Vancouver B.C.
June 19, 1989

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia, this 19th day of June, 1989. In the matter of Delgamuukw versus Her Majesty the Queen at bar, my lord.

ROBERT GALOIS, a witness called on behalf of the Plaintiffs, having previously been duly sworn, testified as follows:

THE REGISTRAR: May I remind you, sir, you are still under oath. Would you state your name for the record, please?

A Robert Galois.

THE REGISTRAR: Thank you, sir.

THE COURT: Well, where are we, Mr. Adams?

MR. ADAMS: My lord, when we left off in May you anticipated correctly that with a month to play with counsel might be able to think of another question.

THE COURT: Yes.

MR. ADAMS: And I have a very few.

THE COURT: All right. Thank you.

EXAMINATION IN CHIEF BY MR. ADAMS, Continued:

Q Dr. Galois, you make reference both in your report and in the documents collected in the exhibit binders to the Special Joint Committee in 1927. I wonder if you could just in a sentence or two remind us what the Special Joint Committee was and how it came to be?

A It was a committee of the House and the Senate which was established in 1927 following a -- as a result of a petition submitted by the allied tribes. This followed the, oh, the Orders in Council of 1923 and 1924 concerning the implementation of the findings of the McKenna McBride Report, and it was concerning the claims of the allied tribes, I think, in general. It's -- the terms of it are contained within the report.

Q I wonder if the witness could be shown Volume 6 of his document binders. And I refer in particular to tab 355 which is towards the front of the volume. My lord, I have given to my friends this morning and will hand up copies of a table of contents that goes volume by volume as a finding aid for these volumes. It's

also the plaintiffs' intention to produce a chronological list of documents of Dr. Galois that wasn't available this morning, but it will be shortly. Those are two sets. They are already separated volume by volume. And they can just be inserted in each of the eight volumes. And there are no, as far as I understand, change to the content except the volume number is added.

THE COURT: Yes.

MR. ADAMS:

Q Now, Dr. Galois, can you just confirm for me, first of all, that the material at tab 355 contains the report and evidence of the Special Joint Committee to which you have referred?

A Yes.

Q And then I want to refer you in particular to a portion of that committee's report which is at small Roman numeral VII, and those numbers, my lord, begin immediately after table of contents and -- well, no. I am sorry. The numbering includes the table of contents.

THE COURT: Yes. I have a small seven.

MR. ADAMS: Yes.

THE COURT: Starting "British Columbia" at the top.

MR. ADAMS: That's correct.

THE COURT: Yes.

MR. ADAMS:

Q And, Dr. Galois, I want to refer you in particular to the final paragraph on that page beginning "early in the proceedings" where it says:

> "Early in the proceedings it developed that the aboriginal title claimed was first presented as a legal claim against the Crown about 15 years ago."

And my question is this: Based on your review of the sources that are cited in your opinion report, is that or is it not an accurate statement?

MR. WILLMS: I object, my lord. Obviously the witness can't characterize a claim as a legal claim. He can say there were other claims. That's fine. But whether it was a legal claim or not this witness can't answer that.

THE COURT: Yes. All right.

MR. ADAMS: Well, my lord, it's not -- the sentence isn't in the context of evaluating its legality or otherwise. It's someone's characterization of the claim. And I --

THE COURT: Well, I don't think we should have an argument about whether it is or it isn't. I am not going to be bound by the answer, but on the other hand it's just as easy to ask him are you aware of earlier claims.
MR. ADAMS: Yes. I have no problem with that.
THE COURT: I am sure he is.
A Am I to answer?
THE COURT: No.
MR. ADAMS:
Q I will ask the question again. As a matter of reference to claims of aboriginal title against the Crown and saying that that was first presented about 15 years ago speaking in 1927 on your review of the sources cited in your report, is that or is it not an accurate statement?
A No. I think there were claims advanced prior to 1912. Certainly.
Q All right. Let me ask you to refer first of all to page -- pages 15 through 17 of your opinion report.
A I don't have a copy of that.
Q And you have already addressed the contents of this 1884 petition in your evidence and I don't propose to have you repeat that. But I do draw your attention on page 16 to the first full paragraph saying:

> "The district is not held unitedly by all the members of the tribe but is portoined out among the several families and no family has a right to trespass on another's grounds."

And then further down the same page 13 lines from the bottom, 14 lines from the bottom:

> "Now we bring the matter before you, and respectfully call upon you to prevent the inroads of any white men upon the land within the fore-named district. In making this claim, we would appeal to your sense of justice and right. We would remind you that it is the duty of the Government to uphold the just claims of all peaceable and law-abiding persons such as we have proved ourselves to be. We hold these lands by the best of all titles. We have received them as the gift of the God of Heaven to our forefathers, and we believe that we cannot be deprived of them by anything short of direct injustice."

And let me ask you to hold that in mind for one moment and ask you to refer now to tab 196 in Volume 4. And this is a document headed "Papers Relating to the Commission appointed to enquire into the state and conditions of the Indians of the North-West Coast of British Columbia" and the heading is dated 1888. I wonder if you could explain very briefly what this document is.

A This is a commission that was appointed to enquire into the various events that had taken place primarily at Metlakatla but also on the lower Skeena and the Nass which led up to and culminated in the departure of the coast Tsimshian from under William Duncan from Metlakatla and various disturbances surrounding those events.

Q All right. Let me refer you to the second page of the tab. These are not numbered, my lord. We will have to count in for them and that has it at the very top Victoria, September 29, 1887, and what appears to be a letter from Alex E.B. Davie, Attorney General, to J. P. Planta, P-l-a-n-t-a.

THE COURT: Where do I find that?

MR. ADAMS: That's the second page of 196, my lord. In the upper left-hand corner it will say J. P. Planta.

THE COURT: Yes.

MR. ADAMS:

Q And I just want to direct your attention, Dr. Galois, to a sentence or two in that copy of a letter. It refers to meeting the Indians of the Nass River in Fort Simpson localities:

> "for the purpose of hearing the expression of their views, wishes and complaints if any. Such will be the main object and scope of your visit and you will please be careful - while assuring the Indians that all they say will be reported to the proper authorities - not to give undertakings or make promises, and in particular you will be careful to discountenance, should it arise, any claim of Indians title to Provincial lands. I need not point out that the Provincial Government are bound to make, at the request of the Dominion, suitable reserves for the Indians; and it will be advisable, should the question of title of land arise, to constantly point this out, and that the Terms of Union secure to the Indians their reserves by the strongest of tenures."

And then let me ask you to go over one more page. And that's a page, my lord, beginning "The Commissioners were conducted."

THE COURT: Yes.

MR. ADAMS: And I am in the fourth full paragraph beginning "the Commissioners had claims."

THE COURT: Yes.

MR. ADAMS:

Q

"The Commissioners had claims and demands reiterated before them by the chiefs and others who addressed them, much more sweeping in character than was the case at Kincolith."

And then skipping down to the next paragraph:

"The basis of the claims advanced was the assertion of the 'Indian Title' to the whole country.

The Commissioners had to combat and deny this by stating the law on the subject, as required by their instructions."

And then on the same side of the same page two more paragraphs down there is, about three-fifths of the way down the page "At the close of the meeting."

"At the close of the meeting at Naas Harbour an address purporting to be signed by eleven up-river chiefs was handed in, as an addition to their speeches.

The address contains a reiteration of the 'Indian Title' in reply to the remarks made by the Commissioners when closing the meeting."

And then going down to four lines from the bottom:

"Thus, as to the determined assertion of the 'Indian Title," your Commissioners found that this was not shared in by the Kincolith branch of the Nish-kar Nation, while it was strongly pressed by the people of Greenville and some of the chiefs from farther up the river."

And then going over another page, this one beginning "group and on the Skeena" and I would refer you to the third last paragraph on that page beginning "the Indian adherents," where it says:

> "The Indian adherents of the Church Missionary Society, and resident at Kincolith and Metlakatlah, put forward no claim of 'Indian Title' to the lands of the Province. In all matters they expressed themselves as loyal to the Federal and Provincial Governments, as desiring to come under the Indian Act, and to have among them Indian Agents. On the other hand, the natives Greenville, on the Naas river, and the Tsimpseans of Port Simpson, stations of the Methodist Church of Canada, strongly urge their claim to ownership in all the country, and speak most determinedly as to what shall be their course of action if their claim be not allowed. They repudiate the idea of the provisions of the Indian Act being exercised with regard to them, and decline to receive an Indian Agent."

And then one further page over there is a heading "Indian Title to Land" and under that heading it says:

> "With reference to this question we found Indian opinion divided."

And then skipping one sentence:

> "The Greenville people and some of the chiefs living still farther up the Naas River, and the Tsimpseans of Port Simpson, hold pronounced views upon the question. They also professed to speak for the Upper Skeena that people.
>
> The Greenville and Upper Naas people demand that a treaty be made with them with reference to the land in their neighbourhood, outside of the reserves they desire to appropriate. They mean that they require a sum paid down or annual subsidies, or in lieu of payment they propose that they should be allowed to pick out land outside of the reserves to the extent of 160 acres for each individual."

And my; question out of all that material is simply are those examples of the materials that you refer to when you say that you find in your search of the sources contradiction of the statement made in the Special Joint Committee report?

A Yes.

MR. ADAMS: Now one final area. My lord, on last Thursday or Friday, I believe there was disclosed and delivered to the plaintiffs material from the Federal defendant which consists of documents in the same time period and covering some of the same subjects as Dr. Galois. And what I seek leave to do is to put those documents in through him. I don't have a lot of questions for him as far as their content. It may be he can help us read a couple of them. And my proposal is that those be added to the appropriate tabs and I have copies for all concerned here.

THE COURT: What tabs are they going to go into in your view?

MR. ADAMS: 416 and 418.

THE COURT: Oh. All right.

MR. ADAMS: In the case of 4 -- that would be in Volume 7.

THE COURT: Oh. I am sorry. 416?

MR. ADAMS: Yes, my lord.

THE COURT: Yes. All right. That's --

THE REGISTRAR: This first document you gave me is going behind tab 16.

MR. ADAMS: They are marked in the upper right-hand corner where we are proposing to put them.

THE COURT: This will be 418B.

MR. ADAMS: The one that has the Federal number 12693 in large numbers would be 418B.

THE COURT: 418B is the same as tab 18, Volume 7, is it?

MR. ADAMS: Let me confirm that.

THE COURT: I think that's right. I am not positive.

MR. ADAMS: Yes, my lord. That's correct.

THE COURT: All right.

MR. ADAMS: Yes, my lord, there is a 418 that is already in before this morning. What I have tendered is 12692 as 418A.

THE COURT: Yes.

MR. ADAMS: And 12693 as 418B.

THE COURT: Yes.

MR. ADAMS: And then at 416A I have tendered 12696. And it's that one that even in the copy I got was sufficiently unclear that I suggest we ask the witness to read through it, omitting the quotations from the Indian Act.

THE COURT: 416A will follow what is now 416?
MR. ADAMS: That's correct.
THE COURT: Yes. All right.
MR. ADAMS: And in fact, I think it will emerge that it is a reply to what was already in 416.
THE COURT: All right.
MR. ADAMS:

Q Dr. Galois, I wonder if you could look at 416A. That's a letter that appears to be dated November 23, 1920?
A Yes.
Q And it's signed by whom?
A Duncan C. Scott, who at this time was the Deputy Superintendent General of Indian Affairs. In other words, the head of the sort of the permanent civil service for the Department of Indian Affairs.
Q And it's addressed to whom?
A The Reverend, and I can't read the initials clearly, but it is the Reverend Shearer who is the General Secretary of the Social Service Council of Canada.
Q And if you look at the previous document in the same tab, 416, from your review of the documents is there a relationship between 416 and 416A?
A Yes. I take this to be a reply to the letter of November the 9th and it's signed there by J. G. Shearer. It's much clearer.
Q All right. Now, I wonder if I could ask you, omitting the quotation of the relevant section of the Indian Act, whether you could read through 416A for us, please?
A Where would you like me to start?
Q Right at the beginning and then you can skip over --

THE COURT: Well, the first two paragraphs are easy to read.
MR. ADAMS:

Q All right. Maybe I can ask you to start in the last line of the first page.
A "As regards to the upper Skeena district."
Q Comprised?
A Surprised.
Q Comprised?
A

"Comprised within what is known as the Babine and upper Skeena Indian Agency, I say -- I may say that -- "

I can't read the next word.

"-- no distant date to appoint a new agent."

Then the next part is illegible. And "who will exercise" something or other. Perhaps I could just add that what is being referred to here is the fact that R. E. Loring, who had been the only Indian agent serving in the Babine agency, retired on or was due to retire on -- at the end of the year 1920. In other words, December the 31st. And Scott is aware of this and is indicating by way of reply to Shearer that a new Indian agent will be appointed in the near future. As events transpired, an interim agent, H. C. Wrinch, served for a brief period before Edward Hyde was appointed as the permanent Indian agent. I am not quite sure when he arrived, but it was sometime, I think, in 1921. Shall I continue reading?

Q Please.

A

"Every effort compatible with the circumstances connected with this troublesome question has been made by the department to, if not at once exterminate the practice, at any rate bring about a reasonably satisfactory condition of affairs. Experience has shown that as the potlatch is a custom which has been handed down for generation and is closely interwoven in the social system of the Indians of this Province, it cannot possibly be eradicated by any abrupt application of force without causing other complications. The only successful treatment being a patient in gradual discouragement of the practice. The department's agents are instructed to enforce the law but, in the first place, to endeavor to prevent any necessity therefor by closely observing the movements of their Indians and to check any inclination to develop the potlatch. Our agent's reports show a quite satisfactory condition on the whole, the practice being now limited to what may be regarded as a comparatively few bands. There is no doubt whatever that with patient and careful handling the practice in a remarkably short time will become -- "

THE COURT: "Reasonably."

MR. ADAMS:

Q "Reasonably."

A "Reasonably." Sorry.

" -- short time will become extinct. Many of the younger Indians now profess disapproval of the practice which of itself is regarded as a hopeful indication in the direction desired.

While, as I say, the department is carrying on a steady policy in the direction of eradicating the custom, I may refer to the fact that this is being done in the face of objections that are quite frequently made by prominent citizens of the Province, some of whom not only advise a moderation of the law but it's abolition.

You will observe that by the amendment above mentioned the offence has been made a summary instead of an indictable one; this has been brought about with a view to the department's having greater control -- "

THE COURT: "Control."

A " -- by -- "

THE COURT: "Cases."

MR. ADAMS:

Q "Cases."

A

" -- cases being placed in the hands of the Indian agents. As regards the suggestion, however, of some of the Missionaries that the Government give Indian agents power to act in cases where white men are living with Indian women unmarried, I may say that, apart from the question of the expediency of granting such powers to the Indian agents, it would no doubt be very difficult to-- "

I can't read the next two words,

" -- in this direction.

The Department is -- "

I can't read the next word,

" -- of the efforts -- "

Perhaps "conscious."

" -- of the efforts of those who are kind enough to lend their assistance in dealing with this

troublesome matter, and I shall be glad to give my further -- "

THE COURT: No. "Any further," isn't it?

A "I shall be glad to give any further," yes, "recommendations -- "

MR. ADAMS:

Q "Representations"?

A Yes.

"-- representations my best consideration. A copy of your letter and of my reply are being sent to our Chief Inspector, Mr. W. E. Ditchburn, Victoria in order that the matter may be kept fully in view. Yours very truly, Duncan C. Scott."

Q All right. Having in mind that letter and the two documents that now appear as 418A and 418B, if you want to take a moment to review those.

A Yes, I would like to, please.

Q Let me ask you a few questions about those documents. First of all, you address in your opinion report and have addressed in your evidence certain opinions with respect to the existence and the function and the persistence of the Feast, correct?

A Yes.

Q Okay. And you don't list these three documents as sources?

A No, I did not.

Q All right. And my question is simply having now seen these documents and had an opportunity to review them, do they influence or not your opinions as expressed in your opinion report and your evidence on the subject of the Feast?

A Well, the latter two documents don't refer to the upper Skeena area. They are concerned one with the Kwakiutl people at Alert Bay and the other one seems to be a more general reference to the status of the Province as a whole, but in terms of the persistence of the Feast and the indications of the functions that it fulfills, I don't see anything that would change my opinion.

Q Now, my lord, as a final matter, I believe that at the beginning of Dr. Galois' evidence I asserted that the contents of his document binders, and we now have made a few additions to that in the course of his evidence

and this morning, were or would become a complete catalog of his sources as listed in his opinion report. And just so that there is no doubt on it as to that, I wanted to ask him to confirm that for your lordship.

Dr. Galois, to your knowledge did eight document binders as supplemented in the course of your evidence contain or at least list all the sources on which you relied for your opinion report?

A To the best of my knowledge I think, yes.

Q Okay. And then as a final final matter, my lord, the opinion report itself has been marked as an exhibit for identification and I understood your lordship to say that we might argue at the end of his evidence or some other time about whether it could or should be marked as an exhibit proper and I don't want to close my direct-examination without having asked that it be marked, even though I am quite prepared to defer the argument on that question to an appropriate time.

THE COURT: All right. What do you say, Mr. Willms, Mr. Macaulay?

MR. WILLMS: Well, the only thing I say, my lord, I just repeat the objections I made before the evidence was led. I don't have anything further to add to the objections that I have already made. So I still object to the admission of the report and the opinions contained in there.

MR. MACAULAY: Yes. So do I, my lord.

THE COURT: Well, I think if that's the case, I should leave it for identification, because we are going to have argument on these matters at some stage and I will be glad to deal with this then.

MR. ADAMS: That completes my examination, my lord.

THE COURT: Thank you.

MR. ADAMS: I should say, my lord, I don't recall whether the volumes were tendered. Oh, 1035. And I should say I take my friends as tendering the documents as documents that the witness relied on and there still is an argument which we intend to raise before the plaintiffs close their case on the effect of, if I can call them fact documents that have been marked along with expert reports. So I don't want to take the marking as being an acknowledgement that they are all admissible for whatever my friend may say. We still have to deal with that.

THE COURT: Have these document books been marked 1035 Roman I to VIII for identification?

THE REGISTRAR: No. They are exhibits proper.
THE COURT: They are exhibits?
THE REGISTRAR: Yes, they are.
MR. ADAMS: I think your lordship's comment at the time was subject to just exceptions.
THE COURT: Yes. All right.
MR. ADAMS: And in fact, it's still the case that some of the documents listed are not there because we have yet to obtain copies. And my intention is still to improve the copies and fill in the blanks.
THE COURT: Yes. All right.
MR. ADAMS: Without adding to the witness' evidence.
THE COURT: Thank you. Have counsel agreed who will cross-examine first?
MR. MACAULAY: Yes, my lord. Mr. Willms will.
THE COURT: Thank you, Mr. Willms.

CROSS-EXAMINATION BY MR. WILLMS:

Q I wonder if the witness' report could be put before him and Volume 5. And Dr. Galois, could you please turn in your report to page 57. And turn in Volume 5 to tab 259. Right. Now, my friend put the middle paragraph in page 57 of your report to you, your discussion of the situation concerning the Feast. Missionary opposition, Loring maintaining the stance on the reform of the Feast system and then you say in your report:

> "It is clear that the Feast was undergoing a number of formal changes, but contemporary and subsequent reports indicate that Loring, on the latter points, was guilty of wishful thinking."

And then my friend directed you at tab 259 to a letter which is the second letter at the tab, a letter of December 31, 1902 -- 1904 and the second page, and read the penultimate paragraph, and in that paragraph what was -- what is set out in that paragraph and just at the page -- the second line down, you see the word "aside"?

A It's very difficult to read this.

Q Well, the second line.

THE COURT: In that last full paragraph.

MR. WILLMS:

Q In the last full paragraph it starts "aside of these." It's the second line, my lord.

THE COURT: Well, I can hardly read it anyway, let alone find

it.
MR. WILLMS:
Q Sorry.
A "Aside of these -- "
Q The third line, it's in the second sentence, the third line "aside of these" in the second to last paragraph on the very last page of the tab.
THE COURT: Of tab 59?
MR. WILLMS: Yes.
THE COURT: Oh. Yes, I have it. Thank you.
MR. WILLMS:
Q
"Aside of these of whom all are Roman Catholics, it is well to mention that the Kit-Ksuns all but a few of the very old embrace the Christian faiths and beliefs and because of this ascendancy throughout the district of the Skeena, the potlatch is put down for good and all as in every condition evolved regarding the survival of the fittest."

Now, just what evidence did you see in the historical record for the holding of a potlatch after 1904?
A Well, I guess the best example of that was in 1921 when four Kispiox Indians were arrested for holding a Feast.
Q Well, I said potlatch.
A Well, I can't remember I mean this -- they were arrested and charged under Section 149 of the Indian Act as it was at that time, which is the potlatch prohibition segments of the Indian Act.
Q Now, in your report when you refer to the historic documents, do you assume that the Feast is the same as a potlatch, or do you assume that they are different when they are being referred to in the historical documents?
A Well, there is an enormous variety of historical documents. One problem with the some segments of the historical documents, particularly the legal prohibition, is the ambiguities about the definitions of what a potlatch is. I understand, and take it to be that that is referring broadly speaking to the Feast system. And through the course of time as various amendments were made to that Act the definition was made more precise.
THE COURT: Well, is it fair for me to make a note that you assume that potlatch equals Feast where those terms

appear in the historical documents and vice versa?
A I am not sure I would want to make a complete blanket statement on that.
MR. WILLMS:
Q I am showing you a letter of July 21, 1906 from Loring and, my lord, this is -- I believe that this is at tab 260, but at tab 260 it's very difficult to read because of the photocopying, and -- but I think it's the very last document at tab 260 and so this -- I just hand this up because it's a little more readable. If you look, Dr. Galois, at the first page of this letter of July 21, 1906, you will see at very bottom paragraph, and this is Loring to Vowell. And, my lord, I am on the first page of the photocopy that I handed up. Loring says this:

> "Insofar as the so-called potlatch is concerned,"

And he's referring to a complaint about a potlatch having taken place,

> "Insofar as the so-called potlatch is concerned, it was merely a memory Feast attended by the old heathens of Kuldoe, Kisgegas and Kitwankool. Really, no objectionable feature is, in my opinion, connected therewith."

Now, it appears, does it not, that at least in this letter Loring is drawing a distinction between a potlatch and a Feast?
A I don't take that to be the case.
Q Well, if you -- I will read the paragraph before. He says this:

> "As to the heathen potlatch and dancing, referred to, having made the attendance of children small at that school, I have the honour to state that Mr. Inspector Green was not rightly informed The Indians of Kispiax, whose children make up the attendance were during last winter chiefly in the woods logging."

And in the very next paragraph he refers to a memory Feast. He doesn't call it a potlatch. Isn't he drawing a distinction or did you assume not?
A I would take it to be not. I take that a memory Feast

to be an integral, an essential part of the whole Feast system. And that the attempts to prohibit the potlatch included such events insofar as they involved the giving of presents and money.

MR. WILLMS: Perhaps that could be 1033-5, my lord.

A I should add that what he is going on here is in part a modification of some of the forms of the Feast system which I describe -- which I mentioned that Loring did in fact describe. The Feast, as it was carried out in 1920, was certainly not the same as the Feast as it was carried out, say, in the 1880s. So they were certainly formal adjustments, but in terms of some of the crucial functions of the Feast system, I see this as persisting through the period that I examined in my report.

MR. WILLMS: Could Volume 4 of the witness' documents be put before him?

THE REGISTRAR: This will be marked as part of Exhibit 1033.

THE COURT: Yes.

(EXHIBIT 1033-5: Clearer Copy - Loring to Vowell - July 21, 1906, Vol 5, Tab 260)

MR. WILLMS:

Q And I wonder, Dr. Galois, if you could please turn to tab 207 in Volume 4, and this is a letter from Mr. Loring to Vowell of July 15, 1897, and what I have is a transcript of 207. I am showing you a typed transcript of that letter. Now, of course this letter of 1897, the reference is on tab 57 of your report with to communications in 1904 and 1906. Those were the two or some communication then. This pre-dated that. And this is, as I said, a transcript of what is contained at Volume 4, tab 207, and in the second paragraph Loring says this, "in replying to the foregoing," and it's -- well, I should read the whole thing:

> "I have the honour to acknowledge the receipt your Circular & Letter 745 X/2 dated the 8th ultimo, stating that representations have been made to the Department that the Indians had become greatly disaffected owing to the enforcement of the provisions of the Indian Act prohibiting the holding of festivals described as the 'Potlach,' etc., and requesting me to supply full particulars, in duplicate, as concerning my

Agency.

In replying to the foregoing I have the honour to state that in regard to the festival the bands of the Hoquel-get Indians do not observe it, for reasons, no doubt, having been for many years under advices of the Roman Catholic priests."

Just pausing there. After 1897, what documents in the historical record are you aware of indicating that the Wet'suwet'en, any Wet'suwet'en people held a potlatch?

A There are a number of destruction, I believe, by Barbeau contained in the potlatch file of the Department of Indian Affairs, RG10, I can't remember the exact number. But it's a document in 1920, I believe, when Barbeau was beginning fieldwork. And he visited a number of Feasts. I can't remember exactly which term that he used. And he -- one of the particularly intriguing points, at least as far as I was concerned, about his comments on that was that he noted that the R.C.M.P. had been sent to observe this activity, departed at the appropriate time, which I took to mean that they left before they had the chance to observe anything that would be deemed illegal.

Q So -- but you are again equating Feast and potlatch?

A I take that to be what the event that was going on there was a Feast system and that it was illegal under the terms of the Indian Act.

Q Now, carrying on.

A And there are also, as I recall, other Feasts that are recorded in -- for the Wet'suwet'en from the period certainly after 1904. I can't remember the exact documents. But certainly it was one, I believe, in 1916. There are accounts of Feasts and money expended, I think, in the local newspapers as a reference to the Grand Trunk Pacific Railway putting on extra carriages to carry some Wet'suwet'en people to Feasts. And I believe, I am not sure, but if I recall correctly, a Wet'suwet'en chief was arrested following in, I think this is in 1923, because he attended a Feast in the Fraser Lake area. At this time going to Feasts of your own reserves was a part of the -- was -- was illegal.

Q Just carrying on with Loring's description of the potlatches and Feasts, the paragraph carries on at the bottom paragraph:

"Each of the bands of Kit-Ksuns divided in respect

to holding the Feast. The old of each band fovour it, whilst the younger of the population are against it. The real providers for supplies to a potlatch were the latter, hence, the main support gone, the custom is now only lingering to soon meet its end. The majority of the Indians--"

I won't read that because that's a guess at what's being said there:

" -- advice of the new provisions for an enforcement of the Indian Act greatly distracted, pleading they would be deprived of their only diversion, during the long winters, etc, etc. Time and again the Indians assembled here to consessions. Seeing in the potlatching only one objectionable feature that of wilful destruction of property, I arranged for quietly meeting in Feast under modified forms, and it is pleasant to reflect that the parties interested met us half way by promising the moose skins, blankets and other offerings to the departed in spirit-land, instead being consigned to the flames, to be carefully divided up amongst the poor and aged and that agreement was carried out to the letter. In fact carried out to a ridiculous extent, in that an old woman was brought down from Kis-piox, and before me, for having thrown a cup-ful of rancid grease onto the fire in order to make it blaze up."

I am going to suggest again to you that Loring drew distinction in his correspondence between Feasts and potlatches.

A May I finish reading the rest of it? Well, if one looks at the next paragraph after from where you read, I mean there is a very crucial point there in which Loring is in fact pointing to one of the central functions of the Feast:

"The origin of the potlatch Feast is only attributable to a desire of being lavish in becoming a man of consequence attending the ceremony in adopting a departed's place and name."

In other words, that is the central function. That's what he means by a memory Feast. And he there

describes it as a potlatch.

Q Yes. But if you read the con -- if you carry on. Well, let's read the rest of the letter. He talks about the ceremony:

> "The gifts received at this ceremony are considered obligations to be reciprocated, yet those are not able to meet them, are not any the less thought of for that and only pitied for not being likewise grand, and the old of the people generally managed to receive enough at the gathering to last them over the most part of the winter.
>
> Should the enforcement of the provisions of the Indian Act under consideration have to be carried out under the in this Agency existing circumstances, I would conscientiously advocate their repeal.
>
> The -- "

And I won't read that. That's a guess.

> " -- is not known in these parts, but a dance accompanying the dog-eating, formerly practised here, may have been it.
>
> Touching on the subject of dog-eating, the most disgusting of all Indian rites, I here may state that nearly eight years ago I forbid the ceremony. The Indians came and pleaded to allow its performance minus dog. Not believing in crushing out in a day an old custom, of time immemorial, I consented to the performance in pantomime and imaginary dog and the participants being clothed instead of in a nude state.
>
> Two years later, the day of that ceremony was passed over entirely, and today lives only in memory, and to the like relegation, in less than three years hence, the potlatch, or rather what remains of it, will have followed."

Now, I suggest to you, Dr. Galois, it's clear from Loring's correspondence that he was concerned about destruction of property, dog-eating and the other parts of the potlatch that he refers to in his correspondence, but that he was not opposed and did not try to stomp out things like memory Feasts or as he described on the previous page, "quietly meeting in

Feast under modified forms," isn't that the case?
A Well, there is no doubt that some of the forms and ceremonies associated with the Feasts were modified to conform with the pressures that were a consequence both of the actions of the missionaries and of the legal system, the banning of the potlatch.
Q You see, if we can just --
A However, as Loring states there, I mean as a central part of the Feast system which he identifies as a potlatch is the whole process of inheriting both name and territory. And that is the crucial function, the central function, and that is what persists through time. And the other important point is to see this document as not a single document but as one of a whole succession, a whole -- reflecting a whole historical process which goes on well beyond this time in which even after those objectionable features, as they are described, there are attempts to remove, eradicate potlatches partly in legal terms and partly also I think one has to bear this in mind, the use of the law and what that symbolized and the way that that fitted into the pressure that missionaries brought to bear on both the Gitksan and the Wet'suwet'en. It was a very important sort of weapon, it seems to me, in their attempts to eradicate the Feast completely, well, after this period.
Q You acknowledge that dog-eating stopped?
A Insofar as I am aware, yes.
Q And destruction of property stopped?
A There may be one or two things that indicate that that wasn't entirely the case. I believe there is a description of Feast at Kitwanga in 1916 where there may have been some description of property. There was certainly one of the elements here which is described, the throwing of grease on the fire. And there was also -- I mean there were also attached with other Feasts what were deemed would be objectionable features which was the -- at least in the missionary reports and I think also an R.C.M.P. report referring to -- I am not sure if Kitwanga or Kitwancool in 1927 about the use of alcohol and attendant I think debauchery as it was termed in the missionaries' account of 1916.
Q But, Dr. Galois, if we can return to page 57 of your report where you said: "Loring, too -- " in the middle of the page:

"Loring, too, maintained the stance he had developed in the 1890's: he reported on the reform of the Feast system"

And that I have just read to you,

"and, on occasion, reported its imminent or actual demise."

And I am going to suggest to you, Dr. Galois, that he did not report on the demise of the Feast system. In fact he acknowledged that if it was going to be enforced to cover the Feast, he'd advocate the repeal of the potlatch section.

A Again --
Q That was his position, wasn't it, Dr. Galois?
A Again, we must take this document not as a single document standing alone, but we have to see it in a whole sequence of documents, including a whole series that were written by Loring himself when he refers to this time and time again. And he is still referring to the imminent demise of the Feast system well after this 1897 letter.
Q But he calls it the potlatch, doesn't he?
A I believe that's the term. I mean that was the standard term that was used. I mean that was the legal term under the Indian Act. I use the Feast term because I mean potlatch was not a term that was used by native peoples there. I mean its origin, I think, is a chinook term.

MR. WILLMS: My lord --
A And --
MR. WILLMS: -- could the transcript be 1033-6.

(EXHIBIT 1033-6: Transcript - Loring to Vowell, 15 July 1897 - Vol 4, Tab 207)

MR. WILLMS:
Q And if you could just turn back one page in your report, Dr. Galois, to page 56.
THE COURT: I am sorry, where are you going to now, Mr. Willms?
MR. WILLMS: I am in his report and we are on 57. I am just asking the witness to turn back one page.
THE COURT: What was the number you referred to, 1033?
MR. WILLMS: 1033-6 was the number that I proposed giving to the transcript --
THE COURT: Oh.

MR. WILLMS: -- of -- it's the -- because you can't read what's at Volume 4, tab 207. It's a transcript of what's at Volume 4.
THE COURT: All right.
MR. WILLMS: Tab 207.
THE COURT: Thank you.
MR. WILLMS: The next reference, my lord, was to page 56 of the witness' report.

Q And at the bottom of the page, Dr. Galois, you refer to the Game Act, amendments to the Game Act, and you say it talks about the prohibition on beaver hunting in the last line of page 56, and then at the top of the next page you talk about Indian protests and the prohibition being modified. And I'm showing you the first report of the Provincial Game and Forest Warden 1905. This was one of the documents and it's referred to in your footnote 48 there that you relied on in alleging that there had been a prohibition on beaver hunting for six years.

A Is there a question?

Q Well, I am just pointing out to you that that, or do you recall -- I mean you recall looking through this?

A I recall looking through this, yes.

Q All right.

A And there was, as I recall, a prohibition on beaver hunting which followed from the Game Act of 1905 and there was a capacity, I believe, in that for that prohibition to be amended or withheld for an unspecified portion of the Province north of some undefined point.

Q Right. And so if you can turn to page D14 of the Game Warden's Report respecting beaver, there is a discussion of the increase, and I won't read the first couple of lines, a discussion of the beaver increasing in certain parts, but if you go down to the sixth line, the sentence: "It is, however":

> "It is, however, a fact that what was once a magnificent beaver country is, with the exception of these few places and some parts of the northern country, almost denuded of beaver. This fact was brought to the attention of the Government last spring, and when the Game Act was amended a clause was inserted protecting beaver for the next six years, but reserving the right for the Lieutenant-Governor in Council to pass an order exempting Indians north of a certain point, and

also persons in the habit of dealing with these Indians."

So the exemption that was ultimately, and the exemption that you referred to on page 57 of your report, the exemption was contemplated at the time of the prohibition?

A Yes.

Q So you don't mean to suggest, do you, that it was only as a result of the protests that the exemption was obtained. When I read the first sentence on page 57 of your report, it seems as if you are suggesting that it was the Indian protests that led to the exemption when in fact the exemption was contemplated when the Act was passed?

A Well, I -- I think that Indian protests, of which there were none from the Gitksan and Wet'suwet'en in 1905, were part of the process which culminated in the implementation and the form it was implemented of that segment of the Act. I believe, too, the Hudson's Bay Company entered the protest.

Q Well, just let's just be clear. Are you suggesting that it was Indian protests that led to this exemption? Is that what you're suggesting in your report?

A What I'm suggesting is that Indian protests about the possibility of the ban as the Act made possible, they protested about that and as a result of that the capacity there, which is indicated in that report, was put into play at -- in a such a way that the Indians north of I think the Blackwater River, but I'm not absolutely sure of that, the prohibition was withdrawn for that particular area. And it was for which is also important that the withdrawal of the prohibition was only for a two year period, not for the six year period.

Q Wasn't it in fact a result of the Hudson's Bay Company approaching the government that the exemption was put in in the first place? Isn't that the case?

A Sorry, could you repeat that question?

Q Wasn't it the Hudson's Bay Company not the Indians who instigated the exemption in the regulation in the first place?

A I know that there was an objection by the Hudson's Bay Company. I know also that there were Indian protests entered. I would presume that both contributed to the exemption that was granted in 1905.

Q Is Exhibit 962 -- well, my lord, I didn't expect to get to this, but I'll put my copy to the witness and then -- I am showing you a copy of the -- it's the report, the draft report of Dr. Ray, Arthur Ray. Do you know Dr. Ray?
A Yes, I do.
Q He's the historical geographer?
A Yes, he is, but he works in the history department at U.B.C. But his training and background and his publications are those of a historical geographer.
Q This is Ray 1985. And on page 86, Dr. Ray says this: I am the at the top of the page. He says:

> "In 1905 the British Columbia legislature also banned the trapping of beaver for six years for Conservational purposes. However, the Hudson's Bay Company managed to get an Order in Council to rescind the restriction."

All right. Dr. Ray has accurately set out what happened, hasn't he?
A I don't know. What I can look at, I haven't read the document that he refers to. The only thing that he does refer to here as far as I can see is a Hudson's Bay Company report of 1905.

THE COURT: What was that reference, please, that's exhibit -- ?
MR. WILLMS: That's Exhibit 962, my lord, page 86 and it's right up at the top of the page.

Q Dr. Galois, I suggest to you that Indian protests have nothing to do with the exemption for beaver trapping and that the beaver trapping exemption resulted from Hudson's Bay Company approach to the government and that's why the exemption was put in. Would you agree with that?
A I would like to look at the documentation to which Dr. Ray refers before making any firm decision on that. I haven't seen the documentation that he relied upon. As I say, what I have seen is certain protest by Indians from the Stuart Lake area. My point I guess is the important thing there is the protests themselves. They are an indication of Indian reaction. I mean they had no control over the actions of the government per se.

MR. WILLMS: My lord, could the Game Warden Report be 1033-7?
THE COURT: Yes.

(EXHIBIT 1033-7: First Report of the Provincial Game and Forest Warden of the Province of British Columbia 1905)

MR. WILLMS: Now, my lord, I am going to turn to another series of documents and I know it's a couple of minutes early. If it would be appropriate to break now.

THE COURT: All right. Thank you. This is 1905. Yes. All right. Thank you.

(PROCEEDINGS ADJOURNED PURSUANT TO MORNING RECESS)

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

Laara Yardley, Official Reporter,
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED AT 11:35 a.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Willms.
MR. WILLMS:

Q Dr. Galois, could you turn to page 15 of your report. And at page 15 through to 17 of your report you've quoted a petition from the Kitwanga chiefs, October 10th, 1884?

A Yes.

Q And you obtained that quote from the Return to an Order of the Legislative Assembly, 2nd February, 1885, document I put in front of you?

A Yes.

Q And in fact, the document that you've quoted is on page 284 of the Return, starting -- my lord, these are numbered in alternating right -- upper right and upper left-hand corners.

But on page 284 which is the number in the left-

hand corner, the petition from the chiefs starts at the bottom and carries over to the next page?

A Yes.

Q And now, my lord, you may want to note, a document -- this document is also found at volume 3, tab 105, but parts are cut off so I've replicated it so we can read the whole document.

THE COURT: Yes.

MR. WILLMS: And I would ask that this document be marked 1033-8, the Return.

(EXHIBIT 1033-8 - Return to an Order of the Legislative Assembly dd. February 2, 1885)

MR. WILLMS:

Q Now you know, Dr. Galois, that the petition of the Kitwanga chiefs was written by Reverend Tomlinson?

A In the sense that it was written down by him, yes.

Q Yes. And so that if we look -- and you started quoting -- you quoted the petition from page 284, but the immediately preceding piece of correspondence is a letter from Reverend Tomlinson to the Provincial Secretary, October 20th, 1884, and that was the letter enclosing the petition of the chiefs?

A Yes.

Q And just to set the stage of the exchange in correspondence, if you turn back to page 279 of the return, there is a letter on page 279 at the very top of the page dated February 29th, 1984.

THE COURT: 1884.

MR. WILLMS:

Q Sorry, 1884. That is the -- a letter from the Provincial Secretary to the Reverend Tomlinson, and that went on the 29th of February. And then if you look to Mr. -- to Reverend Tomlinson's reply which we were just at at page 283, you will see that what Reverend Tomlinson did was he translated the letter from the Provincial Secretary to the Indian chiefs and then he drafted -- he wrote down the petition which he returned. So that's the exchange of correspondence there?

A Yeah.

Q Correct?

Now, when you looked at the petition and Reverend Tomlinson's letter enclosing the petition, you knew that Reverend Tomlinson had not written down exactly word for word what the chiefs had said, correct?

A Yes. That's -- yes, it is not -- it makes no claim, I take it, anyway, to be a verbatim copy.
Q All right. And so you don't know how much of the petition was exactly what the chiefs said and how much of the petition was something that Mr. -- that Reverend Tomlinson interpreted for them and wrote down himself?
A One can't be absolutely sure, but one can, I think, make some intelligent inferences in terms of the information that is contained in there. And I would suspect too that Tomlinson, who at this stage could certainly speak Nishga, and I think he could speak Gitksan, would, I would assume at any rate, have informed the chiefs of what he had in fact communicated.
Q But you will agree with me that what we can agree on is that Reverend Tomlinson wrote this, that it wasn't exactly verbatim what the chiefs told him, and that we don't know which parts are verbatim and which parts aren't?
A Well, I can only repeat my previous statement.

THE COURT: Where does it say that they are not necessarily the same?

MR. WILLMS: Well --

THE COURT: Page 283?

MR. WILLMS: The witness agreed with me, my lord, that Reverend Tomlinson says at the top of page 284 when he encloses the petition, he says:

> "As regards the accompanying petition of the Kitwingach Chiefs, I am happy to be able to inform you that the meeting was conducted in the most orderly manner; that there was a complete absence of all violent action or utterance, and though, through my effort to keep as near the original as possible, parts of the petition may seem curt, no disrespect was intended."

THE COURT: All right.

MR. WILLMS:

Q And I'm just trying to establish that there is no way -- or maybe the witness can point to another document -- is there any other document written by Reverend Tomlinson which would set out how much of the petition is verbatim and how much isn't?
A Well, what he says there. He attempts "to keep as

near the original as possible." And again, I would reiterate what I said before, given the role and relationship that Tomlinson played, I would assume that he informed the chiefs of what he had communicated in writing, and as I indicated, he was certainly fluent in Nishga at that time and I think, though I can't be absolutely sure, that he was fluent in Gitksan. One should remember that he had -- he established a mission at Kitselas, seven miles north of Kispiox in 1879, and he had been in charge of that with, I believe, one year out until 1883. And so he had by 1884, some reasonable experience of Tsimshian speakers and the Gitksan included amongst them.

And so that my point there would be -- is that he is not only familiar with the language, but the people and their customs, and I am sure that that would have informed the way that he wrote that down. And as he indicates in his accompanying letter, he has stuck as near as possible to the original, whilst admitting and trying by way of explanation to point out that no disrespect, as he puts it, was intended.

Q Right. But you will agree with me that you cannot -- when you read the petition that you've quoted there, you must emphasize the sense of the petition rather than the particular language used, because the language may be Reverend Tomlinson's?

A Well, I really can't add to what I've previously said. I mean it is not a verbatim translation. Tomlinson states that. He states that he has stuck as closely as possible to the original, and I would think in terms of the substance of the information that it conveys, it would reflect the views of the chiefs at Kitwanga.

Q Now --

A I have no reason to believe anything to the contrary.

Q All right. Turning -- just keeping with 1033-8, because you refer to it off and on throughout the report -- if I can just take you to a couple more places where you refer to it.

Page 36 of your report, you quote again from the Return, in the middle of the page. And if we can just line up -- in the middle of the page when you are talking about:

> "Indian concern over access to land and resources. This was made clear at a meeting of the chiefs of the Gitksan tribes. One chief

summed up the sentiments of all the chiefs when he stated, according to Reverend Tomlinson, that the 'exclusive right we claim to hunt, fish, and gather fruit in any particular place is a hereditary right enjoyed by us before the white man came among us'."

A Yes.
Q And that, if you look on page 277 of 1033-8, you are quoting there from the very bottom of the page, correct?
A Yes.
Q And ending at "exception".
Now, you see that over onto the next page, and this is carrying on with the quote, the third line down, the chief that Tomlinson is quoting from and you quoted from also said this:

"Some years ago the white men sent the Missionaries among us; a change came, and though we have not yet adopted Christianity, we ceased our quarrelling and fighting. Look at this knife (produces a double-bladed dagger)"

THE COURT: I'm sorry, Mr. Willms, I don't know where you are reading from.
MR. WILLMS: My lord, I'm on 1033-8 on the very first page. At the bottom of the exhibit was the -- at the very bottom, a quote from the Indian chief: "The exclusive right we claim to hunt --"
THE COURT: Yes. Okay.
MR. WILLMS: Now that is in Dr. Galois' report, that line.
THE COURT: Okay.
MR. WILLMS: And he quotes that in the middle of the -- of page 36 on his report.
THE COURT: Yes.
MR. WILLMS: And now I am just carrying on on the next page with what else the chief actually said. The witness in his report summarized, but I am just going to -- it's on page 278, my lord, it's the very next page at 1033-8, up at the top of the page, third line down: "Some years ago --"
THE COURT: Yes. Okay.
MR. WILLMS:
Q

"-- the white men sent the Missionaries among us; a change came, and though we have not yet

> adopted Christianity, we ceased our quarrelling and fighting. Look at this knife (produces a double-bladed dagger), it is rusty; you remember the time it was bright, when hardly a season passed without bloodshed. For many years this knife has lain hidden away, and I never thought to see it again. Now the white men, because they think we will not resist, want to rob us. They have disinterred this knife, and hundreds more like it. Do I think we can cope with the white man? No. We are but as a twig compared to a tree. They have the men, the guns, the power to annihilate us, but it is better so than that we should live to be beggers. We will not live and see ourselves and our children robbed. We can and we will die."

Now that was -- you said in your report -- I took it as a summary of what the rest of the chief was saying, but in your report you say:

> "If the government was unwilling to guarantee such rights, the chief claimed, his people would neither accept reserves nor allow an Indian agent to reside among them."

Well in addition to that, he said that there would be bloodshed too, didn't he? That's exactly what Reverend Tomlinson quoted, correct?

A He holds that out as a possibility, yes.

Q Yes. And in your review of the historical record, how many deaths of Indians did you see in the historical record respecting the reserve issue in this area?

A How many Indians did I see -- recall being killed as a result of?

Q Of the reserve issue?

A Of the reserve issue?

MR. ADAMS: Well, my lord, I am not sure I understand that question. How would one know whether a death was as a result of the reserve issue?

MR. WILLMS:

Q Well, I suppose from carefully analysing all the historical documents. Unless -- if the witness can't answer it I'll take that answer, my lord. If he doesn't know, he doesn't know.

A Could you clarify for me what you mean by "the reserve

issue"?

Q Well, "If the government was unwilling to guarantee such rights," I am reading from your report, page 36, that -- that is the rights "to hunt, fish, and gather fruit in any particular place," as you've quoted on your report, I'll call that the reserve issue just to summarize it, okay. The right to hunt, fish and gather fruit in any particular place, let's call that the reserve issue. That means off the reserve not on the reserve. So, how many deaths of Indians did you note in the historical record resulting -- or arising out of this reserve issue?

A Well then, I have to address the question of the reserve issue at this point in time, which is first of all, that there weren't any on the Upper Skeena, there was no --

Q Okay. I tried to equate reserve, I'll just use the language that you use. In respect of the exclusive right that the Indians claimed to hunt, fish, and gather fruit, how many deaths did you note in the historical record of Indians in respect of that issue, that right?

A Well, I have to place that in some sort of context, which certainly in the period before -- well before -- I guess 1897 anyway, there was no real attempt to interfere with those particular rights. In other words:

> "The right to hunt, fish, and gather fruit in any particular place is a hereditary right enjoyed by us before the white man came among us."

It really was only with the beginnings of white settlement on any scale in the area, which begins -- well, I think I dated it in 1898 -- it's in that period when those rights are curtailed. And of course as part of that process, the whole sort of balance of power, if one will, between Indians and whites, and the coercive power of the whites -- and there had been a number of demonstrations of this after the 1884 incident there, I am thinking particularly of the 1888 uprising as it's termed.

So that the situation had changed after 1898. And I do not recall from that time on, that there were any deaths amongst the Indians as a result of those restrictions.

Q Just on the interference prior to that date, I mean

you know that in 1871, Dewdney selected and surveyed the townsite of Hazelton?

A Yes.

Q And you know that he at the same time reserved land for a tribe called the Gitanmaax?

A Yes. But I don't know that anything happened to that. I am not sure that it ever entered into the -- it became an official reserve. Because as I recall, and I -- I think O'Reilly allotted -- O'Reilly allotted the first reserves in the area. I am unclear as to the status of what happened to Dewdney's designation of an area at the junction of the Skeena and the Bulkley rivers as an Indian reserve.

Q I am showing you two pages of a draft of your report that we had produced to us. And first of all, these are just two pages, but you recognize this as an extract from one of your draft reports?

A Yes. Which one and when it was written, I have absolutely no idea.

Q All right. Well you talk about Hazelton and Dewdney in the middle of the page, and then say this:

> "The results of Dewdney's labours at the forks of the Skeena are neatly encapsulated in Map XX. This, together with some of his correspondence, is worthy of careful examination. The following features of Map are significant:
>
> 1. The townsite and town lots, located at the end of the new trail to Babine.
> 2. The Indian Reserve including Kitenmaik [Getanmax] Village.
> 3. Indian Trails.
> 4. Pre-emptions, Mitchell & Farron, Hankin.
> 5. The location of Hankin's 'old' store."

So that you know that in 1871, that Dewdney had surveyed Hazelton, laid out an Indian reserve, surveyed some pre-emptions at Hazelton?

A Yes. But my point was, again, I'm not quite sure what the status of that Indian reserve was. It seems to me, as I recall the record, that when O'Reilly came along in 1891 to begin the establishment of reserves, he makes no reference to this prior visit by Dewdney. And I seem to recall some other document which said these pre-emptions -- I think it's -- I think it's a letter by the Reverend Field who is a Church

Missionary Society missionary at Hazelton, that something had happened to these pre-emptions on that reserve and that they hadn't carried through. I'm sorry I'm vague about that, but I'm sure that there was some other information that I came across subsequent to writing this.

The other point that I would make in terms of the issue, of course, is when O'Reilly did visit in 1891, he did specifically exclude any restriction on the access of Indians to resources outside of the reserves. In other words, what he said quite clearly, and this is in file 126-A of RG10, that the people -- the Gitksan were free to continue having access to their fisheries, to their hunting grounds and to their berry patches as before. And I think he said that on a number of occasions at different places.

Q All right. Well I'm just trying to get -- I thought you said a few moments ago that prior to the late 1800's, I don't know, I can't remember whether it was 1897 or 1898, there wasn't any interference with this exclusive right -- claim to hunt, fish and gather fruit. And I'm suggesting to you that when Dewdney went in and laid out the townsite of Hazelton and laid out the reserve and laid out some pre-emptions, that that must have interfered with that?

A Well, what I've been trying to suggest is that this was something which existed on paper rather than had any great significance as far as I can determine, on the ground. And I can really only repeat what O'Reilly said in 1891, and from the variety of other documents that I've been able to look at, there seems to be many -- there seems to be very little in the way of any restriction, as I think I said in my report. The words there were "a certain amount of alienation of land" primarily, I think, in terms of -- or the mining legislation is applied at Lorne Creek, and it is significant that conflict and problems did arise directly out of that development. And what that did, of course, was to restrict the access of the Gitksan to gain resources, in particular, by scaring them away.

MR. WILLMS: 1033-9 my lord?
THE COURT: Yes.

(EXHIBIT 1033-9 - Two Pages from Draft Report of Dr. Galois)

MR. WILLMS:

Q I would like to turn back -- I'm still on 1033-8. I wanted to refer to one more item, and it's an item, if you turn in page -- pages 37 to 38 of your report. You quote from a letter to the Provincial Secretary of September 7th, 1884, and you are quoting from the document that's on pages 279 -- at page 279 of Exhibit 1033-8, correct? That's where you -- from that extract that I handed you, if you look at page 279, that is the document that you are quoting from?

A Yes.

Q Okay. Now, you'll see if you turn over to page 282, there is a reply at the bottom of the page -- that starts at the bottom of the page from the Provincial Secretary, and this you will recognize as the reply to the letter of Geddem-Cal-Doe?

A Yes.

Q Yes. And you will see in the last paragraph on page 282, in the reply of the Provincial Secretary -- and the reply, my lord, is dated October 13th, 1884 -- he says this in the third paragraph at the bottom of page 282:

> "It would, perhaps, have been better if Youmans had acted in accordance with the Indian custom; but you must understand that your law was not binding on him. It is by the Queen's law that all the people, Indians and whites alike, are now governed, and those who disobey that law must be punished, no matter what they may have been accustomed to before."

Now, did you note any reply from Geddem-Cal-Doe to this letter from the Provincial Secretary?

A Just like to continue reading, if I may.

THE COURT: What was the date of Mr. Dewdney's survey, please?

MR. WILLMS: 1871, my lord.

THE COURT: Thank you.

THE WITNESS: Was?

MR. WILLMS:

Q Was there -- did you note in the historical record any reply to this letter from the Provincial Secretary?

A I should point out that the letter -- original letter was written by -- written down by Reverend D. Jennings who was a missionary who, I believe, was stationed at Port Essington at that point. So that no, Geddem-Cal-Doe did not write a letter but he would

have required somebody who would have been capable of writing a letter at that point.

Q Right. But as far as the historical record goes, the letter from the Provincial Secretary ends this part of the historical record?

A Well, I don't think it ends the historical record, no. I mean --

Q This part?

A There is a series of whole incidents which follow on from this, including the death of Haatq and the responses to that and also to the actions of some of the Gitksan people after the removal of Haatq from Gitanmaax by Sergeant Roycraft, Constable -- his name I can't remember -- and A.C. Elliott. So it doesn't end the historical record as such. Equally there is no further written communication by Geddem-Cal-Doe in response to the letter from the -- is it the Provincial Secretary?

Q The Provincial Secretary.

A Yes.

Q On page 38 of your report, after you quote this letter, you say that:

> "This statement makes two points abundantly clear: First the nature of Gitksan law concerning personal responsibility and compensation, together with penalties for non-compliance."

Then the second thing that you say is:

> "Second, the assumption that Youmans should have acted in accordance with these Gitksan laws."

A Um-hmm.

Q Now, you will agree with me that the assumption that Youmans should have acted in accordance with the Gitksan laws was because he had a Gitksan wife; is that right?

A That is not entirely clear. He had a Gitksan wife, that may have been a contributory factor. I should add, it does seem to be the construction he has put on it by the Provincial Secretary in his reply to that letter.

Q I'm showing you a page from an earlier draft of your report where you quote at the top -- and the top of

the page ends off quoting from the letter that is at pages 37 to 38 of your report. And then -- and then you say something which is -- which foreshadows what is in your report, but contains some information which isn't in your report. You say this in the middle of the page:

> "Geddem-Cal-doe's statement makes two points with particular clarity. It reveals the Gitksan 'law' concerning the native responsibility for the accidental injury or death of others, and the need for appropriate compensation. Equally obvious is the assumption that Youmans should act in accordance with this law."

And then you say this:

> "Geddem-Cal-doe omitted one piece of information which contributed to this assumption: Youmans had married into Indian society. Unfortunately little is known about Mrs. Youmans, although she did continue to reside on the upper Skeena in the following years."

Now, can you explain why you didn't put that in your report?

A Well, I think it's in part for reasons of compression as much as anything. This is intended to be a summary report and so I was not going into all of the details. I mean that covers all of the events that I described there.

Q Wouldn't you agree that it's pretty important when you are dealing with the assumption to note that Youmans had an Indian wife?

A It is pertinent, yes. How significant it is I am unsure, as I think that statement there indicates --

MR. WILLMS: My lord, could the extract be 1033-10?

THE COURT: Yes. Is it ten?

MR. WILLMS: Should be dash ten. I put -- I've marked a nine.

THE COURT: All right. Yes.

MR. WILLMS: And my lord, just to let you know where I am, I think dash eight -- I think I am finished with dash eight now and it --

THE COURT: All right.

MR. WILLMS: -- and it can be filed in the appropriate place.

(EXHIBIT 1033-10 - Page from Draft Report of Galois)

MR. WILLMS:

Q And the next point, Dr. Galois, I would ask you to turn in your report to page 18, and I am showing you a document dated October 18th, 1888. The first document is a letter from the Lieutenant Governor to the Secretary of State, Ottawa, Canada, and this is a copy -- it's transmitting a copy of the report of a Committee of the Executive Council respecting what you've called, I think in your report from time to time, the Skeena River uprising?

A Yes.

Q Yes. And this is a document that you refer to in your report?

A Yes. This is one version of it. There are several versions.

Q Okay.

A That at least as a historical record, including one that was published in the newspaper.

Q Okay. Well, this one isn't in a newspaper, it appears to have Privy Council Canada on the front page and some stamps from Department of Indian Affairs?

A Yes. There is -- there is a file, an RG10 file which contains a version of it. There is also another version in Victoria --

Q All right.

A -- in the Provincial Archives.

MR. WILLMS: 1033-11, my lord?

THE COURT: Yes.

(EXHIBIT 1033-11 - Report Re: Skeena River Uprising)

MR. WILLMS:

Q And this -- in respect of -- just to explain the background for this: this is in respect of the journey of Fitzstubbs and Roycraft to Hazelton, and the meeting that they had in Hazelton, August 8th, 1888, with various Indian chiefs in Hazelton. That's an important part of this document, correct?

A Well, Roycraft had gone up with a number of B.C. Specials as part of the Skeena River expedition which also included the militia who did not advance beyond Port Essington.

Q Right. The militia stayed back at Port Essington, some constables went up, they called the Indian chiefs

to Hazelton, and there was a meeting on August 8th, 1888, correct?

A Yes. There was a certain amount of military display, shall we say, by the constables, drilling and target practice, which was clearly designed to have an impact upon the Indian peoples of the area.

THE COURT: How many went up the river?

THE WITNESS: I am not sure, your honour. I think it was maybe a dozen all told. There were -- I can't recall the precise -- the number of that. It may be included in the document, I am not sure.

MR. WILLMS:

Q Now --

A There also had been a previous party of provincial police who had gone up about six weeks earlier which there had been -- there were five constables in that party together with the -- with Indian Agent Todd of the Northwest Coast Agency, who I believe didn't go any further than Kitwanga and Kitsegukla before returning down to Port Simpson.

Q Now my lord, and Dr. Galois, if you could turn -- the first part of this document is a copy of the report of the committee, and the pages aren't numbered, but I think if you count in from the back you will see the page with Captain Fitzstubbs and Roycraft at the very top, which describes the meeting of the 8th.

THE COURT: What are the first words on the page?

MR. WILLMS: Captain Fitzstubbs, S.M. and Mr. Roycraft, Superintendent.

THE COURT: Yes, thank you.

MR. WILLMS:

Q All right. Do you have that? There, that's the page. The previous page you will note, my lord, ends with the clerk of the Executive Council, Robson, signing off on his report, and then he includes the minutes. Now, if you look at the top of the page you will see that:

> "Captain Fitzstubbs and Mr. Roycraft, Superintendent of Provincial Police, summoned the chiefs of the different tribes on the Upper Skeena River to a public meeting in order that they might have all matters between themselves and the Government explained to them, and also an order that any grievances which they might have against either the Government or private individuals be enquired into and settled."

And you will note, I won't read it, but the meeting was on August 8th, 1888, there were 13 chiefs representing five different tribes.

This was a very important event, was it not, in the history of the Skeena in the 19th century, late 19th century?

A Yes, it was. I would just add something again about the context of this. That it followed upon the shooting of a Kitwancool Indian, Kamalmuk, by one of the first party of provincial constables who went up. And this caused considerable unrest, discontent amongst the Gitksan, particularly amongst the people of Kitwancool. And one point to notice here is that there are no chiefs from Kitwancool at this meeting.

Q Did you know there are no chiefs from Kitwancool in this action?

A This action?

Q Yes?

A I am not quite sure what you mean.

Q Now --

A I am sorry, I am not clear what you are talking about.

Q Well, I didn't know whether you knew who the plaintiffs in this action were. Did you not know that there are no chiefs from Kitwancool who are plaintiffs in this action?

A Quite honestly, I am not sure. What I was talking about was the Gitksan as a whole of which I included the Kitwancool as --

Q All right.

A -- a part of the Gitksan.

Q Right?

A And in terms of this particular document and the events that we are discussing and the meeting that took place at Hazelton in 1888 in particular, it seems to me it is significant in that there were no Kitwancool chiefs present at this meeting. And there is a variety of other historical documentation that follows on from later dates, for example, when Vowell visited Kitwancool in 1898, which points to the significance of that mission.

Q Now, I would ask if you would just turn through a few pages here to the -- and it's the concluding words before the Indians -- the Indian chief spoke. My lord, it's --

THE COURT: Well, I've got a page here where it says "Morelahan, Head Chief of the --"

MR. WILLMS:

Q Right. It's immediately above -- it's eight pages along and it's just before the first head chief speaks. And this is Roycraft, Superintendent of Provincial Police talking, and he says this, right about the three-hole punch mark, my lord:

> "Before I finish speaking I must ask you to remember that before you came under the British law one tribe was always in danger of being massacred by some other tribe and that there was continual warfare between all the tribes: slaves were taken: but now you all live in peace and quietness because of the Queen's care. I shall go away soon but Captain Fitzstubbs will remain here with two or three officers to administer justice."

Now, when you read this -- and I won't read all of what Fitzstubbs and Roycraft said, but it was crystal clear from what they said, that they were making it clear that it was Her Majesty's law and only Her Majesty's law which applied to these chiefs. That's fair, isn't it? That's what Roycraft --

A Well, it's quite a long statement and I would like to read that through before I agreed to that. I mean we are talking about -- I don't know how many pages here, and it's some time since I looked at this document. If you would like me to read that through --

Q Well, please do. Please do.

A From Captain Fitzstubbs?

Q From Captain Fitzstubbs. And so you have the question in mind, it's my suggestion that both Roycraft and Fitzstubbs are making it crystal clear here that it's Her Majesty's law and Her Majesty's law alone that applies to these Indian chiefs that they are speaking to.

A Roycraft as well?

Q I suggested that they were both making it clear

THE COURT: Well, Mr. Willms. Maybe we should adjourn and let Dr. Galois read the rest of it at his leisure?

THE WITNESS: I just finished reading it.

THE COURT: Oh, all right.

MR. WILLMS: Maybe we could get the answer to the question before we break, my lord.

THE COURT: Yes, all right.

MR. WILLMS:

Q My suggestion was, Dr. Galois, that both Fitzstubbs and Roycraft were making it clear to the chiefs assembled before them that it was Her Majesty's law and Her Majesty's law alone that applied to them?
A Well, I think we have to see this in the context of all of those events of 1888. What we have here is a mixture of claims in that direction by Roycraft and Fitzstubbs and also a good deal in the way of threats and coercive aspects that -- alongside that.
Q Well, do you agree with my proposition or do you not agree with my proposition?
A There is certainly -- well, there is a claim, certainly, by Fitzstubbs in terms of the law, yes.
Q Yes. There is nothing in there that says "Indian law applies to you and continues to apply to you," is there? Neither Roycraft nor Fitzstubbs says that? All they talk about is Her Majesty's law, the Queen's law?
A Well, they talk about more than that. I can't recall any statement that says that Indian law would continue.
Q And in fact, each of the chiefs -- or almost each of the chiefs after this assertion was made to them, accepted that from that point on it would be the Queen's law that would apply and that they would even help to enforce it?
A Well again, I can't recall all of the answers and I would need to sit down and read that through to be sure on that point. There was a good deal of sort of formality, shall we say, in terms of the Gitksan responses. And I think to a certain extent the various sort of aspects of coercion and threats to shoot people down like rabbits and all the various drill and display that had gone on, certainly had some impact on what the chiefs said in response to that. And again, one has to see this in the -- on the ongoing sort of context of events and not a single document, in terms of the actions of chiefs in the period after this. For example --
Q Well just --
A -- referencing there to --
Q Dr. Galois, we will go through the chiefs after lunch. I want to finish off with my question about what the chiefs did, but perhaps after lunch would be the best time to do that, my lord.

THE COURT: All right.
THE REGISTRAR: Order in court. Court stands adjourned until

two o'clock.

(PROCEEDINGS ADJOURNED AT 12:30 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 RESUMED PURSUANT TO LUNCHEON ADJOURNMENT)

THE COURT: Mr. Willms.
MR. WILLMS:
Q My lord, I was in Exhibit 1033-11 just at the end of Roycraft's statement and starting off with the chiefs. And the first chief who spoke is Morelahan, M-o-r-e-l-a-h-a-n. It's at the bottom of the page right after Roycraft is finished and he says:

> "Great Chiefs. I thank you for your kind words. Some of them are severe but they are well meant. I thank you also for giving me still greater power to preserve peace and good order in my tribe. This is all I have to say."

Then the next chief, who is described as the second chief of the Kitzeghakla tribe, said:

> "Great Chiefs. I am pleased to hear what you have said. As my Chief just now mentioned, some part of what you said was severe but it is for our good. We are a poor ignorant race, and not until you explained it to us did we have a proper idea of what the law really is. Soon we will have a great Feast in our village and we will tell our young men all the good and kind words you have said to us."

Down to the next, it quotes from Spawr, S-p-a-w-r, 2nd Chief of the Kitanmax band, and he said respecting what Roycraft and Fitzstubbs said to him, if you turn over to the next page, third line down:

> "I am but the second Chief, but our Head Chief cannot do anything without my consent. For some years past, there has been a notice affixed to the hut of the Head Chief to the effect that the Chief would settle all disputes arising between the pale faces and ourselves but the Chief has disgraced that notice, he has held -- "

Looks like "no meetings."
MR. ADAMS: Secret.

MR. WILLMS:

Q

" -- has held secret meetings behind it and I wish the notice to be taken down and burned as it is no longer pure. I have finished."

Then the next chief, Luluth, the Chief of the Kitwangar tribe:

"I am pleased that you have spoken severely to us, because it shows that there is no hypocrisy lurking in your hearts. Your God has been good to us, and we will therefore endeavour to obey his laws, which are your laws. You tell us that the law will protect us and I am pleased that you have told us all this. I have spoken."

The next chief, the Head Chief of the Haekilgit tribe, says:

"I am also pleased that you both have spoken so strongly about the law. Before, we did not really understand what the law is but now we have been enlightened."

The next chief, who is it says Kitzbox, I suppose that's the Kispiox tribe, Wassamlaha, W-a-s-s-a-m-l-a-h-a, he says:

"My people are not here. I am their only representative present, but I shall tell them what you have said and I trust that when you come to see us again you will find us greatly improved in every way."

Again, another chief of the Kitwangar tribe is quoted, and at the bottom of the page, if you go up five lines from the bottom he says this, Dr. Galois:

"I am very pleased to have been able to come to hear you speak and your words will be poured into the ears of every man, woman and child on this River. For my own part I shall continue being a friend of the white man. I shall value every word you have

> spoken and I pledge my word as a Chief that at the risk of my own life, I shall suppress evil deeds."

The next chief who's from Kitwangar as well, Liggenthla:

> "You have indeed spoken wise words this day, and I have paid great attention. You have explained the law to us and it is for us to see that the law is not broke. I have authority in my tribe and I shall see that in my village your law will be respected."

And then just carrying on, each -- the next chief, Guthumuldoe, says that he has learned a good lesson. The final chief, Nisconolah, N-i-s-c-o-n-o-l-a-h, of the Kitwangar tribe says that he's a friend of the Chief and:

> "will say for him that he will not allow such rebellious acts and words to be spoken in his village."

Now, it's clear from the chiefs' statements, is it not, Dr. Galois, that a number of them said that they didn't understand the law until Roycraft and Fitzstubbs came and now they did and that they accepted it. That's what they said, isn't it?

A Yes. But again, I think we have to place this in a historical context of events that both led up and that followed this meeting at -- at Gitanmaax in 1888. What I mean by this, for example, is the subsequent attempt by Fitzstubbs at the Village of Kitwanga to put into effect the prohibition of the Feast and in that he was singularly unsuccessful. And he also made attempts following on from the events that are mentioned here in terms of the -- of some of the chiefs being in a sense, well, I am not sure if it's in this or related document, he talks about them being constables, giving them a badge and whilst they seem to be some kind of acceptance in some of the statements here, the reality was that when Fitzstubbs tried to put this into effect with one or two exceptions that that was rejected, that the chiefs refused to accept the badge as it was called.

Q Well, I am not talking about the badge here, Dr. Galois. I'm talking about the Fitzstubbs and Roycraft statement that the Queen's law applied and each chief, it appears when you read this, maybe I am not reading it properly, I am not a historical geographer, but it looks like they all agree and accept the law as it's set out to them?

A Well, the badge was an important sort of vehicle within which that what Fitzstubbs was proposing was to be put into effect. And again, I think one has to remember the context of this meeting and the degree of coercion and the displays of force that had preceded it. It's quite clear that I don't think that the Gitksan wanted confrontations. And as I argue in my report, I think this is the culmination, this -- this Skeena uprising and this meeting mark the culmination of a sequence of actions and that subsequently when one gets -- the establishment of the Babine Indian agency, this sort of the whole -- the context of Gitksan protest activity is changed, and that the Gitksan for a period at any rate use Loring, in part anyway, as a vehicle for expressing their concerns, their objections to various -- well, a variety of different circumstances and events.

Q Just keeping this Roycraft/Fitzstubbs minutes in front of you, could you turn to page 42 of your report and at page 42 of your report, Dr. Galois, in the first full paragraph at page 42 you say:

> "Between them, Roycraft and Fitzstubbs took a number of measures to promote respect for law and order among the Gitksan and Wet'suwet'en."

And then you say this:

> "The high point of this process was a meeting held at Hazelton and attended by chiefs from five of the Gitksan and Wet'suwet'en villages."

Now, that's this meeting that I've just taken you through, isn't it?

A Yes.

Q Yes. Then you say this:

> "The white officials explained the reason

> for their presence and made some general demands concerning the future behaviour of the Indians."

Now, the general demands that they made were to abide by the Queen's law, correct? Is that what you mean by general demands made by Roycraft and Fitzstubbs?

A I am just trying -- that's part of the situation and I think too in terms of, well, avoiding confrontations, of generally maintain -- trying to put an end to the sort of series of confrontations that had gone on in the preceding years.

Q You then go on to say:

> "For their part -- "

This is on page 42 of your report:

> "For their part, the chiefs responded to these statements and gave voice to a number of grievances."

Now, what you mean by that is for their part the chiefs generally agreed with what Fitzstubbs and Roycraft had put to them, isn't that what you really mean there? Not that they just responded?

A At that point in time they responded.

Q Affirmatively?

A Broadly in agreement, yes, with the -- with the statements by Fitzstubbs.

Q You say they gave voice to a number of grievances. Would you mind pointing out in the statements of the chiefs the number of grievances that they responded with here?

A Well, there is certainly a couple by Beni.

Q That's right at the end?

A Uh-huh.

Q You mean the part that you read in your evidence in chief, if you just carry on from where I read to you, four pages in from the back.

A

> "Great Chiefs, you have lectured our Chief strongly and may be he deserves it. There has been trouble and I shall explain the cause of the discontent lurking in our hearts. Mr.

Hankin was first white man I ever saw and he was respected and liked by us. Mr. Yeomans and Mr. Sampierre we also liked. During their lifetime all went well. Now they are dead and our troubles have begun. 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. 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 endeavor to live a law-abiding life, but to preserve peace the Government must also make the white man observe the laws. I am not speaking of all white men. I mean especially the Hudson's Bay Company. If we want a higher price for our skins than they want to give us they strike us, and why blame us for retaliation? I am glad that Captain Fitzstubbs has promised to protect us against the company."

Q So the grievance was that if you are going to enforce the law against us you should enforce it against the whites too, that was the grievance that they aired at the meeting, right? Isn't that the sum and substance of what Beni says there?

A Well, they are talking about certain grievances that have arisen and that they should be dealt with in the same way, I suppose, yes.

Q Yes, yes. Fair is fair. If you want us to abide by the Queen's law, which we say we will, we want you to enforce it against the whites too. That's the complaint, isn't it?

A Well, the complaint is in part about the behavior that and the treatment that the Indians have received from whites and specifically from the Hudson's Bay Company And their clerk and their operations in Hazelton.

Q Now, you end the paragraph on page 42 by quoting from a letter from Roycraft. You quote the words "'most salutary effect' of the expedition," and I would like you to turn to that document now. It's in Volume 4.

THE COURT: What was that reference you just mentioned to this document? Where is it? The salutory what?

MR. WILLMS: I am just turning to it now, my lord.

THE COURT: Oh, all right.
MR. WILLMS: It's in Volume 4 and the document 1033-11 can be put to one side. I have finished with that one, my lord. The one I just read I think I marked it already as 1033-11.
THE COURT: Yes.
THE COURT: Volume 4.
MR. WILLMS: Volume 4, tab 188.
THE COURT: Yes. What tab, please?
MR. WILLMS: 188 my lord.
THE COURT: Thank you.
MR. WILLMS:

Q And this is a letter of August 14, 1888 from Roycraft to the Attorney General, Dr. Galois?
A Yes.
Q And you have quoted the words "most -- "

THE COURT: I am sorry, I have lost you. What tab number?
MR. WILLMS: 188. It would be the first one that's got an 88 on it in the volume. I don't know if there two or not.
THE COURT: Yes. Thank you.
MR. WILLMS: And it should be, my lord, August 14, 1888.
THE COURT: Yes.
MR. WILLMS:

Q And you have quoted on the second page, if you go down the three-hole punch in the middle of the page:

> "There is no doubt that this expedition has and will have a most salutary effect upon the Indians in that District."

That's where you took those words on page 42 of your report?
A Yes.
Q All right. And then you'll see that Roycraft continues:

> "My opinion is that no further trouble will arise between the whites and themselves. They seem now perfectly to understand our power. They have promised to keep the law and their Chiefs will bring all offenders to justice."

Now --

MR. ADAMS: Well, my lord, perhaps my friend can complete the paragraph because the witness has already referred to this in the same context.
MR. WILLMS:

> "I intend having a number of Indian police badges made which will be send to Captain Fitzstubbs for distribution by him to the Indian constables."

Now, just focusing -- is that okay now? Do you want me to read some more?

MR. ADAMS: That's fine.

MR. WILLMS:

Q "They seem now to perfectly understand our power." That's a pretty apt description of what transcribed at the meeting of August 8, 1888 when you read the chiefs? In other words, that's accurate, isn't it?

A Well, again, I don't think it's just the meeting that they are referring to. I think they are talking about the surrounding circumstances.

Q No. But I'm suggesting to you that when Roycraft says that, that that's an accurate description of the meeting of August 8, 1888, that at the conclusion of the meeting the chiefs now seem -- now perfectly to understand our power. That is the power of the government?

A Well, again, one has to put that into context of what happened afterwards.

Q Well, let's just pause for a moment and instead of contextualizing, will you agree that from Fitzstubbs' point of view and Roycraft's point of view, when you read what transpired on August 8, 1888 that's an accurate summary of what transpired on August 8, 1888?

A That -- of his interpretation of that, yes.

Q Yes. And continuing on:

> "They have promised to keep the law and their Chiefs will bring all offenders to justice."

Once again, that's an accurate summary by Roycraft of the meeting of August 8, 1888?

A I am just trying to recall about the role of the chiefs and what they did exactly say.

Q Well, I am not asking you to contextualize here. I am just asking you --

A I am trying to recall what the chiefs did say about bringing people to justice. That's the question that I had. I don't know if you can remind me of the relevant section. I don't have the document.

Q Well, for example, Liggenthla, Second Chief of the

Kitwangar, says:

> "I have authority in my tribe and I shall see that in my village your law will be respected."

A Yes. There are a number of statements like that and that again in terms of Roycraft's interpretation of that, it is there in the letter. Quite what the Gitksan made of that is a somewhat different question.

Q That's right. And what you've tried to do in going back and looking at these documents is you've tried to contextualize all of them from the Gitksan point of view, is that correct?

A Not entirely. I've certainly tried to contextualize them. I have tried to elicit insofar as I could what the Gitksan perspective would be. But that's not all that I've done. I mean I talk there about Roycraft's perspective, and what it is that he expressed his satisfaction and then his perception that it had a most salutary effect. The point of the context is that Roycraft's perceptions and what transpired didn't coincide completely by any means.

Q Do you recall after 1888 how many more gun boats were sent up in respect of the Gitksan on the Skeena? Any of those --

A Well, there were no gun boats sent to the Gitksan. The gun boat was sent to Port Essington and a police expedition was then sent up from there.

Q How many more gun boats were sent to Port Essington with police expedition sent up from there after this?

A Well, I mean the transportation system changed. They didn't rely upon the British Navy after that. But there was at least one other occasion when a police -- no. There were more than one -- one occasion. I can't recall the exact number. But there were a number, at least two, possibly more, occasions when police were sent to Gitksan territory.

Q Yes.

A In terms of various disturbances that occurred. There was the Kispiox raid of 1909. There were a number of occasions in the Kitwancool valley as I recall.

Q All right.

A And there were also a number of occasions when --

Q Just -- sorry, but can you answer my question. Were there any more gun boats?

A Gun boats?

Q Sent up to Port Essington?

A Well, I -- I didn't inquire into whether gun boats were sent to Port Essington any more. I know of none that were sent. But in terms of the crucial point for the Gitksan, which was not that a gun boat was sent to Port Essington, but that a police, body of police that were sent up into Gitksan territory, then there was a replication of those events on at least two other occasions as far as I can recall. And there were at least two other occasions when Loring I think in 1908 requested that a body of Northwest Mounted Police be sent and I think he repeated that request again in 1909.

Q And in fact there are police up there today, aren't there?

A But what we're talking -- what I'm talking about is groups that were sent up especially because -- that weren't resident in that area, but that were sent up specially because of events that had transpired within the area. So the fact that there are resident police there at the moment, I am not quite sure how that equates to the situation that arose at Kispiox and Hazelton in 1908 and 1909. Various different events that transpired in the Kitwancool valley from 1910 onwards, there was a special group of Mounties that I know were sent in 1927 when a group of Kitwancool were arrested for blocking access to the valley.

Q Could you turn --

A Which is not very different from what happen to Kispiox in 1909.

Q Could you turn to page 31 of your report. And on page 31 you deal in the last paragraph with -- and I am right about the three-hole punch:

> "For their part, the Gitksan and Wet'suwet'en appear both to have welcomed the arrival small numbers of whites and to have endeavored to control the terms of their entry. The difficulties encountered by the COT construction parties at Kispiox and Hagwilgate point towards such conclusions. At both locations the COT officials chose to negotiate for the right to use a river-crossing. A resort to force, on the white side, was considered, but, as Elwyn noted 'if the natives.... become hostile to the COT company, it would be necessary either to exterminate the former or abandon the line.' He regarded

neither option as 'a pleasant alternative.'"

Now, just starting with that quote, you took that quote from a letter from Elwyn to the Colonial Secretary dated September 4, 1866? I am showing you a copy of that.

A Yes.

MR. WILLMS: Yes. 1033-12, my lord.

(EXHIBIT 1033-12: Letter dated 4 Sept. 1866 to Colonial Secretary from Elwyn)

THE COURT: This will be number -- ?

MR. WILLMS: Hopefully -12.

THE REGISTRAR: Yes.

MR. WILLMS:

Q Now, Elwyn is saying to the Colonial Secretary and this is on -- Elwyn is travelling with the COT construction party up towards Hagwilget, correct, and he also describes in this correspondence events at Hagwilget?

A To the best of my recollection that's the approximate context. I can't recall the detailed contents of the letter without reading it.

Q Well, let's -- if you go to the second page by the hole punch, there is a sentence that starts:

"At the last named place on the Watsonquah."

Are you with me?

A Yes.

Q

"At the last named place on the Watsonquah five miles above its junction with the Skeena, there is a large village with probably at the time of our visit a hundred inhabitants."

Now, that's Hagwilget, you recognize that as Hagwilget?

A I take that to be Hagwilget, yes.

Q

"I was agreeably surprised in finding them most friendly for I had been informed that they strongly disapproved of the whites coming through the country."

And then he talks about the Indians at Metlakatla and Fort Simpson and then carries on:

> "The Simpseans naturally fear that they will now lose this monopoly"

The monopoly on the trading,

> "and they are endeavoring in every way in their power to prejudice the 'stick Indians' against the Company - saying that 'the wire will kill Indians,' etc. etc."

Now, just pausing there, you know by the wire he's referring to the telegraph wire?

A Yes.

Q So what he's saying here is that the Tsimshians of the coast who think that they are going to lose their trading with the stick Indians have been telling the stick Indians that the wire will kill them, correct?

A That's what he's reporting, yes.

Q He then goes on to say this:

> "I am happy to state that so far these representations have only temporarily influenced the natives in this vicinity and our presence has been apparently sufficient to --"

A "Undeceive."

Q I can't --. Yeah. I couldn't figure that one out. Well to -- I can't read that. If anybody can help me with that. I can't read it.

MR. ADAMS: The witness suggest "undeceive."

MR. WILLMS:

Q "To undeceive them." Thank you.

> "The Telegraph Company is most kind and liberal in treatment of the Indians near whose villages the line passes and in the main camp, visited during the past ten days by great numbers of Indians, there has not as yet been the slightest approach to a dispute much less a quarrel."

Now, just pausing there, there really isn't anything in this correspondence, and you can read on, that

talks about difficulties of the COT at Hagwilget. It looks like they are being met most favourably?

A The next paragraph reads:

> "Some time before our arrival Mr. Butler very foolishly lost his temper with an Indian at Rocher de Bouille and knocked him down; the tribe thus excited and angry at the time have now I believe forgiven the wrong for such it was."

Q Right. Okay.

A I take that to be at Hagwilget.

Q Oh, I see. But don't you take anything from the fact that the wrong was forgiven?

A Well, I mean you asked me, as I recall, I can't recall the question, if there had been any conflict or confrontation or some such word. I am not quite -- I don't remember the word that you used.

Q Now --

A It seems to me that that's precisely what he's described there.

Q And you say, and if I can just take you to the portion -- if you turn, it's to the third page from the back. It's the part you quote.

A The pages are numbered actually.

Q Oh. 6/8. Yes. That paragraph started in the middle of the page:

> "I have entered more fully into this Indian question than perhaps in your opinion it deserves, but I am most anxious on the subject for should the natives either now or hereafter become hostile to the Company, it would be necessary either to exterminate the former or or abandon the line; neither, I think you will agree with -- "

A That's the section that I've quoted there, I believe.

Q "You will agree with us being -- "

A "Me."

Q " -- me, being a pleasant alternative." Now, you say a resort to force on the white side was considered. Is that it? Is that what you say is a consideration of a resort to force?

A No. I'm citing Morison's account of the attempt to use the bridge at Hagwil -- Hagwilget. What happened,

as I recall, is that the COT wished to take their supplies across the Bulkley, the Watsonquah, at or near the Village of Hagwilget, and they considered the existing bridge inadequate for that purpose and so they wished to build an alternative bridge and the Indians, as far as I can recall, objected to this process and there was some kind of compromise that was worked out by which the bridge was -- by which the bridge was strengthened.

Q I am showing you --
A There were also --
Q Is this the Morison you are referring to, 1919?
A Yes.
Q All right. Well --
A It's only part of the document.
Q Yes. It's just the part that refers to Hagwilget and to Kispiox. If you go to the fifth page in which has a number 23 in the middle of the top and you see the handwriting, "Alone at Mission Pt. Skeena and Bulkley Rivers, '66"?
A Yes.
Q And this is a description of what Morison observed in 1866 and this is at the confluence of the Skeena and the Bulkley Rivers?
A Uh-huh.
Q Correct?
A Yes.
Q All right. Now, just skipping down to the sixth line -- sixth line down, Morison says this:

> "I rose early and went down to the river for my usual cold bath and ate breakfast with a good appetite, then down came about a hundred Hagwilgaits to look at the White Boy; they were a fierce looking crowd, not a pair of trousers amongst them, their faces painted red and black and each carrying a Hudson's Bay Flint-lock Musket and long knife, but their looks belied them, they were a quiet lot; I sat on a stump smiling like a Cheshire Cat, whatever sort of an animal that is, and they staring at me, of course we could not converse not knowing a word of each others language; then a bright idea struck me, I noticed an old man who seemed to be their chief, I rose, approached him cap in hand, made a most polite bow, held out my hand to him and we shook hands most cordially. I

then took a large United States army kettle, of which we had several, put a quantity of rice in it, filled it with water, and put it on my campfire to boil. I then poured a couple pannikins of molasses in and stirred it with a long stick, distributed tin plates and iron spoons amongst them and they enjoyed what to them was a luxurious feast. They were my friends forever afterwards, their fierceness was all on the surface, such is diplomacy!"

Certainly Morison at this point anyway notices the same thing that Elwyn notices, which is friendliness, not hostility?

A That's not the section that I am referring to.
Q I know. I am just --
A In terms of those comments. I have not said that the -- that the Gitksan and Wet'suwet'en didn't -- I forget exactly how I put it.
Q Well, what you have said --
A The Gitksan and Wet'suwet'en appear both to have welcomed the arrival of small numbers of whites.
Q And endeavored to control the terms of their entry.
A Yes.
Q Okay. Well, maybe we can --
A So there isn't sort of -- I mean in their reasons to explain that part of that is in terms of the trading routes and the modification of the trading routes that the entry of the whites seemed to indicate. I mean the Gitksan and the Wet'suwet'en had been -- by 1866 had some years of experience of obtaining European goods and they had used those for some time and they were, I mean, the coaches incorporated a significant dimension of trading in their activities.
Q Let's go to the part about the bridge that you referred to I think in terms of resort to force. Page 25.

THE COURT: What --

A I didn't say resort.

THE COURT: What should I understand by this expression that not a pair of trousers among them? They still weren't naked in 1866, were they?

A Well, I take that to mean is that they haven't adopted European style of dress at that point in time.

THE COURT: They would be wearing what?

A Well, partly -- probably some -- they haven't adopted trousers. They have -- may have adopted some other

aspect of European dress. I believe there may be some references to coats in there. So it would be some kind of a mixture I would assume. I can't recall all of that --

THE COURT: All right.

A -- with clarity. But that sort of thing was -- is not uncommon, as I understand it, in terms of -- of Indian groups who have some experience in trading with directly or indirectly with Europeans.

MR. WILLMS:

Q If you turn to page 25 you'll see in the margin it says: "Crossing Bulkley canyon," and the paragraph begins:

> "The line was now, by the help of the material transported by us, brought to the bank of the Bulkley River -- "

A I am sorry, I am not quite clear where you are.

Q 25.

A 25.

Q Sorry.

> "The line was now, by the help of the material transported by us, brought to the bank of the Bulkley River and now the crossing of the Bulkley had to be made for all men and material, one hundred and five white men, two hundred pack animals, numerous China cooks, all the baggage, a band of beef cattle and numerous Indians; they did not dare swim the cattle across the canyon, so Steve Decker the foreman ordered up his bridge gang, first class men at their work, to build a bridge across the Bulkley. Here another difficulty arose, the Indians strongly objected to this procedure as one of their wise men had informed them that if the 'Whites' built a bridge across the river no more salmon would run up it. And as the Company did not want to collide with Natives in any way, a great palaver was held and the Indians consented to allow Steve Decker to repair their own bridge and make it practicable for the passage of animals. Now all the hides of the cattle killed on the way from Quesnel had been turned into rawhide rope, with this Steve lashed the bridge strongly, laid a new

floor on it and the passage was made safely by all; although I think that humans and animals were glad when they were over and a great load was removed from Steve Decker's mind."

Now, where is the resort to force in respect of crossing the Bulkley River?

A Well, I didn't say. I said it was considered as I have it there. I mean I don't think -- sure if it's -- I would want to look at the information on the Kispiox. There was too an incident at Kitselas as well.

Q All right. Well, where is the control of the terms of entry here?

A Well, I mean the Indians strongly objected to this procedure.

Q Because they thought it would stop the fish run, because their wise men had told them that?

A Yeah.

Q What's that got to do with entry?

A Well, I mean what they are saying is -- is we object to you going across the river and threatening our resources. So what they -- there is a negotiation process that goes on which comes to some sort of a solution. I mean what my point is there that the whites aren't able to simply march in and ignore the native people and do as they wish. That what they encounter is a society which operates on its own cultural basis and that some form of accommodation goes on which in this case is peaceful and allows the in this case the COT to continue with their activities.

Q You will agree that what the Indians were concerned about was being told by their wise men that another bridge across the river built by the whites would cut down on the salmon? That's what happened?

A What they were concerned with is, I mean salmon are the major part of their subsistence, so this was very important. And what they -- one has to remember the sort of different views of access to resources and the different perception of resource within Gitksan culture, and that what one has got is two coaches which are in a sense mutually -- which do not understand each other very clearly. And what the Wet'suwet'en in this case I guess are putting forward is something which is clearly of importance to them concerning their understandings of maintaining access

to a vital resource.
Q Okay. Can you turn to page 27. You mentioned Kispiox and you thought this might be where the resort to force was?
A Well, no. I have not said a resort to force. I said a consideration.
Q Oh. Okay.
THE COURT: Page?
MR. WILLMS:
Q Page 27. It's a number 27 at the top. It's the last page of the extract, my lord. I'm still at page 31 of the report, but of exhibit --
THE COURT: Yes. Thank you.
MR. WILLMS: Oh, perhaps I should mark this too while I'm --
THE COURT: 1033-13.
MR. WILLMS: 1033-13.

(EXHIBIT 1033-13: Reminiscences - Charles Morison)

MR. WILLMS:
Q And it's the last page of this and here Morison -- I am reading from the first full paragraph on the page, my lord:

> "The work went on swimmingly from the Bulkley River to the Skeena opposite the large and flourishing village of Kispiox. This was and still is the largest village on the Skeena with the most numerous population, at that time I should imagine they numbered some seven or eight hundred souls. Now amongst these people was a very learned Doctor or Medicine man, and he thinking very rightly that the advent of the white men amongst his people would destroy his power over them told them that if the telegraph wire crossed the Skeena no more salmon would ascend that river and that all birds and animals crossing under or over the wire would instantly die; the people of Kispiox becoming alarmed sent word to Mr. Conway that they would shoot the first whiteman that crossed the river who was connected in any way with the telegraph. Here was a serious hindrance."

Now, just pausing there. Once again, as with Hagwilget, the concern was not, as you call it, controlling the terms of entry. The concern was a

statement in this case as Morison described it by a Medicine man that if something crossed the river the salmon would stop going up the river. That was the concern, wasn't it?

A Well, I'd be only repeating what I said on the previous one. That what the Kispiox people in this case are concerned with is the conditions by which the Telegraph Company crossed the river adjacent to their village and the threat that they took that to have in terms of their vital resource which was the salmon run.

Q And then he carries on:

> "Mr. Conway ordered all work to be stopped and ordered every man armed. Luckily we had an adequate supply in case of necessity; the white men were ambushed along the Skeena bank opposite Kispiox. Then Conway came down to Mission Point for a council of war. He decided to send Paymaster Burridge and another man up to Kispiox in a small canoe to parley with the Indians. I cut up a lot of pig-tail tobacco into short lengths and put it in a rice mat; we then proceeded to Kispiox. Burridge managed to explain to the Indians that our work would be a source of revenue to them (always touch a man in his pocket) and that if the Chiefs would come forward he had a present of tobacco (like gold dust to them) for them, instantly every man nearly was a chief. The tobacco was emptied, a general hand-shaking ensued. We returned home, put the arms away and the men returned to work without the Indians ever knowing that a man was under arms. The Kispiox Indians turned on their wise man and chased him out of their village - another fall from grace. The work went on quietly and the line was completed to forty miles north of Kispiox, an operator McCutcheon by name accompanied the work with his portable battery."

And it talks about the wire from New York. Now, when you review Morison and Elwyn, which I put to you earlier, first of all putting Kispiox to one side for a moment, the reception was friendly, correct?

A By and large, and I don't think one can simply put Kispiox on one side.

Q Well, I am going to pin it up in a minute.
A Because that's not way I have put it in my report. No, no. I think it is of some importanance. I have not said that the basic reception among the Gitksan and Wet'suwet'en was unfriendly. I think there are very sound reasons for saying that the -- in the basic reception was -- I mean they welcomed by and large the arrival of the Telegraph Company.
Q Second, at both Hagwilget and at Kispiox, the Indian fear of whites coming was superstition, correct? Was a fear --
A That's not --
Q -- of crossing the --
A That's not the way that I would understand it, no. I mean what we're talking about is a view of the world. Now, I don't regard -- the Gitksan or Wet'suwet'en view of the world is not my view of the world, but I would not describe it simply as superstitious.
Q Well, the Kispiox Indians apparently ran their wise men out of town. Wouldn't you call that -- a response to that a superstition?
A Well, one has to remember about this that these are -- I mean there are two points about this in terms of the Indian reaction. This is something that was written down 50 years after the event, and it's by somebody who says that he has no knowledge of the language of the people, the Indian people of that area. So there is a good deal of interpretation, it seems to me, going on by Morison in terms of the actions of the Indian people, and I think one has to view that with some degree of caution.
Q The third thing is that in respect of your use of the words resort to force on the white side was considered, you will agree that from Morison and Elwyn anyway, the resort to force was only considered after the Kispiox Indians had said that they would shoot the first white man they saw, not before that, correct?
A Yes. There is a confrontation that had developed and not very different from the situation at Kitselas as well.
Q Well, I am just -- you're just dealing with Kispiox and Hagwilget on page 31 of your report. So you don't say Kitsegukla here and you deal with Kitselas in another area. But the resort to force was responsive, the consideration of that?
A The threat of force on the part of the Kispiox was in terms of dealing with something that they regarded as

a threat. And that was one of the -- that was the way that they responded. By and large it was unusual in terms of the general reception of the COT people in that area.

Q Now, after reviewing those extracts from Morison and that extract from Elwyn, is it still your view that the Gitksan and Wet'suwet'en endeavored to control the terms of the entry of the COT party?

A Insofar as I've described it in terms of seeking some sort of agreement and accommodation with the COT on certain grounds, yes. I don't think -- I mean the COT could not just proceed as it wished. It had to accommodate itself to the concerns of both the Wet'suwet'en at Hagwilget and with the Gitksan people at Kispiox. And that involved significantly the giving of certain sorts of presents which was one way of registering some sort of agreement, as I understand it, within those coaches.

Q Can you turn in your report to page 51, please. And you have there referred to in the middle of the page O'Reilly meeting at New Kitsegukla. And I am showing you notes of the New Kitsegukla meeting September 30, 1891. The quote -- your quote is from O'Reilly from this document in the middle of the page:

> "'It is not necessary that the berrying or hunting grounds shall be reserved."

If you turn to the third page in, I'll just help you out here. If you turn to the third page in you'll see -- it's not my third page. If you turn back one page.

A That's my second page.

Q Oh. Okay. I meant the third page including the cover page. But the page that has the word "of country" in the upper left-hand corner.

A Yes.

Q And you've quoted the second line down:

> "'It is not necessary that the berrying or hunting grounds shall be reserved."

And that's where your quote comes from?

A Yes.

Q And what this document describes is an exchange between the Commissioner O'Reilly and an Indian Chief who is described as Numticks, N-u-m-t-i-c-k-s.

A No. I take it that it is an account of O'Reilly's meeting with a number of the people at New Kitsegukla concerning the allotment of reserves.
Q Well, if you -- on the page where there is the reference to the berrying and hunting grounds, you will agree that you are quoting from the Commissioner speaking at top of the page, that's O'Reilly?
A That -- sorry, I am not finding the pages here. This is page three?
Q The third page in, yeah.
A Yes. Well, if you look at the first page of it, it says, "pop 12 or 14 pop of whole band 83." So I took that to mean that there were that number of people in attendance.
Q At the meeting --
A At this meeting of which Numticks speaks. I guess he's the only other -- he's the only new Kitsegukla person to speak.
Q All right. I took it from this that he was a chief. Did you not take it from that?
A I can't recall, and one has to be a little bit careful in terms of that, I think, because one of the points that emerges from these documents is that a number of chiefs were in fact absent when O'Reilly went through.
Q See, just -- if you go to the bottom of the third page where it's got this Numticks, that's the third page in again, the third page of the document that I handed to you, just below the quote where you quoted from, it has Numticks in the margin?
A Yes.
Q And he says:

> "I am very pleased you have come to define the reserve."

I took that as being a statement by Numticks, the Chief.
A As I say, I am not sure that he is in fact the Chief. I take it to be an approximation of what Numticks said. I'm not sure who took these minutes. I suspect it was probably Ashdown Green who was the surveyor who accompanied O'Reilly on this particular trip.
Q Mrs. Loring was the interpreter? First page?
A She was at some of them. I don't know if she was at this one. Is that what it says? Yes.
Q Numticks then goes on after saying he is pleased that he has come to define the reserve:

"We are loyal and uphold both goods and the Queen's law."

A Yes.
Q Well, maybe if you turn to the very last page of the extract which contains an exchange between Numticks at the top and then the Commissioner and then Numticks again at very last page, Numticks says:

"I have been authorized to speak for both the old and the new Kitsegukla -- "

THE COURT: Sorry. Where is that?
MR. WILLMS: On the very last page, my lord.
THE COURT: Yes.
MR. WILLMS:
Q

"I have been authorized to speak for both the old -- "

THE COURT: Yes.
MR. WILLMS:
Q

" -- and the new Kitsegukla villages. Five chiefs empower me."

And then he names the chiefs names and then says:

"Mr. Pearce was present and witnessed the agreement and the request for me to speak for them. We ask from a stream two miles above here to nine miles below."

So didn't you take from this that Numticks was the person authorized by the new and the old Kitsegukla villages to speak on their behalf?
A He's speaking, yes. I am just not -- as I recall it doesn't say whether he is the chief or not. But as that indicates, he is -- he claims to be speaking for them. Yes.
Q And then the Commissioner says:

"I cannot see the necessity of making such a large reserve, you cannot use it. It is

> necessary you should have timber and that I will give you and your village and agricultural land, but it is not necessary to give you seven miles of fishing ground, that cannot be used by anyone else."

And then it looks like Numticks replied:

> "We should like the flat on the opposite side of the river. Our gardens are there and my house. And then I should like my salmon stream two miles above here."

Now, that was what happened at that meeting and that was the resolution of at least this discourse, is that correct?

A Well, no, I don't take it to be the resolution of it. There is a request there which is rejected for it and then it seems to me there is an additional request and there is no reply to that. I mean the point is that there is a substantial -- request for a substantial chunk of territory there, which is rejected by O'Reilly, and in that sense it's not that different from the requests that were put forward at Kitwanga and Kispiox.

Q But the quote that you're talking about about fishing, for example, on page 51 of your report, that fishing as Commissioner O'Reilly describes it in these -- in these notes is standing on a rock, as he says, a stick and a hook into the river and that's what he says there is no problem with, isn't it? Not seven miles of fishing ground.

A Well, but surely we are concerned -- I mean there are two things here. One is a statement by O'Reilly when he is saying that look, you will not be confined to your reserves, which is a significant statement in itself in that it reversed the sort of statements that O'Reilly had made in 1882 amongst the coast Tsimshian when he established reserves there and those statements contributed significantly to the unrest in that area among the Nishga and also amongst the Gitksan at Kitwanga. So there is an interesting reversal there and then there is a statement by Numticks in which he's making a claim for a chunk of territory. Now, I would assume that very likely that is a good chunk of the traditional territory pertaining to the Village of Kitsegukla in the same

way that statements were made at, for example, Kitwanga and at Kispiox requesting large areas of land. O'Reilly rejected those claims in both those places. And the final point I suppose about O'Reilly's time here is that he spent very little time at New Kitsegukla, less than a day as far as I recall. And so that he was less than thorough, it would seem to me, in enquiring into the situation there.

Q You don't take the last statement from Numticks as being an acceptance of the Commissioner telling him that he's not going to get seven miles along the river and then he says okay, well, I'd like a flat on the opposite side anyway. Our gardens are there and my home and I'd like a salmon stream two miles above here, you don't take that as being a reduction in the demands?

A One can't be categorical about that, but it could -- it seems equally consistent to view that as a statement of either his own or an additional statement. I mean the minutes aren't -- don't indicate, as far as I can see, that he accepts the statement by O'Reilly. I mean other than that it is made by O'Reilly. I mean the statement is there.

MR. WILLMS: Could this be 1033-14.

(EXHIBIT 1033-14: New Kitsegukla meeting dated Sept. 30, 1891)

THE COURT: Yes. All right. Should we take the afternoon adjournment?

MR. ADAMS: Yes, my lord.

THE COURT: I don't know if counsel are instructed in the matter, but I'd like to have an indication from counsel as soon as possible about plans for next week and I'd be happy to talk about it later today or tomorrow as counsel prefer, but I have to make some plans, and I am assuming we are going to be engaged in this trial, but if we are not for any reason I'd like to know that and also why not. But I'll be glad to speak to counsel about it whenever it's convenient.

(PROCEEDINGS ADJOURNED PURSUANT TO AFTERNOON RECESS)

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

Laara Yardley, Official Reporter,
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED AT 3:20 p.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Willms.
MR. ADAMS: My lord, just before we start, you asked me before the break about when we might talk about next week.
THE COURT: Yes.
MR. ADAMS: And the plaintiffs are having some trouble getting the appropriate heads together, and perhaps we can address you on that first thing tomorrow morning.
THE COURT: Yes, that's fine. Thank you.
MR. WILLMS:

Q Dr. Galois, could you turn to page 53 of your report, please. You -- on page 53 at the bottom of the page, you talk about the results of competition in 19 -- by 1903 in the Bulkley Valley, noting that:

> "...the choicest parts of the valley had been 'taken up' by white settlers, Loring discounted a report that there was anything untoward in the Wet'suwet'en response to this situation. He noted that the Wet'suwet'en had given up the land, on his orders, 'without raising a question'. Before the end of 1904, however, it became clear that Loring had been overly sanguine. He had occasion to make a trip to the Round Lake and Moricetown areas, partly in connection with a few of the Wet'suwet'en 'giving annoyance to some settlers'.

And I'm showing you a copy of correspondence dated September 30th, 1904, from Loring to Vowell.

A Can't read that.

Q Well, you can read the part on the second page that I want. I just want to confirm -- I just want to get the time sequence straight. You go to the second page which is readable, in the middle paragraph.

THE COURT: That's not readable.
MR. WILLMS: The second page?
THE WITNESS: It's not readable on my copy.
MR. WILLMS: "Subsequent of reports"?
THE COURT: That line is readable but the next line isn't.
MR. WILLMS: My lord, I'm just going to confirm that this -- I can read it but maybe -- well --
THE COURT: Well, your eyesight must be remarkable.
THE WITNESS: I can't read my copy.
MR. WILLMS:

Q "Subsequent of reports regarding a few Indians giving annoyance to some settlers of the Bulkley Valley in connection with a stretch of meadowland, I left here on the 23rd instant for this side of Round Lake."

And that's -- I can read that but -- but in any event, you can see, "giving annoyance to some settlers". That's where you picked this quote up, isn't it? I just say that because in footnote 42, this was the only document in footnote 42 that I could find those words?

A Yes, I think that that is correct.

Q All right. And now following that -- so that's -- can we mark the September 30th document, my lord as --

THE COURT: What page is this "giving annoyance" at?

MR. WILLMS: In the report, my lord?

THE COURT: Yes?

MR. WILLMS: Page 54 at the top of the page. The last sentence in that paragraph from the top of the page is quoted "giving annoyance to some settlers".

THE COURT: Oh yes.

MR. WILLMS: Part about --

COURT: All right.

MR. WILLMS: -- Loring being "overly sanguine". And if this can be 1033-15.

THE COURT: Well, I think we will have to extract an assurance from Mr. Willms that he can provide us with a legible copy.

THE REGISTRAR: 1033-15.

(EXHIBIT 1033-15 - Extract from B.C. Babine Agency, Letter from Mr. Loring to Mr. Vowell dd. September 30, 1904)

MR. WILLMS:

Q I'm showing you a letter that is readable -- mine is, and I think all of them are -- from Loring to Vowell, October 30th, 1904, and he starts off by saying:

"I have the honour to state herewith that from the 1st up to the 15th instant, I was absent from this office, and busy among the Hokwelgets regarding a few of their numbers in behaviour towards white settlers."

And then he talks about laying out reserves at Moricetown. And do you recall this document? This is the document where he talks about laying out the reserves that you refer to in your report, page 54? He had to make a trip to Round Lake and Moricetown in connection with the Wet'suwet'en giving some annoyance to some settlers?

A Partly in connection with.

Q Well, on the last page of the letter which is number two, there is the drawing in between, but Loring -- Loring says, from the top of the page:

> "In justice to the Indians of the Bulkley valley be it said that they-with perhaps the exception of an occasional one or two-gives no cause for complaint. But, as the Indian Agent of the district, I regret that my duty as such compels me to state that many cases of wanton aggressiveness against Indians might be instanced. It is not the bona fide settler, but the endless --"

Either "endless" or" useless"

> "-- rover who displays a talent to make capital out of everything and puts his own arbitrary construction of what suits him in striking a mean between the Indian and him, the latter is generally the offender. In the most cases random assertions are made with the context of the matter sedulously avoided. However, on the whole, the instances of cause for complaint are remarkably few."

Now -- and this is after the extract that you quoted in your report, "giving annoyance to some settlers". I suggest that when you read all of the documents, Dr. Galois, that Loring was not overly sanguine, that there weren't problems -- many problems at all?

A Again, you have to place these in the context, not just of those two documents, but a whole series of documents beginning at this point and going through certainly into the 1920s, which deal with the whole issue of the Wet'suwet'en in the Bulkley Valley being essentially dispossessed of -- of fishing sites and trapping sites. There is a variety of other letters

by Loring, including one or two in retrospect, where he looks back on the process and he talks about -- oh, him solving -- not reporting a whole series of complaints because he managed to settle them by compromise, et cetera. And he also talks about the -- the failure of surveyors to include Wet'suwet'en campsites and other facilities within land when they were surveying them for pre-emption for war script or for purchase. And then one thinks too of the various different presentations by the Wet'suwet'en to commissions and commissioners that passed through -- that visited the Upper Skeena, Stewart Valley in 1909, McDougal in 1910, and also the McKenna-McBride Commission in 1915.

Now, the processes that they refer to --

Q Dr. Galois, can we go back to 1904?

A I was just --

Q Your report says 1904 --

A I was just about to try and do that, but --

Q Well, I don't know whether you are going forward or backward or where in time. I just want to make sure you are in 1904 where you were in your report. Is that where you are?

A What I'm trying to point out is that these processes began at that point and continued through. Some of the references that Loring makes later on throw a certain amount of doubt about the statements that he made in those reports.

Q Well, let's just go to before the end of 1904, Dr. Galois.

A The other point --

Q Dr. Galois, let's go back to 1904, because you say in your report -- and I'm reading from your report, "Before the end of 1904." So please try to limit yourself to what you said in your report, and tell me what other documents before the end of 1904 -- and not 1905 and not 1921, not 1917, but 1904 -- what documents before the end of 1904 show that Loring had become overly sanguine?

A What I'm referring to is the statements that Loring made subsequently is one that comes to mind, and it deals with this period because he refers to the impact, I recall, of the South African war script which began, I think, in 1901.

Q All right. What document?

A It's one of the letters. It's cited in my report but I couldn't give you the exact reference. It's a

letter from him about 1919. There is also a letter by the Reverend Godfrey which is from the same period and refers to the same process.

Now, the other point that I would make is that the -- by this stage, whites have begun to settle and this is the initiation of that -- of a process, really, for the first time beginning around 1900, 1898, where there is fairly direct competition between the Wet'suwet'en and white settlers for the first time. So that the process, it seems to me, has begun by 1904, and continues on.

Q That's not what you said in your report though, is it? I mean you say, "Before the end of 1904"?

A Yes.

Q Not 1919, when he writes in 1919, not the Boer War. You say, "Before the end of 1904, however, it became clear that Loring had been overly sanguine."

Now, what document do you know of in 1904 or before the end of 1904 that supports that?

A Well, the documents that I've cited there, and I've again -- and I again refer in my report that the process was beginning and that insofar as there was no difficulties arising, I don't think that was the case already by 1904.

MR. WILLMS: Can this be 1033-16, my lord?

THE COURT: Yes.

(EXHIBIT 1033-16 - Three-Page Letter from Mr. Loring to Mr. Vowell dd. October 30, 1904)

MR. WILLMS:

Q Now, at the bottom of page 54 you quote again from Loring. You say:

> "In the Bulkley Valley, as Loring regretted his 'painful duty' in driving the Wet'suwet'en from their land."

And showing you a letter, March 16th, 1906, from Loring to Vowell, and the "painful duty" quote, you picked that out of the first line of the third paragraph; is that correct?

A Yeah.

MR. WILLMS: All right. My lord, could this be 1033-17?

THE COURT: Yes.

MR. WILLMS: Now just reading what comes before and after that particular sentence --

THE COURT: Sorry, what page is that on?
MR. WILLMS: The very first page of the letter, my lord.
THE COURT: Yes.
MR. WILLMS:

Q Third paragraph down, but I'm just going to start at the beginning:

> "I have the honour to acknowledge herewith the receipt of your letter 269-8 dated the 9th ultimo., and noted its advice to send a special report, when on special service, as mentioned therein. In respect the stating that I did not appear to have visited Ootsa Lake, per se, I must refer to my monthly report for September last, page 2, third-last paragraph.
>
> "Excepting matters pertaining to Chislatta Lake, Messrs. Scribner and Colley were sadly imposed upon, as any stranger is likely to become on the exparte statement of an Indian. I nevertheless admire the motive with which they were impelled in their action.
>
> "I found it a most painful duty to drive off land, in the Bulkley valley, Indians with cabins, corrals and gardens on ground supposed to have been held for hundreds of years by hereditary right. The cabins on Ootsa Lake were only lately erected by the two (2) Indians, of whom one is Adilak [A-D-I-L-A-K], (self-styled) Skin-Tyhee [S-K-I-N-T-Y-H-E-E], expatriated himself for his quarrelsome propensities; and the other, Nahone [N-A-H-O-N-E] (half Kitsun) who merely hunts in the mountains above Ootsa Lake and has a house at Rocher Deboule and another at Moricetown."

Now just pausing there, it's clear that when he is talking about Bulkley valley, he includes Ootsa Lake and Cheslatta Lake, doesn't he?

A No, I don't say that at all.

Q Oh, well let's carry on:

> "Furthermore, I learned from two gentlemen, coming from there, (Ootsa Lake) that the localities referred to had been staked by settlers. I cannot get myself to understand why Adilak should claim miles around Ootsa Lake, whereas his fellow tribesmen, of the

> Bulkley Valley, have to content themselves with narrow strips of land, unless it were to obtain plenty of latitude wherein to exercise an exceedingly ugly temper."

And then he talks about Nahone again, and talks about other areas, Cheslatta Lake, Ootsa Lake. Isn't this whole letter about Cheslatta and Ootsa?

A Well, it seems to me quite clear:

> "I found it a most painful duty to drive off land, in the Bulkley valley, Indians with cabins, corrals and gardens on ground supposed to have been held for hundreds of years by hereditary right."

I can only interpret that as referring to the Bulkley Valley.

Q No. But when you read the whole letter, when you contextualize the whole letter, don't you see that the letter is talking mostly about Cheslatta Lake, Ootsa Lake as one large area, Bulkley Valley?

A What's the question?

Q Well, it's all one large area, he lumps it all into the same?

A I don't take that. One has to remember the context within which this letter is written, of course, which is that Loring had been criticized for not visiting the southern lakes district. And one has to remember that at this time, the Babine Agency extended south of Francois Lake and included parts of what later became the Stewart Lake Agency. And so that he is here responding about a visit, in part, that he made to that area.

Q The only people by name --

A But as far as I can see, that particular reference there is -- refers to the Bulkley Valley.

Q He refers to somebody who is -- he says is Skin-Tyhee, and someone else who is -- who is half Gitksan, and -- but I don't see Wet'suwet'en in here. You say in your report that he -- "Loring regretted his 'painful duty' in driving the Wet'suwet'en from their land." Sir, where do you get Wet'suwet'en in this?

A From the inhabitants of the Bulkley Valley, who were Wet'suwet'en. The only Indian there that is identified, as far as I can see, in terms of non-Wet'suwet'en, is Nahone who is half Gitksan, and it

states that he "has a house at Rocher DeBoule," which of course is Hagwilget, and another at Moricetown. So I would certainly conclude that he has a residence amongst the Wet'suwet'en.

And the other two, Skin-Tyhee, I'm not sure, but "Tyhee" is a name that is used amongst some of the Wet'suwet'en who complained in 1909 to the Stewart-Vowell Commission. "Tyhee" is a term that is used meaning chief, and it's there in the minutes of that meeting. So in the absence of any other evidence, I would suspect that Adilak probably is also a Wet'suwet'en.

Q When you see Bulkley Valley you just assume that it's Wet'suwet'en; is that correct?

A Given the context of where -- what I understand the Bulkley Valley to mean and what I understand of Wet'suwet'en territories and the settlement process that was going on at this time, yes, I think it's a reasonable assumption to refer to the fact that Indians are being driven off land in the Bulkley Valley, Indians with cabins, corrals and gardens, that that is referring, indeed, to the Wet'suwet'en. And particularly in the light also of later evidence, most notably again the minutes of the Stewart and Vowell Commission in 1909, where there is a list of 29, I think, Wet'suwet'en who -- who enter specific grievances about similar sorts of occurrences.

Q Some of those were Cheslatta, weren't they?

A I don't recall Cheslatta amongst them.

MR. WILLMS: Well, we'll get to that later. 1033-17, my lord.

THE COURT: All right.

(EXHIBIT 1033-17 - Letter from Mr. Loring to Mr. Vowell dd. March 16, 1906)

MR. WILLMS:

Q Now, at the top of page 56 of your report, you refer to a "significant protest action: at Kitwancool in 1898," about allotting reserves, and you quote from a document from the Kitwancool Indians about six lines down:

> "They wrote to say that 'we do not want you to come here'"

Do you see that?

A Yes.

Q The reason why they didn't want them to come was because they were still upset about the Kitwancool Jim affair; isn't that a fair statement?
A I think that's part of the context. I am not sure that it is the entire context.
Q Yes. In fact, the reserve issue was a minor part of that and the Kitwancool Jim protest was the major part of that?
A Well, it was in part the fact -- the terms of what I understand the people of Kitwancool and the relations of Kamalmuk saw in terms of the responsibility for the death of Kamalmuk, and their perceptions of the fact that the issue had never really been settled. So that what we are talking about, in part, is a white official going into that area.

I should also point out that there had been a number of complaints previously in terms of -- a number of protests about the process of establishing reserves, and that continued in the Kitwancool Valley through until the end of the period that I examined in 1927.

Q Could volume 4 be put before the witness, please. Sorry, do you have it?
A Yes, I do.
Q Volume 4 and the very last tab, tab 250.

Okay. And this -- these are the letters written at the request of the chiefs of Kitwancool and they say this to Mr. Vowell:

> "We the Chiefs of Kitwancool do not want you to come to Kitwancool to make a Reserve for us, because we continually remember the death of our Chief Jim, who was killed by the white man who was sent by the government to kill him; therefore we do not want you to come here. You the Government said to me Weka [W-E-K-A] whatever we say to you, do it. This I have done now I want you to have mercy upon me, not to come and reserve our land."

A Yes.
Q Now, it's Kitwancool Jim and not the land that they are concerned about?
A Well, it seems to me that it's both. I mean they are concerned with the Indian Reserve Commissioner, which is Vowell, and his proposed journey up there, and it says, you know, "do not come and reserve our land."

And as I recall -- sorry.
Q Dr. Galois, I am showing you a summary of opinion evidence, History of the Upper Skeena, 1850 to 1927, copyright 1987. This contains your opinions in 1987?
A This was a draft that I did in 1987, yes.
Q Well, you knew that this was going to be the document delivered to the defendants as a summary of your opinion evidence, didn't you? It wasn't a draft, you knew it was going to be sent as a summary of your opinion?
A Yes. Yes, I'm sorry, you are correct. It's hard to recall. It's some time since I wrote this, and yeah, it's my understanding that it was to be submitted as a summary of my opinion.
MR. WILLMS: Now, my lord, I am -- I am going to go through this but I would like to mark this for identification so that it maintains the same status as the opinion report, if the opinion report is ultimately marked, but I don't want to foreclose my arguments that the opinion report is inadmissible by marking this. So I suggest that this be marked 1033-18 for identification.
THE COURT: And if the opinion report is admitted then this is as well.
MR. WILLMS: Yes.
THE COURT: All right.
MR. WILLMS: Now, can you --
MR. ADAMS: My lord, just a moment. There may be some particularizing of the purposes for which this goes in. If it's going to be put to the witness and used in reference to it, surely at least to that extent it's in as an exhibit proper. I don't object to my friend marking it if he wishes to.
THE COURT: Are you saying, Mr. Adams, that your friend, as was the position in the famous Protopappas case, where if he cross-examines, he elects to -- or at least he risks the evidence going in?
MR. ADAMS: My objection isn't even that sophisticated yet, my lord. What I'm remembering is that reference to a similar issue in Dr. Lane's testimony, and all I have seen is a brief reference to it as I flew through the transcript. I would like at least an opportunity to review that and anything that came of that before I have to take a final position on that.
MR. WILLMS: Well, my lord, Dr. Lane -- there was no report, no opinion report marked for Dr. Lane, and I don't know what happened there, but surely that would be

different.
THE COURT: I can't recall.
MR. WILLMS: But my lord, the difficulty here is this: I have -- I have got a report hanging out there for identification which I still object to. I don't want to render it admissible yet. If it ultimately is admissible and I haven't cross-examined on some of the opinions that may have changed, I am going to be prejudiced by that. And so I don't want to take -- this cross-examination as to the opinion of the witness, my lord, will be as inadmissible as the opinion itself if your lordship should so find.
THE COURT: Well, you remember the circumstances of the Protopappas case?
MR. WILLMS: Perhaps your lordship could remind me.
THE COURT: Well, Senator Farris moved for nonsuit in a jury trial, and as there was multiple parties, the learned trial judge reserved the motion until all the evidence was heard. Senator Farris then, with his usual vigour, cross-examined the witness, and it was then held that having put in evidence himself, he had given up his right to claim for a nonsuit, that he himself had called evidence.
MR. WILLMS: Well, if I can --
THE COURT: It seems to me that what your position, Mr. Willms, certainly is, is that if you cross-examine and you do so sufficiently to make some parts of this exhibit admissible -- and I would think that at least the parts that you cross-examine on would become admissible -- your objection to the report must to that extent at least be compromised.
MR. WILLMS: Well let's -- my lord, if I can put it this way: If -- if at the present time the cross-examination is limited to opinions, all right, so that it's limited to opinions that are given in the draft -- in the document that's been marked for identification, and it is -- the cross-examination is aimed at testing those opinions, as this cross-examination has been to date. Because it has to be that, in my submission, I can't render what is inadmissible, admissible, unless I do something to qualify the witness beyond -- you will recall my argument was first of all that this isn't a proper area for opinion evidence anyway, and whether further documents are put in or not isn't going to change that, in my submission. And secondly, I said that it was beyond the witness' qualifications. Now this isn't going to change his qualifications, in my

submission, either.

To the extent that any of my cross-examination, my lord, goes directly to the issues that I argued, then what happened to Senator Farris may well be the case. In that case he wanted to move for a nonsuit, he then led evidence which were then fatal to his motion for a nonsuit. But in this case, in my submission --

THE COURT: It wasn't the fact that the evidence he adduced affected the result, it was the simple fact that he had called evidence. He chose to move rather than to call evidence. You can adduce evidence in cross-examination same as you can in chief, and he had adduced evidence, therefore, he was no longer in position to stand on the evidence that existed at the time of his motion.

And I am not sure that it's a true analogy, but it's the same sort of thing. You, by your conduct at trial, you take a step that may make your previous position untenable, and it seems to me the thing to do to solve the problem is rule on the admissibility of the document, which is what probably you should always do in the first instant anyway. Sometimes it's convenient to use the sidedoor for a little while.

MR. WILLMS: My lord, I hesitate to suggest that your lordship should make a ruling if your lordship is still considering the matter. But of course, I --

THE COURT: I've thought of little else since the time.

MR. WILLMS: I have the difficult position of having objected and now having this sword hanging over my head which is this report for identification, and the real risk, if your lordship should decide to admit it into evidence, that the cross-examination will not be done that should be done. And it's my suggestion that, just as my friend suggested, that you should hear all of the opinion evidence in chief subject to the objection, that all of my cross-examination should be heard subject to the objection as well, if your lordship is inclined to reserve further on the admissibility of the report. I can't see how that prejudices my friend in the least.

THE COURT: Well, I must either stop and give the matter more thought and rule, or I must allow you to proceed and take your chances. I am disposed to the latter, Mr. Willms, but I will rule if you think that it would be unfair not to do so.

MR. WILLMS: Well I think, my lord, the difficulty that I have at this point, my lord, is simply this: We have heard

the evidence of the witness, opinion evidence, subject to my objection, and I have embarked on a cross-examination on the assumption -- and my friend has not risen yet at all when I have cross-examined and tested opinions. That by doing so, I am rendering admissible what he agreed we should reserve for later to argue. And it's my submission, my lord, that my friend can't have it both ways. It's not me that is in the difficult position, it's him. And if he wants this matter reserved for later, if he would like your lordship to reserve on it further, that the cross-examination that I may do on it must be without prejudice to that issue because it's a request from my friend.

THE COURT: Well, the only reason that I have deferred ruling is because I have been led to believe that the plaintiffs wish to make a substantial submission on historical evidence generally. And I am happy to have the assistance that will be furnished to me by such a procedure. But I think that I have to say to you, Mr. Willms, that I think that what you face here is a risk which might arise -- I wouldn't go so far to say it does, but which might arise not by reason of anything that I say or do or your friend says or does at this point, but by operation of law. I am not sure that your conduct results that I have warned you about, and no doubt which you are understandably apprehensive, will necessarily come to pass. But I think there is a risk.

I think it's fair to say that my present view is that Dr. Galois' collection of documents is in because it has been selected by him in his capacity as a person qualified to speak with authority on this question. But my present view is that when you are dealing with this kind of thing, that while it is useful to have an expert collect the documents together, chronologically arranged or otherwise, it is still a matter for the judge to determine what they mean. And I am tending, as I expressed previously with other witnesses, to the view that when one is dealing with a wide sweep of history that -- which is documented, that that is the court's function, to put whatever construction should be placed upon those documents and not the expert who collected them for the assistance of the court.

But I have deferred making that ruling because of the issue that has been mentioned before. But counsel

want to correct me on that preliminary view, and it may be that the Zundel case I mentioned before may be of some support to them in that case, although I am not at the moment persuaded that it is necessarily decided correctly. But beyond that I don't think I can be of any help to you. I think you must either take your chance on whatever the law dictates as a consequence or you must defer your -- not defer, you must restrain your enthusiasm to cross-examine the witness.

I'll leave that to you to decide, but it is four o'clock and perhaps you should have overnight to consider it, unless counsel tell me that we are running seriously behind time and that we ought to sit late. What do counsel say in that regard?

MR. WILLMS: Well, my lord, I can say that first of all I at the present time will withdraw the opinion draft -- opinion summary.

THE COURT: All right. I'll give it back to you. I've made a brief note on it. I merely noted on it "Galois in 1987. He knew it would be sent as a summary of his opinion." That's all I've said on it. I've put a number on it.

MR. WILLMS: And my lord, I can say that I am moving slower than I had planned and that I would probably go into Wednesday with my cross-examination.

THE COURT: All right. Any idea how long you will be, Mr. Macaulay?

MR. MACAULAY: My lord, about a day I would think. Perhaps a little less.

THE COURT: Well, we are well within permissible time.

MR. MACAULAY: Yes.

THE COURT: All right. I don't think -- unless counsel submit otherwise -- there is any need to sit longer this afternoon than regular hours. All right. Ten o'clock tomorrow morning.

THE REGISTRAR: Order in court. Court stands adjourned until 10:00 a.m. tommorow morning.

(PROCEEDINGS ADJOURNED AT 4:00 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.
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