Vancouver, B.C.
April 15, 1989

(PROCEEDINGS RECONVENED AT 9:30 a.m.)

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, Vancouver, this Saturday, April 15, 1989. In the matter of Delgamuukw versus Her Majesty the Queen at bar. I caution the witness, you are still under oath.

THE COURT: Do you think we should proceed without the Federal Crown?

MS. RUSSELL: Apologize, my lord.

MR. JACKSON: My lord, I just wanted to take a moment of the court's time to make two corrections to the transcript of Volume 211, proceedings of April the 11th, 1989. I noticed that when I came in this morning in the courtroom 54, my lord, there is an interesting juxtaposition of signs for Law Day: "Potlatch" and "Citizenship Ceremony".

MR. GOLDIE: I thought it was a sign that said Hansel and Gretel trial.

MR. JACKSON: That's to the left of us, my lord.

The first one is on page 14277, line three, where your lordship says:

> THE COURT: "Well, I have been hearing from the start of this trial two years ago that feasts were made legal."

That should be "illegal".

And on the previous page, my lord, at 14276 at line 30 where I say, my lord:

> MR. JACKSON: "My lord, the relevance of this is to explain and to give your lordship some understanding of the nature of the pressures which were applied to Gitksan and Wet'suwet'en societies, and the nature of their response as part of the question, which -- as an evidentiary basis upon which your lordship can conclude --"

That should be:

1 "-- whether there was acquiescence in the
2 terms of paragraph 39 (a) of the
3 statement of defence."
4
5 Thank you, my lord.
6 THE COURT: All right. Thank you. Mr. Goldie.
7
8 CROSS-EXAMINATION BY MR. GOLDIE CONT'D:
9 Q Thank you, my lord.
10 Mr. Brody, at the conclusion of yesterday's
11 hearing, I had drawn your attention to a document in
12 your book of documents consisting of transcript of
13 Father Godfrey's remarks at -- before the Royal
14 Commission on April 26th, 1915. It's my impression,
15 reading the transcript of the Royal Commission
16 hearings generally, and in particular at -- in the
17 Babine and Stuart Lake agencies, that where a witness
18 was not fluent in the English language, his evidence
19 was given through an interpreter. Is that your
20 impression?
21 A In many of the areas it is through an interpreter but
22 not through the priest, except, as far as I know, in
23 this case. And, of course, in all other cases it's
24 one person giving their evidence and it being
25 translated as they give it. And in this case it's one
26 priest summarizing a great deal of evidence.
27 I remember there is another case, I believe the
28 Indian agent gave evidence in Victoria on behalf of
29 the Wet'suwet'en.
30 Q Well --
31 A Or Carrier. Carrier also. I would have to look at
32 the whole document to be sure about that.
33 Q Yes.
34 A But the simple answer to your question is, usually
35 translation is a person speaking and a translator
36 translating. This is not translation. It's
37 summarizing what other people are said to believe.
38 Q Indeed, technically, it is not even evidence. It's a
39 statement by the priest; isn't that correct?
40 A It's a statement, certainly, yes.
41 Q Yes. He wasn't sworn?
42 A I don't know -- no, I don't --
43 Q Just address the documents.
44 A It doesn't say so, no.
45 Q The person who was first sworn was the interpreter,
46 Mr. Jack Joseph, you see that?
47 A Yes, I do, yes.

1 Q And then the next person who was sworn was the chief,
2 David Francis?
3 A Where is that? I don't have that here.
4 Q Page 7.
5 THE COURT: What tab again, please?
6 MR. GOLDIE: Seventeen, my lord.
7 THE WITNESS: Page 7 is missing from this one.
8 MR. GOLDIE: Under Exhibit 993. Is your lordship still missing
9 the --
10 THE COURT: Seven, yes.
11 MR. JACKSON: Mr. Grant has it, my lord, and it's being
12 photocopied, but unfortunately I've lost Mr. Grant.
13 THE COURT: I don't have page 7 yet.
14 MR. GOLDIE: Could I hand up to his lordship that page?
15 THE WITNESS: Could I have a copy too, please?
16 THE COURT: Give the witness my copy.
17 MR. GOLDIE:
18 Q What I'm asking you to agree with is that the -- after
19 the interpreter was sworn, Father Godfrey made a
20 statement, and the next person sworn was the chief,
21 David Francis. Would you agree with that?
22 A Yes.
23 Q Thank you. And Mr. Francis' evidence does not appear
24 to have been interpreted -- translated?
25 A That's right, yes.
26 Q Thank you. Now, this -- I want to take you back,
27 please, to the question of your description of events
28 in the first two decades in the century. Page 114 of
29 your report where you describe in general terms people
30 being forced out of dwellings that they had put up,
31 and farms were seized. And then on page 115, you
32 state:
33
34 "The chiefs who were dispossessed appear in
35 documents of the day under their English names."
36
37 And then you give a list of the names, Round Lake
38 Tommy, Bulkley Lake Isaac, and so on. And I
39 understood you to agree with me yesterday that it
40 would appear that these people had sought to emulate
41 the white man by farming in the sense that they had
42 observed?
43 A No, I didn't agree to that proposition. What I think
44 I sought to point out was that in the latter part of
45 the 19th century, many Wet'suwet'en became involved in
46 packing and therefore using horses and therefore
47 required meadows and hay, and therefore, at their

1 ancient village sites, in the southern parts of their
2 territories, they created or maintained hay fields to
3 that end. I think I tried to say that that was my
4 view of Wet'suwet'en farming in the early period.
5 Q Yes. I am addressing your attention to the period
6 that you are discussing in your report at page 114,
7 "In the first two decades of this century." Not the
8 latter part of the 19th century.
9 A Well, my characterization would continue up to the
10 dispossession, insofar as people had those villages
11 with the cleared lands and the hay fields around them.
12 They would be having farms of that kind.
13 Q Yes. I had understood you to agree with me that
14 certainly from the statement of Father Godfrey, it
15 would appear that a number of them had undertaken
16 farming in the sense of the use of implements, the
17 tillage of the soil, and so on?
18 A Their -- the statement of Father Godfrey goes to the
19 owning of plows and harrows and gives some numbers.
20 One can own a plow and a harrow without tilling the
21 soil. And we know that the Indian agents at the time
22 handed out plows and harrows in order that the Indians
23 should be encouraged to till the soil. There is a gap
24 between handing people plows and harrows and getting
25 them to till the soil.
26 Now, I've looked at Indian agents' annual reports
27 for this area to identify the extent to which
28 agriculture was taking place. I think you'll find in
29 my notes --
30 Q Yes.
31 A -- that have been given to you, some statistics that
32 come from that bit of research.
33 Q Well then, is it your evidence that there was no
34 agricultural pursuits being carried on by the Indians
35 that are named by you in this report --
36 A No, I didn't --
37 Q Excuse me, let me finish my question.
38 A I'm sorry, I'm sorry.
39 Q In the sense described by Father Godfrey: "...namely,
40 in plowing our ground, raising cattle, raising horses,
41 and in this way we will be able to make our living."
42 That's his quotation?
43 A That's his characterization of Wet'suwet'en wishes.
44 Q Yes?
45 A And I had some comments yesterday to make about his
46 characterization.
47 Q Yes, I heard all about that. My question was, is it

1 your evidence that there was nothing of that being
2 carried on?
3 A No, it is not my evidence.
4 Q All right. Well then --
5 A There was some gardening I know and some plowing of
6 the lands around Moricetown, if I remember the annual
7 reports correctly. I would have to look at my 1983
8 notes to bring myself up --
9 Q Well I --
10 A -- as far as that.
11 Q I'm sorry, have you finished? I suggest to you that
12 the people you are writing about were Wet'suwet'en who
13 wanted to farm and who had gone out onto Crown land
14 and started clearing and fencing as the white settlers
15 were doing?
16 A Where are you referring to? What lands are you
17 referring to?
18 Q I'm -- when I say "Crown land", the lands that they
19 were dispossessed from at a later point?
20 A No. There is no evidence to suggest that at all. The
21 villages seemed to be of great antiquity; Round Lake,
22 Leh Tait, L-E-H-T-A-I-T, Barrett, that's another very
23 old village by all accounts. Five or six along the
24 settlement corridor were old places where people had
25 cleared land.
26 Q But in the eyes of the province that was Crown land?
27 A I don't know how the province defines it at the time.
28 I believe in the 1906 legislation, provision was made
29 for settlement of unoccupied Crown lands by Boer War
30 veterans, and insofar as the southern part of the
31 Wet'suwet'en territory was thus occupied, I assume it
32 follows that this was designated as unoccupied Crown
33 land by the province.
34 Q But there was far earlier legislation than that, you
35 know that, don't you, Mr. Brody?
36 A I'm not up on all the legislation of Northern B.C.
37 Q You just selected the Boer War legislation?
38 A Well, I know that one had a lot of consequences for
39 the people I studied. I look at legislation that
40 pertains to the people I study.
41 Q Of course there was white occupation before 1906,
42 wasn't there?
43 A In the southern Wet'suwet'en territories.
44 Q In the claims area; in the Bulkley River Valley?
45 A There was some but I don't believe there was a great
46 amount.
47 Q All right. Now, the -- in any event, whatever they

1 did, they were dispossessed. I hope we can take that
2 as common ground?
3 A Yes.
4 Q And the -- you leave the description here as if that
5 was the end of the matter. And I believe that you
6 quote an interview with Johnny David in which he takes
7 you up to Barrett Lake and points to a place and says,
8 "That's," in effect, "where one of the families lost
9 their ground"?
10 A Johnny David took me to two such places.
11 Q Yes, all right.
12 A One that is recorded in the notes.
13 Q A number of these very people pre-empted land; is that
14 not correct?
15 A You mean they occupied unoccupied Crown land?
16 Q Pre-empted land. Do you understand what I mean by the
17 use --
18 A Perhaps you should explain it to me. It's a legal
19 term, perhaps you could explain it to me.
20 Q Well, it's homesteaded. Do you understand that?
21 A Oh yes.
22 Q All right. Well, a number of these people homesteaded
23 and acquired title, didn't they?
24 A A number of people acquired title, yes.
25 Q Yes, all right. You don't mention that in your
26 report, that's why I asked you. You refer to, for
27 instance -- I wonder if we could hand out that book of
28 pre-emption documents.
29 I'm going to put before you -- and I'm handing
30 up, my lord, two volumes -- a single volume, two
31 copies of documents, re: "Application to Pre-Empt or
32 Purchase." And these are -- we have the original
33 certified copies, my lord.
34 THE COURT: Did you say two volumes?
35 MR. GOLDIE: No, there is just one.
36 THE COURT: Two copies of documents?
37 MR. GOLDIE:
38 Q Yes, two copies.
39 If we could look under tab 1. August Pete is one
40 of the people you are talking about; is that not
41 correct?
42 A That's right, yes.
43 Q And under tab 1 we find a document under the Land Act
44 stating that August Pete is the owner of 140 acres,
45 and that document is dated 1926. And then following
46 that are the rest of the documents in the file. And
47 the one immediately following the photograph of the

cover of the docket is a drawing, and that appears to be the lot that August Pete obtained title to. It fronts on Alwyn Lake. Are you familiar with that?
A I haven't seen this document before.
Q Well, do you know the name Alwyn Lake?
A Yes.
Q Do you know where it is?
A Roughly, yes.
Q And where is that?
A Well, it's in southern Wet'suwet'en territory along -- just south -- just south of the Bulkley, is it?
Q Yes, all right. And then the next document is an Order in Council of 1917.

> "Application has been made by the Department of Indian Affairs, at Ottawa, under the provisions of Clause A, Subsection 2 of Section 7 of the Land Act for the granting of a Pre-emption Record to one, August Pete, an Indian of Moricetown, of the Hagwilget band, covering a piece of land on which he has been living, situated at Alwyn Lake and which it is represented from time immemorial has been the home of his forefathers."

And then there is the description.

> "(But) it is also represented that there is not sufficient land at Moricetown, and the remaining reserves of the Band are small and of very poor quality, also that this land contains four graves belonging to the family of August, who is a man of good standing in the community, possessing some stock and farm equipment and is doing well on the land in question.
> "Application favourably reported."

Now that, as you see, dated 1917, and over the page is form two under the Land Act, "Application for Pre-Emption Record". That is Mr. August Pete's declaration. I won't bother taking you through. Followed by a sketch, followed by a certificate of the record, and another sketch, and another sketch, and then the government agent's letter to the superintendent of lands dated March 19th, 1926, asking for the Crown grant. Do you have that, it's --
A No, I haven't but -- what page is that?
Q Well, the pages are not numbered but it's -- it's the

1 second from the last?
2 A Yes, I do have it.
3 Q Yes. And that was the application by the government
4 agent for the Crown grant which was the first document
5 we looked at. Now, do you understand from your
6 knowledge of homesteading that this is a means by
7 which a settler can obtain title to land, by improving
8 it and living on it?
9 A Yes, I understand that from my own knowledge of
10 homesteading. And I understand from my knowledge of
11 the Wet'suwet'en that this is a man who is trying to
12 retain ownership of his ancient home.
13 Q And he did so by obtaining a Crown grant?
14 A Yes. He was lucky he was able to.
15 Q And then the -- under tab 2.
16 THE COURT: Excuse me, Mr. Goldie, does it say something about
17 August Pete in Father Godfrey's statement?
18 MR. GOLDIE: Yes, it does, my lord.
19 THE COURT: Let me see if I can see what it says there. I
20 haven't found that yet.
21 MR. GOLDIE: I'm sorry. I had in mind that he was mentioned,
22 but --
23 THE COURT: I thought it did.
24 MR. GOLDIE: No. It's at the top of page 6. Father Godfrey
25 says:
26
27 "One more case is that of Mooseskin Johnny and
28 August --"
29
30 He says Peter. And this is a case of -- he is talking
31 about the cases of people who have been dispossessed.
32 THE COURT: So it's probably not August Pete, or do you think it
33 is?
34 MR. GOLDIE: I think, with respect, it is, my lord.
35 THE COURT: It is?
36 MR. GOLDIE: Yes.
37 THE COURT: I would suggest that's not suggesting he was
38 dispossessed from some other land, was it?
39 MR. GOLDIE: Father Godfrey, of course, is talking 1915.
40 THE COURT: Yes. That's long before this.
41 MR. GOLDIE: Well, the application for the pre-emption is 1917.
42 THE COURT: Yes.
43 MR. GOLDIE: So it indicates he was dispossessed either from
44 this land and then he went and got the -- applied for
45 pre-emption, or it's other land.
46 THE COURT: Yes. All right.
47 MR. GOLDIE:

Q But the Order in Council referring to the representations made by the Department of Indian Affairs indicates that he treat -- has represented that this land is land in which his forefathers have lived.

And then tab 2 is Johnny David. You knew that he had pre-empted land?

A I heard that he had pre-emption land. I was never quite sure about that. This is the first time I've seen this document.

Q Yes. Did you make no inquiry about these?

A Yes, I did, but I never was able to put it all together, actually.

Q I see. Well, this is an Order in Council in 1920 -- I'm under tab 2, my lord. "Application has been made," et cetera, "for one, 'Johnny David', an Indian of the Hagwilget Band." It is represented that he is a "reliable, hard-working man, and has eight head of horses and five head of cattle." Now just pausing there. That would indicate that he is farming, would it not?

A Yes. He is grazing, anyway.

Q Well, can you --

A Making hay. I'm not sure.

Q Can you successfully graze cattle on 160 acres without cultivating hay?

A I'm not sure about that.

Q Um-hmm. And it says:

> "That he is the son of a former Chief of the Hagwilget tribe, and that some time ago he was compelled to abandon his tribal lodge ground and fishing ground on the south side of the South Bulkley Crossing."

Now, that's the -- a reference to the -- apparently, a reference to the land that Johnny David was dispossessed of; is that right?

A Yes. Again, it suggests that this is a land which is of considerable importance to him.

Q

> "That it is further alleged that this parcel of land contains no inducement for a white settler, but that it will suit this Indian better than any portion of the land to be found on any of the reserves of his band."

1 And then following that is -- and these are in no
2 particular sequence, this is just how the file is in
3 the Land Registry Office. The next document happens
4 to be a deed of land from Johnny David to James
5 William Hall and Thomas Hall, October 22nd, 1935, in
6 which he sells that land. You were aware that he, of
7 his own free will, sold this land?
8 A I knew he had sold some land but I was never sure
9 exactly when it was, but this tells me.
10 Q I see. And then the next document is, of course, the
11 survey which identifies the parcel in question. And
12 that's all that appears to be in that file.
13 And then under tab 3 is documents relating to
14 Arthur Charlie. And is he one of those that you refer
15 to? Yes, it is.
16 THE COURT: Whereabouts?
17 MR. GOLDIE: Page 115, my lord. The first paragraph, the third
18 line from the bottom.
19 THE COURT: I'm sorry, where?
20 MR. GOLDIE: Page 115 of Mr. Brody's report.
21 THE COURT: All right.
22 MR. GOLDIE: Paragraph one, the third line from the bottom,
23 Arthur Charlie.
24 THE COURT: Yes.
25 MR. GOLDIE:
26 Q And the first document is the Crown grant of 1926, and
27 then is the survey and it indicates that it is a block
28 of land, 160 acres, and extends to one end of Barrett
29 Lake. You were aware that Arthur Charlie had obtained
30 title to that land?
31 A Again, I had heard about this, yes.
32 Q And as has happened, unfortunately, in a great number
33 of cases, he appears to have been unable to pay, or
34 decided not to pay the taxes, and a record indicates
35 that there was a tax sale, 1953. The next document
36 is, of course, the Order in Council. The next
37 document is -- the next document is also the Order in
38 Council. He -- which states:
39
40 "That (he is) a man of good character...he has
41 been obliged to leave his holding in the Indian
42 Reserve No. 2...as it has a dry, gravelly and
43 unproductive soil; that he possesses seven horses
44 and eight head of cattle; and that the land
45 applied for is a small portion of a former lodge
46 ground of his ancestors.
47 "Favourably reported on."

1
2 And then there is his application for a pre-emption
3 record which is dated May 1920, and so on.
4 And number four is Paddy Isaac. That's one of the
5 people to whom you refer; am I correct in that?
6 A Number four, or you mean tab 4?
7 Q Tab 4.
8 A Tab 4.
9 Q Yes. I think you said that you thought Bulkley Lake
10 Isaac and Paddy Isaac were the same?
11 A I said Indian Isaac and Bulkley Lake Isaac were the
12 same.
13 Q So you are not sure about Paddy?
14 A I'm not sure, no. I've never heard of this Paddy.
15 Q You never heard -- ever heard of Paddy Isaac?
16 A No.
17 THE COURT: Where is he mentioned?
18 MR. GOLDIE:
19 Q He, I believe, is mentioned in -- Bulkley Lake Isaac
20 is mentioned in Father Godfrey's report at page 5.
21 Well then I go on now to -- incidentally, that
22 application was abandoned. Tab 5 is Thomas George
23 and, my lord, this is Exhibit 106. Your lordship may
24 recall that Thomas George's application was made near
25 Owen Lake and he is the former holder of the name of
26 Gisdaywa, Mr. Joseph's uncle.
27 A Mr. Goldie, you are going much too fast for me. I'm
28 trying to read the related documents here and I'm some
29 way behind you.
30 Q Which tab are you looking at?
31 A I'm still on tab 4 here. There are a lot of documents
32 which are very striking.
33 Q Well, I can summarize those for you, Mr. Brody.
34 A I think I prefer to read them.
35 Q They relate to the -- a mistake as to which parcel of
36 land was being pre-empted.
37 THE COURT: Where is he mentioned in any of the Father Godfrey's
38 statement or --
39 MR. GOLDIE: This Paddy Isaac, my lord?
40 THE COURT: Yes. If you have it convenient. I'm having a
41 terrible time finding these in these long documents.
42 MR. GOLDIE: Yes. The person who was referred to under page 5,
43 from the bottom, one, two -- nine lines up, is Bulkley
44 Lake Isaac and his family.
45 THE COURT: Yes.
46 MR. GOLDIE: And Paddy Isaac is a young man who is living with
47 his father, and as far as any information I have goes,

his father was Bulkley Lake Isaac.
THE COURT: And then, of course, there is Patrick Kuldee or Kuldoe, probably.
MR. GOLDIE: Yes. I can't make that out.
MR. JACKSON: My lord, as I recall tab 16, the Indian Isaac referred to there is stated by the Indian agent McLolly (ph) to be without a band. And the Isaac in tab 4 in the third or second document is said to be the Indian agent of the Maxim Lake Band, which I suggest perhaps they are not the same individual.
MR. GOLDIE: Perhaps so.
THE COURT: All right.
MR. GOLDIE:
Q Could we go on to tab 5 now, please, Mr. Brody?
A Perhaps I can go through -- come back to tab 4 again later.
Q Feel free to do so.
Tab 5 is Mr. Thomas George and these documents have been marked as Exhibit 106, and I am not going to make further reference to them.
Tab 6 is Bill Nye who is referred to on page 115 as Belnai, B-E-L-N-A-I. He has been identified before, my lord. And the first document under there is the Crown grant, dated May 1926, followed by the sketch of the 160 acre -- 183 acre parcel. And then the next document is letters of administration, an application for registration of fee simple by the administrator of the estate of Bill Nye, which indicates, my lord, that Mr. Nye held that property until his death. And then following that is a photocopy of the Order in Council.
THE COURT: I'm sorry, Mr. Goldie, but I haven't found any grant of administration in here.
MR. GOLDIE: Sorry, not -- it's an application for a registration of a fee simple by the administrator.
THE COURT: Oh, by the administrator.
MR. GOLDIE: Yes.
THE COURT: Oh yes. Yes, all right, I have that.
MR. GOLDIE:
Q And then if your lordship would go over to the Order in Council of May 1920:

> "Application has been made by the Department of Indian Affairs under the provisions of clause (and so on) of the Land Act for the granting of a pre-emption record to one Belnay --"

B-E-L-N-A-Y,

"-- or Bill Nye, an Indian of Moricetown, of the Hagwilget Band.

"That it is also represented that Bill Nye is a man of good character, and that he has been obliged to leave his holding in the Indian Reserve No. 2...as it has a dry, gravelly, and unproductive soil that will --"

Something or --

THE COURT: "Possesses ten horses".

MR. GOLDIE:

"-- ten horses, twelve head of cattle, seven hogs and some fowls; that the land applied for is a portion of a former lodge ground of his people; and that he has been compelled to locate on it in order to save his animals.

"The application is favourably reported upon by the local government agent."

And then there is the application for the pre-emption record itself, which is dated the 22nd of May 1920, and he says:

"I am a British subject."

"I apply for a pre-emption record of unoccupied and unreserved Crown lands (not being part of an Indian settlement)"

And so on.

And then there is -- the next document is apparently a declaration required at the time, I understand, an application for a pre-emption record:

"I...hereby state that I do not belong to any of the --"

I think it's "sects".

"-- which would refuse the full duies of citizenship."

And there is the certificate of the pre-emption record, and that property appears to have been down near Barrett Lake.

1 Tab 7 is -- the first document is the sketch of
2 the 160 acre parcel Crown granted to Jack Joseph,
3 which is the next document, in 1937, and I think Jack
4 Joseph -- well, Jack Joseph was the -- sworn as the
5 interpreter at the hearing of the Royal Commission in
6 1915, and I'm not sure whether he is referred to by
7 Father Godfrey. At any rate, the usual run of
8 documents there. And again, there is a copy here of
9 the letters probate, and the copy of the estate tax
10 return, real estate valued at $900, and then the Order
11 in Council at 1922. Your lordship will appreciate
12 that there is a very -- there is a varying time-lag
13 between the going on the land and the application for
14 the pre-emption record and the Crown grant.
15 THE COURT: Yes.
16 MR. GOLDIE:
17 Q In this case, the Order in Council is dated 1921,
18 which represented:
19
20 "That Jack Joseph was a young man, 30 years of
21 age, who has a wife and some children and is a
22 skillful and industrious farmer who has lived all
23 his life among white people."
24
25 And then there is the application for pre-emption
26 dated April 1922, and other related documents.
27 Tab 8 is Peter Alex -- I think he is one of the
28 ones referred to by -- he may not be referred to by
29 either Mr. Brody or the Father -- and again, there is
30 the usual documents. He -- the Order in Council
31 recites:
32
33 "That this Indian when quite young left his father
34 and came to live in the Bulkley Valley, and when
35 old enough, worked for white settlers, caring and
36 tilling the land, thereby gaining a good knowledge
37 of farming."
38
39 That's dated 1926. And then there is the inspection
40 branch report of the Department of Lands indicating
41 the nature of the improvements, and a typed later one,
42 again, indicating the improvements.
43 Tab 9 is Round Lake Tommy who was referred to by
44 Mr. Brody and also by, I believe, Father Godfrey. But
45 the first document is a Crown grant of 1933, of 160
46 acres. Were you aware that Mr. -- that Round Lake
47 Tommy had obtained land?

A Yes. But I don't believe this is at Round Lake.
Q Well let's --
A I think that Round Lake was taken and speculated on by a series of land speculators between 1905 and 19 -- so I suspect we need another document here that tells us where he has been trying to acquire some compensatory land.
Q There are a series of transmissions and then, my lord, there is the Order in Council which is towards the back of the document, about five or six pages in from the end. "Application has been made --"
A Where are you, Mr. Goldie?
Q It's the Order in Council, about five pages from the end of the tab.
A Which tab?
Q Nine.

"It is represented that this Indian is middle aged with a wife and large family and has not been located on land in the Indian Reserve."

MR. JACKSON: I don't think Mr. Brody -- do you have that, Mr. Brody?
THE WITNESS: No, I'm not. I'm adrift. It's rather a thick tab, number nine.
MR. GOLDIE: Go to the end of the tab.
THE COURT: Yes. Five pages in from the end of the tab.
MR. GOLDIE:
Q I'm reading from the second paragraph:

"It is represented that this Indian is middle aged with a wife and large family and has not been located on land in the Indian Reserve.

"That he was at one time in occupation of a parcel of land situate in Round Lake, a portion of which he had brought under cultivation, but, due to the land being sold, it was necessary to vacate same.

"That this application has been recommended by the Indian Agent who has known this Indian for eighteen years and considers that this is a deserving case and that an effort will be made by him to develop the land and bring up his family as farmers."

And then there is Round Lake Tommy's application for the 160 acres in question. His occupation being

stated to be that of a rancher. That application, my lord, is 19.

And tab 10 is Julia Joseph, and I make no reference to that other than the fact that she shares a surname that is referred to in a number of other places, including -- including the translators.

Tab 11.

THE COURT: Where is the T-A-I-T-S-K Indian Reserve? Or is it T-S-I-T-S-K?

MR. GOLDIE: Yes. That's up near the junction of the Bulkley and the Skeena.

THE COURT: I see. Thank you.

MR. GOLDIE:

Q Now, I don't propose to go through these in any detail. What we asked for were pre-emption records within the -- within the claims area, the Wet'suwet'en claim area, not the whole of the claims area.

Lucy Nass. These documents include a deed between Thomas George and Her Majesty the Queen and in the Right of the Province of British Columbia. Thomas George being the executor of the will. What that represented, I don't know. The order in council is 1949.

And Charles Isadore is under tab 12.

My lord, I am not suggesting that any of these are compensation or anything of that kind. These are simply applications that have been made by the individuals.

Twelve is Charles Isadore. Thirteen is Frank Bazil, B-A-Z-I-L. Fourteen is Toby Charlie. And 15 is John Joseph, who was said to be an unenfranchised Indian of the Moricetown Band. Sixteen is Charles Isadore, and all that's there is the Crown grant. I'm sorry, that's not correct. There are a variety of documents including the transmissions.

And then under tab 17 is documents relating to John McKenzie. And that one -- and Walter McKenzie. And I'm not sure whether those were -- those were included by the Registrar in accordance with our requests. But they are not -- so of the documents in that blue book, we have Round Lake Tommy, Johnny David, Bill Nye, August Pete, and Jack Joseph who was the interpreter.

These were all pre-emption documents which indicates to you, does it not, Mr. Brody, that the individual in question set out to obtain title to land according to the law of the province?

1 A This is consistent with the people trying to hold onto
2 whatever land they can in whatever way they can.
3 Q Yes
4 A Having been driven out of their old villages by
5 settlers and having had their barns and so on burned
6 to the ground as has been described richly. Several
7 of them seek to find a way of holding onto some part
8 of their ancient territories, and one or two succeed.
9 Q Several?
10 A One or two succeed in getting it -- a part of their
11 ancient territories. Some succeed in getting
12 compensatory territories as in the case of --
13 Q I'm sorry, Mr. Brody, you say "compensatory". Are you
14 referring --
15 A By way -- it says in the document, I think, "By way of
16 compensation for the loss." The loss of Round Lake is
17 very important. As I say, it was subject to
18 speculation.
19 Others get land and then it turns out that they
20 have got land under condition, which means it's quite
21 hard to keep it. If they default on payments they
22 lose the land. They have to give up their established
23 tenure in the land, safety of the tenure according to
24 the Wet'suwet'en system, in favour of a tenure that is
25 quite unsafe. They are vulnerable to all sorts of
26 vicissitudes because of a shift --
27 Q In common with the white settlers?
28 A Absolutely. In common with the white settlers.
29 Because they are given a reduced right in the land.
30 They had, according to the Wet'suwet'en law -- I'm
31 sure you are about to correct me as I'm talking about
32 Wet'suwet'en law -- they had, according to
33 Wet'suwet'en law, a clear hereditary right in large
34 territories, within which territories were old
35 villages, houses, grave sites, little cleared places
36 for farms and so on. Bit by bit they are given to
37 understand they don't, after all, have any safety of
38 tenure, any security in all these lands. Bit by bit
39 it's settled, taken away, they are pushed out. And
40 here they are given an opportunity, as unique through
41 the Indian agent and the missionary, whoever wishes to
42 help them, to get some security. And it turns out
43 very often that it isn't a very real security,
44 certainly not by comparison to the security they had
45 under Wet'suwet'en law. And in some cases, as I said,
46 it is on the ancient lands, in two or three cases. In
47 other cases it's compensation for lands that have been

1 lost. They are encouraged to find some other land
2 that might do, as in the case of Johnny David, where
3 it doesn't do, and he sells it.
4 Q Anything further?
5 A No. That's, I think, an important part of the
6 context.
7 Q Yes. A very substantial change from what they enjoyed
8 is the thrust of what you are saying?
9 A They are losing their lands. You are talking about
10 people who are losing their lands --
11 Q Mr. Brody --
12 A -- and they are trying to defend themselves against
13 this loss. They are trying to secure whatever they
14 can under extremely difficult circumstances in this
15 period. As you know, Mr. Goldie, it's a very, very
16 tough bit of history this, for the Wet'suwet'en, and
17 they managed --
18 Q Yes, I know.
19 A -- and they've managed with one way or another to hold
20 onto bits of land, and they trade off without,
21 perhaps, knowing it, what was a security of tenure for
22 an insecurity of tenure on what were their lands for
23 bits of, often, other lands.
24 Q Yes. Now, I asked you once before, have you got
25 anything further to say about it?
26 A No. I think that will do for the moment.
27 Q Now, would you agree with me that it is a very
28 substantial change in the culture that we are
29 observing?
30 A It's a substantial change in the circumstances that
31 the culture is experiencing. They don't change their
32 belief in their laws. They are being subject to what
33 they would consider illegal laws. They don't give up
34 their idea of law because a new idea of law comes in.
35 They are forced by circumstances to do whatever they
36 can to hold onto their little bits of land, as they
37 always put it.
38 Q Well, I take it you are agreeing with the proposition
39 I put to you?
40 A No, I'm not, Mr. Goldie. I'm not.
41 Q I see.
42 A You are suggesting that they accepted --
43 Q I didn't suggest anything of the kind.
44 A Well then --
45 Q I said it's a very substantial change in the culture?
46 A Well, that is to suggest that the culture has accepted
47 some change in its jurisdictional arrangements.

Q I didn't suggest anything of the kind.
A Well then what is a change in cultural?
Q Well, it comes about from any source.
A Well, the change you are talking about is in the culture. I think we are talking about pressures on the people, not changes in the culture.

MR. GOLDIE: Now, in chapter 5 of your book, you refer to the Gitksan, that's page 48, my lord. And I just want to pick up a couple of points there.

My lord, may this book of documents be marked as an exhibit, please?

MR. JACKSON: My lord, I object to that. Mr. Grant will actually address you on this question as it relates to the documents in this case, but it's in relation to other generic documents.

THE COURT: All right.

MR. GRANT: Thank you, my lord.

Certain of these documents, my lord, particularly as I recall the Johnny David tab 2 documents that were put to him as exhibits and marked for identification, certain of these documents are certified from the Land Title Office, and there has always been, of course, that they are entitled to go in as exhibits because of that.

Given that we just received this this morning, firstly. Given that there is a major issue between the parties as to the purpose for which documents are being marked as exhibits, that is, that they are going in for the truth of the contents and that we have not had -- I have not had an opportunity to review all of these documents, in terms of the agreements made -- and there were agreements made, as you may recall, in 1987, between counsel in terms of archival and land title documents. Some of these documents reviewed do not appear to -- and I am prepared to stand to be corrected on this -- but they do not appear to come from the Land Title Office. But this is a substantial aspect of the documents that we understand the defendants wish to tender in the case. And before it's marked as an exhibit, other than an exhibit for identification, I would ask that we have that opportunity to review these documents.

THE COURT: You only received this book this morning?

MR. GRANT: We only received this book and notice that these documents were going to be put to this witness at the same time as you did. We had no idea that this particular volume was going --

THE COURT: All right. Well, you are suggesting that it be marked for identification then?

MR. GRANT: Yes. That this book be marked for identification, and that we have an opportunity to review this. And as I say, I know -- and my friend may indicate -- for example, at tab 2, the Johnny David documents were put to him, but there were -- and I think some others, but we did not -- I haven't had an opportunity to review all of these and I am very concerned -- and I also would ask my friend if he is -- if it's his intent -- so in our review we can be clear on this -- if it is his intent to tender these for the truth of the contents.

THE COURT: Mr. Goldie?

MR. GOLDIE: The -- almost all of these documents are, of course, listed, my lord, in the Province's list of documents.

THE COURT: Yes.

MR. GOLDIE: They -- and what we have done -- and we didn't get them until yesterday -- were certified copies under the Land Registry Act. And they are --

THE COURT: But is there any difficulty giving him some time to examine the book?

MR. GOLDIE: No. But there is no great surprise about this. As I say, the documents are listed and Thomas George is already an exhibit.

MR. GRANT: Yes.

THE COURT: Yes, all right. Well --

MR. GOLDIE: And Bill Nye, I think.

THE COURT: All right. What's the next exhibit number, Madam Registrar?

THE REGISTRAR: 996.

THE COURT: All right. Blue book and its tabs 1 to 18 will be Exhibit 996 for Identification, and counsel will speak to the matter again at any convenient time.

(EXHIBIT 996 FOR IDENTIFICATION - A.G.B.C. Blue Book, Tabs 1 to 18, Pre-emption Documents)

MR. GOLDIE: I should say, my lord, I have the certified copies and I am entitled to tender these without any reservation at all.

THE COURT: Well, there is a question of relevance.

MR. GOLDIE: But these are the documents the witness has commented on in some length. He said, "Oh, there is no acceptance of these. This is the circumstance under which this took place." He has spent ten

minutes talking about this and my friends had no objection to that.

THE COURT: I think there is some doubt about whether some of them have relevance.

MR. GOLDIE: That could be so, my lord. I am prepared to allow my friends some time, but I point out that I have the certified copies.

THE COURT: Yes, all right. Well, I think you can tender those at the time when the -- if it's determined such should be the case, that they should be marked other than for identification.

MR. GRANT: Yes, my lord. That is the key point. Some of these were not referred to directly with the witness, and also, I'm not certain of some of the names. A few of them my friend brushed over.

MR. GOLDIE: I did so in the interest of getting the witness out of the stand, but if my friend wants me to go through these --

MR. GRANT: No, no, I don't.

THE COURT: None of us do.

MR. GRANT: I can deal with them.

MR. GOLDIE:

Q Now, as I mentioned to you under tab 5 -- not tab 5, chapter 5 of your report, you talked about the Gitksan. And just so that I have a couple of points from you, they are Tsimshian-related people, are they not?

A That's right.

Q And the commonly accepted theory is that they come from the coast and have progressed inland to an extent that there are three Tsimshian groups, the Coast, the Nishga and the Gitksan?

A It's commonly accepted that there are three distinct Tsimshian groups of which the Gitksan is one, yes.

Q The coast Tsimshian are not hunter-gatherers in any sense?

A There is much debate about this in the literature. There are reasons for thinking that many of the northwest coast people are hunter-gatherers with a special characteristic, namely, its concentration on a -- at that salmon fishery. And this goes to some of what I was trying to explain yesterday.

Q Yes. The Gitksan also have food come to them; is that correct?

A They have food come to them and they go hunting for food.

Q Yes?

A And trading, and therefore a part of their economy is trading.
Q They would have little hereditary interest, if I may put it in that sense, in the hunting of animals other than for clothing and to supplement their main diet?
A To complement. The diet requires two elements, as I was saying yesterday. You can't live on salmon. They require their territories for other resources. They have to obtain fat.
Q Yes.
A They either have to obtain it by hunting it or trading it in. And if they trade it in, what are they going to trade it in with? Perhaps with the resources of the territories that they can trade to peoples on the coast who have more fat than they do.
Q They would have no interest in extending their territory other than to obtain something which could be exchanged for what was considered desirable?
A Something they could eat. They would want to expand their territories perhaps for food, perhaps for hunting grounds. They are hunters, the Gitksan, as well as fishermen.
Q Yes. And the -- in its undeveloped state, there is lots of game right at hand with the Gitksan as there was with the Wet'suwet'en?
A No, you were not correct about the Wet'suwet'en. There is close to these large concentrations of population, some game, but nothing like sufficient to meet the demands of this concentration of population. The thing about a salmon fishery is it creates a large number of people in one place trying to live on the salmon. But the salmon, of course, is not something that you can live on. So you have all these people living there to get the salmon, so they are forced to spread out to find the other parts of their diet.
Q You thought it significant that the Gitksan and Wet'suwet'en stories did not speak of warfare against one another. I'm referring to page 15317 of your evidence in chief on Wednesday, where you said, and I quote --

MR. JACKSON: What volume is that, my lord?
MR. GOLDIE: It's the Wednesday volume. I think it's 212, my lord.
THE COURT: 15317?
MR. GOLDIE:
Q Yes. I think you said:

A "There's one piece of evidence that's very striking to me that comes from the adaawk and kungax. The adaawk record conflicts at boundaries, so we find conflicts between the Gitksan and the Nishga."

So on and so forth.

A Yes.

Q Is there not another explanation other than the friendship that you appear to be postulating, and that is, that the fur trade went in opposite directions? That is to say, the trading that the Gitksan did was downriver, down the Skeena, controlled by the middle men between themselves and the traders; and the Wet'suwet'en trade, by and large, went out to Babine?

A Kisgegas traded into Bear Lake as we --

Q I'll come to Bear Lake in a minute?

A You are asking me a question about where the Gitksan traded to and I'm pointing out --

Q I put it in general terms.

A I'm having to think about the generalization and immediately I can think of a very striking contrary example. I'm also under the impression, from the literature, that the Wet'suwet'en traded in both directions. Downstream, Mission Flats, lots of accounts of them going to Mission Flats to trade. Trading into Hazelton, I presume that's downstream trade. And trading north and east. Similarly, Gitksan are trading in many different directions.

Q Well, this is a progression, and let us take the situation where the only fur traders were firstly at the mouth of the Skeena, Fort Simpson and way points. And secondly, in the east, coming into view when Fraser established a trading post in 1806 at Fort Fraser with nothing in between. Now, the -- is it not so that the Gitksan learned of trade goods and carried on trade through the people who controlled the canyon on the Skeena River, and it was a long time before they came into direct contact?

A There are many complaints, as I recall, in the early accounts of the Hudson's Bay Company. People in the Babine area -- to the effect that the Wet'suwet'en, the Babine-Carrier, are trading the wrong direction from their point of view. There are complaints -- I think this is well documented in Dr. Ray's evidence.

Q Yes. That's --

A The complaints -- please, Mr. Goldie.
Q Yes,
A There are complaints directed against the Wet'suwet'en because they are trading in the wrong direction, that is, they are trading, in your terms, downstream and not east.
Q You see, Mr. Brody, you didn't answer my question.
A Perhaps you should ask it again.
Q I asked you to assume before the forts in between the Northwest Company's fort at Fort Fraser -- before the coalition of the Hudson's Bay Company and the Northwest Company, the trade in those days?
A What point? Give me a historical date. It would be easier, I think.
Q Well, can't you do that?
A No. I think perhaps you should help me. You are trying to get me to assume a moment in time.
Q When did the Hudson's Bay Company and the Northwest Company join together?
A I don't know the date of that.
Q Sorry?
A I don't know the date.
Q I thought you referred to the date in your report?
A I can't recall the date.
Q Assume 1821.
A All right.
Q Now prior to that, the fur trade was making itself felt in the claims area indirectly, wasn't it?
A Yes. And the suggestion from all the evidence is that people were trading downstream from quite far inland. There was a link-up of trading from Wet'suwet'en country quite far south in Wet'suwet'en country down towards the coast and towards the interior. The multi-directional nature of trading is one of the features of its early history in every area I've worked. There are remarkable accounts of people going very long distances and surprising directions to take advantage of trade. And the record indicates strongly that by 1826, the Wet'suwet'en established a habit of trading downstream.
Q Yes, of course. Of course. Now, let us go to 1826, because that is a date that you do mention, isn't it?
A I just mentioned it.
Q And let us assume the establishment of Fort Connelly. And you associate that with the warfare that you describe; isn't that right?
A It seems that the establishment of the Bear Lake Post

1 rekindled the habit of warring at that boundary
2 between the Gitksan and the Athabaskan peoples to the
3 east.
4 Q Yes. Including the Carriers?
5 A Sekani-Carrier, not the Wet'suwet'en.
6 Q Yes. The -- and to the degree that the Wet'suwet'en
7 trade into Fort Connelly, that's the origin of the
8 conflict which you describe at considerable length?
9 A No, no. We are not talking about the Wet'suwet'en
10 conflict with the Gitksan, we are talking about the
11 Carrier-Sekani conflict. It's perfectly clear from
12 all the accounts of this period that the struggle was
13 between the Gitksan and their neighbours to the east
14 of that Bear Lake boundary. To the east of that Bear
15 Lake boundary is not Wet'suwet'en country, it's way
16 beyond Wet'suwet'en country; it's Carrier-Sekani
17 country. It's a differ Athabaskan group.
18 Q All right, all right. The proposition that you put is
19 that the absence of any record of conflict is one that
20 you rely upon?
21 A It's a very significant piece of evidence I think is
22 how I put it.
23 Q You apparently have examined at some considerable
24 length, the Loring papers. Can I refer you to a
25 letter of his which appears to be dated November 18th,
26 1909. You've seen this letter before, because you've
27 examined the Loring papers, have you?
28 A Let me read it and I'll tell you.
29 Q Yes, all right.
30 A Yes, I have seen this before.
31 Q Yes. It appears there was -- of course this is 1909,
32 late in the day, but there appears there was a
33 considerable difference of opinion between the --
34 A There is a squabble about -- I remember this, yes.
35 There is a squabble referred to here between the
36 Gitksan --
37 Q May I put the question first?
38 A Oh, I'm sorry. Yes, go ahead.
39 Q As late as 1909 there appears to be a difference of
40 opinion between the Wet'suwet'en at Hagwilget and the
41 Gitksan over the so-called land question; is that
42 correct?
43 A That's right. The Gitksan were inclined to be much
44 more confrontational than the Wet'suwet'en.
45 Q Thank you.
46 A This is something I addressed at considerable length
47 in my opinion, the way in which, culturally, the

1 Gitksan culture is more disposed to be conflictual
2 that the Wet'suwet'en culture. There is a difference
3 between them, and here is a tiny little illustration
4 of it. And we are not talking here, of course, about
5 warfares between -- or among the people, we are
6 talking about internal squabbling, about tactics --
7 Q Yes.
8 A -- against the larger shared difficulty.
9 Q Um-hmm. Just the colourful phrase, "Pick off the
10 others from the perches of their side...and have their
11 bodies float off to the sea as so many flies"?
12 A Yes, that's right. We have Loring at his best here.
13 Q Yes, that's quite right, he is quoting them, isn't he?
14 A Um-hmm.
15 Q May I have this marked, my lord, and put under --
16 MR. JACKSON: I don't think he is quoting them, my lord. I
17 think the witness can perhaps comment on --
18 MR. GOLDIE: Well, I'm referring to the words of the writer of
19 the letter.
20 THE COURT: Well, it says that, "The Rocher Deboule Indians came
21 and assured me that," et cetera et cetera. It may not
22 be quoting. It may be paraphrasing or it may be
23 editorializing. It may be one of those.
24 MR. GOLDIE: I think your lordship is in as good a position to
25 know what that is, than the witness or myself or even
26 Mr. Jackson.
27 THE COURT: All right. 997.
28 MR. GOLDIE: There should be a blank tab in the orange book.
29 THE REGISTRAR: Exhibit 995-38, my lord.
30
31 (EXHIBIT 995-38 - Tab 38 of A.G.B.C. Cross-Exam Book,
32 Letter of Loring dd. November 18, 1909)
33
34 MR. GOLDIE: My lord, the -- in view of your lordship's ruling,
35 I'm not going to examine the witness with respect to
36 his statements about Martha Brown's evidence. I have
37 under tab 6 other evidence that she gave in her
38 commission with respect to the same matter, but I do
39 want to make reference to --
40 MR. JACKSON: Perhaps Mr. Goldie could -- I'm not aware of you
41 made a ruling.
42 THE COURT: Well, I made all kinds of them. Which one, Mr.
43 Goldie?
44 MR. GOLDIE: I had in mind my objection to the witness
45 commenting on Martha Brown's evidence, and I
46 understood your lordship to address a question to my
47 friend, what possible relevance could there be in the

1 witness commenting upon the evidence, and I understood
2 my friend to acquiesce in the implied ruling.
3 THE COURT: Yes. Well, the ancient rule is that one witness may
4 not comment about the evidence of another. It doesn't
5 say that a witness can't be asked to comment upon a
6 fact.
7 MR. GOLDIE: The objection I took, my lord, was that the witness
8 purported in his report to say that Mrs. Brown didn't
9 mean what she said, and that's not a fact.
10 THE COURT: No, that sounds like a comment.
11 MR. GOLDIE: And it's --
12 THE COURT: And I would disregard it.
13 MR. GOLDIE: And I understood my friend withdrew his questions,
14 and I'll have a submission to make about the inclusion
15 of that in the report at a later point.
16 THE COURT: I shouldn't, perhaps, speak in such bold and
17 confident terms. If the comment is in the form of an
18 opinion based in part on what the witness said, then,
19 of course, I would pay attention to it. But we're
20 cutting the ground rather finely, I think, in some of
21 these matters. Counsel will have to decide whether
22 something falls within the prohibited class I've just
23 mentioned or the permitted class. I'll have to leave
24 it to counsel to make those decisions.
25 MR. JACKSON: If I could be permitted a comment, my lord. The
26 issue arises, Mr. Goldie, in referring to the Reverand
27 Godfrey in the matters he read out there. He quoted
28 the priest after Mr. Godfrey to the effect, "What the
29 priest said was right." It's my submission that it
30 was permissible, in fact, that Mr. Goldie invited Mr.
31 Brody to comment on that. It is permissible for Mr.
32 Brody, as an anthropologist, to place that statement
33 in context as to whether or not as an anthropologist
34 he would see that as referentially incorporating, so
35 to speak, the whole of what Father Godfrey said.
36 THE COURT: No. Surely he is in no better position than I am to
37 do that? That is a matter of argument. You or
38 whoever I have the pleasure of hearing in argument can
39 advance that theory, but surely it isn't the province
40 of the witness to say, "Well, when he said that, what
41 the priest said was right, that he meant this or this
42 or this or something else." I have to make those
43 determinations, surely.
44 MR. JACKSON: No, my lord. I entirely, of course, agree with
45 that position, my lord. Mr. Brody, as I understand
46 it, in responding to that question and in dealing with
47 other matters in his report, is putting statements in

1 context, not turn them on their head, as I think your
2 lordship put in context.
3 THE COURT: I took his evidence in chief to be directed, in
4 part, towards that very question of context. He has
5 already done that.
6 MR. JACKSON: Yes, my lord.
7 MR. GOLDIE: Yes.
8 THE COURT: All right. Thank you. Proceed.
9 MR. GOLDIE: However, in your report, you attach some
10 significance to page 131.
11 THE COURT: 131 of?
12 MR. GOLDIE:
13 Q Of Mr. Brody's report
14 Now you say, "At the same time--"
15 A What line is this?
16 Q Well --
17 A Oh I see, yes.
18 Q You say, "At the same time." What time are you
19 speaking of, please?
20 A I think I'm going to have to reread this paragraph.
21 Q Well, let me suggest it's the summer of 1987?
22 A Yes, that's right.
23 Q You say,
24
25 "At the same time, members of the Delgamuukw House
26 had been improving trails and establishing cabin
27 sites."
28
29 Now, are you suggesting there that they were on
30 ancestral territory or were they just doing road work?
31 A They were on territories.
32 Q On what? I'm sorry, I can't hear?
33 A They were on territories.
34 Q Their own?
35 A Yes.
36 Q The house territory?
37 A They were sometimes working on a house -- on their own
38 house territory and sometimes, as I understand,
39 working on another territory, with the permission of
40 the people, in order to do a favour.
41 Q Well, you are aware that the people who would be doing
42 that didn't become members of that house until 1954?
43 A Which individuals do you have in mind here?
44 Q The individuals who comprised the members of the House
45 of Delgamuukw?
46 A Are you saying the whole House of Delgamuukw came into
47 existence in 1954?

1 Q No, I didn't say that. The question that I put to you
2 is that you are aware that the people who would be
3 doing that work didn't become members of that house
4 until 1954?
5 A Well, there were very, very many different people who
6 were doing it.
7 Q I'm talking about the members of the House of
8 Delgamuukw in its entirety as it existed --
9 A Well, it changed its --
10 Q -- in 1987?
11 A -- its constituent shape in the '50's. Is that what
12 you are saying to me?
13 Q Well I'm saying --
14 A Perhaps you should explain what you mean.
15 Q The question that I put to you, Mr. Brody, was that
16 the people who were doing the work were not members of
17 the House of Delgamuukw until 1954 at the earliest, or
18 the successors or the lineal descendants of the people
19 who became members of that house in 1954.
20 MR. JACKSON: Perhaps Mr. Goldie could divide those questions.
21 I think I counted three of them.
22 MR. GOLDIE:
23 Q Would you like me to do that, Mr. Brody?
24 A Yes, I think.
25 THE COURT: I think we are at serious risk here, Mr. Goldie, of
26 being at cross purposes. I'm not sure that the
27 witness knows of the evidence that has been led which
28 supports the proposition you are putting to him.
29 MR. GOLDIE: Well, I would be glad to direct his attention to
30 that, my lord.
31 THE COURT: I think that would be necessary.
32 MR. JACKSON: Isn't my friend asking Mr. Brody to comment on a
33 witness -- on the evidence of another witness?
34 THE COURT: No. I think your friend is trying to settle the
35 context for a question about this statement, that the
36 members of the House of Delgamuukw have been improving
37 the trails deep in their -- in Delgamuukw territory.
38 I'm not sure what point he is at yet, but maybe Mr.
39 Goldie will come to it.
40 MR. GOLDIE: I'm not asking him -- it's the same thing, I'm
41 going to ask him to accept evidence but --
42 THE COURT: I think you must put that to him.
43 MR. GOLDIE:
44 Q Yes, I would be happy to. The -- it should be an
45 extract, my lord, under the -- in the orange book.
46 Tab 7 was the evidence of Heather Harris, and the
47 discussion here was with respect to the genealogy of

1 the House of Delgamuukw. You are familiar with that,
2 are you?
3 A Somewhat, yes. But let me just read what's being said
4 here.
5 Q Well, I direct you to line -- starting at line 42 and
6 going over to the end of her evidence at page 22 --
7 line 22
8 A Yes, I read it.
9 Q Yes. The -- in effect, by virtue of Mr. Albert Tait
10 taking the name Delgamuukw, the resources of that
11 house came under the control of the members of the
12 House of Ax gigii, all the former members of
13 Delgamuukw having died out?
14 A Yes. I knew that Delgamuukw house had declined in
15 numbers greatly. I talked to Albert Tait about this,
16 but I hadn't got a date at which this shift had taken
17 place.
18 Q Well, you are aware, then, that the shift took place.
19 And the particular instance that you are using, the
20 people who were asserting claims, if I understand you
21 correctly, were asserting claims to a territory which
22 came into their scope, if I may put it that way, when
23 Mr. Albert Tait became Delgamuukw in 1954?
24 A I don't see anything here about asserting claims. I'm
25 talking about people making trails and fixing up
26 cabins on the territory.
27 Q Yes. Well I -- I thought I cleared that up when I
28 asked you what they were doing, was it just road work
29 or was it -- had it some significance?
30 A They are using their territory. Using a territory.
31 Q They are using a territory?
32 A They are using the Delgamuukw territory.
33 Q Yes. All right. And that, of course, was after the
34 writ and the defence had been filed --
35 A 1987 --
36 Q -- in fact?
37 A -- was the date when I was told about this, yes.
38 Q Yes. Now, is it --
39 A Sorry, 1986, I was first -- I first talked to Albert
40 Tait.
41 Q I see.
42 A And I remember it was one of our first conversations
43 that he told me about -- or maybe 1985. But anyway,
44 '85, '86.
45 Q I thought we had established that the -- the time this
46 was happening was in 1987?
47 A But if you look at the grammar of the sentence, it

1 says, "At the same time, members of the Delgamuukw
2 House had been improving." So it's referring
3 backwards in time from a particular moment.
4 Q I see. All right. My point is, is it not important
5 in the context of understanding the -- how this
6 culture -- these cultures function, to have regard to
7 the fact that the activities you are describing are
8 taking place in an environment of the land claims
9 litigation?
10 A I would think that clearing trails and fixing cabins
11 is something that takes place in the context of
12 hunting and trapping.
13 MR. JACKSON: I would like to take this moment, my lord, when
14 Mr. Goldie is consulting. The transcript reference of
15 Heather Harris in tab 7 was mended. It was corrected
16 at line 16, about the existence of the two houses "has
17 never been forgiven," was corrected, "has never been
18 forgotten."
19 THE COURT: Yes, I have that.
20 MR. GOLDIE:
21 Q Yes. I don't think that's relevant to the point I'm
22 making.
23 The question I put to you is, is it not
24 significant when you are assessing the continuity of
25 these cultures, to determine what you are observing,
26 what's taking place within the context of these land
27 claims? Isn't it important to understand and make
28 allowance for that fact?
29 A When you are doing field work as an anthropologist,
30 you have to have a very careful ear and eye for
31 bullshit, to put it simply, and it's something that
32 one develops over years and years of work. When I'm
33 talking to Albert Tait about how he does and doesn't
34 spend his time, I feel confident that I have some
35 sense of whether he is spinning me a line or whether
36 he is talking about something that is real.
37 Q Well, your answer to my question is, "Yes, it is
38 important"; isn't that correct?
39 A It's important always to be alive to the possibilities
40 in what people are saying to you, yes.
41 Q Yes. All right. Then you agree with me?
42 A I'm agreeing in general terms.
43 Q Yes?
44 A The job of interviewing is a job of careful skepticism
45 and careful attention to what's being said and why and
46 in what context.
47 Q Yes. Mrs. Harris made reference in her evidence to --

and in her -- as one of her references to a book called the "Gitksan Potlatch", by John W. Adams. Are you familiar with that book?
A I am, yes.
Q He is a qualified anthropologist?
A Yes, he is.
Q Devotes his full time to it?
A I don't know what he does now, but he certainly did a period of field work in Hazelton and wrote a Ph.D. thesis about it, which I believe is the book.
Q You are thinking of his wife, I think, are you?
A Did he not -- did they not both do theses as graduate students on the basis of their field work?
Q And he published a book based upon his field work?
A Based on that graduate work, yes.
MR. GOLDIE: Yes. And it's not in the orange book, my lord, but I want to direct the witness' attention to page 12.
MR. JACKSON: I think this page has been an exhibit before.
MR. GOLDIE: I beg your pardon?
MR. JACKSON: I think this page has been exhibited before.
THE COURT: Oh, I am sure it has.
MR. JACKSON: Yes.
MR. GOLDIE:
Q Perhaps the witness might have a copy.
Paragraph 2:

"The Indians of British Columbia have signed away very little territory over the years -- mostly to the railroad or to the Highway Department -- and have never signed a general treaty with the Government. They are now claiming practically the whole extent of British Columbia of which the Gitksan claim approximately the area registered with the Game Warden, together with whatever land within that general area is still registered to White trappers. As sources of revenue today the lines are almost worthless, but the land-values they symbolize, especially timber and mineral rights, are considerable. Interest in these rights is intense --"

Now, just pausing there. You would agree with that, wouldn't you?
A Oh yes.
Q
"-- and provides more than sufficient reason for the Indians to continue feasting to maintain their

rights among themselves."

Would you agree with that?
A I can imagine that the land claims issue could make the feasts have a particular resonance, yes.
Q Yes. And then he goes on to say:

"That the potlatch survives today in a state of considerable complexity is undoubtedly due to its value in the Native's eyes as a means of furthering their land claims against the government."

Now, just pausing there. Would you agree with that?
A That's an extraordinary statement. The history of the potlatch in the area is -- says a lot more than that.
Q Well, I take it you don't agree?
A I don't agree, no.
Q All right. And then he goes on to say:

"-- but it is also a touchstone of Indian identity in a world increasingly dominated by the Whiteman's values."

And then I think he makes reference to one of your sources. Do you agree with that?
A What reference does he make?
Q Well --
A Oh.
Q Well, I read to you the balance of the sentence consisting of the clause --
A Yes, I see.
Q -- beginning with the words, and I quote:

"...but it is also a touchstone of Indian identity in a world increasingly dominated by the Whiteman's values."

Do you agree with that?
A I'm not sure what he is implying. Does he mean to imply, do you think, that before there was a problem with the white man's values there was no enthusiasm for the feast? We know that's not the case. Does he mean that before the land claims process got underway, there wasn't an intense concern with the feast? We know that wasn't the case.
THE COURT: There is no suggestion of this intensity with regard

to the feasting in this passage, is there?
THE WITNESS: "In a state of considerable complexity," my lord, it says.
THE COURT: Complexity, yes.
THE WITNESS: Well, all right, I'll revise what I'm saying. We know the feast was a complex institution long before land claims got underway, and we know the feast was a complex touchstone of identity, perhaps Gitksan identity or Lax Gibuu identity, long before there was a problem with the white man's values.
MR. GOLDIE:
Q Well, he doesn't talk about a problem, does he. He simply says in a land "increasingly dominated by the Whiteman's values"?
A I'm shortening it.
Q Well, do you agree or disagree with the statement?
A I disagree.
Q All right. Thank you.
THE COURT: I'm sorry, you disagree?
THE WITNESS: I disagree.
MR. GOLDIE: He disagreed.
THE COURT: I know you disagree with the part that says:

> "...the potlatch survives today in a state of considerable complexity is undoubtedly due to its value in the Native's eyes as a means of furthering their land claims against the government."

But do you also disagree with the rest of it?
THE WITNESS: I thought we were just talking about the first proposition. The second proposition, the "touchstone of Indian identify", I would say that it's a touchstone of identity for the people who participate in the feast.
THE COURT: All right.
MR. GOLDIE:
Q "In a world increasingly dominated by the Whiteman's values"?
A "In a world increasingly dominated by the Whiteman's values", yes.
Q Yes, all right, thank you.
And this context of the land claims is one that has been very much a feature of this area in the entire period that you have been there?
A But this passage shows how easy it is to overstate the relevance of that. I mean it's all too easy to say,

"Ah, this is because of land claims." Adams, I suspect, is not aware of the way in which the feast continued up to the beginning of the land claims process.

Q Have you read his book?

A I have indeed.

Q Yes. He --

A Well, it's a long time. I say I have but it's a long time since I read it. I would want to reread it if you were going to cross-examine me on the details of Adams' work.

Q He describes the feast in considerable detail, doesn't he.

A He does, yes.

Q Yes. Now, the question I put to you is not related to Adams now. I'm saying -- simply saying to you that the fact of the land claims was a fact of intense interest to the people up there during the entire period that you were there?

A It was of intense interest to the people who were, as it were, the political leaders. I was often struck by how many Gitksan-Wet'suwet'en were remote from the land claims question. Very few people, apart from the political leadership, talked to me about the land claims issue and what lay behind it or what lay, possibly, ahead as a result of it.

Q Well --

A It's a matter of political representation by a number of articulate leaders. Not a matter of everyday concern or, on the basis of my experience, a thing that permeated the atmosphere of everyday life or percolated through in some way into what people were saying to me or what sorts of things people wanted to talk to me about.

Q Well, we have a list of your informants.

A Um-hmm.

Q And do they comprise the political leadership that you are talking about?

A No, no. They are -- many of them are high chiefs and are very articulate, but they are not persons who, for example, wrote articles for newspapers or made political speeches at events outside the territory.

Q Yes. But the people -- your informants were people who were leaders within the Indian community?

A Many of them were and are chiefs in houses in the Gitksan-Wet'suwet'en system.

Q Yes. And many of them have been witnesses here?

A Yes. They are very articulate members of the culture, and a lot of them have an awful lot to say that's of a great interest, and a lot of my informants and a lot of people I have talked to have not been witnesses here and are not --

Q Mr. Don Ryan hasn't been a witness here but he is a political leader?

A He is a political leader, yes.

Q And under tab 8 --

A Marianne Alec, Wii Mugulsxw, Art Wilson, two very important informants of mine, they are not, I don't believe, figures.

THE COURT: I notice we are half-way through the morning. Is this a convenient time to adjourn?

MR. GOLDIE: Yes, my lord.

THE COURT: Do you want to include this extract from Adams as 998?

MR. GOLDIE: I think it should go under the next blank tab, 39.

THE COURT: All right.

(EXHIBIT 995-39 - Tab 39, "The Gitksan Potlatch" by J.W. Adams)

THE COURT: We'll take the morning adjournment.

THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED AT 11:05 a.m.)

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

Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.

(PROCEEDINGS RECOMMENCED AFTER BRIEF RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mr. Goldie.
MR. GOLDIE: My Lord.

Q Mr. Brody, you told me earlier that you came to Wet'suwet'en-Gitksan area in 1983. Was it after or before February to your recollection?
A Well, I had been to the area before '83. I had been there in '78, '79 and '80, but only on very short trips. My work for the Tribal Council began in '83.
Q That's what I was referring to.
A And it was after February.
Q Under tab 8 of the orange book, My Lord, is a Gitksan-Carrier Tribal Council newsletter of February, 1983, and it is pretty much taken up with an article by Mr. Patsey. He's the Gary that is referred to in Mr. Sterritt's letter to you with respect to the film?
A That's right, yes.
Q Yes. And he talks about what is the land question and so on and so forth. And on page three in the first column under the heading of "What do we want?", midway down that he talks about:

> "The Tribal Council will continue to advocate that each respective member village of Tribal Council has a community plan in place in the event of a wind-fall."

Were you aware of the community plans that were being considered in the event of a windfall arising out of the --
A No, this is the first --
Q -- land claims?
A This is the first I have heard of them.
Q Yes. And under tab 9 there are minutes of a Gitksan-Carrier Tribal Council meeting in 1973. Looking at the first page, do you -- one of your informants there is Don Ryan. Is that correct?
A I haven't seen his name yet.
Q It's -- I'm sorry, the first page should be in attendance.

THE COURT: Oh, yes.
THE WITNESS: Sorry, yes.
MR. GOLDIE:

Q Yes.
A Yes, as an advisor role, yes.

Q Yes. Peter Muldoe, counsellor?
A Yes.
Q Any others that -- of those people that I see there that you either talked to or were informants?
A No.
Q Alvin Weget?
A No.
Q Johnny Mack was probably dead by that time.
A Well, I have exchanged words with many of these people, but I didn't use them as informants.
Q Yes. You recognize a number of the names. Kenny Muldoe?
A I recognize the name, yes.
Q And then the first page of the meeting they talk about the land claims. The third complete paragraph:

> "It was moved by Ken Muldoe discussions be continued on Land Claims ..."

And there is a discussion of a cash settlement. The Oregon Indians settled for six billion in water rights and so on and so forth, and Kenny Muldoe suggests that the compensation should include royalties. And then over the page:

> "I so move that G.C.T.C. adopt for the direction in which to negotiate the compensation in Indian Land Claims in B.C. be based on that, on that compensation be paid for the period that has lapsed since the reserve system was implemented, in 1763 and thereafter royalties be paid for the natural resources that will be derived from lands in which we base our land claim."

Now, that's 1973, and that, of course, was before you were there on any occasion.
A Yes, but I do happen to know the background of this. Though I have never seen it before, by an odd coincidence I knew Ray Jones in 1977, and he had the job working for the union of British Columbian Indian chiefs, of going to communties, encouraging them to consider the question of compensation.
Q Yes.
A That was his job. So I assume the background of this is Ray Jones coming to the area, urging the people to consider a compensation approach to land claims. I

1 think that's what he was doing. And I notice that
2 Peter Williams is prominent here, who, of course, is a
3 Kitwancool elder with a special interest in this whole
4 matter, especially the royal proclamation. So I think
5 that the parameters of this issue, as revealed in this
6 document, don't originate within or necessarily have a
7 continuing expression from the people in the
8 Gitksan-Wet'suwet'en area.
9 Q Well, the evidence here is that Mr. Jones is a former
10 president of the Gitksan-Carrier area Tribal Council
11 and is a Gitksan himself.
12 A Yes, that's right. But I remember talking to him just
13 a couple of years after this about the work he was
14 doing on the compensation --
15 Q Yes.
16 A -- business.
17 MR. GOLDIE: May those two be marked, My Lord, exhibits 8 and
18 9 -- or tabs 8 and 9.
19 THE REGISTRAR: 995-8 -- and 995-9.
20 MR. JACKSON: May I enquire of my friend what purpose these are
21 being marked?
22 MR. GOLDIE: Context.
23 MR. JACKSON: Thank you.
24 THE COURT: 995-8 and 995-9. Of course 995-9 is in already.
25 MR. JACKSON: Yes, it is.
26
27 (EXHIBIT NO. 995-8 - TAB 8 - "NEWSLETTER" -
28 FEBRUARY 1983)
29 (EXHIBIT NO. 995-9 - TAB 9 - MINUTES OF
30 TRIBAL COUNCIL MEETING - 1973)
31
32 Q Mr. Brody, I have a number of apparently unrelated
33 questions, and they are -- they are just simply
34 picking up points here and there. If I understand
35 your evidence correctly, you say that the Wet'suwet'en
36 were influenced by the missionaries, and I think you
37 singled out Father Morice in particular.
38 A Yes.
39 Q He had been gone from the area since about 1903?
40 A He finished 1903 or 1904. He was followed by Father
41 Coccola, I believe, and then by Father Godfrey. I
42 think that's the succession.
43 Q Were the Gitksan similarly or influenced to a similar
44 degree by the missionaries that were amongst them?
45 A Tomlinson is prominent in accounts of Gitksan life.
46 Many references to missionaries' concerns over -- in
47 particular the feast in the late 1880's, Pocock

P-O-C-O-C-K, Raley, R-A-L-E-Y.
Q My question was: Were they similarly influenced?
A Well, I think we would have to be careful about what we are saying the influence is. The evidence suggests that Morice and Tomlinson had in common quite a disciplinarian approach to their parishioners, if that's the right word. Other missionaries had different approaches. The nature of the influence would have been different at different times and so on.
Q Well, you have given extensive evidence with respect to the Wet'suwet'en, and I am trying to get a sense from you as to whether there is a similar degree of influence in the Gitksan --
A I gave --
Q If you feel you can't give me an answer on that, please feel free to say so.
A I am hesitant to rush into a generalization. I gave evidence on Tomlinson's role, the Meanskinish and the Kispiox community.
THE COURT: I'm sorry, a word there I am not sure the Reporter got.
THE WITNESS: I'm sorry. M-E-A-N-S-K-I-N-I-S-H.
MR. GOLDIE:
Q Well, Tomlinson was a follower of the famous Mr. Duncan of Metlekatla?
A Yes.
Q And it was Mr. Duncan who propragated the idea of Indian ownership in the absence of a treaty?
A I don't know very much about Duncan.
Q What wasn't -- the little you know would support the proposition I put to you?
A All I know about Duncan is that he had a community of Metlekatla, and set up a sawmill and told Tomlinson to go up the Skeena. It is really very much basic background.
Q That's about all you know?
A I don't think more about him --
Q Well, Tomlinson came to what is now Cedarvale about 1887?
A Yes. That's what's used to be -- mean as Meanskinish.
THE COURT: Yes. 1897?
MR. GOLDIE: 1887, My Lord.
Q And I understand that from your evidence that O'Reilly was harrassed at Kispiox in 1891?
A Yes, I think the records indicate that he had trouble at Kispiox when he was surveying.

Q Yes. By all except Geel or -- and one or two of the other chiefs?
A He was harrassed by all except?
Q By all except Geel.
A Is that what the documents say? I am not sure what you are basing this on. It's not in my evidence, I don't think, the details of this.
Q I have a recollection that it was. But under tab 10 I have put a document which is dated April the 9th, 1896, which is O'Reilly's letter. You have seen this document before, have you?
A No, I don't believe I have.
Q It reads: "I have the honour to forward herewith a copy of a communication ..."
THE COURT: Isn't it "submit herewith"? Isn't it "submit"?
MR. GOLDIE: It may be, My Lord. I read it as "forward". In any event, it's the first document under tab 10.
THE COURT: Yes, I have it.
MR. GOLDIE: Yes.
Q

"... a copy of a communication received from the chiefs of the Kispiox tribe, whose village is situated in the Upper Skeena River, and in which they pray to have lands alloted to their use.

It will be remembered that in September, 1891, I visited Kispiox for the purpose of defining Reserves, and on that occasion the Indians with the exception of 'Kail', the chief, and a few of his friends, obstructed me, and forcibly prevented Mr. Green carrying out my instructions. I was ultimtely compelled to abandon the attempt after having accomplished the laying out of one reserve."

And then he goes on to say:

"The circumstances were fully reported to you in a letter of 1891."

And then he goes on to talk about the present application. And I want to turn to the next document, which is the enclosure he refers to, which is dated February 10, 1896, addressed to O'Reilly, and it says:

"We are the chiefs and people of Kispiox. We desire to express to you our sorrow at the way

we treated you at the time you were here to lay out our reserves. We were then in heathenism and darkness, and we did it through ignorance.

Now that we have become Christians we think it only right to apologize and ask you to forgive us.

We wish to tell you that when you come here again, we would like you to enlarge our ..."

I can't make that word.

A "Reservation".

Q "Reservation in order to accommodate the people living here."

And it's signed Kail, Kliiyem Lax Haa and one other, or at least the original was.

Now, are -- they appear to have repented of the position that was taken in 1891. Do you attribute that to the influence of missionaries?

A "Appear" is certainly the word. Handwriting is striking here, isn't it. The handwriting of the covering letter is the same as the handwriting of the expression of sorrow. It's quite clear that Mr. O'Reilly wrote both these documents. It's not a document written by Geel, Kliiyem Lax Haa, and there is no evidence here to suggest they knew what it meant. I mean, I don't know how you can take this document on face value.

Q Mr. Brody, it is identified in the upper left-hand corner as a copy.

A But it's a copy of originals, which suggest in their copy that the writing is the same for both these --

Q Well, of course --

A -- items.

Q -- of course the writing is the same.

A It's the same because Mr. O'Reilly, that's O-R-E-I-L-L-Y, wrote both the covering letter and the little expression of sorrow here.

Q Well, he's copying a document that was handed to him.

A Written by Geel, Kliiyem Lax Haa and whoever this other person is at the bottom.

Q Yes.

A They wrote that, do you think?

"We are the chiefs and people of Kispiox."

Q Yes.
A

"We desire to express to you our sorrow."

That's the writing of the Gitksan in 1896?
Q I asked you the question. Do you consider that letter to be under the influence of a missionary?
A I suspect it's under the influence of somebody, but may well be Mr. O'Reilly, since he wrote both the documents.
Q He wasn't there, Mr. Brody. Let's go on.
A Well, if he wasn't there, how can he copy a document that's been signed? Did he transfer the signatures as well? Did he copy the X's from the original document onto this one, which I can't see incidently?
Q Perhaps if you would go back and read his letter.

"I have the honour to submit herewith a copy of a communication received from the chiefs of the Kispiox tribe."

A Can one copy a --
Q Excuse me. Let's finish with his letter.
A Yes.
Q And then go over the page. The last paragraph:

"With reference to the present application by the Kispiox chiefs, I do not think any steps should in any case be taken by the Department to comply with their request until a report on the subject can be obtained from the local agent, Mr. Loring. And I must also point out that a visit to that part of the country would be attended with very great expense, and a probability of little being accomplished."

So Mr. O'Reilly takes this with Cum Grano Salis, doesn't he?
A I'm not sure he is taking it with a grain of salt. He's not wanting an expensive expedition to be mounted in response to it. Presumably he is happy to have the expression of sorrow that he was impeded from carrying out his work.
Q Well, Mr. Brody, I am not sure that you can get into Mr. O'Reilly's mind as an anthropological fact. Let's go onto the next document.
MR. JACKSON: Could I ask my friend if he has a copy of the

1 original document which Mr. O'Reilly is referring to.
2 THE COURT: Mr. O'Reilly must have that. I assume you don't
3 need it, Mr. Goldie?
4 MR. GOLDIE: This is an archival document that my friend should
5 be aware of.
6 Q To your knowledge was the Chief Geel at the time also
7 sworn as an Indian Constable?
8 A That does ring a bell, but I have never -- I don't
9 recall a document which tells me that.
10 Q No. Big Louie?
11 A Ringing bells, but not on the basis of documents I
12 know.
13 Q All right. The -- I asked you the question, did you
14 consider this to be written under the influence of a
15 missionary, and you speculated Mr. O'Reilly?
16 A And I said under the influence of somebody.
17 Q I see. Perhaps Big Louie?
18 A I wonder.
19 Q Well, he states -- Mr. O'Reilly states that he was in
20 1891, when he was obstructed, it was with the
21 exception of Geel, the chief, and a few of his
22 friends.
23 A Well, it may well have been with the exception of
24 Geel. Of course he can't call him the chief and be
25 true to facts. There isn't a chief of a Gitksan
26 village. There are many chiefs.
27 Q Yes.
28 A He may have been the white appointed policeman. I'm
29 not sure.
30 Q Well, Geel is a very important name, isn't it?
31 A It is an important name, and no doubt he held it.
32 Q And the holder of the name is a high chief?
33 A High chief, yes.
34 Q Yes.
35 A All right.
36 Q All right. Now, then we have then in 1913, before the
37 Royal Commission, or at least 1915, I guess, and you
38 have read that -- or Mr. Jackson read the evidence at
39 some length. And in 1914 you -- they petitioned for
40 the abolition of the potlatch. Do you say that was
41 under the influence of the missionary?
42 A Yes, I would think it's very likely to have been.
43 Q So --
44 A It was in response to a great deal of anxiety on the
45 part of the missionaries about the failure of Indian
46 agents sufficiently to control the potlatch. I think
47 the few years preceding 1914 are marked in the

1 documents by lots of comments from missionaries saying
2 that really there is far too much of this feasting
3 going on, and it should be stopped.
4 Q But it seems to me we have this sequence, don't we?
5 We have in 1891, it appears that they obstructed Mr.
6 O'Reilly in laying out the reserve. In 1896 they
7 appear to have changed their minds in that regard.
8 A They? Who is the "they" in the second --
9 Q The people who described themselves as "We are the
10 chiefs of the people of Kispiox."
11 A Those who are described in the letter written by
12 somebody -- now carries Mr. O'Reilly's handwriting. I
13 can't go along with these facts that you are asking me
14 to go along with.
15 Q And then in 1914 they petition for the abolition of
16 the potlatch, and that's a document which I believe
17 you have introduced.
18 A There is a petition, yes.
19 Q Yes. Is that too a spurious?
20 A Context is the whole issue here.
21 Q Well, that's what I am trying to explore with you.
22 A Well, I don't think you are. You are not asking about
23 the context. Let's talk about what happened in 1908
24 to '14.
25 Q Please, just answer my questions, Mr. Brody, and --
26 THE COURT: The question is whether you say or suggest that that
27 is a spurious petition.
28 THE WITNESS: I am strongly inclined to the view, My Lord, that
29 missionary influence being very --
30 THE COURT: You think it is?
31 THE WITNESS: I think it is, yes.
32 MR. GOLDIE:
33 Q Do you apply the same reasoning to the document of
34 1896?
35 A That's a different kind of document. I haven't looked
36 at this document before. I would like to think about
37 what its contexts are, and find out a bit about Yale
38 at the time, and find out who this third signature is,
39 and find out if there are any other references to this
40 document in the archives. I would be very interested
41 in seeing the original, noticing whose handwriting the
42 original was in. I can't establish pieces of
43 information from these kinds of documents. All one
44 can establish is that somebody wrote it.
45 Q Well, would you -- you have introduced, and I am now
46 referring you to it, the evidence of the Gitksan
47 before the Royal Commission in 1915, and you attach

1 some significance to that.
2 A Yes, because there we have line by line all these
3 little passage by passage translations that are
4 recorded word for word by persons with that job, and
5 therefore those documents have a different standing,
6 or at least those parts of the documents that are --
7 constitute a transcription of translated statements of
8 a different status.
9 Q And you invite the court to accept those statements at
10 their face value?
11 A I invite the court to give more credence to the
12 relevance of those statements than to these.
13 Q All right. Well, now, in 1924, and I am going to ask
14 you to turn to tab 11. This is a petition addressed
15 to the Honourable MacKenzie King, Premier of The
16 Dominion of Canada, re Indian land question.
17 THE COURT: Mr. Goldie, do you mean --
18 MR. GOLDIE: Tab 11.
19 THE COURT: That's tab 12 in my book.
20 MR. GOLDIE: Tab 12 should be Mr. Vowell's covering letter of
21 the letter of the 10th of February.
22 THE COURT: Mr. Vowell's covering letter is stapled to and
23 included in my tab 11. Should they be separate?
24 MR. GOLDIE: No, I'll -- I don't know what my friends' books
25 are.
26 MS. KOENIGSBERG: Mine is the same.
27 MR. GOLDIE: I see. Perhaps does Your Lordship have anything
28 that corresponds to a copy of a letter to MacKenzie
29 King?
30 THE COURT: Yes. That's tab 12 in my book.
31 MR. GOLDIE: Well, let me deal with that, and --
32 THE COURT: All right.
33 MR. GOLDIE:
34 Q Have you seen this document?
35 A No.
36 Q And it starts off with a statement:
37
38 "In view of the fact that our forefathers were
39 the occupants and possessers of the land of
40 this country in the days before the coming of
41 the white people, and in view of the fact that
42 for that reason they are now the proper
43 inheritors of this land; and furthermore in
44 view of the fact that in 1908 the Indian people
45 petitioned the Dominion Government for a
46 settlement of our Land Question, we the chiefs
47 of the Kispiox Band of Indians, now resident in

the Kispiox and Glen Vowell reserves, comprising in all a population of 400 people being dissatisfied with the present arrangement of the Indian Land in question that concerns our people respectfully ask:
First: That the present Indian Reserve System be abolished.
Secondly: In place of the present reserve system the peoples of the Kispiox Band now living in Kispiox and Glen Vowell villages be granted a clear title to a strip of land watered by the Kispiox and Skeena Rivers; said strip of land to extend from the Kispiox Sawmill, midway between Hazelton and Kispiox Village, to the Brown Bear Lake approximately eight miles north. Said land bordering on the headwaters of the Kispiox River and draining into the Nass River."

Have you seen this document before?
A No.
Q And then there are a number of names that I assume that are familiar to you. Walter Geel, John Johnson and so on.
A Yes. Some are not familiar to me.
Q Yes. What -- since you haven't seen it, you are not familiar with it. I take it you can't characterize it. What -- would it not be equally consistent with the facts, as you know them, that the statements made by the Gitksan before the Royal Commission were the statements that were in harmony with Mr. Tomlinson's views on the land question?
A I'm not sure what Tomlinson's views were on the land question. I know he -- there was a document I have seen, which I think he had a large hand in, which came from the people of Kitwangak. I can't recall the date, but -- and I'm not even sure that Tomlinson senior was still around in 1924. We maybe have -- we may have two different Tomlinson's here. I'm not sure about this. I think that there were -- Tomlinson -- the Reverend Tomlinson we know from the 1800's -- the late 1800's had a son, who also is a -- who is also is a missionary, but I am searching around in memories here.
Q Perhaps you cannot answer the question, because you say you are not familiar with Tomlinson's views on the land question. But without regard to those views, I

1 have shown you some documents emanating from the
2 people of Kispiox, which at least in one case you say
3 was certainly under the missionary influence.
4 A "Certainly" is not a word I would use. It makes me
5 wonder if perhaps the missionaries had some part in
6 this. In the case of the 1914 petition, I would say
7 more than one -- I strongly suspected, because it's
8 indicated on the document that Tomlinson and Raley
9 were involved.
10 Q Yes. But that has to do with the potlatch?
11 A That has to do with the feast, yes.
12 Q I am talking about the land question.
13 A Yes.
14 Q And I am going to suggest to you that the positions
15 taken by the respective Wet'suwet'en and Gitksan
16 people before the Royal Commission are equally to be
17 taken at their face value, or equally to be taken
18 at -- as under the influence of missionaries with
19 respect to the land question.
20 A I think I said statements that are translated in situ
21 by someone who we know from the documents is a proper
22 translater, carrying more weight with me than
23 documents, that indicate a person summarizing the
24 peoples' point of view in rather large terms, which is
25 the case in Godfrey in 1915.
26 THE COURT: Mr. Goldie, have I ever seen the terms of the Royal
27 Commission?
28 MR. GOLDIE: I don't think so, My Lord.
29 THE COURT: Or his report?
30 MR. GOLDIE: I think the documents that have been submitted so
31 far are just transcripts.
32 THE COURT: Yes. Is there a report?
33 MR. GOLDIE: There is a report, the interim report, final
34 report, and there is a considerable body of material
35 relating to the creation of that commission, which
36 will eventually be coming before Your Lordship here.
37 THE COURT: I can restrain my curiosity and enthusiasm.
38 MR. GOLDIE: Now, to straighten out the documents, My Lord. I
39 want to refer to what is under my tab 12, and which I
40 believe is attached to the O'Reilly letter under tab
41 11, is it, or 10 in Your Lordship's book?
42 THE COURT: The Vowell letter?
43 MR. GOLDIE: Yes.
44 THE COURT: Well, it's part of my tab 11.
45 MR. GOLDIE: Would you see if that's his tab 11. For some of us
46 it will be under tab 12. This is a copy -- this is a
47 letter from Vowell to the Deputy Superintendent of

1 General Indian Affairs in Ottawa.
2 THE COURT: That's my tab 11?
3 MR. GOLDIE: Yes.
4 THE COURT: Attached is a typewritten letter to Mr. Vowell from
5 Geel, Kliiyem Lax Haa and another name I can't make
6 out.
7 MR. GOLDIE:
8 Q Now, that is in text expressing the same thought, but
9 is addressed to Vowell, and it states:
10
11 "We are the chiefs and people of Kispiox
12 Village, Upper Skeena. It has been in our
13 minds for some time to write you a few words as
14 you are appointed to be our great Chief. We
15 wish to ask you to tell whoever comes up here
16 to survey the land, to enlarge our present
17 reservation in order to accommodate the number
18 of people living here. We have sent a letter
19 to Mr. O'Reilly to express our sorrow at the
20 way we treated him when he came here to mark
21 out the reserve. It was through our blind
22 ignorance we did it. We have now become
23 Christians and see our folly. We have our
24 wrote our Missionary to write these words."
25
26 Doesn't that assist you?
27 A Yes, it does.
28 Q And then Mr. Vowell's covering letter of the 13th of
29 April, 1896:
30
31 "I have the honour to submit herewith for your
32 consideration 'copy' of a letter dated 10th
33 February last from the chief and principal men
34 of the Kispiox Band of Indians in the Babine
35 Agency who are desirous of having their Reserve
36 enlarged and surveyed.
37 I beg to state that a 'copy' of the
38 Indian's letter has been sent to Mr. I.R.
39 Commissioner O'Reilly, for his information of
40 action. I have the honour to be ..."
41
42 Et cetera. My Lord, perhaps it would be best if
43 that was treated as part of tab -- or it is in Your
44 Lordship's book, and I ask that that be marked.
45 THE COURT: 995, tab 11, both documents.
46 MR. GOLDIE: Yes. And the letter to the -- to MacKenzie King is
47 in your --

1 THE COURT: That will be tab 995 -- tab 12. And so the letter
2 to O'Reilly of -- or O'Reilly's letter of the 9th of
3 April, 1896 will be enclosure dated February 10, 1896
4 as --
5 THE REGISTRAR: 995-10.
6 MR. GOLDIE: 10.
7
8 (EXHIBIT NO. 995-10 - TAB 10 - APRIL 9,
9 1986 - LETTER OF O'REILLY)
10
11 Q Now, I have some general questions about your chapter
12 on the front here, and I am referring, or I will be
13 referring to page 70 and 71. At page 71, paragraph 2
14 you say there were three dominant influences which
15 marked the early stages of the frontier culture and
16 the church, and you identify in your report Father
17 Morice and Mr. Tomlinson, the fur trade, which, as far
18 as I can make out, you identify with the Hudson's Bay
19 Company, and government, which is represented in your
20 report largely by Mr. Loring. Basically the rest are
21 nameless. And when I say the rest, I am talking
22 about, for instance, the white settlers.
23 A Yes, I am talking about the early stages. The white
24 settlers in some frontiers, of course, come sooner
25 than others, but if we are into the north and at or
26 beyond the edge of agricultural settlement --
27 Q And the white packers and the white -- and the white
28 storekeepers --
29 A Yes.
30 Q -- certainly, and the miners were in there at a very
31 early stage?
32 A Miners probably in northwest B.C. should have had a
33 special mention here, yes.
34 Q Yes. Because the miners went through Hazelton to get
35 to the Omineca --
36 A We are talking about agencies here. I notice that a
37 combination of three agencies. I am not talking about
38 all the possible individuals who came up. I am trying
39 to formalize the institutional forces of work, and the
40 institutions are trade companies, church and
41 government. That there were other individuals is not
42 at issue.
43 THE COURT: So the Hudson's Bay Company should be expanded --
44 THE WITNESS: I'm sorry.
45 THE COURT: So the Hudson's Bay Company as one of your three
46 agencies should be expanded to trade companies?
47 THE WITNESS: Yes. It says fur trade companies here. I think

not specifically restricting my thoughts to the Hudson's Bay Company.
THE COURT: And you wouldn't confine it, then, just to the fur trade companies?
THE WITNESS: No, any trade company.
MR. GOLDIE:
Q I see. All right. Thank you. Basically the white individuals at the frontier from time to time are not given the same treatment of identification, and as the -- as the people representing the Indian and the Indian cultures?
A In this paragraph they are not.
Q Yes. Well, generally you characterize the whites who come to the frontiers as having a sense of superiority, underpinned by force, and you refer to the police and army of a nation state, in this case Canada, are waiting in the wings. Now, of course the early stages of the frontier is before the nation of Canada was created, wasn't it?
A What I have in mind here vis-a-vis the northwest B.C., the 1870 to '90 period is of great importance to my opinion.
Q Well, there are white people who are in that area before British Columbia joined the union.
A Yes, there are agencies there, trade companies, the church.
Q Now, the -- for instance, when -- you're familiar with Major Downy who went through this area in --
A Yes, I know of him. I don't know about him.
Q He was sent there by Governor Douglas?
A Is that so?
Q Do you know?
A No, I don't know that.
Q And he wasn't backed by any police or army of a nation state, was he?
A I don't know much about him, but the general proposition here is not to do with whether an individual was specifically supported. It's to do with the way in which the institutions operate and interconnect.
Q Well, when Dewdney located a trail for the miners in July of 1871, he wasn't interconnecting with either the Hudson's Bay Company or the church, was he? He was there to provide a means of access to the gold fields.
A That's right. Yes.
Q Yes. And he was there in July of 1871?

A You are telling me, yes. I don't know these details.
Q You don't know?
A No --
Q Didn't he post a sign at Hazelton, protecting the Indian village from settlement?
A I didn't know that.
Q Well, if you look under tab 36. This, My Lord, is Mr. Dewdney's letter of July 17th, 1871, written from the forks of the Skeena, and it -- I refer to page 11, which is the third page from the end. Have you got that? It begins with the words "By them you will see that the cost of the work ..." That's the page I am looking at. Do you have that?
A I can't see that, no. Perhaps you can point it out to me.
MR. GOLDIE: Does Your Lordship have that page?
THE COURT: Yes.
MR. GOLDIE: Does he have the page?
THE COURT: Have you got the third page from the end?
THE WITNESS: I am, yes, but there seems to be some difficulty here.
THE COURT: "As I hear from Mr. O'Reilly."
THE WITNESS: Oh, yes.
MR. GOLDIE:
Q You have got that?
A Yes.
Q Mr. Dewdney is reporting:

> "As I hear from Mr. O'Reilly, that he is instructed to settle the Indian Reserves in this part of the district, I have done nothing further than post notices on the Gitanmaax and Babine ranches."

That was part of the very early part of the frontier life?
A Yes.
Q Yes. And you make a number of generalizations that I want to be sure I understand the reference. You say, and I quote at the bottom of page 72:

> "Ignorance and denial of aboriginal culture follow all too directly from some basic features of Euro-Canadian culture. Men and women at the frontier, therefore, ought to ignore, intrude upon, or endeavour to transform ways of life that they know little or nothing

about."

Is that -- what is the time period that you are referring to there?

A I am referring to the early phase of any of the northern frontiers.

Q Well, in this particular case.

A Well, I have in mind 1820's through to -- depending on the sectors.

THE COURT: Where is the passage you have read from?

MR. GOLDIE: 72, My Lord, right at the bottom of the page.

Q And the question is: What time period does that apply to in respect of the period -- of the area --

A Just remind me of the exact passage you just read out.

Q Page 72.

THE COURT: Last 4 lines.

THE WITNESS: The last 4 lines. Yes. Well, this is a proposition about the connection between a view of aboriginal culture and the assumptions within the settlers or frontiersmen or newcomers' culture, and so it applies through to the present.

MR. GOLDIE:

Q So it starts in the 1820's and continues right up until the present day?

A In varying forms and varying degrees.

Q And it applies, of course, to the people who are there? That's who you are talking about, is it not?

A The people who arrive.

Q Well, who are there?

A I am talking about people arriving from somewhere else and coming -- that's the whole point about the analysis here.

Q And is that -- does that generalization apply to the people who arrive, work and die there?

A I am -- yes, I am saying that something follows from something else, and go on to say that men and women at the frontier often ignore and intrude upon and endeavour to transform ways of life that they don't know about.

Q Yes.

A Or little about. And although, of course, there is great variety among individuals. If you look at page 70 of my report, in the middle there, I make the observation it's very important in this context, and I quote:

"Although white individuals and agencies at the

1 frontier from time to time have held widely
2 differing points of view."
3
4 I am allowing, of course, for the possibility that
5 there are many individuals at the frontier. The
6 frontier is a place for individuals. But I am trying
7 to find -- as anthropology I am afraid has to try and
8 find -- a cultural centre of gravity.
9 Q And I am trying to determine from you whether you have
10 made any attempt, cite specific attempt to determine
11 the attitudes and points of view of the people who
12 went to live there.
13 A I have indeed, yes.
14 Q Yes. And where do we find your informants in that
15 respect?
16 A Well, I didn't do an analysis in this opinion of the
17 work I carried out in the white community. That is to
18 say, I didn't write up my findings among the
19 non-Indian population of the Gitksan-Wet'suwet'en
20 territory.
21 Q Presumably because you considered it to be
22 unnecessary?
23 A It wasn't within the province of what I was trying to
24 do here.
25 Q Well, I thought you were trying to talk about the
26 interaction of two communties.
27 A I look at all points in my report at specific places
28 of interaction at the meeting between the missionaries
29 and whites as recorded in early accounts given to
30 Barbeau Beynon. I look at the ongoing connection
31 through the trapline registration issue, all the time
32 I am doing an anthropology of the Gitksan-Wet'suwet'en
33 as they experience the pressures upon their lives.
34 Q And you did not consider it necessary to analyze it
35 from the standpoint of the white settlers?
36 A No. I am doing an analysis through the peoples' eyes.
37 I am trying to find out what things meant to them, how
38 it affected them. I am trying to find out the ways in
39 which their institutions were seen by them, operated
40 by them. I am looking at the degree to which specific
41 aspects of their culture did and did not continue.
42 That leaves me to research what centers on the people.
43 The people in this case are the Gitksan-Wet'suwet'en.
44 Q And to take the stories that you hear from them and
45 their sources and treat them as facts?
46 A No. To listen to them carefully, accumulate a whole
47 universe of information, and try and see what it is

1 telling me. And that universe of information comes
2 from interviews, participation, documents, old
3 records.
4 Q And a part of that you spend -- from part of that you
5 spend your -- some aspects of your report in
6 suggesting that the potlatch was --
7 A Feast, I think the word there is, Mr. Gordie, in
8 Northwest British Columbia.
9 Q I beg your pardon?
10 A Feast, I think it is.
11 Q Feast was forbidden, and an attempt was made to put it
12 down; isn't that right?
13 A That's right, yes.
14 Q Now, in point of fact the white community there was
15 entirely tolerant of the feast, wasn't it?
16 A Not entirely tolerant. There were tolerances that I
17 say in my evidence, and as I say in my opinion, there
18 is some striking examples of tolerance for the feast.
19 Clifford's memorandum I referred to. Fitzstubbs I
20 referred to. The passages of Loring that I have
21 referred to, where he says "Don't surpress the feast,
22 it will be too expensive and too difficult". It's not
23 an enthusiasm for the feast in Loring's case, but a
24 kind of pragmatism. In Loring's documents again and
25 again there are indications that the feast is
26 declining, so one doesn't need to worry too much.
27 So there are two sides to this, I am fully aware,
28 but the overall drift centered on the missionaries,
29 but spreading out from there into other places, into
30 legislation, into reform of legislation, I believe in
31 1918, there is an attempt to stop the feast.
32 Q Yes. All right. Now, look under tab 22. And I want
33 to deal with this as quickly as possible. And under
34 tab 22 is a copy of the Interior News of 1930.
35 A 22?
36 Q 22.
37 A Yes.
38 Q And the next page attached to it is an attempt to make
39 it a little more legible. But it records the death of
40 Mooseskin Johnny?
41 A Uh-huh.
42 Q And it records the fact that there was -- that there
43 will be a new chief following, lobbying and parleying,
44 and finally on the next page is July the 16th, 1930:
45
46 "Jimmy Mitchell new chief at Moricetown. At
47 elaborate tribal ceremonies concluded on

1 Wednesday of last week .... Large numbers,
2 there was much feasting and merriment as the
3 ceremony proceeded."
4
5 And so on and so forth. That's what I meant when
6 I said "tolerance".
7 A Well, there is a --
8 Q And under tab 23 is an order-in-council of the
9 Province of British Columbia, requesting the Dominion
10 Government to enquire into the origin, nature and
11 meaning of the potlatch, with a view, should it be
12 ascertained that the grievance complained is well
13 founded, and if so the immediate repeal of so much of
14 the said sections of the federal statute --
15 A This is the 1896 document?
16 Q That's right.
17 A Yes.
18 Q Yes.
19 A It didn't result in any reduction of the pressure on
20 the feasts, as we know from Loring's comments in 1899
21 and 1901, I believe.
22 Q Well, he was enforcing the federal statute, wasn't he?
23 A He was saying that it -- he was saying that the
24 federal -- let me start again. He was enforcing the
25 federal statutes, but he is saying again and again in
26 these documents that the feast is a bad thing, it's
27 against civilization, it is contrary to the proper
28 development of the people and so on. He discourages
29 people from going to feasts.
30 Q And under tab 24. Is this -- are these the Clifford
31 and Fitzstubbs' documents that you are talking about?
32 A No, this is the memo. It looks like a Clifford memo.
33 Q That's what you were talking about?
34 A And then Fitzstubbs reporting, yes, and the Pocock
35 letter, yes.
36 Q Yes.
37 THE COURT: The dates -- it's not dated.
38 MR. GOLDIE: It's -- yes, the --
39 THE COURT: Is that 1890?
40 MR. GOLDIE: It's 1890.
41 THE COURT: Yes.
42 MR. GOLDIE: And then there are two documents or three really.
43 One is Clifford's memorandum, the other is Fitzstubbs,
44 which is the 13th of March, 1890, and then there is
45 Mr. Pocock, who Captain Fitzstubbs refers to. And
46 those are the documents that you referred to. May
47 those be marked, My Lord, beginning with the newspaper

account under tab 22, which consists of the Interior News of April the 30th, and the Interior News extracts of July 16th.

THE COURT: All right. 995-22.

(EXHIBIT NO. 995-22 - TAB 22 - EXTRACTS FROM INTERIOR NEWS)

MR. GOLDIE: The British Columbia order-in-council of 1896 under tab 23.

THE COURT: April 27.

MR. GOLDIE: 1897, yes, My Lord.

THE COURT: 23, yes.

(EXHIBIT 995-12 - TAB 12 - PETITION TO PREMIER McKENZIE KING)

(EXHIBIT NO. 995-23 - ORDER IN COUNCIL - 1897)

MR. GOLDIE: And then the Fitzstubbs, Clifford material, which is 1890.

THE COURT: Yes.

MR. GOLDIE: And then there is attached a letter from Mr. Loring.

THE COURT: 24.

MR. GOLDIE: Under Tab 24, which is dated July 15th, and I think it's 97.

(EXHIBIT NO. 995-24 - CLIFFORD MEMO - 1890 CAPTAIN FITZSTUBBS' DOCUMENT AND LETTER OF POCOCK JULY 15, 1897)

THE COURT: Yes.

MR. GOLDIE: Reporting on the feast. I'll come back later to Loring. Then I want to refer to an extract from a report of a R.C.M.P. Constable under tab 21. This is dated January the 6th, 1921. And, My Lord, it follows from Mr. Loring posting a notice requiring Section 149 of the Indian Act to be adhered to in prohibiting the holding of what is commonly called a potlatch, and the R.C.M.P. were -- attended a meeting which was requested by the Gitksan present there, being the R.C.M.P. Constable Dr. Wrinch, Mr. Sergeant, Dominion Indian Constable James Havener and Dr. Marius Barbeau.

MR. JACKSON: Mr. Marius Barbeau.

THE COURT: Yes.

MR. GOLDIE: Yes.
Q And:

"The meeting was called and attended by many of the Indian chiefs of the Skeena River ..."

I am reading from page one, My Lord.

"The meeting was called and attended by many of the Indian Chiefs of the Skeena River covered by the Babine and Skeena River Indian Agency, and the object of the meeting was for the purpose of placing certain facts before Mr. R.E. Loring, Indian Agent for the aforementioned Agency; unfortunately Mr. Loring was not present, as he had been pensioned from Office on December 31st, 1920, however Indian Constale Havener was present as representattive of the Indian Department."

And then he goes on to state that Loring's notice had been posted and had given concern, and the meeting was a result of that. And I direct your attention to page 2, Mr. Brody. Paragraph 2:

"In the various speeches which were made, the Indians gave many instances as bases for their argument such as it was their own money and not the Government's money which they were spending, they are all non-treaty indians, one Indian stated that the Hudson Bay Co. had given a big feast last summer, the 250th anniversary of the Hudson's Bay Company at which present were handed out to the Indians, yet it was not a potlach in the white man's law, another Indian gave nine instances of Potlatch customs which had been dropped, namely the eating of raw dog meat, the burning of canoes and blankets, the buring of live slaves, etc., etc, and they all stated that the potlaches did not impoverish them."

Now, the nine instances which are referred to by the speaker and recorded by the R.C.M.P., to the extent of four, namely, the eating of raw dog meat, the burning of canoes and blankets, the burying of live slaves, those are features of the potlatch which

1 I assume -- or feasts which I assume even you would
2 find undesirable.
3 A They are features of the feast. I don't think the
4 Gitksan-Wet'suwet'en had in some cases -- the burying
5 of slaves was not a Gitksan or Wet'suwet'en custom to
6 my knowledge. Raw dog meat I don't have any great
7 difficulty with. I have lived in the artic.
8 Q Yes. Well, perhaps you are in favour of that.
9 A I am not in favour of it, Mr. Goldie. You asked me if
10 I had difficulty with it.
11 Q Yes. These are certain features of the feast,
12 however, which resulted in a considerable opposition
13 to it, other than the allocation of property and the
14 features which are part of it today.
15 A Are we talking about Gitksan-Wet'suwet'en territory or
16 about the whole of --
17 Q We are talking about a meeting.
18 A In Gitksan and Wet'suwet'en territory?
19 Q In the Gitksan-Wet'suwet'en territory in which one of
20 the informants said "Look, we have nine cases of
21 potlatch customs which have been dropped ..."
22 A But he is not referring to the customs of his own
23 peoples in all respects. At least two of those
24 important respects, the customs that became an issue,
25 as I understand it, on the coast.
26 Q Well --
27 A And he is not -- burying of live slaves was not a
28 custom.
29 Q Well, the Gitksan had slaves, didn't they, at one
30 time?
31 A The adaawk refer to slaves, yes.
32 Q So --
33 A Don't ever refer to the burying of slaves. And the
34 anthropology on the whole is strongly of the view that
35 the killing of slaves was confined as a feast element
36 to a very limited area of the northwest coast culture.
37 Q Now, the -- and with respect to Loring's views, he
38 regarded the feast, when it was free of objectionable
39 features, as being perfectly all right, didn't he?
40 A You are basing this on which document?
41 Q Well, I am asking you the question.
42 A Loring -- he seems to be against the feast generally.
43 He is specifically against several customs in the
44 feast, but he does, I think in 1911 and in 1913, say
45 that he has been to feasts that are perfectly nice,
46 because the tables are laid neatly and such like
47 things. So he tends to take a view of the feasts as

all right, so long as it isn't improper, according to his notions of propriety.

Q Uh-huh. Would you -- this is his letter of December 31st, 1916, agent's report on occurrence from this agency during the month of December. And on page 2 he says:

> "As wont - in a custom which not obtains with the Hagwilgets of late years - during this month the Kitsus, by way of diversion, spent some time in attending feasts in memory of those of their number deprted by death during the year just ended; and happily there at every semblance of the whilom objectionable features of the potlach is being departed from."

He enforced the potlatch with -- enforced the ban against potlatch with some reluctance; isn't that right?

A The enforcement of the ban against the potlatch was really the responsibility of the magistrate under the legislation. Until 1918 -- the legislation was changed in 1918, I believe, specifically to make enforcement of the ban on the feast the responsibility of the Indian agent and not the magistrate.

MR. GOLDIE: Yes. My Lord, may that be added as the last tab?

THE COURT: This will be number 40, I think.

(EXHIBIT NO. 955-40 - TAB 40 - LETTER DATED DECEMBR 31, 1916 - LORING)

THE REGISTRAR: 40.

MR. GOLDIE:

Q Now, I have put some excerpts in from your books, and I am not going to take up any further time with that, but if you wish to look under the rest of the tabs to satisfy yourself that they are excerpts from your books, please do.

A Can you direct me to the tabs in question.

Q Yes. I will do that right now. Under tab 25, an extract from The People's Land. That's your book, is it not?

A Yes.

Q Tab 26, Indians on Skid Row. That's an extract from your book, or your report I should say?

A Yes.

Q Maps and Dreams under tab 27. This is the part

that -- from the edition published by Douglas & McIntyre?
A Yes.
Q Under tab 28 I have put an item from the Interior News of one Pete Anderson, and I am asking Your Lordship to remove that. Under tab 29 I have a copy of a publication, the Sound Heritage Series of the Province called Martin, The Story of a Young Fur Trader. Are you familiar with that?
A A little. I think I once skimmed through it and noticed one or two things about it.
Q Was it one of the sources that you consulted?
A No, not really.
Q Yes. Do you know what it's all about?
A Yes. It's a story of a man who goes in about 1909 to Hazelton to stay with his uncle.
Q Yes.
A And then goes up to Babine, and then is involved with his uncle in speculating land at Round Lake, I believe. He buys -- he is the second buyer of Round Lake --
Q His uncle bought it?
A His uncle --
Q He bought for his uncle?
A He bought it for his uncle. He went to Round Lake, if I recall.
Q He didn't put money in himself?
A No, but he went and found the place and arranged the deal.
Q Yes. And --
A It's a good little insight into the way in which the Wet'suwet'en lands were part of a speculation in the area, rather than a settlement.
Q Well, he spent 34 years in the Babine Lake, Bulkley Valley area, sometimes as a fur trader, sometimes as a rancher, sometimes cutting ties for the railroad?
A Yes.
Q Some years with the forest service?
A Yes.
Q Living within what is now claimed as the territory?
A Partly in and partly out. He didn't live within the territory for a long time at first. He went to Hazelton, and I think rather quickly went onto the Babine, and then went briefly back to Hazelton, then over to Fort St. James, I believe, then down to the Telkwa area. I can't remember all the details, but some such things.

1 Q This is all in 1909?
2 A Yes.
3 Q And he --
4 A About 1909 and thereafter.
5 Q Yes. And he married the daughter of a high chief?
6 A I didn't know that.
7 Q Uh-huh. Would that not be of interest to you?
8 A Yes, it would As I am saying, I looked at this quite
9 awhile ago, and --
10 Q There are lots of oral histories available in the
11 white community, aren't there, of the people who lived
12 there --
13 A I wouldn't say lots. There are very few oral
14 histories available of people who lived in the Indian
15 world who would actually see it from inside. There
16 are very few available people who spoke in the
17 language with the people and so on over a long period
18 of time. That's why the Barbeau Beynon archive is so
19 remarkable.
20 Q Uh-huh. Well here we have an oral history of a man
21 who started out in 1909 and homesteaded, was an
22 independent fur trader and married, as I say, the
23 daughter of a high Wet'suwet'en chief.
24 A I am just skimming through it here. I note she's
25 indicating that in 1909 Loring is not any longer at
26 Hazelton. That's rather surprising. Says "Loring
27 left Hazelton in 1920".
28 Q He married Pauline, the daughter are of Chief Daniel
29 Leong?
30 A Perhaps I can find out more about this by reading the
31 oral excerpt here.
32 Q I am not asking you to comment any further on it. I
33 would like that marked, My Lord.
34 MR. JACKSON: I object, My Lord.
35 MR. GOLDIE: On what base?
36 MR. JACKSON: It seems that Mr. Goldie is putting this --
37 characterized as an oral history. So far in this
38 trial --
39 THE COURT: Looks like a written history.
40 MR. JACKSON: It seems to be an oral history reduced to writing,
41 but to the extent it's being submitted, it seems to me
42 that more evidence should be led by my friend, and
43 certainly not through this witness, as to the way in
44 which this was compiled, before it can be tendered as
45 an exhibit, My Lord --
46 MR. GOLDIE: Well, Mr. Martin, of course, is dead. The -- this
47 is taken by a tape recorder. It's tendered as part of

the context of the white community that my -- that the witness has been talking about. The witness is familiar with it. He has characterized it in some respects, and in my submission I am entitled to have it marked.

THE COURT: What is the date of this publication? Do you know?

MR. GOLDIE: 1981. It is a publication of the provincial archives, and it is based upon interviews by a Mr. Imbert Orchard, who is a CBC producer specializing in radio programmes of earlier days, and the part of it is a record of his trip with Martin in -- and Martin had been long retired, and part of it is literally the -- his tape recording.

THE COURT: Yes. Well, I am sure there is much fascinating material here, but on what basis is it sought to be produced into evidence, Mr. Goldie?

MR. GOLDIE: Well, it is introduced, or I put it to the witness on the basis of material -- information about the white community of which he was familiar, but to which he makes no reference. And in my submission, if he's going to do what he set out to do, it was incumbent upon him to take into account the sources of information about the white community that was available to him.

THE COURT: Are you going to ask him anything further about it?

MR. GOLDIE: I didn't want to.

THE COURT: All right. Well, I think, because we are under some time constraints, I think it should just be marked for identification, and we'll talk about it some other time.

(EXHIBIT NO. 995-29 FOR IDENTIFICATION - TAB 29 - "MARTIN - STORY OF A YOUNG FUR TRADER")

MR. GOLDIE: And 26 -- 25, 26 and 28 -- not 28. 25, 26, 27 should go in, My Lord.

MR. JACKSON: Again, My Lord, I rise to -- is it appropriate for my friend to put in extracts from quite extensive books, without giving my -- giving Mr. Brody, first of all, notice of what extracts they are, an opportunity to comment on whether in fact they are in context, out of context. I object to the little pieces of a larger volume being put in totally out of context.

MR. GOLDIE: My friend can put in the whole book if he wants to. All I want to have from the witness is these are extracts from his books.

THE COURT: It seems to me I have heard the other side of this

argument. Not long ago where Mr. Grant or Mr. Rush or Ms. Mandell, I think it was with respect to Mr. Daly, Dr. Daly, Mr. Willms wanted to supplement other parts that he thought necessary to take the context, and as Mr. Goldie says, that you can put the whole of the rest of the publications -- that you can put in the whole of the rest of the publication if you wished, Mr. Jackson. But it seems to me that the problem of context is resolved in that way, and you are free to take up Mr. Goldie's offer if you wish.

MR. JACKSON: Yes, My Lord.

THE COURT: 995-26 and 27?

THE REGISTRAR: And 25.

THE COURT: And 25.

(EXHIBIT NO. 995-25 - TAB 25 - "PEOPLES LAND")

(EXHIBIT NO. 995-26 - "INDIANS ON SKID ROW" - H. BRODY)

(EXHIBIT NO. 995-27 - "MAPS AND DREAMS" - H. BRODY)

MR. GOLDIE:

Q Mr. Brody, in some of your -- a number of instances in your report you use the word -- phrase "confined to reserves". You are not suggesting any physical confinement, are you?

A I would have to look at the passages now. I am not suggesting there was an apartheid system of some sort.

Q No. Now, you have stated that you have looked at trapline records.

THE COURT: Are you starting a whole new subject, Mr. Goldie?

MR. GOLDIE: I will just be a few minutes, My Lord.

THE COURT: Yes, all right.

MR. GOLDIE:

Q You looked at trapline documents, and I am not going to examine you with respect to the evidence you gave, which was quite extensive, but you stated in your evidence at volume 214, page 15480, that you looked at trapline documents in Hazelton, two boxes of trapline documents in Smithers.

> "Trapline documents I also looked at when I was working in northeast British Columbia. There was a big overlap of documents, all the documents that were in Prince George ... and I had access to documents in the provincial archive in Victoria."

Now, over there there are a number of volumes which constitute, so far as I am aware, the trapline documents to which you are referring. I want to show you the index. Just this one copy, My Lord. There is the AGBC number, which is irrelevant here, the trapline number, and you're familiar with that?

A Yes, I am familiar with it.

Q And the trapline holder and their given name, and then the tab numbers. And then under the tab numbers are the kind of documents that you looked at?

A The -- a lot of these documents were looked at by research assistants that looked at them for me. And then I looked at photocopies of large numbers of -- hang on.

THE COURT: Mr. Brody, the Reporter can't take down these asides.

THE WITNESS: I'm sorry.

MR. GOLDIE: Perhaps, My Lord, what I might do is simply ask Mr. Brody to confirm that these are the trapline documents, in part at any rate, that he was referring to in his evidence, and upon which he bases the opinions he stated. And if we could adjourn on that point, then perhaps that could be done over the lunch hour.

THE COURT: All right. 2:00 o'clock.

Are you able to give your friends any indication of how long you will be, Mr. Goldie?

MR. GOLDIE: I will be about another twenty minutes or so.

MR. JACKSON: I just want to point out there are twenty volumes of documents that Mr. Brody is going to have to --

MR. GOLDIE: Mr. Brody's evidence was that he had looked at trapline documents or had them looked at on his behalf.

THE COURT: He is not being asked to memorize them or anything like that. Just going to be asked to give a comparison, is he, that this is the sort of document --

MR. GOLDIE: Yes. I want identified that the documents that he based his opinion on are similar to these.

THE COURT: These kinds of documents?

MR. GOLDIE: Yes.

THE COURT: Yes, all right. 2:00 o'clock please.

THE REGISTRAR: Order in court. This court will adjourn 'til 2:00.

(PROCEEDINGS ADJOURNED FOR LUNCHEON RECESS)

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS HEREIN TO THE BEST OF MY SKILL AND ABILITY.

_____
LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RECONVENED AT 2:00 P.M.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Goldie.
MR. GOLDIE:
Q My lord.
Mr. Brody, did you have a sufficient opportunity to sample the trapline documents that I have assembled and --
A Yes, I think I had enough time to get a sense of them.

Q These are the kind of sources that you utilized in --
A I never had access to that complete set. I had -- I found in Smithers in the tribal council library, when it was located in Smithers temporarily, a box of about 30 of those documents. Also, my research assistant, when going through the administration files in the provincial archives, would occasionally come across the odd one that had been included -- or a copy of which had been included in the reports, the monthly reports sent from the field to head-office.
Q All right. Well, the -- for instance, you paid attention to files which were registered in the name of "X and Co.-- and company". You give specific evidence with respect to that?
A Yeah. But not by going through that index. I had never seen that index.
Q No, I quite understand that. I'm not suggesting that you did go through this index. But you found files which allowed you to give evidence of the derivation of that and to draw certain conclusions from that?
A I found also "and Co." marked on the map a very important source of my sense of -- use of "and Co.", and very important, the people's own accounts of the trapline registration process, they mentioned the "and Co.".
Q Yes.
A Company lines, especially vis-a-vis southern Wet'suwet'en and Kitwancool, as I recall. And of course the "and Co." device is referred to often in documents that come from the administration files from Indian Affairs and Fish and Wildlife.
Q You put it this way in your evidence in chief at page 15428, volume 213, line 32:

> A "...one sees in the trapline documents of the day and on maps that were kept in Indian agents' offices, the expression 'and company', it will say, 'Thomas Wright and Company'."

The "trapline documents of the day" are the registration files, aren't they?
A When I say "trapline documents of the day" I would have to look at the context very carefully, but I think I'm meaning all the documents I looked at.
Q Yes.
A Including those 30 or so registration or transfer

1 documents and/or the other documents pertaining to
2 registration and administration of traplines.
3 Q And you also refer to "documents of the day" at page
4 15426. 15432:
5
6 A "I got the impression from the documents,
7 that those working for the Department of
8 Indian Affairs on the one hand and those
9 working as wildlife officers on the other
10 hand, came to the issue from two very
11 different points of view."
12
13 And page 15433, "One sees in the documents." And on
14 your cross-examination to which I referred you this
15 morning, you identified the places that you saw these
16 documents?
17 A Yes.
18 Q And I'm asking you if you are satisfied that, in part,
19 those that you looked at fitted the kind of document
20 that you see in there?
21 A There are -- I looked at about 30 examples of what --
22 there must have been many, I don't know, hundreds.
23 MR. GOLDIE: Yes, all right. All right. Well, my lord, I have
24 only got that one set, but they represent, so far as
25 the plaintiffs -- or the defendants are aware, all of
26 the trapline files of the trapline areas in the land
27 claims district. I am going to --
28 THE COURT: Gitksan and Wet'suwet'en?
29 MR. GOLDIE: Yes, both. I am going to hand up, my lord, a copy
30 of the index that's in each volume. And I'm going to
31 ask, my lord, that that copy of the index be marked
32 and that the set of documents be allotted an exhibit
33 number.
34 THE COURT: All right.
35 MR. GOLDIE: And perhaps that document might be put in the
36 orange book.
37 THE COURT: All right. 995?
38 THE REGISTRAR: Dash 41.
39 THE COURT: Forty-one, yes.
40 MR. GRANT: My lord, maybe I could speak to that. I'm not
41 sure --
42 THE COURT: If Mr. Jackson agrees.
43 MR. JACKSON: Yes, my lord.
44 THE COURT: Yes.
45 MR. GRANT: My lord, with re -- respecting this, my friend says
46 he wants this index, I presume, allotted a number,
47 that's 995-41, and these documents allotted an exhibit

1 number. We object to the admissibility of these
2 documents.
3 These files, which my friend knows very well, the
4 process that has happened is that these particular
5 documents include applications for trapline
6 registration which have been presented through notices
7 to admit. That's part of them. They also include
8 documents which we have objected to as not being
9 business records and are not admissible. This witness
10 has not -- and given that there is over 500 tabs
11 indicating over 500 files reflected in 21 volumes,
12 there was no likelihood of him being able to review
13 them all. And as my friend indicated fairly enough,
14 he just wanted to look at a sampling.
15 For what purpose is my friend putting these
16 documents in now? That's the first question I ask of
17 him. But the whole question -- and there has been on
18 the -- on what you may recall the mapping project of
19 my friends, a map of the traplines and documents of
20 this nature were tendered, and there has been
21 cross-examination on that, and my friend has not
22 proceeded further with that. I submit that it is
23 entirely inappropriate now to put these documents in
24 through this witness when this witness has referred to
25 30 files.
26 Now, on page 194 of his report, tab 19, Mr. Brody
27 did refer -- in footnote 19 I should say, my lord --
28 he did refer to a number of trapline files. All of
29 those, of course, have been disclosed to my friends.
30 They asked for the documents on which he relied and
31 they got all of those. But this whole question of
32 tendering this enormous body of material -- and there
33 is no way of knowing whether it's duplicative or
34 not --- but some of it which is clearly inadmissible,
35 in our position, should be held off for another day.
36 There is no advantage here, unless my friend is now
37 going to go through these documents with the witness
38 to tender them now.
39 I see no difficulty with marking the exhibit for
40 identification -- this index for identification.
41 That's not the point. I understand my friend may wish
42 to do it because he has now referred to -- to indicate
43 what he has. But the documents themselves, I would
44 strongly object to, my lord. This is a matter that my
45 friends know our position, they could have put all the
46 applications in through a notice to admit. That is
47 the applications for registration, notice to admit to

ourselves. We had no advance notice that this was the approach they were going --

THE COURT: I thought there was a notice.

MR. GRANT: Not with all of these. No, no. With certain ones, for example, the Thomas George type trapline. Those that they were using with different witnesses they put in notices to admit. But nowhere near has there been a notice to admit regarding anywhere near all of these documents.

THE COURT: Mr. Goldie, are you going to be proceeding with your alienation project?

MR. GOLDIE: Oh yes. My -- I tendered -- I asked them to cross-examine, and they did with one, and I've received no further information on that. But I told them that on the traplines, I had come to the conclusion that it would be necessary to call a witness. And the -- but I have received no further information on whether they accept all of the others, and I was going to bring that to Mr. Rush's attention, that with the -- with the relevant correspondence.

THE COURT: Well, this material you are talking about now would be subsumed in the alienation project?

MR. GOLDIE: Absolutely. This index is of the number of every trapline that is in the land claims area.

THE COURT: Whether it's owned by a --

MR. GOLDIE: A white man or a native or what. It's every trapline within the land claims area. And the -- obviously, the witness has had regard to a number of them, he has selected those he wants, but they are all of the same character. If my friend wants a notice to admit with respect to all of these, I'll send him a notice to admit with this index, and he has now copies of every single document.

THE COURT: All right. Well, I don't think -- well, no, one other question I have to ask you. Does your remaining cross-examination of this witness depend in any way upon these documents being in or being out?

MR. GOLDIE: No, they don't. I can conclude without -- I am invited, practically, by my friend to say to the witness, "Please go down there and identify the files that you've used." I would prefer not to do that. There must be better ways of doing things than that.

THE COURT: Yes.

MR. GOLDIE: But --

THE COURT: But the witness has identified the ones that he particularly relied upon, has he not?

MR. GOLDIE: Not -- he hasn't identified them all, no.

THE COURT: Well, your friend mentioned --
MR. GRANT: Yes, he has.
MR. GOLDIE: No. These are not the -- what he has identified in footnote 19 it is not -- is not exhaustive --
THE COURT: Where is footnote 19?
MR. GOLDIE: Page 194. Is not exhaustive of his description of his research.
THE COURT: Yes, all right.
MR. GRANT: Well, my lord --
THE COURT: No, I don't think we need to pursue it, Mr. Grant. I'm going to mark 995-41 for identification -- I'm going to reserve 995-41 capital A for identification for the other documents, if we -- if it's useful to include it in that numbering sequence, upon them being found admissible, if such should occur. And I think we should get on with the examination of the witness.
MR. GOLDIE: Thank you, my lord.

(EXHIBIT 995-41 - Tab 41, Index of Traplines in Claimed Territories)

(EXHIBIT 995-41A FOR IDENTIFICATON - Reserved for Trapline Volumes)

THE COURT: Thank you, Mr. Goldie.
MR. GOLDIE: Thank you, my lord.
Would you turn in the orange book, please, to tab 33. This is a telegram to the head of the Indian Department, Ottawa.
THE COURT: I'm sorry, the number again?
MR. GOLDIE: Tab 33, my lord:

> "We the fifty two Chiefs of Kiskagash have been ordered to quit the potlatch by Mr. Loring. Please give permission to continue as before reply."

And I can't make that word out. "Chief Milulach". And then the reply, Chief Milulach, Ottawa, March 7, 1908:

> "Must accept your Agent's instructions re potlatches."

That is an example of the federal government's position with respect to the potlatch, is it?
A I'm sorry, Mr. Goldie, what's the question?

Q The reply telegram, would you accept that as an indication of the federal government's position on potlatching?
A That the federal government has to give its permission?
Q Yes?
A Instructing Milulach to accept his agent's instructions. Is that what you are referring to, the second one here?
Q Well, the first one asks permission; isn't that right?
A Yes, that's what it looks like.
Q And the permission is couched in the words, "Please give permission to continue as before"?
A Yes, that's right.
Q And in this case, the permission was denied?
A That's what it seems to be saying here, yes.
Q Yes. But in other cases, there seems to have been no impediment?
A I've never seen another case of requesting permission, have you? Do you have other documents of this nature?
Q Well, the question that I put to you, Mr. Brody, was in other cases there seems to have been no impediment to the holding of feasts?
A Well, I know from my reading of the Loring documents and many that I was referring to earlier today, that there were many impediments.
Q Well, I said in other cases there seems to be no impediment. And if you would look over on the next page under tab 33 of the new -- of the Omineca Herald for June of 1919, the extract reads:

> "After celebrating for a couple of weeks the death of one of the chiefs at Burns Lake, a crowd of Hagwilget Indians, accompanied by Father Godfrey, returned to their homes Tuesday morning. They had a very good time and got their chief well planted."

There is a certain frontier air about that. But I am suggesting to you that obviously there was no impediment to that. It was a matter of public notice, will you agree with that?
A Well, the word is "celebrating for a couple of weeks". It doesn't say that this constituted a feast under the relevant legislation.
Q All right.
A I assume the impediment as to what the Indian agent or the magistrate deems to be a feast.

1 MR. GOLDIE: All right. May that --
2 THE COURT: 995-33.
3 MR. GOLDIE: Thank you.
4
5 (EXHIBIT 995-33 - Tab 33, Telegram from Chief Milulach
6 to Head of Indian Department dd. March 6, 1908)
7
8 MR. GOLDIE: One of the Barbeau-Beynon accounts included in your
9 list, it's tab -- volume -- excuse me, my lord. Yes,
10 it's Exhibit 992.321.4 tab 29. This is one you
11 referred to in your evidence in chief, and I just want
12 your assistance, please.
13 THE COURT: What are you referring to?
14 MR. GOLDIE:
15 Q Volume 2, my lord, which I understand is Exhibit 992,
16 and it's tab 29. And the witness referred to this in
17 the course of his examination in chief, but I want
18 your assistance at page 7, please?
19 A Did I refer to this in my evidence by its BF number?
20 Q Well, the number is 321.4?
21 A Did I refer to it in my evidence as such, though?
22 Because I know there are a number of Barbeau-Beynon
23 documents that cover this ground, and I want to be
24 sure I'm dealing with the right one here.
25 Q Well, whether you -- whether this is the one that you
26 had in mind in your evidence or not, I don't know.
27 But it's one that is tendered on your behalf as
28 sources of your -- as a source of your information and
29 opinion. And I want to ask you a question about page
30 7?
31 A Um-hmm.
32 Q The first paragraph:
33
34 "When Father Morice returned and visited the whole
35 of the Interior that is the reserve he had been
36 on it with surprising to see the joy and the
37 reception they showed him."
38 Does that refer to his return after a number of years
39 of absence following his departure in 1903?
40 A Yes, it might well. It's not coming back into my
41 memory, this, at the moment. We don't have a date on
42 this document either? I can't see a date on here.
43 Q Well, that's why I was asking you for your help?
44 A Father Morice went on a number of trips during his
45 long mission in Carrier country, and this could be
46 describing his return from any one of them.
47 Q But he did make a trip back in 1919, did he not?

1 A Possibly. I don't remember.
2 Q After being away for something like 16 years.
3 A If he did make a trip in 1919 he would've been away 15
4 or 16 years.
5 Q Yes. But you were unable to assist me with that?
6 A Well, because I can't see the date, and I don't see
7 that this is referring to him having been away for a
8 long time. I'm just scanning here. I notice him
9 saying, "They have not forgotten the old rules." I
10 think that may refer to the rule that people should
11 greet Morice in a particular way. He had rules about
12 being welcomed, if I recall rightly, that the people
13 were expected to fire guns and create a big event for
14 him whenever he came into a village after being away.
15 So that may be the old rule reference there.
16 Q Well, it wouldn't be an old rule if he was still a
17 parish priest, it would be an old rule if he was
18 returning?
19 A He was there for many, many years. I would think the
20 rule would become old after, I would say, 10 years.
21 Q In any event, he had to get off and ride on a freight
22 train. Now that -- when he left in 1903, of course,
23 the train wasn't there?
24 A That is a clue, yes.
25 Q Does that assist you in your reconstruction?
26 A That suggests it's after 1915.
27 Q Um-hmm.
28 A I can't remember when the first freight went through
29 on that line. Thereabouts.
30 Q So that for what it's worth, it indicates that upon
31 his return after a number of years of absence from --
32 this informant is stating that he was -- "it was
33 surprising to see the joy" with which he was
34 received."
35 A Surprised "to see the joy and the reception" and to
36 see that they hadn't forgotten the old rule about
37 showing joy and giving him the right kind of
38 reception. I think Morice was very concerned about
39 this, if I remember rightly.
40 Q He had no authority, of course, on his return?
41 A He had no authority.
42 Q He had no authority on his return?
43 A He was a Catholic missionary.
44 Q He had ceased to be a missionary, hadn't he?
45 A No. But he was still Father Morice.
46 Q Yes. Fifteen years later?
47 A Yes. He was still Father Morice a long time after

1 that, I think.
2 Q All right. Now let me refer you to one further -- at
3 page 1 of your report?
4 A Page 1?
5 Q Page 1, yes. It's all right, we are not going to
6 start at page 1 and go on. You say in the third
7 paragraph:
8
9 "The interconnectedness of social elements is a
10 feature of human life."
11
12 Now, as I read your report, you connect this inter --
13 or you describe this interconnectedness in mainly a
14 narrative fashion. And by "narrative" I mean as
15 opposed to any statistical fashion?
16 A Oh, I see. Yes.
17 Q It would be of importance to a social scientist to --
18 who followed your analysis, to have some facts of a
19 statistical kind, and I'm going to give you some
20 examples. First, he would want to know the population
21 of the two cultures you are describing; would you
22 agree with that?
23 A He might want to know what my estimate of the
24 population was. It was very hard to know the
25 population very precisely in these kind of cultures,
26 but yes, he might.
27 Q You refer to depopulation, but some other person of
28 your persuasion would like to have a sense of the
29 trend of your estimates of the population?
30 A I refer to depopulation in two contexts as, I recall:
31 One in Kisgegas where I give the numbers and the
32 source upon which I am basing my numbers.
33 Q Yes?
34 A And I refer to depopulation in relation to the
35 consequence of illnesses in the wake of early contact
36 and there -- I am aware that the historical opinion on
37 the matter is very various, and I think I give some
38 ballpark figures that are based on the authorities you
39 might have consulted.
40 Q We don't have any sense from your report of a recovery
41 of the population from -- and when the low point was?
42 A No, you don't. And I think there are things I don't
43 know the answers to. I don't know when the low point
44 was and I don't have a profile of the recovery. Of
45 course the annual reports of the Department of Indian
46 Affairs do give estimates of populations, so they are,
47 at least in that form, readily available.

1 Q Yeah. Another fact which would be of interest to a
2 social scientist assessing your report, is your
3 estimate of the proportion of the population with
4 which you are concerned who live off the reserve?
5 A I'm not sure why a social scientist would be concerned
6 with that question, given the analysis that I'm
7 engaged upon.
8 Q Well, you are talking --
9 A I'm not talking about in my report, anything that
10 would raise the need for those kinds of statistics.
11 Q Well, would it not be of interest, in assessing the
12 continuity of a culture, to know how many of the
13 present population live off the reserve as opposed to
14 the assumed number of 100 percent at the time that you
15 begin your analysis?
16 A Well, of course, nobody lived on reserves at the
17 assumed time when I begin my analysis. There weren't
18 such things. People lived on their territories.
19 Q Um-hmm.
20 A And the proportion of the population that lives on
21 reserves in 1985, 1986 may be of interest. It never
22 seemed to be something that was important to what I
23 was looking at.
24 Q Well, how about the proportion of those on the reserve
25 who follow employment outside?
26 A Sir, this is going to economic analysis. I am not, in
27 this opinion, providing an economic anthropology of
28 the culture area.
29 Q Well, it isn't just economic analysis, is it? It is a
30 question of, as you put it, the continuity of the
31 culture and your assessment of the impact of change?
32 A I talk about the mixed economy and the way in which
33 that evolves, but I don't have statistics and no
34 statistics are available that are remotely reliable
35 until very recent times.
36 Q Well -- and how about the shifts in these employment
37 patterns, hasn't that had an impact on the culture?
38 A No, I don't think so. Not in relation to the
39 questions I'm seeking to ask and answer.
40 Q I see. How about the marriage pattern?
41 A Again, I'm not trying to produce an analysis of the
42 genealogies. I know that that was done by someone
43 else who was extremely well qualified to do it, and I
44 had the genealogical findings available to me.
45 Q Well --
46 A And any other social scientist who was interested in
47 the marriage patterns could go to that information.

1 They wouldn't expect to come to my information for
2 something I wouldn't be qualified to deal with.
3 Q Well, it doesn't -- isn't it of significance to a
4 social scientist to be -- to learn that out of some
5 1550 marriages, that set of statistics being available
6 to him, some Wet'suwet'en -- with Wet'suwet'en -- I'm
7 talking about Gitksan marriages now -- some 86 are
8 with Wet'suwet'en, and some 200 are with whites.
9 Wouldn't that tell you something about the culture?
10 A You could do an analysis of marriage patterns over
11 time and the kinds of alliances that marriages are
12 bringing as between Gitksan-Wet'suwet'en, Gitksan and
13 non-Indian persons. You could do an analysis of that
14 sort, in which analysis you would require details,
15 statistics. But it's not what I'm doing.
16 Q I know. But I'm putting it to you, and my question
17 was, that if a social scientist had available to him
18 an analysis of 1550 Gitksan marriages of which 86 were
19 to Wet'suwet'en and over 200 to whites, what -- would
20 he not think that perhaps -- he is an anthropologist
21 or a sociologist, might he be interested in that from
22 the standpoint of the nature of the culture today?
23 A Well, I think that a social scientist would be
24 interested in that if they had it available to them
25 and if that was the analysis they were doing. It's
26 not data that I have made use of.
27 Q Well, I'm aware of that. I -- of course I'm aware of
28 that. That's not the question. You have -- you've
29 made use of marriage statistics in other studies,
30 haven't you?
31 A In one study I have done not marriage statistics of
32 that sort. I've never done an analysis of how many
33 persons of one culture married, for instance, another
34 culture, not that I can recall. In the west of
35 Ireland I did an analysis of family life and sought to
36 establish how many people lived alone and how many
37 people lived as couples who could not expect their
38 children to inherit the land. I did, in the west of
39 Ireland, look at the whole history of family life in a
40 particular area. Completely different kind of study.
41 Q Yes. The records of Barbeau-Beynon, would it not be
42 of interest to a social scientist to be aware of
43 those, which record the decline of the feast as well
44 as its present and past occurrences?
45 A I'm not aware of much in Barbeau-Beynon that goes to
46 the decline of the feast, but then I've already said I
47 only looked at a small proportion of Barbeau-Beynon

1 archives. I'm aware of a 1945 account of a feast in
2 which Beynon makes some observations about Christian
3 revivalism in the feast. I am not --
4 Q It's not referred to in your --
5 A No, I didn't use Barbeau-Beynon for that kind of
6 evidence. I -- as I think I said, I selected very
7 carefully from the Barbeau-Beynon index, the things
8 that went to what I used Barbeau-Beynon for. Of
9 course bits of Barbeau-Beynon were always coming into
10 my hands in all sorts of ways.
11 Q Another matter which might be of interest to the
12 social scientist would be the fur trade -- the actual
13 fur trade returns on an annual basis; the actual
14 utilization of the fur trade resource?
15 A It would be of interest in a social scientific study
16 of the fur trade, yes.
17 Q Well, not just the fur trade, I'm talking about the
18 culture of the people, to what extent they depend
19 today or yesterday or the day before on the fur trade?
20 A I'm not doing that sort of a study. I mean you are
21 asking for a study of the economy sector by sector,
22 profile of income and land use. I'm interested, in my
23 opinion, in the way in which the rules governing the
24 system have and have not persisted.
25 Q Um-hmm. And you don't think that any of the things
26 that I have referred to have any bearing on the
27 persistence of the rules?
28 A Oh, I think they might, but they are not the way that
29 I operated in this particular study. That every
30 social scientist has to choose the point of entry and
31 limit the amount of data they are going to try and
32 work with. Data potentially available is infinite.
33 Q Well, the items that I have referred you to are
34 matters which would be uniquely open to you?
35 A Uniquely open to me?
36 Q Yes?
37 A I would be the only person who would have access to
38 these data?
39 Q Well, I say unique because you were accepted by the
40 community and you had a period of time with which you
41 were given to study it, and you covered a very large
42 area in your opinion?
43 A That doesn't make those data uniquely available to me.
44 Q Well, you were within the community, let me put it
45 this way?
46 A I did -- I did a certain amount of participant
47 observation. There is quite a gap between doing the

1 sort of participant observation I did and getting data
2 about marriages and fur returns. So, in fact, I don't
3 think some of those data depend on intimate connection
4 with the community.
5 Q All right. I just want to make sure, my lord, that
6 I've got some of these I didn't mark as I went along.
7 Under tab 21 is the R.C.M.P. report of January the
8 6th, 1921, and --
9 THE COURT: I think you did.
10 MR. GOLDIE: And I asked -- I discussed that with the witness.
11 That was the one that --
12 THE COURT: That's 995-21.
13 MR. GOLDIE: Yes.
14 THE COURT: That will be marked.
15
16 (EXHIBIT 995-21 - Tab 21, R.C.M.P. Report dd. January
17 6, 1921)
18
19 MR. GOLDIE: Thirty-two.
20 THE COURT: I don't have that marked in any way.
21 MR. GOLDIE: Those are the documents which --
22 THE COURT: Oh, wait a minute. I have something else for
23 Clifford and Fitzstubbs.
24 MR. GOLDIE: Yes, those are the documents. Clifford, Fitzstubbs
25 and Pochock.
26 THE COURT: Well, the one I marked they were all in one tab.
27 THE REGISTRAR: That's tab 24.
28 MR. GOLDIE:
29 Q Well, tab 24 I -- oh, I'm sorry. Thank you. That's
30 correct, it is the Fitzstubbs.
31 Tab 32. Are you familiar with this document, Mr.
32 Brody? This is a Captain Fitzstubbs and Mr. Roycraft,
33 the Superintendent of Provincial Police, meeting with
34 13 chiefs in August the 8th, 1888. This is the
35 Kitwancool gym matter. Are you familiar with this
36 document?
37 A No, I don't think I am.
38 THE COURT: It is conveniently undated, is it?
39 MR. GOLDIE: It is undated, my lord, but it is the --
40 THE COURT: No. It says in the body of the document, August 8,
41 1888.
42 MR. GOLDIE: Yes. The occasion is stated in the first, that is:
43
44 "Captain Fitzstubbs, S.M., (Stipendiary
45 Magistrate) and Mr. Roycraft, Superintendent of
46 Provincial Police, summoned the chiefs of the
47 different tribes on the Upper Skeena River to a

1 public meeting in order that they might have all
2 matters between themselves and the Government
3 explained to them, and also in order that any
4 grievances which they might have against either
5 the Government or private individuals be enquired
6 into and settled. The meeting at which Captain
7 Fitzstubbs and Mr. Roycraft presided was held in
8 the Church House at Hazelton on Tuesday, August
9 8th, 1888, where there were present no less than
10 thirteen chiefs representing in all five different
11 tribes. Mrs. Hankin acted as interpreter and Mr.
12 David L. Chalmers took a report of the
13 proceedings."
14
15 That Mrs. Hankin is not subsequently -- or before
16 that, Mrs. Cox, is it?
17 A That would be Margaret Cox. Is that not Constance
18 Cox's mother?
19 Q You say this may be --
20 A Margaret Hankin not Margaret Cox. Margaret Hankin, I
21 think, was Constance Cox's mother, Mrs. Cox's mother.
22 Q All right. That would be about right then. This
23 is -- as I say, this is 1888, and these are the tribes
24 other than Kitwancool. And you are not familiar with
25 this document?
26 A No. Seems like a reading of the riot act, doesn't it.
27 Q Not quite.
28 A
29 "If ever you defy the Queen's authority...the
30 Queen's soldiers would pursue you everywhere and
31 shoot you down like rabbits."
32
33 Q I don't think that's in the riot act.
34 A No. I said like the riot act.
35 Q I see.
36 A
37 "You yourselves would be exterminated, as the
38 number of the Queen's soldiers is great."
39
40 This is a remarkable document
41 MR. GOLDIE: Well, I find it remarkable that you are not
42 familiar with it. Well, Mr. Brody, if you are not
43 familiar with it, I don't intend to ask you any
44 questions.
45 I want to have the document marked, my lord. It
46 is an archival document and it is a record of the
47 meeting, as I have stated, with Captain Fitzstubbs and

1 Mr. Roycraft on August 8th, 1888, with 13 chiefs of
2 the Gitanmaax or Hazelton Band, Kispiox, Hagwilget,
3 Gitsequkla, Kitwanga.
4 THE COURT: All right. Well, it can be marked for
5 identification as being a document that the witness
6 has not seen, subject to the argument we are going to
7 have in due course about --
8 MR. GOLDIE: Yes, archival documents.
9 MR. JACKSON: Subject, of course, to my right to re-examine on
10 this document, my lord?
11 MR. GOLDIE: I am not conducting any cross-examination on the
12 document because the witness is not familiar with it.
13 THE WITNESS: I'm familiarizing myself with it.
14 THE COURT: He can't cross-examine on the unfamiliarity of the
15 witness on the documents, Mr. Jackson.
16 THE WITNESS: Do you have any more information about how this
17 translating was done here? Very curious idiom.
18 MR. GOLDIE: That's 995-32?
19 THE COURT: 32 for identification.
20 MR. GOLDIE: Thank you, my lord.
21
22 (EXHIBIT 995-32 FOR IDENTIFICATION - Tab 32, Captain
23 Fitzstubbs Meeting with 13 Chiefs August 8, 1888)
24
25 THE COURT: You can re-examine, Mr. Jackson, or you can try.
26 We'll see what can come out. At the moment, all the
27 witness has said is, "I am not familiar with it," and
28 I'm not sure what that would lead to. Mr. Goldie's
29 point thus far is that it's remarkable to him the
30 witness hasn't see it. Therefore, if it becomes
31 admissible as an archival document, it might be proof
32 of everything that's in it or it might be evidence
33 that here is proof of this and this and this and that,
34 which the witness doesn't know about.
35 MR. GOLDIE: Well, my lord, eventually it's going to be tendered
36 for the truth of the matters therein stated, but just
37 so that my friends are aware of that.
38 THE COURT: Mr. Jackson can assess that risk and may decide to
39 re-examine.
40 MR. GOLDIE: Yes.
41 THE COURT: You can put it in now, apart from the archival
42 question.
43 MR. GOLDIE: Yes. Well it -- I'll be quite happy to have him do
44 that.
45 MR. JACKSON: That is not my position at the moment, my lord.
46 THE COURT: We will see in due course.
47 MR. GOLDIE:

1 Q Thirty-five is, I think, the Barbeau-Beynon 1945
2 report that you referred to a couple of minutes ago?
3 A Yes. This is Beynon's 1945 account, isn't it?
4 Q Yes.
5 THE COURT: It's not translated anywhere?
6 MR. GOLDIE: Oh this -- oh, you mean typed, my lord?
7 THE COURT: Yes.
8 MR. GOLDIE: I'm -- no. It's written in English.
9 THE COURT: Yes. Oh yes, I can almost make that out.
10 MR. GOLDIE:
11 Q And there is -- there is a page of -- or several pages
12 of -- I take it Gitksan or Tsimshian words?
13 A Gitksan names, I think, with the amounts they paid at
14 the Hanamuuk feast.
15 Q Yes, yes. Thank you. But it is a record of not just
16 Mr. Beynon's comments or observations, but it is a
17 record of statements made at a feast; is that not
18 correct?
19 A Yes, yes.
20 MR. GOLDIE: I tender that as an exhibit, my lord, and it's on
21 the basis that the witness was aware of it but did not
22 use it as a source.
23 MR. JACKSON: On what basis -- is there any further basis upon
24 which this is being tendered for the truth of what's
25 contained therein?
26 MR. GOLDIE: Well, it goes in like the rest of the Barbeau-
27 Beynon material.
28 THE COURT: There is all kinds of Barbeau-Beynon material in
29 already.
30 MR. GOLDIE: Yes.
31 MR. JACKSON: I have no objection.
32 THE COURT: All right 995-35.
33 MR. GOLDIE: There is a general cloud hanging over a number of
34 these anyway, but it is in -- it is in to the extent
35 the other Barbeau-Beynon material is in.
36 MR. JACKSON: I think, my lord, this was material which was
37 essentially referred to during the evidence given by
38 Olive Ryan, Gwaans, in Smithers in the summer of 1987.
39 MR. GOLDIE: Yes, that's right. That's right.
40
41 (EXHIBIT 995-35 - Tab 35, Barbeau-Beynon Report 1945)
42
43 MR. GOLDIE: Miss Sigurdson tells me that I did not tender to
44 have marked the document under tab 36 which is Mr.
45 Dewdney's report.
46 THE COURT: Is it archival?
47 MR. GOLDIE: It is, my lord. I don't have the archives

1 reference here but I'll get it.
2 THE COURT: 995-36 for identification then.
3 MR. GOLDIE: Well, I don't understand the -- Mr. Grant referred
4 to the agreement earlier. I'm not sure that it can go
5 that far, but the parties have been consistent in not
6 taking an objection to the admissibility of an
7 archival document, and I think it's at the present
8 time, it goes in, but the extent to which it speaks of
9 the matters therein as truth is open to argument.
10 THE COURT: Well, is that your position, Mr. Grant?
11 MR. GRANT: Well, my position, my lord, is that this was dealt
12 with in Exhibit 20 in a letter between counsel, to Mr.
13 Rush to Mr. Goldie and Mr. Macaulay, agreed to by all
14 parties. And I think I -- to save time, I don't have
15 to read the terms of that letter, but you may want to
16 make note that that letter consists of the agreement,
17 and the agreement, as I recall, to summarize, is that
18 there is no requirement for certification of archival
19 documents.
20 THE COURT: All right.
21 MR. GOLDIE: The.
22 MR. GRANT: The issue of whether they go in for the truth of
23 them or not is not.
24 THE COURT: All right.
25 MR. JACKSON: And Exhibit 20 sets out terms of the agreement.
26 THE COURT: 995-36 then.
27
28 (EXHIBIT 995-36 - Tab 36, Dewdney Report)
29
30 MR. GOLDIE: We, of course, haven't had an opportunity of
31 hearing the Bear Lake tape, and otherwise subject to
32 that, my cross-examination is complete.
33 THE COURT: Thank you.
34 Miss Koenigsberg.
35 MR. JACKSON: Before Miss Koenigsberg starts, I take it all the
36 other tabs in the document book of my friend's will be
37 removed?
38 MR. GOLDIE: So far as I'm aware there is just the one and I
39 removed that.
40 MS. KOENIGSBERG: My lord, I don't intend to terrorize the court
41 at this point with the prospect of going through
42 everything that's in this volume, and I think we'll
43 find that there has -- in fact, some considerable
44 numbers of these documents have been referred to by my
45 friend, Mr. Goldie. And so my proposal at this point
46 is that because I have organized my cross-examination
47 in accordance with this book, that we should not

1 assume that we will mark everything in this book, and
2 I'll see how far we get. And maybe the easiest thing
3 will be to pull two or three documents out and mark
4 them and leave the book behind.
5 THE COURT: All right. Thank you.
6
7 CROSS-EXAMINATION BY MS. KOENIGSBERG:
8 Q Mr. Brody, at page 143 of your report, you say:
9
10 "When the first reserve commissioners, Vowell and
11 O'Reilly, came in 1890 and 1891 respectively, they
12 were greeted with great hostility."
13
14 A On 143? Oh yes, the top there.
15 Q Yes, at the top. First, may I ask you, on what
16 documents or sources do you rely to say that Mr.
17 Vowell was in the Gitksan-Wet'suwet'en area in
18 reference to reserve allocation in 1890?
19 A Well, I would have to look at my footnote here. If
20 you give me a moment, and I'll find it. Well I don't
21 know, because I'm looking at this and I can't
22 remember.
23 Q I can assure you that I looked, I couldn't find that
24 he was there?
25 A I may be mistaken. It may be that I'm confused by
26 Vowell's correspondence with O'Reilly in this regard
27 and that I've relocated Vowell in error. But I would
28 have to go back to the documents.
29 Q You do know that Vowell was in the area in 1898 and
30 did allocate reserves at that time?
31 A Yes.
32 Q And would it be your understanding, or did you intend,
33 assuming that that's when and was the only time that
34 Vowell was there allocating reserves, that he was
35 greeted with great hostility at that time?
36 A I can't recall the 18 -- the 1898 was it?
37 Q Yes?
38 A Yes. I can't recall. I would have to -- I would have
39 to go and look at the sources.
40 THE COURT: What are we talking about, in Kispiox or the Gitksan
41 people in general, or where?
42 MS. KOENIGSBERG:
43 Q Well, reference is, I assume, to the Gitksan-
44 Wet'suwet'en area?
45 A I think Vowell was in the Gitksan country in 1898.
46 Q Yes. What did you mean in terms of the breadth of the
47 great hostility that you referred to there?

1 Geographic?
2 A The reserve commissioners encounter hostility I know
3 from the documents -- or on the basis of the documents
4 I'm lead to believe that they were met with hostility
5 in Kispiox, Kitwanga, Kitwancool, at that period.
6 It's Gitksan country for which I have many documents
7 in mind.
8 Q And in your report, you do make reference to
9 O'Reilly's diaries?
10 A Yes.
11 Q And is it in the diaries that you find "general great
12 hostility"?
13 A I think I'm using the diaries as a way to one episode.
14 And again, I'm dredging around in my memory of
15 documents.
16 Q Well, I'm going to suggest to you that if one reviews
17 O'Reilly's diaries for this period -- and it really
18 covers just a couple of weeks that he was there in
19 1891, primarily in September, late September and early
20 October -- that there is really only one incident that
21 I would suggest to you one could fairly call great
22 hostility or hostility at all, and that was the
23 Kispiox incident?
24 A Kispiox. Which we referred to earlier today.
25 Q Yes.
26 A Yes.
27 Q And that he did indeed, during that same time, visit
28 Hazelton and meet with Hagwilget -- the Hagwilget Band
29 at that time, the Hazelton or Gitanmaax Band,
30 Kitsegukla and Kitwanga, and that nowhere in his diary
31 can you find a reference to hostility or great
32 hostility with regard to his visits to those bands and
33 his setting up or beginning the allotment of reserves?
34 A Yeah. We know that he was greeted with hostility at
35 Kispiox and that's the episode I have in mind as part
36 of the documentation here.
37 Q We know from his reports that he would not share with
38 you the characterization that he was greeted,
39 generally speaking, with great hostility. Is that
40 fair from your reading of this report?
41 A You are more familiar with his reports than I am.
42 Q Well, I won't take you to them all, but if we just
43 look at tab -- beginning at tab 5 in the book that
44 I've handed you, this is the letter -- a letter after
45 he has left, and he is discussing his visit. And in
46 this letter of October 21st, 1891 -- and this is
47 reporting to the Superintendent General of Indian

Affairs on his visit -- he says at the bottom of that letter:

> "I was well received. And the Indians with the exception of one band expressed their satisfaction at the prospect of having lands defined for them. Stimulated by the report of the probability of a railway being constructed down the valley of the Skeena, they urged me to have their lands surveyed without delay. This, I promised, should be done."

And he then goes on and discusses the incident at Kispiox, which I think we have agreed can fairly be described as hostile. I don't believe, if we look at any of his other letters, we can find expressions of hostility. What we find, in fact, are expressions, generally, of satisfaction, and sometimes of concern expressed as in Kitwanga.

A That may be right. That may be right.

Q Then again, when Mr. Vowell went up in 1898 and allocated reserves, he allocated them for Kuldoe, Kisgegas and Kispiox, to your knowledge?

A Are you referring to a document here?

Q They are all documented.

A No. I thought you were referring to a document.

Q No, I was going to try and summarize.

A Yes, that's right, he was at Kuldoe and Kisgegas, yes.

Q Yes. And you are unaware of any hostility expressed during that entire episode?

A Of Kuldoe and Kisgegas, no, I've never heard of any hostility at that period. I'm not -- I haven't looked at every document.

THE COURT: That was with Mr. Vowell, was it?

MS. KOENIGSBERG:

Q Mr. Vowell in 1898.

Would you be prepared to agree with me, then, that your assertion on page 27 is an exaggeration?

A Page 27?

Q I'm sorry, 143 is at least an exaggeration that these gentlemen were greeted with great hostility?

A I think I say from 142 to 143, the Gitksan heard about the idea of reserves before reserve surveyors reached them.

Q Yes?

A And then it goes on. "Their sense of outrage is revealed in contemporary documents."

Q Just dealing with that point, did you mean on the

1 bottom of page 142 going over to page 143, that the
2 Indians were expecting the surveyors or the
3 commissioners, or were you meaning the same person?
4 A They heard about the idea of reserves is what I'm
5 asserting, nothing else. They are not expecting
6 anything in particular at this moment in time.
7 Q Yes?
8 A To my knowledge that is.
9 Q And assuming that you are correct, that they had heard
10 about reserves generally before reserve commissioners
11 arrived --
12 A Well, in the documents surrounding the Kitsegukla and
13 Kitwancool episodes, there is, if I remember rightly,
14 a concern about the land issue. There is already at
15 this time anxiety about the land issue, and perhaps
16 that's what I have in mind here.
17 Q Yes. We can't find an expression of it in O'Reilly's
18 diaries except, of course, with regard to Kispiox, and
19 he does mention in regard to Kitwanga that he -- that
20 he didn't receive all of the co-operation that he
21 wanted, but I don't think one could characterize that
22 diary as hostile -- as there being hostility of the
23 type --
24 A This diary may not support anything more than the
25 Kispiox and Kitwanga hostility.
26 Q Yes. From what do you assume hostility in the
27 Kitwanga?
28 A Well again, I have to look at the documents, but I'm
29 trying to remember a letter, if I remember rightly,
30 that is attributed to the Kitwanga chiefs that
31 expresses some concern about the whole land issue.
32 Q When you use a term like "great hostility", did you
33 mean for them to be qualified in some way?
34 A You mean for them to be qualified?
35 Q Yes?
36 A There is a sense of outrage at what is happening
37 between the newcomers to the area and the people of
38 the area, the chiefs of the area, expressed in various
39 episodes at the time, and in O'Reilly's diary, and in
40 this Kitwanga document, the exact date of which I
41 don't recall.
42 Q But it wasn't necessarily expressed to the reserve
43 commissioners in their allotment of reserves; is that
44 fair?
45 A It's at the idea is what I'm saying here.
46 Q That there are expressions -- you mean to be conveying
47 here that there are expressions, in general, that you

1 are aware of, of concern or outrage?
2 A Sense of outrage is what I say here, yes.
3 Q At newcomers coming into the area and taking land?
4 A And I say that O'Reilly was greeted with great
5 hostility and I'm referring, I imagine, to Kispiox and
6 perhaps Kitwanga. I would have to look again at the
7 O'Reilly diary and -- I made a mistake about Vowell at
8 this time.
9 Q Well, I have O'Reilly --
10 A It would seem.
11 Q I have O'Reilly's diary. You'll see at tab 3 for
12 September the 26th, and this is his meeting at
13 Kispiox. And -- I'm sorry, tab 2. I can read that
14 for you, if it will be easier, although this is the
15 Kispiox one and it does express, at least to my eye,
16 hostility. It says:
17
18 "Slight frost-fine. Could not get canoe till ten
19 o'clock."
20
21 That's a short form for:
22
23 "Indians refused to bring one over. Very stormy
24 meeting. Spent over two hours in explaining about
25 the reserves to Indians. Defined one reserve
26 about (blank) acres. The chief and others anxious
27 to show me the land, but a large number of men and
28 women objected and prevented our proceeding.
29 Extravagant demands for hire of canoe."
30
31 Et cetera.
32
33 "Returned to Hazelton 7:00 p.m."
34
35 And I can't -- I think it's very heavy something after
36 that?
37 A Yes, yes.
38 Q That, of course, was Kispiox?
39 A Yup.
40 Q And if you go over to the next tab, the 28th, he
41 doesn't -- he is dealing again, I believe, with
42 Kispiox, but this time it's not an expression of
43 hostility, it is just, oh, about the fifth line up
44 from the bottom:
45
46 "The chief Kaile from Kispiox came to my camp
47 and expressed his regret at the conduct of his

1 people on Saturday last. Mrs. Loring
2 interpreted."
3
4 A As we see again here, the role of Geel in the story of
5 the period. Again and again Geel does seem to
6 constitute himself as an apologist for the Kispiox
7 community.
8 Q Yes. And he does seem to be a chief there and to
9 represent them in some respects, but not to have a
10 great deal of power or control over them?
11 A I'm sorry?
12 Q He is represented as chief?
13 A Yes. Was Geel already appointed as a special
14 constable at this time?
15 Q I don't believe so. Are you thinking of someone else?
16 A Well --
17 Q The next diary is at the next tab.
18 THE COURT: This one on tab 3, you say, is Kispiox again?
19 MS. KOENIGSBERG: Yes. He is not in Kispiox but this relates to
20 Kispiox and it's the next day.
21 THE COURT: Yes, all right.
22 MR. JACKSON: Hagwilget, my lord.
23 THE COURT: He is in Hagwilget, is he?
24 MS. KOENIGSBERG:
25 Q Yes. And then the next day, on the 29th, it's hard to
26 read, but -- very hard to read. About the middle of
27 the page again is another reference to Kispiox. It
28 says, "Mr. Spencer --" it's about the seventh line up.
29 Somebody with much better eyes than I helped me with
30 this.
31
32 "Mr. Spencer --"
33
34 If you can make that out,
35
36 "-- returned from Kispiox. He told me the people
37 there regretted their conduct and (question mark)
38 to send a petition asking me to return but feared
39 I will not."
40
41 And that's all. And I don't know -- yes, I think the
42 next part of the diary is at tab 9 and that's for
43 September 30th, October 1st, October 2nd. And the
44 September 30th one is dealing with probably
45 Kitsegukla?
46 A Which one is dealing with Kitsegukla?
47 Q I think the first one, September 30th, about midway

1 down the page again. New -- and it's K-I-L space E
2 then G-U-C-K and then L-A, 11:30. New Kitsegukla, I
3 think.
4
5 Reverard Pierce very kind. Very few Indians.
6 Held meeting in church. James spoke for the
7 people. Marked off the res."
8
9 I assume the reservation.
10
11 "Reservation asked for everything satisfactory."
12
13 That's how I read that. Those are the words in any
14 event?
15 A Yes, I think that's right. It's very striking. Is
16 Reverand Pierce at this reserve meeting, do you think,
17 in this context?
18 Q I assumed he was.
19 A Very few Indians.
20 Q And very few Indians, that's correct?
21 A I have seen this before. I'm very impressed you
22 managed it.
23 Q I did have a lot of help?
24 A Have you enlarged it?
25 Q I don't know if they enlarged it, to tell you the
26 truth. I could see it once it was told to me.
27 The next, October 1st.
28 MR. JACKSON: My lord, are you able to make out these words? I
29 am having some great difficulty.
30 THE COURT: Oh, I'm -- when I'm led to it I generally think it's
31 right. It's not easy, but I think that's what it
32 says. I think when I see it in front of me and I hear
33 it read to me it looks to be right.
34 MS. KOENIGSBERG:
35 Q If you look at the next one you'll see October 1st,
36 and here you can see what looks like probably Kitwanga
37 about the third line down:
38 "Arrived Kitwanga around noon. Very cold. Called
39 on Reverand, Mr. Price."
40
41 A Pierce I suppose it would be again, wouldn't it? Oh
42 no, Price.
43 Q I think it might be Price?
44 A Price, yes.
45 Q
46 "Held meeting. Most unsatisfactory. Chief and
47 nearly all the people absent."

THE COURT: Yes.
MS. KOENIGSBERG: And I don't -- I'm trying to read this one because I don't have a -- I believe, however, that this is one in which, initially, one person was reputed to ask for 35 miles.
THE COURT: Of the river?
MS. KOENIGSBERG: Of the river.
THE COURT: Yes.
MS. KOENIGSBERG:
Q And he declined to provide it. And he did mark off reserves, however, and then, because there is subsequent correspondence about this particular diary entry. In fact, if you look over -- for assistance as to the meaning of it, if you look over at tab 11. Tab 11, you will see a transcribed hearing and these, I believe, if you flip over the typed page, you will see the written text of O'Reilly's notes of the hearing at Kitwanga, and you see expressions of the people there that they want a great deal of land and that they are concerned about the land question, et cetera.
The point here, Mr. Brody, is, and you can -- are at liberty to read that if you haven't read it before. I would suggest to you that at Kitwanga, there is no expression of hostility but there is an expression of concern about reservation and land. Are you familiar with this documentation?
A No, I'm not.
Q When you formed your opinion about the hostility and the outrage, what documents did you consult?
A I had seen the O'Reilly diary and such part of it as I could decipher. I had seen the Fitzstubbs documents, the --
Q When you say --
A -- the petition from Kitwanga.
Q When you say the Fitzstubbs documents, which ones are you referring to?
A Fitzstubbs had a number of documents. Around 1888.
Q Of the type that Mr. Goldie just referred you to?
A Yes.
Q Yes?
A There is a petition from Kitwanga of around that time too, but as I say, I can't remember the date of it.
Q Yes?
A And there is the Barbeau-Beynon accounts of all the episodes that I referred to in evidence the other day.
Q Yes.

A In which accounts one gets a sense of people's concern about the land issue at that time. There is also in Loring's first years as Indian agent, that's after 1889, a reference to anxieties about land, if I'm not mistaken.

THE COURT: Should we take the afternoon adjournment, Miss Koenigsberg.

THE REGISTRAR: Order in court. This court will recess.

(PROCEEDINGS ADJOURNED AT 3:05 P.M.)

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

Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.

(PROCEEDINGS RECOMMENCED AFTER BRIEF RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mrs. Koenigsberg.
MS. KOENIGSBERG: Perhaps we can most expeditiously deal with Kitwangak by looking at tab 12. Mr. O'Reilly is here writing to the Deputy Superintendent General in July -- on July 20th, 1892, and you will see it deals with Kitwangak in the first paragraph. And he says in the first -- second full paragraph:

> "I regret that very few of the Indians were present notwithstanding that they had been accurately informed of my intended visit by the Indian Agent and by myself.
>
> I held a meeting with the few who remained in the village at the schoolhouse, it was kindly placed at my disposal by the Reverend Mr. Price. I held a prolonged conversation with them, and I invited them to tell me where the lands were situated which they wished to have reserved and to accompany me in order to point them out.
>
> I explained fully the advantage it would be to them to have their lands defined, and told them I was prepared to visit the places they desired to have.
>
> 'Sha nauts', one of the band, stated that he had been deputed by the chiefs to speak for them, and to tell me that they wanted all the land from a place named An de maul; about five miles above the village, to a point thirty miles below, including both sides of the river, and that if they could not have that they did not want reserves laid out at all.
>
> This stretch of country, thirty-five miles included, the pre-emption claims of two settlers, and I told them I had no power to give it to them.
>
> Finally, after considerable delay I proceeded, accompanied by some members of the band, and defined four reserves, but by reason of the absence of the Chief and the larger number of the people, I do not consider this band finally dealt with."

And then if you just go over, he then tells us the

1 reserves that he lays out. To tab 13, two years
2 later, February 9th, 1894, Mr. O'Reilly again writes
3 to the Deputy Superintendent General and says:
4
5 "In my letter to you of the 20th of July, 1892,
6 I stated that in consequence of the absence of
7 the chief, and the greater number of his
8 people, I was unable at that time to complete
9 the allotment of reserves for the Kitwangar
10 band of the Kitisun, K-I-T-I-S-U-N, tribe of
11 Indians.
12 I have now the honour to inform you that
13 under the authority contained in your letter of
14 the 12th of June, 1893 I visited the Kitwangar
15 village in September last, and having conferred
16 with the Indians and made a careful examination
17 of the lands they asked for, I defined three
18 reserves, making with those previously alloted,
19 seven in all."
20
21 And then he sets out the additional reserves. And
22 I can advise you that as late as in 1900, if I can
23 just find the tab here, if you turn over to tab 21,
24 you will see the last piece of allotment relating to
25 this band. And this is a letter from Vowell.
26 THE COURT: 21?
27 MS. KOENIGSBERG: Yes, My Lord. A letter from Vowell.
28 THE COURT: What is that, 1900?
29 MS. KOENIGSBERG: Yes, I believe it is, October 9th, to E.M.
30 Skinner, and I believe he was the surveyor.
31 Q Is that to your recollection?
32 A Yes, that does ring a bell.
33 Q
34 "Sir, I have the honour to acknowledge the
35 receipt of your letter of the fourth ultimo and
36 to inform you that your action in conforming to
37 the wishes of the Kitwangar Indians and
38 including a small piece of timber land within
39 limits of reserve number 2 is approved."
40
41 Those, I believe, are the allocation documents
42 dealing with reserve allocation --
43 A Uh-huh.
44 Q -- of the Kitwangak Indians. And would you agree with
45 me that while there is clearly concern expressed early
46 on, at least, by the Kitwangak Indians as to the
47 effect of reservations and the creation of

1 reservations, that they expressed nothing that could
2 be called hostility in the sense of the Kispiox
3 incident?
4 A Well, not turning up at a meeting is a very unfriendly
5 act from Gitksan chiefs, if they have received the
6 message. That's very striking. Not included in these
7 documents is a petition that I have been referring to,
8 which grew out of these meetings, and which states
9 very clearly that the people of Kitwangak insist that
10 their ancient rights to the land be recognized fully,
11 rights based on the historic inheritance and histories
12 to go with that inheritance. We know that at about
13 this time there was a tremendous amount of tension in
14 the lower Skeena -- when I say the lower Skeena, I
15 mean in relation to Gitksan territory, or Kitwangak,
16 Kitsegukla, Kitwancool. We know that in 1888 or 9 the
17 people are told -- 1889 the people are told, as we saw
18 just before the break, that if they didn't accept the
19 new law, they would be shot down like rabbits, they
20 would be exterminated. Is this the response to people
21 who are accepting the new arrangements about their
22 lands?
23 There is tremendously solid evidence to support
24 bad feeling in this period. There is also evidence to
25 support the view that the people of Kitwangak,
26 Kitsegukla in particular, were trying to negotiate, as
27 it were, chief to chief with the newcomers. They
28 wanted, as it were, to feast with them and arrive at a
29 mutual recognition, as the Barbeau Beynon evidence
30 that goes to that.
31 Q Can we just deal with -- to the extent that we can
32 isolate time periods and subject matters, we are
33 dealing here with the degree of hostility shown to the
34 reserve commissioners in the carrying out of their
35 duty to allot reserves.
36 A And I have agreed with you that the O'Reilly diaries
37 only indicate hostility at Kispiox and Kitwangak.
38 Q And you can't agree with me that there is a difference
39 in the ambiance as it comes across from the source
40 that you are referring to between Kispiox and
41 Kitwangak?
42 A There is a difference in the descriptions of events,
43 yes, and Kitwangak, the commissioner reports that
44 people don't turn up, that -- was it Gitanmaax that
45 there were very few there as well?
46 Q It was Kitwangak.
47 A Kitwangak the same one. I take that to be part of the

1 general atmosphere of bad feeling, given that this
2 contemporary supporting evidence of that
3 interpretation, and the evidence of Gitksan culture
4 itself.
5 Q All right. So if we lump into the conduct that we are
6 going to classify as great hostility, not turning up
7 to have your reserves alloted, then we have two
8 examples?
9 A From those documents, yes.
10 Q Yes.
11 A From O'Reilly's diaries, yes.
12 Q And were there other documents that you consulted?
13 A I just referred to documents that tell us about the
14 ambiance of the period.
15 Q That was the Fitzstubbs, 1888 --
16 A And there was Loring documents.
17 Q Which ones were those?
18 A And Loring in 1889, I think, one of his earlier
19 reports, warns that any attempt to interfere with the
20 Indians' way of doing things should be cautious. And
21 I think actually I noticed at the top of -- isn't
22 there a mark at the top of one of O'Reilly's documents
23 saying "Go carefully with these Indians"? The whole
24 atmosphere at this time is that it's explosive. And
25 that continues, since you just mentioned the question
26 of what time period we are talking about, that
27 explosive atmosphere seems to me, on the basis of the
28 evidence I have looked at anyway, to continue from the
29 1870's through to '99.
30 Q You will agree with me that it didn't explode in 1894
31 in Kitwangak?
32 A No, it didn't explode.
33 Q All right. Now, we have talked about the evidence of
34 hostility and interference with surveyors, and in this
35 period of -- at least as evidenced by the Kispiox
36 incident, and perhaps by the Kitwangak reception. And
37 would you be able to agree with me that there is
38 evidence that, from an anthropological perspective,
39 you would take into account that that attitude is in
40 part at least motivated by the missionaries of the
41 day?
42 A I wouldn't agree that it was motivated by the
43 missionaries of the day. I think there was an extent
44 to which the missionaries or one or two of the
45 missionaries allied themselves with the Gitksan on the
46 land question, at least allied themselves to some
47 extent on the land question. Yes, I would say that.

1 Q You are aware that there are documents in the
2 historical record in this period that would support
3 that the missionaries were responsible for this kind
4 of hostility?
5 A I wouldn't say they were responsible for the
6 hostility. They may have had a hand in some of the
7 expression hostility received --
8 Q My question is: You are aware that there are
9 documents in the historical record in this period in
10 this area that would support the proposition that the
11 missionaries were responsible for the hostile
12 reception?
13 A No, I am not aware of that. If you mean the hostile
14 reception given to O'Reilly at Kispiox and Kitwangak,
15 I am not aware of that.
16 Q Well, not necessarily site specific, but in this area
17 that this is by -- it was fostered by missionaries --
18 A You mean the general areas the missionaries are
19 shaping the hostility?
20 Q Yes.
21 A You don't think the people would be hostile about
22 settlers moving in, for example -- sorry, let me try
23 and start the sentence again. You don't suppose that
24 the people would be likely to be hostile on their own
25 behalf about the settlement of the Kitwangak Valley
26 and the Kispiox Valley. Do the missionaries motivate
27 the blockading of the Kispiox Valley Road in early
28 1905 --
29 Q We are talking about before the reserves are alloted
30 and the amount of white settlement, you will agree
31 with me at that point, is not overwhelming?
32 A In the early --
33 Q 1880's and 1890.
34 A No, there is not much white settlement in the
35 Kitwangak Valley at that time. But are you thinking
36 that the missionaries are shaping all the hostility
37 that causes this show of force in 1888, '89?
38 Q I am not really thinking anything in particular. What
39 I am wondering is from the anthropological point of
40 view taking, as you have put it, the necessity of
41 looking at the historical context, are there documents
42 in the historical record that you are aware of, from
43 your research, which would support that point of view
44 that you might take into consideration?
45 A Not cite specific ones. And I think you have to show
46 me what you have in mind. I think when you begin the
47 question "From the anthropological point of view", my

1 thought goes to what we might expect Gitksan culture
2 to be doing at this time, given the kinds of pressures
3 upon the culture.
4 Q Yes. And one of those pressures were missionaries, is
5 that correct?
6 A One of the pressures, yes. The missionaries are a
7 complicated factor, as we have already found out.
8 They are very hostile to the feast, but in the case of
9 some in the Kitwangak area, identify themselves with
10 the Indian position on the land issue to some extent.
11 Q Would you turn to tab 23.
12 THE COURT: Before you do that, could you tell me -- this was a
13 petition, and we heard about this this morning. Was
14 it 1915?
15 THE WITNESS: No, My Lord. There was an earlier petition, and I
16 keep -- I am embarrassed by the fact I can't remember
17 the date. It was the 19th century, late 1880's or
18 1890's, which I think, if I remember rightly, came out
19 of the surveying of reserves.
20 MS. KOENIGSBERG: I confess, My Lord, as to not being certain
21 what documents we are talking about.
22 THE COURT: No, I am not either, but the witness mentioned a
23 petition just a moment ago, and I was wondering just
24 where it was. You are not talking about something
25 later?
26 THE WITNESS: No, My Lord, no. The 1914 was a white settler
27 one.
28 MR. KOENIGSBERG:
29 Q Did you know or hear about Mr. Stephenson?
30 A At the moment I am not remembering who Mr. Stephenson
31 is.
32 Q Well, Mr. Stephenson -- you will see, if you look at
33 the first letter here, which is to Dr. Powell.
34 THE COURT: What tab are we in?
35 MS. KOENIGSBERG: Tab 23, My Lord.
36 Q Dated December 9th, 1886.
37 A The first letter to Dr. Powell, tab 23?
38 Q Yes.
39 A Mine's dated March 23, 1887.
40 THE COURT: Yes, so is mine. It's addressed to the Honourable
41 Superintendent General of Indian affairs. Yes, it's
42 from Powell.
43 MS. KOENIGSBERG: I am sorry, it's just reversed, My Lord. The
44 one enclosed is the one just after that. You will
45 see --
46 THE COURT: All right.
47 MS. KOENIGSBERG: -- in my book they are put in in the order in

which -- with the December 9th letter.
THE COURT: All right.
MS. KOENIGSBERG: Which encloses the --
THE COURT: Yes.
MS. KOENIGSBERG:
Q And the letter to Dr. Powell, as you will see on the fourth page, from a Mr. Stephenson.
A Mr. Stephenson was the Anglican missionary, wasn't he, somewhere in the area?
Q Yes. And if you just look over on the second page.
A Of the December 9th letter?
Q Yes.
THE COURT: On the second page?
MS. KOENIGSBERG: Second page.
Q It's hard to read the whole thing. And about a third of the way down the page, the paragraph that begins "At any rate." Do you see that? I believe it says:

"At any rate he said things which he affirmed Messrs. Duncan and Tomlinson had told him, which had he known, I understood all he said, I am sure would not have been uttered in my hearing. There is one confirming what I showed you in a letter in Victoria. Mr. Tomlinson had told him on no account to allow a C.M. Swan to land,"

And you know Mr. Swan was a surveyor?
A Yes.
Q

"... let alone stay at Kitwangak, and if while ..."

I can't make out the next word.

"... came on to prevent ..."

A "Use of canoe".
Q I'm sorry, yes.

"To prevent their landing."

And if you just go to the end of that letter, to what today we would refer to as a postscript, I believe:

"By the by, they told me if I joined Messrs.

1 Duncan and Tomlinson in opposing the government
2 and oppose the survey here, I might stay, and
3 they would come to church, et cetera, et
4 cetera. What a glorious chance for a second
5 Metlakatla."
6
7 And then if you just turn over to the letter from
8 Mr. Powell or Dr. Powell, you will see in the second
9 full paragraph: "I am of the opinion that the ..."
10 A I'm sorry, I'm not with you. What's the number at the
11 top of the page?
12 THE COURT: March 23rd, 1887. The first letter in the tab.
13 MS. KOENIGSBERG: This letter includes the letter we just read
14 from.
15 MR. JACKSON: Shouldn't we reverse these tabs, My Lord?
16 MS. KOENIGSBERG: If it's easier for you. I put them in the way
17 I thought they would be, because of the enclosure, but
18 actually in time, of course --
19 THE COURT: The latter enclosed the earlier, which is the only
20 way it can be.
21 MS. KOENIGSBERG: Something like that. I believe he says here:
22
23 "I am of the opinion that the long license
24 which both Messrs. Tomlinson and Messrs. Mr.
25 Duncan have had to create a feeling of
26 hostility in the minds of the Indians, not only
27 against the church missionary society, but
28 against the government in the immediate
29 vicinity of Metlakatla has had a very
30 prejudicial effect upon those more distant and
31 isolated bands."
32
33 I take it that you were unaware of this particular
34 correspondence?
35 A I am unaware of this particular correspondence, but I
36 am on the other hand aware of the extent to which
37 missionaries were rivaling one another and always
38 bad-mouthing one another in the competition for the
39 peoples' soles that was going on here. And I am
40 familiar with the accusations made against Tomlinson
41 for being a pawn in Duncan's campaign against the
42 government. This was an attempt by other missionaries
43 to undermine Tomlinson's place among the Gitksan.
44 Q And were you aware of the suggestion here that the
45 missionaries are responsible for the hostility of the
46 Indians towards surveyors and the government in
47 relation to the allotment of reserves and the land

1 issue?
2 A I am not aware of this particular instance. I am
3 aware of the general phenomenon, to an extent that it
4 would make me easily believe that whatever disturbance
5 happened, one missionary would blame it on another.
6 Q Yes. These are documents, would you agree with me,
7 that one could take into account in supporting the
8 point of view that missionaries had an effect and were
9 in fact, at least, one of the major reasons for the
10 hostility being shown by the Indians to the surveyors?
11 A You could take them into account to support that point
12 of view. There just would be a contrary quality to
13 that, because we know about the relations among the
14 missionaries, which relationship goes to question the
15 truth of the statements here.
16 Q To your knowledge are there reputable qualified
17 anthropologists who have come to that conclusion, that
18 the missionaries had a great deal to do with the
19 hostility of the Indians towards land surveyors and
20 towards -- and to the expression of the Indians that
21 we find in petitions on behalf of their land claims?
22 A There is something in the back of my mind about the
23 role missionaries have played in the land question
24 written by some anthropologists, but I can't remember
25 what it was. I wouldn't be surprised to find that
26 that's --
27 Q Are you aware of Phillip Drucker's book?
28 A Yes.
29 Q Cultures of the North Pacific Coast?
30 A It's quite awhile since I looked at it.
31 Q Look at tab 24. Are you familiar with this work?
32 A I think I read it awhile ago. I can't remember when
33 it passed by me, so-to-speak, or passed through me.
34 Q You will agree that Phillip Drucker is a reputable
35 well-known anthropologist?
36 A Yes.
37 Q With regard to the Cultures of the North Pacific
38 Coast --
39 A He has written extensively about it.
40 Q I included an extract, which of course deals with this
41 issue of the missionaries, and at page 224, "Culture
42 change in British Columbia". And we'll try and --
43 it's relatively long, but if you look over on page
44 2255, which is on the same page, on the right-hand
45 side of the first page here of writing, about a third
46 of the way up from the bottom.
47 A Onto 20 --

Q 5.
A 5.
Q Third of the way up from the bottom there is a line that starts "This sort of control ..." Do you see that?
A Yes.
Q

"This sort of control led of the missionaries to insist that their charges lead well-ordered civilized lives, and hence needed no Dominion interference, that is, legal and secular control by Indian agents. Therefore the missionaries did not want reserves of any size for their congregation. They wanted their charges to be given title in fee simple to plots comparable to those given white settlers so that they, the missionaries, could continue unmolested to guide their Indians to complete Christian civilization. It must be recognized the missionaries believed they were acting in the best interests of their native charges. They did not regard themselves as rebels against constituted authority but believed sincerely that no one else could guide the Indians along the path of righteousness as well as they could. There is direct evidence not only from Indian informants of recent times but from sources of that day, including a Provincial Commission of Enquiry, that certain missionaries openly advised their congregations to demand their return of the lands that had been taken from them. In 1887, the first of many delegations, consisting of a group of Niska and Fort Simpson chiefs, went to Victoria 'to petition for the return of their lands,' and to demand a formal treaty guaranteeing their rights to those lands 'forever'. The idea of the treaty, to repair the omission of such agreement in the past and to define Indian rights in perpetuity, obviously did not originate with the Indians, who knew nothing of Indian treaties made elsewhere. The delegation accomplished nothing, but the Indians were not discouraged. Their attention had been directed to the land quesiton, just as that of Tlingit and Alaskan Haida was directed toward the

question of citizenshp, as the solution of their problems, and this issue was their battlefield for many years."

And then if you just turn over to page 229. Do you have that?

A Yes.

Q Bottom of the page, last paragraph.

"The story of the land claims by the Indians is an important part of their recent history. Its significance in regard to acculturation remains to be considered. One fact shows through very clearly. The inspiration throughout was non-Indian, or by sophisticated Indians long removed from the native way of life and thought. The techniques used were non-Indian - petitions drafted by attornies, attempts to utilize British legal procedure, fund-raising campaigns to implement the legal contest, and the like. The obvious conclusion is that Indian interest in land outside the few heavily settled areas was largely artificial."

And he goes on further. Would you agree with me that the kind of correspondence which I showed you of Mr. Stephenson's, would be the kind of evidence that could be utilized to come to the kind of conclusions that Mr. Drucker is coming to in this particular passage?

A Yes, I think they could be. I am struck by the surprising statement here that on page 226 the Indians knew nothing of Indian treaties made elsewhere. We are talking in relation to the Gitksan, about the people with trading connections, family connections reaching in many directions, and they may not have known about treaties, because in fact there weren't treaties along the coast of British Columbia, but they would have heard, I assume, about the land issue as experienced by and raised by other Indian groups, as it seems very unlikely that people would not know about the land issue or what reserves had -- what reserve surveying had meant to imply.

And as to the point about the novelty of the media through which the Indians expressed their unhappiness, of course petitions are new to the Gitksan in 1880's and 1890's. And I think I said, in answer to an

1 earlier question of yours, that I am easily able to
2 see that the missionaries found a way of giving
3 expression to concerns that they found out about, and
4 there are anthropological reasons for thinking that
5 the Gitksan would, like all northwest coast cultures,
6 perhaps like all northern British Columbian cultures,
7 be unhappy about the prospect of someone else saying
8 that the land is theirs, and suggesting that their
9 laws are somehow not relevant or not legal. And
10 that's what's happening in the 1880's and '90's and
11 into the early part of the century.
12 Q I would like to take you to another topic.
13 THE COURT: Can you tell me again who was Mr. Tomlinson?
14 THE WITNESS: Mr. Tomlinson was a missionary who came up the
15 Skeena, My Lord.
16 THE COURT: From Metlakatla?
17 THE WITNESS: Well, he was associated with Duncan. Duncan, I
18 think, if I am remembering Tomlinson's account of this
19 correctly, urged Tomlinson to go up the Skeena.
20 THE COURT: I see. All right. Thank you.
21 MS. KOENIGSBERG: You may recall Mr. Tomlinson's journey in --
22 THE COURT: Yes. Was he Catholic, Anglican?
23 THE WITNESS: Methodist, I think, or some kind of -- Methodist,
24 I think.
25 THE COURT: All right.
26 MS. KOENIGSBERG:
27 Q On page 27.
28 A Tab 27 or page 27?
29 Q Page 27 of your report. Middle paragraph, third line
30 down you say, "house chiefs". You are dealing with a
31 topic of jurisdiction and visibleness, I think.
32
33 "House chiefs were not summoned to a collective
34 meeting at which they were told one
35 jurisdiction was now giving way to another."
36
37 A Uh-huh.
38 Q When Mr. Goldie put the document in tab 32, the
39 Fitzstubbs, Roycraft meeting, you said you hadn't seen
40 it before?
41 A That's right, yes.
42 Q Would it be fair to say that if you had you might have
43 modified that sentence?
44 A Yes, it does go to this issue. It's the first example
45 I have seen of an attempt to assemble, as it were, the
46 representatives of the people, and announce to them
47 something formal. Of course what's being announced,

on the basis of my quick read of that document, is a threat, as well as other things. This is the document in which they are told they will be shot down like rabbits and exterminated, if they don't cooperate.

Q It wouldn't be fair of me to ask you about it in detail, since you have not read it or seen it before, but I will suggest to you that it is in a great deal of detail an explanation of the jurisdiction of Her Majesty the Queen to be extended over this area as against any other jurisdiction.

A Yes, it's an announcement that the peoples' laws are not going to be respected, and if they come into conflict with the new laws, then soldiers will be sent up and a state of war will be declared. And I think, if I remember right from my quick read, the soldiers are characterized as very brave men, who would not be frightened of shooting down the Indians and so on. But if you give me the document, perhaps I will look at it again.

Q I don't think we need to. My point was, you would not have written that sentence, certainly, if you were aware of the historical record --

A I would have done a -- I think I would have taken some interest in analyzing that document and looking up the names of chiefs and trying to understand how the translation was and so on. Yes, it was a very suggestive document.

THE COURT: Can you remind me where that document is?

MS. KOENIGSBERG: It's tab 32 in the Attorney General of B.C.'s documents.

THE REGISTRAR: 995.

MS. KOENIGSBERG:

Q Lastly, I would like to deal with Bear Lake, but in a very limited way, since I too have not had what I would call access to the facts. But just at page 42 and 43 of your report. You say there, dealing with the meeting, which if I may characterize it as the overlap meeting of July 15th, 1985.

A The meeting lasted longer than that. This particular paragraph is about what happened on that day of the meeting.

Q "For two days", you say at the bottom, page --

> "... elders visited mountains, discussed place names and reviewed oral histories. Tension was building. Both sides seemed implacable in their insistence on their rights to the place."

1
2 And just stopping there. I think you have
3 described it elsewhere, perhaps in this very chapter,
4 that the Gitksan were saying that they had, I think
5 you characterized it as formal jurisdiction, and the
6 Carrier-Sekani's claim to the same area was based
7 on -- I think you characterized it as use and
8 occupation?
9 A Occupancy -- use and occupancy.
10 Q Use and occupancy. If we go back to another point
11 that you make in your report, and perhaps it's best
12 exemplified --
13 A Just let me interrupt you a moment. May I, just while
14 we are on this question of the characterization of the
15 different --
16 Q That is your characterization?
17 A Yes. Yes. You have left out the extent to which the
18 Gitksan chiefs sought to point out that many of the
19 Sustut Dene, as they call themselves, the
20 Sekani-Carrier of that particular area, are Gitksan
21 speakers and members of Gitksan Houses through the
22 mother's line. So it's actually an
23 oversimplification. It may be my oversimplification
24 in the text. I am not suggesting you are
25 oversimplifying it. But an oversimplification to say
26 there is a claim based on former jurisdiction and a
27 claim based on land -- sorry, it's an
28 oversimplification to say that there is a claim based
29 on jurisdiction on the one hand and a claim based on
30 land use and occupancy on the other.
31 There is also a dimension to the overlap that's
32 rather more intricate than that, which is to do with
33 the Gitksan dimension to the Sekani-Carrier, as they
34 would characterize themselves, of the Sustut Dene,
35 S-u-s-t-u-t D-e-n-e, group at Bear Lake, and that's an
36 important part of the whole nature of the overlap.
37 Q Yes. Nevertheless, I think to make the point that
38 there is such a thing in the Gitksan institutions as
39 formal jurisdictions separate from use and occupation,
40 you contrast those two ways of claiming that area; is
41 that correct?
42 A Yes. There is a way in which the ownership of land in
43 Gitksan law, within the Gitksan system is explicit and
44 visible, and therefore one doesn't have to do very
45 much research on the ground to find out where their
46 territories lie. And I contrast with that the
47 Athabaskan way of viewing or describing that. And I

1 think I should be clear. The Athabaskan way of
2 describing land, they say they don't have explicit
3 institutions through which they define land -- and
4 when I say as Athabaskan here, I, of course, mean the
5 northern and eastern Athabaskans -- but for us, as
6 anthropologists, in order to find out the extent of
7 their lands, we have to look at their use and
8 occupancy. They on the other hand may not need to
9 look at their use and occupancy. If you put a map in
10 front of them, they might be able to show you where
11 their boundaries were anyway.
12 Q On page 74 and 75 of your report you spend some time
13 explaining why it is that white people can't see this
14 jurisdiction institution, and it's in -- you express
15 it in a number of places in your report, but on page
16 74 in the second full paragraph you say:
17
18 "We can see, therefore, that a fundamental of
19 European consciousness, its belief and
20 evolutionism and attendant inability or refusal
21 to recognize aboriginal cultures combines, in
22 the Canadian north, with national imigrant
23 points of view. Along with the power of first
24 an emerging, then a modern nation-state, this
25 establishes the ways in which 'we' approach
26 'them' at the frontier. We are white, and are
27 armed with a strong sense of economic, moral
28 and political righteousness. We are also
29 numerous and powerful. They seem to us to be
30 poor, few in number, elusive and somehow
31 belonging to the past. We look down on them
32 from a very great height; so high, indeed, that
33 we are not able to discern their authority and
34 laws."
35
36 You've expressed it in a number of ways, and if I
37 can ask you if you are saying that white people, for
38 the reasons that you put there, don't see this formal
39 jurisdiction, if I can put it that way, the
40 institutions of formal jurisdiction among the Gitksan,
41 because we are different cultures, and particularly
42 because you say that the white people have such a
43 sense of cultural superiority, combined, of course,
44 I'm sure, with a language difficulty.
45 A Yes, there are many dimensions to this, as I am sure
46 you are aware. We think again of that meeting in 1889
47 that we saw described. I suppose it's stuck in my

1 mind because I have been given this new document. The
2 power, the jurisdictional claim, the numerousness --
3 that's not the right word -- the sheer population size
4 of the newcomers' societies affirmed very strongly to
5 the Gitksan in that case. I think I am losing your
6 question. I am tired, and you better put the question
7 to me again.
8 Q My question is: White people in your view can't see
9 the institution of formal jurisdiction as distinct
10 from use and occupancy?
11 A That's right, yes.
12 Q Because of their sense of cultural superiority,
13 essentially the very different cultures from which
14 we've come, and one of the major differences you have
15 pointed out is that white people coming from what, I
16 guess, we would describe as a very complex culture,
17 can't see formal jurisdiction unless it's in a similar
18 form to that in which they come.
19 A It has the same kind of complexity as our own. They
20 can't see the complexity that is there. That's what I
21 am saying, yes.
22 Q My question is: Why could the Carrier-Sekani at Bear
23 Lake, who had shared the same culture, speak the same
24 language, are even related to these people for
25 generations, according to you, used and occupied that
26 land, but did not see the formal jurisdiction of the
27 Gitksan.
28 A They -- they answered this question themselves at the
29 meeting. They pointed out that they had not had
30 occasion to go to what they call potlatches, and they
31 meant the Gitksan feasts. And I remember Tom Patrick,
32 for example, saying rather movingly that he would need
33 to do research into the feast, the potlatch, and
34 reconnect himself with his heritage with that point of
35 view, in order to find out where his territory did and
36 did not lie.
37 So attendance at the feast for the Sustut Dene is
38 an issue, and it would be an issue also for settlers
39 and white newcomers at the frontier. If you don't
40 attend the feast, if you don't hear what people have
41 to say about their laws, their territories and
42 understand it, which of course goes to the question of
43 language which you raised, and if you are not in any
44 case disposed to understand it, and here I have in
45 mind missionaries, Indian agents, Fish and Wildlife
46 officers, traders in a specialized way in this regard,
47 the great institutions that come to bear on relations

at the frontier, then there is the difficulty of knowing what these institutions are, although anthropologically we know they are there in a relatively clear form in the case of the Gitksan.

Q You would have to agree with me, I think, that if that is the explanation of why the Carrier-Sekani didn't see it, that it is a jurisdiction which is not visible to those outside the feasting complex.

A It's difficult to see, if you are not aware of the feast system and are not being told what the laws are and where the territories lie, you can't know what the lands mean to the people, you can't know much about the boundaries that people have around their territories, without hearing their accounts of these matters.

MS. KOENIGSBERG: Those are all my questions.

THE COURT: Thank you.

MS. KOENIGSBERG: There could be a considerable exercise to go through and take out the items here. I wonder if I can perhaps, while Mr. Jackson is re-examining, I will go through and make a note of those which are not, and then submit the balance.

THE COURT: All right. Thank you.

MR. JACKSON: I suggest we take a 10 minute break.

THE COURT: Do we have to?

MR. JACKSON: I was just taking --

THE COURT: I was going to suggest that we go for another 10 minutes or so, and then Madam Reporter -- about time to give her a break.

MR. JACKSON: I can proceed, My Lord.

THE COURT: All right.

MR. JACKSON: Madam Registrar, could document book two of plaintiffs' document book be put before the witness. My Lord, when I had suggested the short break, I was responding to Mr. Brody's --

THE COURT: Oh, we are all tired. No exception. We are all tired.

RE-EXAMINATION IN CHIEF BY MR. JACKSON:

Q If you could turn to tab 29 of document book two, Mr. Brody. This was the document my friend, Mr. Goldie, referred to you regarding Father Morice's return.

THE COURT: Mr. Goldie referred to page seven of this document.

MR. JACKSON: Not tab 29?

THE COURT: Page seven.

MR. JACKSON: Yes, page seven.

Q Do you have that Mr. Brody?
A This is the beginning of the --
Q It's page seven of the English version.
A Page seven. Where are the page numbers? I see, yes.
Q You see at the top of the page it says "Collection Marius Barbeau informant". I take it the question mark indicates unknown. If you could go halfway down the page where it says:

"... his teachings were not so bad after all."

And I would like to read after that:

"Handle an Indian roughly and that is what he likes. You have always to show to an Indian that you are the superior. Never let an Indian think that he is your equal. It will work fine for you. They will show you respect and they will obey you."

As an anthropologist, does that give you any clue as to who the informant might be?

MR. GOLDIE: I object to that question, My Lord. It's a matter of argument.

THE COURT: It's a matter of speculation, isn't it?

MR. JACKSON: I am asking this witness as an anthropologist who, in looking at documents, seeks to understand the context, as to whether that statement would be a contextual statement which he would look to.

THE COURT: Well, I wouldn't regard the answer of the witness to that question any more highly than I would regard the submissions of counsel.

MR. JACKSON: Then I won't pursue it, My Lord.

THE COURT: Thank you.

MR. JACKSON:

Q Mr. Brody, could you turn to tab 32 of the provincial government's book of documents. On page one of that document, in your response to Mr. Goldie, you indicated that Mrs. Hankin acted as an interpreter, and there is an exchange between you and Mr. Goldie regarding who Mrs. Hankin was. You indicated that she was the mother of Constance Cox?
A That's right, yes.
Q Who was one of the informants in the Barbeau Beynon --
A Yes, she was a very important informant.
Q Was she --

THE COURT: I'm sorry, a very poor?

THE WITNESS: Important informant.
MR. JACKSON:
Q To your knowledge is Mrs. Hankin an Indian person?
A No. She was the daughter -- Mrs. Cox or Mrs. Hankin?
Q Mrs. Hankin.
A Mrs. Hankin was the daughter of a fur trader at the coast with a Scottish name called Macaulay, something like that, and a Fort Simpson woman, I think.
Q Mr. Brody, assume that this document is a meeting between non-Indian authorities on the one hand, as represented by a Magistrate and a Superintendent of Provincial Police, and Indian Chiefs on the other hand. What relevance, if any, would it have in your analyzing this document in your role as an anthropologist that the interpreter was Mrs. Hankin?
A Well, the idiom that I noticed when I was running through this is very striking. It didn't, I thought as I was going through, read like a Gitksan voice at all. If you are interpreting a cross language family, as opposed to within language families, the interpretation always is a bit of a struggle. And I know this because I worked a great deal as an interpreter, so I have idea of the differences. If you are translating between, say, French and English, languages that belong to the same family, you can offer really well parallel translations, word for word, concept for concept. If you are going at cross language families, that's not always the case, and you always have to grope around and explain.
So, for example, if you look at the translations done by Beynon, you can see him groping around for the right words, and sometimes explaining by putting in the Gitksan words. And what strikes me about this, and what struck me when I was going through, is there is no evidence at all of that kind of translation exercise. This is written out as if one could just translate word for word, concept for concept. And if you look at some of the words -- I have to just go back for a moment.
Q Can I just perhaps put this to you, Mr. Brody, to expedite matters. If you saw in the document the words "send up armed men to punish us wicked savages because we are but dirty Indians ..."
MR. GOLDIE: Where are you reading from please?
MR. JACKSON: The last page of the document, My Lord. About a third of the way down the page, "Nowadays". And if you have that, My Lord. Very last page of tab 32.

"Nowadays, if one of us goes to a white man to ask his advice about anything, we are kicked out of his house because we are but dirty Indians as he calls us in contempt."

THE COURT: I am sorry, Mr. Jackson, that's not the last page in my tab 32. What's your first page?
MR. JACKSON: Captain Fitzstubbs.
MS. RUSSELL: The orange book, My Lord.
THE COURT: In the wrong series. The right 32, but the wrong coloured book. Thank you.
MR. JACKSON: The first page, My Lord, is Captain Fitzstubbs. The last page about a third of the way down the page. "Nowadays". Would you like me to --
THE COURT: No, I have it thank you.
MR. JACKSON:
Q Okay. It goes on:

"We retaliate, of course, and the result is that they take pen and paper and write down to the Government to send up armed men to punish us wicked savages. I am glad to have heard what you have spoken and I shall endeavour to live a law abiding life, but to preserve the peace of the government I must also observe the laws."

MR. GOLDIE: I think you should go on.
MR. JACKSON: I am content to -- Your Lordship has the whole document.
THE COURT: Yes. I have read the rest of the note.
MR. JACKSON:
Q If you go back, Mr. Brody. And four pages in from the back of the document, My Lord. My copy -- working from the back seems to be the best way to locate matters. Halfway down the page:

"Cawgh, head chief of the Kitwangak."

THE COURT: Yes.
MR. JACKSON:
Q

"The last chief of the Kitwangar tribe, my brother, whose spirit is now in our happy hunting grounds far away, was a good man and friendly to the whites."

Taking those two pieces, Mr. Brody, as an anthropologist how would you evaluate this document in terms of giving it credence, in terms of assessing it in light of other evidentiary bases which are available to you as an anthropologist in coming to --

A Well, it doesn't look like a --

MR. GOLDIE: Excuse me, Mr. Brody.

THE WITNESS: Oh, I'm sorry.

MR. GOLDIE: My Lord, I have an objection to that question, because it seeks to characterize a document as a whole by reference to a translation. The first part of this document is not a translation. The first part of this document records the words of Fitzstubbs and Roycraft. They are not translated.

MR. JACKSON: I am --

MR. GOLDIE: Excuse me. Let me finish. My friend's question sought to characterize the credence to be placed on this document by some reference to the validity of the translation of the Gitksan words into English.

THE COURT: Perhaps Mr. Jackson could confine his question to the translated portion.

MR. JACKSON: Yes, My Lord. It is intended to be so defined. I am grateful to Mr. Goldie for clarifying that.

THE COURT: All right.

MR. JACKSON:

Q Do you understand the question?

A Just ask me again. I am sorry.

Q Yes. You recall the two passages I read to you?

A Yes.

Q In light of the idiom expressed, how would you as an anthropologist evaluate the document in the context of anthropological sources?

A Well, in many ways it just doesn't look like a careful translation. It looks like something that was written in some other way. The idiom, as I think I mentioned, is very strange. This happy hunting ground expression, that's the language of the Hiawatha, not the language of the Gitksan, and the idea that a Gitksan chief would use these kinds of words is just implausible to me. It seems to bear the mark of perhaps a hand or mind other than the chief at question.

I am also struck by the way it says "Cawgh, head chief of the Kitwangar tribe", and then above that Wassamlaha. And the spelling of the first one is C-a-w-g-h here, and the second one is

1 W-a-s-s-a-m-l-a-h-a here. Head chief of the Kitzbox,
2 K-i-t-z-b-o-x, tribe. My understanding of the
3 cultures is that there aren't head chiefs. There are
4 high chiefs, there are important chiefs, but the idea
5 of the head chief again is an idea about Indian life
6 that comes from somewhere else. It doesn't come from
7 inside the Gitksan culture. So I suspect it comes
8 from inside the mind of someone who wrote this out.
9 Q My penultimate question to you, Mr. Brody. You
10 indicated to Mr. Goldie that you did not use
11 population data material relating to offers of
12 housing, marriage patterns or contempary employment
13 patterns in formulating your opinions. Why not?
14 A I don't have any opinions about offers of populations,
15 and insofar as I have opinions about marriage
16 patterns, they are very subsidiary, and I have at my
17 disposal the genealogical work, as I think I said,
18 that's available in the charts. When I say the
19 charts, I mean the genealogical tables.
20 Q My final question, My Lord. In response to a question
21 from Mr. Goldie in which he put to you the theory that
22 the Wet'suwet'en came from the east, you indicated
23 that you were of the opinion that that was a theory
24 crisis?
25 A Yes.
26 Q On what do you base that opinion?
27 A Well, I suppose in large part upon my own work and
28 reading in the area. The idea that the hunting
29 peoples of interior British Columbia gradually moved
30 west is somewhat a boot strapped idea in the history
31 of the anthropology of the area, beginning with the
32 missionary who worked and the MacKenzie who Morice was
33 so impressed by, and then carrying through Jenness.
34 In fact you have the feeling that this idea that the
35 people came from the east to the west is as much to do
36 with the anthropologists coming from the east to the
37 west as the people coming from the east to the west.
38 And once you, as it were, shed that assumption that's
39 written so large into the older literature, suddenly
40 there springs out of the data, at me anyway, a
41 completely other idea, which is that the people were
42 coming from the north and west and heading east.
43 And we have talked a bit about populations at
44 salmon fishing sites. Populations at salmon fishing
45 sites are large. There is with growing populations
46 always a resource problem to do with fat, as I have
47 said, and perhaps to do with other things, so one can

easily imagine pressure on population away from these rather crowded areas at the fishing sites. And therefore I start to imagine, thinking about it, a movement east and over the rockies.

If I then add to that the archaeological and climatological evidence, I am struck by the fact that excellent hunting lands would have been available to the east, with the recession of the last ice age, which would coincide fairly well with what the archaeological data is telling us about occupancy of the coast, and then the spread from the coast.

So I start to have a picture of a movement of Athabaskans from the coast, where perhaps they have been living in spite of very hard conditions in the interior, and then conditions in the interior easing, because of the change in climate, vast hunting territories being developed there, climatology, biological, and the moving into that, into the hunting area. So you get a picture movement that is down and across, and that makes a lot of anthropological, biological, archaeological sense.

And then there is all the linguistic data, which is very new, Dyen and Aberle and Rigsby and Kari, and I suddenly think to myself, well, this is all adding up to a new view of the anthropology of the whole region. And it's a much more plausible view on the evidence available, much, much more plausible. And so there is a crisis, and I think this probably comes through the work of Dyen and Aberle particularly, in the old rather unquestioned assumption, which I made myself, I have to say, and until comparatively recently it all came from the east and headed west. As soon as you challenge that assumption, that idea of east to west starts to crumble and a rival idea, which is sort of north to southwest to east, asserts itself with a great deal of force. That's what I had in mind.

MR. JACKSON: Those are all my questions, My Lord.

THE COURT: All right. Thank you. Just a moment, please, Mr. Goldie. I don't think anything would arise out of what Mrs. Koenigsberg has to do now with your document book. What do you want to do about that?

MS. KOENIGSBERG: A lot comes out of it, My Lord.

THE COURT: All right.

MS. KOENIGSBERG: Tab 1 comes out, tab 6 comes out, tab 7 comes out, tab 8 comes out.

THE COURT: Just a moment please. Yes.

1 MS. KOENIGSBERG: Tab 10 comes out, tab 14 -- tabs 14, 15, 16,
2 17, 18, 19 and 20 come out.
3 MR. GOLDIE: 17 and 18?
4 MS. KOENIGSBERG: I'm sorry, 14 through 20 are out. Tab 22 is
5 out, and from 25 through to the end, 32 are out.
6 THE COURT: 23 is in?
7 MS. KOENIGSBERG: Yes, 23 and 24.
8 MR. GOLDIE: You are taking 27 out?
9 MS. KOENIGSBERG: Yes.
10 THE COURT: All right.
11 MS. KOENIGSBERG: And, My Lord, if we could have a number, then,
12 for this book that we have all gotten a lot out of.
13 THE COURT: All right. The book will be the next number in the
14 tabs.
15 THE REGISTRAR: The next number will be 997.
16
17 (EXHIBIT NO. 997 - A.G. CANADA DOCUMENT
18 BOOK - TABS 2, 3, 4, 5, 9, 11, 12, 13,
19 23, 24)
20
21 THE REGISTRAR: And the tabs will be dashed.
22 THE COURT: The tabs accordingly.
23 MR. JACKSON: I just have one thing.
24 THE COURT: Yes.
25 MR. JACKSON: In document book three, plaintiffs' document book,
26 tab 17, Mr. Goldie referred to page seven of the
27 transcript of proceedings of the Kenneth McBride
28 hearing, which was omitted from the plaintiffs'
29 document book, and I have copies here.
30 THE COURT: Tab 13?
31 MR. JACKSON: Tab 17.
32 THE COURT: Yes.
33 MR. JACKSON: One other matter of clarification. In the
34 defendants' book of authorities, the provincial
35 defendants', tab 34, may I ask Mr. Goldie, is that one
36 of the tabs which has been deleted? I don't recall it
37 being put to the witness.
38 MR. GOLDIE: No, it wasn't, and it can be, but I -- and it's all
39 right if it has been taken out. It is going to be
40 coming in later on.
41 THE COURT: All right. Then you are excused, Mr. Brody. Thank
42 you very much. Hope your back gets better. And we
43 will adjourn until Tuesday morning at 10:00 o'clock.
44 MR. GRANT: If I may just say one thing unrelated, and I think
45 that Mr. Goldie was going to advise the court, or
46 advise us in any event. Next Tuesday -- Mr. Rush
47 asked me to raise that. I don't think Mr. Goldie

1 would be here on Tuesday, and it's the question of --
2 not asking for a response now, but possibly he could
3 consider it about the question of expert witnesses
4 that Mr. Rush had raised. I think Mr. Goldie said in
5 a few weeks he will --
6 THE COURT: That was whether Mr. Goldie was going to call an
7 additional witness?
8 MR. GOLDIE: I am going to.
9 THE COURT: Does your friend know who it is?
10 MR. GOLDIE: It's Dr. Farley, who is a retired cartographer.
11 THE COURT: All right. And you will be giving your friend --
12 MR. GOLDIE: Oh, yes.
13 THE COURT: -- notice of his evidence?
14 MR. GOLDIE: Oh, yes.
15 MR. GRANT: His summary.
16 MR. GOLDIE: It is in the final stages of preparation, but he is
17 a gentleman who suffered a death in his family, and
18 he's been out of commission for a number of months.
19 THE COURT: Yes. All right. Thank you.
20 THE REGISTRAR: Order in court. This court will adjourn until
21 10:00 a.m. at Tuesday.
22
23 (PROCEEDINGS ADJOURNED AT 4:30 P.M. TO APRIL
24 18, 1989 AT 10:00 A.M.)
25
26 I HEREBY CERTIFY THE FOREGOING TO BE
27 A TRUE AND ACCURATE TRANSCRIPT OF THE
28 PROCEEDINGS HEREIN TO THE BEST OF MY
29 SKILL AND ABIILTY.
30
31 _____
32 LORI OXLEY
33 OFFICIAL REPORTER
34 UNITED REPORTING SERVICE LTD.
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