22 February 1989
Vancouver, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia; Vancouver, this Wednesday, February 22, 1989. Calling Delgamuukw versus Her Majesty the Queen. I caution the witness you are still under oath.
THE COURT: Mr. Grant.
MR. GRANT: Thank you, my lord. Dr. Daly, I'd like to refer you to page 164 of your report. I believe that's where we left off yesterday.
THE COURT: I'm sorry, page?
MR. GRANT: 164, my lord.
THE COURT: Thank you.

EXAMINATION IN CHIEF BY MR. GRANT: (Continued)
Q You have it?
A Yes, I do.
Q And that middle paragraph there I referred you to yesterday, you have indicated the documentary evidence of the nineteenth century which you were referred to, and then you say:

> "...as well as upon comparative understanding of other, similar cultures 'discovered' by Europeans in the past two centuries."

What other cultures were you referring to that you would compare to -- give a comparative understanding with?
A Well, in my training, a lot of the work was in Africa.
Q Yes.
A The relations between the European powers and the Gold Coast, for example, the Akan states, A-k-a-n, which is matrilineal society.
THE COURT: A-k-a-i-n?
THE WITNESS: A-k-a-n.
THE COURT: Thank you.
THE WITNESS: The Ashanti Kingdom is one of the members of the Akan-speaking groups, A-s-h-a-n-t-i. And they had quite a highly developed and enunciated system of ownership. That was one example that came out of my training. And the whole region of Central Africa where Clyde Mitchell and Gluckman had focused their work dealt with questions of ownership and how it came into the before -- when it was confronted by the

colonial experience.

MR. GRANT:

Q Could you just pause. The Akan states, were they -- what kind of societies are they considered --

A They are a tribal society, tending toward the chiefdom end of the spectrum in terms of their tribe. They are matrilineal; they are a slash-and-burn agricultural society, and they are also in a middle belt ecologically between an interior plane and the coastal trading area.

Q Is that analogous to --

A It is quite analogous to the peoples I have studied, the Iroquois and the Gitksan and Wet'suwet'en, sort of intermediary position.

Q What other cultures did you refer to -- are you referring to when you base this opinion on comparative understanding of other cultures?

A Well, my understanding of property relations in the context societies in Eastern Canada and the United States which I had certain amount of work to do with in relation to my thesis and historical research with heritage Ontario. That includes the Iroquios and the Huron particularly, and the surrounding hunting bands, Algonkian-speaking hunting bands. A-l-g-o-n-k-i-a-n.

Q Okay. Any other societies which you'd like to refer -- to which you referred to in this comparative understanding?

A Well, when I was studying economic and anthropology at London School of Economics, most of the examples were from Melanesia and Polynesia.

Q And did you examine the concepts of ownership with respect to those societies?

A Yes. That's part of the overall ethnographic comparative work that one does in the course of one's training in the field, I mean the field of anthropology as opposed to field work.

Q Have you studied any -- did you rely on any of the work with respect to Central or Latin American groups?

A I did in the course of working as a teaching assistant.

Q Okay. In terms, I am talking about, in this concept?

A The responsive of people such as, for example, the Inca state, there was different types of ownership in the Inca state which responded in different ways to the conquest by Spain in the fifteen hundreds.

Q And did you, in your training, have any familiarity with other Northwest Coast cultures that you used in

this comparative analysis other than the Gitksan and the Wet'suwet'en?
A Well, when I was at the ROM, we relied quite a lot on the works of Barbeau, Boas, and general overviews of the history of the aboriginal peoples, such as the collection of descriptions of native society at the point of contact by explorers and traders that was collected by Erna Gunther, and Phillip Drucker's works were like a handbook and the driver's comparative work on the tribes and bands of North America.
Q Okay. And when you refer here in this statement to comparative understanding of other similar cultures, these are the cultures that you were referring to?
A Yes.
Q You also say at the end of that paragraph that this is based on your understanding of present day Gitksan and Wet'suwet'en kinship society and oral culture, as explained in the previous chapters. Do you also mean in the subsequent chapters?
A Yes.
Q This being the early part of chapter 3 of your report.
Now, going to page 165 of your report, you refer to the concept of ownership and set out that it includes the following aspects: Firstly, you say at the bottom of 165 that ownership -- and this is ownership at any culture?
A Mm-hmm.
Q And this is in terms of explaining in anthropological terms what is meant by ownership?
A I was seeking to find some common ground for purposes of explanation, as anthropologists have a certain understanding of what they mean by ownership, and I know the legal profession does, and I thought that the encyclopedia would be a general public view of -- a general presentation of the whole subject in a -- with a common denominator that perhaps would apply to everybody.
Q Okay. Now, you say at the bottom of that page 165 that ownership implies the concept of exclusive possession. Now, what do you mean by exclusive possession?
A I mean that the persons or the groups that own property have the right to enjoy it and use it to the full extent of the laws of their society and they have -- the laws of their society back up their demands that others do not use that property without their consent.

MR. GRANT: And applying this to the Wet'suwet'en or to the Gitksan, how would you explain that term?
MR. WILLMS: My lord, I object. There is no foundation for that opinion at this point in the evidence and I object to that opinion being asked unless my friend lays the factual foundation for it.
THE COURT: Isn't this exactly what he told us yesterday?
MR. GRANT: In terms of the --
THE COURT: It seems to me I've heard that expression the other day now.
MR. GRANT: He has given his opinion, yes. He's given the opinion on page 164, and it says with the aboriginal people, he's described it. Now, what he is -- he is setting out here is a number of features of what he means by ownership, my lord. I have very little difficulty with pausing because the balance of this section of his report deals with how it applies to the Gitksan and dealing with it at the applicability of this to the Gitksan would be my only point.
THE COURT: Well, Mr. Grant, why should I be troubled with Gitksan concepts of ownership?
MR. GRANT: Well --
THE COURT: I have to decide this case according to the law of British Columbia, do I not? I can't apply any other system.
MR. GRANT: The law of British Columbia that you will be applying will be the law -- will include the law of -- the common law recognition of aboriginal title and the question --
THE COURT: Surely, that's a legal question, though, is it not?
MR. GRANT: The common law issue of aboriginal title is a legal question, but when you determine in the scope of this case, and what will be sought is the scope and content of aboriginal title with respect to the Gitksan and to the Wet'suwet'en following the principle established in Kruger and Manuel, it is --
THE COURT: Kruger and Manuel was a very narrow case, wasn't it?
MR. GRANT: Yes.
THE COURT: Shooting a moose out of season or something.
MR. GRANT: But what Justice Dickson, and it has been reiterated of course in this -- in the Court of Appeal and in other cases is that in any -- what Justice Dickson said in Kruger and Manuel, you have to -- in dealing with questions of title, you must deal with each band and with its system, including its laws and all the components of that particular band or organization you are dealing with as to the issue of aboriginal title,

and he said it is agreed by all parties that that's not being dealt with here. And I agree that that is dicta but it is dicta that's being applied by the Court of Appeal in the Meares Island case and in subsequent cases both in this court and in the Court of Appeal, it is very -- and I believe in Guerin it is referred to as well as to what the court must look at with respect to the content of aboriginal title, and of course here you are asking -- you are being asked to make a declaration of the rights of the Gitksan and Wet'suwet'en, their aboriginal rights, those rights including concept of ownership and jurisdiction.

THE COURT: Surely the rights, if I may, spring from the nature of the use of the land. Surely they don't spring from the subjective beliefs of the claimants, do they?

MR. GRANT: They don't spring from the subjective beliefs of the claimants but with respect, my lord, I don't think they solely spring from the quote what you said the use of the land.

THE COURT: I may have put it narrowly.

MR. GRANT: Because what they spring from is, I think, as Judson, and I am paraphrasing here because I can't recall it, but as Judson says, the people were here, they were occupying the territories at the time of contact. Now, the question is, when you are dealing now with these two nation groups, the Gitksan and Wet'suwet'en, what is the aboriginal title of these people in its fullness that is recognized if you make a finding of aboriginal title to the territory, what does that mean for the Gitksan and Wet'suwet'en? And I submit it means something significantly different than possibly with Inuit as found by Mr. Justice Mahoney in Baker Lake or with any other group where there is a finding. And of course that's why this body of evidence has been produced to you. Now, the component -- in fact, the aboriginal title includes a claim of Gitksan and Wet'suwet'en jurisdiction or authority over their territory. Now, that authority over their territory has to be founded on a system. The question is, do the Gitksan and the Wet'suwet'en have a system of ownership within their system, and that's relevant for you to find to have evidence of that to determine if their system -- the scope of the aboriginal title that existed at the time the Europeans arrived and, therefore, then making the subsequent findings subject of course to the findings with respect to the certain defences of

extinguishment, et cetera.
THE COURT: Well, Mr. Willms, what is the specific objection that you are making at the moment?
MR. WILLMS: The specific objection, my lord, is that if the witness is going to -- yesterday the witness gave evidence about Wet'suwet'en, everybody's related to everybody else and so they hunt on all the other kinship and all of that. Now, if that's the evidence -- if those are the facts that this opinion is based on, then it is a simple matter for the witness to say that. If there is something else that the witness is basing this opinion on for the Wet'suwet'en, in my submission it should be stated so that we know what the facts are. I mean, we know what he said yesterday. If that's all, that's fine; then we can deal with that. If there is something more, that evidence should be led before the opinion is asked so that there is a foundation for the opinion.
So that if I can put it it this way, my lord, so that what we have is expert opinion, not just the opinion of an expert.
THE COURT: Well, these concepts are almost impossible to come to any kind of grips with. I am inclined to think that, that is so often the case, that there is something to be said for both of the points that have been advanced. I haven't heard from Ms. Koenigsberg on this, perhaps I should do so before I stray any further.
MS. KOENIGSBERG: Well, I won't presume to add my two cents to the problem of what ownership has to do with this case. However, I do have difficulties looking at the next several pages of the report, and Mr. Grant's eliciting the opinion, but I have the same difficulty Mr. Willms does. What is the foundation for the opinion? Now, we've been told that there is this available documentary evidence and we have heard something about that. And we have -- I take it that we are launching into something having to do with the present day Gitksan/Wet'suwet'en kinship society; we heard about that. It would be extremely helpful, I think quite frankly for your lordship, though I don't presume to know if your lordship is able to follow this, but I am having great difficulty following, when we have an opinion, what it is that exactly is being relied on in support of the opinion, and it would be very helpful if it were set out by Mr. Grant in the normal course of leading expert evidence because, in

1 particular, these concepts are very strongly mixed up.
2 Are we dealing with subjective beliefs? Are the
3 subjective beliefs part of what Mr. Daly says is his
4 opinion about the system? That may be so. Is it also
5 something else? And then we can have an elaboration
6 of what it is. But I don't know if I have helped any
7 but I am certainly having the same difficulty as Mr.
8 Willms.
9 THE COURT: Well, it is more than two cents' worth anyway.
10 MS. KOENIGSBERG: Thank you, my lord.
11 THE COURT: Mr. Grant, I am disposed to accede to your friend's
12 objection and to say to you that I think you have to
13 establish the basis for the opinions the witness is
14 going to express. I am not going to go so far as to
15 say that you have to resort to the hypothetical
16 question because in something as diffuse as this is,
17 we would never get all the factors properly stated.
18 And as an old defence counsel and in criminal work it
19 was always good tactics to let your friend state the
20 hypothetical question and then object at the last one
21 and ask him to repeat it and right before you do it,
22 the jury never understands what the hypotheticals
23 were, and understand what the people were doing. And
24 I don't think you should get into hypothetical
25 questions or be forced to, but I think you do have to
26 have the witness indicate, before expressing opinion,
27 what it is that the -- what the opinion is that he's
28 reached on the basis of the information you have
29 adduced or he can refer in part to the report or
30 something, but I think we have to have something a
31 little more than just the opinion.
32 I am disposed to agree with you on the question of
33 the aboriginal rights question. I think that whatever
34 the aboriginal rights are, they spring in part from
35 the social order as well as the occupation, and a
36 system of laws might, which seem to me be part of a
37 social order, that could form the basis for an
38 aboriginal right or an amalgam of aboriginal rights
39 and for that reason, I am not seeking in the ruling I
40 have just made to restrict you from adducing from the
41 witness what conclusions he has reached about what the
42 laws or social rules of the Gitksan and Wet'suwet'en
43 were. I am not sure that that advances this very far
44 and it may move us several steps backwards, but I
45 think on that basis you will have to proceed with it
46 that way.
47 MR. GRANT: If I may just have a moment, my lord.

THE COURT: Yes.
MR. GRANT:
Q I will go back, Dr. Daly, to page 165 at the bottom. That -- first you provide the quote from the Encyclopedia Britannica as to an explanation of what property is and we have set out that quote?
A Yes.
Q Then you state:

> "A broad explanation of ownership in any culture would include the following aspects."

And that's -- I would like to ask you -- and then you list a series of aspects. And why do you say that a broad explanation of ownership in any culture would include these aspects?
A Because that's what I have learned in my training, that's what the chiefs have told me in this case, and that's what they have told the court in their transcripts. That's what I found from my evidence and my interviews from living in the community.
Q Okay.
A These are the features which were meaningful to me and they are consistent with the systems of land tenure and land holding and exchange of rights concerning land in other societies.
Q And would you refer there, for example, to the societies that you have just described that you have studied in your training?
A Yes.
Q Okay. Now --
A And that's -- that's true of all my opinion, that it's based on my experience; it is based on my training as an anthropologist in comparative studies, and first and foremost, it is based on what the chiefs have said in evidence and what they have told me and what I have experienced of their society in the Gitksan and Wet'suwet'en territories.
Q Now, you had described yesterday tribal cultures, tribal societies, and our society, that is Canadian society, be known as a state society in this spectrum; is that right?
A Yes.
Q Would these concepts of ownership apply in a state society as well as a tribal society?
A Yes, yes, they would.
Q Now, you state that:

"Ownership applies to concept of exclusive possession. Implicit in this aspect is the delineation of boundaries; that is, social recognition of the physical limits of the property over which ownership is claimed. While exclusive possession is a dominant feature of ownership it does not preclude the existence of defined areas over which there are common or joint use rights."

Now, with respect to that statement about exclusive possession, are you still talking here in general concepts about what ownership in any culture implies?

A Cross culturally, yes.

Q Cross culturally. Now, why do you say that:

"While exclusive possession is a dominant feature of ownership it does not preclude the existence of defined areas over which there are common or joint use rights."

I am talking here about cross culturally?

A Well, in societies which are commonly organized according to principles of a band, the use and control of the territory is very subtle. It is not engraved in stone, and yet there is a system -- a recognized system within the society. The actual boundary line is generally a matter of fuzziness in the sense that the focusing by one group of its boundary with the next group is probably from the centre of the resources that are exploited on that territory most consistently. For example, among the !Kung bushmen, that's !-K-u-n-g, of Botswana and Namibia, the central features of the ownership of the band is the water-hole, whereas -- and then the next water-hole is the next focal point of ownership for the next band. There is some point -- some features of land which mark a line of demarcation between the two which are by common usage and common recognition on both sides is the boundary, but no one makes a big issue of it if someone strays over that boundary, but there is certainly an issue if someone moves in and tries to oust the others from their water-hole. However, they can come in to visit and be invited to use your territory and then you can go -- this will be reciprocally recognized, but this is much more subtle,

and it's defined but it's not defined in terms that we are familiar with in our culture.

Q Now, that example of the !Kung you said was an example of a band?

A Yes.

Q If terms of this use of boundaries, is there a distinction between bands and tribes?

A There is, because tribes are basically settled populations or they are settled on the land for considerable portions of the year. I am thinking of the tribes that we talked about yesterday morning that are not based on agriculture. But there is a sedentary sense to the nature of the social structure. People are on the land and in a more consistent way together as a fairly large group.

And as a result, the population density is greater, much greater than among a band, band societies. So you have to have -- the people find in order to have ordinary orderly social exchanges, there has to be more defined systems of control and ownership of territories and resources. That's another thing, the individual family units within a band may have ownership rights over specific resources within a territory and, yet, they have band-wide rights over the whole region and this is generally much more territorially circumscribed in a tribal society and certainly in a chiefdom.

Q Now, then you have a concept that:

> "Second, ownership entails rules to govern the conveyance of rights from person to person, and generation to generation."

Would this principle of ownership apply to both band societies and tribal societies? I should say --

A Yes.

Q -- feature. I should use your term, you say it is a feature of ownership?

A Yes.

Q And then you describe that:

> "In some societies the conveyance of land is limited to inheritance; in others, it can be bought, sold, traded or auctioned."

Is that a distinction that you would find in tribal and band societies?

A Tribal and band societies, the passing of land from one holder to another or from one generation to another follows lines of kinship, whereas the predominant form in, of course, in our society is through the market, the mediation of the market.
Q And so when you say it follows lines of kinship, would that be consistent with the conveyance of land is limited to inheritance?
A Yes.
Q You then go on to say that, thirdly, a third concept is that ownership entails property management. Do you find this feature in both band and tribal societies?
A Yes, you do. There was an interesting article on the aborigines of Australia fairly recently showing the management of their land in terms of controlling the -- well, shall I say since the coming of the Europeans to Australia, there have been considerable devastating bush fires, and the article was arguing that this was because the government had put a stop to the regular burning of territory by the aboriginal populations and they had been burning territory in the past to stop the spread of bush fires by having fire breaks and to also stop the ecological cycle at what's called a seral growth, that's s-e-r-a-l, so there is more species generally that can be exploited in a seral growth phase of an ecological cycle, and this has kept -- when you fly over Australia you can see it, the type of vegetation is changing now that there has been over 200 years of European occupation, but still the effects are -- of the management, what I call here management of the territories by the original population on the land, has had very definite effects on the way the land is used and enjoyed by different peoples.
Q Are the aborigines a band or a tribal type of society, the aboriginals of Australia?
A They are bands, the band structure.
MR. GRANT: Possibly you could have the blue book put in front of you, tab 44.
THE COURT: What part of Australia were you talking about there?
THE WITNESS: It was an article in general about the land -- the burning on the northern territories.
THE COURT: The northern territories, thank you.
THE WITNESS: The article is item 44 in the book.
MR. GRANT:
Q And this is an article by Clive Gamble?
A That's correct.

Q And do you know who Clive Gamble is?
A He is, I believe, basically an archaeologist. He does a fair amount of writing on scientific journalists on popularizing science.
Q And this was an article in the April '86 New Scientist?
A Yes.
Q This is the article to which you are referring?
A Yes.

MR. GRANT: I'd ask that that be marked as the next exhibit.
THE REGISTRAR: Exhibit 890.
THE COURT: 890.
THE REGISTRAR: Yes, my lord.

(EXHIBIT 890 - TAB 44 - WITNESS BOOK - ARTICLE BY CLIVE GAMBLE IN NEW SCIENTIST 1986)

MR. GRANT:
Q Now, that was one of the articles from which you relied in your report that you referred to?
A Well, it was sort of like an icing on the cake as I -- it certainly backed up what I -- my understanding of the way the land is utilized but it wasn't the foundation of my opinion.
Q No. You then go on to say that, fourthly:

"The ownership involves the owner in obligations to whichever society recognizes and validates his or her proprietorship."

And then you say:

"These obligations may involve the giving of gifts and hospitality, or the payment of taxes."

And if we can just take each of those two statements, can you explain what you mean in the general concept of the owner involved in obligations?
A Well, as I have been taught, ownership is a body of rights in respect to property, and rights, according to at least British social anthropology, entails responsibilities as well as in society. And the right to enjoy ownership, as I see it in our society, is balanced by a responsibility to pay your taxes. That's one, under a very bold layman's fashion, view of it in the situation.
In tribal societies and band societies, the right

to enjoy the property depends on your whole social performance in the course of your day-to-day life, and it is frequently associated with giving of hospitality, of providing largess, providing food and services to the needy; if you have the rights in your name, your kinship has the rights -- your kinship grouping has the rights to use and enjoy certain territory. It has the responsibility to feed anybody who is needy from that territory and, of course, that reinforces your authority and standing as well.

Q You then go on to say that ownership, and I take -- I am going to ask you if this is the general or the particular but:

> "Ownership implies the right to manage and direct activities concerning the property in question, be they production activities, marketing or property maintenance."

Are you here dealing as well with cross cultural --

A Yes, I am.

Q -- use of the term? And why do you say that, that it implies the right to manage and direct activities?

A Because you can't have, in any society, you can't have a successful economy unless you've got control over your resources and you have some stability of labour, ability to deploy labour. And it is a question of control, authority and ownership which is -- which assures that stability which you need to engage in the activities which will give you the returns of your economy or your enterprise.

Q I'd like to refer you to page 169 -- I'm sorry -- well, I am not going to quote this. You state -- I will just -- the initial statement at page 167 on the bottom. It says:

> "The public and ceremonial announcement of changes and reaffirmations of matters pertaining to property is common in societies without a written culture."

Now, then you go on through to page 171, and you're talking about the Iroquois, and I'd just like you to explain what you mean by that and, if you wish to do it with reference to the Iroquios or those comments, proceed?

A Well, in order to -- that all the participants in a

1 system of ownership know who the owners are and what
2 the decisions and important activities that are being
3 engaged upon or deliberated upon, if you don't have
4 written documents, it is hard for the other actors in
5 the overall social drama which is an anthropological
6 term, to understand -- to know how to react and how to
7 respond, and whether the claims that the owners of one
8 group are pursuing are legitimate or not in terms of
9 the overall morality and unwritten laws of the
10 society. So in these societies, there is a way of
11 recording the decisions in an oral fashion and that is
12 when one property-owning group makes important
13 decisions, such as succession, these decisions, in
14 order to be legitimate, must be witnessed by other
15 property-holding groups or their leading
16 representatives. And when the witnesses do their
17 witnessing they are generally paid something by the
18 person who calls the gathering, to thank them for
19 their assistance and the witnessing is not passive.
20 Usually there is a comment by the witness as to the
21 correctness of what is going on from their own
22 experience and their own training. And this certainly
23 was the experience of the early Europeans who came
24 into the eastern seaboard of the United States in
25 their dealings with the groupings like the Iroquios.
26 When they wanted -- when the land was being seeded in
27 the early stages, they found that the people
28 considered it to be illegitimate unless it was
29 witnessed by other chiefs. No one could sign away
30 land unless the action was witnessed by their peers.
31 Q Now, is this reported by -- was this reported by
32 Cadwallader or Colden?
33 A No. Colden was the Surveyor General for the colony of
34 New York and this was his experience in achieving land
35 sessions for settlement in the sixteen hundreds.
36 Q Was he also an ethnographer?
37 A No, he wasn't. Well, he took a keen interest in the
38 cultures and the customs of the people he was working
39 with and wrote a lot about them.
40 MR. GRANT: Now, with reference to this, I'd like to refer you
41 back to page 9 of the report if you will bear with me.
42 THE COURT: Page 9.
43 MR. GRANT:
44 Q Yes, page 9. Now, here you're quoting Drucker and you
45 state at the bottom:
46
47 "Gifts are given to visiting chiefs. These

are payments made by the host group to the leaders of other, like groups for having witnessed and validated the decisions of the host."

And then quoting Drucker:

"Then the gifts were distributed in the name of the recipient of the title or crest. The first and largest gift went to the highest ranking guest, the second and next largest to the second in precedence, and so on down the line. Recital of the history of the privilege and the distribution of wealth served to validate its use. The guests were witnesses to the fact that the privilege was rightfully owned and rightfully transmitted to its new bearer. This sanction was the essence of the potlatch and the prime purpose of the wealth. The effect of the procedure may be compared to that of notarizing a document or of registering a deed."

Then he says:

"...The myriad of rights in North Pacific Coast culture had to be validated in this manner. The rights included those to names and titles, not only names of persons but traditionally owned names for houses and other property, the right to use specific masks and symbols in rituals, the right to perform the rituals themselves, to use carvings, feast dishes, and the ownership of places of economic and ritual importance....It was usual to announce to guests, for example, that they were invited to eat sockeye salmon from such and such a stream, which had been discovered, given to, or captured in war by an ancestor and transmitted to the incumbent head of the group. The public announcement and tacit recognition of the fact by the guest group, so to speak, legalized the claim.

In my opinion, this passage describes in its general contours, the essence of major feasts as they are still given among the Gitksan and Wet'suwet'en today."

Now, who was Drucker specifically talking about in his quote?

A He was talking about the phenomenon of what's commonly

called the potlatch along the Pacific Coast, and he had been -- he spent his life -- a lot of his life studying the cultures of the whole region and wrote innumerable papers and a couple of general guides, general introductory books about the nature of the cultures along the Coast. And while he was a chief ethnologist at the Smithsonian, he carried out work on the -- studying the formation of the native brotherhood and it took him into the Gitksan territories; it took him into the Nishga territories of the Nass River, out to the Queen Charlotte Islands and around Prince Rupert, but he was also very familiar with Boas' work among the Kwakiutl people in the middle of the Coast and the work on the Nootka or Noochalna (phonetic) today.

Q And your statement -- you maintain your statement that based on your own research --

A This rings true, certainly does.

Q With the Gitksan and Wet'suwet'en?

A Yes.

Q And in your description between 168 and 171 you describe how this publication of witnessing occurred amongst the Iroquios as well as reciprocal gift exchanges?

A Yes. They also recognized that the British had their own system of notarizing documents which was different from theirs, and I have recorded that here, too. They recognize we have one system and you have another, so let's make it properly formal; we will accede to yours as you have acceded to our ways.

Q So the Iroquios actually signed --

A They actually signed the --

Q -- documents on the British system?

A They sent deer skins across so that the king could sign and put his seal on which was his way and we send you our wampum and we give you these gifts and it's been witnessed by your representative on our shores. The two processes side by side.

Q Okay.

A And they -- all the colonial administrators of that period, they acceded to this etiquette or customary way of doing business with the leaders of that time. It is not to say they didn't get their way and end up with most of the land in most cases.

Q Now, this -- and this -- your research on that was at the time you were doing your thesis; is that right?

A That's correct.

1 Q Going to the next section, my lord, page 173; it is a
2 section entitled Rights of Exclusive Possession, and
3 you start with a quote by Xhliimlaxha, Martha Brown.
4 Now, is that from the interview which is at tab 10 of
5 the blue book?
6 A I believe it is.
7 Q Martha Brown was one of your informants and at tab 10
8 and 11 you interviewed her in August of 1986 and in
9 April 1987?
10 A Yes. It is on page 5.
11 Q Of your interview notes?
12 A Of the interview notes.
13 MR. GRANT: Now, she was -- sorry. And then you have --
14 THE COURT: Where on page 5, please?
15 THE WITNESS: It is in the second section, the second half,
16 about six lines down.
17 MR. GRANT:
18 Q "Why not ask if you can use it? I said to them."
19 A Yes.
20 Q Okay.
21 A The GM refers to grandmother, and I consciously didn't
22 put in the names that she was citing for purposes of
23 rapport with the community.
24 Q And in terms in your field of anthropology, is that
25 common to not be named specifically?
26 A Yes. On this whole process of revealing of all the
27 documents and everything is quite foreign to the
28 ethics of conducting anthropological investigation.
29 If you are doing any research through a university,
30 the university will not underwrite the granting
31 bodies -- they won't support your grant unless you
32 have passed the Ethics Committee's requirements of
33 confidentiality and respect for the dignity of the
34 people and the information that they give you. So
35 generally when you are writing up this sort of
36 information, you use pseudonyms or change the names of
37 the village or something like that for publication.
38 Q Now, you state there, and there is a Gitksan word,
39 Xhlenganamaxw: "We tried to..." that refers to a
40 fishing site; is that right?
41 A Yes.
42 MR. GRANT: Okay.
43 THE COURT: Do you have a spelling for that?
44 MR. GRANT:
45 Q Yes, I will spell it. It is in the -- that middle
46 paragraph of the interview on page 5, my lord.
47 X-h-l-e-n-g-a-n-a-m-a-x-w.

"We Try to check up on our sites and our trapline. Those guys from blank have tried to get everything away from us. It is difficult for an old chief nowadays to look after things properly. Some members of our houses have told them they have no right to visit this site. I have, too, and I still tell them why not ask if you can use it? I said to them. They said, but their grandmother used it. Yes, I said, lots of people have used it, but we own it. If you just ask us..."

A Ask me.

Q

"...ask me, you can use it. I will even tell you where you can set your net." Billy Williams Gisgaast always used to ask Paul Xhliimlaxha and he always got permission. That's the way it always was. Then there is blank. These guys wanted on the basis that their father had used it. He could use it because he was married into our family. That is our law. He could use it right up till his death. Blank's mother's father was in the house of Xhliimlaxha. Then they were told afterwards right in the feast that they were not going to use it any more. There was a court case about it. Then after the old man died, my mother used the spot. There was no road up there at that time. My mother used a big canoe. She went up there by boat. It is a beautiful place to spend the summer with all the families getting together to catch all..."

A "...to catch and put up some fish."

Q

"...to catch and put up some fish. We always fished there with nets, at least in my day. The old people made nets from cedar strips..."

A Cedar string.

Q

"...cedar string. We got twine from the cannery, hay sported the coast and made nets. The ladies went down to the coast and worked the nets mending them until their hands swelled up. Before the nets we had the mauss sticks pounded into the river. That's what there was at Temlaxamid.

Skak'sen..."
THE COURT: Just a moment. You better spell Temlaxamid.
T-e-m-l-a-x-a-m-i-d?
MR. GRANT:
Q Yes, Temlaxamid, thank you, my lord.

"Skak'san the sticks were about a yard apart with the..."

Can you help he me there, "trips down in between"?
A The traps.
Q

"...traps down in between."

A These are the basket traps.
Q

"I seen a fish fence ti'in in the 'Ksan before the flood of 1936. Fish hooks that my mother said they got moose or goat..."

A

"...for fish hooks, my mother said, they got moose or goat bone and sharpened it and tied them, two of them in a cross."

And that's called dawx'aht, d-a-w-x-underline-'-a-h-t.
Q Now, this is the reference that you were referring to about the fishing site of Martha Brown?
A Yes.
Q And about the question of use and own it. And that underlining is -- that you put in your quote in the report is also used and the own is underlined in the transcript of your notes, and that was an emphasis that she made or that you made?
A That was the emphasis she made in her voice. I underlined it because that was what she was emphasizing.
THE COURT: What's underlined?
THE WITNESS: She said, "I tell them you may use it but we own it". So you had underlined "use" and "own".
THE COURT: Is that underlined?
MR. GRANT: You see in the -- it is underlined in the --
THE COURT: Oh, yes, all right. Yes, thank you.
MR. GRANT:
Q Martha Brown, Xhliimlaxha is now deceased?
A Yes, she is.
THE COURT: In the middle of page 5, starting that long

paragraph, there is a word there that I don't know what it means. X-h-l-e-n-g-a-n-a-n-a-x-w. What does that mean?

THE WITNESS: That was my phonetic spelling. It refers to a dispute over a fishing site and I don't have all the particulars of it. It wasn't what was --

THE COURT: That was the name of the fishing site?

MR. GRANT:

Q That was the name of the fishing site?

A I believe that was the name of the site. I am probably spelling it quite differently from what the experts would.

THE COURT: Thank you.

MR. GRANT: My lord, I would ask to tender this interview as the next exhibit.

THE COURT: Well, I think it would have to be for the purpose of establishing the knowledge of the witness only and I suppose that's basically how you tender it, is it?

MR. GRANT: I would like to -- that's certainly one of the basis and I will -- I wish to tender all of these interview notes for that purpose. With respect to this interview, I would be tendering it as well as a statement of a person now deceased with respect to territory. Martha Brown gave evidence by way of commission in the case.

THE COURT: Did she say these things in her evidence?

MR. GRANT: She dealt with some of the things but she didn't necessarily deal with all of the things.

THE COURT: All right. Well, I will mark it now for the limited purpose I mentioned, and you may revisit the subject later. And I am uncertain about the second part of your proposition but we will deal with that later.

MR. GRANT: Yes. I just wanted to put my friends on notice and possibly --

THE COURT: The next exhibit number.

THE REGISTRAR: Next exhibit number 891. Is that all of tab 10?

MR. GRANT: Yes. And I would ask then to put tab 11 in as well at the same time which is the second interview with Martha Brown.

THE COURT: 892.

THE REGISTRAR: Thank you.

(EXHIBIT 891 TAB 10 - WITNESS BOOK - FIRST INTERVIEW WITH MARTHA BROWN BY DR. DALY AUG. 1986)

(EXHIBIT 892 TAB 11 - WITNESS BOOK - SECOND INTERVIEW WITH MARTHA BROWN BY DR. DALY - APRIL 1987)

1 THE COURT: Seems to me there may be a problem, and I am only
2 anticipating that we might think about it, that the
3 exception to the hearsay rule for declarations made by
4 a deceased person entitles usually declarations are
5 made spontaneously; not sure that it extends to a
6 process of this kind where a statement has been made
7 for the purpose of litigation but I'd like to hear
8 counsel on that when the time comes.
9 MR. WILLMS: My lord --
10 MR. GRANT: I have no difficulty with that. I wanted to raise
11 it, my lord, because I appreciated that the reason we
12 have put in interviews as -- as you have defined in
13 the past and I just wanted to put my friends and your
14 lordship on notice that I propose that there may be,
15 with respect to certain of the interviews, we may make
16 a different position but I think it is more sensible
17 to argue -- to mark it as an exhibit on the principles
18 that these types of things have been accepted and then
19 argue it at a later time rather than dealing with it
20 at the time of the witness time in terms of the
21 time-table. That's the approach that I think is
22 preferable.
23 THE COURT: Thank you.
24 MR. WILLMS: My lord, just then to help my friend the other way.
25 These weren't delivered until the fall of this year so
26 there was no opportunity to test Martha Brown with
27 them. The evidence had already been done. We didn't
28 get them until October.
29 MR. GRANT: My recollection is that Martha Brown -- that these
30 actual -- that these interviews would have taken place
31 after her commission evidence. She was one of the
32 first witnesses who gave commission evidence.
33 THE COURT: Does your statement, Mr. Willms, apply to all of
34 these interviews in this blue book?
35 MR. WILLMS: My lord, the earliest that we got any of these
36 interviews was October. We got some as recently as
37 last week but the earliest was last October.
38 MR. GRANT: Well --
39 THE COURT: Let's get on with the case, Mr. Grant.
40 MR. GRANT:
41 Q Yes, okay, my lord.
42 Under this area of Rights of Exclusive Possession
43 on page 174, and this is the area Unit of Exclusive
44 Ownership is the house. Now, you have talked earlier
45 about the generic concept of exclusive possession
46 which you just dealt with, and you state on page 184
47 with respect here to the -- I am sorry, page 174 at

the top, and I quote:

> "The owner of territory need not be an individual; among the Gitksan and Wet'suwet'en it is a collective, corporate body: the House group, with rights vested in the chief on behalf of the whole kinship group. Decision-making in these groups is consultative; the views of the chief, the elders and general members are the regular components of decisions taken with regard to ownership rights."

Now, first of all, when you refer to collective, corporate body, is that a term that is utilized in anthropology?

A It is used in anthropology and sociology to denote a social grouping. It has certain criteria. It has a system of boundaries. There are certain criteria for membership within the group. The group has a name and so on, and generally it delegates someone to act on its behalf on -- under various circumstances.

Q Now --

A One example was the women's society among the Senaca Iroquios and the women didn't speak in this council so the chief who was the spokesman for the women, he used to start all his speeches -- this was Corn Planter -- no, Red Jacket, Chief Red Jacket, he'd say, "We women believe", that's how he started all his speeches. He was speaking as the corporate -- the representative of the corporate grouping of all the women in the counsils.

Q Now, can you explain why -- what is the basis upon which you have concluded that with respect to the Gitksan and Wet'suwet'en, the owner of territory is the house group with rights vested in the chief on the basis of the whole kinship group? Firstly, I am asking you the source of that opinion -- the basis of that opinion in terms of --

A Do we have to do this with every statement? Because the sources are what we have already laid out. My experience in the community, what the chiefs have told me, what I have read about the area, what Drucker has said about the general region in general. It just seems to be every single statement you ask me the same thing.

Q What did you observe in the feast that reflects on this?

A I observed that the chiefs spoke about their territories and their crests and their histories. If the chief was not able to attend, one of his wing chiefs or his sub chiefs would speak on his behalf. The unit which interacted in the feast was the house group through the persons of their chiefs, and these -- the chiefs -- the membership in these groupings was through kinship, through matrilineal inheritance.

Q And you have indicated that you attended the fish camps at An Kii Iss, A-n-K-i-i-I-s-s, and Gwinoop, G-w-i-n-o-o-p. Did you make any observations there which reflected on this opinion?

A Yes. The people would always, not just at those camps, but at all of the fishing sites it was made very clear to you whose fishing site you were visiting, who owned it; and in terms of those fishing sites, the house group that owned them, the two of them, it was the Eagles from Kitwanga, and I believe it was Wii Moglusxw, Art Wilson, and his wilnadahl who controlled -- who had ownership of the Gwinoop camp.

Q That was the one at Kispiox?

A That's the one at Kispiox. And these people were your hosts in -- for all the events that were there, and it was people associated with them that were the backbone of the camps and were there on the permanent basis. Other people came and went but they were -- because they were the owners, they had to oversee what was happening or be there in case anything or there were any problems.

MR. GRANT: When you say those people, you are obviously referring to, in the case of Gwinoop, to Wii Moglusxw and his house group and, in the case of An Kii Iss, to the Eagles that you just referred to.

THE COURT: Just a moment please. Ms. Koenigsberg?

MS. KOENIGSBERG: Perhaps this is a good point to raise an objection which we raised in the beginning and I won't -- I haven't risen at every opportunity but perhaps this is a good example. This kind of evidence, if we begin with the opinion that the Gitksan/Wet'suwet'en is a collective, corporate body and then go on to what the house group is and how the decision-making is taking place and so on, it will be our submission that that is inadmissible to the extent that it is based upon this witness' interpretation of what the witness has told him because of course the witnesses have told your lordship, we have heard from

a variety of witnesses leaving aside, and I will get to that, calling it a collective, corporate body, which is the labelling for the purposes of understanding anthropological concepts in which this witness is of course qualified to do and it may or may not be helpful and we will deal with that in due time, but the balance of it is this witness telling us which of what parts of what the witnesses have told your lordship are to -- what meaning you should take from it, and in my submission, that is objectionable and it isn't admissible. It is for your lordship to determine.

THE COURT: Whether they are a collective, corporate body?

MS. KOENIGSBERG: Well, I think probably that too, but leaving aside the label, whether on the basis of what the chiefs have told your lordship with respect to this very issue, whether the rights are vested in the chief on behalf of the whole kinship group, and I mean, we have had chiefs who have said something that we would say, yes, definitely that's what they were saying, and we have had chiefs saying something quite different, and it is going to be a question of argument put to your lordship as to what that means. And here we are landed right in the middle, in my submission, to the difficulty with accepting and hearing evidence from a witness like this whose evidence -- whose participant observation includes the witness' evidence before the court and includes interviewing them during -- exclusively during the ongoing court case, so that we have no choice but to deal with his interpretation, what he takes, what he selects of that and presents, and it can make a cohesive hole, there is no doubt about that, but in my submission, it is ultimately the argument, the formal argument, and it certainly is based on his interpretation of what the witnesses have told you which is, in my submission, going to be your function to determine.

THE COURT: Isn't the conclusion that the Gitksan and/or the Wet'suwet'en are a collective, corporate whole, not for this limited purpose an anthropological definition?

MS. KOENIGSBERG: I'm sorry?

THE COURT: It is a definition that is used perhaps, I don't know, but perhaps it is used by anthropologists and it is a classification.

MS. KOENIGSBERG: Yes.

THE COURT: And I am not sure that he is telling me as a matter

of fact or as a matter of law that the Gitksan and the Wet'suwet'en are collective, corporate bodies but merely that's how anthropologists would classify them.

MS. KOENIGSBERG: I agree, my lord, and I set that aside. I say for whatever purposes we can hear an anthropologist's opinion, it would certainly be within his area of expertise and admissible for him to look at assumed facts or facts proven and say that constitutes a collective, corporate body and it's like X in Africa, to make a point, to make it understandable.

My problem isn't with his calling it a collective, corporate body; my problem is, when he goes on to tell us what that means for the Gitksan and Wet'suwet'en when that very issue and all of those component parts have been the subject of evidence before your lordship by different chiefs who say they are the ones who can tell your lordship what their role is, and it will be our submission that it isn't as though it is beyond peradventure what chiefs do and what the rules are. We have had a lot of evidence on that subject.

THE COURT: Well, I think I understand what you are saying, Ms. Koenigsberg, but I don't think we have the right, any of us in this case, to be overwhelmed by the magnitude of the problem. That may be a reality but we are not allowed to be overwhelmed. I have never had to deal with a 700-page report before and I think it is almost unmanageable. I haven't taken the time to read it and I have to rely on counsel to highlight the parts that bear special attention. I don't think we should allow ourselves to be bogged down with detail. I think that when counsel put forward a 700-page report they are going to have to allow it to speak for itself on a leisurely-reading basis and I have to allow Mr. Grant to show me those parts that he thinks I should underline, which I am doing, and to give special consideration to them when I come to read the report.

But I don't think, if I am not going to be overwhelmed, that I can worry about the order in which things are done or even possibly the admissibilities of it. I think we have to manage this problem, and I am not sure that at the end of the day I am going to be any wiser but I hope I will be, but I hope that if Mr. Grant shows me the parts I have to pay special attention to, it will fit into some scheme of things and that I can classify it in terms of what's admissible and what isn't or that all of it is admissible or none of it is. I am sure some of it is.

Therefore, I think that I have to fall back on the old side door of the law and say that your objection has been recorded but I am not sure that I give effect to it.

MS. KOENIGSBERG: For what it is worth, my lord, I didn't really anticipate that you would. I simply -- our difficulty is that when we began in this way, it was left that we would object as things came up and I am sure neither Mr. Willms and I have done that very regularly but here was an apt example of the kind of evidence that we will be submitting is inadmissible at the end of the day, and I don't think I need to put it any clearer.

THE COURT: Mr. Justice Bruce Macdonald had such a report in the Anderson case, he saw the problem and ruled it totally inadmissible, and perhaps it was even longer than this one. I don't think a judge should be expected to deal with it in court in any other way than this. It is up to counsel to recognize that their job is to dissuade and focus. If they give me too big a target -- but we'll do the best we can. I don't think we can do it any way except the way we are doing it. We will take the morning adjournment.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED FOR A RECESS)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO THE MORNING BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT:
Q Thank you, my lord. Now, you were describing about -- before the break, Dr. Daly, about your observations at the fish camps with respect to this opinion at page 174 regarding ownership. Now, you also have referred to the fact that you went out and took trips on the territory with some of the chiefs. Did your observations there influence your opinion here?
A Yes, it did.
Q Okay. Can you explain -- expand on what happened?
A It was only the first or second day I was in the region, and we were going to visit the territory of Gisday wa in Wet'suwet'en -- in the Wet'suwet'en region. And I believe I was driving, and my guide was Andrew George, who holds the name of Tsibasaa.
Q Is that a Wet'suwet'en chief?
A Yes.
Q Ah ha.
A From the Lakshamshu Clan. And I had asked him if he could just show us the territory and familiarize us with the -- with the region.
Q Um hum.
A Nothing -- I didn't ask any specific questions. And I was struck right away on -- as we were driving down, he was pointing out the window at different land features, that this belonged to so and so and this belonged to someone else, and I recognized some of the names. But I remember we approached -- now, before we got to Houston, he said, "This is the -- this is the territory, both sides of Smogelgem." And I said, "Is that -- that's your brother, isn't it, Leonard George, Smogelgem?" And he said, "That's right." He said, "And it ends down here, and the territory south" -- well, anyway just before we get to Houston, we turned off on to the road that follows the Morice River, and he pointed out the land on our left was Kanoots' of the Wolf Clan, the Gitdumden, and I didn't know who Kanoots was, and he said, "Well, that's the Madeek people." So I said, "What is the Madeek people?" He said, "Well, that's their -- their house group." And then the next territory was the one we were going to at Owen Lake. So this alerted me to the -- the concern for the -- for the -- whose territory we were

1 crossing and who was located in relation to -- to whom
2 in the course of just getting oriented to the nature
3 of the -- of the region.
4 Q Well, in the course of that trip were you asking him
5 whose territory it was?
6 A No. Well, I started to after that because I became
7 alerted to it.
8 Q Okay. But he -- which of you initiated the concept as
9 to --
10 A Well, he initiated -- on the trip down I didn't ask
11 him anything about the territories. I was just
12 listening and driving. But on the way back I was
13 asking about who -- where's the boundary line and so
14 on.
15 Q Now, as an anthropologist -- did you go out on a field
16 trip shortly thereafter with David Blackwater as well?
17 A Yes, I believe it was the next day.
18 Q And where did you go with David?
19 A We went up the Kispiox Valley and had a look at the
20 beginnings of the -- of the old telegraph line that
21 runs through the Gitksan area up into the northern
22 part of the province. And that day I wasn't driving
23 so -- but I was sitting in the back seat. I asked --
24 I'd asked David about the annual round and how the
25 territories were used, and as he explained, he
26 suddenly stopped and said, "Well, this -- these
27 mountain peaks here are very important. That's where
28 we -- we go in the fall and our ladies are picking
29 berries in the middle and upper ranges around tree
30 level. And not too long ago we were using the
31 groundhog skins as a main feast item." And the
32 groundhog were very good. They taste like bacon, and
33 they're very fatty, and it's a good food to give to
34 chiefs. And he gave some examples of chiefs whose
35 territory was quite distant from Kispiox but they had
36 the rights to take groundhog and occasionally mountain
37 goat from someone else's territory but on a specific
38 mountain or a ridge of mountains because they needed
39 access to certain goods for their -- to uphold their
40 responsibilities in the feasting.
41 Q Again, on that trip did you interview or question
42 David as to who owned these places that he was
43 pointing out or did he say anything about it?
44 A Yes, yes, I asked him who owned them, and he would
45 give me the -- the name of the chief and tell me about
46 how the chief and his family or members of his group
47 would go there and use them in one way or another. He

also told me about a dispute he was having on his own trapline, in relation to his own trapline on Slamgeesh Lake in the Blackwater country. That indicated to me that he was -- when he was giving me the names of chiefs in relation to the territories he was thinking of them as the whole kinship grouping because this man, who was a doctor from Smithers who runs a -- he has a game -- big game and fishing resort business. He flies businessmen into the area to -- to enjoy the region. And --

Q He's a guide outfitter?

A He's a guide outfitter. And he -- he wanted to buy David's trapline, rights to David's trapline.

Q This guide outfitter, is he a Gitksan or Wet'suwet'en?

A No, he's a non-Native.

Q Okay.

A David said, "I can't sell -- even if I wanted to, I can't sell you this trapline because it's not mine to give you. It belongs to my house. It belongs to Niist, and Niist is not just me, it's everybody in our house. We don't sell our traplines, for one thing." And I asked him what he meant, did he mean trapline or his territory, and he said, "Well, the trapline and the territory is the same thing as far as I'm concerned." He said, "But that would -- I would be -- immediately lose my position as a chief if I were to sell -- agree to sell the land even on behalf of my house without any consultation. That would be it. I would be finished. Nobody would have any respect for me again."

Q Now, as an anthropologist and a person with experience in the field and other situations, is this -- what do you -- do you -- how do you deal with statements of persons about the concepts of ownership and their society? I mean, how do you use that?

A Well, they -- they alert flags in terms of the categorization that we're trained to make. So this -- obviously this -- he was talking about corporate groupings. And there's lots of examples in the anthropological literature, so then we just use that as a guide to further thinking and looking for similar explan -- or similar descriptions and explanations in the -- in the written literature and in other similar societies, particularly in the general cultural area.

Q And when you reviewed, for example, transcripts of witnesses in the trial, did you review those to determine --

A No, it's the same process. It's the same way that ethnohistorians read between the lines, so to speak, or take bodies out of a text that a fur trader left in terms of his description of how Native society operated. But he's not looking at it from the same perspective that I would because my training is different, my interests and training are different than his were.
Q Than whose, the ethnohistorian?
A Than the person who wrote the account which is the source of the ethnohistory.
Q Okay.
A And it's the same -- I treat the court transcripts in the same light. They're part of the raw material for forming an opinion about the nature -- the contours of the society and how it works.
Q You were requested by counsel to review the court transcripts, weren't you?
A Yes.
Q Now, you go on -- just a moment. Now, when you refer -- I'm sorry. Go to page 175. I'd just like to refer you to the third line down on page 175. You state:

> "Among the Gitksan and Wet'suwet'en, ownership is predicated upon a system of decentralized kinship government. Here, the means of decision-taking and enforcement is worked out between Houses and clans according to established rules and laws which ensure a form of social control and public order."

And that, I take it, is your opinion?
A Yes.
Q And now, can you explain what you mean about the -- why you came to the conclusion that the ownership is based upon a system of decentralized -- you've already really explained kinship -- but decentralized government? If you have to use it in the context of kinship, that's fine.
A My experience of the Gitksan and the Wet'suwet'en is that the contours of their social structure and their systems of interaction are consistent with what we commonly call a tribal organization.
Q Um hum.
A And generally in tribes there's no overarching

1 administrative body that settles disputes. I think
2 we've already gone into this.
3 Q Yes. Right.
4 A So that the level of interaction in the society which
5 is most frequently called into play is the house group
6 of the -- of the kinship units. So relations between
7 the house groups are -- that's the level of decision-
8 taking and legitimizing decision-taking and dealing
9 with questions pertaining to ownership and use of
10 property.
11 Q Now --
12 A Whereas the similar questions concerning land disputes
13 in an African kingdom, such as the Barotse that
14 Gluckman studied --
15 Q Yes.
16 A -- would be mediated by the king or his -- his -- his
17 court. And the findings of the king, because he spoke
18 on behalf of the whole nation, were binding on -- on
19 the litigants, but this is not -- it's more of a
20 negotiated situation in the tribal or band society
21 between what I call corporate units.
22 Q Okay. Now, you go on to say that the means of
23 decision-taking and enforcement is worked out between
24 houses and clans. Now, can you explain -- and then
25 you -- just taking that part of that statement,
26 "according to established rules and laws," can you
27 explain why you came to the conclusion that the
28 decision-taking is worked out between houses and clans
29 and exemplify it if possible?
30 A Now, this is most clearly exemplified in the feasting
31 situation. When it's a question of succession to a
32 name, this is the business of -- of the house itself
33 and the families within that house, so whatever --
34 despite whatever degree of -- of common blood ties
35 they have, they -- they discuss who is going to be the
36 next incumbent to that name. But they generally call
37 in to -- for advice people who are going to be in the
38 future and have been in the past closely associated
39 with them and with the ramifications of the decision
40 as to who they're going to choose.
41 THE COURT: Mr. Grant, I hesitate to interrupt, but I've heard
42 this over and over again from the witnesses.
43 MR. GRANT: Well --
44 THE COURT: How does it --
45 MR. GRANT: I don't need -- I take your point on this area, my
46 lord.
47 THE COURT: Yes.

1 MR. GRANT: The only concern I have -- and I don't want to
2 repeat evidence. The only concern I have is the
3 implication that my friends are making that if Dr.
4 Daly does not explain the facts upon which he relies
5 for the opinions that they're going to challenge the
6 very admissibility of the opinion. And I concur with
7 your lordship, and it's one of the reasons why Dr.
8 Daly as well as doing his own research reviewed
9 transcripts, is that that's all before you, and I
10 don't have to give him a hypothetical question because
11 it's in evidence. And -- but I don't need to have him
12 repeat it all, but I don't want the opinion --
13 THE COURT: But that's what he's doing.
14 MR. GRANT: That's right. But, on the other hand, I'm faced
15 with these -- these positions that, first of all, he
16 can't rely on something that's in evidence.
17 THE COURT: I don't think anyone said that.
18 MR. GRANT: Well, he refers to transcript evidence.
19 MR. WILLMS: I invite that, my lord.
20 MR. GRANT: And -- well --
21 THE COURT: If he's read it.
22 MR. GRANT: Yes.
23 THE COURT: He can't rely on what he hasn't read.
24 MR. GRANT: And what his report shows is that he refers to
25 specific witnesses and to their evidence, and that --
26 all he's doing is relying on that in part.
27 THE COURT: But it sounds to me like he's summarizing the
28 evidence for me. Not even summarizing, in many cases
29 repeating.
30 MR. GRANT: No. And that is not what the intent is here. I
31 mean, the difficulty, as you indicated before the
32 break, is that in terms -- to form his opinions -- to
33 set out his opinions which are contained in the
34 report, I would like him to -- I don't see the need
35 for him to go through each particular fact that --
36 upon which he relies, but it seems to be on the basis
37 of which my friends are suggesting that at the end of
38 the day that's exactly what they're going to say he
39 has to do. And if he has to then when he -- when he
40 relies on evidence before the court, if he has to set
41 out the facts upon which he relies, I don't want him
42 to repeat that evidence. That's the -- that's the
43 Catch-22 that I find myself in with respect to this
44 position. With all due respect to my friends, they
45 basically want it both ways. He must set out the
46 facts upon which he relies firstly. Secondly, he
47 can't repeat any of the evidence in the court, even --

but he should be relying on evidence that's before the court or is going to be before the court. Well, he comes after the evidence, not before. In many cases a person -- an expert witness comes before you and you say assuming A, B and C what do you conclude. The evidence is then established. But that's the -- and I'm not -- I can withdraw from this area based on your comment, and I will govern myself according to your concerns, but I just want your lordship to appreciate that I find myself in a situation where I'm being compelled to have Dr. Daly reiterate evidence, which I think is unnecessary, and, on the other hand, to -- or else I'm in jeopardy about his opinions. On the other hand, that if he doesn't -- if he doesn't reiterate the evidence. But I don't want him to reiterate the evidence.

THE COURT: I haven't got a comprehensive answer to your problem, but I know this much, that there is no profit in a witness giving me a summary of facts that I have heard from many, many witnesses.

MR. GRANT: And that is not the intent, my lord. I appreciate that. Maybe I can just go to the bottom of the page 175.

THE COURT: Yes.

MR. GRANT:

Q Dr. Daly, you state there that ownership -- this is after you reiterate that ownership of land and property is the whole house group at the beginning of that paragraph, which is your opinion. And then you say at the end:

> "Ownership is vested in the persons of the... high chiefs."

Now, what I'd like you to do, if you could, is to explain what you mean when you say:

> "Ownership is vested in the persons of the simgiget...or deniize'yu."

S-i-m-g-i-g-e-t. Deniize'yu, d-e-n-i-i-z-e-'-y-u.

A Well, the body of rights and obligations that goes to make up a corporate group is an intangible thing, and societies are composed of persons that are not tied to one another by ropes and chains. So the -- the office holder, if you like, the one with the high name, stands for the whole group in relation to the

deployment of people on the land, the ability of others to use the land, and to speak on behalf of the land in the public gatherings, the public forums.

Q And is that -- that is the case -- that is what you're referring to specifically with respect to the Gitksan and the Wet'suwet'en?

A Yes, it is. And in the feasting -- I don't know whether --

Q Go ahead.

A This is reflected in the -- in the seating in the feasts. The high chiefs are seated in a specific order. This reflects their -- their status in terms of land and everything else.

Q And that's what you observed?

A Yes, that's what I observed.

Q Okay. Now, you state on the next page, in the middle paragraph, that the chief acts as the human embodiment of the house and its activities. This is on page 176, middle paragraph.

> "The chief does so both informally in his or her daily behavior and formally, on all public occasions."

And is that --

A Yes.

Q -- what you're explaining about the vesting of ownership in the chief?

A Yes. But when a person receives a name and goes through the requisite exchange of gifts and payments and is -- the event is witnessed in public, he or she accedes to something already in existence, which is this whole mantle of -- complex of rights and prerogatives associated with the name, the crests, the history, the songs, the -- the sense of power and legitimacy. And that's a very broad word -- broad concept, rather, in these two cultures. Power is your -- of course your standing, your political position vis-a-vis other members of your kinship groupings and in relation to other chiefs, but it's also an authority that you obtain by coming into that name. The blanket that's put over your shoulders is the power of the land and the history and all of these symbolic features of the history of -- and tradition of that group. So you're walking into a whole set of responsibilities and prerogatives that are tied one to the other, the land, and the crests, and the songs,

and the adaawk, and so on.
Q Is that -- is there similar features -- is that similar to features in other tribal societies which you examined?
A It's consistent, yes.
MR. GRANT: I'd like to go to the next section, Dr. Daly, which is the section on page 177, Exclusivity and the Clan System.
THE COURT: Crest System.
MR. GRANT:
Q I'm sorry, Exclusivity and the Crest System. Now, if I could just go to page 185, 186, which is near the end of that section and which sets out your -- your opinions, and I'm going to go back to parts of the section. You state at the bottom of page -- I'm sorry -- 186 or -- I'm sorry. I'll start at page 185, the fifth line -- sixth line down.

> "The crests or ayuks on the pole display the history of the events, often in the distant past, whereby the crest was first adopted. They stand for the pedigree of the House, as do the names of river sites and features of the land, and the songs. Each crest pole stands as a form of legitimacy of rights to the fishing sites and the hunting ground."

Then at page 186 you state at the very bottom of that page:

> "The crests and the story of their acquisition give legitimacy to claims to ownership of land. The crests are a map, or a memory device..."

Then you refer to the Iroquois "memory cane," which you described for us yesterday.
Now, those are your opinions with respect to the crests and the relationship to the land; is that right?
A Yes, that's right.
Q And that's based on your research and your background training in other fields --
A It is.
Q -- as you've already described?
Now, first of all, can you tell his lordship, when you say exclusivity and the crest system, what do you

mean by crest system?
A I think I've already -- already alluded to this in the answer to the last question. The crest system is -- is the whole -- the whole narrative of the -- which gives rise to the legitimacy or the claims to legitimacy of a house group to a specific title, to the name, to the land, to the fishing sites on the basis of their migrations through history and their experiences, the wars they've been engaged in, the facets of life which have been anomalies, the things that are remembered peculiar to their -- to their own history and tradition that's passed down through the mother's side generation after generation, the things that are considered to be crucial to the survival of the social structure.
Q So the crest system includes the oral history?
A It includes the oral history.
Q What else does it include?
A The crests are quite often associated with events that occurred in that oral history --
Q Yes.
A -- either wars or supernatural events and other matters.
Q Okay. When you refer to crest system, what else are you referring to besides crests and the oral history?
A Well, it's -- the crests are manifested on virtually all of the possessions of the -- of the people. At least in the precontact periods and the early contact periods there were -- the chief's crest was on his pole, it was on his blanket, on his talking stick, and quite often tattooed on his chest.
Q When you were doing work with the R.O.M., did you investigate the crest system of the Gitksan and the Tsimshian?
A The Gitksan and the Nishga mostly.
Q The Gitksan and the Nishga. Including the use of -- the crests being tattooed on persons?
A Yes. I helped set up a display and worked with the art department on the putting of -- putting of tattoos on mannequins for displays. We had to obtain the early historic -- post-contact photographs to verify what we were doing.
Q Now, you refer to, both on page 186 and at the bottom of 177, that oral cultures utilize many mneumonic or memory devices. That's m-n-e-u-m-o-n-i-c. And you described yesterday the utilization of memory canes by the Iroquois. Are you suggesting that the use of

crests among the Gitksan and the Wet'suwet'en are also mneumonic or memory devices?
A I am.
Q Okay. Can you explain why you give that opinion -- have that opinion?
A Well, there are -- looking at the societies as a whole, not all chiefs know all the crests and all the stories of all the other chiefs, but there are groups of chiefs that have acted together through history, through different parts of history, shall we say, at least in the present and recent past, and according to the oral traditions for very long periods of time. They -- they tend to know one another's history and their crests. They interact with one another on the land in the course of their seasonal rounds and their -- their village interactions. So the crests are known and the land that the chief comes from is known, and when these are seen in the feast, it calls to mind your relationship, if you're speaking as a chief, your relationship to the territory of the crest of -- on the back -- on the blanket of -- of a chief sitting across the room.
Q Can you explain an example of where you actually saw that utilization of the crest?
A This was -- this was explained in very, I think, very graphic terms at the Burns Lake feast in April of '87.
Q Yes.
A Which was a gathering of Wet'suwet'en, Gitksan, and other Carrier peoples from farther to the east. And they were discussing boundary questions, and in the afternoon of the first day I believe it was --
Q You attended this? You saw this?
A I attended this. One of the reasons I wanted to go was that I knew since there were people there from different aboriginal nations that at least part of the proceedings would be in English, and it's easier for me not speaking the languages to follow the explanations of what was -- what was being presented. And in the afternoon of the first day a group of Gitksan chiefs from the northern territories, from Kuldo and Kisgegas, they were the next item on the agenda. They sat up at the roster and explained to the -- all the people who were there their ancient history of -- their legitimacy for their claims to certain territories in the vicinity of Bear Lake, and the way they did this was to ask Chief Nii kyap, David Gunanoot, to recite part of his adaawk, which I think

you find in his commission evidence as well. I located it there.
Q Okay. That's the adaawk he refers to in his commission evidence?
A Yes.
Q Yes. And then what happened?
A He told it in his language, and he was dressed in his robes. The telling was translated by Gyolugyet, Mary McKenzie, and also translated and commented upon by James Morrison.
THE COURT: Haven't I heard all this, Mr. Grant? I'm sure I have.
MR. GRANT: My lord, you're in the best position to know.
THE COURT: Well, I'm sure I've heard this whole story. There's a transcript of it.
MR. GRANT: The transcript -- there's a transcript of the feast.
THE COURT: Yes.
MR. GRANT: But tying to it is the question of the relationship of the crest system to the territory in this witness' opinion.
THE COURT: I remember being told that David Gunanoot was asked to speak. I remember it being said that he wore his blanket. I think I've heard all this before. I don't think I've made it up.
MR. GRANT: No, I'm certain that you haven't, my lord. You've been here much more regularly than all counsel, although I -- I'll just ask one question.
THE COURT: All right.
MR. GRANT:
Q Dr. Daly, in the event -- can you go to the point at which you saw the utilization of the crest?
A What struck me was at a certain point when James Morrison was speaking he turned David Gunanoot around to face the assembled people there --
Q Yes.
A -- and to display the crest on the back of his blanket. And he said -- and then he explained, "This is Gaimadim, the split bear, and it's related to the events of the -- of the adaawk which you've just heard, and people -- older people here will know what I'm talking about because this crest is associated with this house and this piece of land." And there was some feathers, a group of feathers sewn on to one corner of the blanket, and he said, "These feathers are the feathers of this territory, and they're associated with this ancient history and the songs of mourning and the whole migration into the area." Now,

I didn't quite understand what he meant, so I asked him during a break out in the parking lot, and he gave me more explanation, and then I interviewed him on it at a later date. But the feathers were of a very specific type of ptarmigan that only grows on one set of mountains in the region, which is in that Nii kyap territory, and anyone sees them who knows that area and is a regular user of the land in that region or a fellow chief, they recognize that fact.

Q Now, I just refer you to page 184. Halfway down you state, after the quote from Fred Johnson's commission evidence, you state:

> "There is archeological evidence of the inscription of crests on material objects along the Skeena system for at least the last two and a half millennia."

Then you refer to Fladmark, and you actually cite Fladmark for that. Are there other archaeologists who have -- upon whom you relied to come to that conclusion?

A George MacDonald and Richard Inglis. They concur with this view as well.

Q Now, on page 188, the third line from the bottom, you state:

> "In the Gitksan and Wet'suwet'en areas the travels" --

I'm sorry, I should put it in context because -- above there you say -- you quote from a book on the aborigines of Australia, and then you state:

> "The ownership rights to long sections of these songlines is defined by reference to kinship, economy and the world of spirits."

Here you're referring to the Australian aborigines?

A Yes.

Q Then you say:

> "Aboriginal Australian rights to property ownership are validated in ways similar to those found among the Gitksan and Wet'suwet'en - through crests, narratives and songs that have to do with the way the

ancestors came to walk the land."

And this is part of your comparative analysis that you're reflecting here of different culture groups; is that right?

A Yes.

Q And that's your conclusion. And then you describe how they -- what happened in Australia in the next line -- sentence, and then you go on to say:

"In the Gitksan and Wet'suwet'en areas the travels were confined more to the present territories, the northern interior and adjacent coast. The ada'oxs and kungaxs tell us of migrations and dispersals which were the people's responses to a combination of factors, including the settlement patterns of other human groups, climatic changes, and the importance of trying to remain within seasonal reach of the phenomenal salmon runs."

And that is your conclusion -- your opinion and conclusion with respect to the Gitksan and the Wet'suwet'en?

A The comparison with the Australian situation is that the Australians, being bands, they are moving over a large territory where they have experienced through the generations a lot of events over many generations, and they're following a -- they all -- all the groupings have their pathway right across the continent almost the way -- the way it works out.

Q Okay.

A And then they work their way back to the starting point. It may take two or three years, this whole process of hunting and gathering along the way, but that's their way and they're following their spiritual connections with the land, and every bush and every rock denotes a certain history that they have had or their grandparents have had or their ancient ancestors, quite often called supernatural ancestors, have had. But in this area, in the tribal society, such as we're studying here, these travel routes were much more conscribed -- circumscribed by the different nature of the economy. The recurring oolichan runs and salmon runs were very often important to the nature of the trails in these two regions.

Q Is there an analysis of the trails in the regions of the Gitksan and the Wet'suwet'en upon which you rely?
A Yes.
Q And whose is that?
A That's by Dr. George MacDonald.
Q Okay. If I could have Volume 2 of the report, Appendix E. It would be tab E in your copy, my lord. If you could just look at the tab E, Dr. Daly. Is this the reference to doctor -- or to George MacDonald's report --
A Yes, it is.
MR. GRANT: -- which you're referring to?
THE COURT: This is the report by Dr. MacDonald?
THE WITNESS: It's a portion of a report where he sets out in descriptive terms the important grease trails and trading trails in the region of the Gitksan and their neighbours.
THE COURT: What is this, an extract or a summary or something like that?
THE WITNESS: It's an extract.
MR. GRANT:
Q The first three lines are your statement, and then where it starts "Kitwancool Trail," that's a quote from him?
A That's correct.
Q And it goes on from there?
A Yes.
Q It's George McDonald's report.
A And this information has subsequently been published in the Canadian Historical Atlas.
MR. GRANT: Okay. I'll take you to that now.
MR. WILLMS: My lord, if it assists my friend, it's also in the Epic of Nekt, which has been marked by the plaintiffs. The trails are laid out on a nice little map by Dr. MacDonald in the Epic of Nekt.
MR. GRANT:
Q I'd like to refer to this document book, and I'd like to refer you to tab 89, which is the very last tab in that document book. And it's in a plastic holder, my lord, so it's easier to get out. And it's two pages. And can you just describe for the Court what this extract is from?
A This extract is -- I believe is from the -- the -- it's from the historical -- Canadian Historical Atlas.
Q And on the second page -- in the bottom right-hand corner of the first page is "Trade Goods and Trade Routes," and that's enlarged on the second page.

1 That's actually the same -- an enlargement of that
2 section on the first page; is that right?
3 A That's correct.
4 Q And are these -- this is a reference to trails which
5 are numbered on the map on the first page?
6 A That's right. And in the original it's nicely colour
7 coded. It is much -- it's easier to read.
8 Q Okay. Now, you referred in your report to doctor --
9 or to George MacDonald's Appendix E, and subsequently
10 you had an opportunity to review the Historical Atlas;
11 is that right?
12 A Yes.
13 MR. GRANT: I'd ask that that document, tab 89, be marked as the
14 next exhibit, my lord.
15 MR. WILLMS: My lord, if it's being marked just as something
16 that the witness can identify, that's fine. If it's
17 being marked for the truth of the contents, I object.
18 THE COURT: Well, it can only be the former, can't it, Mr.
19 Grant?
20 MR. GRANT: Certainly, yes.
21 THE COURT: All right. Exhibit?
22 THE REGISTRAR: Exhibit number 893.
23 THE COURT: 893. Thank you.
24
25 (EXHIBIT 893 - TAB 89 - WITNESS BOOK II EXTRACT FROM
26 CANADIAN HISTORICAL ATLAS SHOWING TRAILS)
27
28 THE COURT: I'm having trouble finding the main trail that I've
29 heard so much about.
30 MR. GRANT: Can you just -- do you have that excerpt?
31 THE COURT: It must be the one that starts at Kitwanga, is it?
32 MR. GRANT: This is the grease trail to the Nass?
33 THE COURT: Yes, it heads north to Kitwancool.
34 MR. GRANT:
35 Q It would be the one numbered 9, my lord. It actually
36 starts -- yes, it starts at Kitwanga, and you see a
37 number 9 on it. It goes up past Kitwancool.
38 A It goes up to the Cranberry junction and then down
39 into the Nass.
40 MR. GRANT: Then it goes down to the Nass, and it's numbered one
41 there it appears.
42 THE COURT: What is this large double line?
43 THE WITNESS: These are --
44 THE COURT: Or are they trails --
45 THE WITNESS: They're ethnic boundaries of different language
46 groupings between the Nishga, the Gitksan and the
47 coast Tsimshian.

THE COURT: I see. So the double line is language boundaries?
THE WITNESS: Yes.
THE COURT: All right. Thank you.
THE WITNESS: They're actually shaded on the original map in different colours.
THE COURT: Thank you.
MR. GRANT:
Q This -- my lord, this, as I recall, contains the -- except for some markings to the east, that is, to the right-hand side, and cut off of some of the writing on the left and a cutting off on the bottom, the only part of the map that may be cut off a bit is to the east, otherwise the entire map -- it goes right to the top of the page. It was rather difficult to reproduce.
A And it excludes the trails in most of the Wet'suwet'en territory.
Q Is that excluded by that photograph on the bottom?
A Yes. Well, they extend farther to the south, so it would go off to the bottom right.
THE COURT: The bottom of the map is Prince Rupert Harbour?
THE WITNESS: On the left, yes.
MR. GRANT:
Q Is George MacDonald's work with the trails in this area, is that recognized in the field of anthropology?
A Yes, it is. He collated it from the eyewitness accounts of surveyors and early travellers for the most part, as well as finding out what -- what the local Native people had to say about where their trails were. People like George Dawson and Poudrier, who were drawing maps and looking for transportation corridors from along the north coast into the interior, they ran into these trails in the 1880's and 1890's.
Q And Poudrier is one of the persons you've looked at --
A Yes, I've relied on.
Q -- and examined and relied on yourself?
A Yes, he was a very nice map maker.
Q Now, I'd like to move to the next section on page 189 of the report, Volume 1, my lord. Now, you state as an opinion at the beginning:

> "The right to grant or withhold consent to use House territory is closely linked to the owner's public responsibility to see that the land is well used, its general fertility maintained, and the people's basic

subsistence requirements fulfilled."

And that is your opinion?

A Yes.

Q Now, what I'd like to ask you is why do you say that the -- among the Gitksan and Wet'suwet'en why did you conclude that the owners, in this case it would be the house groups, that their -- the right to grant or withhold consent is linked to the owner's public responsibility? What do you mean by public responsibility there?

A Well, public responsibility is first and foremost to be very active in -- in the feasting system, not to fall into arrears but keep the name of the house up by having good feasts to pay back your debts after somebody has died particularly, and to mark the -- the passing through the life cycle of young members of the house, particularly those who may one day accede to high names.

Q Now, on the bottom line, just to clarify, you refer to -- there's two persons who may seek and be granted permission. One is the father's house group, and then B, at the second bottom line, the spouses' kinship groups. When you say the spouses' kinship group, are you referring to the house group or another group?

A The house group.

Q Now, you state at the top of page 192 that:

> "Whether the user is linked to the House through his or her father, or spouse, or is more distantly linked, the use rights are supposed to be extinguished at least by the time of the death of the person to whom these rights were granted by the chief."

And you refer there to Olive Ryan. And that's something that -- I take it from that citation that that's something that you read in her transcript?

A Yes. But it's also a concern in the community. You hear lots of discussion on the question about why someone is using a piece of land when their father has passed on and they should by rights have left and gone to their own territory.

Q Okay. Well, I think you've anticipated my question, which is: Is that concept, aside from Olive Ryan's statement, is that something you found generally in the community?

A No, it's very much alive, yes.
Q Would that apply to the Wet'suwet'en as well?
A Yes. But it's slightly different, I think.
Q Can you explain that distinction?
A I can think of various instances, but the Wet'suwet'en tend to realize that there's a shortage of land these days because of the changes that have occurred in the last hundred years, so before making a big fuss about somebody staying on the land after the death of their father, they weigh all the consequences of how this person is going to have access to land, if they're asked to leave that piece of land, will they have anywhere to go. So there's more consciousness about the shrinking nature of land that can be used for hunting and trapping and berry picking.
MR. GRANT: Now --
THE COURT: I'm sorry, they're picky about letting someone stay or about kicking someone off?
THE WITNESS: I think I said berry picking.
THE COURT: Oh, berry picking.
MR. GRANT: I'm glad you asked the question, my lord.
THE COURT: All right.
MR. GRANT:
Q But maybe -- do you understand his lordship? There was -- they're more concerned about letting someone stay on the land?
A No, I mean the rules are -- the rules are cited in both -- in both societies --
Q Yes.
A -- that once your father has passed on you should -- you should leave the land, and you might be asked to or you'll find out in a feast that the land is now being used by someone from the house. It's announced there.
Q Um hum.
A Or if -- if the person who's been using the land has discussions with the -- the chief in question whose land he is on, and that whole family, they may decide that since he doesn't have anywhere else to go he can be their caretaker if they're not using the land. That sort of arrangement will be used to extend the rights. But they don't -- the rights aren't forgotten; it's just there are various ways of dealing with the real situation on the ground today.
MR. GRANT: Okay.
THE COURT: Do I take it that it's different in the Gitksan?
THE WITNESS: I think it's a matter of degree.

THE COURT: More rigid?
THE WITNESS: The Gitksan is more --
THE COURT: Not rigid but --
THE WITNESS: They're a little more sticklers to getting people off the land after that period of time. But there's gradation, so it's hard to say that it's all one and then all the other. It's just a matter of emphasis, I think.
MR. GRANT:
Q Within the Gitksan are there gradations about the applicability of this rule?
A Yes, there are, and other -- other facets too.
Q Can you expand on that?
A Well, my impression is that there's more leeway, a more relaxed attitude, if you like, in the northern and eastern territories than in the western territories. They're more coast like in terms of the -- the cut-and-dried nature of the relations and the competitive nature of questions concerning land use.
Q Okay. Now --
A Again, it's a question of gradation, and it's not all of one or all of the other.
Q I'm going to ask -- on page 193 you state:

> "The user of a fishing site customarily makes an on-the-spot payment,"

the middle paragraph,

> "for short-term use rights to fishing locations."

Now, have you observed this happen among the Wet'suwet'en, the Gitksan, or both?
A I have observed it among the Gitksan where someone will pay -- a couple of times in the hot summer weather they'll pay with a case or beer of something of that nature, or some cold drinks, for the right to fish for a day, and then maybe later on they'll give some of the fish to an elder who's associated with the site that they used.
Q Have you seen this happen with respect to the Wet'suwet'en, and does the statement apply to the Wet'suwet'en from your -- based on your research?
A Based on my research it certainly applies, but I haven't actually seen it with my own eyes.

MR. GRANT: Okay.
THE COURT: Time for lunch, Mr. Grant?
MR. GRANT: Yes, it may be appropriate, my lord.
THE COURT: All right. Thank you. Two o'clock.
THE REGISTRAR: Order in court. Trial will adjourn until 2:00.

(PROCEEDINGS ADJOURNED AT 12:31 P.M.)

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

_____
Leanna Smith
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED AT 2:00 p.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT:

Q Thank you, my lord. Dr. Daly, I am at page 194 of your report, or, I'm sorry, there was one thing I wanted to ask you.

In terms of this section I just asked you about the comment on page 193 before lunch about the on-the-spot payment for short-term use of rights to fishing locations. From your research, including your ethno historical work and your work in the review of the adaawks and the kungax and other ethnographies, was there an example historically among the Wet'suwet'en where they went to other areas to use fishing rights?

A Historically, you mean in the written records?

Q In the distant past, yeah, but in the written records?

A Well, certainly in -- after the rock slide in the canyon, they couldn't get fish in Moricetown.

Q Yes.

A They went to the Babine, which was a reversal of the process. More often Babine people would come to fish to Moricetown before that and even subsequently, today. And then they made arrangements with fellow clansmen from the Gitanmaax area around Hazelton to move to what is today Hagwilget. That's in sort of contact period.

Q Okay. And from -- and that is recorded in historical documents?

A Yes, it is. And there is a certain number of references to it in the notes of William Beynon in the Barbeau-Beynon papers about all the negotiations for the move to the fishing sites in Hagwilget Canyon.

Q Okay. My lord, I just am going into the next section, Exclusive Rights and Trapline Registration, and I just wanted to set out clearly for your lordship and my friends in case there is any -- I'd hate to come to the end of this direct examination and find that people are operating under different assumptions. In light of your comments this morning, my lord, I don't intend to lead through Dr. Daly all of the specific facts upon which each opinion is based. I will submit that those are set out in his report. He's also now given evidence of all of the major sources. I may exemplify them in certain circumstances, but I feel

otherwise, my lord, the time I have allocated would be just tripled and I don't see any point in that. And if my friends have an objection on that, then I think they should raise that at the time of the specific area and then I will focus on it.

THE COURT: You may find that in cross-examination, counsel might make something inadmissible into something that is admissible. That often happens.

MR. GRANT: That's why I like to give them ample opportunity to expand --

THE COURT: Yes, to prove your case for you. Well, I think, with respect, that's a correct decision. If the facts upon which opinion are based are not in the report, well then probably the opinion isn't admissible or elsewhere that's been established. Yes.

MR. GRANT:

Q Or elsewhere includes the -- of course the transcripts that the witnesses have reviewed.

I'd like to make a brief reference, and you don't have to pull this at this time, my lord, to George MacDonald's appendix E of your report, that is the reference to the trails?

A Yes.

Q Now, you yourself have reviewed certain of the historical documents such as the Poudrier documents?

A Yes, and Horetsky's travels and so on.

Q Okay.

A And there is a count by a man by the name of Chisholm who travelled through the area at the end of the century written up in one of the Victorian newspapers I think.

Q And you have read through that?

A A number of things of that nature.

Q Yes. Based on your own ethno historical analysis, do you adopt the opinions of George MacDonald that are set out in appendix E?

A Yes. I think it's -- his portrayal of the trails is quite well accepted in the field of their existence and the fact that they have considerable time depth to them.

Q And in terms of the locations of those trails that was consistent with your own ethno historical research?

A Yes, it was.

Q That is with respect to the trails that are within the Gitksan and Wet'suwet'en area?

A Yes.

Q And with respect to the map, in the map atlas, do you

assume that that map accurately reflects the trails that George MacDonald refers to in appendix E of your report?

A I do.

MR. GRANT: My lord, I am not going to go through the appendix in detail.

THE COURT: All right. The map is Exhibit -- was it tab 38, was it?

MR. GRANT: Tab 89.

THE REGISTRAR: Exhibit 893, my lord.

MR. GRANT: -- of the green book.

THE REGISTRAR: Exhibit 893, my lord.

THE COURT: Exhibit 893.

THE REGISTRAR: Yes.

THE COURT: Thank you. Shouldn't you then be tendering this as Exhibit E, Mr. Grant?

MR. GRANT: Yes.

THE COURT: Whenever you wish.

MR. GRANT: Yes. I would propose that, if the report goes in, of course I would tender the exhibit as appendix E as part of the report.

THE COURT: All right.

MR. GRANT:

Q Now, I refer you to the next section of your report on page 194 dealing with Exclusive Rights and Trapline Registration. And at page 194, 195, you set out your opinion. You state that:

> "Today, particularly as a result of trapline registration, there is considerable pressure upon the Gitksan and Wet'suwet'en to convert this system of matrilineal exclusive ownership and inheritance..."

That's the system you have been describing previously in the earlier parts of your report?

A Yes.

Q

> "...to a patrilineal system where property passes from father to son. The property rights of the matrilineal owners continue, however, to be recognized in the communities, even over lands that have been in use for considerable periods of time by people whose predecessors were in father-son relationships to the owning house. The elders are stressing the adherence to the long-standing rules of succession and the attendant system of

exclusive ownership rights embodied in the matrilineal House group."

Then you say:

"To an outsider..."

the next paragraph:

"...it may look as though the Gitksan and Wet'suwet'en pass land from father to son in many instances. But this impression is incorrect because the apparent father-to-son succession to land is frequently made legitimate when the sons practise cross-cousin marriage or are adopted into the owning House."

Now --

A I would like to -- this isn't necessarily cross-cousin marriage but marrying into the house of your father, the house and clan of your father.

Q Okay. So it may be articulated through cross-cousin or another marriage into that house?

A Yes, so that you establish -- you continue an ongoing inter-generational relationship but it may not be exactly a cross-cousin marriage.

THE COURT: Are you making those alternatives as Mr. Grant said, cross-cousin marriage, or marry into the house, or are you substituting marrying for cross-cousin marriage?

THE WITNESS: Cross-cousin marriage results in marrying into that house, too, but it is a very specific relationship. You have to marry a very specific person.

THE COURT: All I want to know is whether you want your report to read with those as alternatives or as one being substituted for the other?

THE WITNESS: I would say alternatives.

THE COURT: Or marrying into the house of the father, all right.

MR. GRANT:

Q Now, I have read a lengthy portion of your opinion there and I just want to go back to that first page 194. Basically, can you explain why you have concluded that although there is this considerable pressure, that firstly there is considerable pressure and also why you say that matrilineal owners continued to be recognized in the communities? Would you expand on that please or explain why you have come to that

conclusion?

A Well, trapline registration tends to follow a pattern of father-to-son inheritance according to the wildlife people and this flies in the face of the matrilineal system of succession to land and fishing sites of the Gitksan and Wet'suwet'en. The same time the people have -- my understanding, the people have done their best to register their traplines in what they call the white man system. At the same time not give up their own system of reckoning and transfer of rights over the land. So it is rather difficult to explain. I wrote it out here in the report.

A man may inherit land according to the wildlife system from his father, but of course during -- he can legitimize his position there through his kinship ties. He can either get -- be acknowledged as a temporary caretaker of that land on behalf of the house, and then the land is -- there is a shifting of ownership at a later date. Or through the type of marriage he engages in, he can gain legitimacy by marrying back into that house and then as a spouse he has rights to be there. Or he or one of his children may be adopted in, and there is various ways of adjusting to the realities of the wildlife registration system in terms of the regional system.

Q Just one comment you said, I want to be clear on it. You said he could be a caretaker of land and then the ownership could shift at a later stage. Are you referring --

A I am not -- did I say ownership?

Q Yes, you did. I just wanted to be sure what you meant there.

A No. The actual use rights, because the ownership hasn't shifted in the eyes of the community; the ownership remains with the house group, but the actual user who is the registered owner or controller of the trapline, his rights to use that territory will be shifted to someone else at a later date.

Q Thank you.

A And there are quite a few examples of people ending up on their father's territory and the people who are on their territory are their patrilateral relatives, too, so at a certain point they then switch over the land and go back to zero -- back to square one and start over again in terms of the passing on of land and the use of the land.

Q And have you seen an example of this or have you

1 investigated any examples of this without getting into
2 the description of that example right now?
3 A There are quite a few examples but I have recounted
4 one in some detail in the report.
5 Q And that is between which houses?
6 A That's between the House of Namox and the House of --
7 it is the John and Pat Namox on one side and Emma
8 Michell and Dan Michell and Victor Jim on the other.
9 They are the House of Namox.
10 Q Okay. So it is the house of John and Pat Namox?
11 A Yes.
12 Q It's okay, we will come back to it. Now, aside
13 from -- and you investigated that particular example
14 and researched it as part of your own research?
15 A I did.
16 Q And did you -- do you know of anything with respect to
17 David Blackwater and trapline registration?
18 A Yes. The predecessor to David's trapline in terms of
19 the registry, when he passed on, the land was
20 re-registered by the Wildlife office in the name of
21 this man's son. The man said, "No, I don't want -- it
22 is wrong to put my name on it because I am not the
23 successor to Niist", which is Niist's trapline and
24 Niist is David Blackwater.
25 Q And that, if David Blackwater was the one that
26 obtained that registered trapline, that would be
27 consistent with the --
28 A With the matrilineal succession, yes, because the
29 previous holder was the -- held it in the name of the
30 House of Niist.
31 Q Now, I'd just like to refer you to the bottom of page
32 195 and the top of page 196 and ask you to expand on
33 that. You state over -- you state at the bottom, you
34 state:
35
36 "Over time, these interacting Houses and Clans will
37 be 'feeding each other's children' from their own
38 respective territories in alternate generations.
39 This system of enduring reciprocal relations
40 knits the respective kinship social units
41 together, and the Gitksan and Wet'suwet'en strive
42 to reassert it, and set right the confusions
43 wrought by modern trapline inheritance."
44
45 Now, there is a couple of concepts there that I'd like
46 to ask you about. What do you mean when you say the
47 interacting houses and clans will be feeding each

other's children from their own respective territories in alternate generations?

A Well, the people who are using the land at any one time, if they are married people, only half of them are members of the owning group. The other half are members of other groups, and because of matrilineal succession or because of the system of inheritance, half of the people using the territory will belong to -- at least half of the people will belong to other houses, so they are being raised on the territory in question, so that territory and its chief and its lineage or its chief and its house are feeding the children of these other property owning chiefly groups, these other houses.

Q Right.

A So that's the way this concept of feeding each other's children works. And they also talk about producing children for -- we give you spouses so that you may produce children for your lineage or, sorry, your house and then somewhere down the line there is a reciprocation of this process.

Q And would this apply in cases where houses marry each other in alternate generations?

A Yes.

MR. GRANT: Now, you go on to refer to the -- page 196 at the top:

> "The Gitksan and Wet'suwet'en principle of matrilineal inheritance can easily come into conflict with the residential pattern if which a wife moves to her house territory..."

MR. WILLMS: Husband's.

MR. GRANT:

Q

> "...to her husband's territory",

thank you:

> "...(that is, after a new husband has lived among his wife's people for a period of time, working and hunting on their behalf, he may then take his wife to live on his House territory, as was the personal experience of Johnny David."

Now, did you see other examples of this, other than Johnny David, what he has described, and I take it in

his commission evidence, of where the wife moved to her husband's territory and then the husband then moved back and worked on his wife's house territory, or one of the -- or the other of those features? I am referring here specifically to the Gitksan. Do you recall a situation where the husband worked on the wife's territory and taught her children about that territory?

A No. One example that comes to mind is the situation of Art Matthews Senior who was from the House of Luuxoon, I believe, from Kitwancool.

Q L-u-u-x-o-o-n.

A Which is the Ganada or the Frog Clan. But he was raised on his father's side territory and he married there, which is a very good situation for raising for -- not a particularly good situation politically for that man in terms of rising to a position of great importance in his home lineage because he is living outside his territory, but it's a very good situation for his children because he is raising his children on the land that they legitimately inherit so that their whole life time experience on that land is unbroken and it gives them a very good attachment to it; whereas in other situations, the children will -- at a certain point the sons will have to leave the father and be schooled by their uncle and sometimes it is at quite a distance away in a different territory.

THE COURT: Why do they have to leave their father? You mean when he dies?

THE WITNESS: Well, the father has heirs that are not his children. His heirs are his sister's children, according to the matrilineal inheritance.

THE COURT: Well, that doesn't explain to me why his children have to leave him.

THE WITNESS: They don't have to leave him but, if they are in line for a chiefly position within their own house, their mother -- the house that their mother --

THE COURT: The house where they are?

THE WITNESS: Well --

THE COURT: Why don't they just stay there?

THE WITNESS: If they are in the -- an example of Axtii Hiikw, Tenimgyet with the Matthews, that's the situation, but in the other situation which is very common, the children are raised where their father is. The father takes his wife onto his land. He raises his children there.

THE COURT: I am sorry, I thought you were postulating the

1 situation where the husband went to live at his wife's
2 territory and his children were going to stay there.
3 I thought that's the situation you were describing?
4 THE WITNESS: No. I switched from that to the alternate.
5 THE COURT: So you were talking about where the children are
6 being brought up on the father's land which they will
7 not inherit?
8 THE WITNESS: Yes.
9 THE COURT: Then they will -- at some point they will go back to
10 the land they are going to inherit on their mother's
11 side?
12 THE WITNESS: Yes, or else they will maintain a position there
13 during the life of their father through the rights of
14 Negedeldes, Amnikwats.
15 THE COURT: I understand, thank you.
16 MR. GRANT:
17 Q And that was a situation, for example, with Vince
18 Jackson, the son of Robert Jackson Senior; he was
19 raised on his father's land, is that right?
20 A Yes, and a number of his brothers, too.
21 Q And his brothers. And with the situation with the
22 children of Mary McKenzie, they were raised on --
23 A They were raised on their father's land, yes.
24 Q I think you have already referred to James Morrison
25 yesterday?
26 A Yes.
27 Q Now, politically or in terms of power, Dr. Daly, how
28 does this, what you have just described, this fact
29 that children are commonly raised on their father's
30 land and then they move back to their mother's house
31 territory? Does that have any effect on --
32 A It has an effect --
33 Q -- power relationships within the kinship system of
34 the Gitksan and Wet'suwet'en?
35 A It is a common feature of matrilineal societies.
36 Where you have buildups of power in the patrilineal
37 systems, it is a group of men who are brothers and
38 their sons and their grandsons who control on the
39 ground throughout several -- three or four
40 generations. But in a matrilineal system there is
41 quite often this shifting of men between different
42 maternal groups, so it breaks up this tendancy to
43 develop inter-generational long-term types through the
44 father's side. I mean, there is relationships but
45 they don't hold all the power because you don't
46 inherit father to son.
47 Q And this is common with other matrilineal groups other

than the Gitksan/Wet'suwet'en?
A Yes, and it is one of the structural features which keeps the society in a sort of equilibrium between kinship groupings rather than developing into a hierarchical chiefdom.
Q Now, does that apply in a circumstance where a person is raised on say his father's territory and may learn a lot about it, but he's not of that house and when it comes time to describing that territory to somebody else, whether that person can do so or not?
A Well, he has no rights -- he has no rights to talk about the territory or to be its representative. All he can do is use the land or the fishing site.
Q Okay. Now, did you research any examples of how that gave rise to that conclusion?
A Yes. I came into one rather interesting example where -- when Alfred Joseph was researching the territories of the chiefs, he went to Emma Michell, the elder of the House of Namox, the Tsayu Clan, and asked her about the Namox territory, and she said, "Well, I wasn't actually raised on my land, I was raised on my father's land, so you should talk to the people who actually have been using it, and that is John and Pat Namox."
Q Before you go further, did you also talk to Emma Michell and to John and Pat Namox about this?
A I didn't talk to John Namox, I talked to Pat Namox and to Emma Michell and to Alfred Joseph.
Q About this?
A Yes.
Q Go on.
A Anyway, Alfred went to visit Pat Namox and Pat said, "Well, I don't know anything about this territory. Why are you talking to me? It is not my land. You should see the Tsayu people, see Emma Michell, she is the person who can deal with it. I don't know anything about it."
Q Yes.
A But Alfred said, "Well, I got permission from Emma. She sent me to talk to you." So she said, "Well, in that case I will talk to you." And he told in detail the place names and the use of the different regions within the territory.
Q Is that example typical of what you have found in other matrilineal societies in terms of persons may learn about their father's sides territory, for example, but not disclose it?

1 A Well, it is a feature of non-centralized societies.
2 You get into trouble if you talk about the affairs of
3 others that you are not related to, so you get a
4 rather tunnel-vision view of the overall society
5 because people are focusing on their own affairs.
6 That's what interests them the most and that's what
7 they have a legitimate right to talk about, but they
8 can't, except in exceptional circumstances, speak on
9 behalf of everybody, of all the groupings.
10 Q Now, I'd like to refer you to -- you state on page 198
11 of your report, and this is starting the second line
12 from the top:
13
14 "Over the years, 'companies', usually groups of
15 matrilineal kin from within the House, have
16 registered traplines."
17
18 And that's an assumption you make of the trapline
19 registration systems; is that right?
20 A Well, that's what people told me.
21 Q Okay.
22
23 "...both out of fear of losing their territories to
24 the Government, and gaining a degree of Government
25 recognition of their ownership, and their right to
26 be on the lands where their traplines are located.
27 They believed that they had, by this means,
28 obtained at least a de facto recognition, from
29 Government, of their authority over their own
30 lands."
31
32 It is based on part of what people have told you; is
33 that right?
34 A That's correct.
35 MR. GRANT: I'd like to pause here and ask you as an
36 anthropologist, do you -- what do you do with what
37 people describe in terms of their beliefs of certain
38 set of circumstances? Is that part of the field of
39 anthropology?
40 MR. WILLMS: My lord, my friend qualified this witness two days
41 ago. There was nothing about value belief systems in
42 that qualification that this witness was acutely able
43 to say, when he talked to somebody, that they really
44 believed in it or that they really believed something
45 else when they said what they said, and even if he
46 would have said that, in my submission, there is no
47 way in the world that any person is qualified in a

court case to say what people believed or what they thought, other than perhaps your lordship, except in the case where there is perhaps a psychiatrist where we are talking about a defence of diminished capability or something like that. But in circumstances like this, I mean, the witness talked to 20 people and now he is going to say what their value belief system was about what they were talking about and I object.

THE COURT: Ms. Koenigsberg?

MS. KOENIGSBERG: I don't think I will try to add anything to that.

THE COURT: Thank you. Mr. Grant. I am sure there are various ways of looking at this and I am sure you are not asking the witness to rate the credibility of the various witnesses he talked with.

MR. GRANT: Of course not.

THE COURT: Aren't you going into an area of trying to make subjective assessments of subjective matters?

MR. GRANT: Well, no, with respect, I don't believe so, because as was argued out I believe with another expert witness in this field and as I think my friend keeps forgetting, we are dealing here not with chemistry but with anthropology, we are dealing with human beings, and just as the chemist looks at the molecules under the microscope, what an anthropologist does is look at people and their interactions and their social relationships.

THE COURT: That's what they do and how they live and what -- well, the things they use and that sort of thing.

MR. GRANT: Right. And in the analysis of the conduct and behaviour of a society what the people -- the assumptions or the beliefs upon which the people are operating under in terms of why they do things, now I haven't had the opportunity to ask Dr. Daly this yet, but if he says that's part of the field of anthropology which is the question at which my friend objected, I submit that that's relevant. It is not -- of course, I am not asking Dr. Daly this question to determine the truth of the statement of those people which would be the hearsay point, but the fact that people have said this to Dr. Daly may have some impact on his opinion and also it may be something that, as an anthropologist, he can interpret. My friend used the analysis of a psychiatrist. Psychiatrist deals with individuals and their thought pattern. An anthropologist deals with societies, with groups of

1 people and their behaviour, and I submit that this is
2 exactly what he was being qualified -- for example, I
3 had him qualified in the system of management and
4 harvesting of resources, the system of the set of
5 social relations and institutions and their linkages
6 to the --
7 THE COURT: You don't need to read all seven again.
8 MR. GRANT: No, I am not going to, but those two examples, I
9 have qualified him in the field. But of course if he
10 says this isn't what anthropologists normally do --
11 THE COURT: The trouble, Mr. Grant, is when you get into values,
12 you are into a double concept at least and maybe more
13 than that, and if you are assessing how someone
14 behaves, you can describe it objectively. If you are
15 talking about what somebody thinks, psychiatrists will
16 guess at what people think; juries decide what people
17 are thinking all the time when they are dealing with
18 the question of intent; medical doctors tell us that
19 the pain is thought to be real, even if there are no
20 objective signs, but they do it on the basis of an
21 assessment of the injury and the likely period of
22 recovery and the response they get to an
23 investigation -- detailed investigation. But once you
24 are into values, everyone's values are different.
25 MR. GRANT: But I submit with respect, my lord, I am not asking
26 about values; I am not asking about values here. I am
27 asking what the witness was told -- what a person is
28 told -- if Dr. Daly is told something by a person, it
29 is as much a fact that he can speak to as if he sees
30 the person do something, and that's what I am asking
31 about and then I am saying what do anthropologists do
32 when they are told fact with respect to this area. Do
33 they deal with that?
34 THE COURT: Well, I think that the thrust of the debate has
35 changed a bit because values were -- certainly we were
36 in the values earlier and that's what made me lean
37 towards your friend's objection, but if you say you
38 are not talking about values, then I have lost it
39 through the tread of what we are talking about.
40 Perhaps we will solve all our problems if you just
41 start again and we will see if your friend objects to
42 your next question, and I won't have to rule.
43 MR. GRANT: Well, my friend objected because I asked him what
44 anthropologists do.
45 THE COURT: But that's from an answer to a previous question.
46 So you decided to bring it within the field of
47 anthropology.

MR. GRANT: I heard some humming and hawing to my right, that's for sure.
THE COURT: Both your friend and the witness may be right.
MR. GRANT: Not from the witness, my lord, not from the witness. I can hardly hear the witness sometimes from my friend.

Dr. Daly, you make this statement that, with respect to the people:

> "They believed that they had, by this means, obtained at least a de facto recognition, from Government, of their authority over their own lands."

And earlier on, you say that people told you why they registered traplines, and this is one of the things that people told you, and you describe it above that.
THE COURT: You are really not saying anything more there than the fact that that's what they told you?
THE WITNESS: I think I am.
THE COURT: You think you are saying something more than that?
THE WITNESS: I think I am saying something more.
THE COURT: You're saying that they told you and you believed them?
THE WITNESS: No. I am saying that, in terms of their culture, they have a set of objectives, values, principles, and sets of means which are -- have a logic of their own which is different from ours and this is what motivates them in their actions, and it is not always the same assumptions that lead them into a set of actions that we have.
MR. GRANT:
Q Well, you referred this morning to the example that you have referred to earlier in your research from the ethno history of the Iroquios and first contact with the white men and the different methods that they dealt with. You recall that?
A Yes.
Q Now, is that analogous to what you are talking about here?
A Yes, it is. There is one set of assumptions from the Game and Wildlife -- Fish and Wildlife Department, and another set of assumptions from the Gitksan/Wet'suwet'en who are registering their traplines as to the signification of that -- those events. There is two cultures at work perceiving of the situation in different ways.

Q Now, that analysis of contact -- of how two cultures interact with different assumptions, is that something that is studied in the field of anthropology?

A It is involved in every study in the field of anthropology since contact because there are -- there is this culture clash and conflict and interaction and the waxing of one and the waning of the other, and the relationship between the two and how it changes people's perceptions and how ideological frameworks develop and change.

THE COURT: Well, Mr. Grant, I intend absolutely no disrespect to the discipline of anthropology but on this particular area here, what the doctor is telling me is really no different from what Mr. Michell told me which is quoted on the same page. He is telling me that that's what the various plaintiffs believed when they registered their traplines and they have told me that themselves. Now, what do I get in addition to that --

MR. GRANT: Well --

THE COURT: -- from having the doctor repeat it? It seems to me to be perfectly obvious and it's really a question: Do I believe what they said when they said they registered for that reason? How can the doctor help me?

MR. GRANT:

Q That's for certain but, of course, the doctor here is talking about these areas that I have qualified him in and I'd like to go to that next step from that which is where I was when my friend objected, and that is: Does it tell you anything about the Wet'suwet'en and Gitksan system from an anthropological point of view when this is what the people are saying occurred of the trapline registration?

A Well, taken in the context of all the other things that I observed people doing and saying and making and so on in the course of the field work, it does make sense. It fits into their matrilineal principles of ownership and land holding and their problems of how to maintain it today when there is a lot of duress and pressure against its maintenance.

Q Does it reflect a continuation from an anthropological point of view of the matrilineal kinship system or does it reflect a demise or major alteration of that system?

A The thinking is based on the matrilineal principles; it's not a question of whether it is in demise or it

is continuing. That's what the basis of the opinions and the goals and the actions of the Gitksan and Wet'suwet'en on this matter are informed by. It is very much at the core of their understanding and the tools of which they deal with the world, the frame of reference.

Q If I could just have a moment, my lord.

Now, can you explain -- you mentioned earlier, just completing this area, you mentioned earlier about research you did with respect to Pat Namox's house and the House of Namox, and I believe in your report at page 201 you refer to it and there you refer to it as the House of --

A Hagwilneghl.

Q Hagwilneghl, thank you. Can you describe for his lordship what occurred there in terms of this back and forthing in terms of your research?

A Well, you get an indication of it from the very name -- the fact that the two -- the Namox brothers who were using the Namox land have that name. Their father was the chief of that house in his generation.

Q Their father was Namox?

A He got through the patrilineal naming system of the -- of the Canadian society and reinforced by the churches and so on. He passed his name on to his sons but of course they don't inherit through the same system.

Q What happened -- was there any change?

A They were raised on his land and the -- one of them -- the central family in the Namox house of that generation were being raised, the inheriters shall we say, were being raised on the land which the Namox brothers should have been on that was -- their inheritance through their mother, the Hagwilneghl territory, in the upper Telkwa region.

Q Right.

A So this switchover went on for some years, and then at a certain point the two houses decided that they would get -- sort out the anomaly and each go back to their own territories but invite one another to use them from time to time, so that's how it happened and this was all formally transacted in the course of feasting.

Q Now, on page 203, I'd like to ask you, this is after you talk about -- talk about this particular example. You go on to say -- at the top of 203:

> "Such inter-weaving of lands and rights of exclusive ownership between House groups is

typical in the Gitksan and Wet'suwet'en communities."

And then you go on to say:

"The Wet'suwet'en example presented above illustrates the articulation of rights that occur between intermarrying clans and Houses. This same system pertains among the Gitksan although it is my impression that longterm use rights (such as several chiefs hunting jointly on their combined territories) are granted less frequently to those who are not members of the land-owning House, or for shorter duration than among the Wet'suwet'en."

Can you explain to his lordship why you make that distinction between the Gitksan and the Wet'suwet'en with respect to the long-term use rights?

A I think basically it is a matter of gradation as well as the pressure on the available land for hunting and and trapping purposes because you find areas in -- among the Gitksan where this occurs as well.

Q Which areas are that?

A Particularly in the northeast in the Kisgagas area. While farther to the west there is a considerable detailed attention paid to housekeeping and straightening out the indebtedness and the use relationships between houses which isn't to say that the hunters in that area don't hunt together on each other's lands either. They do, but in some areas among the Wet'suwet'en chiefs, a whole set of families would hunt and trap together over several territories and maybe involving two clans, so that the harvesting of the resources was planned and in a way that would allow lands to be left fallow for a year or two, so maybe three or four hunters would all trap together on one man's land and then move to another one. And it varied with the species, too, and the knowledge of where the certain species would be at a certain time of the year.

Q Can you go to page 204, and I am going to combine this with something you have on 205. The first paragraph on page 204 you say:

"In the course of trapline registration and inheritance these interrelations between Houses have tended to become reified and frozen. Men

1 become attached to one territory/trapline - so
2 long as it has not been clearcut or cleared for
3 settlement - and kinship reciprocity between
4 Houses begins to breakdown."
5
6 And then I'd like to refer you to 205, before asking
7 you the question. You say:
8
9 "The chiefs and elders have responded to these
10 consequences of the trapline registration with
11 renewed vigour, standing in the feast house and
12 explaining the indigenous system of exclusive
13 ownership rights devolving from mother to child,
14 and the reciprocal relations between father's
15 House and that of his children - relations which
16 are emphasized in the giving of gifts and making
17 of payments in the feast."
18
19 Now, when you refer to this reified and frozen, what
20 are you referring to on page 204? It appears that
21 those two statements appear to contradict, to me, when
22 I read them on their face. Can you explain that?
23 A I am referring to the system of trapline registration,
24 sets a lot of men on the land that they don't belong
25 on in terms of the matrilineal system and this is a
26 fact. It is a de facto fact, so then the system goes
27 into action to readjust to this reality. It is not
28 something which has -- that is, I am not trying to
29 suggest that the matrilineal system of inheritance is
30 crumbling, but by the nature of the registration, the
31 situation has changed; it is like a rock in the middle
32 of the river but with the culture, like water, goes
33 around that rock and tries to find ways of rejoining
34 again. It is perhaps not very well put in the text.
35 Q On page 205, you have described this renewed vigour in
36 the responses. Have you seen this in your own -- have
37 you seen this observed, this personally, in the feasts
38 or in meetings or at other occasions?
39 A Well, I don't know if it is renewed vigour but there
40 is certainly a lot -- there is a pre-occupation in the
41 feasting and in the communities with the question of
42 making sure everyone in the community knows whose land
43 is whose, because there is a considerable pressure to
44 register through the patrilineal line. The chiefs are
45 concerned, and have been for quite a long time, that
46 the long-standing system prevail in the face of the de
47 facto registrations.

Q I'd like to -- you make reference then to one of the incidents you have already referred to. I'd like to go to chapter -- or to the next part, page 207 on trespass. And then to page -- I'd like to start at page 212, because you appear to make a general statement and then be more specific there. You state at page 212, the middle paragraph, my lord:

> "In any society, if the laws of trespass (as a component of kinship property rights), are to be effective they must be known widely in the society. The important role of the crests and their history, in this information system, has been discussed. Among the Gitksan and Wet'suwet'en, as well as among all their neighbours, this announcement of rights and boundaries is carried out, above all else, in the feast hall."

This is your opinion; is that right?

A Yes.

Q Now, on page 209, you state -- on 209, 210, you refer to the punitive systems that have changed and I will just focus on page 210 actually:

> "Today, more than ever, trespass is a question of great concern to the owner-groups of Gitksan and Wet'suwet'en. The struggle to maintain exclusive possession has not been stopped. Public opinion mobilized against trespassers, including warnings and social ostracism was, and remains, a forceful sanction against those who violate the laws of ownership."

And that is your opinion as well, regarding trespass among the Gitksan and Wet'suwet'en?

A Yes.

Q Why do you say that public opinion mobilized against trespasser remains a forceful sanction?

A Well, public opinion has always been a very important feature of social control, and I assume in this society because it is a feature of tribes and bands, you don't have a police force, you have a moral force and you have the effects of gossip and possibilities of ostracism. The constant pressure on people to follow the rules, it is common knowledge in the nature of tribal societies.

THE COURT: In public opinion in this passage, you mean public opinion within the Gitksan and Wet'suwet'en communities?

THE WITNESS: Within the Gitksan and Wet'suwet'en commununities and face-to-face relations with the villages, and news travels fast. Everyone understands when someone is using land which does not -- they don't have rights to. And there is a considerable outcry and social pressure that takes various forms on a day-to-day basis. I haven't actually seen with my own eyes the instances which I have been told about in feasts. There are announcements made that so and so has no right to be on our land. The feast isn't necessarily held for this reason but it is done in a big feast in a public way and made very clear.

MR. GRANT:

Q Is that consistent with the ethnographic work you have read about the Gitksan?

A Yes, it is.

Q And is this feature similar with other Northwest Coast --

A Of course most of the ethnographic accounts talk about the situation right at the time of the contact when trespass was dealt with in a different way but ultimately ended in the execution of the trespasser after a certain number of warnings and the procedure that everyone understood. I mean these things were very difficult to carry out because the lack of a centralized authority, so to follow the rules and be able to kill a trespasser without having the repercussions of a member of your group, your corporate group, being killed in return, there had to be a regulating body to cover. And the same thing when a trespasser may affect your relations with his or her whole house group, so it has to be handled in a very diplomatic way, too, according to rules of custom.

Q Now, you say at the bottom of page 210 that:

> "The actions they take involve the warning, isolation and ostracism of trespassers, and formal public debate on the subject, with the outcome witnessed in the feast hall by the high chiefs."

And this is a result of your research and what people have told you?

A That's right.

Q It is also a result of your review of evidence of Alfred Joseph, Stanley Williams, Art Matthews and Johnny David?
A That's right.
Q Of their transcripts.
Now, what I'd like to ask you is what you -- with respect to relations in a matrilineal society or a kinship society, a contact situation, when the trespasser is not a member of that society. Do anthropologists -- have anthropologists researched that kind of aspect of contact?
A Well, if people come in from another culture who don't understand your rules, then they are not going to obey -- they are not going to follow your rules. You're going to try to teach them or else ignore them, and one or other response is usually followed.
Q Okay. Now, with respect to issues of trespass say between the Gitksan and Wet'suwet'en on the one hand and say their neighbours, that is, the -- when I say their neighbours, I talk here about the Haisla, the Nutsinii, Secani --
A Tahltan.
Q Tahltan, the Nishga, and the Coastal Tsimshian. Is there a relationship --
A Everybody understands the system of trespass within the region. It is a common procedural matter between all the peoples in that whole general area, and the whole system of settling disputes is likewise a common matter of -- matter of common knowledge across the linguistic and local cultural boundaries.
THE COURT: We will take the afternoon adjournment, Mr. Grant.
MR. GRANT: Yes, my lord.
THE COURT: Mr. Grant, do you want to sit an extra hour this afternoon? You can talk about that.
MR. GRANT: I will operate on the basis -- maybe I could advise you after the break.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO THE AFTERNOON BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT: Thank you, my lord.
THE COURT: I'm told you want to sit an extra hour this afternoon.
MR. GRANT: I don't know if you should say the word "want," my lord, but it may be the better decision though.
THE COURT: Yes. All right then. Well, the only problem is I think we'll take a very short adjournment at four o'clock. And will you want to be replaced? You'll stay, Madam Reporter. Yes. All right. We'll take five or ten minutes at four o'clock, then we'll go to 5:00.
MR. GRANT: My lord, just to be clear, were you unavailable tomorrow?
THE COURT: No, tomorrow is fine. We can sit late tomorrow afternoon.
MR. GRANT: Because I thought you'd indicated that you weren't.
THE COURT: No.
MR. GRANT:
Q Can I refer you to page 211 at the bottom and 212. You state there it's part of your opinion that:

> "The reiteration of the history of ownership - the story of the crests, the migrations and of the land itself - in an important feast is a further assertion of exclusive rights. So too is the protection of the property by psychic means, such that misfortunes and illnesses suffered by trespassers and their close relations, are ascribed to the trespasser's dishonourable actions - to his or her anti-social, anti-reciprocal, anti-respectful behaviour. While this is an intangible feature of societies without central government, it certainly exists and exerts pressure on people to follow the law therein."

Now, first of all, in general in dealing with societies without central government, and specifically tribal societies, is this common to find the use of psychic protection, if I may put it that way, as a feature of the society?
A It is. It's similar to the institution of gambling.

It's a way of dealing with intergroup relations without one side or another -- or I suppose gambling is a bit different. It -- gambling is explained in the -- such cultures as the competition between the will or the power of the participants, and whichever one is the strongest affects the turn of the die, so to speak, and the whole concept of psychic power is very much a part of such societies.

Q What -- when you say psychic power, what do you refer to? What are you referring to?

A I'm referring to the people's perceived sense -- the sense of strength and authority they get from their land and from the training they have to -- to become either healers or chiefs in the society in the Gitksan Wet'suwet'en area. And this is considered to be something -- something tangible, something related to -- something like electricity, if you like, which helps people focus on hunting and on -- on the -- on your fishing, finding -- locating the game, assisting in the spiritual -- or healing purposes and the psychic and physical well-being of people. Shamanism is the common term used. It's from a -- from a Siberian word which means a doctor or medicine person.

THE COURT: Spell that, please?

THE WITNESS: Shaman is S-h-a-m-a-n.

THE COURT: i-s-m?

THE WITNESS: i-s-m.

MR. GRANT:

Q Did you in your experiences with the Gitksan and Wet'suwet'en see -- observe how people behaved on the land, for example, and see examples of what you describe?

A Well, this isn't something that you observe. It's something that is very -- very deeply hidden in the cultures, and people don't talk about it readily because it has been labelled as witchcraft by the churches and by the white society in general. But what I'm referring to here are the stories that one hears about other -- generally it's people referring to other societies. The Wet'suwet'en, for example, one Charlie Austin told me -- he's one of the elders at Hagwilget -- of an occasion when a group of Wet'suwet'en hunters were hunting in Tahltan territory, which is not their area, and they didn't have permission, and on the first night they were hunting there one of the hunters had shot at an animal, and he fell ill that evening. The explanation

of this situation was that he had had something shot into him by a power person among the Tahltan because he was hunting there without permission, because these were foreigners and it was a protection of the land, so various things were done to right the situation. And it's frequently by reputation that you don't go to other people's land because they're known to be people with great power, which they can use either to heal people or they can use it to create harm in others. So it is another form of boundary maintenance in a very subtle -- subtle fashion. And this is -- this is in the body of -- I, as an anthropologist, consider it is part of reality because it's very alive in the communities, but you don't -- it's intangible. It's part of the values and the cultural beliefs that have been -- been in operation for a long period of time.

Q Are examples of these also delineated in the evidence of some of the witnesses that you reviewed?

A I believe there are, but I -- for the moment I can't recall.

Q Did you refer to adaawk, that is the Barbeau-Beynon adaawk? Do they reflect --

A Oh, yes.

Q -- the importance of psychic powers?

A And I think -- I think we mentioned one in the last couple of days where the people who were perceived by the Frog-Raven Clan of -- members of one of the houses from the Kisgegas area to have -- no, it was the -- it was either the frogs or the wolves from Kisgegas. They had an incursion by people from the north, one of the leaders of whom was considered to be a man of great, great spirit power, and they describe graphically some of his uses of his power in an aggressive way, which is against the value system of both peoples, and that's the justification for -- for the action that was taken against them. Apart from the fact that they were trespassing, the powers that he was using were -- were anti-social.

Q When you refer to -- when you refer to witchcraft, it implies to me in our perspective a negative aspect. Is that how shamanism or the use of psychic powers is usually considered?

A No, power is power. It's like electricity or fire. Used in one way it's beneficial, and used in a different way or uncontrolled it's dangerous. It's the same attitude towards many -- many phenomena, that if they're kept in control, they're of use to people,

and if they're not, they can be dangerous.
THE COURT: Sounds like judges.
MR. GRANT:
Q And you learned of these events from or you also saw examples of this in interviews that you conducted, such as you've referred with Charlie Austin, for example?
A Yes, informal discussions with people. It's a very touchy subject, and it's not something that one readily writes about until you -- you have a lot of experience in the community.
MR. GRANT: Now, I'd like to go to the next section, which is Exclusivity and Common Use Rights, at page 213.
THE COURT: I'm sorry, what page?
MR. GRANT:
Q 213, my lord. 213.
Now, I'd just like to focus on your opinion at the beginning of this section. You say, Doctor, that:

> "Among the Gitksan and (the) Wet'suwet'en, the right to exclude others from the enjoyment of one's property and the resources located there were qualified by certain common use rights; that is, by virtue of unique resources found there, certain places in the Gitksan and Wet'suwet'en territories have traditionally been treated as a type of 'common land'. This term warrants couching in quotation marks because the land in question generally is not without an owner. The point is that under certain conditions these locations are open to all members of the local community."

And you then go on to refer to Moricetown being on the land of Wah Tah K'eght, Hagwilget on the land of Spookw, and Kitwanga on the Eagle lands of Sakxum Higookx and Simadiik.
Now, can you expand and explain for the Court what you mean here by "common land"? You've cautioned it by putting it in quotation marks and said that it's -- it's not land that's without an owner, but can you explain what you mean? And if you wish to use examples, that's fine.
A Well, there's a -- there's a fishing site that comes to mind in Kispiox, which David Blackwater explained was the location where they -- he and his grandparents

took their -- their salmon when they were in the village in the summer months when he was a child. They -- they were some of the caretakers of the village while most of the villagers were away at the coast and engaged in cannery work and the fishing.

THE COURT: Mr. Grant, I've had evidence about all of this.

MR. GRANT: Of the specific --

THE COURT: Yes. There's the area at Kisgegas, and there was an area where there was shale where they were all free to look for things, and I don't -- there are other examples, not many, but I've heard about these common areas. I've heard them firsthand. I'm not sure there's any point in repeating it. If there's something additional, that would be fine.

MR. GRANT: I appreciate your comment, my lord.

THE COURT: I know it was at Kisgegas. They said there was an area around the village that was open season for everyone.

MR. GRANT: Well, that -- the common hunting area, James Morrison described that, I believe.

THE COURT: Yes, James Morrison.

MR. GRANT: And he described how the chiefs got together on that.

THE COURT: If this is something different from that, well then by all means proceed.

MR. GRANT: Yes. I wasn't going to refer to that example.

THE COURT: All right.

MR. GRANT:

Q Except by --

Now, you're referring to a fishing site in Kispiox?

A Yes. Would you -- you want me to talk about the principles --

Q Yeah, if you can explain --

A -- if the Court already knows the -- most of the examples. My understanding is that these areas which are considered to be common grounds or common sites are actually owned by one house or another.

Q Yes.

A Or the area in the Silver King basin east of Smithers is between two -- right -- part of it is on one chief's territory and part of it is on another near Mount Cronin.

Q And what is that? Is it a hunting or a trapping or a berry area or what?

A It's an area that was known for very rich groundhog country, for pelts and for the fat content of the

1 groundhog, as well as for a certain amount of mountain
2 goat hunting.
3 Q Now, with respect to -- I believe that area was
4 described in the evidence by --
5 A It was described by Alfred Joseph.
6 Q Alfred Joseph. Now, with respect to the concept of
7 common areas as described in this case by Alfred
8 Joseph at Mount Cronin, James Morrison at Kisgegas,
9 this fishing site that you talk about at Kispiox, and
10 other similar areas, how does that fit into the
11 concept of ownership of these territories in a
12 matrilineal kinship system?
13 A Well, it's within the -- it's within the framework of
14 the -- of the matrilineal house group ownership. It's
15 just that -- in terms of the fishing sites, I have a
16 feeling that there was probably a site near each of
17 the villages where people who perhaps had sites at
18 some distance could go for fresh fish and no one
19 raised a fuss about it. It was a local village
20 fishing spot. However, if someone came there from the
21 Nass without permission and started to fish, they
22 would be in a lot of trouble with all the villagers.
23 On the case of the -- this case up in Silver King
24 basin is quite interesting because people were allowed
25 to go there on a first come, first served basis to
26 harvest the available resources, but whoever went in
27 first had to pass through the territories of -- of the
28 surrounding land and were expected by all concerned to
29 look after it properly, and if someone else came in,
30 to tell them which would be an area that they could
31 harvest without over-harvesting the species. And it
32 involved people from the Babine watershed as well as
33 the Bulkley watershed. But they were -- they were
34 related, and they had adjoining territories and
35 similar clan affiliations.
36 Q Now, on page 218 of your report you state at the top
37 of that page:
38
39 "The Gitksan and Wet'suwet'en consider that
40 if an area of exceptional productivity is
41 available in their territories the area must
42 be open to the benefit of others. The
43 species hunted in these two locations were
44 not available in all House territories.
45 These were known to be exceptionally
46 productive areas, with exceptional
47 resources needed by the people for clothing

and trade..."

You refer there to Alfred Joseph.

"...ground-hog: fat and pelts; mountain goat: fat, hides, horn, hair for blankets and skin for drums; and caribou: hides for clothing and footwear."

A It also pertains to berry -- phenomenally productive berry patches too.

Q Okay. Now, can you explain why you conclude that if there's an area of exceptional productivity the area must be open to the benefit of others? How does that work? Why do you come to that conclusion within these matrilineal --

A It's part of the ethic of maintaining your land in a good condition where again you have the balance, the reciprocity. You mustn't over-harvest, but neither should you under-harvest. If you don't harvest the useful species, then they realize they're not being appreciated according to the values of the culture, and they will not maintain themselves. And there is ecological basis for this too in terms of the population cycles and so on, but if there's a certain rate of predation, then the species is kept in a healthy growing condition within its ecological cycle.

Q This is part of the belief system that you're referring to here?

A Well, not the ecological explanation. That's me. But the -- it is part of the belief system that you must show your appreciation of those species which are important to you by harvesting them or they'll go away.

Q Is there any parallels with other cultural groups of that kind of belief system?

A Well, I first became aware of it in this instance, but in terms of being in tune with the ecological cycles, it's common right across northern Canada. But this actual formulation I hadn't heard before I came into the Gitksan-Wet'suwet'en territories.

Q Can you go to page 220, please, the next section on conveyance? This is called The Conveyance of Property Rights, and you set out your opinion in the first two sentences.

"The identity and well-being of the Gitksan

and Wet'suwet'en House group is indissolubly linked with its fishing sites and its hunting grounds. These land holdings do not easily change hands."

And then I'd like to go down a few lines to -- about ten lines down. It starts at the end of the line:

"The law according to which Gitksan and Wet'suwet'en govern the ownership of land includes provisions for granting use rights; it does not include the right to ultimate alienation; nor does it allow the owner to destroy the land such that it is rendered unfit for customary use. A House may occasionally lose its land due to a peace settlement, as will be discussed below, or in post-contact times, when the population of a House became so reduced due to disease and social crises, the members were occasionally unable to pay back funeral expenses for a deceased chief, and thus land could fall into the hands of the House which paid for the burial of the deceased."

Now, first of all, when you -- first of all, those are your opinions -- that's a fair statement of your opinions with respect to conveyance?

A Yes.

Q And if you -- what were the foundations or what was the basis upon which you came to these conclusions, Doctor? That is -- I'm focusing specifically -- I've read a large section to you, but specifically on the first two sentences and the sentence that these land holdings do not easily change hands, which is amplified later in your explanation.

A Well, people -- if people maintain their responsibilities to the -- the thinking in the culture is if people maintain their responsibilities to the land and to the other kinship groups through their -- their ceremonial exchanges and their feasting exchanges, then they're maintaining their ownership. They can't buy and sell land as we can in our system. The way it is passed is through lines of inheritance, through the matriline. And it is considered to be illegal and immoral to destroy land.

Q Now, did you --

A And this is common to many tribal areas, the same morality with regard to the land and the responsibilities of owners as found in the whole matrilineal belt of Central Africa, where the -- if the land is not well cared for, it's considered that the people will fall sick, or if the people fall sick, it means the land is not being looked after. Well, there's that relation between looking after your territory and your well-being in terms of your health and the well-being of your whole kinship group.

Q Now, in the -- in the anthropological field why is this common to the matrilineal kin group, this land relationship?

A I don't think it's peculiar to matrilinea beyond what I said yesterday about how matrilinea has been correlated with horticultural societies and those that have -- those hunting and gathering societies which have a regular wild species to harvest year in and year out, such as the salmon along this coast.

Q Now, I'd like to take you to page 221, in the middle of that page. I'm sorry, I can -- well, just -- yeah, I just want to clarify that question. You say:

> "The Gitksan, for instance, say that the land belongs to them, and at the same time, they belong to the land."

From your research, would that statement apply equally to the Wet'suwet'en?

A Yes. Oh, yes.

MR. GRANT: I'll come back to that concept later as you deal with it later in your report.

THE COURT: But, of course, that's common world wide, isn't it?

THE WITNESS: We tend to lose sight of it in our society, I believe.

THE COURT: Where we freely buy and sell where there's lots of land that can be acquired and disposed of?

THE WITNESS: Yes.

THE COURT: It's common in Europe, common in many countries, is it not?

THE WITNESS: Well, there's certainly more regulations in terms of the use -- the use to which an owner can put their land in Europe than there is here.

THE COURT: I'm talking in pre-regulation days.

THE WITNESS: Oh, certainly it's true. It's my understanding of hunting peoples in northern Europe 3,000 years ago it looked like a similar type of system.

THE COURT: Eastern Europeans don't sell land as a general rule or they didn't before regulation arrived?
THE WITNESS: No. Well, they also had kinship societies in many of the rural areas in eastern Europe and through the Balkans.
THE COURT: Thank you.
MR. GRANT:
Q Now, there's only one other point -- there's one other point I'd like to deal with here. The last sentence on 221 you state that:

> "Whereas foodstuffs, tools and luxury items can be conveyed from one proprietor to another through feast payments, gift exchange or gambling - and today, through buying and selling - the conveyance of hunting grounds and fishing sites is not conducted in this manner."

And that is your opinion with respect to the Gitksan and the Wet'suwet'en, is it?
A Yes.
Q Now, when you list foodstuff, tools and luxury items, are there other things that would be -- is there generic category of what you would describe those things that can be within the context of the Gitksan system conveyed?
A Well, generally it's referred to cross-culturally as movable property. But in the perception of the people today, it includes such items as housing on -- within the reservation. It can be disposed of in different ways. It doesn't have to follow matrilineal principle.
THE COURT: Dr. Daly, this is the second time today you've mentioned gambling. It hasn't been mentioned before in this trial, as far as I can recall. Is it a common feature of Gitksan or Wet'suwet'en life?
THE WITNESS: It's very common. In fact, gambling is a common feature of Native life right across the country, and it's common to hunting societies in many parts of the world. It's a way of interacting and competing in a way which will have not repercussions that will lead to an outbreak of violence.
THE COURT: What sort of gambling?
THE WITNESS: Games of chance.
THE COURT: They don't have dice, but they have something similar?

THE WITNESS: Similar -- similar procedures, yes.
THE COURT: Is this a way of occupying idle time?
THE WITNESS: It occupies a lot of time, and a lot of goods change hands this way, and there's no repercussions in terms -- you can't lay the blame on the person who ends up with all your belongings. There are quite a number of accounts of this in the Hudson Bay records among the Western Carrier people, of how they were fed up because they couldn't get these people to go trapping for them because they'd gambled away everything, including their winter clothing, and they couldn't understand the mechanism that was going on.
THE COURT: And is it a current problem with them today?
THE WITNESS: A lot of it today takes the form of bingo.
THE COURT: Yes.
THE WITNESS: It's not really seen so much as a problem. It's a feature, a component part of the culture complex.
THE COURT: Well, I speak subject to correction, but I don't recall it having been mentioned previously in this whole trial.
MR. GRANT: I can deal with that now, my lord.
THE COURT: No, I don't need it to be dealt with.
MR. GRANT: Dr. Daly is going to deal specifically with gambling in the context of his report.
THE COURT: All right. Thank you.
MR. GRANT:
Q And we'll come back to it.
Going to the next section, Conveyance Through Kinship Inheritance -- this is actually a subsection -- you state at page 222 that:

> "Property rights over territory and fishing sites are organic extensions of Gitksan and Wet'suwet'en genealogical life cycles."

And then you state:

> "Social harmony,"

the fourth line from the bottom,

> "demands public recognition of the identity of a certain House with a certain territory, for this configuration of ownership affects the fortunes of all members of the community through networks of kinship and affinity."

Now, you're talking here of -- in that second sentence about the -- excuse me -- the Gitksan and the Wet'suwet'en as well, Doctor?

A Yes.

Q And when you say that social harmony -- why does social harmony demand public recognition of the identity of a certain house with a certain territory?

A What I'm saying is that it's a systemic phenomenon that the fortunes and well-being of one set of owners are dependent on everyone else following in the general contours of the system of ownership and exchange. No one house can maintain the system in itself. And, you see, in much of this century there has been a preoccupation by the people with falling numbers, that a lot of houses have -- have experienced a depletion of population. And the chiefs will meet -- from a whole village will meet and just try to work out how they can repopulate, how -- they have at certain points in this century -- how they can repopulate houses that appear to be dying. Because it's important for the keeping of the whole interchange. It can't go on with just one or two houses because the interlinking of the people on the land and the distribution of the -- of the people with the resources over the whole region demands that the whole system be kept in some sort of viable state.

MR. GRANT: On page 223 you do refer to -- and of course yesterday you described the mixed economy, but you do refer here with respect to land purchase, pre-emption and the setting up of enterprises, and you say:

> "Under present-day conditions of the mixed economy, Gitksan and Wet'suwet'en people have engaged in a certain amount of land purchase, pre-emption and the setting up of enterprises like sawmills within the general area of the Gitksan and Wet'suwet'en territories. It is my understanding,"

and I take it that means it's your opinion,

> "that these ventures, while conforming to the Canadian legal and economic systems, have been regarded by the people as economic activities which will help them continue to use and enjoy their territories and resources when these territories are under

pressure from alternate, and often
non-Native users and harvesters."

My question is why do you say that?

MR. WILLMS: My lord, I rise to object here. My friend read "understanding" as "opinion." Now, "understanding" makes sense because -- in the context of this witness repeating what other witnesses have said about what they're doing. If it's "opinion," it's certainly not an anthropological opinion. It can't possibly be one. If it's his understanding and it's a repetition of something we've already heard, that's one thing, but I would like to know whether or not that is purportedly an anthropological opinion, because if it is, I'm going to object.

MR. GRANT:

Q I'm going to -- I may -- I may have -- my own notation may have misled me there, Doctor. It may be more correct to say that's an understanding. That is your understanding; is that right?

A It is my understanding. At the same time, it's my comment on a general feature of cultural interplay throughout this century among the societies that anthropologists study. There is the interaction between hierarchical state systems and non-state systems or kinship societies, and they each have their bodies of understanding of phenomena, and there's a certain balance or imbalance of -- of power between the two cultures. And generally the people that anthropologists study are -- they lose their independence or they lose their power. At the same time, it's not an all-or-nothing situation. They carry on according to their customary values but in a way that -- that bends with the wind of the pressure from the -- their surrounding society. So it isn't -- it's -- it's my understanding, but it's informed by the whole common scenario that you find in many parts of the world today.

Q I'd like to go to page 225, if I may. At the -- at the top you deal with -- you provide your opinion regarding this conveyance, and you say:

"Among the Gitksan and Wet'suwet'en the conveyance of rights to landed property is played out in the arena of succession to office within the House group, or within the broader scope of people united by the

wilnat'ahl/baneeyexgixnay,"

A Baneeyexgixnay.
MR. GRANT: That's w-i-l-n-a-t-'-a-h-l-/-b-a-n-e-e-y-e-x-g-i-x-n-a-y,

"membership, that is, those who by their kinship ties consider they had a common history in ancient times. Positions of power and influence are filled according to patterns of kinship. This system is a major feature of the exercise of authority over the affairs of the wilp/yex. This authority is strikingly evident in the form of chiefly management of House territory and the associated labour force."

And then going on:

"For the Gitksan and Wet'suwet'en, these rights and duties have involved the investment of social energy in the territories, either by concentrating or by dispersing labour power according to ecological" --

THE COURT: Better slow down, Mr. Grant.
MR. GRANT:
Q I'm sorry.

"...either by concentrating or by dispersing labour power according to ecological and technological considerations, so as to produce the basic material goods needed by the society."

Now, with respect to this -- this opinion that you provide here, can you -- or the set of opinions here, you refer here once again to an investment of social energy, and you also refer in the previous paragraph to the chiefly management of house territory and associated labour force. Now, can you explain what you mean by -- why you conclude that this authority is connected to the associated labour force and what you're referring to?
A Associated labour force is the people you're related to through your lines of inheritance or through

1 marriage and through your father's side, the three
2 possibilities. Sometimes the father's side and who
3 you marry are the same; sometimes they're not. The
4 management of house territories, some of the chiefs
5 will quite frankly tell -- quite frankly told me that,
6 "We marry the way we do over the generations so that
7 we keep control of that set of resources which are
8 important to maintaining our way of life and what's
9 become a customary relationship over a number of House
10 groups." It's in a sense marriage following property
11 relations. So the management of house territory
12 involves the arrangement, thinking about political
13 ties through channels of kinship, kinship and
14 marriage.
15 Q I'd like to refer you to page 228. You state at the
16 top of that page:
17
18 "Members of a Gitksan or Wet'suwet'en House
19 will vie for chiefly names and the
20 managerial authority associated with these
21 names; protagonists can seek the support of
22 members of other, related Houses. While
23 this process may tend to broaden disputes to
24 include a number of families and Houses, it
25 at the same time diffuses power and
26 authority."
27
28 My question to you: Is this dynamic, if we can call
29 it that, that you comment on here, is this typical of
30 types of society that's a tribal society?
31 A It's typical of many tribal societies, typical of
32 hunting bands too. No, I'll correct that. It's
33 typical of tribal societies.
34 Q And what effect does it have in terms of the social
35 control and the social organization within tribal
36 societies?
37 A It means that the --
38 Q And I should just refer you to the last two sentences
39 of that paragraph as well where you say:
40
41 "Selection is by no means a matter of simple
42 ascription to office. It can be highly
43 contested."
44
45 What impact is that on the social organization?
46 A There's a dynamic -- I'm not -- I'm not clear on what
47 your --

Q Well, you describe a dynamic here of -- as you say at the end, it can be highly contested within the house group, the succession to chiefly names and authority?
A Well, it certainly is.
Q And you've said now that that is something that you find in tribal societies?
A Yes, yes.
Q What is --
A There's a common misconception by some people that in tribal societies you're born into a position. There's a number of people who are born into the -- potentially born into that position in any kinship system. In these societies, the Gitksan and Wet'suwet'en, as in many others, there's a process of selection and assessment of the actual personalities as to who -- among those who through blood ties are eligible for the position. And this is assessed in the course of their life and their growing-up period. Among the Iroquois it was the elder ladies, called the matrons, who made the ultimate selection of who would have the clan chieftainship, and if that person didn't do a good job, he could be recalled by that same body of women.
Q Now, if I can take you over to the next section. Maybe I have one thing -- I'm sorry -- on page 228, my lord. At the bottom of page 228 you state:

> "The public accounting of proprietary rights to land, history, crests and songs reassyres neighbouring House groups that a House's line of succession will not threaten the authority of the surrounding House groups and their chiefs. This public registry of title and authority before an assembly of high chiefs affirms, in the minds of all, both the legitimacy of succession to the name and transmission of property rights."

Now, is that opinion and conclusion of yours, is that connected to what you commented on, the quote from Drucker that is at page 9 and 10 of the report that you referred to this morning?
A Yes, it's consistent with that.
Q And that's your conclusion, that the Gitksan operation of the system is consistent with what Drucker described for the Northwest Coast generally?
A Yes. Yes, very much so.

MR. GRANT: Okay. I'd like to turn you to chapter -- or part III.3.b.
THE COURT: I think, Mr. Grant, we'll take not more than ten minutes.
MR. GRANT: Ten minutes. Thank you, my lord.
THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AND RECONVENED PURSUANT TO A BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT:
Q Thank you, my lord. Dr. Daly, you have the page 230 of your report?
A Yes.
Q The section on Indebtedness and the Forfeiture of House Property. You say:

> "Land can be forfeited when a House fails to repay the funeral expenses of its chief."

And I believe examples have been given in evidence, including the transcripts that you've described. And then you state at the bottom of that same paragraph, fifth line up:

> "If the repayment of these expenses is not forthcoming, then the father's House, or any other House which assumed the burden of paying the funeral costs, may fall into a situation where it can take possession of the land. This usually occurs when a House is severely under-populated or impoverished."

Now, going over to the next page, you refer to Thomas Wright's description in which he talks about -- in his commission evidence about his grandchildren, if they didn't have the money, they wouldn't get the land. And then you say -- this, I understand, is your opinion.

> "'Getting the land' as a result of providing funeral expense money is getting, at most, use rights to that land until it is redeemed. If the land..."

Now, I'll stop there for the moment. Why do you conclude that what is given is use rights until the land is redeemed?

A Because there's a matter of gradation involved. As I said before, it's a system of ownership between a number of groupings, and if everyone is going to forfeit on their land if they go into debt, the system becomes highly imbalanced, so this -- what I have described here as losing land due to indebtedness, it's a long period of negotiation, and the other -- the side that is in debt is given opportunities to get out of debt and so on. It's not a cut-and-dried thing, but the ultimate result may be that the land stays in the hands of -- of the creditor and comes to be known as their land after some generations.

Q Okay. That is actually what you state in the next sentence, where you say:

> "If the land is not redeemed, according to the Gitksan law, it may become part of the holdings of the House which paid the funeral costs."

Now, why do you conclude that? On what basis do you conclude that?

A That's on the basis of evidence in -- commission evidence, and chiefs' testimony, and what I've learned in the community.

Q I see. Okay. Now, is this feature of what you say that -- as you've described, if the debt isn't repaid, you get use rights of the land until it is redeemed, is that something that would be unique to the Gitksan and Wet'suwet'en, or is that something you would find in tribal societies more generally or hunter/gatherer -- hunter/gathering tribal societies?

A I'm not sure. I certainly have learned how it works in -- under these conditions. I'm not sure how common it is elsewhere.

Q Is there any parallels or analogies in the Iroquois situation? Or is their land tenure and conveyance --

A It's a different system.

Q Now, is there any parallels with other Northwest Coast cultures from your research of the ethnography of the other Northwest Coast groups such as the coastal Tsimshian or the Nishga?

A Yes, they have -- it's -- my understanding is they have the same system --

Q Okay.
A -- throughout that general region.
Q I refer you to page 232, where you refer to Temlaham, the land of plenty. This is one of the series of the Beynon adaawks, that is, the adaawks collected by Beynon?
A Um hum.
Q And where you said that:

> "Another example of this type of forfeiture" --

and you've gone through, before that, a number of examples given by Jessie Sterritt and by Olive Ryan.

> "Another example of this type of forfeiture, involving not land, but a chiefly name, is cited by William Beynon from the lower Skeena Tsimshian village of Gin'adoiks..."

You give the citation.

> "Beynon notes that a chiefly name can be taken publicly in a feast, from a debtor who has steadfastly refused to acknowledge his debts and pay them."

And then:

> "By way of example he gives the Frog Clan name of Sa'edzan,"

that's S-a-'-e-d-z-a-n,

> "which became a Wolf name as a result of non-payment of a longstanding debt by the Gin'adoiks,"

that's G-i-n-'-a-d-o-i-k-s,

> "Frogs. The Wolf Clan subsequently threatened to give the name back to the Frogs, thereby doubling both their shame and their indebtedness. The threat was intended to coerce the Frogs to hold a feast and redeem their name, their crest, and the honour of the Ganeda (Frog) Clan as a

whole."

Now, what I'd like to ask you about that is what do you mean when you say that -- that it's a threat for the Wolf Clan to give the name back to the Frogs?

A It's a threat to the -- to the Frogs.

Q Why?

A Because they -- they are then put in a position of receiver -- of -- I won't use receivership because that has a different meaning in our society, but they become net receivers of favours from another group. They're doubly in debt this way because they're being given -- first of all, they lost their land because they didn't pay the funeral expenses.

Q In this case a name.

A Oh, sorry, a name in this case.

Q Yes.

A And then they didn't -- when they didn't redeem the land under those conditions, there was discussion about giving -- actually giving them back their land. Now, it would make sense from the -- the position of the creditor. This -- sorry, it's the name here. They would have given it back, the name, and the system would have carried on ostensibly, but these people would have been doubly shamed because they would have been indebted twice. Favour had been paid to them or something had been given to them twice without any return, and they would have fallen in stature even lower than they -- than they were by not redeeming this name.

Q And is this something you find in kinship societies?

A Yes.

Q That -- that the gift and the return is a feature of the society?

A Oh, yes. Yes, very much so. It's the -- the form of social interaction and economic exchange quite often takes -- it takes the form of gift giving and giving of hospitality. And people keep close account of what is given and what is received, even though they may not -- may say they don't. They may say that the whole system generally balances out, but there's a very careful reckoning on what has been given and what has been repaid over time.

Q Now, I'd like to refer you to the next paragraph there, where you state that:

"The House which, on such a rare occasion,

1 would make such a seizure is required to
2 announce publicly, in a feast, what action
3 it has taken. If the defaulting" --
4
5 and here you're talking about a House which takes over
6 control of the land when it's not redeemed --
7 A Yes.
8 Q -- I assume.
9
10 "If the defaulting House is to redeem its
11 land, it must pay its debts with interest by
12 means of a feast. Normally this is done
13 swiftly. If the debt is not paid it might
14 indicate that the House is waning in power
15 and strength, and does not have the manpower
16 to clear its debts."
17
18 Now, does this opinion that you're talking about here
19 apply to the Gitksan and to the Wet'suwet'en?
20 A It does. And it still goes on today. This was the
21 preoccupation of the House of Tenimget after they
22 incurred funeral expenses when the previous Axtii
23 Hiikw passed away. They worked very, very hard to --
24 there are many other examples, but this is one I know
25 quite well. They worked very, very hard to prepare to
26 repay those debts as -- in as short a time as possible
27 so that there would be no gossip about how their
28 standing in the community was waning or not up to the
29 scratch that it had been under during the leadership
30 of the previous chief of that house.
31 Q Is that -- do you recall if that's reflected in your
32 interviews with the Tenimgyet House group?
33 A I believe it is.
34 Q Okay.
35 A It was in the discussion with Art Mathews and his
36 parents in August of '86.
37 Q Could you refer to tab 24 of the blue book, Volume 1,
38 please, page 2, the middle paragraph, where he starts
39 off:
40
41 "Geoffrey Morgan who was Axti Hiix died
42 about this time last year."
43
44 This is a discussion with Art Mathews Jr.; is that
45 right?
46 A Yes.
47 Q

"We had the funeral that his father's side - Wilksi Witxw - paid for. That's our way. We paid off most of the debt after that at the funeral feast. The rest of the debt we'll wipe out with the gravestone feast this fall. We don't like staying in debt to anyone."

A Yeah. You said, "father's side - Wilksi Witxw," but it's, "his father's side - our Wilksi Witxw."
Q I'm sorry. Thank you. That's -- he was referring to Geoffrey Morgan's father's side?
A Yes.
Q Do you recall what group that was offhand? It's all right.
A It's slipped my mind.
MR. GRANT: It's okay. Now, you were --
THE COURT: Where's the part you were reading from, Mr. Grant, on page 2?
MR. GRANT: At tab 24.
THE COURT: Yes, I have that, page 2.
MR. GRANT: Page 2, the middle paragraph starting, "Geoffrey Morgan who was Axti Hiix died," that middle paragraph.
THE COURT: Yes.
MR. GRANT:
Q Now, is there any -- do you recall if there was further discussion about that?
A Well, he -- Art Mathews, Tenimgyet, invited me to the feast to see how they paid it off.
Q Yes.
A And I attended that. And then afterwards they said, "Well, our name is clear, and we're out of debt. We've paid back. We're satisfied with the way things are."
Q Now, you -- I believe there's three interviews with Art Mathews, Tenimgyet, in your interview notes, tab 23, 24, and 25, and why did you decide to interview and work with Art Mathews Jr. and his house group in your research? In other words -- or I'm asking you this to go to the general question as to why you -- how you selected people.
A I -- like anthropologists generally do, you ask around the community, when you're interested in a certain feature of the culture, who knows a lot about it, who is a specialist, and then in addition to that you ask -- you observe and ask about people who are perhaps not in the know to get some sort of

comparison. And one of the people that was suggested when I -- when I went to the fish camp at Ankii iss down at Kitwanga, I asked there who in the local village would be a good person to talk to about the seasonal round and the use of the land in that area, and one -- as an example of one of the western villages because I was living in -- in Gitanmaax or Hazelton, which is on the eastern -- among the eastern villages, and it -- someone at the fish camp suggested I talk to the Mathews family. In fact, that night, after going to the fish camp, I went down the road to Terrace. Coming back it was very late at night. I asked the driver -- we were in the middle -- it seemed to me we were in the middle of nowhere -- "What are those lights across the river?" And he said, "Well, that's the Mathews family fish camp at Wilson Creek. And they -- they're camped there all summer every summer. They have -- they're fishing there in a big way, and they've -- they've been there for a number of years, and they've put up fish in the traditional way." So that again inspired me to get to know this family.

Q You didn't select Art as a person because he ended up being a witness?

A Well, I didn't know who was going to be a witness at that point.

Q Okay. I mean a witness in this trial. Now, as his lordship referred to yesterday, and as you know, Art Mathews Jr. is -- I think he's a foreman at the Kitwanga sawmill --

A Yes.

Q -- Westar? You're aware of that.

Well, I'd just like you to -- and his lordship was asking you about this question of the market economy and the subsistence economy yesterday. And while we're on the point of Art Mathews Jr. and him as your informant, can you explain how -- if Art Mathews works full time at the mill and yet he was one of your main informants and you were advised he was important in terms of the seasonal round, how do those two concepts work? I mean, how does that -- it appears to me to be a contradiction?

A Well, it's a very hard working family. And I said to --

THE COURT: Well, I'm sorry, Mr. Grant, I don't see the contradiction, so you're going to lose me unless you make the contradiction plain.

MR. GRANT:
Q Okay. It may be my framing of the question, my lord. Can you explain how Art Mathews Jr., who apparently to me, apparently to an outsider I should say, is fully involved in the market economy -- I shouldn't say to me, I led his evidence of course -- is fully involved in the market economy through his work and yet you say that what he is is he's fully involved in a subsistence economy, not using subsistence in a negative term but as you defined it yesterday? Can you explain that?
A Well, he's a member of the contemporary society and has many strands in his economic and social life. His whole family does, and they're extremely hard working. I was -- I was saying to his father one day, "You've been doing all this fishing all summer and tomorrow morning you're going" --
THE COURT: Mr. Grant, I really don't think I have to hear all of this hearsay. Isn't this pure hearsay? It's almost conversational. What's the basis for its admissibility.
MR. GRANT: Well, okay, I'll --
THE COURT: Research is one thing, but you're getting into conversations about individuals, it seems to me, which goes well beyond research.
MR. GRANT:
Q Okay. What did you conclude in terms of the Art Mathews family group, including Art Mathews Jr., as to their involvement with the subsistence and market economy?
A They're heavily involved in both, and they're both strands of their overall economy and their overall involvement in their community.
Q And how are they involved in the subsistence economy?
A They hunt, and they fish, and they pick berries. They utilize their land in ways which use modern technology but ways which are consistent with the past. They're very active in the feasting system and in the village politics and the band council and 101 other ways.
Q And is that reflected in the interviews that you had with Art Mathews and with his family?
A I think so. Although when I started, I was emphasizing the use of land and the annual cycle, but it became pretty obvious that he was involved in many, many things.
MR. GRANT: Possibly at this point it's appropriate to put in for the purpose of methodology, my lord, those three

tabs, 23 to 25. And what I would propose is to put in the balance of those notes, and I have no objection to putting in all of the notes from tab 6 to 41 under one number with lettering or under separate numbers, whatever is most convenient, but I would be tendering all of these notes for -- as the methodology of Dr. Daly and the notes upon which he relies.

THE COURT: Well, all right. Which numbers, tabs 6 to?

MR. GRANT: 6 through 9, and 10 and 11 are already marked as exhibits, and 12 through to 41.

THE COURT: All right. Well, I don't see why they can't be given one number and a dash and the tab number, so I think 893 is next.

THE REGISTRAR: 894 is next, my lord. 893 is the map.

MR. WILLMS: My lord, it's just a formality, but the witness, I think, should be asked to confirm for the record that he made each and every one of those notes.

THE COURT: All right. Is that correct, Dr. Daly?

THE WITNESS: Yes, that's correct.

THE COURT: All right. Now, this will be 894, is it?

THE REGISTRAR: 894.

THE COURT: 894, tabs 6 to 9 and 12 to 41.

(EXHIBIT 894 -TABS 6-9 AND TABS 12-41 IN WITNESS BOOK I)

MR. GRANT: And the numbers they'd have would be the tab numbers, my lord?

THE COURT: Yes.

MR. GRANT: Now, just one moment. Okay.

THE COURT: I don't have anything -- oh, yes, I do. Yes. Okay.

MR. GRANT: Sorry, my lord.

THE COURT: No, it's all right.

MR. GRANT:

Q In page 235 of your report, Doctor, you refer to the Gitksan and the Wet'suwet'en, and you say -- you conclude in the middle paragraph:

> "Neither Gitksan nor Wet'suwet'en suggest that land can be irrevocably alienated for unpaid debts. However the two cultures view such forfeitures slightly differently. The Gitksan regard such a payment (a lifetime's use of a territory) as a pledge that the other side will redeem in public, with a quantity of goods and services as soon as possible, so as to free their territory of use by outsiders.

1 For their part, the Wet'suwet'en will
2 announce that a territory goes to the person
3 who paid the expenses. It is understood
4 that this person possesses that territory
5 only during his or her lifetime, and that
6 the payment which they have made consists of
7 rights to the wealth of the chief's
8 territory for a generation. The
9 Wet'suwet'en do not regard this as a form of
10 pledging, but rather, they view it as an
11 actual form of repayment when the House is
12 unable to make sufficient payments in any
13 other way."
14
15 Then you say:
16
17 "This example brings to light slight cultural
18 differences."
19
20 And you go into a description of an example. Now, did
21 you -- I believe this relates to a Gitksan and a
22 Wet'suwet'en house, this example that you're referring
23 to?
24 A Yes.
25 Q Now, can you just explain what -- how you learned of
26 this example and --
27 A Well, it wasn't a question of learning of an example.
28 I was trying to work out this whole thing about
29 whether or not land was alienated when the debts
30 weren't paid and what were the perceptions from the
31 two parties invovled.
32 Q Okay. How did this incident come to your attention?
33 A I can't recall now whether it was from the commission
34 of Jessie Sterritt or a discussion I had, but anyway,
35 she mentioned that her uncle used to trap down south
36 or south-west of Houston.
37 Q Now, her uncle was a Gitksan?
38 A Her uncle was a Gitksan --
39 Q Okay.
40 A -- trapper, quite a well-off trapper. He was very
41 successful in trapping and hunting and in fishing.
42 Q Who was -- do you recall his name?
43 A Daniel Skawil, S-k-a-w-i-l. And so I talked -- I
44 went -- I went to visit her, and the substance of what
45 I said is in these interviews or what I found out was
46 from her perspective. She stated that --
47 Q Maybe what you can do is just explain what the

1 circumstances were now? What was the --
2 A Chief Knedebeas from the -- one of the Frog Clans from
3 the Wet'suwet'en territory had died, and his -- at
4 his -- it was during the fishing season, and there
5 were a lot of people away, and there -- there was
6 nobody to step in from the father's side to pay the
7 funeral expenses, according to Wii'goob'l, Jessie
8 Sterritt, and her uncle, being of the same clan, the
9 Frog Clan, among the Gitksan and having some ties
10 through -- because they're a family from Gitanmaax,
11 they're close to the Wet'suwet'en territories, and
12 they've been interacting over the years, he stepped in
13 and paid the funeral expenses.
14 Q Um hum.
15 A In the course of that funeral feast the Knedebeas
16 family stood up and thanked him for his payment, and
17 they awarded him what they call their trapline, their
18 hunting territory and the -- the trapping rights on
19 it. And when he was getting old, he was thinking over
20 all of his outstanding business, and one of the things
21 was what to do with this trapline which he had -- she
22 wasn't sure how much he had used it but that he had
23 had the rights to it. And he told her that she
24 should -- as she was going to be responsible for
25 sorting out his business as a nametaker and a senior
26 member in that house -- this was the combined House of
27 Wii'goob'l and Gyetm galdoo -- that the best
28 arrangement would be for someone from the House of
29 Knedebeas to come and make a funeral payment to
30 support their burying of him when he was deceased and
31 then Jessie or some other chief would stand up and
32 say, "Okay. The matter is closed. We give back
33 your -- we unredeem your land and give you back the
34 land. You've made a payment to our feast, and the
35 matter is closed."
36 Q Yes.
37 A But nobody came to that funeral feast from the House
38 of Knedebeas, and so Jessie was -- she's very old now.
39 She considers the matter is closed because she doesn't
40 want any bad feelings or animosity with -- between the
41 houses and between the two peoples, but she felt that
42 somehow it wasn't finished. So I then got in touch
43 with the present Knedebeas, Sarah Layton, and I asked
44 her about this situation, was this considered to be
45 outstanding business of her house, that they hadn't
46 redeemed the funeral expenses, and she said no, it
47 wasn't, and she wasn't informed of this when she

acceded to the name. I said, "Well, why would that have been?" She said it's the -- it's the rules of -- according to the rules of the Wet'suwet'en, the matter was already settled because you -- you -- if someone doesn't -- if you don't have the money and the goods to repay the funeral expenses that your father's side had or others who stepped in had paid, then you give them your -- your land, but you give it to them for that generation, and then when they pass on, their heirs are supposed to stand up in their funeral feast and say, "We give this back."

Q Without a repayment?

A Without a repayment. So those were the two perceptions of the situation.

Q So the Gitksan -- was what each -- was what Jessie said about that example consistent with other research you did and other findings you have about how the Gitksan --

A Yes. Well, this was consistent with the way people had been explaining it to me, that it wasn't an irrevocable alienation of the land by paying the funeral expenses and not -- not paying back in one generation.

Q And in your research with respect to the Wet'suwet'en, was what Mrs. Layton described to you consistent with how the Wet'suwet'en have described that --

A Yes.

Q -- in other cases?

A Yes, yes. In some cases the land, it doesn't go back. It is retained and gains -- it becomes recognized as the land of the -- of the person who paid the original debt, or his house.

Q Okay. I'd like to refer you now to the -- to the next section, which deals with property conveyance as compensation, and you say another example under which land may be transferred revolve around peace settlements, xsiisxw in Gitksan, that's x-s-i-i-s-x-w, and hlene gya deet k'es in Wet'suwet'en, h-l-e-n-e one word, g-y-a second word, d-e-e-t third word, k-'-e-s fourth word.

Now, you -- in the course of your research, including your review of evidence of witnesses, you have seen the -- in the course of the adaawk and your interviews and the review of transcripts of commission and trial evidence, you have seen descriptions of examples of this kind of conveyance?

A Yes, it's a frequent occurrence in the oral -- oral

accounts, in the adaawk.
Q Can you account for why it would be such a frequent occurrence in the adaawk?
A Because the adaawk registers important events and -- such as invasions and animosities in the settlement of enmities. It's a recording of important events, and a peace which comes at the end of a period of war is certainly one of those events.
Q Okay. Now, I'd like to refer you to page 242, where you describe a number of examples, and at page 242 you state:

> "Xsiisxw is an institution for effecting peace agreements and compensation over a widespread area in the culture area known as the Northwest Coast, precisely because it is intertwined in the web of kinship and intermarriage. This web, in turn, links Houses within and between societies. Xsiisxw also articulates with the feast system which exists across the region."

What do you mean by that statement, that it articulates with the feast system which exists across the region?
A Part of the settlement of a dispute is that the disputants come together in a feast. One -- they have actually two feasts. One is hosted by one of the disputants and then the second one by the other disputant. And they exchange -- they exchange a lot of gifts, and they might even exchange a personnel so that they effect a marriage between them so you create a kinship link which binds the -- because the children of that link will then be related to the two disputant peoples. And they can be from quite distant areas. This is then -- they are then brought before the assembled groups at the end of this ceremony and eagle down or swan's down is sprinkled over them, and once this is done, the matter is closed and cannot be reopened again. So it's a cessation of hostilities. There's no possibility of reopening it, at least not on that issue.
Q And you say this is -- I'm sorry, I'll read the next sentence. You say:

> "As the Houses within a culture (area) interact on the basis of a common set of

rules" --

I'm sorry.

"As the Houses within a culture interact on the basis of a common set of rules, so do Houses at the territorial boundaries, which share a border with other peoples."

And is this what you're explaining with respect to the Xsiisxw?

A Yes.

Q Why it is a regional phenomenon?

A Well, it's used internally, within the societies as well -- as well as between them.

Q And you -- there's been examples provided to the Court of where it's been used?

A Yes.

Q I'd like to now turn you to the next major section of this chapter, which is Stewardship and Management, page 245, my lord, and it states there at the top:

"Management is used here to refer to the directing and implementing of activities which are part of the rights of ownership of territory. Management entails the direction of human activities and relationships vis-a-vis the property in question. Many of these relations and activities are economic in nature, or at least they possess economic features. Stewardship, on the other hand, is used to refer to the manager's responsibility, to the fact that he is not a free agent, but rather he must answer for his actions to the social group he represents, and to the territory which he manages."

And that is your opinion?

A Yes.

Q And you also, of course, define some of the terms there. Now, is this a cross-cultural comment up to this point?

A Yes, it is.

Q Okay. And it's an anthropological description of management?

A It's used by anthropologists, yes.

THE COURT: When you say cross-cultural comment, you mean it can apply equally to --
THE WITNESS: That's right.
THE COURT: -- to other cultures? Thank you.
MR. GRANT:
Q It's a term the witness used this morning, my lord. Then under the first sub-category, Land Management, A Question of Competition and Reciprocity, you start by saying:

> "The Gitksan...say that the land belongs to them, and also, that they themselves belong to the land."

A The Gitksan and Wet'suwet'en.
Q I'm sorry.

> "The Gitksan and the Wet'suwet'en say that the land belongs to them, and also, that they themselves belong to the land."

And then going over to page -- you then refer to Dan Michell. And then on page 246 you say:

> "The relationship between the land and its owners is that of reciprocal interaction, not at all unlike the relationship that carries on between two founding clans in a village, or between two matricentric House groups linked through men who are the fathers to one group and chiefly brothers and mothers' brothers to the other."

And you then say -- you quote Mr. Michell, who says:

> "'It was handed down to us by our forefathers. And we are brought up in those territory where we know that we belong to the land and the land belong to us. That is one way of putting it, and all the resource in it we are entitled to it. And that is why we are taught to respect the land and everything that's in it.'"

Now, with respect to that first opinion at the top of that page, can you explain to his lordship what you mean by reciprocal interaction?

A Well, I've already used the term quite a bit in the last three days, but what I'm indicating here is the isomorphic nature of the relationship that people perceive between their group and their land, being it's isomorphic with the type of relationship between groupings. It's of a give-and-take relationship, a reciprocal relationship. You give to the land, you take from the land. You eat from the land, and ultimately you feed the land with your bones.

Q And is that what you mean by isomorphic?

A Yeah. Well, isomorphic means parallel or roughly equivalent in structure.

Q Okay. Now, at the beginning of this section you talk -- you say -- your heading you've put is Land Management, A Question of Competition and Reciprocity?

A Yeah. Well, this statement, "The Gitksan and the Wet'suwet'en say that the land belongs to them, and also, that they themselves belong to the land," this is something I had a lot of trouble reconciling. You interview someone like Martha Brown, who would say both that "I own this land, and what are these people doing on my land?" At the same time she would say, "Nobody owns the land," or, "The land owns us," or, "We belong to the land. We're wedded to the land." So which is true? Well, the fact of the matter, in my estimation, is that they're both true because they refer to two different things. There's the -- the ownership of the land is a body of rights vis-a-vis between people, and then there's this -- this attitude, reciprocal attitude between the people and the land within -- within the -- the grouping, the ownership grouping. And then you get the whole philosophy of caring for the land and being cared for, and the metaphors of the land being our mother and so on, this sort of thing. And the chief must pay attention -- that's one of his responsibilities of ownership, is to pay attention to that relationship as well as to the relationship with the other owning groups.

Q You state at the bottom, and maybe this -- of page 247 and the top of page 248 as follows:

> "The world view of those living close to nature in a non-centralized, kinship society, reflect the basic reciprocal principle which governs day-to-day social relations in the society itself. On one

hand, nature's life force is seen to nurture the people; on the other, nature exacts its price from the people, its life force feeding in turn, upon the people and their society, consuming them, causing death so as to nurture rebirth. The House group's proprietary representative, its leader or chief, exercises a reciprocal stewardship vis-a-vis the land, and at the same time, a proprietary right toward this land vis-a-vis the claims of other groups or nations. On one hand, the land is dealt with as a property object between two potentially competitive groups."

Those being the groups -- the human groups; is that right?

A That's right.

Q

"As such it is subject to ownership. On the other hand, the land is non-property when it is viewed in terms of the people's relationship to the life force in the natural world."

And that is your conclusion as a result of your research?

A Yes.

MR. GRANT: Okay.

THE COURT: What are the two potentially competitive groups you're talking about there?

MR. GRANT: At the top of page 248, my lord?

THE COURT: Yes

THE WITNESS: Well, there's always potential competition within the house groups as to who -- who is going to accede to the -- to the name. It can be handled in an alternating way, that one family at one time and another at another. Sometimes there is only one lineage within the house group. So there's room for competition there. And there's also --

THE COURT: You said between two potentially competitive groups. Are you assuming that there's always two lineages or there's always two competitors for a chiefly name?

THE WITNESS: No, no, no. But there's a range of possibilities as to who the new leader will be after someone passes on.

THE COURT: Could we strike out the word "two" there and have

the same meaning?
THE WITNESS: Where?
THE COURT: Top line on page 248.
MR. GRANT: "...the land is dealt with as a property object between two potentially..."
THE WITNESS: Yes, that's right, you could take out the word "two."
THE COURT: Take out "two." All right. That's fine. Thank you. And the competitive groups there then would be within the houses?
THE WITNESS: Within the houses or sometimes between the houses.
THE COURT: Or are you talking here about between the plaintiffs and defendants?
THE WITNESS: No.
THE COURT: No. All right.
MR. GRANT: We'll leave that to you, my lord.
THE COURT: All right. Thank you.
MR. GRANT:

Q Now, I'd like to refer you -- just a second. This is what you concluded regarding that apparently contradictory statement that you've referred to that people make?

A Yes, yes.

Q Yes. Now, you go on to say at the bottom of page 248, the top of 249, after quoting -- referring to Hanamuxw's evidence, you say:

> "Ownership rights to land entail competition and conflict management in relation to other people - we must remember that it is the rights and not the land which are protected and conveyed, and not the land itself."

Why do you conclude that it is the rights and not the land which are protected and conveyed?

A This is the anthropological understanding of ownership. It's bodies of rights which are the subject of ownership, which are vested in the property between the peoples. And this is reinforced by what the elders among the Gitksan and Wet'suwet'en -- the way they regarded their relationship to the land itself. It's very clearly in my eyes that it's the body of rights concerning people that they are concerned with. The land itself -- you can't own land, you can't own air, you can't own fish, but you own the rights of access to them in specific places and contexts.

Q Okay. Going on:

"At the same time, ownership in such societies entails a responsibility to care for that which is owned. Management and stewardship in such societies require a blend of ownership and tenantship, aggressive control and careful respect. The resultant interweave of competitiveness and rights to ownership, with respectful reciprocation, is manifest in many features and institutions of Gitksan and Wet'suwet'en culture.

The exercise of jurisdictional authority by the House chief constitutes both stewardship and executive management."

Now, can you exemplify or explain what you mean by:

"The resultant interweave of competitiveness and rights to ownership, with respectful reciprocation, is manifest in many features and institutions of Gitksan and Wet'suwet'en culture"?

What are you referring to there? In other words, can you just explain how it's manifest?

A I'm sorry.

Q And if you're referring to things you have already said, you can --

A I'm sorry, I was thinking of my last answer, ruminating, so I wasn't paying close attention here.

Q Just look at that sentence on the top of page 249. "The resultant interweave..." it starts.

A Well, I think I've already been discussing this most of the day.

THE COURT: It's the interweave that's manifest?

THE WITNESS: Yes.

MR. GRANT:

Q Okay. That's what you see in all of these different features of the society?

A Yes, yes.

Q Okay.

A A replication of the same quality of relationships. Quality or type of relationship.

THE COURT: What do you think, Mr. Grant? Do you think we should adjourn?

MR. GRANT: I think --
THE COURT: It's almost time.
MR. GRANT: If it's a convenient time to break, my lord.
THE COURT: All right. Thank you. And do counsel think we will sit tomorrow afternoon late or tomorrow evening, or what do you want to do?
MR. GRANT: I just want to advise your lordship that, as I had indicated yesterday, this was one of the longest chapters. Some of the chapters I'm going to be very brief with, some sections of it.
THE COURT: Yes.
MR. GRANT: Although I'll explain to you why it's there and leave it to your lordship.
THE COURT: Yes.
MR. GRANT: But --
THE COURT: Well, I don't need to know now.
MR. GRANT: I'd like to see how we go tomorrow, if I could.
THE COURT: Yes, all right. Well, counsel should consider what they want to do, that is, stay until 6:00 or 6:30 or do they want to take a break and come back at seven o'clock.
MR. GRANT: Oh, you're available longer than till 5:00 tomorrow?
THE COURT: Yes.
MR. GRANT: Thank you, my lord. We'll raise it in the morning.
THE COURT: All right. Thank you. Ten o'clock.
THE REGISTRAR: Order in court. Trial will adjourn until 10:00 a.m.

(PROCEEDINGS ADJOURNED AT 5:00 P.M.)

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

_____
Leanna Smith
Official Reporter
United Reporting Service Ltd.