't collect them in that as a historical operation. It was an explanation of the crests on the poles and so on.

Q Yes. And so what he does in this monograph, and he

1 does it on the next page, is talk about the crests
2 which he was exploring at the top of the page. And he
3 says this about the wolves:
4
5 "The wolves split up into halves or
6 moieties -- one of them, the wolves proper,
7 and the other, the eagles, in imitation of
8 the Russian imperial crest."
9
10 Now, first you know that the Russian imperial crest
11 was an eagle?
12 A Yes. And I know it's been the subject of debate
13 over -- all over the cultural history of Europe as to
14 whether the indigenous cultures had their own eagle or
15 whether they adopted the Russian or the
16 Austro-Hungarian eagles. It's been a big debate in
17 folklore for many generations.
18 Q Just returning back to the -- you don't need to look
19 at it, but the wolf-clan invaders, you'll recall that
20 the Stikine Glacier, the Russian trade and sea otters
21 and the volcanic eruption were all put together by Dr.
22 Barbeau to date that at about 200 years ago?
23 A Yes.
24 Q Now, he carries on on page 5 here to say this:
25
26 "The eagle moiety or phratry, at the height
27 of the fur trade with the Russians and the
28 British, rose to the first rank among the
29 Tsimsyans, the Haidas, and the southern
30 Tlingits."
31
32 Now, you know that -- that ethnohistorically that's an
33 accurate statement, isn't it? The eagles did rise
34 above the other moieties?
35 A In the nineteenth century.
36 Q Yes.
37 A Among the coast Tsimshian, yes, and they exerted an
38 influence on the Gitksan as well and on the social and
39 political life of the Nass.
40 Q Legaix was an eagle?
41 A Yes.
42 Q Now, putting together the wolf clan coming down the
43 Nass and the Stikine, the glacier, the sea otter
44 hunting, the volcanic eruption, the rise of the eagle
45 clan among the Russians at the height of the fur
46 trade, isn't it possible --
47 A I wouldn't necessarily agree that the eagle clan rose

1 with the fur trade. There's a -- --
2 Q Let me change that. I'll --
3 A There's a florescence of their activities in that
4 period, but there are a lot of other events that have
5 occurred in their -- in their narratives that probably
6 preceded that period.
7 Q On the coast during that period, the period of Legaix,
8 for example, they were pre-eminent?
9 A But there have been many, many Legaix in a succession
10 going back a long, long way. One of Beynon's
11 informants was talking about a Legaix, and he asked
12 him -- it's in one of the introductions somewhere --
13 which Legaix you're speaking of, and he said, "A very
14 recent one." "How recent?" "Only about 10
15 generations ago", he said. So these names have --
16 through the process of feasting and system of
17 reincarnation and so on, the names and the
18 personalities go on and the contradictions they're
19 involved in tend to work out over several generations,
20 so you can't just limit a name of a chief to a certain
21 historic period. It tends to stretch out in an
22 endless way, as kinship systems tend to do.
23 Q Is it not possible, considering the historical facts
24 of glacier, the volcanic eruption, the Russian sea
25 otter trade and the level of the eagle clan during
26 that trade, that the eagle clan was created, as
27 suggested by Dr. Barbeau, in imitation of the Russian
28 imperial crest?
29 A No. I wouldn't agree with that, even though I don't
30 have the volcanoes and other glaciers to date it with
31 and the sort of analysis that is ongoing of such oral
32 traditions today where you look at the whole procedure
33 of how these things are remembered and how they're
34 performed, what is selected out at different stages of
35 the coalescing of the story. The -- the whole
36 symbolic set of meanings and events which are
37 associated with the supernatural, the -- they denote a
38 certain degree of ancientness to the telling as
39 opposed to more secular histories of wars and
40 political intrigue and so on, which is generally a
41 more recent phase, as well as the fact that we have
42 few instances in the living culture and things that
43 have come to light in the record of detailed tellings
44 of adaawks that there's possibilities for alternative
45 datings and a broader scope of the whole -- of the
46 whole situation than you find in the analysis of
47 Barbeau.

1 Q But one thing that Dr. Barbeau did was he did actually
2 try to date the oral history by reference to real
3 things?
4 A Yes, he did.
5 Q Now, just assume for a moment that -- never mind that.
6 Can you turn to page 40 of your report? And this is
7 in volume one, my lord. You say, Dr. Daly, that in
8 the paragraph -- the last paragraph on that page:
9
10 "Those scholars who address themselves to
11 the subject of native history today try to
12 integrate archaeological, ethnographic and
13 archival documentary data to produce an
14 accurate and meaningful cultural history.
15 This work is extremely complex, as Bishop
16 and Ray, (1976:122-123) point out."
17
18 And I'm going to show you now -- I'm putting before
19 you the first page from "Ethnohistoric Research in the
20 Central Subarctic: Some Conceptual and Methodological
21 Problems". And this is the Bishop and Ray that you're
22 referring to in your report?
23 A Yes. That's it.
24 MR. WILLMS: My lord, Exhibit 902.
25 THE COURT: 6.
26 (EXHIBIT 902-6: Ethnohistoric Research in the Central
27 Subarctic - C.A. Bishop and A.J. Ray)
28 MR. WILLMS:
29 Q Thank you. Now, here's what -- and you've referred to
30 these people. You relied on them in writing your
31 report; is that correct?
32 A Yes.
33 Q You will see that on page 122 in the last -- the
34 penultimate paragraph after a discussion of folk
35 histories and oral traditions, the authors say this:
36
37 "The validity of oral tradition as
38 historical 'truth' must be carefully
39 cross-checked against other categories of
40 data. Unless these canons are rigorously
41 adhered to, particularly with reference to
42 'memory ethnograph', ethnographic details
43 from different time periods may be
44 inadvertently jumbled together, fostering
45 the illusion of cultural stability."
46
47 Just pausing there, you accept that proposition, don't

1 you?
2 A Yes. And this is -- this is very much part of the
3 methodological cautionary tale things we've got to be
4 very careful about when we're assessing the data.
5 Q And, in fact, that's what Dr. Barbeau was doing in his
6 monographs? He was testing against other --
7 A Against --
8 Q -- other categories of data?
9 A Against the level of knowledge of his day and his
10 general perceptions and hunches about the time depth
11 on the coast. Of course there have been -- there's
12 been a fair body of work done since then.
13 Q Then you say here -- sorry. Bishop and Ray carry on:
14
15 "Such illusions are often manifest in
16 chronologies which include a seemingly
17 timeless 'traditional era' preceding one of
18 rapid modern changes."
19
20 Now, just pausing there, that's a fairly apt
21 description of the origin myths of both the
22 Wet'suwet'en and the Gitksan; is that correct?
23 A Where exactly is it on here?
24 Q I just carried on.
25 A Well, I didn't find where you were reading from.
26 Q Oh. I started with "The validity of oral histories"
27 and I read that and I just read to you the last
28 sentence in that paragraph. And --
29 A No. I wouldn't say that applies to the Gitksan and --
30 or the Wet'suwet'en, even though the -- there is a --
31 there's a difference in the nature of the -- of the
32 oral traditions between the two peoples. The --
33 there's no -- there's no timeless -- there's no sense
34 of timelessness. There's a --
35 Q Wasn't there a lot of sense of a long time ago?
36 A There's very much a sense of a long time ago,
37 certainly, and these are events at certain points in
38 the oral narratives which are considered to be very
39 ancient and they bring tears to people's eyes when
40 they're told because of the ancient ties that people
41 feel to their roots. And they're loaded down with
42 symbolism, which is very meaningful in terms of the
43 crest system and the songs and the whole cultural
44 system of meaning of the present day as well as in the
45 earlier part of the century.
46 Q I'd just like to carry on with what Bishop and Ray say
47 at that bottom paragraph in the first line. The

authors say this:

> "Even when employed carefully, memory ethnography can only provide totally accurate information for relatively short time spans, usually 100 years at the very most. Memory ethnography is most valuable to fill in information on events which were important to the people."

You'll accept what I just read to you as an accurate general proposition?

A In relation to what -- yes. In relation to what I -- the distinction I made earlier about the oral recall of events that someone has experienced or has learned from their grandparents, say. And we all use that and we all have to vet its accuracy through cross-referencing and asking several people for the same information and so on.

Q But that doesn't apply to the Gitksan and the Wet'suwet'en oral histories; is that your evidence?

A It doesn't apply to the -- to the oral histories which are public events, which are witnessed and revealed in the course of feasting. That's the kungax and the adaawk. But it certainly applies to the -- to the reminiscences of people about what life was like at the turn of the century or in the early part of the nineteenth century, and it applies to the stories which people tell sometimes in the course of the adaawk but in the course of instructing and informing children about what you should do and what you shouldn't do, just like the Russian folklore's full of stories of cautionary tales about how to live your life and how to not live your life. That's a different quality, a different type of oral tradition.

Q So there's --

A So what they're talking about here is -- especially when you've got a culture which is -- is rather tattered and there are only a few speakers left who remember the past. This is what's usually called salvage anthropology and it's a key informant process where you've got to rely on the knowledge and authority of just the few people who are remembering the past, and in those conditions these scriptures are very much applicable.

Q So you're drawing a distinction between the traditions that are told at feasts and the traditions that are

1 just passed on generation to generation within a
2 house?
3 A No, because what's passed on generation to generation
4 in a -- inside the kinship grouping of the house is
5 usually an elaboration of what's told in the feasts.
6 But in addition to that, there are lots of other
7 things that are told, all the stories about the
8 animals and how you learn from -- and the wiget
9 stories and the trickster stories all through the
10 hunting areas of North America. There's hundreds and
11 hundreds of them, and they all inform the people about
12 different aspects of life with a lot of humour about
13 when you do things wrong, you get -- you really get
14 into a pickle. This is the sort of moral of the story
15 that is -- comes out.
16 Q I'm showing you an extract from an article by
17 Catharine McClellan entitled "Indian Stories About the
18 First Whites in Northwestern America". Have you read
19 this article?
20 A No, I haven't.
21 Q But you recognize Catharine McClellan as an
22 anthropologist who's worked among the Athabascans?
23 A And I know Margaret Lantis' book that it comes from.
24 Q Now, the -- at pages 115 to 118 -- and that's the
25 extract that I've put before you -- the author
26 discusses the classification of Indian stories about
27 the first whites. And starting partway down that
28 second paragraph, she says this:
29
30 "As it happens, all the Tlingit and
31 Athabascans being considered distinguish two
32 main classes of story which seem to
33 correspond fairly well with Bascom's 'myth'
34 and 'legend'. The first class is designated
35 by native terms which are often translated
36 as 'long ago stories' or occasionally as
37 'fairy stories'. The chief actors are
38 usually animal-named beings with superhuman
39 powers, who nevertheless look and behave
40 much of the time like human beings and who
41 only rarely assume animal guise. However,
42 they also participate in events which have
43 nonhuman qualities and which help to explain
44 the ordering of the world today. Examples
45 in this category are the familiar raven
46 stories of the coast (told as crow stories
47 in the interior) or the Smart Man cycle of

the interior."

Just pausing there, there are stories like that in Gitksan and Wet'suwet'en oral tradition, aren't there?

A Yes, there are.

Q The second paragraph she says this:

"The second class of prose narratives is designated by terms which the Indians usually render in English as 'histories' or 'true stories', although 'long ago stories' are, of course, thought to be equally true. These tales tell what has happened to the narrator himself, to his contemporaries, or to his immediate ancestors - for example, about a shaman's acquisition of power or the feuding between the Inland Tlingit and the Tahltan. It is in this category that the Indians usually put their stories about the first whites, if they classify such a story at all. In a general way all such stories tell of the ordinary world of today or the not-too-distant past."

Now, just pausing there, there are stories or oral traditions among the Gitksan and Wet'suwet'en that fall into that category, aren't there?

A There are, yes.

Q Now, just carrying on, the author says this:

"Yet these categories are loose ones at best, and neither our own characterization of their nature nor that of the Indians should lull us into thinking that the scheme is absolutely rigorous. Thus, they may explain that 'long ago stories' are distinguished from 'histories' chiefly by chronological criteria - because they happened in 'myth time' - but myth-time and mythlike events can nevertheless form important parts of 'histories'. In fact, both the Tlingit and the Athabascans have what appears to be a high tolerance for discontinuity in time, in the sense that it is possible for myth-time to exist simultaneously with either the present or the recent past."

Now, in respect of the last sentence, if you put in Gitksan and Wet'suwet'en, the sentence would be accurate as well, wouldn't it?

A You'd have to make a distinction between them. I think it to some extent would apply to the Wet'suwet'en, but with the Gitksan there is a much stronger sense of linear time. The myth -- what she's calling a myth time here or the events which are infused with great power and meaning of a nonmaterial type are generally events in -- considered to be in the distant past while with the Wet'suwet'en it is sometimes much more recent.

Q You mentioned the raven and the darkness earlier in your evidence today, and on 117 at the bottom, the author deals with raven origin stories in that last full paragraph, and she says this:

> "Even 'long ago stories' often seem to lack our idea of true temporal sequence. While many narrators of the raven cycle tell of certain key events in much the same order, the ordering is really one of logic: after the earth is made, raven gets water, then he gets daylight, and so on."

Now, that's accurate, isn't it?

A That's not what I was talking about.

Q I thought you were talking about the darkness and the mist and the --

A I was talking about the mist and the fact that there was no sun in the early parts of the -- a number of the adaawks for the different clans and --

Q That could be getting daylight?

A I'm not a climatologist or a quaternary specialist, but I have consulted a few people who said that this is consistent with the deglaciation conditions of steam and mist and lack of clear skies, and so there are various -- they're just hypotheses, but there are other alternate explanations.

Q Like the Ice Age?

A But the raven stories are what I would call stories, exemplary stories, as opposed to the histories and validations of -- of family and clan legitimacy to property and to -- to speak for a kinship group in the society today.

Q If you turn to page 118, she concludes with this

paragraph. In the middle of the page before she starts talking about function, style and content, she says:

> "None of the Indians, however, should ever face the dilemma of the western historiographer in deciding what is fact and what is fiction in their oral literature. In theory, at least, no deliberately fictitious stories are ever told. So far as I know, Bascom's category of folktale does not exist in any of the groups. Like all their other stories, therefore, those about the first whites are true."

Now, that is the approach that you adopted in assessing the oral histories that you reviewed, isn't it? You adopted the Indian approach?

A It's emphasized in the literature on methods and the attitude between the culture of the researcher and the culture of the researched that you pay attention to what people are saying and look in as minute detail as you can at the actual -- well, the jargon word today is text that the people utter and analyse it as a true document and then see what implications you can draw from the whole thing instead of jumping to conclusions partway through the process, which has unfortunately been a tendency in our profession.

THE COURT: Is this last paragraph spoken cynically? "In theory, at least, no deliberately fictitious stories are ever told." Is she saying that's what they say or --

THE WITNESS: I think she's saying that this should be a research approach; that you should assume that this is a true statement by the people and then assess it in terms of your anthropological knowledge. But obviously --

THE COURT: I have evidence from Mrs. MacKenzie, for example, that there are stories --

THE WITNESS: Yes.

THE COURT: -- apart from their adaawk.

THE WITNESS: I was going on to mention that. There are a lot of stories in all of the cultures along the British Columbia coast which are hilarious stories. They're just stories and they're out of time and they're important for humour and for teaching a moral or a variety of things.

THE COURT: If this isn't cynical, well then this writer is

1 saying that we should assume to be true what the
2 Indians themselves don't say is true.
3 THE WITNESS: She's assuming for in order to be able to typify
4 them and evaluate them as sources of linear history as
5 we know it, they should be for purposes of research be
6 treated as true data, I think. I don't think it's a
7 cynical statement.
8 MR. WILLMS: My lord, I think the answer to the question is
9 that -- is to go back to the very first part of
10 McClellan's article where she says there is -- if you
11 read partway down, she talks, first of all, about two
12 kinds of narrative.
13 THE COURT: I'm sorry. Where are you now?
14 MR. WILLMS: I'm on page 115.
15 THE COURT: Yes.
16 MR. WILLMS:
17 Q And she's talking about Bascom talking about two major
18 kinds of prose narrative are myths and legends.
19
20 "Both kinds of narratives are thought to be
21 true, unlike the third category: folktales,
22 which are pure fiction deliberately devised
23 for entertainment."
24
25 Now -- so the part that I wrote, and I apologize for
26 not reading that first -- the part that I wrote -- or
27 read. The part that I wrote. I wish. The part that
28 I read, my lord, is not the folktale part. It is the
29 part that is myth or legend. And I -- what I
30 understand the author is saying is that the
31 ethnographer may be concerned about whether to his
32 view the story is true or not, but from the Indians'
33 perspective they should be assumed to be true. That's
34 what I -- do you agree with that? Is that essentially
35 what the author is concluding there? That when you
36 look at it, you shouldn't impose the western
37 historiographer's perspective on the teller of the
38 story?
39 A That's right.
40 Q However, the western historiographer's perspective is
41 important for western civilization's attempts to date
42 the history, isn't it?
43 A Yes.
44 MR. WILLMS: Could we mark that as Exhibit 802 -- 902?
45 THE REGISTRAR: -7.
46 THE COURT: 902-7.
47 (EXHIBIT 902-7: Indian Stories about the First Whites

in Northwestern America - C. McClellan)
MR. WILLMS: And I'm going to turn to another document, my lord.
THE COURT: All right.
THE REGISTRAR: Order in court. The trial will adjourn until two.

(PROCEEDINGS ADJOURNED)

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

Kathie Tanaka, Official Reporter
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1 (PROCEEDINGS RESUMED PURSUANT TO LUNCHEON ADJOURNMENT)
2
3 THE COURT: Mr. Willms.
4 MR. WILLMS:
5 Q Dr. Daly, you will recall, and you don't need to turn
6 back to it, but the McClellan reference drew a
7 distinction between two types of stories or two types
8 of histories, one in which the informant himself was
9 able to place himself as part of the story --
10 MR. GRANT: Sorry, which one of them is it? He referred to two
11 McClellans.
12 MR. WILLMS: Is it's the last McClellan. Maybe I will just --
13 MR. GRANT: Tab seven.
14 MR. WILLMS:
15 Q It's 902-7 at page 116 what McClellan describes and I
16 read this to you. This is the second line:
17
18 "These tales tell what has happened to the
19 narrator himself, to his contemporaries or to his
20 immediate ancestors."
21
22 A Yes.
23 Q Are you with me?
24 A Yes.
25 Q So that there are some oral traditions where you may
26 be able to date the tradition by internally
27 referencing the tradition?
28 A Yes.
29 Q All right. And in fact Exhibit 896-68 which I think
30 is the --
31 THE REGISTRAR: Green book.
32 MR. WILLMS: Green book.
33 THE COURT: Green book?
34 THE REGISTRAR: Yes.
35 THE COURT: Thank you.
36 MR. WILLMS: I can't find mine, my lord.
37 THE REGISTRAR: I don't think yours is green.
38 MR. WILLMS: I know mine isn't green. That's probably why.
39 It's gray.
40 Q If you turn to tab 68, this is -- and you refer to
41 this in your evidence in chief. This is history
42 number 46 entitled Lutrhaisu, L-u-t-r-h-a-i-s-u, and
43 Naeqt, her son. This is one of the ones that you
44 relied on in your report?
45 A Yes.
46 Q And when you look down you'll see that this oral
47 history was recorded, the informant was Salomon

1 Johnson, and if you look down in the middle of the
2 paragraph beside interpreter Mrs. Constance Cox, it
3 was recorded in 1920?
4 A Yes.
5 THE COURT: Where do you find all that information?
6 MR. WILLMS: Sorry, my lord. It's on the very first page and
7 the information is in the very first paragraph in
8 parenthesis. So it starts off saying the informant
9 was Salomon Johnson. That's the very first line.
10 THE COURT: Oh, yes. Yes, I see it.
11 MR. WILLMS: And then if you -- and it describes what the
12 narrative is, and then it goes down and it describes
13 that the interpreter was Mrs. Constance Cox at
14 Hazelton in 1920.
15 THE COURT: Thank you.
16 MR. WILLMS:
17 Q So now you'll -- the paragraph starting with -- the
18 next paragraph it says:
19
20 "Right after the flood, which is called Ptalks,"
21
22 P-t-a-l-k-s.
23
24 "Swell-of-the-water, the town of Temlarh'am
25 On-the-good-land-of-yore was established."
26
27 And then I just skip down, you will see there is a
28 line there that says:
29
30 "My great grandfather was also living at
31 Temlarh'am."
32
33 That's six lines down in that paragraph.
34 A Yes.
35 Q So that accepting that what this informant is saying
36 is historically accurate, Temlaham exists in the time
37 of his great grandfather or perhaps 60 years or maybe
38 80 years prior to 1920?
39 A Well, that's one interpretation. But among the
40 Gitksan there is not much concern generally for
41 generations prior your grandparents' generation.
42 Anyone from beyond that is quite often referred to in
43 a very cavalier fashion as being an ancestor is a
44 grandfather or great grandfather or a grand uncle
45 sometimes. So it's -- it has to be taken with a grain
46 of salt in terms of the common usage of these terms in
47 the community.

1 Q All right. Well, if you turn to the second page here
2 and look to that very middle little paragraph there,
3 and this is the informant speaking again, the last
4 line of that middle paragraph, the informant says:
5
6 "It was my great grandfather, Yae'l"
7
8 Y-a-e-l,
9
10 "who had founded the Village of Kispayaks."
11
12 A It's the same comment would pertain there I would
13 think.
14 Q So it could be his great grandfather, it could be
15 somebody else, is that what you're saying?
16 A I'm saying that by the whole structure of the whole
17 series of adaawks, it's unlikely that it was his
18 living grandfather or his own blood tied great
19 grandfather.
20 Q But if we accept this particular oral history, which
21 you refer to and rely on in preparing your report as
22 being literally true, then that would place both
23 Temlaham and Kispiox in historic times, correct?
24 A Well, literally true in whose terminology? That's the
25 question. You are working between two sets of -- two
26 assumptions about the nature of history and how you
27 account for actions of one's ancestors.
28 Q Well, you accepted that when they said oolachan grease
29 in this oral history, he meant oolachan grease?
30 A I think oolachan grease is a little more
31 straightforward than great grandfathers.
32 Q I see. Well, maybe we can look at another oral
33 history that doesn't have great grandfathers in it.
34 THE COURT: Are you finished with this?
35 MR. WILLMS: Yes, my lord.
36 MR. GRANT: This is the whole --
37 MR. WILLMS: This is the whole thing.
38 Q Now, I'm showing you -- and this is another of the
39 Raven Clan Outlaw origin agreement. It's not one of
40 the ones that you've listed in your report and it's
41 not one of the ones filed as an exhibit, but it's
42 number 84 from Raven Clan Outlaws. And this is one of
43 the oral histories that you reviewed in preparing your
44 report, isn't it?
45 A Yes, I believe so.
46 MR. WILLMS: My lord, might this be --
47 THE COURT: 902-7.

THE REGISTRAR: No. 902-8.
MR. WILLMS: 902-8, my lord.
THE COURT: All right. What was seven, please?
THE REGISTRAR: It was the one referred to Indian stories about the white.
THE COURT: Yes. Thank you.

(EXHIBIT 902-8: Document entitled Indian Frontiers at Kiskagas and Babine)

MR. WILLMS: And you'll see --
MR. GRANT: My lord, just to be clear, I don't think my friend intended to mislead, but my recollection of how he framed it is that Dr. Daly did refer to the entire Raven Clan Outlaws in the bibliography and the ones that were filed were an excerpt and section of those and as I understand he is saying this is one from that same group.
MR. WILLMS: Yes. I thought I said that, but --
MR. GRANT: Okay.
MR. WILLMS: But I'm very grateful to my friend there.

Q The informant you'll see is Arthur Hankin, Hazelton, in 1923?
A Yes.
Q And so -- and he starts off:

> "I have heard chief Kaidarhkyit, Almighty, of Kiskagas, a Larhsai'l, say that the Indians moved to Bear Lake from Kiskagas to be with the Hudson's Bay Company. They disagreed over the boundary line between the Gitksan and the Tsetsaut. So they went to war over it."

Now, just pausing there, there is no great grandfather there?
A No.
Q And that's in historic times, isn't it?
A Yes.
Q And he carries on to date it, and I am sure the dating is by Dr. Barbeau, but I'm sure it's not far off. You will see the second line from the bottom, the second paragraph:

> "This happened not so long ago, after the Hudson's Bay came to that country."

Now, 1808 would be the date put in by Dr. Barbeau?

A That's right.
Q
"The man who brought about this settlement is living still."

Do you see that?
A Yes.
Q So there is no doubt that this oral history about the dispute over the boundary is in historic times?
A It would be in the early part of the nineteenth century probably.
Q And it's a boundary line between -- you recognized the Tsetsaut?
A Yes.
MR. WILLMS: I am finished with that one, my lord. I am going to move on to another one.
THE COURT: Thank you.
MR. WILLMS:
Q Now, I am showing you -- it's number 80 in Raven Clan Outlaws and it's entitled "The Niskae and the Tsetsaut." This is another one that you reviewed in preparing your report?
A Yes.
MR. WILLMS: My lord 902-9.
THE COURT: Yes.

(EXHIBIT 902-9: Document entitled "The Niskae and the Tsetsaut")
MR. WILLMS:
Q And you'll see that this is information collected for the National Museum in manuscript form by James Teit from the Tahltan ca. 1915. Are you aware of the material that James Teit collected from the Tahltan?
A Yes. I haven't gone through in detail, but I'm aware of it.
Q Anthropologically speaking, is there any information that you are aware of that Tahltan oral history is less reliable or more reliable than Gitksan oral history?
A I really don't know much about the Tahltan oral history.
Q Now, in this history it starts off:

"Some Indians claim that the Tsetsaut were the same as the old Bear Lake tribe."

And I won't describe the Tsetsaut country, but

1 starting on the beginning of the next paragraph it
2 says this:
3
4 "They stretched across the head of the Skeena
5 River above the Kuldo River over to Bear and
6 Sustut Lakes. They had the Gitksan south of them
7 on the Skeena River, and the Babines south of
8 them, at Bear Lake."
9
10 And I won't go through the Ominica and the Inginika.
11 But then to date you will see the beginning of the
12 next paragraph:
13
14 "Over one hundred years ago, it is not known how
15 long ago, one of the Tsetsaut killed a Niskae near
16 Miziadin Lake."
17
18 Now, just pausing there, are you aware from your
19 review of the oral histories of the existence of the
20 Tsetsaut in the Upper Skeena and near Bear Lake in the
21 oral histories that you've reviewed?
22 A Well, the various people have been called Tsetsaut and
23 some accounts refer to interactions with these people
24 around Bear Lake and others around Miziadin farther to
25 the west.
26 Q Carrying on, it describes in that paragraph where I
27 read you the first line, an attack after the killing
28 of the Nishga, and then the third line from the
29 bottom:
30
31 "The Gitksan pushed up the Skeena River on
32 trapping expeditions as far as Bear Lake. The
33 Carrier or Babine trappers also came in there, and
34 the Sekani from the east. The fur traders put a
35 station there. This was resented by the Gitksan,
36 who carried on all the trade with the Bear Lake
37 Indians."
38
39 Now, just pausing there, there is no question that the
40 timing of this oral history and that description is in
41 historic times, is that correct?
42 A That's correct.
43 Q And is that consistent with -- oh, now, this is the
44 Tahltan oral history. Is that consistent with the
45 Gitksan oral histories that you reviewed?
46 A The events are consistent, I think, roughly. The
47 interpretations probably are somewhat different.

1 Q How about the timing?
2 A Well, some of the -- some of the animosity between
3 people in the Gitksan areas and those referred to as
4 Tsetsaut I think are quite definitely in historic
5 times and others may be somewhat earlier. But there
6 is some -- some of them are -- yes, they would be
7 consistent.
8 MR. WILLMS: This is -- I am going to move on to a different
9 topic, my lord, but I have one more question before I
10 move to the other topic.
11 Q In your interviews with Pearl Trombley and Mary
12 McKenzie - you don't need to turn to it unless you
13 want to, but you noted a description of the use of
14 storage pits by Pearl Trombley's grandmother. Do you
15 recall --
16 A Yes.
17 Q -- having that described to you?
18 A Yes.
19 Q Did anyone tell you when either the Gitksan or the
20 Wet'suwet'en stopped using storage pits for storing
21 food?
22 A Well, Mary Johnson gave me a graphic description of it
23 that she had observed in her childhood. So it would
24 be in existence sometime at least in the earlier part
25 of this century. And the one that Mary McKenzie and
26 Pearl Trombley were describing or the series of pits
27 was in the Four Mile Canyon area between Kispiox and
28 Gitanmaax.
29 Q Did anybody ever show you one?
30 A They -- they showed me the location, but I couldn't
31 distinguish any -- any depression in the ground there.
32 I have seen the depressions up in Kisgagas. There is
33 a whole row. They go on a huge area. It's upriver
34 from the old village site on the north side of the
35 river.
36 THE COURT: I am not sure how I am going to treat that evidence,
37 what this witness says of what Mary McKenzie told him.
38 Oh, I suppose if she is a plaintiff it's a statement
39 that's made against interest, but she wasn't asked
40 about it.
41 MR. WILLMS: Well, my lord --
42 MR. GRANT: It was Mary Johnson.
43 THE COURT: It was Mary Johnson.
44 MR. GRANT: It still applies, my lord.
45 MR. WILLMS: I will just say this, my lord, because we don't
46 need to really take up much time right now, but first
47 of all, the reference to storage pits and Pearl

1 Trombley's grandmother has been marked by my friend.
2 So that's in evidence. That was marked by my friend.
3 THE COURT: Yes.
4 MR. WILLMS: And secondly, and your lordship will recall Miss
5 Albright's reluctance to say when they stopped using
6 them, and that's what that goes to.
7 THE COURT: Yes. All right. Well, it's just a matter that --
8 it's a fleeting concern I have and I don't think it's
9 going to be determinative of the principal issues in
10 this case.
11 MR. WILLMS:
12 Q Now, what I would like to turn to now, Dr. Daly, is if
13 you could have your report in front of you and I think
14 it's Volume 1 at page 215.
15 MR. GRANT: My lord, if my friend is finished with 902-8 and
16 902-9, I just want to comment that my friend's use of
17 the term oral history may be different than mine. The
18 fact that something is typed out in this format does
19 not mean it's an oral history and I will deal with
20 them on redirect. But --
21 THE COURT: All right.
22 MR. GRANT: -- I just don't want you to be left with that
23 impression that we agree with that.
24 THE COURT: All right.
25 MR. WILLMS: I am simply putting them in for the same reason my
26 friend put the other ones in, my lord. Whatever he
27 says they are I say they are.
28 MR. GRANT: Well, there is different things. There is different
29 categories and the same format, that's all.
30 MR. WILLMS:
31 Q On page 215, Dr. Daly, of your report, and there are a
32 couple of extracts that I would like to put to you in
33 succession and then ask you one question. And the
34 first one is on page 215, and you say in that second
35 paragraph -- and here you're talking about access to
36 fishing places. You say this:
37
38 "Common access also pertained, at different times,
39 to one or two fishing places near villages. For
40 the most part, this common use has been limited to
41 villagers and their close kin, by the consent of
42 the community."
43
44 Now, the next one is on page 226 and there in terms of
45 the rights to use places, you've cited Martha Brown's
46 commission evidence. And it's under the rights to use
47 one's in-law's places after marriage, and you say --

the answer that you quote ends with:

> "This has all been the Indian law to oversee -- all chiefs to oversee other members of in-laws."

Then -- so that's what Martha Brown said and then on page -- flipping ahead to page 229.

THE COURT: I can't help but wonder if that's a complete answer, whether she didn't mean oversee other members of something comma and in-laws. How do we ever know these things? It doesn't really make much sense the way it reads.

MR. WILLMS: Well, I will just take the conclusion then, my lord, in the next line that it suits the same purpose.

THE COURT: All right.

MR. WILLMS: The witness says:

> "This quality of inter-House and inter-Clan alliance can be seen in a Feast when a chief will announce some of the persons he is delegating to use and care for parts of the House territory."

THE COURT: All right.

MR. WILLMS:

Q So there is a reference to use again. And then if you can turn to page 229, you talk about use again in the first -- in that full paragraph on 229 at the start you say:

> "In this way, succession to chiefly names through a matrilineal line of inheritance transmits the rights of ownership and resource management from one incumbent to another. Succession to a chiefly name also transmits the right to grant or withhold temporary permission to use the territories."

So that's use again on page 229. The next -- well, sorry, I have to work backwards here, my lord. I tried to work forwards and it doesn't always work. Go back to page 225, Dr. Daly. At the bottom again you are talking about access:

> "In some non-state economies inheritance through kinship tends to be highly flexible and open to many categories of relationship. In other non-state economies, including those of the Gitksan and the Wet'suwet'en, permanent access to

1 landed resources is restricted, and available only
2 to those with a narrowly defined kin-based right
3 to membership."
4
5 And then finally, the final extract on this point is
6 at 243, and this is in respect of boundaries where you
7 quote Alfred Joseph as saying in that quote there:
8
9 "Whatever we did was always done by the advice of
10 the chiefs and elders."
11
12 Now, you talked earlier about the community, you
13 talked later about the chiefs and here it's the chiefs
14 and the elders. And my question to you is: Who has
15 the right to grant or withhold permission for
16 temporary use of property?
17 A The chief of the House.
18 Q Now, can I take from your opinion that Gitksan and
19 Wet'suwet'en society is in your opinion an egalitarian
20 or is it hierarchical?
21 A It's both. It's egalitarian in terms of the relations
22 between the kinship groupings and there is a degree of
23 hierarchy and a variety of social statuses within
24 those groupings. The people who have been described
25 by some of the informants as princesses and princes or
26 as ordinary people. And in the past under some
27 circumstances there seems to have been a little bit of
28 captives or slave population, but everyone stresses
29 that it was always a peripheral in this area unlike
30 the coast where it was much more significant.
31 THE COURT: I am sorry, did you say it was egalitarian within
32 the kinship groups?
33 A Between the groups that no group was allowed to rise
34 above the others for very long. There would be
35 mechanisms to redress the imbalance.
36 THE COURT: The hierarchical within the group, within individual
37 groups?
38 A Yes.
39 MR. WILLMS:
40 Q Now, just on this point of egalitarianism and
41 hierarchy, I am showing you -- this is an extract from
42 Exhibit 734. Now, it's an extract from Neil
43 Sterritt's evidence before a Parliamentary Commission.
44 And -- Penner Commission, my lord, I believe. And
45 the -- first of all, you are aware that the
46 Gitksan-Wet'suwet'en Tribal Council is a band council?
47 MR. GRANT: That's not right. My lord, so I -- whether he is

aware of it or not, it's not correct what my friend has asked.

MR. WILLMS:

Q All right. You are aware that it's an elected council?

A Yes.

THE COURT: Which one?

MR. WILLMS: The Gitksan/Wet'suwet'en Tribal Council.

MR. GRANT: That's not correct either, my lord. And the Constitution is before you as an exhibit.

THE COURT: Yes.

MR. GRANT: So my friend's assumption is wrong.

MR. WILLMS: Okay. All right.

THE COURT: The band councils are elected and the Tribal Council is elected. Not a --

MR. GRANT: Well, it's -- it was a complex arrangement, but it was a delegated system and the Constitution is before you as an exhibit, I believe.

THE COURT: Yes.

MR. GRANT: But my friend's statement is incorrect.

MR. WILLMS:

Q All right. Well, this is what Mr. Sterritt said to the Penner Commission. The first page that I have given to you is -- it's got 8:45 in the upper right-hand corner. And he says this in the third paragraph, Dr. Daly:

> "Maybe I might have given a wrong impression about the Simgiget and the tribal council."

Now, just pausing there. Do you know what the Simgiget is?

A Those are the hereditary chiefs of the Gitksan.

Q

> "The hereditary chiefs, you could say, are blessing the tribal council. They see it as their vehicle to work on this issue. Over the last eight years it has been at times a direct struggle between the band councils and the hereditary chiefs, but as the band councils started to understand what was happening there was a lessening of that tension, a more cooperative working relationship between the high chiefs and the band councils. The tribal council really is an arm of the band councils, by definition, but through our activities and our policies we are working on behalf of the high chiefs and trying to

1 work also for the band councils. It is a
2 dilemma."
3
4 Now, in your investigations in the community, did you
5 observe that dilemma?
6 A In what -- in what sense? That's a pretty broad
7 question.
8 Q Well, did you observe a struggle between the band
9 council and the hereditary chiefs?
10 A Well, I didn't attend any band council meetings. I
11 have talked to and have heard various things within
12 the communities pertaining to matters of the
13 particular bands and issues of the Tribal Council.
14 They -- my impression was that they are -- basically
15 were working in two different areas for the most part
16 with some overlapping of social services that they
17 respectively provide.
18 Q Now, if you turn to the next page --
19 A And also a lot -- there is a lot of the hereditary
20 chiefs who were involved in both processes. It's --
21 it would be hard to characterize it whether this was a
22 battle or whether it was a co-operation.
23 Q I am just asking if there is something you saw. Did
24 you notice anything that might qualify for a struggle
25 between the band council and the hereditary chiefs
26 while you were there?
27 A No, I don't think I did.
28 Q All right. Now, turning over to the next page, which
29 is 8:10 in the upper left-hand corner where Mr.
30 Sterritt -- if you look just below the three hole
31 punch on the left-hand side and not that paragraph,
32 but the paragraph "Our name for the high chief."
33 A Yes.
34 Q
35 "Our name for the high chief is Simgiget. 'Sim'
36 in front of the 'giget' is very important, because
37 it speaks to the truth; it speaks to what is real.
38 They are the people with authority, with power;
39 and therefore they have to have the qualities of
40 leadership, all the qualities you require for any
41 leadership group."
42
43 Now, your experience in the community and your
44 participant observation, did it confirm that? Is that
45 accurate?
46 A Yes, it is.
47 Q Okay. Now, just carrying on:

"The other people... We use that as a triangle; and that applies to any society in the world, including Canadian society today. There are people with authority and people without. So it was with us. We had the Simgiget and the Lixgiget, and the Lixgiget are simply people without authority. That does not mean they are not important, just as any citizen or voter in Canada is important."

Now, once again, based on your participant observation in the community, is that accurate?

A Yes, that's accurate. And the other thing is that both the Simgiget and the Lixgiget are linked by ties of blood and marriage. So it's not -- it's quite often portrayed as though it were a highly stratified class society. But it leaves out the linkages that follow through the lines of blood and marriage.

Q At any of the Feasts that you attended, did you observe any elections by the Lixgiget of chiefs?

MR. GRANT: Of?

MR. WILLMS: Chiefs.

MR. GRANT: Hereditary or elected?

MR. WILLMS:

Q No. Hereditary chiefs, any election, any voting?

A I don't know that there was anybody that constituted -- any political grouping that constituted Lixgiget.

Q Well, I think that's clear if you turn to the next page of the extract that I have handed to you, Mr. Sterritt drew planning hierarchies past, present and future. By the way, did you review this in preparing your report?

A No, I didn't.

Q Did you even know it existed?

A No, I didn't.

MR. GRANT: What, the Penner report or this graph?

MR. WILLMS:

Q Neil Sterritt's evidence at the Penner Commission.

A No. I didn't even know he was at the Penner Commission.

MR. WILLMS:

Q And you will see here that Mr. Sterritt sets out planning hierarchies. And if you look, he's got two columns in the middle: past and present. And past he's described as traditional. And present

1 fed-Indian. Do you see those columns there?
2 A Yes.
3 Q And if you go down those columns and you review them
4 to the activity on the left-hand side, you'll see that
5 for the past all of the policy making activities are
6 the Simgiget, correct?
7 A Yes.
8 Q So the Lixgiget are not involved in policy. They are
9 involved in -- according to this diagram, they are
10 involved in the operations if you go below the line,
11 but not the policy?
12 A I suppose so. I don't really know what it means.
13 Q Now, is it your understanding that people who could be
14 called Lixgiget are allowed to vote in band council
15 elections?
16 A Oh, sure.
17 Q Now, you say at page 174 of your report -- and just
18 please keep Mr. Sterritt's diagram open in front of
19 you. At 174 in the top paragraph you say, in that
20 last line:
21
22 "Decision-making in these groups -- "
23
24 And you are referring to House groups,
25
26 " -- is consultative; the views of the chief, the
27 elders and general members are the regular
28 components of decisions taken with regard to
29 ownership rights."
30
31 Now, is that traditional Indian government as you
32 understood it in 1986?
33 A Yes.
34 Q So that in 1986 if you were going to draw this
35 diagram, you'd move the Lixgiget up into the
36 policy-making area as well?
37 A Well, I have trouble with schemes like this.
38 Policy-making.
39 Q Well, do you have trouble with the concept of
40 developing a policy and then implementing the policy?
41 A No. No.
42 Q And as I understand this, the traditional method
43 according to this diagram is that the development of
44 the policy is Simgiget and the implementation is the
45 Simgiget and the Lixgiget?
46 A Well, I don't know whether that's what it means or
47 not. It's hard to -- it looks like one of these

teaching devices for a seminar.
MR. GRANT: My lord, I am just hesitating -- I presume that this was an exhibit, that this particular graph was put to Mr. Sterritt and he explained it. I am operating on that assumption. I was not present during this cross.
THE COURT: I think it was. I have seen this before and I think it was explored, but of course I have just been given a fresh copy. If I knew where it was before I could quickly tell you if I had my notes on it.
MR. GRANT: Yes. I was looking for --
THE COURT: But I wouldn't have them here anyway.
MR. GRANT: No. I don't have Mr. Rush's here and I was looking to check to see if he had notes of it.
THE COURT: I am sure I have seen this plan before.
MR. WILLMS: It's Exhibit 734, my lord.
THE COURT: Mr. Sterritt was cross-examined on this diagram. I am almost certain.
MR. WILLMS:
Q In your discussions with the hereditary chiefs, it was clear to you that they wanted to return to traditional Indian government?
A Yes. Not that they wanted to return necessarily to the technology of the past, but the decentralized way of making decisions, the consultation within the kinship group and between those you are closely linked with in every day life and through your historical ties. To that extent I'd say yes.
Q Now, could you turn to page 136 of your report.
MR. GRANT: Which page?
MR. WILLMS:
Q 136. In your report on page 136 in that paragraph starting about the middle of the page you say:

> "This is not to say that a man's House owns his gillnetter, store or sawmill, but rather that the House, at times of Feast-holding, has the right, through the person of its chief, to ensure that a substantial portion of the income from the wage occupation or the enterprise be devoted to the proper conduct of House affairs, and particularly to feasting obligations which centre upon the management of the territories and the proper conduct of marriages, births, deaths and successions."

Now, just pausing there. In your interviews with the hereditary chiefs, they would like to return to that

1 system of government?
2 A They would like to return to the decentralized system
3 somehow based on the way they organize their Feasts
4 and the way they organize their extended family
5 economies and so on today. The degree to which it --
6 such a process would be systematized, I don't think
7 they have -- not all the chiefs have thought that
8 through and it's a whole thing that's in -- under
9 discussion and in the community today.
10 Q Just turn to page 139 of your report, and it's in the
11 bottom right-hand portion. It's that last full line
12 on page 139 you say this:
13
14 "In economic terms the Houses own the rights to
15 the labour of their sons and daughters, and of
16 their daughters' offspring, and they of course
17 own lands and river sites as well."
18
19 Now, first of all, that ownership is exercised through
20 the person of the hereditary chief, is that correct?
21 A Yes. And it's very clear in terms of the actual
22 productive activities on the land. When it concerns
23 the market sector today, there is a certain degree of
24 give and take between the chief and the other members
25 of the House. If the chiefly people are going to be
26 able to continue to demand support in times of crisis
27 and feasting and so on, they have to be able to
28 provide what in the old days was a lot of hospitality
29 and support and material needs to all their members.
30 And they have -- today they have to be of assistance
31 in social problems and the fighting for job -- access
32 to jobs and so on to their members. And in the
33 long-run this will maintain the support of their
34 grouping in times of life crisis.
35 Q Dr. Daly, when you review the notes that you made from
36 your informants, that is the 35 or 33 odd notes, the
37 vast bulk of your informants were Simgiget in those
38 notes?
39 A Yes.
40 Q During your term of participant observation, did you
41 take any formal pole, that is written down among the
42 Lixgiget in Gitksan and Wet'suwet'en society to see
43 whether or not they agreed that the traditional form
44 of property ownership and control by the Simgiget
45 continue?
46 A Well, it's hard to -- it's hard to make that sort of
47 distinction, because the Lixgiget, as you have put it,

are -- if they live long enough will one day be Simgiget. Many instances people are able to accede to a position so long as they're active in the social responsibilities within the community. So you talk to young people who don't have any high names and they are Lixgiget, but many of them will reflect the attitudes of their chiefs, because that is -- that's where they are being trained in that direction to become chiefs one day.

Q You know that there is approximately 60 hereditary chiefs named, head chiefs?

A Well, there are more than that, but within the present functioning Houses, yes, there is roughly that.

Q And during your stay with Gitksan and Wet'suwet'en society, what population estimate did you have of the whole society?

A Oh, roughly six or seven thousand people. But there is also, there is also innumerable other chiefly names within the House, not full chief names, but associated chief names and names which are on the road to becoming -- if one assumes that name one is definitely on a trajectory to become a chief, and of course not everybody does, but there is a massive number of names which are royal or semi-royal that peoples --

Q How many would you say?

A Oh dear.

Q Are we talking about a thousand, two thousand?

A Well, there is up to 20 or 30 per House.

Q Two thousand?

A Possibly, yes.

Q And so you deduced from that, because everybody had a crack at becoming a Simgiget, that the Lixgiget agreed that this traditional form of government that you've described in your report should continue?

A People don't -- don't view themselves as Lixgiget. They -- the chiefs are very prominent and the wing chiefs in the House and some of the other old names and around -- within each -- within many of the Houses now, particularly those where there has been amalgamations with people from the northern two villages, there are several names that look like sub-chiefs, but each of them in former time was a full chief surrounded by sub-chiefs and these are all potentials -- potential House groups that would -- would -- if their circumstances were such would be able to come to fruition and raise up their names and strengthen the House or in that case it would be -- it

1 would expand from one House to maybe three or four.
2 They would all be part of the Wil' na t'ahl, the
3 expanded group of kin that work together.
4 Q You'll agree with me that the society that you
5 observed from an individual perspective, I am not
6 talking about a House to House perspective, but from
7 that individual perspective is not egalitarian?
8 A From an individual perspective. Well, no society is
9 egalitarian. There is a definite devolution of
10 authority from the old to the young. And from -- in
11 many -- in many respects from the chief to the
12 non-chiefs. But it's not -- it's not a cut and dried
13 matter. It's family relations. It's face-to-face
14 relation. You're talking about people who are uncles
15 and grandchildren and so on. So things are couched in
16 that terminology.
17 Q But I thought you said that Houses which didn't repay
18 their debts would diminish compared to other Houses
19 that were paying their debts?
20 A Yes.
21 Q And they would have less power?
22 A They'd have less influence in the community, yes.
23 Q And in that sense between the Houses it's not
24 egalitarian?
25 A At any one time there is a political imbalance. Of
26 course that's the political process. But the amount
27 of hierarchical authority that the system allows to
28 remain in place is severely limited. So that if you
29 look at the fortunes of any one House group over a
30 period of time, it fluctuates basically on the basis
31 of the skills and talents of the people who have held
32 the high names in that House and names which have been
33 very illustrious of two or three generations ago are
34 quite often quite low in the terms of how they are
35 being handled today. And vice versa.
36 Q So it's in that context that you are using the word
37 egalitarian?
38 A Yes.
39 MR. WILLMS: My lord, I don't know if I need to -- it was marked
40 as Exhibit 734. I could mark this extract. Perhaps I
41 should.
42 THE COURT: I prefer that you did so I can keep them in the same
43 material together in one place.
44 MR. WILLMS: 902-10, my lord.
45 THE COURT: Yes.
46 (EXHIBIT 902-10: Document extract from Indian
47 Self-Government)

1 MR. WILLMS:
2 Q Dr. Daly, I am showing you an agreement for consultant
3 services dated April 22, 1986. This is the agreement
4 that you and Dr. Lee signed in respect of your report
5 in this case?
6 A Yes, it is.
7 MR. WILLMS: Could that be 902-11, my lord?
8 THE COURT: Yes.
9
10 (EXHIBIT 902- 11: Agreement for consultant services
11 between Dr. Daly and Dr. Lee dated
12 April 22, 1986)
13
14 MR. WILLMS:
15 Q Now, Dr. Lee signed this agreement as well and we've
16 already seen correspondence that was between Mr.
17 Overstall and yourself and Dr. Lee. Did Dr. Lee write
18 any part of your report?
19 A No, he didn't. Initially we were going to do the
20 whole project together and he became very busy with a
21 project on aging and gerontology in Southern Africa,
22 so he didn't have time to carry on.
23 Q You described in your evidence earlier the fact that
24 you wrote this report and added to it while you were
25 writing it on a computer?
26 A Yes.
27 Q Now, where was this computer?
28 A This was in the Tribal Council office in Hazelton.
29 Q Okay. Was it a computer terminal hooked up to -- did
30 other terminals have access to the computer or was it
31 your PC or your personal computer that you were using?
32 A It was the Tribal Council system.
33 Q All right. And is this -- so you went to the Tribal
34 Council office whenever you wanted to run off or put
35 some more material in?
36 A Put more stuff in and change.
37 Q When was the first time that you ran off a hard copy,
38 that is a copy on paper, of the material that you were
39 putting into the computer?
40 A I didn't run off a full copy for a very long time. I
41 would run off parts and when I was asked to do so by
42 the lawyers. It was more or less in the works part by
43 part until -- until almost to the end of this
44 procedure. I was reviewing all of the court
45 transcripts and making changes and additions and
46 deletions and so on right through till the spring of
47 last year.

1 Q Did you save any of those hard copies that you ran
2 off, the early ones?
3 A No. I would pass them on to the lawyers and get them
4 back marked up or with suggestions. Then I would
5 decide whether I would concur with them or not.
6 Sometimes I didn't like their suggestions. And when I
7 finished I made my changes into the computer and
8 generally destroyed the stuff. When I was doing my
9 contract I keep reams and reams of paper and I got so
10 confused about the -- I had two and a half filing
11 cabinets of different versions and I was not going to
12 go through that process again. It is at the same time
13 very hazardous because I was working one weekend and
14 someone hit a power pole and there was a power outage
15 and I lost a whole weekend's inputting and had to
16 start all over from scratch. But I didn't keep any
17 substantial materials.
18 Q Did you also receive some of the hard copy that you
19 had written off with comments back from Richard
20 Overstall?
21 A Richard didn't make any comments. In the course of
22 things, the work I was doing I could see it wasn't --
23 it was going to be somewhat different from what we
24 signed here. And I discussed it with him about what I
25 would like to do and he said, "Well, go ahead and
26 we'll see what comes up."
27 Q So in terms of people --
28 A He read -- he read -- he read the draft that I
29 eventually ran off in the spring of last year and made
30 a couple of verbal comments on it, but nothing really
31 substantial.
32 Q Okay. But you did have written comments from the
33 lawyers on the substance of your report, some of which
34 you accepted and some of which you didn't?
35 A Yes.
36 Q And those are gone now?
37 A As far as I know.
38 Q Certainly they are gone from your file?
39 A Yeah.
40 Q And you don't know whether other copies exist in other
41 people's files?
42 A No, I don't know. I haven't checked.
43 Q Now, produced through your counsel have been a draft
44 dated March 1988 -- sorry, through the plaintiffs'
45 counsel and a summary dated February 1987.
46 THE COURT: I am sorry, the draft dated?
47 MR. WILLMS:

1 Q March 1988, and a summary of February 1987, but you
2 did run off hard copies of what was in your computer
3 other than those two?
4 A I ran off parts of what I was working on when I was
5 told I had to prepare a summary. And on the basis of
6 discussions at that time I worked out the outline for
7 the overall report and stuck to it as well as I could
8 for the -- in the following period.
9 Q Certainly in your -- now, by the time that you did
10 your summary in February of 1987, did you have at
11 least in a bear bones outline a full draft of your
12 report with all the chapters that ultimately became in
13 it?
14 A No.
15 Q I am not saying --
16 A No, I didn't. I had the -- I had the last chapter.
17 That was pretty much in order. The second chapter I
18 did later I did virtually after the summary, I had the
19 bones of the third chapter. I did the trade chapter
20 later on. What is now chapter four, five and six I
21 was working on it in various versions and various
22 combinations and that was -- that didn't get sort of
23 solidified until the summary.
24 Q Did anyone else -- were you the only person to input
25 in respect of your report or did other people do input
26 work for you on the computer?
27 A I had some help with the summary. We were raising for
28 a deadline and one of the secretaries helped me a
29 couple of afternoons. But apart from that I was in
30 control of it, because it was much more manageable,
31 otherwise I would have had to type out material and
32 give it to the secretary and it was much faster to
33 just work it myself.
34 Q In respect of the material inputted in by the
35 secretary, was she working from your handwritten notes
36 or your typed notes?
37 A She would be -- I don't remember.
38 Q You didn't dictate to her, did you? Or did you?
39 A It would have been some sort of draft of the summary,
40 but I can't remember.
41 Q You don't have that any more, do you?
42 A No.
43 Q In fact, all you've got now is your February 1987
44 summary, your March 1988 draft and your final report?
45 A Yes.
46 Q Now, one of the important aspects of your work was to
47 describe both at the present and in the past Gitksan

and Wet'suwet'en social organization.
THE COURT: Mr. Willms, you are going on to something else now?
MR. WILLMS: It's a short --
THE COURT: All right. Go ahead.
MR. WILLMS: -- point, my lord.
THE COURT: Go ahead.
MR. WILLMS: Well -- well, my lord, that's fine.
THE COURT: Whatever you say.
MR. WILLMS: I can carry on after.
THE COURT: Thank you.

(PROCEEDINGS ADJOURNED PURSUANT TO AFTERNOON RECESS)

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

Laara Yardley,
Official Reporter,
United Reporting Service Ltd.

1 (PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
2 THE REGISTRAR: Order in court.
3 THE COURT: Mr. Willms.
4 MR. GRANT: My lord, before my friend proceeds, at the break I
5 took an opportunity to review Exhibit 734, and the
6 document that was the portion -- the diagram that was
7 put to Mr. Sterritt was the triangle on 8A:5, that is
8 the series of three triangles. And from my review of
9 the evidence in volume 135, which deals with this
10 evidence, this document was tendered by the
11 defendants. Mr. Goldie's cross-examination of Mr.
12 Sterritt did deal with the citation on 845 that my
13 friend referred to, but it does not appear that the
14 diagram on 8A:4, which was put to Dr. Daly, was ever
15 put to Mr. Sterritt for an explanation.
16 THE COURT: The cross-examination was limited to the triangles,
17 was it?
18 MR. GRANT: That's correct, my lord. So I would object to my
19 friend to the extent that I can ex post facto or that
20 you disregard any cross-examination with respect to
21 that, because this was put -- this was put in evidence
22 during the cross-examination of Mr. Sterritt. It came
23 from the provincial defendant. They have had a full
24 opportunity to cross-examine Mr. Sterritt on it.
25 MR. WILLMS: My lord, if I can just rise, this is an expert
26 witness who is giving opinions based on facts and to
27 the extent that my friend can show later on in
28 argument that the facts that I'm suggesting to the
29 witness don't exist, then all the more power to him in
30 argument, my lord. But it doesn't render the question
31 inadmissible and my friend should save these comments
32 for argument. That's where they belong with an expert
33 witness. That's not -- this isn't a normal lay
34 witness, my lord, where the sensitivities about
35 putting something which may be inaccurate arise,
36 because if I put something inaccurate to Dr. Daly, it
37 will be worthless in terms of generating an opinion
38 from Dr. Daly, and my friend can make that point in
39 argument. He doesn't need to make it now. Also --
40 MR. GRANT: Of course my objection is much more fundamental, my
41 lord, is that presumably either Mr. Sterritt, if not
42 the author of this diagram, was its proponent at the
43 Penner Committee, and in order to rely on it, he
44 should have been -- it should have been put to him.
45 THE COURT: Mr. Grant, I'm going to reserve on your objection
46 and maybe we'll have a chance to speak to some of
47 these things, but at the moment my inclination is to

say that in a case of this magnitude where Mr. Sterritt was under cross-examination for I don't know how many days, but I would think three to four weeks, that it's stretching the rule a bit to say that when he's cross-examined on a document but not asked about a particular passage in a document, that -- that -- that it can't ever -- no other part of the document can be looked at, particularly in connection with putting the proposition to an expert and asking an opinion on it, because if that were so, I suppose the cross-examination of Mr. Sterritt would necessarily have been twice or three times as long as it was, or it might not have been, but it just seems to me when he's asked about a document and he isn't cross-examined on it and so it isn't just sprung on the plaintiff's side of the case, is in evidence, it was put in at that time, and that it's going a long way to say that the witness can't be asked about something that Mr. Sterritt prepared but wasn't asked about. I -- I want to think about your -- your proposition. I'm not prepared to rule at the moment that the fact that the witness is an expert is conclusive, but it's worthy of some further thought. It doesn't need to take up the time on cross-examination now, but I will certainly be glad to hear from you further about that question if anything turns on it.

MR. GRANT: Thank you, my lord.

MR. WILLMS: Could Exhibit 901-1 be put --

THE COURT: 901-1.

MR. WILLMS: 901-1. It's the letter of February 6th, 1986.

THE COURT: You mean 901 or 902?

MR. WILLMS: 901.

THE COURT: Yes. Thank you.

MR. WILLMS:

Q This -- if you turn to the second page of the letter which sets out what -- the research that initially was sought, items 4 and 5, you were requested to: "Can the differences in ecosystems, and thus resource bases, between the Gitksan, Wet'suwet'en and neighbouring peoples logically account for the volumes of various commodities traded between them both before and after the introduction of European goods?" And item 5: "Can the changes in the Gitksan and Wet'suwet'en economics after contact be in part related to the use of their resource base by the European industrial system?" You were asked to assess

changes in the Gitksan and Wet'suwet'en economy both pre and post-contact; is that correct? And that's one of the underlying functions of your report, Dr. Daly?
A That's one way of putting it, yes.
MR. WILLMS: I'm showing you --
THE COURT: Is an ecosystem the same thing as an economic system?
THE WITNESS: No, it isn't.
THE COURT: No.
THE WITNESS: It's the relationship between all of the living organisms on the land, including the human.
THE COURT: That includes the trees?
THE WITNESS: Yes.
THE COURT: And the berry bushes?
MR. WILLMS: Maybe a biogeoclimatic system, my lord, with people.
THE COURT: Does it include the climate?
THE WITNESS: Yes.
THE COURT: All right.
MR. WILLMS:
Q I'm showing you an extract from the "Proceedings of the Eighteenth Annual Conference of the Archaeological Association of University of Calgary" on "Ethnicity and Culture". Are you aware of this conference?
A No.
Q There is an extract at the beginning by Dr. Hatt on "Folk Generalizations and Expert Generalizations About Human Differences". And the doctor on page 3 discusses here ethnographies. In the left-hand column partway down he starts:

> Most ethnographies, I think, have this syndrome of lapse-into-reification in them; it is an occupational hazard of ethnographers. Though starting off with a sophisticated awareness of the construct or artificial status of their entities of analysis (societies, culture-bearing-units or whatever), it is all too easy to slip into thinking that one has 'found' what in fact one has created."

Just pausing there, as a general proposition the field of ethnography, part of anthropology, that's accurate, isn't it? That's a fair statement of a problem?
A It's a statement of a problem, yes.
Q Now, what you were asked to do here in this case was

1 to look at the Gitksan-Wet'suwet'en economy and how it
2 had changed over time or if it had changed over time?
3 A That was a component part of it, yes.
4 Q The underlying component part of that is the
5 assumption that there is a Gitksan and Wet'suwet'en
6 economy?
7 A Yes. Every society has some sort of economy.
8 MR. WILLMS: And so you started off with that proposition.
9 MR. GRANT: Which one?
10 MR. WILLMS:
11 Q That there is a Gitksan and Wet'suwet'en economy.
12 A Yes.
13 Q Now, what did you do in terms of looking at the
14 neighbouring regions, for example the coast Tsimshian
15 in native culture or the Carrier to the south or the
16 Tahltans to the north, to determine whether or not
17 there was a Tahltan economy or a coast Tsimshian
18 economy or a Carrier economy or anything of the like?
19 Did you do any analysis of that?
20 A I reviewed the literature on the area.
21 Q What analysis did you do of the European economy, say,
22 from Prince Rupert to Prince George?
23 A I read some of the document -- documentation of -- of
24 different scholars, sort of general background. One
25 was a study on the Kitsumkalum people in Terrace, two
26 volumes by James MacDonald.
27 Q Isn't it the case that only through --
28 A There was another one on some aspects of -- this was
29 part of the doctorate of, I think, Robert Adlam on the
30 Tahltan. And I looked at some of the stuff that had
31 been done in the past on some of the Carrier groups.
32 Q Is there a Gitksan economy to the exclusion of a
33 Wet'suwet'en economy?
34 A The structure of the Gitksan economy and the structure
35 of the Wet'suwet'en economy are very, very similar.
36 They're a combination with the market sector in their
37 traditional use of the land and use of modern
38 technology in relation to the land and so on.
39 Q Is there a Gitksan economy separate from a Nishga
40 economy?
41 A Well, in any area that the anthropologist is working,
42 there are peculiarities and specificities in terms of
43 the relationship, the economic activities and the
44 types of interaction in the local community and in
45 relation to the wider economy in which it is enmeshed.
46 Q We've heard evidence here that there is a common
47 language called Babine-Wet'suwet'en, which extends

1 beyond the territory claimed by the Wet'suwet'en in
2 this action. Did you discover a Babine-Wet'suwet'en
3 economy?
4 A I didn't look for a Babine-Wet'suwet'en economy.
5 Economies don't necessarily follow the contours of the
6 linguistic groupings, but if the -- if the Babine
7 people have been part of this action, I suppose I
8 would have -- I would have included a number of people
9 from that region in my investigation.
10 Q Of course then it would be the
11 Babine-Gitksan-Wet'suwet'en economy that you'd be
12 reporting on?
13 A Yes.
14 MR. WILLMS: My lord, can this be Exhibit 902-12?
15 THE COURT: Yes.
16 (EXHIBIT 902-12: Ethnicity and Culture)
17 MR. WILLMS: Dr. Daly, could you turn to page 329 of your
18 report? I think it's in -- my lord, I think it's in
19 volume one.
20 THE COURT: Page 3 --
21 MR. WILLMS:
22 Q Page 329. In the middle of that paragraph on page
23 329, Dr. Daly, you say:
24
25 "Prior to European settlement this was an
26 area of open forests and meadows"...
27
28 And you cite Hauessler 1987 and Hatler 1987. And then
29 you cite some of the abundant berries after that. In
30 making that statement you're relying on the reports of
31 Hauessler and Dr. Hatler; is that correct?
32 A That's correct.
33 Q Now, were you aware of Dr. Hatler's opinion that
34 before 1860 that moose were not significant in this
35 region due to climate?
36 A Well, one strain of moose seems to have come into the
37 area, from what I understand in his report, in the
38 nineteenth century and another strain seems to have
39 been much older and have come from a different
40 direction. One came in from the south and the west
41 and the other came down from the north at an earlier
42 point.
43 Q You might be mistaking mule deer.
44 A No. I'm not mistaking mule deer. There were two
45 different -- I think genuses is the word of moose in
46 his report.
47 MR. WILLMS: You saw -- did you see map -- the moose map? My

lord, I'm referring to Dr. Hatler's map 13.
MR. GRANT: It's 35813.
THE WITNESS: Yes. I've seen it.
MR. WILLMS:
Q And in the -- you'll see:

> "As provincial government reports indicate that moose were still scarce in the Bulkley and Skeena areas in 1928, but by 1931 they were increasing in most areas and had spread westward as far as Terrace. By 1947 moose had spread as far south as Kamloops and had been seen in the west almost at tide water both in the vicinity of Kitimat and on the lower Nass River."

Then if you look over, he's drawn a -- a limit, estimated limits of distribution in 1860, and you'll see the cross-hatching, Dr. Daly, is far to the left above the claim territory, that is to the north?
A Yes.
Q Right. Were you aware of that when you wrote your report?
A I wasn't aware of this map, but from my reading of his report and discussing the question with him personally, there is certainly the open-ended possibility of moose coming into the region, into the general region from the north, from the refugia in the Yukon area, sometime after the recession of the ice. He leaves that as an open possibility, and the fact that on the northern fringes of the region, these -- these species have been -- are recorded now.
Q Well, if moose were not predominant in this area at all until after 1860, if his lordship should find that as a fact, would that affect your opinion at all?
A Well, it might, because the people themselves are adamant that there have been moose in the region, ancient moose in the old days. And this is one connection I can use for an explanation of this assertion. And it comes up in the adaawk histories as well, moose being -- they assert the moose are very ancient. They also say that there were no moose until the nineteenth century in the area. So you have both statements that in the ancient times the people use the moose and for a long period in their history moose was extremely important in the feasting complex, and then they say, well, in more recent times there were

no moose in our area until after the coming of the white man. So it's not founded in any -- any hard facts, but I put it in that way as a possibility, a possible explanation. But if this can be unfounded, then it can do damage to the whole authenticity, I suppose, of the oral tradition, but I think the jury's still out on that one.

Q Were you aware that the Little Ice Age, which ended as recently as 1850, affected the regional climate?

A Yes.

Q And were you aware that Dr. Hatler has given evidence that the climate which seems to have prevailed during the Little Ice Age would have been hard on everything?

A Yes.

Q And, my lord, I won't put this to the witness, but it's Exhibit 849-36, page 25, and it's a quote from Dr. Fladmark, "Glass and Ice". You've read "Glass and Ice" by Dr. Fladmark?

A Which one? What's the -- that's his full title?

Q The full title is --

A It's not the piece on the diffusion of obsidian?

Q It's "Glass and Ice. The Archaeology of Mt. Edziza".

A No, I haven't.

MR. WILLMS: Perhaps --

THE REGISTRAR: I have it here.

MR. WILMS: Perhaps that could be put before the -- it's 849-36, page 25.

MR. GRANT: I just wonder if my friend has a reference to where he was referring to Dr. Hatler's evidence.

MR. WILLMS: Page 9554. It was Mr. Grant's re-examination of Dr. Hatler, volume 149.

MR. GRANT: Thank you.

MR. WILLMS:

Q In the extract you'll see in the middle paragraph on page 25, and I'm at Tab 36, of "Glass and Ice", Dr. Daly --

A Yes.

Q -- he talks about the neoglacial period and -- and then getting towards the bottom of that paragraph, he says:

> "On the coast of Southeast Alaska, the Tlingit Indians retain numerous oral traditions describing their interaction through time with the coming and going of the ice, including accounts of glaciers over-running villages and blocking river

communication routes inland."

And then Dr. Fladmark says:

"For people dependent on interior alpine resources, the neoglaciation must have been even more severe."

Now, were you aware of that when you wrote your report?

A Well, I was certainly aware that there have been many climatic fluctuations. This is reflected in the oral histories in the post-glacial times.

Q So the fact that the climate was significantly colder as --

A Well, for example, when it's colder, and in the -- my knowledge of the post-glacial conditions in central Canada, the alpine tundra regions extend out from the receiving glaciers. So your main subsistence animals under those conditions are caribou generally, the tundra caribou, and then that's followed by a whole ecological cycle of vegetational growths that roughly approximate the boreal forests. And as it warms up, these bands move -- the tundra ones move farther north and the more temperate ones move farther north as well.

Q But are you saying that you took that into account in coming to the conclusion that the subsistence economy still remain?

A At what time?

Q Precontact subsistence economy of the Gitksan and Wet'suwet'en is still alive and well today?

A Oh, yes. Yes.

Q Now, you also cited Hauessler on page 329 of your report. Now, were you aware that Dr. Hauessler gave evidence that her berry distribution maps were a snapshot of around 1985 and that she didn't know what the regional climate had done in a study area over the last 200 years?

A Yes.

Q You were aware of that?

A Yes.

Q And were you also aware that she gave evidence that the majority of the vegetation in the area is younger than 150 years?

A Yes.

Q Does that change your opinion at all in respect of the

precontact Gitksan and Wet'suwet'en subsistence economy?

A No. I don't think it does, because the early accounts -- if we just look at the -- the ethnohistorical record, the early accounts of what was being consumed and exchanged in the feasts in the Tsimshian area in general, say in the late 1700's, included references, for example, to the berries and the -- and the hides from the -- from the interior regions, from the Hagwilget people and from the general Gitksan-Wet'suwet'en area. So there -- there are clues from the oral histories and the records of the -- of the first contact that show that there's a continuity of local produce which is being exchanged at that time with what was being exchanged in the present century, and at that time the effects of this mini-ice age were still in effect.

THE COURT: Mr. Willms, could you give me the references to Miss Hauessler's evidence?

MR. WILLMS: My lord, Miss Hauessler's evidence are in volume 151, page 960 and 9 -- sorry -- 9680 and 9681.

THE COURT: Thank you.

THE WITNESS: The people say that there were various features which were affected by the cold climate before the coming -- in the period immediately before the coming of the white man, such as the rivers were smaller, the glaciers were bigger, it was easier to put weirs across the Skeena River. It was much, much smaller than it was, and that the warming trend -- they view with alarm the warming trend of the last century or so.

MR. WILLMS: Turning to page -- and this is still on the same point. If you could please turn to page 346 of your report.

THE COURT: I'm sorry. Page?

MR. WILLMS:

Q 346, my lord. Oh, this might be in volume two, beginning of chapter five. And at the bottom of the page, you say this:

> "According to the chiefs, the seasonal round has been followed for millennia except when interrupted by periods of major glaciation. The data of the archaeological, biological and climatic record"...

Then you cite Hatler again in there and you cite

Chilton as well, along with some others.

> "... suggested the environmental conditions have long been available for human harvest and sustenance."

Now, just stopping there, putting to one side the archaeological record, my lord --

A I don't think you can put aside the archaeological record, because you need the both sets of factors to arrive at that opinion I've offered there.

Q All right. Well, I'm particularly interested in -- in your -- your note that the seasonal round is followed except when interrupted by periods of major glaciation. And I'm going to suggest to you that when Dr. Daly describes the Little Ice Age as being hard on -- I'm sorry -- when Dr. Hatler describes the Little Ice Age being hard on everything, that that's consistent with what you've set out there. That is it's going to interrupt the seasonal round?

A No. I don't think that necessarily follows. And also this is -- this is an opinion that I've received from the chiefs. It's not necessarily my considered opinion. The first sentence that -- I don't know to what degree the chief's present knowledge of glaciation affects what they've told me.

Q That makes sense though, doesn't it? I mean what they said makes sense?

A Yes.

Q So not only did they tell it to you, but it also makes sense?

A Well, it can make some sense. You have to check it against a lot of other types of data to --

Q Now --

A -- draw some conclusions.

Q Mr. Chilton gave evidence at this trial that the climate was cooler during the Little Ice Age and that if the climate was different 100 years ago, it would affect the ability of the atmosphere to take up water and would affect the relative ability of the atmosphere to dry anything. And he also said that his map was a snapshot in time, that is a snapshot of 1985. Now, does that -- adding that to Dr. Hatler, what Dr. Hatler has given in evidence and what I've already told you about Miss Hauessler, does that change your opinion about the precontact subsistence economy during the Little Ice Age?

A Not really, because even if the conditions were -- I don't -- if they were better or dryer than they are today, they would -- it would be correspondingly wetter or dryer on the coast. And there is a -- at least in the present time there is a recognition by people that drying conditions are pretty good in the interior, and the fish, for example, are highly sought after on the coast, the fish which are caught in the Gitksan-Wet'suwet'en area, because of the way they're dried and the -- they have less fat in them when they reach that point in the river. At the same time, the whole technology isn't totally dependent on the -- on the transpiration rates of air, because berries for the most part are dried on racks over the fire, smoked, and the fish were dried in ventilated smokehouses and still are.

Q Even at the coast?

A Even at the coast. But at the coast it does make a difference in the degree of humidity on certain years, and I cited that example from Scott and Heller along the coast of Alaska where they say every once in a while they lose a fair proportion of their smokehouse contents due to mildew and so on.

MR. WILMS: My lord, the reference to Mr. Chilton's evidence is volume 147, pages 9397 to 9399.

THE COURT: Thank you.

MR. WILLMS:

Q Dr. Daly, you've given some evidence earlier about the trails, the trading trails in the region, the grease trails as described by MacDonald?

A Yes.

Q And from your assessment of that description, was there any impediment in prehistoric times to travel along those trails?

A Just the regular seasonal -- seasonal problems of heavy snow packs in some areas, but no. I don't think there would have been.

Q Now, I'd like you to assume first that the climate was colder 200 years ago in this area so that it was less hospitable to human habitation.

A I wouldn't assume it was less hospitable. It may -- you may have had the range of certain species changing within the area; that some animals would come into the area which normally wouldn't and others would disappear that normally would and that some species of plants would come to fruition in the area that wouldn't under other conditions and vice versa.

1 Q Well, let's just start with the climate. The climate
2 is colder 200 years ago. The cooling climate had an
3 effect on the vegetation and the productivity. I
4 think you just said that. There could be a change.
5 Third, that the climate was hard on all animals in the
6 region and, fourth, that it was relatively easy to
7 move along these trails to the coast. Now, if you
8 make those assumptions, isn't it logical and more
9 likely that people would spend more time near the
10 coast rather than inland?
11 A It depends on the actual circumstances, I think. For
12 example, when the -- when the slide took place on the
13 Bulkley River roughly around 1820, the Wet'suwet'en
14 people, a lot of them moved to the Babine area and
15 stayed there for a few years and then they negotiated
16 an agreement with the people at Gitanmaax for the --
17 Gitksan people at Gitanmaax for the ability to do
18 their fishing there, and the same time the Babine
19 people and people from as far east as Stuart Lake
20 would come to the Wet'suwet'en when they had a failure
21 or a problem with their salmon run. So there was a
22 lot of -- I think over time a lot of extended safety
23 net activities because the ethic throughout the region
24 is nobody should be allowed to starve. So I don't
25 know what you're getting at, but perhaps people did go
26 out to the coast at some -- in response to some
27 crisis.
28 Q Well, didn't they go out for the oolichan run?
29 A Yes. But that was just a period of three or four
30 weeks every year.
31 Q So from your own investigations -- there was no
32 difficulty from your investigations of getting to the
33 coast for the oolichan run; is that right?
34 A Well, it was hard work, but it wasn't impossible.
35 Q What --
36 A Every year it was hard work. Even if you had a higher
37 snow pack, you had to work much harder, especially
38 coming back packing the heavy oil. You'd be taking
39 down dried produce. Given that the conditions were
40 probably much tougher, the population was probably
41 somewhat smaller at the time of contact or in the --
42 in the period before the populations were subject to
43 severe attack by the European diseases.
44 Q Your investigations confirm that the Nishga, for
45 example, along the coast and the coast Tsimshian and
46 the southern Tsimshian had available to them pretty
47 much a year round supply of subsistence food stuffs?

A Yes.
Q Now, if the climate is colder, if the vegetation is different, if the -- it's harder on all the animals and if you can get to the coast where there is a supply of food stuffs, what economic reason is there for going back into this climate that you've come from --
A Well --
Q -- in the dead of winter in the Little Ice Age?
A The economic reason would be probably an overharvesting of the resources of the area you've gone to; that the resources there can stand to be shared at certain seasons or to certain -- for certain periods of time, but on the long run it leads to fighting over resources and a lot of social animosity, as -- as I explained with the text of that Men of Medeek adaawk last week.
Q Didn't you just say a minute ago that the populations were likely lower?
A Yes.
Q So that that's certainly an explanation for why in the last while there may have been a population expansion out of the Nass River, but you've got to make a big --
A Population out of the Nass River?
Q Yes. Over the trails to the Skeena. Isn't that how the people went back and forth? Didn't they go through Kitwancool?
A They went down to the Nass River to take their oolichan and then they went home again.
Q Let's just deal with the way they went. I thought there was a grease trail running from the Skeena River through Kitwancool to the Nass; isn't that right?
A That's one of them, yes.
Q Well, isn't that the one that's described as being worn down by Fladmark or something? Didn't you refer to that?
A It's in the citation for MacDonald, yes.
Q Well, my suggestion to you, Dr. Daly, is if we assume what Dr. Hatler says about the climate is accurate and the animals, if we assume that the vegetation is different, if we assume that it's colder, which perhaps -- perhaps we need expert evidence for this, but if it's colder, it's less hospitable; isn't that correct?
A Well, not necessarily. It depends on the -- on the way you make your living. If under those cold conditions there are species that you can -- you can

exploit, then you look forward to the cold. And this is the case of many of the hunting groups across the subarctic of Canada. They much prefer the cold winter weather to the -- to the summer, because they can get back to the species that -- where they have an ease of harvesting. It's certainly the case -- it has been the case in the contact period at least with the Inuit people up on the arctic coast.

Q But we're not talking -- I mean the Gitksan and the Wet'suwet'en are not in an Inuit or subarctic society, are they?

A What you're suggesting, with the drop of temperature even a couple of degrees, you begin to get subarctic conditions in this region, which today is overlaid by those three biogeoclimatic regions of the continent.

Q Well, the evidence was that the glaciers came down as low as 1200 metres. That's evidence at this trial, Dr. Daly. Now, all that I'm suggesting to you is isn't it logical, given that situation and given the food supply at the coast, that people would spend more of their time at the coast?

A It might be logical, but I don't see it being consistent with the -- with the history and the culture and so on. There are certain -- certain periods from the oral record where people had a very tough time and they speak endlessly about obtaining enough food. And there are other times when it's not mentioned. So you presume that -- that the conditions were -- were easier for basic survival.

MR. WILLMS: My lord, this would be an appropriate time for a break.

THE COURT: All right.

MR. WILLMS: I would still like to start at nine, my lord.

THE COURT: All right. I'm beginning to have some difficulties with scheduling; that I should like to have a conversation with counsel as soon as possible about scheduling for May and June. When will it be convenient to do that, Mr. Grant?

MR. GRANT: My lord, I believe that when Mr. Rush came in at the beginning of this month, at the beginning of February, you -- he advised that on March 6th that he would advise you. I'm not saying that as being faint-hearted and leaving that discussion, but I've had discussions with Mr. Rush and I think that we had assumed that you wanted some reporting at that stage.

THE COURT: Yes.

MR. GRANT: And that's what we had anticipated.

THE COURT: All right.
MR. GRANT: And I'd like to -- I'd have to have further discussions with Mr. Rush. I won't be here on Monday, but I assume that will be an appropriate time to deal with it. Hopefully that's not inconvenient to your lordship.
THE COURT: That's fine. Do we start another witness on Monday?
MR. GRANT: On Monday we would start a one-week witness, a Ms. Antonia Mills. Then we would be taking a week off. Then we would have Dr. Arthur Ray, a historian, for one week -- actually four days, my lord, because that's the Easter week.
THE COURT: Yes.
MR. GRANT: Then we would have Mike Morrell, a fisheries biologist, for the four days on the week following that.
THE COURT: There are two four-day weeks in a row, aren't there?
MR. GRANT: Yes. And I believe you're unavailable the week following that if I recall rightly.
THE COURT: I think that's right.
MR. GRANT: And so we only have two weeks.
THE COURT: Yes.
MR. GRANT: And if it's any -- I believe we will be dealing with the cross-examination of remaining witnesses in the off week between Antonia mills. It's not that we're not doing anything on the trial now.
THE COURT: All right. We're relatively on schedule then?
MR. GRANT: Well, you had indicated hopefully two expert witnesses a month and I think that we're probably going to be able as we get along to better that. But we are certainly now -- we're advising the other side of our proposed schedule for the end of April.
THE COURT: All right. I'd like to discuss with counsel on Monday if possible the schedule for May and June. Thank you.
THE REGISTRAR: Nine o'clock tomorrow morning.
THE COURT: Yes. Nine o'clock.
THE REGISTRAR: Order in court. Court is adjourned until tomorrow morning, 9:00 a.m.

(PROCEEDINGS ADJOURNED UNTIL MARCH 3, 1989 AT 9:00 A.M.)

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

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Kathie Tanaka, Official Reporter
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