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## Docket Entry 416J - Filed Transcript of Proceedings Volume X

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1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT TACOMA

FILED IN THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

FEB 12 1974

EDGAR SCOFIELD, CLERK

By Ch Deputy

CIVIL NO. 9213

4 UNITED STATES OF AMERICA, )  
5 Plaintiff, )  
6 QUINAULT TRIBE OF INDIANS, )  
7 et al, )  
8 Intervenor-Plaintiffs, )  
9 v. )  
10 STATE OF WASHINGTON, )  
11 Defendant, )  
12 THOR C. TOLLEFSON, et al, )  
13 Intervenor-Defendants. )

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15  
16  
17  
18 TRANSCRIPT OF PROCEEDINGS

19  
20 September 7, 1973  
Tacoma, Washington

21  
22  
23 THE HONORABLE GEORGE H. BOLDT  
24 UNITED STATES DISTRICT JUDGE, Presiding

25  
Vol. X

Exhibit #2

P R O C E E D I N G S

September 7, 1973  
9:00 o'clock a.m.

(Appearances as heretofore noted  
in Volume I.)

(All parties present.)

THE COURT: I understand you are all  
in agreement with the scheduling that we discussed  
last evening?

MR. McGIMPSEY: Yes, sir, we agreed to  
meet tomorrow.

THE COURT: Thank you.

MR. McGIMPSEY: Your Honor, I indicated  
yesterday that I had finished my cross-examination,  
but there were a couple questions I inadvertently  
omitted.

THE COURT: Go ahead.

DR. BARBARA LANE,  
being previously sworn, resumed the stand and testified  
further as follows:

CROSS-EXAMINATION (Cont.)

1 BY MR. MCGIMPSEY:

2 Q Dr. Lane, as I understand your testimony, the  
3 Indians at treaty times did have property concepts  
4 in that particular Indians might have an ownership  
5 interest in a fishing site and they would grant  
6 user interests to other Indians, is that correct?

7 A That's correct.

8 Q When you spoke of a primary and secondary right,  
9 would the ownership interest be the primary right  
10 you referred to and the user interest the secondary  
11 right?

12 A No, no, that's not what I referred to.

13 Q Would you clarify then the difference between  
14 a primary and a secondary right for me?

15 A Yes. It is simply that certain people would have  
16 stronger rights, if you would like to put it that  
17 way, in a resource producing area or any fishing  
18 location than other people who had weaker rights  
19 but still had rights, and these would, in my view,  
20 would be termed as ownership rights in the location.  
21 However, they were not of the same degree.

22 Q There were varying degrees of ownerships rights,  
23 is that your testimony?

24 A Yes, as I am using the term.

25 Q The distinction between ownership rights and user

1 rights holds up, does it not?

2 A. Yes, there would be other people who had no claims  
3 of ownership, no claims of heirship to a particular  
4 location but who might be accorded use rights by  
5 the owners.

6 Q. You drew an analogy yesterday or the day before  
7 to yourself and your fence post digger, I believe,  
8 a post hole digger, as to that being analogous to  
9 the type of ownership user relationship on fishing  
10 rights, is that right?

11 A. Yes.

12 Q. Now, did it ever occur that two or more INDIANS  
13 might have this type of an ownership interest in  
14 a particular fishing site?

15 A. Which type of interest?

16 Q. Well, in your analogy, the type of interest that  
17 would be analogous to your owning the fence hole  
18 digger?

19 A. Yes, if I understand what you are asking me.

20 Q. In other words, you and another person could have  
21 bought a fence hole digger and owned it in common,  
22 right?

23 A. I perhaps didn't speak properly the other day.  
24 My husband and I own the post hole digger.

25 Q. You and your husband own the post hole digger, but

1           you could have had common ownership interest in it?

2       A.    Yes.

3       Q.    And there you would still extend use rights to other  
4           Indians?

5       A.    Yes, correct.

6       Q.    As far as fishing sites, were there other --

7       A.    I think there were analogous situations.

8       Q.    That occurred?

9       A.    Yes.

10      Q.    Is that situation analogous then to what we call  
11           in common law a tenancy in common?

12      A.    I don't know.

13      Q.    If your ownership interest in that fence hole  
14           digger with your husband were, under the law of  
15           Canada, a tenancy in common in that you each had  
16           an undivided equal interest in it, would that be  
17           analogous to what two Indians might have in a  
18           particular fishing site if they had an ownership?

19      A.    I'm sorry, I can't answer that because I don't  
20           know what an undivided interest or these other  
21           terms may entail.

22      Q.    Well, without worrying about what the actual  
23           legal connotation is of an undivided interest, if  
24           you and your husband have each an equal interest  
25

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1 to the post hole digger, is that the type of  
2 interest that each of those two Indians would  
3 have in my hypothetical question?

4 A Yes, you could have a situation like that, yes.  
5 I see now.

6 Q Now, in the treaty, the use of the term "in common  
7 with" could that have been a legal term?

8 A Yes, I suppose it could have been.

9 Q And as I understand your testimony, Mr. Gibbs  
10 was -- there is a 90 percent chance that he  
11 wrote the treaty or drafted the treaties?

12 A Oh, he definitely was one of those who sat at the  
13 office in Olympia drafting it, and he was not  
14 yet serving as Secretary of the Commission, but  
15 I think he was very influential in the drafting,  
16 yes.

17 Q And he was an attorney, was he not?

18 A Yes, he was.

19 Q And would it be likely, in your opinion, that  
20 some of the language that would be used in the  
21 treaty would be legal language?

22 A I would assume so.

23 Q Now, you also indicated -- one other question,  
24 could this idea of an undivided ownership interest  
25 that you have indicated two Indian fishermen could

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1        have, could that idea have been discussed in  
2        Chinook jargon?

3        A     I think so.

4        Q     Now, you also indicated that with regard to  
5        references in the treaty about pasturing horses,  
6        cattle, I believe it was, in open and unused  
7        areas --

8        A     Just horses.

9        Q     Horses in open and unused areas, that you felt  
10       that they were referring there to a situation  
11       analogous to the English commons?

12       A     I'm saying that the only suggestion I'm able to  
13       think of in this discussion that occurred at  
14       several of the treaties, for example, during the  
15       first attempt at making a treaty with the Quinault  
16       Chehalis and Cowlitz and other tribes, some of those  
17       people who owned horses at the time discussed this,  
18       and I'm speaking now with reference to the individual  
19       treaty proceedings, the record of the daily log  
20       of the negotiations, and during that week they were  
21       talking -- one of the concerns was "If we have to  
22       move away from our own country to go somewhere on  
23       the coast, how will we feed our horses?"

24                     And so the question came up, it came  
25       up as, you know, earlier along in some of the



1 treaties on the Sound, and as a matter of fact,  
2 I probably should mention this that afterwards  
3 in part of the correspondence from Gibbs to  
4 Stevens, they realized the original Puyallup  
5 and Nisqually Reservations were simply inadequate  
6 to provide for the stock, the horses of the Puyallups  
7 and the Nisqually, who lived upriver who had horses  
8 at that time. Gibbs said to Stevens, "When we  
9 set up a reservation for the Upper Chehalis, we  
10 will have to set it up in such a way that there  
11 is a place for the horses of Upper Chehalis and  
12 the Upper Nisqually and Upper Puyallup Indians."

13 Q Now, as far as those Indians where the treaty  
14 says they will have equal access, I guess, with  
15 whites, in effect, to open and unclaimed lands for  
16 their horses --

17 A Yes.

18 Q This would be the in common with type of arrangement,  
19 would it not, that we have referred to?

20 A The reason that I made the suggestion that this  
21 may be a plausible explanation was because -- and  
22 I can't think exactly where just now, I believe  
23 it was Gibbs, or perhaps it was Stevens, who writes  
24 this won't create a problem because they don't  
25 imagine these areas will become places taken

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1 up by settlers, so there will always be a common  
2 ground for the horses to graze.

3 Q And that was because the settlers wanted basically  
4 to live in the woods?

5 A Yes, the edge.

6 Q At the edge of the clearing?

7 A Yes, at the edge of the clearing, that's correct.

8 Q So it would have been contemplated by the parties  
9 that these open and unclaimed lands that they  
10 were speaking of that were to be used in common  
11 by both the Indians and whites?

12 A This explanation appears in the correspondence  
13 somewhere, and that's why I mentioned, that's the  
14 only clue I could find to explain what they might  
15 have had in mind.

16 Q Was there not a similar type of concept with regard  
17 to fishing locations in that it was understood  
18 that the settlers were not likely to use fishing  
19 locations that were being traditionally used by  
20 the tribe?

21 A No, I think not, in point of fact, there were  
22 already settlers trying to use locations which  
23 had been important fishing sites, so I think  
24 definitely no.

25 Q Now, you indicate in the Makah report at page

1 47 of an instance when some white traders, some  
2 gentlemen from California had established a  
3 trading post and a fishery at Waadda, could you  
4 tell us where Waadda is?

5 A. This is a little island just north of Neah Bay.

6 Q. And this would be just off of the Makah Reservation  
7 area?

8 A. Well, that was a matter of dispute at the time,  
9 I believe the Makahs understood that that was  
10 included in the reservations and the whites did not.

11 Q. And there at least -- this occurred after the  
12 treaty in 1858, did it not?

13 A. Yes, the report refers to the matter after the  
14 treaty.

15 Q. And at least in that instance, the Makah refused  
16 to allow the fishermen --

17 A. Yes.

18 Q. On what they felt was a reservation from fishing  
19 in the banks?

20 A. I don't know whether it was because they felt it  
21 was on their reservation or because they felt it  
22 was a fishing site which belonged to them and which  
23 had been secured to them.

24 Q. Other than that example, do you know at the time  
25 the treaties were negotiated of any evidence

1 that would indicate an intention on the part of  
2 the parties to the treaty, both the governmental  
3 officials and the Indians, that the Indians could  
4 restrict the whites or settler fishing populations?

5 A I haven't found any other documentation dating  
6 from treaty times. However, later on toward  
7 the turn of the century, there is more documentation  
8 of that sort in the sense of statements made  
9 by Indians because it wasn't until much later that  
10 this became an issue. There was enough white  
11 encroachment on specific sites, such as the  
12 example here, to create a problem which had been  
13 recorded.

14 Q But as far as contemporary evidence, you have  
15 none that either party intended to restrict the  
16 other parties' fishing?

17 A Apart from this which I found.

18 Q Apart from the Makah?

19 A No, I have not found anything else documented  
20 contemporaneously at treaty times.

21 Q Now, based on your understanding of the evidence  
22 available at that time, would it be fair to say  
23 that probably the reason there may not be  
24 evidence would be that the resource was sufficiently  
25

1 abundant that it may not have been contemplated  
2 that there would be this interference by one  
3 or the other?

4 A. I agree with that or the fact that there were  
5 so few whites at that time or non-Indians that  
6 were competing.

7 MR. MCGIMPSEY: That's all the questions  
8 I have.

9 (Continued on next page.)

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1 Q Dr. Lane, I would like to ask you questions particularly  
2 about the portion of your written testimony that  
3 relates to the Lummi.

4 Directing your attention to page 2 of the  
5 Lummi section of your report, USA-30, and the final  
6 paragraph, which I will read:

7 "Second, the Semiahmoo, Lummi and Sammish  
8 shared their most important subsistence activity --  
9 reefnetting -- a specialized technique to take  
10 sockeye and other salmon in the salt water."

11 Then you have gone on and point out the  
12 contrast. Have you not elsewhere stated in your report  
13 Dr. Lane that the Sammish principally occupied the  
14 southern portion of that area that was occupied by  
15 tribes subsumed together in the Treaty of Point Elliott?

16 Another way of stating my question, were not  
17 the Sammish Indians located well to the south of the  
18 Lummi?

19 A Yes, that is true. They were their neighbors to the south.

20 Q Have you made much of a check yourself, personally to  
21 determine the number of reefnet areas there may be  
22 in the area previously occupied by the Sammish Indians?

23 A I think there may be reefnet locations off the Fidalgo  
24 Island and south Lopez.

25 Q Correct, and are you aware of any reefnetting being

1       pursued now on Fidalgo Island?

2       A    I have no knowledge. I have not looked into that.

3       Q    You would not be able to deny the statement then, that  
4       there is no reefnetting activity prsently in either  
5       of those spots that you have referred to?

6       A    I have no information of that at present.

7       Q    Thank you. Now, later in that same paragraph, I want  
8       to ask you about this sentence:

9               "The reefnetting technique was a local  
10              Indian invention."

11             Could you give us your basis for that state-  
12       ment, please?

13       A    Yes, this technique is known nowhere else in the world.

14       Q    Do you recall the statement elsewhere in your report  
15       that there is a certain line of authority for stating  
16       that the technique or method or the equipment was taught  
17       to the Indians by a Hudson Bay Trading Company  
18       representative?

19       A    I don't think I referred to that in the line of authority.  
20       I don't think I dignify it with that term. This is the  
21       only statement that has ever been recorded anywhere  
22       to the effect that it was not a local Indian invention,  
23       and because of this I explored it, and examined it very  
24       carefully to see what weight might be given it.

25       Q    Could you tell us how and where that remark is recorded,

1 A Yes, I would have to refer to my report to get the  
2 exact citation.

3 Q If it wouldn't take too long, I would appreciate it if  
4 you would. Do you have a page number?

5 I will work my way around to that. Let's pass on  
6 to the next point, still following that same paragraph,  
7 and pick it up at the last word on page 2. You state,  
8 the private ownership of fishing locations again  
9 contrasts with general practice among Puget Sound peoples."

10 May I again ask you the basis for your  
11 statement of the private ownership of fishing locations,  
12 please?

13 A Yes, there is quite a bit of information on the inheritance  
14 of specific locations in specific families.

15 This is information collected by anthropologists  
16 who worked with the Lummi at various times in the past.

17 Q Could you tell us when they worked with them?

18 A Yes, Wayne Suttles worked extensively on this question  
19 in the late 1940's, and Bernard Stern, I think, about  
20 a decade or so previously. I would have to check my  
21 bibliography to see when he did his field work, check  
22 my notes, rather.

23 Q Now, actually, there were no contemporaneous accounts  
24 that would reinforce the statement that they had private  
25 ownership of fishing locations, is there?



1 A Well, excuse me. There is some other kind of documenta-  
2 tion. There have also been additional anthropologists  
3 who have worked even earlier, before the turn of  
4 the century and in the 1920's, I believe it would be --  
5 I would have to check that -- who described the same  
6 reefnetting areas and practices, and adjoining ones  
7 for tribes who are not plaintiffs in this case. I  
8 refer specifically to the Samish people on the southern  
9 part of the Vancouver Island.

10 There were also reefnet locations, and the  
11 ~~Sa-Saanichon~~ Indians on Southeastern Vancouver Island  
12 who shared some of the reefnet locations in the Straits  
13 and the accounts are all consistent, in the reefnetting  
14 area, that these reefnet locations were inherited in  
15 families, and so I use that as a kind of a corroboration,  
16 because then the information that Stern and later Suttles  
17 collected on the Lummi fits with the general picture.

18 There is no discordance for the larger  
19 area, and in addition, of course, there is considerable  
20 other Indian testimony taken before the turn of the  
21 century regarding inheritance of specific rights.

22 Q How did these particular people whom you have been  
23 quoting upon whose opinion you base your own --

24 A Yes.

25 Q State the situation. Do they just give us a final word

1       that this is private property or --

2       A   No, no, these are --

3       Q   Pardon, or do they give certain attributes that lead  
4       to a conclusion that private property rights existed?  
5       How was that done?

6       A   Both. In addition, of course, discussions of how  
7       particular individuals came to own or control particular  
8       individuals came to own or control particular sites or  
9       have secondary rights in particular sites.

10      Q   Are you prepared to deny the hypothesis that perhaps  
11      certain ones became reefnet fishermen just because that  
12      was their particular skill for the group, and hence  
13      they followed that activity for the benefit at all?

14      A   At what time period are you speaking?

15      Q   Pretreaty.

16      A   Pretreaty. When we go back to very long ago, I don't  
17      know how the original reefnetters in the very first  
18      instance came to be owners of those locations. It may  
19      be as you suggest, that somebody who knew how to do it  
20      originally went out and invented a technique, and then  
21      those locations became inherited properties because  
22      they were wealth producing.

23      Q   There is no authority disclosing how the concept then  
24      of private property in these locations was created.  
25      Is that your answer?

1 A No, that is not what I said. Concepts of private property  
2 are well established in many areas of the Northwest  
3 coast Indian life, and this wouldn't have been a  
4 specifically new innovation just with respect to  
5 reefnet areas. It would fit into the larger cultural  
6 patterns themselves.

7 Q You will grant as an anthropologist that private property  
8 concept is the result of an organized society, isn't  
9 this true?

10 A No, it is not true.

11 Q Well, how do you feel then that this actual feature  
12 of private property was established? Merely by the power  
13 to exclude competitors?

14 A I have no idea how the notion was established. I think  
15 I said that a few moments ago.

16 Q You feel then it was purely a private feature and some  
17 family held a particular location then, is that your  
18 belief?

19 A It is my understanding on the basis of all of the  
20 available evidence that specific reefnet locations were  
21 inherited by kinship or bestowed to affinal kin; in  
22 other words, a son-in-law could inherit the location  
23 from his father in law, did not have to be a direct line  
24 of descent. A nephew could inherit from an uncle, and  
25 the genealogy and the history of these locations -- I am

1 point to those two examples of specific examples that  
2 are recorded.

3 Q Where are they recorded?

4 A In the doctoral dissertation of Wayne Prescott Suttles.

5 Q Based upon what?

6 A Based upon field work done in the 1940's, and I have  
7 checked Dr. Suttles' materials with other materials  
8 which he had not had available to him in order to  
9 corroborate or to find descriptions or any kind of  
10 corroboration or lack of ~~corroboration~~ for any of the  
11 materials that he collected, and wherever I have been  
12 able to check his information, it is substantiated  
13 by information elsewhere, so I tend to place reliance  
14 to a greater degree, rather than a lesser degree on these  
15 histories that he was able -- ownership histories that  
16 he was able to collect in the 1940's, and I might mention  
17 that when he collected them, they were in the context of  
18 a much larger ethnological study for purely academic  
19 purposes, which he conducted over a number of years with  
20 the Lummi and neighboring Salish peoples, and they were  
21 not, the information was not collected in the context  
22 of any court proceeding or litigation about the ownership  
23 of these locations.

24 However, there had been before the turn of the  
25 century a number of times in between litigation, and hard

1 feeling about the loss of ownership of these sites,  
2 so that both Dr. Suttles at the time he collected his  
3 material and I, when reviewing it took into account  
4 the possibility that there might be bias because of a  
5 history of litigation, and the kind of materials that  
6 were being provided.

7 Q May I interrupt at this point then?

8 A Yes.

9 Q Are you suggesting that there was litigation among the  
10 Indians?

11 A Between the Indians and non-Indian fishermen.

12 Q Would you tell us where and when that litigation occurred,  
13 please.

14 A Yes, in the 1890's there was a case, I don't know the  
15 exact name of the case, but it was the Alaska Packers  
16 Association, who set up a series of traps right in front  
17 of the Indian reefnets and had blocked off fish so that  
18 they couldn't come into the reefnets, and there was a  
19 case, I guess like this one, meant to examine the  
20 Indian treaty rights with regard to those reefnet locations.

21  
22 (Continued on the next page.)

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Q And do you happen to know --

A And other cases afterwards.

Q Do you know where it was heard, where it was tried, in other words?

A No, I don't. I am sorry.

Q Would you direct your attention, please, to the second paragraph, page 15 of your summary, the portion that <sup>is</sup> at the very front of your report, please. Do you have it?

A Yes, I have page 15.

Q It is the first complete paragraph.

"The role of fishing in the native economy was more readily appreciated although the intricacies --"

A I am sorry, I must have made a mistake.

Q Page 15 of the first --

A Of the summary?

Q Of the summary, correct.

A I was still on the Lummi report.

Q Have you found it now?

A Yes, I have.

Q It is the paragraph that says, "The role of fishing in the native economy was more readily appreciated although the intricacies of the native exchange

1 systems and the social role of cooperative  
2 enterprises such as reef netting and weir construc-  
3 tion were probably not realized."

4 Don't you find an inconsistency in speak-  
5 ing of reef netting as a cooperative enterprise  
6 after having first elaborated these very tight  
7 property concepts you have been telling us about?

8 A. No.

9 Q. You still think a thing can be a cooperative enterprise  
10 and private ownership?

11 A. Yes.

12 Q. You mean a cooperative enterprise within the  
13 family that allegedly owned the site?

14 A. No, I do not.

15 Q. You feel then that it was still, you think it is  
16 still consistent with concepts of private ownership  
17 that there be cooperative enterprises relating  
18 to it?

19 A. Yes, if you would like me to explain what I was  
20 referring to when I said, "cooperative enterprises,"  
21 I would be happy to do that.

22 THE COURT: Go ahead. One time or another  
23 somebody is going to ask you to do it. First,  
24 let me ask you, you don't feel they are inconsistencies?

25 THE WITNESS: No.

1 Q All right, continue.

2 A When I spoke of cooperative enterprise I referred  
3 to the fact that the reef net owner had to rely  
4 on the help of many other people to construct the  
5 weir and handle the gear. Boulders had to be brought  
6 ~~in from Chuckanut~~ to serve as anchors. Men  
7 had to work on building the different parts of the  
8 net which were then put together, so it would  
9 be in proper condition before it was placed in  
10 the location. Many men had to be hired on as  
11 crew, and these might be relatives, and might  
12 also include people who were not relatives and  
13 might include people who were co-owners, and  
14 even those who were not in any way owners of the  
15 site, and the work of many women was required to  
16 dry the catch, because many fish were caught at  
17 one time, and numbers of them would come together  
18 at the reef net locations and work cooperatively  
19 in order to take advantage of the opportunity to  
20 take huge amounts of fish at one time.

21 This in no way conflicts with the fact  
22 that specific locations were inherited and  
23 privately owned in family lines.

24 Q Of course, there was a sharing then of the catch  
25 among all these who participated in this cooperative



1       enterprise?

2       A.    Yes.

3       Q.    Then, of course, they must have had well-developed  
4            concepts of joint effort producing joint benefits,  
5            mustn't they?

6       A.    Yes.

7       Q.    Isn't that quite consistent then with the terminology  
8            in the treaty that the right to take fish at the  
9            usual and accustomed stations would be in common  
10          with other citizens of the territory?

11      A.    I don't think there is any relationship between  
12          the two sets of statements.

13      Q.    You don't think that merely to say "in common with  
14          a certain other type of citizen," isn't also another  
15          form of joint effort, Dr. Lane?

16      A.    No, I think you are placing two things in one  
17          context that are unrelated.

18      Q.    Certainly, Dr. Lane, if they would have a catch  
19          in common after these efforts that would entail  
20          sharing, would it not?

21      A.    I am sorry.

22      Q.    Well, maybe I can rephrase the question.  Certainly  
23          in the method of cooperative enterprise, as you  
24          refer to it on page 15 in reef netting, implied  
25          a concept of sharing, didn't it?

1           If Indian four, five, six and seven went  
2           on to locations owned by Indian Number One, or maybe  
3           one and two, they still understood they were going  
4           to share, didn't they?

5       A.   Let me explain.

6       Q.   May I have a direct answer? Doesn't that imply  
7           that they could share?

8       A.   The only people who could share, Mr. Rhea, are  
9           the people who were hired on as crew and working  
10          on the gear, or people who had ownership rights  
11          in it and could come and collect a share by virtue  
12          of inherited ownership.

13                   (Continued on next page.)

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1 Q I'll accept that point, but still, nonetheless,  
2 as between those people or as among those people,  
3 and I believe one place in your report on in your  
4 authority you say that the crews were ten at least  
5 in number, isn't that correct?

6 A The size of the crews would vary.

7 Q All right. Now, nonetheless, they would be ten  
8 or fourteen in size, that would not be uncommon,  
9 would it?

10 A I think not.

11 Q Very well. Now, you have just said in this sentence  
12 that you gave instead of ayes or no answer, you  
13 stated that they would go on there and then share,  
14 isn't that correct?

15 A Yes.

16 Q All right. Doesn't that imply then an ethnic  
17 consciousness, if you will, of a theory of sharing?  
18 If you don't want ethnic consciousness, let's  
19 say then doesn't that imply the existence in the  
20 minds of those individuals of a concept of sharing?

21 A Of sharing results of their labor, yes.

22 Q All right. A sharing of results obtained by labor,  
23 would you agree with that?

24 A Yes, or by virtue of inheritance.

25 Q No, I'm not speaking of inheritance at this point,

1 I'm confining my line of inquiry to ownership  
2 by effort.

3 A I merely wanted it clear to you that not all the  
4 people who shared worked on the gear.

5 Q I'll accept that, but I still say the fact remains  
6 say fourteen that worked on it or sixteen or eighteen  
7 if they worked on that, they shared, did they not?

8 A Yes.

9 Q And I would ask you again, that does indicate then  
10 a consciousness in their minds of the idea of  
11 a division of the result of certain efforts, does  
12 it not.

13 A Yes.

14 Q All right. So then doesn't that also reveal a  
15 state of mind that would be compatible with the  
16 notion that the whites -- I mean the Indians and  
17 the non-Indians would share the waters of Puget  
18 Sound together, which is really the substance of  
19 the wording of the treaty?

20 A I don't think there is any question but that the  
21 Indian people who were parties to the treaties  
22 were agreeing to share the waters of the Sound  
23 with non-Indian fishermen. I don't think there is  
24 any question about that.

25 Q Then you think that is what the meaning of the words

1 "in common with" really were put in the treaty  
2 for, is that correct?

3 A. Yes, I do.

4 Q. Now, going to page 4 again, of the Lummi reports,  
5 this section that is headed "Treaty Status," the  
6 bottom left there, page 4 of the Lummi summary,  
7 reading the first sentence, "Neither the Semiahmoo  
8 Lummi, nor the Samish are named in the preamble to  
9 the treaty of Point Elliott. We have to assume  
10 that the failure to list these names in the  
11 preamble was an oversight ---" I will stop at  
12 that point.

13 Who is named then in the treaty?

14 A. I don't have the document before me, but a large  
15 number of other what were conceived to be tribes  
16 in the treaty just to the south of these groups  
17 and on the east side of the Sound running to the  
18 Duwamish at Seattle.

19 Q. All these met at Point Elliott?

20 A. Yes.

21 Q. Do you recall what the contemporary sources indicate  
22 of being the number of those present at the meeting  
23 of the Treaty of Point Elliott?

24 A. It was several thousand, I forget the exact  
25 figure.

1 Q And if I were to tell you that Plaintiff's  
2 Exhibit 14, in the portion of that that transmits,  
3 you might say, the minutes of the session onto  
4 the appropriate higher officials, the scrivner says  
5 3,000 were present at the first meeting, which  
6 happens to be the one at Point Elliott, would that  
7 sound approximately correct to you?

8 A Yes.

9 Q Would you prefer maybe to --

10 A I think that was about it.

11 Q We may assume then that is a correct number, that  
12 3,000 Indians were in attendance.

13 A Something like that.

14 Q At the deliberations of the treaty at Point Elliott?

15 A Yes.

16 Q Do you think that that particular assembly or  
17 mixture of tribes, as you have just said, from the  
18 south, could have at any time had any specific  
19 discussion relating to preservation of reef nets,  
20 reef net areas, reef net locations?

21 A Well, since there is nothing in the related documents  
22 anything I say has to be pure conjecture. You have  
23 asked me what I think -- and it would simply be  
24 an opinion, yes, it could have happened. That  
25 can't be ruled out because they met there for some

1 days and there was some serious discussion about  
2 what was going to happen. It was unusual, almost  
3 unique for that many Indians to be gathered together  
4 in one place.

5 Q Was there any --

6 A Let me finish. And a rather unusual circumstance  
7 and clearly something important was happening,  
8 and the only evidence that we do have on this  
9 specific question you asked is oral testimony  
10 from Lummi Indians later who insist that --

11 Q I will get to that later. If you don't mind,  
12 I will get to that later, that is a separate  
13 point that will be more logically pursued in a  
14 few minutes.

15 A Fine, I thought you were asking for it now.

16 Q It will tie in with a later line of inquiry.  
17 I do want to pursue with you this one point, and  
18 I'm still talking about the Lummis and the quite  
19 large assemblage from all through the area.

20 A Yes.

21 Q Is there any data that would give us believable  
22 information as to the number of Lummis which may  
23 have been present?

24 A I have to refer to my notes. I can't recall whether  
25 there would be any clues as to the specific number

1 of Lummi. I do recall that some twenty-odd Lummis  
2 signed the treaty, and that is a rather large  
3 number, larger than for most of the other groups.  
4 So I would suppose that they must have been there  
5 in some kind of representative numbers.

6 Q Now, on page 5 you state, and still talking to the  
7 Lummi report, you say, " The fourteen Lummi  
8 signatories are as follows:"

9 How is that figure --

10 A It was fourteen, not twenty.

11 Q How is that fact established, Dr. Lane, that they  
12 were Lummis?

13 A They were so designated by the scrivner, on the  
14 treaty document.

15 Q And then these names that were put on there, was  
16 that his effort at what we might now call phonetic  
17 spellings?

18 A That was his effort to put down Indians names. Yes.

19 Q He established then they were Lummis, is that  
20 correct?

21 A That's correct.

22 Q Do you happen to know the total number of tribes  
23 as they then existed before, assuming this occurred,  
24 that were actually present at the treaty at Point  
25 Elliott conclave, or whatever, meetings shall we say?



1 Can you recall how many various tribes were  
2 present?

3 A. Well, the number of so-called tribes present,  
4 I suppose, would be indicated by the number of  
5 distinct names listed in the preamble to the  
6 treaty.

7 Q. If you could see a holographic copy of that, could  
8 you tell me how many there are, if you recall?

9 A. I would have to look at the treaty again to count  
10 up.

11 Q. Would that take you very long?

12 A. If somebody has a copy of the treaty, I could do  
13 it very quickly.

14 THE COURT: Why doesn't one of your  
15 colleagues do that while you go on with the  
16 interrogation.

17 MR. RHEA: All right.

18 Q. (By Mr. Rhea) Perhaps you can give me that informa-  
19 tion later then?

20 A. Yes, certainly.

21 THE COURT: I think we can rely on some-  
22 body to count it accurately and report it truth-  
23 fully at a later time.

24 MR. RHEA: Perhaps Dr. Riley will do it.

25 Q. (By Mr. Rhea) In any event, I will proceed on

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1 to my next point.

2 Now, Dr. Lane, we now get to the point  
3 you were very eager to discuss a while ago, and  
4 I want to now pursue it on page 6, the first  
5 paragraph after the portion that begins, "Treaty  
6 Fishing Provisions," that section. In other  
7 words, I'm referring to the paragraph that states,

8 "Lummi who were themselves present  
9 at the treaty later asserted that the Lummi  
10 signers received assurances that they would  
11 continue to hold the rights to their fishing  
12 grounds and stations including their reef  
13 net locations."

14 Could you please tell me the basis  
15 for that statement in your report, please?

16 A. Yes, the basis are depositions which were taken  
17 at that Alaska Packers Association case towards  
18 the turn of the century, which I referred to, in  
19 which several of the Indians who made depositions  
20 at that time asserted that they had in fact fished  
21 on family owned locations prior to treaty times  
22 with their fathers and their uncles and grandfathers  
23 as younger men, and they were present at the  
24 treaty negotiations, and these things were discussed  
25 and they had been assured they could keep those

1           locations.

2       Q    Have you ever read the actual wording of those  
3           depositions?

4       A    Yes, I have.

5       Q    Where could the text of those be observed?

6       A    I have copies of them with me here.

7       Q    May I examine them later?

8       A    Certainly.

9       Q    I do ask the privilege of reviewing them and  
10           I appreciate your courtesy in making them available  
11           to me.

12                       Do you recall how this was phrased?  
13       Was it phrased in the form they could continue to  
14       fish at those locations or was it phrased in the  
15       terminology undisputedly that they alone would fish  
16       at those locations?

17      A    No, I don't think it was as clear cut as your latter  
18           statement.

19      Q    Are you familiar with the techniques called reef  
20           netting either by the Indians or by non-Indians  
21           in current times?

22      A    In a general way, yes.

23      Q    Do you know, of course, that the operation is  
24           conducted from a fixed base, isn't that true?

25      A    Yes.

1 Q You yourself mentioned a while ago something about  
2 boulders being used as anchors?

3 A Yes.

4 Q And isn't it your testimony, then, that wherever  
5 those particular fixed operations were pursued,  
6 that is what was meant by these reef net locations  
7 allegedly retained by the Indians?

8 A Yes.

9 Q Yet do you think, Dr. Lane, that if it had been  
10 so expressly stated that they should continue  
11 and had the right to thus exclusively pursue this  
12 method of fishing, that Governor Stevens would have  
13 used the language that he does in a quotation  
14 from him that appears on page 7 of your report  
15 approximately two-thirds of the way down, and it's  
16 the indented portion, "You understand well my pur-  
17 pose, and you want now to know the special things  
18 we propose to do for you. We want to place you  
19 in homes where you can cultivate the soil, raising  
20 potatoes and other articles of food, and where you  
21 may be able to pass in canoes on the waters of the  
22 Sound and catch fish ---"

23 Now, that is a form of mobile fishing,  
24 is it not, moving?

25 A Not necessarily. You have to move out to the reef

1 net location in canoes, then you have to move  
2 back with the fish in the canoes to the shore to  
3 deposit them, you have to move out again, and  
4 in those days they had to move the gear according  
5 to the tides in order to catch the fish so that  
6 they were moved far more often than the present  
7 gear.

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8 (Continued on next page.)  
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1 Q Nonetheless, you have stated they operate from a fixed  
2 location, isn't that true?

3 A At the moment in which they are catching the fish,  
4 they are in fixed locations. When they are transporting  
5 the catch back, as they did in the old days and not as  
6 non-Indians are doing at present, they moved canoes  
7 back and forth from the fishing location to the shore.

8 Q I will invite you again to point out anything in this  
9 terminology that implies the right to retain some fixed  
10 location.

11 A I don't think one can draw that conclusion from that  
12 language.

13 Q You mean that you cannot draw the conclusion that fixed  
14 locations were reserved to them, isn't that correct?

15 A That's not what I said, Mr. Rhea, that's not what I  
16 think is correct.

17 Let me explain. I have looked at this question  
18 very carefully --

19 THE COURT: One thing I want to be sure about,  
20 though, Doctor, before you do that, the only text that  
21 Mr. Rhea has called your attention to is what appears  
22 to be three sentences.

23 THE WITNESS: Yes.

24 THE COURT: In fact, he didn't read the last  
25 sentence, so it's only two. Now, the question is, what

1 can you derive from those two sentences on this subject?

2 THE WITNESS: Nothing from those two sentences.

3 MR. PIERSON: I might say his last question  
4 asked whether they were reserved a right, and I took  
5 that to mean he was speaking as well of the treaty.

6 THE COURT: Well, in any event, let's us  
7 go ahead with another question now. But the answer  
8 that you have just given to the two sentences remains,  
9 is that correct?

10 THE WITNESS: All right. Go ahead.

11 Q (By Mr. Rhea) I'm afraid I'm still a little in doubt  
12 that we have had a meeting of the minds. So I want  
13 to really practically re-ask the question, can you show  
14 me anywhere in the text of this language, anything that  
15 implies that they were given the right to fish by methods  
16 other than moving or, in other words if nothing was  
17 expressly indicated, they had been given the right to  
18 fixed spots or locations or areas?

19 A Not in this particular language, no.

20 Q On page 8, it's a very minor matter, but I can't help  
21 but have my curiosity aroused, at the end of the first  
22 complete paragraph on that page, second the last  
23 sentence, it is merely this sentence: "The reefnetters  
24 were able to take enormous quantities."

25 A There are some figures about how many salmon were purchased

1 from the Lummi Indians by the Hudson Bay Company at the  
2 fishing station on the southeast end of San Juan Island.

3 Q Recorded by whom?

4 A By non-Indians.

5 Q But their status --

6 A By contemporaneous employees of the company there.

7 Q What did they say, that 800 barrels of salmon were  
8 caught or 500 or what?

9 A No. If you wish me to look through my notes, I can give  
10 you the figures. They are much larger than that. We  
11 are speaking in thousands.

12 Q Thousands of salmon?

13 A I would prefer to refer to my notes to give you a  
14 precise amount and a dollar value.

15 THE COURT: Was it salmon or barrels or what?

16 THE WITNESS: I will have to check to be sure.

17 THE COURT: All right.

18 Q (By Mr. Rhea) Would it take you long?

19 A I can do it at recess.

20 Q Very well. Directing your attention then to the first  
21 complete paragraph on the next page, Number 9,  
22 "a second, and to my mind, compelling argument in  
23 support of the allegation that ownership of the reefnet  
24 fisheries was discussed at treaty negotiations lies  
25 in the fact that some of the men who signed the treaty



1 as Lummi subchiefs were owners of reefnet locations."

2 How then is this known?

3 A How is it known?

4 Q Yes, ma'am.

5 A When Dr. Suttles collected information from Lummi  
6 Indians in the 1940's regarding reefnetting he was  
7 given the names of the owners of various reefnet  
8 locations, and he was also in some instances given  
9 information from whom they had inherited the locations  
10 from.

11 In the course of his work, he also collected  
12 extensive genealogical information in an entirely  
13 different context. I have done somewhat the same with  
14 the Lummis as well and collected genealogical information  
15 other people have done so.

16 There are other kinds of records, I have  
17 used all of these sources to tie in and have been able  
18 to, by this triangulation if you like, to assure myself  
19 that several of the men whose names appear in the  
20 treaty documents as signers and whose names also appear  
21 in the different genealogical collections and who were  
22 stated by Lummis in the 1940's to be ancestors for --  
23 not the treaty signers, but intermediate people, to be  
24 the people that they had inherited locations from, one  
25 can work right back to the treaty signers and get a complete

1 line of inheritance.

2 Q I believe you stated Dr. Suttles collected his work  
3 in the 1940's?

4 A Yes.

5 Q And it is safe to say, is it not, that was approximately  
6 ninety years after the signing of the Treaty of Point  
7 Elliott?

8 A Yes.

9 Q And to use a legal term, which I hope you won't take  
10 exception to, isn't that practically hearsay on hearsay  
11 then?

12 A That's a legal question I can't answer.

13 Q I will drop the legal terms.

14 Isn't this then a rather nebulous and tenuous  
15 trickling down of verbal accounts that are being taken  
16 as gospel ninety years later?

17 A I don't believe it is taken as gospel when you use  
18 several lines of corroboration to give you -- all I  
19 can do is to give you an opinion as to what kind of  
20 weight I feel can be given to various bits of evidence.  
21 That is my only function here, to tell you what I base  
22 my opinion on.

23 I feel that I can place a relatively high  
24 degree of confidence in statements that are taken  
25 independently and in different contexts and mesh  
perfectly and put together and don't disclose discrepancies.

1 Q In the last analysis, though, we have to agree, don't  
2 we, that that is but your opinion?

3 A Certainly, this is an opinion which I base upon various  
4 lines of fragmentary evidence, and the weight to be  
5 given my opinion would depend on two things, one what  
6 weight to give to the evidence, and the other, what  
7 weight to give to the analytical powers that were brought  
8 to bear, and either can be faulty.

9 Q And Dr. Suttles had gone through the same process?

10 A No, I am the only one who has tried to tie the reefnet  
11 locations to treaty signers.

12 Q Didn't he reach his conclusions in connection with his  
13 research, then form opinions before he then wrote?  
14 Doesn't any writer do that?

15 A Of course.

16 Q So then, to the extent you are using him as an authority,  
17 this is an opinion on opinion, is it not?

18 A Not really, because I also have available to me the bases  
19 on which he arrived at his opinion, and what I'm doing  
20 is he made no opinions about the matters that we are  
21 discussing here, that some of the treaty signers were  
22 owners of reefnet locations, I don't think.

23 Q I thought that's what he said.

24 A No, no. I had taken his material and analyzed it, and  
25 other people's material and analyzed it, and put together

1       this line which goes back to treaty signers. He made  
2       no effort to do so, nor has anyone else, to my knowledge.

3       Q    Would you please once again tell me what was in this  
4       area that you covered in the material that you sifted  
5       that led you to have support for the conclusion that  
6       certain signers were "owners" of reefnet locations?

7       A    By checking the geneological materials which were  
8       collected in an entirely different context, and  
9       official records.

10      Q    May I interrupt at this point, it would be helpful in  
11      understanding if I knew -- you say by consulting  
12      geneological tables, but as I understand that term, that  
13      merely means records of descents?

14      A    That's right.

15      Q    Very well, so that doesn't per se connote the occupation?

16      A    Not alone, no.

17      Q    So now, if you proceed to the point where I interrupted --

18               THE COURT: I think what you had better do is  
19      state it step by step all at one time, then we can go  
20      back to the individual parcel. The thread of what you  
21      did is lost if it is chopped up. Please state it now,  
22      one, two, three down the line, without undue amplification  
23      of each step, because you have already given us that,  
24      and you have given us the citation or where the sort  
25      of material may be found. So just give us the step, one  
two, three, please.

1 Q And that was the approach that I was wanting  
2 to -- and we have covered the geneological table.  
3 Go on to item 2 of this data, item 2 class of  
4 data that you assembled to reach this conclusion,  
5 please, just as the Judge requested there.

6 A Yes, I took the statements that were given in the  
7 depositions in 1890, whenever it was, of individuals  
8 who claimed they were owners of reef net locations,  
9 and had used those locations prior to the treaty,  
10 and who said they inherited those locations is  
11 how they came by their ownership of those locations,  
12 and I checked their statements against the geneologi-  
13 cal terms already referred to, checked also --  
14 and the statements which Dr. Suttles --

15 Q Just a moment. Let me stop you. Would you call  
16 then a proper stopping point for item two the matter  
17 of reviewing the statements taken in this trial  
18 and then together with your geneological table,  
19 would you say that is a stopping point for item  
20 2? The moment you get into an account of Dr.  
21 Suttles, you might be entering into area 3,  
22 am I correct?

23 A I don't follow --

24 THE COURT: We are talking about  
25 steps, and this is what I find.

1                   When we finish I'm going to have you  
2 do it one, two, three, all at one time without  
3 interruption, but I don't want to interfere with  
4 Counsel's method of interrogation. He has a right  
5 to interrogate as he thinks best, but he is talking  
6 now about steps.

7                   Step one you referred to -- at least I  
8 assume that is the end of step one.

9 A. Let me --

10                   THE COURT: Step one was to take the data  
11 from the depositions, right?

12                   THE WITNESS: Right.

13                   THE COURT: Step two, now, was what?

14                   THE WITNESS: Trying to see if I could  
15 corroborate or disprove the statements in those  
16 depositions.

17                   THE COURT: And what did you do in that  
18 respect?

19                   THE WITNESS: I referred to geneological  
20 materials that hve been collected by anthropologists  
21 entirely unconnected with the individuals who were  
22 making those depositions.

23                   THE COURT: That is step two.

24                   THE WITNESS: Right.  
25

1 THE COURT: Now, what is next?

2 THE WITNESS: I then used other sources as  
3 well as the geneological material to tie where  
4 individuals were, who they were when they lived,  
5 to make sure that I was getting some kind of a  
6 check on the geneological materials.

7 THE COURT: That is step three.

8 THE WITNESS: That is step three.

9 Q What was the nature of the sources you checked?

10 A Official correspondence of employees of the  
11 Bureau of Indian Affairs, where they would refer  
12 to individuals who were named in the geneological  
13 materials.

14 Q All right, now, continue where you were when  
15 I just interrupted you with that last question.

16 A Then my third step, if that is what it is --

17 THE COURT: Four.

18 Q Four.

19 A -- was to take the information that had been  
20 collected by other anthropologists such as Dr.  
21 Suttles on ownership of reef net locations and  
22 tie it in to the statements made in step one in those  
23 depositions, and the family history as I had been  
24 able to check them out with the other materials,  
25 to see where they fitted in and in point of fact,

1 materials that Dr. Suttles collected specifically  
2 on the questions of ownership fitted in with, over-  
3 lapped and fitted in with the previous information  
4 that had been given in the 1890s about who owned  
5 locations and who fished where.

6 THE COURT: As I understand it, you  
7 personally checked the data from which Suttles  
8 derived his conclusions for his report?

9 THE WITNESS: Well, he derived his infor-  
10 mation from Indians and recorded it in his notes,  
11 and in his unpublished dissertation I have to rely,  
12 and I am making an assumption, Mr. Rhea, in one  
13 sense that Dr. Suttles was competent to get the  
14 information correctly and that he was being given  
15 correct information, but I have checked that  
16 assumption with whatever other material I can bring  
17 to bear from completely separate sources such as  
18 correspondence, employees who refer to specific  
19 Indians going up to Point Roberts to fish, et  
20 cetera, and so, now, this doesn't precisely detail  
21 who were owners or anything of that sort.

22 Q Just the verything I was going to ask you, then.

23 A Yes.

24 Q The data basically says that Indian such and such  
25 a name went so and so place to fish. It doesn't



1 say the same Indian, though, is the owner of  
2 a fixed spot that could be identified.

3 A Right. The only place that information is precisely  
4 contained and documented are in the works of  
5 anthropologists like Dr. Stern, Dr. Suttles and  
6 some of those that worked on the Canadian side.

7 Q Did they get that purely on the basis of interrogating  
8 successors of the Indian tribal members who were  
9 at the treaty or what?

10 A That's right, that is the only place that informa-  
11 tion is recorded.

12 Q We don't know the words that they received from  
13 their informants, do we?

14 A The words that they received?

15 Q Yes, that's right, we don't know the words that  
16 they received, do we?

17 A We don't have a verbatim record of the interviews,  
18 no.

19 Q Now, therefore, in the last analysis they are  
20 but reaching a conclusion that "ownership" existed,  
21 isn't that correct?

22 A I don't know whether that would be entirely fair.  
23 Certainly they are presenting evidence which would  
24 give us some notion of the content involved. You  
25 are describing practices from which the reader

1 can then as well as they draw a conclusion as  
2 to whether it is useful to call this ownership  
3 or not?

4 Q It could well be described as a succession of  
5 operators united by either bloodstream or tie  
6 of marriage; is that correct?

7 A That would be a less useful way, I think, of  
8 describing it, because some owners were not users.

9 Q There would be no inaccuracy in that statement,  
10 would there?

11 A Only by virtue of its incompleteness.

12 Q Wherein is it incomplete?

13 A In that you might have owners who are not users,  
14 but who came to collect a share by virtue of this  
15 inherited ownership.

16 THE COURT: In that connection, in your  
17 opinion, would there be any doubt that at least  
18 this conclusion was a reasonable inference from  
19 the evidence, the total evidence on the subject?

20 THE WITNESS: In my opinion, yes.

21 THE COURT: Well, my question was, do  
22 you think there is any doubt about that, that at  
23 least the data would support that inference?

24 THE WITNESS: I have no doubt.

25 Q Could it not have been a matter really of relating,

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1 of reiterating a family craft line, such as perhaps  
2 in the old guild days, a tinker or a tanner went  
3 on in the same succession down; could it not  
4 have been the same thing in reef netting?

5 A. I think not.

6 Q. Can you indicate authority for thinking not?

7 A. The matter that we were just discussing that  
8 you could have owner sharing in the proceeds who  
9 were in no way involved in the guild or craft or  
10 whatever it is you are suggesting here.

11 Q. Do we have knowledge sufficiently complete and  
12 accurate to refine that relationship to a point  
13 to exclude the thought that possibly his share  
14 was based on the prior ownership of the canoe or  
15 net or something that was being used, or his skill  
16 in having told them how to operate? Was there  
17 knowledge so detailed and accurate that we can  
18 exclude the possibility that the compensation  
19 would be really for that?

20 A. A woman who has nothing to do with the operation  
21 except the fact that she has inherited a co-ownership  
22 comes and collects fish. I don't think any of the  
23 examples that you suggest fit that case.

24 Q. Couldn't it very well be, though, Dr. Lane, that  
25

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1 she had inherited, if we may use the word, gear?

2 A. Hypothetically that is possible, and undocumented.

3 I am only going on the basis of the evidence that  
4 we have. This doesn't fit the facts.

5 Q. Well, really, don't you think it is more a matter  
6 of her having inherited what we call gear rather  
7 than having inherited a given spot right out there  
8 in some marine area of Puget Sound?

9 A. No, I do not.

10 Q. You think they inherited the right to anchor  
11 permanently over a portion of the ocean bottom,  
12 is this your testimony?

13 A. Yes, it is.

14 Q. Now, directing your attention to the bottom of  
15 page 10 of your report on the Lummis,

16 "In 1791 when Spanish ships arrived  
17 at Boundary Bay, they found large numbers of  
18 Indians fishing there, probably the Saanich  
19 and the Semiahmoo at their reef net locations."

20 Incidentally, this is where? Isn't  
21 that over the line in Canada?

22 A. In 1791 the lines were not yet drawn.

23 Q. Now, I am speaking, I am just trying to get  
24 myself oriented.

25 A. This is Point Roberts that is referred to in

1 this particular instance. I believe there is still  
2 some controversy over it, but as far as I  
3 understand the legal position, it is United  
4 States' territory.

5 Q Well, frankly, my point is, I was trying to get  
6 myself oriented, is all.

7 Anyway, let's pass that for the moment.

8 A Point Roberts is the specific --

9 Q Some body of water adjacent to Point Roberts; is  
10 that correct?

11 A Yes, this particular site was with reference to  
12 Point Roberts.

13 Q All right, now, let me --

14 THE COURT: Is Point Roberts on Boundary  
15 Bay?

16 THE WITNESS: Yes.

17 Q I am looking at the map and I am looking at Point  
18 Roberts. I don't see anything there that could  
19 be designated as Boundary Bay, but let's abandon  
20 that point.

21 A I think in the Spanish record was --

22 THE COURT: I wasn't questioning it. I  
23 was just asking for information.

24 THE WITNESS: Right.  
25

1 Q Now:

2 "In 1791 when Spanish ships arrived at  
3 Boundary Bay, they found large numbers of Indians  
4 fishing there, probably the ~~Spanish~~ and the  
5 Semiahmoo at their reefnet locations."

6 Let me ask you, what is the source of your  
7 authority, the voice speaking, shall we say, from the  
8 Spanish ships?

9 A Referring to the ultimate source is the log of the  
10 particular ship, I forget its name. I have read English  
11 translations. I have not read the original log.

12 Q Let me ask you, and I want you to be very exact in your  
13 answer, please, Dr. Lane.

14 A Yes.

15 Q Does this log say that they came into "Boundary Bay"  
16 and observed Indians fishing and stopped there, or does  
17 it really, actually and truthfully go so far as to put  
18 in some Spanish term that says "reefnetting"?

19 A No, the term "reefnetting" is a fairly modern term.

20 Q In other words, this particular account in the logs of  
21 the Spanish ships, in the last analysis says no more  
22 than they arrived at Boundary Bay, they saw Indians  
23 fishing; isn't that correct?

24 A Yes.

25 Q All right. You mentioned a while ago in connection with

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1 your references to reefnetting as pursued by the pre-  
2 treaty Indians that they used boulders. Are you able to  
3 tell us at this time how they attached those boulders  
4 to their nets for use as anchors in this reefnetting  
5 operation?

6 A I am not sure that I have data on the precise attachment  
7 procedures. I may do. I would have to check my notes.

8 Q Once again we are back to a point you and I briefly  
9 touched on already. It is on the next page, page 12,  
10 the portion there that quotes Collins (1892:260) in a  
11 general report on fisheries of the Pacific Coast  
12 reported that reefnetting had been taught to local  
13 Indians by an employee of the Hudson Bay Company.

14 Now, why did you dispute Mr. Collins while  
15 Dr. Suttles has a total sanctity?

16 A Excuse me.

17 THE COURT: That is a compound question, I  
18 think.

19 MR. RHEA: I think it might be described as  
20 a loaded question. I will withdraw it.

21 THE COURT: I think it is a fair description  
22 of it.

23 A I would have to demur. I don't think Dr. Suttles has  
24 total sanctity. I have checked religiously everything  
25 that I can possibly check that Dr. Suttles or anybody

1 else has written.

2 Q I couched the question in terms of controversy. Let me  
3 rephrase it.

4 Do you have any particular reasons for dis-  
5 regarding this particular contemporary source?

6 A I again would suggest I did not disregard it. I was so  
7 startled by it, I examined it and reexamined it, and  
8 checked it out just as carefully as I could. I have  
9 certainly not disregarded it.

10 Q Very well. Now, let's go on to the next question.

11 THE COURT: You wouldn't have put it right  
12 in the text here; that is obvious.

13 THE WITNESS: Yes.

14 Q We go on to the next sentence:

15 "This explanation of its origin fails to  
16 account for the sighting of reefnetters in 1791,  
17 some years prior to the arrival of Hudson Bay  
18 Company men in this part of the world."

19 Now, tell me if I am drawing an incorrect  
20 inference, that to me implies that the principal reason  
21 for rejecting Mr. Collins' account is that supposedly  
22 reefnetters had been seen by the Spanish in 1791.

23

24 (Continued on the next page.)

25



1 A I would have to object, because that is not my  
2 principal reason. That is the first of a number of  
3 reasons which I give to explain why I arrive at the  
4 opinion I do. It's only one of several.

5 I answered in the affirmative to your  
6 question as to whether the Spanish report simply did  
7 not say that they found lots of Indians fishing there.  
8 My reason for --

9 THE COURT: They found them fishing at the  
10 sites where later, at least, there was reefnetting?

11 THE WITNESS: Right; and at the proper time  
12 for the reefnetting operations.

13 Q (By Mr. Rhea) But still you have chosen to bolster your  
14 rejection of Mr. Collins by choosing instead the source  
15 that we found later here a moment ago really wasn't  
16 complete after all.

17 The Spanish logs didn't throw in the words  
18 "reefnetting" or its Spanish equivalent, did it?

19 A Mr. Rhea, as I have tried to explain --

20 THE COURT: No. Answer the question first.

21 THE WITNESS: What was the question?

22 MR. RHEA: Would you read it back, ma'am?

23 THE COURT: If you don't answer it first,  
24 we will invariably have to go back and forth three times  
25 for it. So, first answer the question yes or no, if it's

1 possible. Now, there are some questions that can't be  
2 answered categorically. However, when they can, you  
3 must answer them so.

4 (Pending question read by Reporter.)

5 THE WITNESS: The Spanish logs did not use  
6 the words "reefnetting." Nobody used the words  
7 "reefnetting" or anything similar until much later.  
8 I have examined various lines of evidence including this  
9 one conflicting statement, which to my knowledge, nobody  
10 has come across before who wrote anything about  
11 reefnetting, and I bring it to the attention of people  
12 who are concerned with this very serious problem,  
13 because I think all evidence, both that which supports  
14 the notion and that which conflicts with the notion  
15 that this was an Indian technique should be brought out  
16 and laid before the people who have to make decisions  
17 about it.

18 Having brought the material out, I then  
19 explained very carefully what kinds of evidence I am  
20 using to arrive at my evaluation of one or another  
21 statement that I exposed of you here.

22 Q Nonetheless, we are confronted with the obvious facts,  
23 are we not, that in the second paragraph, page 12, the  
24 second sentence, the one that followed the remark about  
25 Collins, is one that attempts to then bolster your

1 rejection of it?

2 A Yes, that's right.

3 Q So, in the last analysis, you have done nothing but  
4 balance opinions? You have balanced an opinion as to  
5 which source you want to believe, isn't this correct,  
6 Dr. Lane?

7 A No, it's not entirely correct, Mr. Rhea.

8 Q It's an opinion on your part?

9 A Any opinion is to select which evidence is going to be  
10 given weight and which isn't. The Collins report is  
11 simply an offhand hearsay statement. He quotes no source  
12 and gives no evidence in support of his statement.

13 He merely alleges or asserts that the Indians  
14 learned this from a Hudson Bay factory. He doesn't  
15 explain in any way as to how he came by this information  
16 or who gave it to him, or anything of this nature.

17 Despite this, I have tried to examine the  
18 possibility of the truth of this statement with whatever  
19 evidence I could collect or bring to bear.

20 Q But, on the other hand, you still find --

21 A One of the things which I used was the fact that the  
22 Spaniards saw a lot of Indians fishing at what we know  
23 later was a reefnetting location at precisely the time  
24 of year when we would expect them to be there reefnetting.

25 Q But, in any event, we don't have actually --

1 A It is not proof positive.

2 Q Now, going on to the next paragraph on the same page:

3 "The following facts all indicate an  
4 Indian origin for the technique: (1) native  
5 materials were used for all parts of the gear,..."

6 Now, frankly, Dr. Lane, even assuming a  
7 non-Indian were to have contrived such a device, he  
8 would in those pre-monofilament and whatever days, have  
9 been compelled to resort to native materials, would he  
10 not?

11 A No, he would not.

12 Q He wouldn't have? He wouldn't have used the materials  
13 at hand?

14 A No. The first non-Indian fisherman who tried to fish at  
15 these locations used cotton to make their nets with because  
16 that's the way non-Indians made nets.

17 As a matter of fact, we have quite a bit of  
18 documentation on the problems they had, because their  
19 materials were not as successful as the native Indian  
20 materials in the area. They couldn't catch fish. In  
21 fact, they tried to find out how to treat the cotton so  
22 it would last longer because it deteriorated too fast  
23 and various other problems that they had, and there is  
24 quite a bit of discussion about this.

25 Q You had actual reliable contemporaneous sources for those

1 complaints?

2 A I don't know whether there are reliable sources. There  
3 are fisheries documents, correspondence between non-  
4 Indians engaged in fisheries who are trying to figure  
5 out how to be more successful.

6 Q Would this have been in perhaps the 1870's?

7 A Yes. This is towards the latter part, maybe even the  
8 1880's. I'm not sure.

9 Q Then had non-Indians have chosen to fish prior to the  
10 arrival of cotton on the scene as a result of Eli  
11 Whitney and his invention and so forth, they would have  
12 adapted themselves to the materials at hand, would they  
13 not?

14 A No. The non-Indian fishermen of whom we have knowledge  
15 who were using nets in their fishing operations at treaty  
16 times in Western Washington were using introduced netting  
17 materials that were of European origin or eastern U.S.  
18 They were not adapting native materials.

19 Q Actually, there were no non-Indians fishing at treaty times  
20 were there?

21 A There certainly were.

22 Q Reefnetting, I mean.

23 A I didn't say reefnetting. As far as I know, there were  
24 no non-Indians reefnetting at treaty times.

25 Q Going on to your point two:

1 "Each detail of gear and construction had a  
2 native name in each of the several dialects used  
3 by Indian groups participating in the fishery..."

4 Do you believe that that in any respect  
5 indicates they were the inventors of this particular  
6 device?

7 A It is not proof positive by itself. It is one of the  
8 many points of evidence, taken together, which seem to  
9 me to add up to a high probability that we were dealing  
10 here with a native technique. If this had been an  
11 introduced non-Indian technique, it is less likely that  
12 there would be native names for each piece of gear and each  
13 part of the operation in all of the dialects, because  
14 it takes a little time for this to happen.

15 Q Let me direct your attention to this parallel please:

16 The internal combustion engine used in  
17 automobiles is considered to have been launched by Daimler  
18 Benz in Germany. However, certainly every part of that  
19 motor now and then has its German name, and certainly  
20 those are not the names used by a mechanic on 26th  
21 Street in Tacoma, are they?

22 A Yes.

23 Q You think that the American mechanic is using the  
24 German word for everything on that car?

25 A Mr. Rhea, I guess I didn't make myself clear. I said it

1 takes some time.

2 THE COURT: Just stay to this single situation.  
3 Let's not depart from this.

4 THE WITNESS: Fine.

5 THE COURT: He asked you whether or not you  
6 think the mechanics that work on internal combustion  
7 engines would use the same terms as Daimler-Benz.

8 THE WITNESS: I know nothing about the subject.

9 THE COURT: All right.

10 Q (By Mr. Rhea) Incidentally I note that on page 13 of  
11 this same portion of your report you state, at the  
12 paragraph that begins right after the indentation:

13 "Winthrop (1913:27) saw reefnetters in August  
14 1853. George Gibbs... mentions the reefnet fishery  
15 off the west side of Lummi Island in 1853. Other  
16 scattered references may be found in correspondence  
17 of early settlers dating from the mid-1850's.  
18 However, none of these early sources provide details  
19 concerning the reefnet fishery."

20 In view of that last statement that leaves us  
21 completely unable to judge the similarity between the two  
22 procedures, reefnetting as pursued then by that name  
23 used under these authorities and as it may be today by  
24 the individuals operating in northern Puget Sound?

25 A I think I say also in the report that we have no

1 descriptions of the actual reefnetting gear, technique  
2 and so on dating contemporaneously from treaty times.

3 Q That leaves us in a position for it to be rather  
4 difficult for us to make the true comparison between  
5 the techniques, the methods and the equipment, isn't  
6 this correct?

7 A Insofar as the descriptions that we have were taken down  
8 somewhat later, such as at the turn of the century.

9 THE COURT: Are you anywhere near conclusion?

10 MR. RHEA: This would be a very good point,  
11 as far as I am concerned.

12 THE COURT: I think we should take the  
13 morning recess about this time. We will reconvene fifteen  
14 minutes from now, which would seem to be about 10:38  
15 or thereabouts.

16 (Recess.)

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1 THE COURT: Continue, please.

2 Q (By Mr. Rhea) Dr. Lane, resuming our discussion  
3 of the Lummi report, directing your attention  
4 to the bottom of page 20, you state:

5 "Locations were said to be owned by  
6 individuals who claimed proprietary rights  
7 by virtue of inheritance in the male line."

8 Now, I have questioned you previously  
9 on that, then you say,

10 "The data regarding distribution of  
11 the catch indicates that what were owned  
12 were stewardship rights over a resource-  
13 producing area. True ownership, evidently,  
14 resided in somewhat a larger settlement group  
15 or kinship group."

16 Have you found the place?

17 A No, I haven't.

18 Q It's at page 20, the Lummi portion.

19 A Oh, I have it now.

20 Q (Reading)

21 "Locations were said to be owned by  
22 individuals who claimed proprietary rights  
23 by virtue of inheritance in the male line.  
24 The data regarding distribution of the catch  
25 indicates that what were owned were stewardship

1           rights over a resource producing area. A  
2           true ownership evidently resided in a somewhat  
3           larger settlement group or kinship group."

4           Well, then, don't the last two sentences  
5           imply that these reef nets were basically just a  
6           tribal resource and those skills that we previously  
7           discussed and referred to are just the operators  
8           of it?

9   A.   No.

10   Q.   You don't think those two concepts are inconsistent?

11   A.   My two statements are not inconsistent, no.

12   Q.   The data regarding distribution of the catch  
13           indicates that what were owned were stewardship  
14           rights over resource producing areas? "True  
15           ownership" and I stress the two words, "true  
16           ownership," "evidently resided in a somewhat  
17           larger settlement group or kinship group."

18           That doesn't sound like individual  
19           ownership.

20   A.   That doesn't reach the tribes, which I think you'  
21           were just saying or even villages, if you wish to  
22           consider that. I'm speaking about a larger kinship  
23           group than a single individual, and this is  
24           based upon analysis of all the information we can  
25           get as to the content of the right.

1 Q Nonetheless, that doesn't imply that any so-called  
2 ownership did rest in a larger entity than a  
3 single individual or two people, is that correct?

4 A No, it is not correct.

5 Q Isn't that what this sentence means, "true ownership  
6 evidently resided in a somewhat larger settlement  
7 group or kinship group"?

8 A It means what it says.

9 Q All right. Well, then, the larger settlement  
10 group or kinship group is more than one or two  
11 people, isn't that correct?

12 A Yes.

13 Q Okay. Now, directing your attention to page  
14 22, this quote from John McGlinn:

15 "The oil from the dogfish they get  
16 ready sale for at forty to forty-five cents  
17 a gallon. With this oil they purchase clothing,  
18 food, and in fact, about all the necessities  
19 of life."

20 You go on to say,

21 "It may be that before the Lummi began  
22 selling part of their reef net catch to the  
23 canneries, sale of dogfish oil was a more  
24 important source of income."

25 Do you imply from that that the reef nets

1       were used to catch dogfish?

2       A.    No, no.

3       Q.    They got those from different sources?

4       A.    Yes.

5       Q.    That is indicative of the fact that they pursued  
6       multiple fishing techniques, isn't it then?

7       A.    And they were supporting themselves by the sale  
8       of fish and fish products.

9       Q.    But they resorted to multiple techniques, did  
10      they not?

11      A.    Yes. The purpose was to show that at least at  
12      one stage in time, the salmon fishery may not have  
13      been as important as other fisheries.

14      Q.    For example, on page 24 of the same part of your  
15      report, you point out that,

16                 " -- the ancestors of the present Lummi  
17      tribe of Indians also trolled for salmon  
18      in the contiguous salt waters of Harro and  
19      Rosario Straits and in the islands, speared  
20      them in the bays and streams of the mainland,  
21      and took them by means of weirs and traps  
22      in the rivers."

23                 Isn't that correct?

24      A.    Yes, it is.

25      Q.    May it then be safely said the Lummis pursued

1 multiple techniques of catching various kinds  
2 of fish, isn't that correct?

3 A. Yes.

4 Q. Directing your attention then to -- well, the  
5 sentence begins at the bottom of page 24, that  
6 is divided by a map, but let's turn to the page  
7 of 24 of the Lummi report,

8 "Other descendants of these pre-treaty  
9 entities have not become members of the Lummi  
10 Tribe and those descendants would, of course,  
11 legitimately make claim to some of the same  
12 usual and accustomed fishing area included  
13 here."

14 How would one establish such heirship?

15 A. I suppose the only way you could would be by  
16 checking geneology.

17 Q. And how much of the degree of ownership would give  
18 one title to a purported location under your  
19 theory of private ownership?

20 A. I'm sorry?

21 Q. How much percentage of blood would be necessary  
22 to give a person a right to then use one of these  
23 what you contend to be privately owned locations  
24 for reef netting?

25 A. I don't think I can answer that question.

1 Q Let me ask it in an even more concrete form  
2 then, Dr. Lane, that is, one can observe in the  
3 descent of land titles among various tribes,  
4 particularly in the records of the tribal office,  
5 it has gotten down to where it might be, for  
6 illustration, one three hundred sixty-fifth share  
7 was held by one person in one overall tract  
8 because the descent branched off into so many  
9 ownerships, and in fact, it has even been my  
10 observation, and I doubt you dispute this, one  
11 that got passed the one one-thousandth ownership,  
12 and you conceded, perhaps, you have seen some  
13 rather extreme fractions in those areas, haven't  
14 you, isn't that correct?

15 A Frankly, I haven't been concerned looking at those  
16 kinds of fractions. Perhaps it would help if I  
17 explained what I have reference to here, because  
18 it was not the sort of thing you are discussing.

19 Q No, frankly, I don't need an explanation at this  
20 point because I want to ask you a question.

21 I will ask you the question I have  
22 already asked, what percentage of Indian blood  
23 would you suggest would entitle one to take over  
24 through heirship this purported privately owned  
25 location, would one-thirty second entitle one to it,

1 one-sixty fourth, one-two hundred fiftieth, one-  
2 five hundred fiftieth, what percentage of Indian  
3 blood or would it have to be a totality of Lummi  
4 strain to entitle one to that?

5 A I really can't answer that question except to  
6 say that you might not need any degree of Lummi  
7 blood.

8 Q But you will have to grant the practicalities  
9 of establishing heirship are almost impossible,  
10 are they not?

11 A That may be, I don't know. I haven't examined  
12 the problem.

13 Q If we are to assume that the rights that you contend  
14 for were created as of the time the treaty of  
15 Point Elliott in 1853 or 1855 whichever it was,  
16 that means that a century and a quarter later,  
17 nearly, at least a century and twenty years have  
18 passed by which time the factors of descent have  
19 gotten down into enormous fractions, isn't that  
20 correct, six generations?

21 A What you say is correct with respect to what you  
22 have just been laying out, but this is not the  
23 way in which heirship operates. It is not a  
24 question of an individual and a degree of blood,  
25 and what I had reference here to was the fact

1 that parts of the Samish group have not been  
2 subsumed into the present Lummi tribal entity,  
3 and I wish to make clear there may be Samish  
4 reef net heirs that are not now presently part  
5 of the Lummi, and I didn't want to --

6 Q May I agree with you to the extent of conceding  
7 there are parallel problems, are they not? The  
8 Samish would have their descent problems and so  
9 would the Lummis, isn't that correct?

10 A But the descent problems are not of the sort  
11 that you are asking me to look at now, and I  
12 cannot respond to those. I really haven't researched  
13 it.

14 Q In other words, presume that everything on behalf  
15 of the plaintiffs were established, this is  
16 hypothetical, let's assume that everything the  
17 plaintiffs have contended for is established and  
18 that a certain point was declared somehow to be  
19 the private ownership of such and such an Indian,  
20 now, how would we determine who then moved in  
21 there and how much he would take of the operation  
22 of that area for reef net purposes in the taking  
23 of the catch?

24 A May I refer you to the page on my report, page 21,  
25 it states:



1 "True ownership evidently resided in  
2 a somewhat larger settlement group or kinship  
3 group." This is why I am unable to respond  
4 to your question of the blood quantum of  
5 a given individual.

6 Q That's right, and that complicates it now.  
7 Let's go back to that sentence you just read  
8 to me --

9 THE COURT: Wait, let's start over,  
10 you made a comment, put a question, please.

11 MR. RHEA: All right.

12 Q (By Mr. Rhea) Let's assume then the implications  
13 of this statement of yours from page 25 that you  
14 have just read, let's assume this communal group  
15 resided in a somewhat larger settlement group  
16 or kinship group, let's presuppose there was  
17 twenty or twenty-five in number, is that an  
18 unlikely supposition?

19 A It's hypothetical, so continue.

20 Q Very well, then, wouldn't each member of this  
21 hypothetical twenty or twenty-five group have  
22 heirship rights?

23 A I would think so.

24 Q Now, going on to page 25 --

25 THE COURT: Are you still on the

1 heirship situation?

2 MR. RHEA: Yes, Your Honor.

3 THE COURT: When you have concluded,  
4 I have something.

5 MR. RHEA: I have concluded with the  
6 heirship aspect.

7 THE COURT: However difficult it may be  
8 at this time to reconstruct how heirship was  
9 determined by the Indian, is there any doubt in  
10 your mind from the data pro and con on the subject  
11 that the Indians contemporaneously had means  
12 and methods of determining those questions?

13 THE WITNESS: No doubt in my mind.

14 Q. Now, is there anything in the historical data  
15 that you know of that indicates precisely how  
16 this was done?

17 A. Not precisely, no. All we have are records of  
18 how people claimed rights by virtue of what kind of  
19 relationship to them.

20 Q. Now, then, do you think that that would be quite  
21 a different problem if done at the time that an  
22 heirship question arose back in pre-treaty years  
23 and presumably for long years previously? The  
24 difficulty of that problem would be infinitely  
25 less at that time when the living people were

1 present and actually using these rights?

2 A Yes, I think it would have been quite easy to do  
3 it then.

4 THE COURT: And why do you think that?

5 THE WITNESS: Because there is nothing  
6 in the records to suggest that there was any  
7 difficulty or allocation about managing transfer  
8 of these inheritance of these rights, and I'm  
9 working on negative evidence.

10 (Continued on next page.)

ET6

1 THE COURT: And, of course, the owner  
2 presumably had just deceased?

3 A Yes.

4 THE COURT: Or had gone away or made a sale  
5 or some other sort of thing. So that the people then  
6 interested in the subject matter were alive and  
7 participating in this dissertation.

8 THE WITNESS: Right.

9 THE COURT: Now, have you found any instance  
10 of a hearing or a trial or a controversy on that subject  
11 of heirship?

12 THE WITNESS: To the best of my recollection, no.

13 THE COURT: Have you found anything to indicate  
14 that there were such problems?

15 THE WITNESS: No.

16 THE COURT: Go ahead.

17 MR. RHEA: Thank you, your Honor.

18 Q (By Mr. Rhea) Now, continuing on to the next area.

19 As I said, it is a survey way down on page 25:

20 "The same manner, Saanich, Clallam, Skagit  
21 and other Indians fished in waters described above  
22 as in the Semiahmoo, Lummi and Samish territory.  
23 The Straits and Sound were traditional highways  
24 used in common by all Indians of the region, and  
25 most salt water fisheries traditionally were free

1 access areas."

2 Then I'll skip the reference:

3 "While it is useful for certain purposes  
4 to speak of Lummi waters or Samish territory it  
5 is important to note that this by no means implies  
6 exclusive rights by one group. That these Indians  
7 traveled widely and frequently throughout the waters  
8 of the Sound and Straits is commented on by numerous  
9 early observers."

10 In the face of your statements in that  
11 paragraph, is it not, then more likely that the so-called  
12 "ownership" of reefnet locations was but an operation  
13 procedure? It was open to the individual who chose to  
14 gather the equipment and go to a certain what they had  
15 found to be a productive spot and proceed with what was  
16 their version of reefnetting?

17 A No.

18 Q You do not think those two concepts are inconsistent  
19 then, Dr. Lane?

20 A No.

21 Q Now, at page 27, the final line:

22 "However, non-Indian fishermen began to use  
23 the Indian techniques and rapidly monopolized the  
24 reefnet locations.

25 In what sense and with what implication do you

1 use the word monopolize?

2 A That they started out as a minority of users when they  
3 first entered what had previously been an exclusively  
4 Indian fishery, and within a few years controlled the  
5 reefnet locations, and the Indians were no longer  
6 fishing there or were only fishing in a minimal sort  
7 of way.

8 Q Now, are you intending to use the term in a legal sense,  
9 that there was a calculated exclusion?

10 A The answer to your question is both yes and no. I am not  
11 using it in a legal sense, but, yes, there was a  
12 calculated exclusion in the sense that you had competing  
13 user groups, and one group drove off the other group.

14 Q Drove off?

15 A Yes.

16 Q Have you any evidence that they were denied the right to  
17 pursue that activity precisely as the non-Indians?

18 A I believe so.

19 Q And have you ever by any means conducted a personal  
20 investigation of the subject, such as by observing it  
21 or checking license records?

22 A No. I have referred only to documentary records on this  
23 point.

24 Q On whose records?

25 A Documentary records on this point.

1 Q And have you ever at any time approached any reefnet  
2 operator or crew member to ask him whether or not his  
3 industry has pursued such a systematic policy?

4 A I have not.

5 Q Monopolized is a word that implies a conclusion, is it  
6 not?

7 A I didn't hear you.

8 Q Monopolize --

9 A I was using it as a descriptive term.

10 Q But it means a conclusion, does it not?

11 A I am not sure I follow you.

12 Q If we say, as you do here, "...and rapidly monopolizes  
13 the reefnet locations," I am asking you, is not the  
14 word "monopolized" suggestive of a result of a conclusion  
15 you have reached?

16 A No. It's a description of a fact, an activity, a state  
17 of affairs.

18 Q Nonetheless, is it not a fact that your so-called  
19 description carries with it a conclusion that this  
20 occurred as a conscious activity by non-Indians?

21 A I can't add to my statement.

22 Q When did this alleged event occur, the monopolization of  
23 the reefnet locations? When did it occur? Can you give  
24 us dates?

25 A Yes, if you will bear with me for a moment while I find them.

1 Q If you would, please.

2 A Well, without taking time, perhaps to look here, I can  
3 give you rough dates; not precise years.

4 Q If you would, please.

5 A Toward the turn of the century, in the early 1890's,  
6 the fish traps --

7 Q We will all concede that at a certain location or two  
8 there were fish traps placed that then eliminated  
9 reefnetting as a form of fishing at a place.

10 You are not prepared at this time to state to the  
11 Court, are you, that fish traps terminated all reefnet  
12 locations?

13 A By just about the turn of the century, traps had been  
14 set so as to prevent successful reefnet operations at  
15 all of the major reefnet sites as far as the documentary  
16 records go.

17 After the traps were outlawed in -- what was  
18 it -- 1934 or '35 or '36, somewhere along in there,  
19 Indians began to reefnet again. Some, of course, had  
20 been doing it in a small way in the intervening years.

21 Within a very few years, the percentages --  
22 and I could find you the dates and give you the years  
23 of how many Indians and whites -- very quickly the whites  
24 came into the reefnet industry along with the Indians  
25 and within a decade -- that is what you would call a



1     ballpark figure -- the whites had control of the reefnet  
2     locations.

3             The documentary records suggest that not  
4     only with reference to Indian fishermen, but with  
5     reference to competing purse seiners, for example, that  
6     the reefnetters were known to use guns or threats of  
7     violence to ward off competing Indian and competing  
8     non-Indian fishermen.

9             This is the context in which I have used the  
10    words "throw off" or "monopolized" or what-have-you.

11   Q    You have no concrete instances, have you, to cite or  
12       support this assertion of gunplay?

13   A    The concrete instances are simply documentary reports  
14       to this effect.

15   Q    Documentary of what nature?

16   A    Previous litigation -- I beg your pardon.

17   Q    Documentary of what nature?

18   A    Some of them depositions given in litigation. Some of  
19       them reports by non-Indians describing the current  
20       situation, whether in reports or in newspaper accounts --

21   Q    When was the litigation --

22   A    -- contemporaneous ones.

23   Q    When was the litigation to which you had reference?

24   A    I have mentioned the Alaska Packers case, which was in the  
25       1890's.

1                   Then there was another case, if I remember  
2 correctly, somewhere about 1920. I am vague on dates.  
3 I would have to check my notes.

4 Q Surely you have no basis for any assertion in the  
5 '40's, '50's, or '60's, that such an activity was  
6 pursued?

7 A No, and I have not so stated. I have no knowledge.

8 Q When did the Lummis stop reefnetting off San Juan Island?

9 A I don't think I know the answer to that question.

10 Q Were there traps there that excluded the reefnetting  
11 operation?

12 A I would have to check my notes.

13 Q By the way, a digression before I open up a new line.

14                   At points throughout your report, you have  
15 made reference to the Salish culture; is that not  
16 correct?

17 A Yes.

18 Q What is the basis or the authorities you relied upon for  
19 conclusions or data relating to them?

20 A All of the relevant professional literature.

21 Q Such as? Could you detail some of the relevant  
22 professional literature, giving us names and sources?

23 A You could start with Professor Boas.

24 Q And his time of writing was approximately when?

25 A The latter part of the 19th Century.

1 Q And he wrote on the Salish culture?

2 A Yes.

3 I could go on through --

4 Q What other authorities?

5 A I could name twenty or so people. Is that what you are  
6 asking for?

7 Q Who wrote on the Salish culture? Is this correct?

8 A Yes.

9 Q Could you give us the names of a few more whom you  
10 consider the more outstanding authorities?

11 A Yes. Professor Homer Barnett.

12 Q With whom was he connected?

13 A I believe he's retired now, but for many years --

14 Q I put it in the past tense.

15 A Sorry. He was the head of the Department of Anthropology  
16 at the University of Oregon.

17 Q And who were, perhaps, some other names?

18 A Professor Ernst Gunther, who was for many years the head  
19 of the Department of Anthropology at the University of  
20 Washington.

21 Dr. William Elmendorf, who is at the University  
22 of Wisconsin, I believe, at present. Professor Melville  
23 Jacobs, who was with the Department of Anthropology at  
24 the University of Washington.

25 Professor Wayne Suttles, who was head of the

1 Department of Anthropology at Portland State University.

ET7 2 I'm not positive of the title.

T8 3 Q And is it your statement then that all of them wrote  
4 on the Salish culture?

5 A All of these people have published extensively on the  
6 Coast Salish culture, yes.

7 Q Thank you.

8 Now, directing your attention as to what was  
9 I might describe as supplementary, written testimony  
10 when it was filed as USA Exhibit 52, additional written  
11 direct testimony by you consisting of the six pages.

12 A Yes, that's right, it was six pages.

13 Q Now, turning to page 4 thereof, yes page 4, at lines  
14 20 and 21, you state -- have you found the point?

15 A Yes, I have.

16 Q First:

17 "The nature of gear used has influenced the  
18 recording of sites."

19 Now this is a true statement, isn't that  
20 correct?

21 A In my view it is, yes.

22 Q Going on to line 25, "Second, Indian fishermen, like all  
23 fishermen, shifted to those locales which seemed most  
24 productive at any given time."

25 This also is a true statement, is that correct?

1 A Yes.

2 Q Would not that latter statement be the basis for the  
3 purported reefnetters to have taken different locations  
4 for their operations at various times?

5 A No, I think not. I think you are pulling a statement  
6 from one place and applying it to another situation that  
7 it was not written with regard to. The shifting of  
8 locations that I referred to earlier in my oral  
9 testimony today, as it was engaged in by Indian  
10 reefnetters, had to do with setting the gear to take  
11 advantage of different tide conditions.

12 In other words, a man might own two locations.

13 Q Then, you wish to qualify your statement at lines 25 and  
14 26.

15 "Second, Indian fishermen, like all fishermen  
16 shifted to those locales that seemed most productive  
17 at any given time," including the operation of the  
18 reefnets, then?

19 A The statement requires no qualification.

20 Q If it requires no qualification, does it not follow that  
21 of course a person might have fished at various times  
22 in various places under various conditions with reefnets,  
23 isn't that correct?

24 A Certainly.

25 Q They had no fixed stakeout location that could be established.

1       They didn't have compasses to take cross bearings, they  
2       had no fixed locations. They went where the fishing was?

3       A    No, that statement does not follow the previous one.

4       Q    Didn't they go to the part most productive for fishing  
5       like your lines 25 and 26 say?

6       A    No, sir.

7       Q    You say a reefnet location at one location was just as  
8       good, one season, one time, as another, then; is this  
9       correct?

10      A    I have nowhere so stated.

11      Q    I thought that you were saying here that as to reefnets,  
12      lines 25 and 26 didn't apply.

13               "SEcond, Indian fishermen, like all fishermen,  
14               shifted to those locales which seemed most  
15               productive at any given time."

16               Didn't reefnetters shift in accordance with  
17      the principle that you have stated there?

18      A    Yes, they did, Mr. Rhea.

19      Q    That is all I want, thank you.

20      A    That affirmative answer requires qualification. I think  
21      I have already explained to you.

22               MR. RHEA: If we might have your attention  
23      directed to Exhibit 62. 62 is the map over there.  
24      Let's see, who admitted that? That would be 62.  
25      Do you have Exhibit 62 there on top, Mr. Walters?

1 THE BAILIFF: I have 61.

2 MR. RHEA: If you just roll that up, roll it  
3 up, over the top, and then I would request, your Honor,  
4 permission to advance to the exhibit.

5 Your Honor will observe that that is so finely  
6 detailed that it is impossible to pursue a rational  
7 discussion of it from here.

8 THE COURT: Perfectly all right.

9 Q Now, Dr. Lane, if you would forgive the informality,  
10 would you please come to this exhibit with me? It is  
11 so detailed. Maybe we could both inspect it together,  
12 please.

13 THE COURT: And be sure and speak loudly, please.

14 Q Now, directing your attention to this, which was  
15 introduced in evidence yesterday or the day before as  
16 U.S. Exhibit Number 62, you will recall, Dr. Lane, that  
17 you pointed out that it showed here on San Juan Islands,  
18 down here, Hudson Bay Company fishing stations, did it not?

19 A That is correct.

20 Q Then it also shows right there above that designation  
21 I just read that says "Indian fishery" does it not?

22 A Yes. Similarly, up here further on what was, I think,  
23 in the original testimony referred to as the northwest  
24 corner of San Juan Island. Once again, it says, "Indian  
25 salmon fishery," does it not?

1 Yes, it does.

2 Q I believe from the testimony when this exhibit was  
3 introduced there was no other Indian salmon fishery  
4 station put out -- oh, there is. Very well, there is  
5 one up here, let the record show, at the end of what  
6 is probably Point Roberts. It certainly is at the top  
7 of the map. It has to be Point Roberts. Two things about --

8 A Excuse me.

9 Q My understanding of the testimony was it was limited only  
10 to the San Juans, so this Indian fishery over here, as  
11 to these particular locations, it in no way states which  
12 form of fisheries, does it?

13 A No, it does not.

14 Q And it also does not, on the western shore of Lummi Island  
15 mark any fishery location, does it?

16 A No, it does not.

17 MR. RHEA: Thank you, Mr. Walters, if you  
18 would drop 61, please.

19 Q Now, Dr. Lane, are you able to determine what this word  
20 right to the left of the word, right to the left of the  
21 letter "i" in the word "Lummi" on this particular exhibit  
22 61 -- could you tell me what that is?

23 A Yes.

24 Q It is semi-legible.

25 A Sky - ak - sin, spelled there for the Reporter, S-k-a --



1       -- well, on this copy it is not easy to see. On the  
2       original which I examined in the ARchives, it was much  
3       clearer, and underneath it says "fishery."

4       Q   Is that what this word means?

5       A   No, that is the name of that particular location. That  
6       is where the village was.

7       Q   No, this bottom word "fishery".

8       A   The bottom word is fishery, 'f-i-s-h-e-r-y.

9       Q   What is the meaning of this word above it?

10      A   That is the name of the Indian fishing village there at  
11      the reefnet location.

12      Q   That is the village name?

13      A   That is correct.

14      Q   It says "fishery" at that point, is that correct?

15      A   Yes, that is correct.

16      Q   I am trying to find that portion of your report, Dr. Lane,  
17      in which you think it is in the summary, and I thought  
18      that I had it marked, but I don't find it.

19                You describe the various forms of fishery  
20      that were pursued. Are you able to locate that better  
21      than I am? I found it. It is at page, it is at page 12  
22      of your summary portion. You state there, about a third  
23      of the way down:

24                "Fishing methods varied according to the  
25      locale, but generally it included trapping, dipnetting,

1       gillnetting, reefnetting, trolling, longlining,  
2       jigging, setlining, impounding, gaffing, spearing,  
3       harpooning, raking and so on."

4               In other words, we may fairly infer from that  
5       portion of your report that there were numerous methods  
6       of fishing pursued by the Indians; is that not correct?

7   A   The Indians of Western Washington?

8   Q   Yes.

9   A   Yes.

10   Q   And I think we agreed some time ago in your testimony  
11       that in response to another question of mine that the  
12       Lummi also pursued various methods, just as you have  
13       stated here, they pursued methods --

14   A   Not just as I have stated here. The Lummi did not use  
15       all of these methods. This is a general list for all of  
16       the tribes in Western Washington with whom we are  
17       concerned.

18               The Lummi tried several methods, some of  
19       which are illustrated here, yes.

20   Q   Certainly, but it is not a practice; it is but a statement  
21       that it was a fishery, in other words, a place where  
22       fish could be caught but it in no wise restricts it as  
23       to methods. They very well may have trolled there or  
24       gillnetted or longlined, may they not?

25               MR. PIERSON: I am not sure what the reference

1 is when he says "there."

2 Q The place where it says "fishery" on that last exhibit  
3 that she and I were referring to, right to the left,  
4 and below the letter "i" in "Lummi."

5 A Did you want me to explain that?

6 Q Yes.

7 A Yes, Mr. Rhea, all of the fisheries, whether they are  
8 indicated simply as fishery or Indian fishery or Indian  
9 salmon fishery on these maps from the collection of  
10 Northwest boundary surveys from the late 1850's up to  
11 1861 or to when the collection was made, none of them  
12 indicate the technology used in the fishery.

13 Q That is precisely my point.

14 A However, all of these locations you have had me look at  
15 on these two maps are located at precisely what are known  
16 to be in historic times Indian reefnet fisheries with  
17 one exception; that is, the Indian salmon fishery on that  
18 stream on the west coast of San Juan Island that you  
19 pointed out on the first printed map which dates from  
20 1853. I should advise you that that is not a Lummi  
21 location.

22 Q But nonetheless, the term is a generalized one, and it  
23 could be there nearly as a point of identification or  
24 reference as to being a place from which fish were taken,  
25 isn't that correct?

1 A That is correct. It is correct that is a hypothetical  
2 possibility. It is an unlikely one.

3 Q You don't think that the fact that they might be trolling  
4 or pursuing some other method there would be of such  
5 moment, then, to note it on the map; is this correct?

6 A That is correct in part. It is not only that.

7 MR. ZIONTZ: I wonder if the witness could  
8 finish the answer? If there is another part of the  
9 answer that she is reserving --

10 THE WITNESS: The other part, I suppose the  
11 most obvious thing is that all of the Indian fisheries  
12 which are noted on these maps are located at places which  
13 were later reefnet fisheries, and there are no fisheries  
14 noted at places which were not later known to be reefnet  
15 fisheries, and all of those troll fishery areas that we  
16 know of are nowhere noted on these maps.

17 Q By the way, in the Salish culture, were there any writings  
18 from the 19th Century on them?

19 A Boas did. He described reefnet fishing among the  
20 Songish in 1890.

21 Q Anyone besides Dr. Boas?

22 A In the 19th Century?

23 Q Yes.

24 A No other anthropologist that I can recall.

25 Q That is what I mean.

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1 A Yes.

2 Q And then the final point I would like to question you on  
3 on page 5 of your written direct testimony that was  
4 supplied us, USA Number 52, yesterday or the day before,  
5 beginning at line 24, George Gibbs -- got it?

6 A Yes.

7 Q George Gibbs whom you have quoted as an authority for  
8 various things, does state, drawing upon information  
9 gathered during treaty times, he wrote:

10 In 1855 or 1856, not published until 1877,

11 "As regards the fisheries, they are held in  
12 common, and no tribe pretends to claim from another  
13 or from individuals seniorage for the right of  
14 taking. In fact, such a claim of the inconvenience  
15 to all parties that Indians move about on the Sound,  
16 particularly from one to another locality according  
17 to the season."

18 Now, you are not prepared then to accept Mr.  
19 Gibbs' statement covering reefnets?

20 A That is correct. I tried to explain to you earlier,  
21 hoping that we could cut down in the area of misunderstanding  
22 which you didn't hear me at that time. Perhaps you will  
23 hear me now.

24 To the best of my knowledge, and I have  
25 searched diligently, I cannot find any reason to believe

1 from looking at the contemporaneous documents, published  
2 and unpublished that either Stevens or Gibbs knew of  
3 the reefnet fisheries, or had observed the reefnet  
4 fisheries, or that any of the people with whom they  
5 might have consulted had so observed at the time that  
6 Stevens spoke the words that you quoted earlier about  
7 free movement on the Sound, or at the time that Gibbs  
8 wrote these words about fisheries being held in common.

9 Q You don't believe that these maps, drawn in the early  
10 1850 's were known to Mr. Gibbs or Mr. Stevens?

11 A They may have seen the maps. I said there was no  
12 evidence to suggest that they had seen the fisheries or  
13 had occasion to have them described to them. People  
14 looking at the reefnet fishery who were moving about  
15 for other purposes -- remember, this is happenstance in  
16 a way, because the purpose of these maps was not to go  
17 out and plot locations of Indian fisheries.

18 People observing these fisheries were not  
19 necessarily making a full investigation of underwater  
20 details or concepts of ownership or property rights or  
21 anything else regarding them, so that I think it is  
22 entirely likely that Stevens and Gibbs may have known  
23 that there were places up there where these Indians  
24 fished without knowing that these in any way were  
25 different kinds of fisheries with different kinds of

1 ownership rights or property concepts or controls of  
2 fisheries that they knew more about than the Sound,  
3 other than I think it is quite clear from the evidence  
4 that we have that both Stevens and Gibbs, like you and  
5 I, were frequently guilty of generalizations on the  
6 basis of specific knowledge, and not knowing enough about  
7 a foreign situation to know that it was foreign.

8  
9 (Continued on the next page.)

ET8

1 Q Now, one final thing and then I will quit. The  
2 fact you are going to be here, can you at some  
3 recess look up this information, and at some  
4 point I'm going to ask you for it, but I would  
5 like the dates for the San Juan Islands that you  
6 may have in your notes for determination of  
7 reef netting by Indians of this purported or  
8 alleged encroachment of rights or by threats  
9 of violence or any other means.

10 You said that you had that?

11 A I cannot give that to you specifically for the  
12 San Juan Island sites. I can give you figures  
13 of how many INDIANS were fishing or how many  
14 whites were fishing with the year, but I can't  
15 give you as to each particular site exactly how  
16 many Indians and how many non-Indians were at  
17 any particular location. I can give you how many  
18 Indians were issued reef net licenses as opposed  
19 to non-Indians in a given year, but I can't give --

20 Q How do you establish the distinction?

21 A I simply am relying on documentary evidence which  
22 purports to give that information.

23 Q Documentary evidence secured from where?

24 A I believe I'm referring to US government documents.  
25



1 Q Well, that would be the thing that I would wish  
2 to examine later, the figures then on how many  
3 Indians or non-Indians were reef netting at given  
4 years. I know you said you can't distinguish  
5 as to locations, but I would like to review that  
6 particular data.

7 A Yes. Would you like that data now?

8 Q No, I would like to examine it later and see what  
9 you have on that, and there are one or two other  
10 points you were later going to make available.

11 A I did that during the recess.

12 Q Good.

13 A I have that information now.

14 Q All right. If you will give it to us, then.

15 A You asked me to check on the amounts of salmon  
16 being purchased on the south coast of San Juan  
17 Island?

18 Q That's one of the points.

19 A The National Archives in Washington, D.C., I read  
20 a letter which was so old that I couldn't get a  
21 decent Xerox copy of it, so I am reading from  
22 my own written notes of that letter, it is a letter  
23 dated April 11, 1859, and it was sent by Henry  
24 Custer to Archibald Campbell, who is one of the  
25 officials on the boundary survey, he was

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1 Commissioner for the United States in the Northwest  
2 Boundary Commission, and I'm reading extracts  
3 from his letter, and he says,

4 "One of the principal sources of fish  
5 for the Hudson Bay Company is their fishery  
6 here. According to a statement of Mr. Griffin,  
7 over 2,000 barrels, each containing forty  
8 to forty-five salmon,"

9 so that would make --

10 Q How many barrels?

11 A Two thousand, which was the figure I remembered,  
12 I remembered a couple thousand and I couldn't  
13 remember that exact figure, that would make 80,000  
14 or more fish that have been collected heretofore  
15 during the year.

16 "Halibut and cod fish are also in large  
17 numbers in the vicinity of the Island and said  
18 to be unsurpassed in their quality."

19 That was one source. I also have a  
20 booklet called, "Notes By Pioneer, 1851," which  
21 are reminiscents of William John McDonald who was  
22 sent out by Governor Douglas from Victoria to  
23 establish a Hudson Bay fishery on San Juan Island,  
24 and he notes, and I'm reading from pages 6 and 7  
25 of that pamphlet --

1 Q Where is that diary stored, by the way?

2 A I beg your pardon?

3 Q Where is the diary stored?

4 A This is in Victoria, however, a more accessible  
5 place is also -- extracts from it have been reprinted  
6 in a book which is widely available, a recent  
7 book called, "Salmon, Our Heritage," by a woman  
8 named Cecily Lyons, it's a huge history of the  
9 salmon industry in the Northwest, Mitchell Press,  
10 Limited, at Vancouver, British Columbia, 1969,  
11 and I am certain it is available in all libraries  
12 here.

13 Mr. McDonald wrote,

14 "Arrived Victoria 14 May, 1851,"

15 and then deleting here, he was sent then by  
16 Governor Douglas almost immediately to San Juan  
17 Island to establish the Hudson Bay fishery there.

18 He said, "In the month of June I was  
19 sent to San Juan Island to establish the  
20 salmon fishery. Starting in a canoe with  
21 an Indian crew, James W. MacKay as pilot and  
22 locator of the site and four French-Canadian  
23 workmen, we selected a small sheltered bay  
24 and erected a rough shed for salting," and  
25

1 more deletions, I'm getting to the point you want,  
2 "This year --", this is 1851, "this year  
3 being a short run of fish, only 60 barrels  
4 of salmon were cured."

5 More deletions, "The next few years  
6 the annual output between 2,000 and 3,000  
7 barrels,"and the Hudson Bay operation,  
8 of course, was terminated by the San Juan  
9 water boundary decision in 1872.

10 Q And that had been conducted commencing when?

11 A 1851.

12 Q All right. Now, if you will supply me from  
13 your notes later these dates, I mean the amount  
14 of non-Indian and Indian fishermen of these  
15 various locations, or do you have that at hand  
16 now?

17 A That isn't the other data that I got during the  
18 recess, but I have another document here which  
19 I think you should have in connection with that.

20 Q Very well.

21 A You haven't asked me the question, but there is  
22 no problem about identifying particular sites  
23 that I have identified as Lummi reef net locations  
24 as opposed to my various kinds of evidence, and  
25 perhaps one letter will serve as an example.

1 I have a letter here from George Gibbs  
2 written from Semiahmoo Bay in 1858 when he was  
3 serving on the Northwest Boundary Commission, and  
4 it is a very long letter dealing with a number  
5 of problems relating to the boundary decision which  
6 had not yet been taken, but he in a paragraph about  
7 the fourth page of his letter says, I'm reading  
8 here,

9 "A consideration very important to bear  
10 in mind is that they for the most part belong  
11 to our Indians,"

12 he is referring to the San Juan Island group,

13 "belong to our Indians, the Lummi claiming  
14 Orcas, Blakely, Cypress, Decatur and a part  
15 of Lopez; the Samish, the remainder of Lopez  
16 and the Clallams a part of San Juan; while  
17 only Waldron Stuart, Johns I., Spieden, and  
18 possibly a small part of the San Juans belong  
19 to the SSaanich of Vancouver Island."

20 Then there is more on the same, but  
21 perhaps that's sufficient to help you understand  
22 how I established with several different documents  
23 the conclusions that I arrived at.

24 Q That is implied then by the saying they owned that,  
25 therefore, they had the right to take fish,

1 is that right?

2 A. Yes.

3 Q. Do you think those are the areas to which reference  
4 was had at the time of the execution of the treaties?

5 A. I'm not sure what the answer to that question is  
6 because one of the white men who made his deposi-  
7 tion at the time of the Alaska Packers case was  
8 the same Mr. Shaw who served as the official  
9 interpreter at the treaties in Western Washington,  
10 and in his deposition in the 1890s, in that  
11 litigation, Mr. Shaw testified -- there was a  
12 question in that litigation as to whether the  
13 Lummis used the reef net locations at Point  
14 Roberts, and Mr. Shaw testified or said in his  
15 deposition that at the time of the treaties, at  
16 the time they were negotiated, it was not yet  
17 understood by any of the whites or Indians, if  
18 I recall his deposition properly, whether those  
19 waters would be Canadian waters or American waters.  
20 So I cannot answer your question, I don't really  
21 know.

22 Q. By the way, doesn't that letter, though, from this  
23 chap who was sent out to establish this post for  
24 Hudson Bay Company rather confirm the point that  
25 was made at page 12 of your Lummi report in

1 which -- and I quote,

2 "Collins, 1892, in a general report  
3 on fisheries of the Pacific Coast reported  
4 that reef netting had been taught to local  
5 Indians by an employee of the Hudson Bay  
6 Company."

7 A. That no way confirms that, and I have other  
8 materials, and I was trying to not burden you with  
9 a lengthy discussion, I have other materials con-  
10 temporaneously describing that they were purchasing  
11 the salmon from the Indians, and it tells the  
12 amounts they were paying, how many blankets and  
13 the very first year they got out there, and it is  
14 quite clear we know how many people came out  
15 and what they did that first year. They built  
16 a shed for salting, they purchased fish from the  
17 Indians, and Mr. McDonald had just arrived, I think,  
18 from the Isle of Skye, I may be wrong as to the  
19 exactly where he arrived from, and I think it would  
20 have hardly allowed sufficient time for him to  
21 have arrived on the scene, invented a reef netting  
22 technique, which is known no where else in the  
23 world, taught it to the local Indians and start  
24 purchasing salmon from them.  
25

1 Q But these particular salmon that were purchased  
2 could have been caught by other methods?  
3 Certainly there were other methods extant among  
4 the Indians that you detail in another portion  
5 of your report?

6 A That is a hypothetical possibility. I don't  
7 count it as a very likely probability since they  
8 set up their salting station next to what is  
9 historically known as a reef net fishery.

10 Q Nonetheless, they certainly could have acquired  
11 fish from other sources, isn't that true?

12 A That's true.

13 Q Is there any evidence that the Indians ever  
14 in their aboriginal state pursued this practice  
15 of salting salmon?

16 A No, the Indians in their aboriginal state did  
17 not salt salmon to the best of our knowledge.

18 Q So that would be a technique introduced by the  
19 non-Indians, would it not?

20 A Yes, it would.

21 MR. RHEA: Nothing further.

22 THE COURT: Is there anything further  
23 now on behalf of the defendants or any other  
24 defendant-intervenor?

25 If not, we will turn back to



1 redirect.

2 MR. HOVIS: Your Honor, I thought this  
3 perhaps would be a time for my questions.

4 THE COURT: That is perfectly agreeable  
5 to me.

6  
7  
8 CROSS-EXAMINATION

9 BY MR. HOVIS:

10 Q Mr. Rhea was asking you some questions in which  
11 you responded as to the familiarity of Governor  
12 Stevens in regard to this particular area.

13 Now, when Washington territory was  
14 organized in 1853, it covered the area from the  
15 Pacific Ocean to the Bitter Root Mountains on  
16 both the west side and the east side and also  
17 the 49th parallel to the north and the Columbia  
18 River and an extension of the Washington State  
19 line to the south, those were the areas covered  
20 in the establishment of the Washington territory,  
21 do you know?

22 A. Are you asking me?

23 Q Yes.

24 A. To confirm that?

25 Q Yes.

1 A I think that is probably correct. I haven't  
2 checked and looked at the documents that would  
3 provide that information in any recent time.

4 (Continued on next page.)  
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- 1 Q Now, the officers that President Pierce appointed after  
2 the establishment of the Washington Territory, none  
3 of these people had resided in the Washington  
4 Territory, had they?
- 5 A I'm sorry, Mr. Hovis. The officers that he appointed?  
6 Who are you referring to?
- 7 Q I am saying Governor Stevens was a citizen of  
8 Massachusetts, was he not?
- 9 A Governor Stevens had not been to Washington Territory  
10 prior to the time that he was appointed in his official  
11 capacity as governor of the new territory.
- 12 Q And the marshal that was appointed, J. Patton Anderson,  
13 he was from Mississippi?
- 14 A I'm afraid I don't know.
- 15 Q And the Secretary-Major Farquarson was from Texas, was he  
16 not?
- 17 A I don't know.
- 18 Q Anywhere in your writings have you found that any of  
19 the officers of the Washington Territory were residents  
20 of the Washington Territory prior to their appointment  
21 as officers of the Washington Territory?
- 22 A I don't really know how large a group of people you are  
23 encompassing. I don't know what officers you have  
24 reference to, Mr. Hovis.
- 25 Q I was thinking basically that the only officers appointed

1 were the governor, governor, marshal, the chief justice,  
2 assistant justice, the district attorney and the  
3 secretary?

4 A I'm sorry. I really don't know.

5 Q Now, when did Mr. Gibbs come into the Washington  
6 Territory area?

7 A Well, Mr. Gibbs had been a resident in what was the  
8 Oregon Territory before Washington Territory was separated  
9 out. I'm sorry. I can't remember the exact year. I  
10 could give you a close approximation.

11 He is an easterner, and he came out to  
12 California in 1849, along with a few other people, and  
13 spent a year trying his luck in the mines.

14 Then he came north to what was then Oregon  
15 Territory before Washington Territory had been separated  
16 out, and he performed a number of functions in different  
17 parts of Oregon. He was I think customs keeper for a  
18 while. He helped with some of the treaty commissions.  
19 I think it was General Gaines in Oregon, those  
20 unratified treaties. He was part of that treaty  
21 commission.

22 He later then went to California where he was  
23 again involved in work connected with treaties which  
24 again were not ratified in California, prior to coming  
25 up to Washington Territory after its separation in 1853.

1           He arrived in the area that I have done  
2 research on, which is the Puget Sound area, I believe  
3 in 1854. It could have been late '53. I would have to  
4 check my notes.

5   Q   Was there anyone that you know of who was on the treaty  
6 commission or worked with Governor Stevens in regard  
7 to these treaties who was any more knowledgeable in  
8 regard to the Indians of the area in which you researched  
9 then Mr. Gibbs?

10   A   That's a hard one to answer. Mr. Shaw and Mr. Simmons  
11 who were the other two principals, had resided for much  
12 longer in the area than Mr. Gibbs had, but I'm not  
13 certain that their longer residence gave them greater  
14 insight or information into the Indians than Mr. Gibbs  
15 during his shorter term stay. I would have difficulty  
16 answering that.

17   Q   Is Mr. Simmons who was on the treaty commission, did he  
18 or was he the same Mr. Simmons who settled in the  
19 Tumwater area?

20   A   Yes, he is.

21   Q   And he settled in that area in about 1844?

22   A   No, I think the figure is later than that, but still in  
23 the late 1840's. He made an initial trip in and came  
24 back and settled. I wouldn't want to be tied down to  
25 the exact year.

1 Q Governor Stevens had the duties as ex-officio  
2 superintendent of Indian affairs, or rather superintendent  
3 of Indian affairs within the Washington Territory of  
4 treating and dealing with all of the Indians in the  
5 Washington Territory?

6 A Yes, he did.

7 Q Now, in frame of reference, when I use the word "Yakimas"  
8 I am talking about all of the aboriginal bands and  
9 tribes that were confederated into the Yakima Indian  
10 Nation.

11 Now, in writings and in discussions,  
12 contemporary writings and discussions in regard to the  
13 Puget Sound area, when the word Klickitat is used,  
14 isn't that the common name used for all Yakimas, regard-  
15 less of what aboriginal group they came from?

16 A I think the answer to your question is yes. Klickitat  
17 was used generally by non-Indians in the western portion  
18 of the territory at that time to refer to Indians from  
19 across the mountains, without being precise as to their  
20 local names.

21 Q If I might have 15-A and 15-B put on the board.

22 Dr. Lane, though it wasn't part of your project  
23 and part of your research to cover the number of Yakimas  
24 fishing at the usual and accustomed places within the  
25 case area, did you run into information or discover

1 information or contemporary documentation of their  
2 existence in this area, the case area?

3 A Of the existence of Klickitats?

4 Q Yes.

5 A Yes, I did.

6 Q And could you review some of that evidence for us,  
7 please?

8 A Well, I wasn't looking for this sort of information.  
9 So my response will simply reflect what I couldn't avoid  
10 noticing I was looking for other things in the literature.

11 George Gibbs makes reference in a number  
12 of places, to the communications, trade, intermarriage  
13 movement back and forth of people in the upper Puyallup,  
14 upper Nisqually areas, particularly, White River and  
15 Green River areas, through Naches Pass, with people from  
16 the other side of the mountains.

17 THE COURT: You are dropping your voice.  
18 Even the Reporter is having difficulty hearing you.

19 THE WITNESS: He refers to the fact that  
20 many people in these upper river areas spoke not only  
21 the coastal Salish language of their immediate  
22 neighbors, but many people were bilingual and also spoke  
23 a language of the Sahaptin from east of the mountains.

24 Q Did you in your research discover a map in which a  
25 population figure was indicated for the Klickitats?

1 A Yes, I did.

2 Q I think I have the photographs I made from your  
3 originals, which have been shown the defendants and  
4 have their approval, up on the board. Could you step  
5 to that, please, and examine it, and see if it is the  
6 same as what you have before you so you can resume the  
7 stand and read from the ones you have before you while  
8 you are at the microphone?

9 A Yes. I believe it's the same.

10 Q Would you read into the record, please, what you have  
11 found on 15-A and 15-B, Yakima exhibits?

12 A Would you like me to identify the maps, first?

13 Q Yes, if you would, please.

14 A Yes. This is a map which is entitled "Map of a Part of  
15 Washington Territory Compiled by Order of Lt. Colonel  
16 Casey and Lt. M. G. Mendell, Topographical Engineer,  
17 and George Gibbs, Esquire, 1856."

18 There are marginal notations on the map in  
19 what to the best -- I'm not a handwriting expert, but  
20 I would give it as my opinion that this is George Gibbs'  
21 handwriting, having read a lot of <sup>his</sup> handwriting, although  
22 I am not a handwriting expert--in which he gives  
23 population figures for many groups covered in this portion  
24 of the map, including an entry which says, after he has  
25 gone through a number of Coast Salish groups:



1 "To these, Klickitats of Sound rivers 400"  
2 then underneath that, the entry reads: "Nooscope,"  
3 which was the Indian name for the Green River and  
4 indeterminate bands 400.

5 Q And does he give other indications of the rivers on which  
6 these Indians were located?

7 A Yes, he does. Later on there is a note that the  
8 Klickitats are offshoots of the Yakimas. The Yakimas  
9 have intermarried with the western Indians as far north  
10 as Skokomish, and controlled them, to a certain extent.

11 Then there is a further note that Leschi,  
12 Quiemuth-half Yakimas. Then Kitsap and Kanasket-all  
13 Yakima.

14 Q Leschi and those names you referred to were principal  
15 chiefs involved in the Indian wars on the coast?

16 A Indian hostilities?

17 Q Yes.

18 A Yes.

19 Q And some of them were signers of the treaties in this  
20 area?

21 A That is a matter of dispute.

22 Q Now, what particular groups are composing the Yakima  
23 Indian Nation? In other words, there is both Salish,  
24 Sahaptin and Chinookan tribes in the Yakima Indian Nation?

25 A I don't know, Mr. Hovis.

1 Q Let's presume that it has been agreed to in the  
2 pretrial order, if it has, if we might take the  
3 Sahaptin and Salish groups on the other side of  
4 the mountain, do you have any information as to  
5 regards their culture, whether you could compare  
6 it with the culture of the Indians to the west  
7 side of the Cascade Mountains, general knowledge?

8 A Only in a general way, Mr. Hovis. I haven't  
9 researched the Yakima.

10 Q In a general way, are there many similar character-  
11 istics in their culture with the coast Salish?

12 A In certain respects, yes.

13 Q In regard to the respect of salmon being a staple  
14 food, what would be your comparison?

15 A Well, again I'm not speaking as an expert on the  
16 Yakima. All I can refer to are the statements  
17 that I couldn't avoid reading by Mr. Gibbs in the  
18 literature that I was covering, and I gained the  
19 impression there -- I would have to check back --  
20 I believe he says that the people on the eastern  
21 side of the mountains depended even more heavily  
22 on salmon than the people west of the mountains,  
23 but I would have to refer again. That is my  
24 recollection.

25 MR. HOVIS: I move the admission of

1 F-15A and 15B.

2 MR. CONIFF: No objection.

3 THE COURT: Admitted.

4 (Plaintiffs' Exhibit Numbers  
5 F-15A and F-15B for  
6 identification were ad-  
mitted in evidence.)

7 MR. HOVIS: That is all. Thank you very  
8 much, Doctor.  
9

10 REDIRECT EXAMINATION

11 BY MR. PIERSON:

12 Q Dr. Lane, in your research and writing your  
13 reports, have you encountered any statements  
14 by George Gibbs relative to the accuracy of prior  
15 population?

16 A Yes, I have.

17 Q Could you tell us what you found?

18 A I would prefer to read Mr. Gibbs' words, if that  
19 is a suitable answer.

20 Q If you have it with you, please.

21 A I do.

22 Q Could you give the page and document you are  
23 reading from?

24 A Yes, I am reading from the 1877 publication which  
25 was written in 1855-56 by George Gibbs, and

1 which is published entitled, "Tribes of Western  
2 Washington and Northwestern Oregon," and in it  
3 in the first passage which I am going to read,  
4 Mr. Gibbs refers to his earlier report which  
5 was dated March of 1854 and was one of the reports  
6 in the Pacific Railroad survey, and in this  
7 later publication, the one I am going to read from,  
8 Mr. Gibbs was concerned again, as he had been  
9 in the earlier one in dealing with previous  
10 population estimates in making some estimate  
11 about the present population of Indians in the  
12 territory, and I am reading now from his section  
13 on population from 1877 report.

14 "In my report to Captain McClellan,  
15 and I made an attempt to compare all the  
16 estimates of the Indian populations of the  
17 territory which ~~were~~ within my reach, And  
18 actual count or census of most of the tribes  
19 in this part of the territory has been  
20 twice attempted, once by myself and once  
21 by Colonel Simmons. In considering different  
22 statements which have been made from time  
23 to time, I am well satisfied that none of  
24 them can be taken as the basis of any accurate  
25

1 calculations respecting the rate of increase  
2 or diminution, and I am further inclined to the  
3 opinion that the aggregate former population  
4 taking one period with another, has never been  
5 very much greater than within our knowledge of it.

6 "In arriving at any conclusion, it is  
7 necessary to regard not merely the actual fact  
8 of increase or mortalities known to us, but the  
9 capacity of the country to furnish subsistence,  
10 the modes of obtaining it followed by the Indians,  
11 their general characteristics and habits, their  
12 fecundity, their wars and various other circum-  
13 stances directly or indirectly bearing upon it.  
14 That the estimates even of residents cannot be  
15 relied upon with confidence has been made suffi-  
16 ciently evident by the discrepancies in our  
17 different attempts of an actual enumeration and  
18 those of travelers like Lewis and Clark are likely  
19 to have been still wider from the facts.

20 "Still, as there is no other data that  
21 exists on which to found any opinion, we are  
22 driven to assume these for the purposes of  
23 discussion."

24 And then he goes on with a long  
25 discussion, but I think that perhaps is sufficient.

1 Q Earlier in testimony on cross-examination you  
2 mentioned a man by the name of Mr. Gingrey.  
3 Could you tell us when you met him and under  
4 what circumstances you worked with him, please?

5 A I am sorry, I don't remember dates.

6 Q Was it a year and a half ago?

7 A Something like that, yes.

8 Mr. Gingrey was Mr. McGimpsey's  
9 predecessor as legal counsel for the State  
10 Department of Fisheries, I believe, and I met  
11 him when I was teaching at Bellingham at Western  
12 Washington State College, and Mr. Gingrey was  
13 I believe perhaps then also legal Counsel to  
14 Western Washington State, and we had the opportunity  
15 to discuss my research and my role in preparing  
16 reports for this litigation, and I think I said  
17 the other day, I believe it was his suggestion  
18 that I prepare the summary report that I was  
19 being asked about.

20 I think he, as I understood his explana-  
21 tion to me, felt that if I would prepare a core  
22 report, a summary report, it could be a jointly  
23 agreed to report that would go in both for the  
24 clients that he represented or perhaps all of  
25 the defendants. I was uncertain.

1                   In any event, the idea was to make  
2                   a joint anthropological statement.

3       Q     Switching subjects, and going back to the treaty  
4             times, between the time of the signing of the  
5             treaty or treaties and the last one, were there  
6             any temporary reservations set up?

7       A     Yes, during the period of hostilities when the  
8             Indians and the settlers were in armed conflict.

9       Q     Can you give us the general location of some of  
10            those temporary reservations?

11      A     Generally, they were located on islands out  
12            in the Sound. The idea was to separate those  
13            Indians who were non-combatents from the so-called  
14            hostile ones, and the idea was to do this by  
15            physical and geographic separation, so the  
16            Indians were asked to remove themselves to places  
17            like Fox Island, and I believe also Anderson  
18            Island, and somewhere around, I think, Whidby  
19            Island.

20                   They were told that if they did not  
21            go to what were then called temporary reservations,  
22            because the treaties, apart from Medicine Creek,  
23            I believe had not yet been ratified, so they would  
24            be required to move. They were told if they didn't  
25            move to these temporary reservations which were

1 entirely unconnected to the treaties, but the  
2 setup was a war measure, if you like, but that they  
3 might be mistaken for combatants, and might be  
4 killed.

5 Q Were these reservations different in location  
6 than the ones subsequently setup pursuant to the  
7 treaties?

8 A Oh, yes.

9 Q Could you in just a brief summary outline for the  
10 court your understanding of the prior legal  
11 experience of George Gibbs before his activities  
12 from 1854 onward in Washington territory.

13 A He was a practicing attorney, I believe, in New  
14 York for about ten years before he came to  
15 California in 1849.

16 Q And then from California to Oregon and then to  
17 Washington?

18 A Then to California. I am sorry. I can't remember  
19 it, Reddick, R-e-d-d-i-c-k, was the gentleman,  
20 I forget his title, who was negotiating treaties  
21 in California.

22 Q In addition to the research and study which you  
23 have done to compile your reports and present  
24 your testimony in this case, Dr. Lane, have you  
25 had any occasion to do professional work in the



1 area of kinship structure?

2 A Yes, I have.

3 Q By comparison to the test of your professional  
4 experience and study, how would you rate the  
5 time and effort you put into Kinship structure  
6 studies, and all the other studies?

7 A My primary field of interest in the field of  
8 anthropology is in kinship organization and social  
9 structure.

10 MR. PIERSON: That is all for the  
11 United States, Your Honor.

12 THE COURT: Any other plaintiff wish to  
13 inquire?

14 MR. GETCHES: No questions.

15 THE COURT: Mr. Ziontz?

16  
17 REDIRECT EXAMINATION

18 BY MR. ZIONTZ:

19 Q Dr. Lane, with respect to the reef net gear,  
20 have you had occasion to examine the types of  
21 fisheries gear used elsewhere in the United  
22 States and perhaps elsewhere in the world to see  
23 whether reef net gear is found in other parts of  
24 the world or elsewhere in the United States than  
25 in the Northwest?

1 A I have made no personal examination, Mr. Ziontz.  
2 That statement that I made earlier rests upon  
3 a rather detailed examination of fisheries  
4 literature in order to try to discover whether  
5 this was in fact a unique type of fishery, and  
6 I have read a number of books published in Britain  
7 and the United States and elsewhere, in which  
8 fisheries around the world are described, ancient  
9 historic techniques in China and Japan, primitive  
10 techniques, so-called around the world, and so on;  
11 but my research has been entirely documentary  
12 based upon fisheries experts who have been his-  
13 torians of the fishing field.

14 Q Based upon that research, do you have an opinion  
15 as to whether reef net fishery as found in use  
16 by the Lummi Indians was unique in the world?

17 A Yes, I have.

18 Q And what is that opinion?

19 A That it was unique to this particular area. It  
20 is a local Indian invention not known to either  
21 history or geography anywhere else.

22 Q Do you have any knowledge or information as to  
23 whether non-Indians used any Indians names for  
24 any of the gear or methods of operations involved  
25 in the reef net fishery?

1 A Whether non-Indians used Indian names?

2 No, I have no information.

3 Q Could you tell us in terms of the concept you  
4 spoke of earlier, that is the aculturation process,  
5 and if so, how?

6 A Yes, I think it is a beautiful example of one  
7 ethnic group taking on culture complex , culture  
8 traits that belonged exclusively to the other.  
9 In this case, the non-Indians were taking on part  
10 of Indian culture.

11 Q You mentioned that boulders were taken from  
12 Chukanut area. What was the use to which these  
13 boulders were put?

14 A These were the anchors, if you like, the fixed  
15 appliance which was set down on the named  
16 individual locations where the gear owner fixed,  
17 attached his lines.

18 Q Did you mean to imply that the Chukanut area was  
19 the only area from which these boulders were taken?

20 A No.

21 Q Where else were boulders secured?

22 A I don't know.

23 Q Do you know if the boulders were taken out each  
24 day?

25 A Oh, no, no. The opening of the season when the

1 gear was fixed, the gear would be fixed at the  
2 best low tide , the lowest tide prior to the  
3 commencement of the fishery.

4 Q Do you know whether the boulders were small enough  
5 to be accomodated within the boat or whether they  
6 had to be carried out to the site by some other  
7 means?

8 A I don't recall any specific information about  
9 the method of transport.

10 THE COURT: Since it may not appear  
11 anywhere else in the record, the Chukanut area  
12 I think is roughly east of the lower portion of  
13 Lummi Island, as it is now designated; is that  
14 correct?

15 THE WITNESS: That is my understanding.

16 Q Now, what within the Indian, Lummi Indian system  
17 of ethnic rights, obligations, what was the  
18 attitude of the Lummis, would the attitude of  
19 the Lummis, would the attitude of the Lummis have  
20 been toward an occupant of the site who was out  
21 there without any right of inheritance or without  
22 any claim of ownership, let's say, other than  
23 some other Indian just went out to a Lummi family  
24 site and set up reef net gear. Would there have been  
25 friction?

1 A Anything I say here will just be conjecture,  
2 because I have no evidence that anything of  
3 that nature ever occurred, so to predict what  
4 somebody's reaction would be to something which  
5 had never happened would be perhaps not too fruitful.

6 Q However, you testified it has occurred in contem-  
7 poraneous times?

8 A Yes, not by other Indians, however.

9 Q But by whites?

10 A Yes.

11 Q Do you know what the Lummi reaction was to that?

12 A Yes.

13 (Continued on next page.)

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1 Q What was that reaction?

2 A Well, as is recorded on the documents which I have  
3 reviewed, they were much exercised over the matter,  
4 and sought legal assistance from the Indian agent, from  
5 the U. S. Government, and private lawyers, attempting  
6 to deal with the situation in a lawful way.

7 Q Were they successful?

8 A No.

9 Successful? They were successful in involving  
10 other people. They were not successful as to their  
11 results.

12 Q That was my question.

13 A Yes.

14 Q Apart from the Lummi situation, Dr. Lane, can you tell  
15 us whether your studies have shown to you conflict  
16 between the whites and Indians over the fishery after  
17 the treaties were made?

18 A When you say over the fishery, do you mean generally  
19 in Western Washington?

20 Q Generally in Western Washington.

21 A At treaty times? Immediately after the treaties?

22 Q From the time of the treaties and thereafter.

23 A Well, certainly in the first few decades after the  
24 treaties, no, with one or two very minor exceptions.

25 When I say "minor" I mean simply numerically,

1 one or two exceptions.

2 However, later on when the whites began to  
3 engage as competitors in the fish harvesting, there  
4 were frequent instances of conflict.

5 Q When would you place that historically?

6 THE COURT: You mean the beginning of that?

7 MR. ZIONTZ: The beginning of the conflict, yes.

8 THE WITNESS: 1870's-1880's.

9 Q Did the conflict take the form of litigation or  
10 legislation?

11 A In some cases.

12 Q Were there questions of conservation raised in those  
13 years?

14 A I don't think that was the issue.

15 Q How was the issue framed?

16 A The issue was who was going to harvest the fish.

17 Q Would you say that there has been a continuous history  
18 of conflict between the non-Indian and Indians over  
19 the harvesting of the fish in western Washington since  
20 the 1870's?

21 A Yes; with the qualification that when you say "continguous,"  
22 there have been times in which the Indians vigorously  
23 tried to protect their rights and other periods of time  
24 when they were apparently inactive in this area.

25 Now, I haven't made a thorough survey. I have

1 not tried to document from treaty times to 1973 the  
2 history of fishing controversy between whites and  
3 Indians. I am only relying on the reading which I  
4 happen to have come across while looking for other  
5 things in the fishery literature.

6 MR. ZIONTZ: Thank you. I have nothing further.

7 THE COURT: Anyone else for the plaintiff?

8 MR. TAYLOR: Your HONor, because Dr. Lane is  
9 going to be required to return next week to discuss the  
10 Quinault report, I thought that the few questions I had  
11 would be better asked at that time to make them  
12 contiguous with the other considerations of the Quinault  
13 report.

14 THE COURT: As you please.

15 MR. TAYLOR: Thank you.

16 THE COURT: Anyone else now? Any further  
17 interrogation of Dr. Lane?

18 Excuse me, Mr. McGimpsey.

19 MR. MCGIMPSEY: At this time, your Honor, I  
20 would like to offer Exhibit F-39 which Dr. Lane  
21 identified and described. I don't believe there is an  
22 objection.

23 MR. PIERSON: No objection.

24 THE COURT: Admitted.  
25



(Exhibit NUMBER F-39 for identification was admitted in evidence.)

RECROSS EXAMINATION

BY MR. MCGIMPSEY:

Q In answer to some questions by Mr. Rhea, Dr. Lane, you indicated that as far as fishing occurring at the time of the treaties that the white fishermen were using cotton nets, or at least fiber nets that would be unlike the nets that would be native to the aboriginal people here; is that correct?

A Yes.

Q Are you then stating that at the time of the treaties there was white or non-Indian people engaged in the act of fishing?

A Yes; to the extent that they were providing the gear. I believe I mentioned to you specifically, Mr. McGimpsey, that the seine which Swan and Riley were using was, in my opinion, an introduced European beach seine. I'm not prepared to say whether the fiber was cotton, linen or what-have-you.

Q I have a little difficulty. I thought you said to Mr. Rhea that certainly there were non-Indians fishing at the time of the treaties.

A Perhaps I wasn't as clear as I should have been. I was

1 thinking of people like Swan and Riley and I believe  
2 there was a man by the name of Brunn who was operating  
3 a fishery at the mouth of the Satsup.

4 There were perhaps half a dozen, at most,  
5 to my knowledge, white individuals who may well have  
6 been fishing themselves with a beach seine or using Indian  
7 labor to perform this.

8 We really don't know from the literature. But,  
9 in any event, it is quite clear that seines of  
10 European manufacture or American manufacture, non-  
11 Indian manufacture, had been introduced into the area  
12 that we are concerned with at treaty times, and that was  
13 all I meant to say when I said that we had evidence of  
14 nets of non-Indian manufacture in the area.

15 Specifically with regard to the earliest  
16 accounts that we have of non-Indians engaging in reefnet  
17 fishery, or attempting to compete in the fisheries at  
18 the Indian reefnet locations, we know that they were  
19 using their own nets and not those of native manufacture  
20 because they were having troubles with disintegration  
21 and wondering how they would treat the nets.

22 Q Now, referring you to USA-62, is that exhibit a  
23 navigational chart or is it --

24 A This is 62?

25 Q Yes, I believe it is.

1 MR. MCGIMPSEY: May I approach?

2 THE COURT: Certainly.

3 Q (By Mr. McGimpsey) Yes, it would be USA-62. Can you  
4 tell us what the nature of this map is?

5 THE WITNESS: May I read from the title of the  
6 map?

7 THE COURT: Yes, of course.

8 THE WITNESS: The map is entitled:

9 "U.S. Coast Survey, A. D. Bache, Superintendent.  
10 Haro and Rosario Straits, and the Islands between the  
11 Main and Vancouver Island. Compiled from a reconnaissance  
12 by the U. S. Coast Survey Steamer ACTIVE. The Surveys  
13 of the U. S. Exploring Expedition of Captain  
14 Royal Navy, from information furnished by the officers  
15 of the Hudson Bay Company and from a Survey of George  
16 Davidson, Esquire, Assistant U. S. Coast Survey, by James  
17 Alden, Lt. Commander, United States Navy, Assistant U. S.  
18 Coast Survey, 1853."

19 Q Is it your understanding of this map that it would be  
20 used as a navigational type map?

21 A No.

22 Q Do you know why it was prepared by the U. S. Coast Survey?

23 A I believe it was in connection with providing information  
24 about the area.

25 Q Do you know whether or not there were other maps that were

1 used as navigational charts in 1853 that had been  
2 prepared for this area?

3 A I wouldn't be able to answer that without looking again  
4 at the maps that I have reviewed. This is certainly  
5 not a navigational chart in the sense in which we use  
6 the term today. It does not have soundings, of course.

7 Q In what sense is it different than a navigational  
8 chart would be today?

9 A Well, in a number of ways. It doesn't contain various  
10 kinds of landmarks and markers that we would expect to  
11 find on a navigational chart today. It doesn't include  
12 compass bearings, et cetera.

13 Q Now, as regards it's not containing navigational markers,  
14 are you familiar with how many navigational markers  
15 might have been in place in 1853?

16 A Not offhand, no.

17 Q And as far as the directions of north or compass directions  
18 on the map, it does contain latitude and longitude lines,  
19 does it not?

20 A I think so.

21 Q And would those be oriented to a true direction of  
22 north and south/ east and west, as you understand it  
23 would be on their mapmaking in 1853?

24 THE COURT: You mustn't drop your voice.

25 M MR. MCGIMPSEY: I apologize, your Honor.

1 Q (By Mr. McGimpsey) Would the markings on a map of the  
2 latitude and longitudinal lines on a map in 1853 reflect  
3 what the mapmaker would understand to be the north and  
4 south/ east and west true directions on the map as  
5 opposed to magnetics, say?

6 A I can't answer that question.

7 Q What was the purpose, do you believe, of indicating  
8 Indian fishery at the southeast corner of San Juan  
9 Island?

10 A As I suggested yesterday, I can only offer a hypothesis,  
11 an idea. One thought that occurred to me is that these  
12 might have been noted because they were landmarks, if  
13 you like, obstructions to navigation. They were set  
14 gear sitting out there at these locations.

15 Q That would mean an obstruction to navigation in that  
16 channel which is between Lopez and San Juan Island?  
17 Is that what you are referring to?

18 A In a general way, yes.

19 Q Now, am I correct that there is no indication of a  
20 fishery of any type off of Lummi Island indicated on this  
21 map on the west coast of Lummi Island, but there are  
22 are there not, fathom soundings along the west coast  
23 of Lummi Island?

24 A That is correct.

25 Q Now, do you have any explanation as to why they would have

1 fathom soundings and the markings of an Indian fishery  
2 off the southeast coast of San Juan Island, and if  
3 such a fishery existed, would not have indicated the  
4 fishery off the coast of Lummi Island?

5 A Anything I say here would be purely conjecture, but I  
6 might point out that in one case, we are working in a  
7 rather enclosed area, and another, much wider open  
8 area.

9 Q In both cases, is it not true, in the case of the area  
10 between Lummi Island and Orcas Island, that is a  
11 passage, is it not?

12 A Yes, it is.

13 Q And the same is true between San Juan Island and Lopez?

14 A Yes, of course. They are quite different with passages.

15 Q They are different width passages, but they are both  
16 passages?

17 A Certainly.

18

19 (Continued on the next page.)

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- 1 Q Now, I believe you indicated that as far as  
2 placing the anchors, which were these boulders,  
3 in place, they were done at low tide?
- 4 A Yes.
- 5 Q Were they rolled down into the water from the  
6 land, or how were they placed?
- 7 A No, I would want to refer to my notes if I  
8 were going to give you a precise description. But  
9 my recollection is that they were fixed with a  
10 native rope and lowered down into position from  
11 boats.
- 12 Q Why is the low tide significant?
- 13 A Because they were some depth underwater, and it  
14 was easier to work at low tide before the fishing  
15 season in order to set the gear, to get the gear  
16 attached in place at that stage.
- 17 Q As I understand it, the significance of low tide  
18 would be after the boulder is already in place,  
19 it would be attaching the lines to the boulder  
20 in subsequent years, is that correct?
- 21 A Yes, correct.
- 22 Q And do you have any idea what depth of water we  
23 are talking about when we say, "at low tide"?
- 24 A Without referring to the notes --
- 25 Q Would the boulders be exposed at low tide?

1 A I think not.

2 Q Do you have any idea of the depth of the water?

3 A I would have to refer to my notes.

4 Q Would you have it in your notes?

5 A I think I do.

6 Q If you could get that information for us from  
7 your notes.

8 Are you presently aware of where the  
9 currently used reef net sites off the west coast  
10 of Lummi Island are located?

11 A No, I'm not.

12 Q So you are unable to tell us whether or not  
13 those sites would be in locations that had been  
14 used by the Lummi Indians?

15 A That's correct.

16 MR. MCGIMPSEY: That's all.

17 THE COURT: Anything further from anyone?  
18 If not, we will conclude and have the mid-day  
19 recess. We will reconvene at 1:00 o'clock.

(At 12:30 p.m. a noon  
recess was taken.)

Et13

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AFTERNOON SESSION

September 7, 1973  
1:00 o'clock p.m.

DR. CARROLL L. RILEY,  
called as a witness on behalf of the defendants, being  
first duly sworn, was examined and testified as follows:

THE CLERK: Would you please state your  
full name and spell your last name?

THE WITNESS: My full name is Carroll  
L. Riley, R-i-l-e-y.

THE COURT: Be seated, please, thank you.

DIRECT EXAMINATION

BY MR. CONIFF:

Q Dr. Riley, are you the same Carroll Laverne  
Riley whose prepared testimony has been submitted  
in this court as Exhibit D-1?

A That is correct, sir.

Q And in the testimony which you have prepared  
for the court are there any additions or corrections  
that you care to make in it?

A Yes, there are a few.

Before going on, I might apologize

1 to the Court. I suppose on the doctrine of  
2 equal time, Dr. Lane yesterday came down with  
3 a cold. Today a hay fever condition of mine has  
4 flared up, and I am at the moment trying to balance  
5 a rather strong antihistimine, taking enough to  
6 keep my voice from clogging up and my nose from  
7 running, and not taking so much that I go to  
8 sleep.

9 Perhaps the adrenalin --

10 Q Dr. Riley, would you please proceed to indicate  
11 for the record and for the court, page and line  
12 numbers, if you can, to the corrections that you  
13 care to make?

14 A Yes, there are, first of all, two or three of  
15 very small errors that I would like to correct.

16 There may well be others that I haven't  
17 caught. On page 2, line 5, this, I think, was  
18 simply a matter of the typist not putting in all  
19 of my line.

20 When I attended the University of  
21 California there were in fact only two universities  
22 of California. I believe they are numbered now.  
23 I attended UCLA, so the words Los Angeles should  
24 be included, there.

25 On page 36, the last page, line 7,

1 I specify the Chem-a-kum at the head of Hood  
2 Canal. I mean, of course, the mouth or foot  
3 of the Canal.

4 I also say they are northwest. Actually,  
5 just north would probably be more accurate.

6 On page 5 I refer to a bibliography  
7 which is marked for identification, line 8, page  
8 5 as Defendants' Exhibit G-1, and this biblio-  
9 graphy has -- it should be updated in minor  
10 ways, which is the natural evolution of a biblio-  
11 graphy over a period of months, but unless  
12 somebody specifically wants me to do that I will  
13 not bother.

14 However, something that I think will  
15 be of interest to this Court and to these kinds  
16 of trials, a press in New York, named Garland  
17 Press is now in the process of publishing in  
18 five volumes the Puget -- I am sorry, the Coast  
19 Salish Indian material from the Indian Claims  
20 Commission. This includes my own reports of which,  
21 Defendants' Exhibit G-21 is a small but rather  
22 important part. It includes the reports of other  
23 people, Herbert C. Taylor, for example. Verne  
24 Ray (phonetic), Elmendorf, I believe his dissertation,  
25 Dr. Suttles dissertation, and several others.

1 Q Dr. Riley, I have asked the Clerk to mark for  
2 identification G-22 through G-26 which consists  
3 of your Indians Claims Commission reports on  
4 several of the tribes in the case area, and as  
5 G-27, for the record, I have supplied two copies  
6 to the clerk and, of course, copies to opposing  
7 counsel of portions of a book entitled, "The  
8 Puyallup and Nisqually," by Marion W. Smith,  
9 and if my impressions are correct the plaintiffs'  
10 counsel do not object to these exhibits being  
11 offered at this time.

12 MR. PIERSON: No objection.

13 THE COURT: They are admitted.

14 (Defendants' Exhibit Numbers  
15 G-22 through G-27 for  
16 identification were  
admitted in evidence.)

17 MR. CONIFF: I don't believe, as long  
18 as we are on the subject of exhibits, for purposes  
19 of the record, I believe that the balance of the  
20 anthropological exhibits, I don't have my list  
21 which Dr. Riley would have sponsored, have been  
22 admitted by stipulation. Am I correct?

23 MR. PIERSON: Yes.

24 Q Dr. Riley, would you proceed, if there are any  
25 further corrections or additions you would care

1 to make to your prepared testimony?

2 A Yes, on page 24 at the very bottom, the last line  
3 of page 24, line 33, or actually, line 31 begins  
4 the question -- to line 33, and then line 1,  
5 the question -- let me rephrase it briefly.

6 "Q In your opinion..." asking me  
7 did any of the Indians at the time of the treaty  
8 understand English, my answer was:

9 "A To the best of my knowledge, there  
10 is no statement in the treaty documents that  
11 indicates English was used," and then went  
12 on to say that I thought it was almost beyond  
13 belief that some of them did not understand  
14 English.

15 At the time I gave that I had not seen  
16 the ancillary documents of the plaintiffs relating  
17 to the treaties, or at least I had not seen them  
18 recently. I had seen them in earlier years, and  
19 was depending, I believe to some degree, on Dr.  
20 Lane's testimony and my own memory. There is at  
21 least one mention, and this is a mention in the  
22 exhibit, Plaintiffs' 12, a letter -- Plaintiff  
23 12 is a series of documents that relate to the  
24 Treaty of Point Elliott, and if in effect some of  
25 the treaty minutes. This isn't paged, so --

1 it is page 5, I believe, but that big page, or  
2 page 2, part (b), under the heading, "Monday,  
3 January 22," and it has 1955, but I assume that  
4 would be 1855.

5 There is discussion between Governor  
6 Stevens, a Colonel Simmons of Seattle, was called  
7 the Chief of the Duwamish, et cetera, and then  
8 the statement:

9 "This done, Governor Stevens informed  
10 them that the treaty, in pursuance of the  
11 views previously explained to them, had been  
12 drawn up and would be read and translated to  
13 them. It was accordingly translated in jargon  
14 by Mr. F. Shaw, the interpreter, and then  
15 repeated in the Indian language by a  
16 Snohomish Indian named Blank, or John Taylor,  
17 who understands English also, and had been  
18 previously made thoroughly acquainted with  
19 its features. There is no doubt existing as  
20 to their understanding of the subject."

21 By "their understanding" I assume that  
22 they are talking about the Indians gathered at  
23 this treaty place. There is, of course, no indica-  
24 tion how well John Taylor understood English, but  
25 there is an indication that he did, and that by

1       implication had been previously made acquainted  
2       with the features of the treaty.

3               By "implication," I feel made acquainted  
4       in English.

5       Q    Are there any other additions, corrections that  
6       you care to make to any of the responses that you  
7       have made to the questions in your prepared testi-  
8       mony?

9       A    I believe not, sir.

10           THE COURT: Before we conclude that last  
11       one previous, namely, your answer beginning at  
12       the bottom of page 24, the sole instance, as I  
13       now understand from your present testimony, the  
14       sole instance indicating that an y Indian participat-  
15       ing in the treaty negotiations that had any acquaint-  
16       ance with the English language was this one  
17       instance that you specified.

18           THE WITNESS: That is the only one I  
19       have been able to find, yes.

20           THE COURT: Thank you.

21           MR. CONIFF: I believe, Your Honor, that  
22       I am prepared to move the admission of the testimony  
23       of Dr. Riley in the record as it has been modified  
24       and corrected, and I also note that there were  
25       objections presented by Mr. Pierson on behalf of

1 plaintiffs to certain portions of that testimony.

2 MR. PIERSON: First objection, Your  
3 Honor, appears on page 8, line 6, and the question  
4 really asks Mr. Riley to speculate about the  
5 intentions of the United States government and  
6 the United States Attorney's office.

7 I don't think he is competent to do that.

8 MR. CONIFF: I would submit it goes to  
9 the weight in that the witness is available for  
10 cross-examination, and he states, this is my  
11 understanding of the situation.

12 THE COURT: Well, to what extent do you  
13 know how the United States Attorney's office  
14 used your studies in this particular respect?

15 THE WITNESS: They used them.

16 THE COURT: I mean of your own knowledge  
17 now.

18 THE WITNESS: Of my own knowledge?

19 THE COURT: Yes.

20 THE WITNESS: In the opinions given in  
21 a number of cases, there are references on the  
22 part of the Commission to my studies. I assume  
23 that would be through the use of the --

24 THE COURT: Thank you. All right, that  
25 addition to this, the answer to the question,



1 of course, now clears the record.

2 MR. PIERSON: We withdraw the objection  
3 on page 21.

4 THE COURT: Very well.

5 MR. PIERSON: Withdraw the objection on  
6 page 22.

7 THE COURT: Very well.

8 MR. PIERSON: Withdraw the objection at  
9 lines 11 through 18 at page 29, and the objection  
10 made to the remainder of that page in the first  
11 five lines, the following page 30.

12 Withdraw the objection on page 30;  
13 withdraw the objection on pages 31, 32 and the  
14 objection on page 33, and that does away with  
15 the objections.

ET14 16 (Continued on next page.)  
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1 MR. CONIFF: I might be permitted, your Honor,  
2 there are two oral questions I would like to put to  
3 Dr. Riley so that his complete direct testimony may be  
4 in the record at one location.

5 THE COURT: Yes.

6 The witness' written exhibit, D-1, is admitted.  
7 (Exhibit Number D-1 for identifica-  
8 tion was admitted in evidence.)  
9  
10  
11

12 Q Mr. Riley, I want to read to you from the record in this  
13 case certain testimony given by Dr. Barbara Lane,  
14 which appears at transcript pages 1749 and 1750. I  
15 will read it for you now, commencing at line 16 on page  
16 1749. In this testimony, Dr. Lane is commenting upon the  
17 differences in her views as contrasted to yours as  
18 contained in your summary report, which is Exhibit  
19 G-21. She states:

20 "And the final sentence to which I object,  
21 with which I disagree, is 'if we apply the commonly  
22 accepted definition of tribes, that is a political  
23 land-using unit, to western Washington, then  
24 obviously the village was a tribe.'"

25 That quote, by the way, being from your summary.

1 Dr. Lane goes on to state:

2 "And to my mind, this is a ridiculous  
3 statement, because it would mean that on a stretch  
4 of Green River, for example, where you had perhaps  
5 eight or ten villages in a several mile stretch  
6 of river that you had eight or ten distinct tribes,  
7 and I don't think that that is a generally accepted  
8 characterization by anyone who works in this area,  
9 apart from Dr. Riley and whoever else may agree  
10 with him, but certainly among people who have  
11 published on the tribes that we are concerned with  
12 here, there is no place in the ethnographic  
13 literature that I know of where any anthropologist  
14 in modern times has said that each village was a  
15 separate tribe."

16 Would you care to comment on Dr. Lane's  
17 testimony?

18 A Yes. I do think a comment is necessary here.

19 Dr. Lane, I am assuming, had not seen this  
20 document, this defense Exhibit G-21, there before she  
21 says in her own summary report that she had not read at  
22 least a part of the material from the Indian Claims  
23 Commission.

24 I assume that she hasn't read this, because  
25 if she had read it, I believe she would have caught the

1 essential sarcasm in that statement.

2 I was trying in there -- and I tried all  
3 through my writings in that -- in those cases to point  
4 out that in the Puget Sound area, and generally in  
5 Western Washington, although there is one exception, but  
6 generally through Western Washington, the village was  
7 the largest political unit, the largest cohesive  
8 political unit.

9 Even the village had a very loose kind of  
10 political authority, but there was certainly nothing  
11 above the village.

12 I, therefore, was objecting to the rather  
13 casual use of "tribe" which was being done, and in terms  
14 of some of these cases, "tribe" usually meaning the  
15 people of an entire river, valley or an entire drainage,  
16 or sometimes people of an entire stretch of coast.

17 I thought that peoples in a river drainage  
18 did not have this kind of cohesion, it was unfortunate  
19 to call them tribes.

20 I would, however, point out as a kind of an  
21 anthropology lesson -- actually, I think Dr. Lane went  
22 on and pointed this out later on herself -- that there  
23 is nothing really sacred about this terminology, and  
24 particularly terminology like "tribe." It's almost as  
25 bad as a term like "rape." It can mean so many things to

1 so many people. I was trying to not use it, and I did not  
2 use except in these kinds of contexts, where essentially  
3 I was explaining something.

4 The other part of Dr. Lane's statement --  
5 I think Dr. Lane has unwittingly drifted into a kind  
6 of sophism here.

7 Would you read the last few lines of that  
8 again, so that I can comment a little, with this a  
9 little clearer in my mind?

10 Q (Reading:)

11 "And to my mind, this is a  
12 ridiculous statement because it would mean that  
13 on a stretch of the Green River for example where  
14 you had perhaps eight or ten villages in a several  
15 mile stretch of river that you had eight or ten  
16 distinct tribes, and I don't think that that is a  
17 generally accepted characterization by anyone who  
18 works in this area, apart from Dr. Riley and  
19 whoever else may agree with him, but certainly  
20 among people who have published on the tribes that  
21 we are concerned with here, there is no place in  
22 the ethnographic literature that I know of where  
23 any anthropologist in modern times has said that  
24 each village was a separate tribe."

25 A Perhaps one could find a statement such as this. But the

1 import of my point was that the village was the largest  
2 unit of political control, and there are a number of  
3 people who have agreed with that.

4 In fact, before the Indian Claims Commission  
5 cases started, it is my judgment that most people held  
6 that view; at least, in part.

7 A third section of Exhibit G-21, I cite a number  
8 who have worked in this area, senior and distinguished  
9 and highly competent people, who have worked generally  
10 in the western North American region. I have cited  
11 them supporting that position that I make.

12 Q Would you mind reading them for the record at this point.

13 A Without wanting to extend this very far, the statement  
14 of A. L. Kroeber, I think is germane here, page 3-2,  
15 the second paragraph:

16 "From Alaska to California there does not  
17 appear to have been a group that could be designated  
18 as a political unit other than what it is usual  
19 to call the village; that is, a settlement on one  
20 spot. These villages may often have been in a  
21 state of neutrality toward each other or even linked  
22 by peaceful trade, intermarriage, in participation  
23 in each other's ceremonies and festivals. But  
24 they were linked like nations of the civilized  
25 world, whose intercourse, however intimate, friendly

1           and long-enduring is always, as it were, in a  
2           condition of suspense because, built on nothing  
3           more than the occasions of the moment,..."

4           This goes even further than I would go, and  
5           I would not speak outside of the western Washington area.  
6           I do not think it completely applies to the Makah.  
7           I think that the Makah had a multivillage organization,  
8           as I have stated in a subsequent publication- but I  
9           certainly agree that it is true in western Washington  
10          in general.

11       Q   Do you have any further comments that you would care to  
12          make regarding Dr. Lane's testimony?

13       A   In terms of Dr. Lane's testimony?

14       Q   In terms of the testimony that we were discussing, the  
15          portion that I read to you.

16       A   I see. NO, sir.

17               MR. CONIFF: Therefore, your Honor, the  
18          testimony and the witness are available for cross  
19          examination.

20               MR. MCGIMPSEY: Your Honor, I have a few  
21          questions.

22               THE COURT: Mr. McGimpsey, did you have  
23          something to add?

## 1 DIRECT EXAMINATION

2 BY MR. MCGIMPSEY:

3 Q Dr. Riley, do you have any opinion as to what may have  
4 been the Indians' concern that the treaties assured  
5 them the right to take fish at their usual and accustomed  
6 stations?

7 A This, I think, was covered in my direct report.  
8 Certainly one concern was simply the concern that they  
9 have enough to eat, and that they be protected in this  
10 right, this basic human right, to have enough to eat  
11 in a period when they saw impingement of settlers  
12 increasingly on their land.

13 Q Were there any other --

14 A -- by "their lands" I mean Western Washington Territory  
15 generally.

16 Q Were there any other reasons that they might have thought  
17 to have been secured of their right to take fish at  
18 their usual and accustomed stations other than their  
19 own sustenance of food?

20 A Dr. Lane discussed at some length the commercial uses  
21 in this area as far as Indian fisheries are concerned.  
22 The data on that, I think, are somewhat mixed. There  
23 unquestionably, however, was Indian trade all through  
24 the area, and certainly trade was one of the factors.

25 Q Now, referring you to Exhibit MLQ-1, which is a report by



1 Dr. Paul Thomas, a history of salmon fishing at Canada  
2 and the Puget Sound, I will read to you at least a  
3 portion of that report that had been read to Dr. Lane  
4 and ask you to comment on it. The portion I am reading  
5 from is taken from page 1 at the beginning of the  
6 second paragraph:

7 "Consumption of Pacific salmon by whites  
8 began with the first visits of early Spanish, Russian  
9 and English explorers, when exchange with Indians  
10 allowed them to replenish their stores. Early  
11 settlers also traded with the Indians for salmon  
12 and, to a limited extent, fish to satisfy personal  
13 food requirements. However, any expansion of the  
14 fishery was limited by primitive techniques of  
15 food preservation available. Salmon could be dried,  
16 salted, smoked in a style of the Indians, or  
17 pickled in brine. Although there is evidence of  
18 shipments to South American in the 1840's, and to  
19 the Hawaiian Islands during the 1850's, most  
20 long distance transport left the fish unappetizing.  
21 Due primarily to the sparse settlement of the  
22 western states in the mid 19th Century, any large  
23 development of industry awaited more rapid  
24 transportation facilities and, far more important,  
25 better means of preservation. The development of

1 the vacuum sealed metal can fulfilled the latter  
2 requirement."

3 Can you comment on that as to whether you  
4 agree with that or disagree with that statement and  
5 whatever other comments you would like to make.

6 A To the limit of my expertise, I would agree with it.  
7 My studies on western Washington actually were not  
8 directed to this point. There is some incidental  
9 information on it that I can direct you to, the statements  
10 of Mr. Suckley which I think have already been discussed  
11 by Dr Lane, concerning the troubles of the Columbia  
12 River fishermen, whose fish tended to spoil.

13 I have no direct data on the shipping of fish  
14 to South America or to the Hawaiian Islands. I don't  
15 question in any way Dr. Lane's material on that from  
16 the newspaper files. However, it has been many years  
17 since I have gone over those early files, and I don't  
18 recall it of my own accord.

19 So, with these caveats, I would agree with that.  
20

21 (Continued on the next page.)'  
22  
23  
24  
25

1 Q Do you have an opinion as to whether the  
2 phrase "usual and accustomed places and stations"  
3 and the phrase "in common with" is used in the  
4 treaties and in the clauses respecting the reser-  
5 vation or securing of fishing rights were likely  
6 legal phrases?

7 A I have tended to assume that they were. I don't  
8 suppose I have given it much thought until it came  
9 up for discussion yesterday or the day before  
10 yesterday, whenever.

11 The reason I assumed it, I suppose,  
12 is two -- the reasons I assume are two, one is  
13 that the treaty documents themselves are, I suppose,  
14 in a general way legal instruments, any treaty  
15 document is.

16 Second, I agree with Dr. Lane that in  
17 all probability, Mr. Gibbs who was a lawyer from  
18 the east, from Massachusetts, I believe, was one  
19 of the very important people in drafting or in  
20 helping to modify a base document from which  
21 the Stevens party was working, and I would suppose  
22 I simply assumed that he would use legal language.

23 It seems to me very simple legal language,  
24 but legal nevertheless. However, remember, this  
25 is an anthropologists opinion on a legal matter.

1 Q From your studies, do you have any opinion as to  
2 what the parties understood by the term "usual  
3 and accustomed places" as used in those treaty  
4 clauses?

5 A From my own studies, I would believe that they  
6 understood "usual and accustomed places and  
7 stations" and "stations" of course implied to me,  
8 at any rate, a point. They understood these would  
9 be those areas and those individual spots where  
10 fish and other kinds of food was -- were taken.

11 I, in my own mind, I think I have always  
12 balanced "usual and accustomed places" to "unusual  
13 and unaccustomed" or some such negative phrasing  
14 that what the Indians usually -- where the Indians  
15 usually went to take salmon, let's say. This is  
16 what the treaty Commissioners and, I assume, the  
17 Indian parties to the treaty also meant by this  
18 phrase. That again is an interpretation.

19 Q It would be a restrictive phrase then, in your  
20 judgment?

21 A I can't see how anyone could agree in any light  
22 other than restrictive.

23 Q Do you have any opinion from your studies as to  
24 what the parties understood by that phrase?

25 THE COURT: Excuse me. If you are going

1 to a new subject, why do you think that "stations"  
2 refers to a point of land?

3 THE WITNESS: It seems to me that in  
4 the context of these times and in a treaty document  
5 "stations" Most likely referred to such things  
6 as fish weirs, places where a person could literally  
7 station themselves or a person could station himself  
8 and take fish, and I think that the distinction  
9 between the two terms "usual and accustomed grounds"  
10 and "stations" seems to imply somewhat a wider  
11 area, that is a contrary distinction.

12 THE COURT: In other words, a "station"  
13 for the most part, at least probably was some  
14 fixed -- or to some extent a fixed establishment  
15 as distinguished from other places which were usually  
16 used but did not have this kind of more or less  
17 permanent structure?

18 THE WITNESS: Yes, sir, usual and accustomed  
19 ground to me might mean a prairie where roots could  
20 be harvested or collected, or it might mean a  
21 hunting ground. A "station" to me would mean, as  
22 you say, a more fixed area and a point in a sense  
23 on a map as an area.

24 Q (By Mr. McGimpsey) In your opinion, did the use  
25 of the term "fishing ground" or "grounds" in

1 the context of the fishing clause of the treaty,  
2 would that have referred to areas where there  
3 might have been a casual or incidental fishing?

4 A I think it meant what it said, which was usual  
5 and accustomed, not casual and incidental.

6 Q So in the hypothetical that I put to Dr. Lane  
7 yesterday of a Nisqually making a trip from the  
8 Nisqually to a point in northern Puget Sound or  
9 on the coast, if that Indian were to have fished  
10 along his route, would that entire area that he  
11 would have fished be encompassed in the term  
12 "usual and accustomed ground"?

13 THE COURT: Don't you have to have another  
14 factor in that hypothetical, namely, that he  
15 only did that at rare intervals or something of  
16 the kind?

17 Q (By Mr. McGimpsey) That he did this rarely.

18 A Phrased that way, Yes, I would assume that to not  
19 mean usual and accustomed grounds.

20 Q Do you have any evidence of the tribes that were  
21 in the southern Sound area frequently making trips  
22 to northern Sound areas?

23 A There isn't much in the way of contemporary evidence  
24 for that. However, as Dr. Lane pointed out,  
25 the residents patterns and the idea of

1 out-marriage certainly made it happen on occasion.

2 I will give an anthropologist's answer  
3 to that, I will say that on the basis of what I  
4 know of this area, that people are more likely  
5 to marry close and establish kinship ties close  
6 than they are far, far away. But certainly there  
7 was an ideal about marriage, I feel reasonably  
8 certain it did happen.

9 Q Those instances where it happened, would you say  
10 that was an occasional event rather than a routine  
11 or regular intercourse?

12 A Well, you get into something else here, although,  
13 it isn't to my mind, at any rate, too completely  
14 understood. The kinship system and the reciprocal  
15 rights of kin may -- made people utilize each  
16 others areas within villages of a kinsman, and so  
17 I don't believe one could have -- make a blanket  
18 answer to that.

19 If, let's say, a person from the Lummi  
20 River and a person from the Nisqually River were  
21 married and moving back and forth, I feel that  
22 certain areas in the Nisqually River would  
23 certainly represent usual and accustomed grounds  
24 and certain areas in the -- I did say Lummi,  
25 I meant the Nooksack River, in the Nooksack River,

1 but I don't think the area inbetween would represent  
2 these unless there were still other factors that  
3 haven't been put into this model that you are  
4 here presenting to me.

5 Q Do you have an opinion from your studies on what  
6 the parties understood by the term "in common  
7 with" in the treaty clauses as that concerned  
8 fishing?

9 A Well, again I have always assumed that to be  
10 a legal term for the reasons I gave before in  
11 the "usual and accustomed" in my layman's knowledge  
12 of the legal term "in common with" based on my  
13 own holding of property and holding of property  
14 in common with people, it means pretty much what  
15 it means in common English parlance. It is a  
16 sharing, it is to be shared and to be shared with-  
17 out the idea of division.

18 MR. MCGIMPSEY: I have no further questions,  
19 Your Honor.

20 MR. RHEA: No questions.

21 THE COURT: Very well, cross-examine  
22 please.

23  
24 CROSS-EXAMINATION

25 BY MR. PIERSON:



1 Q Dr. Riley, just to follow up some of the oral  
2 testimony that you have just given and kind of  
3 working backwards, are you familiar with in your  
4 anthropological work the English common law concept  
5 called the Right of Common?

6 A The Right of Common?

7 Q Yes.

8 A The term was used earlier today, and I think I  
9 know what it means, but it is a layman's interpreta-  
10 tion of it and that is perhaps not what you want,

11 Q Well, it is what I want, I want whatever you bring  
12 to your understanding of the language "in common  
13 with," and maybe you can explain to us what your  
14 layman's understanding is.

15 A Now, give me the phrase again.

16 Q Right of common.

17 A Right of common. I would interpret the right of  
18 common to mean the right of more than one party  
19 to an area to utilize that area.

20 Q Are you familiar with that concept as applied  
21 in English, that is, British law, to the use of  
22 the waters of streams by abutting land owners?

23 A Mr. Pierson, You have just got out of my field.

24 Q So that the Court and you will understand, I am  
25 referring to an English, British concept of use

1 of the waters of an abutting land owner. Let's  
2 assume for the purpose of my question that the  
3 concept includes the right of owners on either  
4 side of the river to use the entire width of the  
5 river in common, and that is part of the conno-  
6 tation of the right of common.

7 Assuming that to be true, do you have  
8 any notion or understanding of whether that concept  
9 from British common law was ever applied in the  
10 language or used or intended by the United  
11 States Commissioners in their use of the term  
12 "in common with" in the treaties involved in  
13 this case?

14 A To the best of my knowledge, the term was not  
15 used. What was intended, I do not know.

16 Q All right. Do you know of that concept ever  
17 being applied, in your experience or understanding  
18 to the use of shore waters, that is, not streams  
19 but marine and tideland abutting waters?

20 A No, I do not.

21 Q Are you familiar with the common naval phrase,  
22 speaking of ships, as "being on station"?

23 A You might simplify things by simply giving me  
24 the definition, if you would, sir.

25 Q Let me give you an example in a fairly commonly

1       remembered political event, there were two  
2       United States war ships in Tonkin Gulf, and  
3       they were spoken of as "on station."

4               Now, they were moving about, but they  
5       were in an area of water, and I'm asking whether  
6       you are familiar with that phrase?

7       A.   In that context, yes. They were in a position  
8       to exercise the function aboard ships in that  
9       particular engagement, yes.

10      Q.   Would you describe their station as their area  
11      of movement or that place where they were situated  
12      physically at one particular second of time?

13      A.   I really don't know what one -- how one would  
14      describe their station, whether one would do it  
15      in terms of a fixed point or in terms of an  
16      enclosed area.

17      Q.   Let me ask you, if in use of that word "grounds"  
18      and "stations" in the treaties we are talking of,  
19      whether it is within your understanding probable  
20      or even possible that that spoke of an area of  
21      movement on the water and not some specific  
22      point?

23      A.   It is, of course, conceivable. I was simply  
24      asked to give an interpretation, I labeled it  
25      very clearly as a laymen's interpretation.

1 Q I'm asking you for your anthropological and  
2 layman's explanation in terms of research and  
3 experience that you have had and as you brought  
4 to bear on your response to that question, and  
5 my question is directed now just to the probability  
6 that that term "station" spoke of an area of  
7 movement on the water and not some specific place?

8 A The answer to that, sir, is I could not give you  
9 a probability answer, I would say that it is  
10 possible, I would also feel that the suggestion  
11 that I make responsible.

12 Q And have you undertaken in preparation for this  
13 case or in the Claims Commission cases that  
14 you spoke of have you ever consulted dictionaries  
15 contemporaneous with the time when treaties  
16 in this case were signed and ratified?

17 A About two weeks ago I consulted a dictionary,  
18 which I happened to have at hand, that dates  
19 from about 1875 on the term "usual and accustomed"  
20 and I compared it with the modern dictionary  
21 definition.

22 It was not very helpful as the definitions  
23 are very similar. I Did not use -- did not consult  
24 that same dictionary for the term "in common with."

25 (Continued on next page.)

1 Q Mr. Riley --

2 A I am sorry, sir, was this not your question?

3 Q Yes, you understood it correctly. Now, if I were to say  
4 to you that you could continue to go to the places  
5 where you had commonly gone, my question is in two  
6 parts.

7 Would that connote to you that you could go  
8 there with other people, or that you could go there  
9 as you usually had?

10 A I don't believe that the first connotation would  
11 necessarily follow at all. I believe that the second  
12 one would be the one I would --

13 THE COURT: I don't think you are answering  
14 the question. Repeat it now again, please.

15 Q If I said that you were permitted to continue to go to  
16 places or a place where you had commonly gone, as between  
17 the two alternatives I give you, which is the more  
18 probable connotation, that you could go there in common  
19 with others, or as you usually have gone there?

20 A Phrased as you have phrased it, sir, it would surely be  
21 the second.

22 Q Have you undertaken in your preparation for this  
23 case or for the Claims Commission cases that you have  
24 spoken of, to consult drafts of the treaty language, of  
25 the Treaty of Medicine Creek?

1 A I have, yes, on two occasions. One, I consulted all  
2 of the treaty and the ancillary treaty documents, or  
3 perhaps not all of them, but a large number of them in  
4 the early fifties, and I have within the last few days  
5 consulted a draft of the Medicine Creek Treaty in one  
6 of the exhibits of the plaintiff.

7 Q I wonder if the Clerk could show the witness PL-10A, and  
8 while she is doing that, Dr. Riley, if you can tell me  
9 whether according to your recollection, the language  
10 for the phrase "and accustomed" was the same in the draft  
11 as it was in the treaty?

12 A I would need to look at the draft.

13 THE COURT: Well, it is important. Do you  
14 recall that independently?

15 THE WITNESS: No, I do not recall it  
16 independently.

17 Q All right, the Clerk has shown you PL-10A, and counting  
18 one, two, three, four -- fourth page --

19 A Yes.

20 Q And I direct your attention to the first and second  
21 sentence there under Article 2, and I will read them.

22 "There is, however, reserved to use of the  
23 said tribes the following tracts, viz."

24 and there is a semicolon and a dash and the paragraph says:

25 "...the right of fishing at common and

1           accustomed places is further secured to them."

2           Now, having read that, is your opinion of  
3           the phrase, "usual and accustomed" any different than  
4           what you gave earlier?

5   A   No, this does not change the total situation at all.  
6           For one thing, this is a precis of the treaty. It is  
7           actually a draft.

8           The final wording and expanding came,  
9           obviously came later, since we have the final treaties.  
10          I suggest that what happened here, probably what  
11          happened in virtually all treaties, what happens in  
12          practically all documents of this sort, is that a rough  
13          draft is made, and then the language is carefully thought  
14          out and put in that would be appropriate to that treaty.

15          This -- if anything suggests to me that  
16          perhaps there are important legal meanings or there were  
17          important legal meanings at that time, which necessitated  
18          certain preciseness of language, if you follow me, sir.

19   Q   I do.

20   A   Yes, if, in other words, I would ask this question, if  
21          I may, why do we have a rough a draft, and then why do  
22          we have a series of changes which spot certain words.  
23          The answer to me, and I am again -- let me say that I  
24          am giving you layman's answers to legal questions, and  
25          I hope this is sufficiently shown in the record --

1 Q I just want the answers in the same vein that you gave  
2 them when Mr. McGimpsey was questioning you.

3 A I tried to give them in the same vein with him. Again  
4 and again, several times it has been pointed out that  
5 I was not the legal expert, but it seems to me that  
6 what we have with these treaties is the kind of thing  
7 that we have with a doctoral dissertation or with any  
8 government document, that one must start with a draft,  
9 and the draft almost never is the same as the final  
10 document.

11 Q Let me ask you then directly, if as you understand the  
12 history, anthropologically then from circumstances  
13 which preceded the signing and drafting of these treaties,  
14 whether that word "common" as used in the phrase  
15 "fishing at common" is any different than the term in  
16 the treaty which is put in place of it, "usual".

17 A I am sorry, sir, would you -- we are still on Section 2,  
18 is this correct/

19 THE COURT: Rephrase the question.

20 Q Article 2 says, after the viz, "The right of fishing at  
21 common and accustomed places," and I take it that  
22 "common" was replaced by the word "usual". Assuming  
23 that would be true, according to your understanding of  
24 the instance from which the eventual treaty arose,  
25 does that word "common" differ from the meaning of "usual"



1 as found in the treaty?

2 A I really don't know. I would suggest from an editor's  
3 viewpoint, one reason why "common" may have been dropped  
4 out, and that is that common, like so many English  
5 words, has several meanings, and there is another part  
6 of the treaty which deals with the term "in common with."

7 I think probably the treaty writers, who were  
8 some of them literate men, were trying to turn out a  
9 literate treaty.

10 THE COURT: Would you say, Doctor, that the  
11 very fact that another word was the word that was  
12 finally used, that those who selected the second word  
13 thought it better described what was intended to be said  
14 than the word they had replaced?

15 THE WITNESS: The word "usual" better  
16 described than the word "common," I think is also a very  
17 good possibility.

18 THE COURT: Doesn't there appear to be  
19 at least the first absolutely certain thing that we know  
20 about that?

21 THE WITNESS: Sir, that they considered it?

22 THE COURT: We certainly know that they  
23 abandoned "common" and put in "usual." That we know  
24 beyond peradventure, don't we?

25 THE WITNESS: Yes, sir.

1 THE COURT: Isn't it clear from that very  
2 circumstance itself that the people who drafted it thought  
3 that word better described what they intended in the  
4 treaty than the word they had previously used?

5 THE WITNESS: Yes, sir, there is no question  
6 of it.

7 THE COURT: I don't see how it could be  
8 debated, even.

9 THE WITNESS: I believe the question that Mr.  
10 Pierson had for me is why did they think it better.

11 THE COURT: Well, I didn't understand him to  
12 say that.

13 MR. PIERSON: My question was, whether they  
14 meant the same thing, and I think the Court understood  
15 what the thrust was.

16 Q Now, I think also in your answer you indicated that the  
17 reason for the new language, or the more refined language  
18 was because the treaty drafters' understanding of the  
19 need for the preciseness of language in the final treaty;  
20 is that an accurate statement?

21 A I don't believe I said precise. Preciseness. I really  
22 don't remember the words that I used, but what I was  
23 trying to get at was that they were trying to -- well,  
24 all right, let me accept your word, "preciseness,"  
25 whether I used it or not, if I may do that.

1 Q And do you have any evidence that the Indian parties to  
2 the treaty appreciated or understood the need for such  
3 preciseness of language in the final document?

4 A I have no such evidence, and I would doubt if they  
5 appreciated this kind of thing. They were not acquainted  
6 with the uses of American practices of this sort.

7 Q I believe you mentioned in one of your answers about the  
8 exhibit MLQ-1, the authority by name of Suttles. Was  
9 that the one you referred to?

10 A Yes, sir, that is one of the plaintiffs' exhibits,  
11 Plaintiffs' Exhibit Number --

12 Q Well, the number is unimportant.

13 A Yes, it is an exhibit.

14 Q And is it accurate to say that there are portions, at  
15 least of Dr. Suttles' work that you find reliable in  
16 an anthropological sense?

17 A Well, I make no such statement, and I don't see how one  
18 could draw any such inference.

19 What I said was that although I had not read  
20 very extensively on this matter of commercial fishing  
21 in this period, I did remember the statement from Suttles  
22 about the tendency of salmon to spoil or go bad when it  
23 was shipped from the Columbia, by Columbia River  
24 entrepreneurs. I don't quite see how one can draw any  
25 larger conclusions than that.

1 Q The name was Suttles?

2 A I am sorry, Suttles.

3 Q And I believe also in answer to a question by Mr.  
4 McGimpsey, you said that two of the reasons for the  
5 Indian concern that they continued their right to fish  
6 was Indian trade.

7 Would you tell the Court what you mean by  
8 Indian trade?

9 A Yes, I can. There was unquestionably a very considerable  
10 trade in Western Washington, and a series of materials --  
11 it was probably most highly developed among the Makah,  
12 the southern-most of the Nootkan Tribes, but it also  
13 affected all of the other Indians.

14 There is a great deal of material by Dr.  
15 Lane which has been put into evidence in terms of this  
16 trade. I would add that it seemed to have affected all  
17 of the groups, all of the groups that we know anything  
18 about, and a number of the items were traded.

19 Q Let me stop you, if I may, a minute.

20 A Certainly.

21 Q The people involved in the trade, are you speaking just  
22 of trade among Indians, or are you speaking of trade  
23 that at one point or another involved non-Indians?

24 A I was speaking here of trade among Indians. There is  
25 some documentation, of course, trade to non-Indians by

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Indians.

Q Is there evidence of trade from non-Indians to Indians?

A From non-Indians to Indians? Oh, yes, yes. I draw your attention to the Hudson Bay operation on the Nisqually, in which trade went both ways, extensively, a kind of fur trading operation throughout the western seacoast area of North America on the part of Hudson Bay Company, and they in turn traded processed goods to the Indians.

(Continued on the next page.)

ET17

1 Q In your oral testimony in response to questions  
2 from Mr. Coniff, you said you believed that it  
3 was accurate to say that the largest unit  
4 of political control was the village.

5 Could you itemize for the court, please,  
6 the incidents of the political control you were  
7 speaking of?

8 A Political control, first of all, was very weak  
9 and did not operate in the sense of political  
10 control as we know it in a modern nation of a  
11 larger, more complex society.

12 Now, may I ask a clarifying question?  
13 When you say "itemized" what do you mean?

14 Q Well, let me give you some examples of what I  
15 would consider incidents of political control and  
16 have you comment on them and add some more,  
17 if you will:

18 The ability to control access to areas  
19 on the earth, either in water or on the land;  
20 the ability or the apparent capability of controlling  
21 the behavior of members; the ability or apparent  
22 capability of directive activities, such as a weir  
23 site, such as raiding points.

24 I would like you to itemize what you  
25 think are the incidents of political control

1 in which you say the village was the largest  
2 unit.

3 A Again, let me preface it by saying that it was  
4 weak and diffuse.

5 In terms of warfare, there were individuals  
6 who had war power, guardian spirit power, that  
7 made them great warriors. In the sporadic and  
8 intermittant raids which are described in Gibbs'  
9 1877 reports, some other things, these individuals  
10 from particular villages led war parties, either  
11 direct raids or in retaliatory raids.

12 There is some economic activities the  
13 villages controlled, although the mechanism of  
14 control may have been focused on houses within  
15 villages, longhouses, that is, multi-family  
16 houses.

17 Then essentially the villages controlled  
18 the weir sites, fish trap sites, near which many  
19 of the villages were constructed.

20 Let me add another statement here just  
21 to make sure we are all clear: You are asking  
22 me, of course, to give a very simple answer to  
23 a very complex situation.

24 One of the things that you may be asking  
25 me to do -- and I would be very happy to do it --

1 is to distinguish between a village and a house  
2 group. Often they were the same thing; that  
3 is, a village was made up of one house, in which  
4 case we had no conflicting interests. If villages  
5 were made up of more than one house, the tendency  
6 was for a particular fish weir area where fish  
7 were taken, whether they are weirs or not, the  
8 construction would be the function of a house  
9 group rather than a village. But the village  
10 had, by reasons of village bonds, had more or  
11 less free access to these.

12 What other incidents, we talked about two?

13 Q You named, in addition to your qualification that  
14 the structure was weak and you have added, one,  
15 that there were guardian spirit-type people who  
16 directed warfare activities and that there were  
17 village-directed economic activities.

18 What others can you think of?

19 A Religious activities, focused on the village;  
20 that is, winter activities, where it appeared  
21 the operation of the secret society would function  
22 where potlatches would be given. Potlatches were  
23 primarily village affairs.

24 So, we have economic, religious, warfare,  
25 and social.



1           Even at a village level, authority  
2 was quite weak. This is a problem which the  
3 government Commissioners and the Indian Agents  
4 saw and had to deal with very, very early.

5   Q   Notwithstanding the fact that you admit that  
6 they didn't fully understand the structure?

7   A   They understood, and there were statements to  
8 that effect. They understood that the lines  
9 of authority were very weakly developed, and this  
10 was a constant problem with them in the early  
11 years, particularly around the period of the  
12 Indian wars. They had had no one to turn to  
13 when an Indian committed a crime against a settler.  
14 They found that they could not demand of any  
15 individual or any group, really, that that  
16 person be turned over to the settlers' American  
17 law for trial, and this was a major reason, one  
18 major reason, for the continuing emphasis on  
19 Chiefs, who were intended to be, among other  
20 things, agents of the government to the extent  
21 that they could control their population.

22   Q   Dr. Riley, what I'm really after is the political  
23 structure among the Indians, and not with respect  
24 to their ability or lack thereof to demonstrate  
25 political authority to non-Indians.

1                   Now, let me ask you whether kinship  
2 structure is an incident of political control that  
3 you were speaking of?

4     A. No, Kinship structure is outside of political  
5 control as I have described it to this area.  
6 Kinship structure in this area cross cut the  
7 villages and often cross cut boundaries. We  
8 have already gone over that.

9                   Kinship gives certain other kinds of  
10 rights and certain other kinds of responsibilities.

11                  Yes, there was one area in which one  
12 might say that kinship functioned in a quasi  
13 political way, and that was the area of retribution.

14                  When a person had something done to  
15 him, it was not so much the village group that  
16 was involved in responding to this; it was the  
17 kin group. The kin group might be split out  
18 very widely.

19     Q. Wouldn't you say that was very often the case?

20     A. What did I say? That the group is spread out  
21 widely is very often the case?

22     Q. Was often the case of these tribes at treaty  
23 times.

24     A. Often is probably too strong a word, Mr. Pierson.

25     Q. Let's turn the question around. How often was

1 it that the kinship ties were confined to the  
2 village unit?

3 A To the village unit?

4 Q Yes.

5 A I don't think anyone has any real evidence on that  
6 as far as quantitative evidence is concerned. The  
7 ideal was out-marriage.

8 Q Now, you said that one of the incidents of political  
9 control was religious activities and potlatches.

10 Did these always involve a single  
11 village?

12 A They focused on a single village and they did  
13 involve a single village in the primary sense  
14 of the word. They also involved, however, outsiders  
15 of kinship groups who would come in from other  
16 villages and who might contribute to potlatch.

17 I think we have to make a distinction  
18 here between two different concepts, a distinction  
19 between the village as a territorial unit and  
20 the potlatch giver as the head or a member of a  
21 kin group.

22 Village as a territorial unit in the  
23 Western Washington area was the host organization  
24 for a potlatch. But the giver of the potlatch  
25 was usually a wealthy man with a large number of

1 kin, some of whom might be in the village and  
2 some of whom might not be. People from outside  
3 the village would come to the potlatch, although  
4 the data is not very clear on this. We have  
5 virtually no contemporary data on it.

6 From later data I would feel that they  
7 would go to the potlatch, not as potlatch guests  
8 but as members of the family giving potlatch.

9 Q As to economic activities, let's speak of large  
10 fishing parties, large weir, large fishing, let's  
11 say, in Commencement Bay of what we have heard  
12 before.

13 Did these always involve only one village?

14 A They did not involve multiple villages. They  
15 may have involve families drawn from several  
16 villages which might change year after year, by  
17 the way.

18 Q In fact, isn't it true that most of the population  
19 native population in Western Washington that  
20 we are talking about was confined in villages?  
21 as a unit mostly during the winter, and that when  
22 the summer and the warmer weather came, the  
23 families went many different ways?

24 A They were confined to the winter villages during  
25 the late fall, winter and early spring months,

1 from mid-spring through mid-fall.

2 They did go out, these villages members,  
3 as individual families, often meeting families from  
4 other villages who might or might not be kin, and  
5 pursue summer economic activities.

6 However, the village was important  
7 in that it was the focus for the winter storage  
8 of food. It was a primary area for certain of  
9 the important economic activities, particularly  
10 the catching of salmon, and, of course, a focus  
11 for the winter ceremonials.

12 In all likelihood, villages were not  
13 deserted during the summer. Some people would  
14 choose to remain in the village. We do not have  
15 an exodus, a great scattering in all directions,  
16 during the spring and then a coming back during the  
17 fall.

18 Marian Smith in her study of the Puyallup-  
19 Nisqually believes that most of the travel of  
20 these families on their summer expeditions was  
21 up and down the rivers to visit the prairies higher  
22 up and to visit the coastal areas lower down.

23 Q And up and down the river they would join members  
24 of the other villages?  
25

1 A They would join other families.

2 Q Now, you say that one of the principal incidents  
3 or functions of a winter village was the storage  
4 of food.

5 Do you know of any cases where the  
6 villages or the families of these various fillages  
7 borrowed food stores or exchanged food stores?  
8 Let's confine it to the same river draingge  
9 area.

10 A I'm not sure, sir, that I see the thrust of your  
11 question. There certainly was trading food.

12 Q Was the storage of food you are speaking of  
13 confined to the use of those people that lived  
14 in that single village?

15 A For the most part, yes. But with the hospitality  
16 situation in Western Washington certain amounts  
17 of it would inevitably be consumed by people  
18 from outside the villages.

19 Q One of the first incidents you spoke of was  
20 warfare being led by a person who had some  
21 guardians function.

22 Did this warfare, to the extent it  
23 ever existed, involve families and people from  
24 more than one village?

25 A The village was a focus for war parties. In

1 warfare, however, first of all the data is  
2 not very clear. The data that we do have, some  
3 from the Lummi for example, seems to be describing  
4 village warfares.

5 My own feeling is that the demands  
6 of family reciprocal responsibilities, would,  
7 at least, on occasion, pull some families in  
8 from the outside.

9 I don't think one should put too much  
10 emphasis on this because I do not believe --  
11 and I have developed this in previous testimony  
12 before the Claims Commission -- I do not believe  
13 that warfare had a very important part in the  
14 lives of Western Washington Indians.

15 Q I am citing that incident of political control  
16 which you called warefare, and my question was  
17 was it always the case that warfare was confined  
18 to the families in the single village unit?

19 A I would really have relatively little evidence  
20 on that, but I would say and did say in my  
21 answer to you previously no.

22 Q You cited one authority for your statement that  
23 the village was basically the tribe as you  
24 explained it, and that was Kroeber; is that  
25 correct?

1 A Yes.

2 Q And do you know whether Mr. Kroeber did any  
3 feel work in the Coast Salish area?

4 A I don't believe Kroeber did, but Kroeber lived  
5 a long time and did a lot of field work in a  
6 lot of places. So, I'm not absolutely certain  
7 of it.

8 Q Do you know what authority Mr. Kroeber relied on?

9 A Kroeber was one of the real giants of anthropology,  
10 kind of an equivalent of, let's say, Sigmund  
11 Freud in psychiatry. He had a tremendous ability  
12 to synthesize.

13 His field work was rather varied. He  
14 worked with California Indians. He worked in  
15 the plains. He read virtually everything that  
16 was written. He was a student of Boas, who  
17 worked throughout the northwest coast.

18 I think that kind of answer really  
19 answers your question.

20 Q You mean your answer is you don't know what  
21 authorities he relied upon?

22 A My answer is that he probably relied on every  
23 person who ever wrote up to the time he put  
24 this particular thing down.

25 Q I'm really asking you for your understanding,



1 whether you knew or know what authorities he  
2 relied on.

3 A Yes. My answer to you was that in all probability  
4 everyone. We are not dealing here with a --

5 THE COURT: Do you mean by that that  
6 that would have been simply an oral contact and  
7 not in any documentary form?

8 THE WITNESS: No, sir. What I mean  
9 is that Dr. Kroeber was for many, many, many  
10 years the premier anthropologist of the western  
11 United States from his position at the University  
12 of California at Berkley.

13 From that position he trained  
14 or helped train many of the anthropologists who  
15 later went on to become northwest coast experts.  
16 He was involved, for example, with Dr. Drucker  
17 and many others.

18 In light of that and in light of his  
19 known monstrous ability to absorb information, I  
20 simply replied to Mr. Pierson that Professor  
21 Kroeber in all probability had read everything  
22 that was ever written and that he based his opinion  
23 on a vast scope of reading, and on trips and the  
24 like.

25 The question before that, the narrower

1       that Mr. Pierson asked me was whether Dr. Kroeber  
2       had done any field work in the Western Washington  
3       area, and I said that I did not think so,  
4       but that I didn't really know because he had done  
5       so much in so many places.

6               THE COURT: All right.

7               (Continued on next page.)

Et18

1 Q Dr. Riley, just to test your statement that the village  
2 was the largest unit of political control, let's assume  
3 a hypothetical whereas, the man in Village A has  
4 kinship ties with people in Village B, and let's assume  
5 for the sake of the hypothetical it is the same  
6 drainage, and that this man in Village A is drawn to  
7 Village B and the leader in Village B, for warfare  
8 purposes involved the kin of his wife, just assume these  
9 things, and his wife refuses to follow him in his pursuit.

10 Now, what I want to do is to have you comment  
11 on that hypothetical, keeping in mind, and I am asking  
12 you whether kinship ties ever surmounted or superseded  
13 ties or the control of the village unit.

14 A I can answer that in two parts, the first part is directed  
15 to your hypothetical question, I do not believe we have  
16 at this time enough evidence one way or the other to  
17 answer it.

18 However, the second part of your question,  
19 which is, I think, what you are really getting at, I do  
20 believe there were times when kinship obligations  
21 superseded village obligations.

22 I have always contended that the village ties  
23 were -- that the system of authority in Western  
24 Washington was very weak.

25 Q Dr. Riley, how many times would you estimate you have

1 testified under oath in legal proceedings as an expert  
2 anthropologist?

3 A Would a ballpark guess be satisfactory?

4 Q Yes.

5 A IF I said a dozen would you hold me to that very closely?  
6 I don't really remember it.

7 Q No, I wouldn't hold you to it closely.

8 And in any of these times when you have  
9 testified, have you ever testified on behalf of Indians  
10 making claims?

11 A I have never testified on behalf of anybody. I have  
12 simply given, to the best of my knowledge, what the  
13 situation was.

14 THE COURT: Called at the instance of, would  
15 you go for that?

16 THE WITNESS: At the instance of being paid  
17 by, in other words, yes, not being paid by Indians, no.

18 Q (By Mr. Pierson) And the times when you come to testify  
19 in these some dozen odd instances, have you been paid  
20 for your professional services in addition to the normal  
21 witness fee?

22 A I don't believe I have ever received a witness fee.  
23 My contractual arrangements I had with the Department of  
24 Justice called for me to research, prepare a position  
25 and be prepared to testify on given questions, given tribal

1 areas, given groups, and given questions about those  
2 groups, and that I was simply paid on a daily and per  
3 diem rate.

4 Q What was your daily rate?

5 A It varied with time, it started out in 1952 at \$21 a day  
6 plus whatever the per diem was at the time. It was  
7 raised at some point in the mid-fifties to \$35 a day,  
8 and in the early sixties to \$50 a day.

9 Q Directing your attention to the contractual arrangement  
10 that you entered into for the purposes of this case,  
11 when did you enter into your contractual duties, what day?

12 A I believe it was the 14th of March, at any rate it  
13 was in March.

14 THE COURT: Of this year?

15 THE WITNESS: Of 1973, yes, sir.

16 Q (By Mr. Pierson) And what were the financial arrangements?

17 A I was to be given a fee of \$250 a day for research,  
18 \$300 a day for appearance in court, plus expenses.

19 Q Can you give the Court an estimate over and above  
20 expenses of how much money you have earned on this case  
21 since March, 1973?

22 A Yes, something like -- something between \$7000 and \$8000.

23 THE COURT: How about an afternoon recess?

24 MR. PIERSON: Fine your Honor.

25 THE COURT: I think we should try to go a little

1 bit longer than three today. I am primarily thinking of  
2 Dr. Riley, since he took the stand just a relatively  
3 short time ago, he would probably prefer to go a little  
4 bit later this afternoon, rather than stretch it out  
5 tomorrow.

6 THE WITNESS: Yes, sir.

7 THE COURT: My crystal ball is working.

8 (Laughter in the courtroom.)  
9

10 (Continued on the next page.)  
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ET19

1 THE COURT: Continue, please.

2 Q Dr. Riley, have you had an opportunity to read the reports  
3 of Dr. Lane which are entered as USA-20 through 30?

4 A Yes, sir, I have.

5 Q I would like to direct your attention to the Skokomish  
6 report, and that is Exhibit, USA-23. Before you turn  
7 to the page, let me ask you, Dr. Riley, are you familiar  
8 with the work by Mr. Elmendorf on the Coast Salish  
9 culture?

10 A Yes, I have read it. It has been numbered.

11 Q Have you read his 1968 monograph entitled "The Structure  
12 of Twana Culture"?

13 A I think that is what I am referring to, is it not? It is  
14 his dissertation that I am talking about. I think it is  
15 called "The Structure of Twana Culture."

16 Q Dissertation?

17 A Yes.

18 Q Turn --

19 A Pardon me, sir. Let me stress it has been a number of  
20 years.

21 Q I understand. Let's turn to page 23. Page 23 is a map  
22 marked "Appendix 1." I would like to direct your  
23 attention down to the number 6A which is up on the  
24 Skokomish in the lake area, 6B, 6C, 6D, 6E, all of which  
25 are on the Skokomish, proceeding down the river, and 6F,

1       which is on Hood Canal and ask you if you are familiar  
2       with those locations as set forth and analyzed by Dr.  
3       Elmendorf.

4       A    I have only a very general familiarity with them. I was  
5       at one time, during the lawsuits, on the Skokomish.

6       Q    Isn't it true that Dr. Elmendorf undertook in his  
7       monograph and dissertation to outline the village  
8       structure of the Skokomish or Twana?

9       A    Yes, among other things. Also he studied the economic  
10      situation.

11      Q    And isn't it true that he marked those sites, 6A through  
12      6F, as discreet winter village sites?

13      A    The map caption would indicate that, a triangular winter  
14      village site, yes.

15      Q    Isn't it true that all of those six village sites came  
16      together as one unit to operate three different weirs  
17      for fishing the Skokomish River?

18      A    I am less certain of that, at least in the period for  
19      which we are dealing -- that is, the period of the treaty.  
20      The evidence as of treaty times, the documents that  
21      surround the treaty period do not so indicate.

22                Dr. Elmendorf's work was much, much later.  
23      Of course, he is approximately my age.

24      Q    Isn't it true that Dr. Elmendorf said that all six of  
25      those communities getting together and in common operated



1 six or three separate weir sites on the Skokomish River?

2 A I don't recall it, but I will accept your word for  
3 it, sir.

4 Q Okay, accepting that, would you say that each of those  
5 sites in your use of the term "village" was a village  
6 or that the village encompassed the entire area  
7 surrounding and embracing those six sites?

8 A You are asking a hypothetical question or --

9 Q I am asking you a question about Elmendorf and directing  
10 it to your understanding and your use of the term "village"

11 A Yes.

12 Q Especially when you say it is the highest unit of  
13 political control, and I want to know whether your term  
14 "village" would be applied to each of those six sites  
15 or to the area embracing all of them.

16 A Yes, I do talk -- I don't know if I do it in the report  
17 or not.

18 THE COURT: Can you answer the question directly  
19 first, and then give your dissertation afterwards?

20 A Yes, sir. The answer to the question is that I do not  
21 feel there is sufficiently clear material or clear  
22 evidence for me to make a definitive answer. My  
23 clarification, my addendum to this would be as follows:  
24 I do, in various testimony for the Claims Commissioner,  
25 perhaps also in this report, mention the possibility of

1 an extended village, in which you had houses scattered  
2 out over a certain area of the river, and I think we  
3 may have a few examples of this type.

4 Now, this is a little too extended, it seems  
5 to me. It is possible that since Puget Sound counted  
6 Puget Sound Indians in general, and Hood Canal had a  
7 rather, a kind of social, had a kind of social system  
8 that was rather, I can't find the word I am grasping  
9 for here, but rather unformed, let's say -- it is  
10 possible that this might have been an exception.

11 If it was an exception then either the  
12 population figures are very wrong for this area, or these  
13 are extremely small "villages" because the population  
14 lists in the 1855 period are in the nature of 200, 250  
15 for this area.

16 Q Do I understand your answer to be that you can't say  
17 whether your sense of the term, the entire area is the  
18 village, or each unit is the village?

19 A I don't think the evidence is sufficient at this late date.

20 Q Are there any villages, as you would use the term, in  
21 the Coast Salish area, about which you have less evidence  
22 than what Elmendorf has given you for the Skokomish?

23 A About which I have less than I have had --

24 Q That is correct.

25 A I am sorry, the phraseology, the phraseology of that

1 question tends to escape me.

2 THE COURT: The counterpart to it was the  
3 other way around.

4 MR. PIERSON: Well, I would prefer not to.

5 Q I am inquiring in your generality about this village  
6 being the highest political unit in Coast Salish culture,  
7 and I want to know whether in your mind there are any  
8 villages or settlements or sites which would be embraced  
9 in your generality about which you know less than Dr.  
10 Elmendorf has told you about Twana culture, and sites  
11 and villages of the Skokomish.

12 A I am sorry, I am obviously very logy right now, because  
13 I still don't understand the import of your question.  
14 Perhaps I can phrase it and see if I have it right.

15 You are asking me if there are village sites  
16 in this Western Washington area about which I know less  
17 than I know about Dr. Elmendorf's village sites.

18 THE COURT: From the data that he has given you,  
19 of course.

20 Q That is correct.

21 A I see, yes, there is a smattering of documents that  
22 relate to village sites in various parts of the rivers  
23 in the Upper Sound, going back to Hudson Bay documents,  
24 and I would say that I still have this backwards.

25 I would say that we would know more about them

1       than we know about the Skokomish village sites.

2               The Skokomish weren't really all that well  
3 known at treaty time. There is a very interesting map  
4 that Dr. Lane recently discovered which I had never  
5 seen. Apparently she had never seen it until very  
6 recently, Gibbs' sketch of the Upper Skagit with the  
7 Semiahmoo village.

8               I would say that we would be, we could  
9 depend on knowing where that was at the juncture of the  
10 Suak and Suiattle, of the Skagit and Suak Rivers.

11 Q   My question really is, Dr. Riley, are there any settlements  
12 sites, villages, whatever you want to use the term,  
13 whatever term you want to use, which would be embraced  
14 within your generality about Coast Salish culture,  
15 about which you have to your understanding less evidence  
16 concerning their political structure, their social  
17 structure than you have from Elmendorf about the  
18 Skokomish and the Twana?

19 A   Oh, I see what you mean now. Yes.

20               THE COURT: Your answer is yes. You said  
21 yes, and I wasn't sure whether you meant the yes to be  
22 that you now understood it.

23 A   Yes means that I now understand it, I think.

24               THE COURT: What is your answer to it?

25               THE WITNESS: My answer to it is that the question

1 really doesn't have much meaning, because it is the  
2 nature of the evidence, and not the physical counting  
3 of the evidence.

4 Q Meaning by better evidence and worse evidence, in your  
5 evaluation?

6 A I think in terms of the placement of village sites,  
7 there are two primary kinds of evidence. One is the  
8 evidence of archeology, the other is the evidence of  
9 contemporaneous documents and maps and the like.

10 A third kind, which is almost -- perhaps not  
11 almost as good, but which is good, is the memory of people  
12 who were at the scene at the time and wrote about it later.

13 The fourth kind of evidence is the memory  
14 of people who had it told to them, and what we are dealing  
15 with, the Skokomish, primarily, is a fourth and even  
16 fifth kind of evidence, of people who had it told to  
17 them, who had it told to them.

18 Even so, it is my belief that there is more  
19 validity from informants' evidence or this kind of  
20 evidence than there is of certain other kinds.

21 Q Let me see if I can ask my question with one change of  
22 terminology. Are there any village sites, settlements,  
23 embraced in your generality about a village being the  
24 highest unit of political control in Coast Salish  
25 culture, about which you have worse evidence than you

1 have about the Skokomish sites given you through  
2 Elmendorf?

3 A I would have to take that question under advisement,  
4 sir, because I am still uncertain I understand it.

5 Perhaps if his Honor explained it to me.

6 THE COURT: Well, I don't think I should  
7 intrude into the interrogation at this point. I have  
8 some ideas about it, but --

9 Q I take it you can answer the question?

10 A I simply don't understand the question.

11 Q Let me see if I can tell you where I am going.

12 One of the reasons you can't reach a judgment  
13 about whether all six of these sites, villages, or  
14 whether each one of them is a village, is because you  
15 say you don't have enough evidence.

16 What I want to know is, whether there are any  
17 sites that you specify and embrace within your generality  
18 about which you have worse evidence or less?

19 A Yes, I am sure there are sites upon which we have  
20 no evidence whatsoever, virtually no evidence whatsoever.

21 Q And your generality would apply to them, if they are  
22 in the Coast Salish area, and in the area of this case?

23 A Yes.

24 ET19

25 (Continued on the next page.)

1 Q So, directing your attention to the testimony you gave  
2 and others gave in the Claims Commission case involving  
3 the Quinault, is it accurate to say --

4 MR. CONIFF: Objection, your Honor. I  
5 believe that we agreed to limit the testimony of this  
6 witness to the tribes on which Dr. Lane has presented  
7 reports in the green bound volumes, USA-20 through 30  
8 and we have agreed to set the Quinault apart until Dr.  
9 Riley has had an opportunity to review her report.  
10 USA '53.

11 We are going to handle that matter, I believe,  
12 next week.

13 MR. PIERSON: I am not going to ask him anything  
14 about the report of Dr. Lane on the Quinaults.

15 THE COURT" Let's hear the question, and then  
16 I will make a judgment. You, too, make a judgment  
17 whether you feel it falls within the area of your under-  
18 standing.

19 MR. CONIFF: Very well.

20 Q (By Mr. Pierson) Would it be accurate to say, Dr. Riley,  
21 that in that case there was a dispute between you and  
22 at least two other anthropologists concerning your  
23 definition of a village and its political structure?

24 A Yes, of course, it would be accurate to say that.

25 Q And isn't one of the authorities Dr. Olson, whom you cited

1 in your direct testimony?

2 A I'm not sure of that. As far as I know, Dr. Olson and  
3 I never had dealings in terms of Indian Claims  
4 Commission. I don't believe I have ever met Dr. Olson.

5 Q You were not at the Indian Claims Commission case  
6 involving the Quinaults at which Dr. Olson testified?

7 A I was not at the case in which he testified. I was  
8 involved in the case at one point. That is true.

9 MR. PIERSON: Excuse me a minute, your Honor.

10 Q (By Mr. Pierson) Directing your attention to your  
11 written testimony at page 26, do you have it?

12 A Yes.

13 Q Line 22. You are speaking of the concept involving  
14 ownership of individual stretches of land and beach:

15 "This concept"-- which you are commenting on --  
16 "is also echoed by people like Olson (1936) who  
17 speak of the Quinaults, nearby neighbors of the  
18 Makah."

19 Now, is not that the Dr. Olson that testified  
20 in the Quinault Claims Commission?

21 A Yes, that's the same Dr. Olson, that's not what I'm  
22 citing. Olson (1936) is Olson's book called The  
23 Quinault.

24 Q Are you aware that Dr. Olson was called upon to present  
25 part of his work from his book in the Claims Commission



1 A I don't really remember anything about that case at  
2 this time, and I do not have available even copies of  
3 my own report on that case.

4 I now understand the drift of your question  
5 and I will answer it, probably to your satisfaction.

6 Q Why don't you let me ask the question I was after.

7 A Okay.

8 Q Isn't it true that Dr. Olson, whose authority you cite  
9 on page 26, testified in the Quinault Claims Commission:

10 "...and he is speaking of the Quinaults and  
11 where their villages were up and down the rivershed,  
12 that the villages were not autonomous,  
13 completely so, perhaps in the sense that our New  
14 England villages are autonomous. You have your  
15 village council, your village meeting. The New  
16 England village runs its affairs orderly, but there  
17 was authority above -- and so it was, I think, with  
18 the Quinault villages. For most ordinary affairs  
19 they ran things in their own way; but when it came  
20 to matters of tribal concern, the village was not  
21 autonomous, but was subject to the influence --  
22 not absolute authority -- of the chiefs, the higher  
23 chiefs."

24 My question is, do you know anything about  
25 that testimony?

1 A Not at this time. I am sure I have read it.

2 Q Moving down in your direct testimony --

3 A I'm sorry, sir. May I amplify?

4 Q Certainly.

5 A May I point out to you, first, and to the Court, that  
6 my quote from Olson had nothing to do with village  
7 autonomy?

8 It had to do with rights to given areas.

9 Do you understand that?

10 THE COURT: Oh, yes.

11 Q (By Mr. Pierson) Do you disagree with that portion of  
12 Olson and his background and his testimony in the Claims  
13 Commission which I have just read regarding village  
14 autonomy?

15 A I do disagree with it.

16 Q And further down in your testimony, where you are quoting  
17 Olson:

18 "Olson says the feeling of ownership or  
19 exclusive right to Quinault territory was unheard  
20 of, and if, expressed, would have no doubt been  
21 considered a great joke."

22 Now, do you know whether Dr. Olson holds  
23 that view today?

24 A I do not. I personally think the view is overstated.  
25 I quoted it as an example of the kind of concepts people

1 had in these earlier days.

2 Q Would you be surprised if Dr. Olson fully retracted that  
3 statement in the Quinault Claims Commission case?

4 A I wouldn't really be surprised of much of anything  
5 that happened in those long claims cases, sir.

6 Q Did you undertake to check with Olson to see if this  
7 great joke comment was still current in his mind?

8 A I have not.

9 Q Page 6 of your testimony at line 1 through 3, you are  
10 speaking of the reliability of three types of  
11 anthropological sources, and you say:

12 "I put relatively less importance on this  
13 kind of information than I do from information  
14 from documentary sources."

15 Dr. Riley, have you undertaken on any scale  
16 to check your documentary sources against your informed  
17 sources with respect to coastal Salish culture?

18 A I have, wherever possible. This is one of the strategies  
19 of anthropology.

20 The difficulty with this kind of checking  
21 is that the basic documents are themselves often so  
22 poor.

23 I might add that it is not intended to imply  
24 that one should not be skeptical of all kinds of evidence.

25 Q My question is next, how often do you find that these

1 contemporaneous documents that you used conflicted  
2 with the oral informant testimony?

3 A Well, in most cases, it's impossible to check. In most  
4 cases it's impossible to check. I'm sure Dr. Lane  
5 and everyone else has found that out.

6 Where you can check, it depends really on  
7 the kind of information you are getting. For example,  
8 among the Makah, informants can describe village sites  
9 which we know from a host of evidence over the years  
10 to have been where the informants said they are.

11 When the informants describe other kinds of  
12 things, then the ability to cross-check drops sharply.

13 Q So you would qualify your statement about the relative  
14 reliability of informant testimony and say that that's  
15 true, depending upon what they are telling you about?

16 A No, I wouldn't modify the statement as a whole. I would  
17 add that as a writer.

18 The statement is a philosophical statement  
19 as well as being one directed to this area. It is a  
20 statement that I am simply making as an anthropologist  
21 and one with a great deal of field experience.

22 Q In those instances where you have been able to check  
23 an informant's against documentary evidence, how  
24 frequently have you found the informants disagree or  
25 conflict with the documentary evidence?

1 Informants often disagree and conflict with  
2 each other, first of all.

3 The second part of the question, I can't  
4 put a quantitative answer on it.

5 Q Would you say frequently or infrequently? Is that  
6 impossible?

7 A Well, are we talking now about evidence that I can  
8 verify?

9 Q We are talking about the evidence that you put the  
10 higher reliability on, contemporaneous documents.

11 For those times when you have been able to  
12 check those against informants, I want to know whether  
13 frequently or infrequently you have found that they  
14 conflict?

15 A Well, I can't answer the question the way it's stated,  
16 sir. That is my answer to the question.

17 Q The bottom of page 6, you list a number of groups around  
18 Puget Sound that you were asked to study. As I look  
19 at your list, it doesn't include the Hoh Tribe, the  
20 Yakima Tribe, the Muckleshoot Tribe, the Suak-Suiattle  
21 Tribe, or the Stillaguamish Tribe.

22 Is it accurate to say, Dr. Riley, that you  
23 have not studied those tribes?

24 A Let us take them one by one, if we may, sir.

25 Q The Hoh Tribe?

1 A The Hoh Tribe was a study and an involvement with the  
2 Quileute.

3 Q The Yakima Tribe?

4 A I have not studied the Yakima.

5 Q Muckleshoot Tribe?

6 A There was nothing that even could remotely be called  
7 Muckleshoot Tribe at treaty times, which is the period  
8 I was studying.

9 I have, in fact, presented evidence on the  
10 latter day Muckleshoot Tribe. If it's missing from that  
11 -- and it does seem to be -- that is simply a  
12 typographical error. It should be included.

13 Q Suak-Suiattle Tribe?

14 A The Suak-Suiattle were -- and I'm really reaching in  
15 my memory for this because it's been twenty years --  
16 Suak-Suiattle, I believe, were subsuming themselves  
17 under the Skagit.

18 Q The Suak-Suiattle should have been in the list?

19 A Well, the Skagit is in the list.

20 Q So, it's accurate to say you studied the Suak-Suiattle?

21 A Yes My Skagit report is in evidence here and you can  
22 consult that and see. I include the whole Skagit River  
23 basin, yes.

24 Q Stillaguamish Tribe?

25 A I did deal with the Stillaguamish Tribe. It should be

1 on there.

2 Q Which case?

3 A I don't remember. It is, however, a matter of record.

4 Q Dr. Riley, beginning on page 7, you are asked some  
5 questions concerning your testimony in Claims Commission  
6 cases.

7 At line 24 the question is:

8 "You mentioned that the actions were for  
9 compensation of land taken. Do you know whether  
10 or not this included the value of fish and wildlife  
11 resources?

12 "A I was asked by the Department of Justice  
13 and subsequently testified as to use areas of Indians,  
14 including fishing, collecting, hunting, farming,  
15 shellfish gathering, and the particular group or  
16 groups that utilized that given area.

17 "Q Was this information utilized to  
18 determine the value of the land taken by the Indian  
19 Claims Commission?

20 "A It is my understanding that it was."

21 Would you tell the Court, please, what your  
22 understanding is based upon.

23 A Yes. In interpreted that question in the broad sense  
24 that all materials would be taken into account. I did  
25 not interpret it in the narrow sense that this was a land

1 evaluation holding of any sort. I'm glad to brought  
2 that up, because it does clarify that point.

3 Q Do you have any evidence that you would draw upon to  
4 indicate that any of the Claims Commission cases  
5 in any of the cases involving any of the tribes in  
6 this case purported to compensate for the taking of  
7 fishing rights?

8 A I really don't know this part of the case, and it -- I  
9 didn't concern myself with it.

10 All I know is that I was asked to make my  
11 reports, and to study the things that I had listed.

12 Q Down below at line 6 on page 8, the question is:

13 "Q Your studies were used by the United  
14 States Government through the United States  
15 Attorney's Office to determine compensation for  
16 the Indian hunting and fishing in connection with  
17 land values?

18 "A This is my understanding of the  
19 situation."

20 First question, Dr. Riley, are you sure  
21 that it was the United States Attorney's Office you were  
22 dealing with?

23 A I was dealing with the U. S. Department of Justice.

24 Q Secondly, what is the basis for your understanding  
25 stated in line 10?



1 A The same basis I had that I stated above. I was engaged  
2 to bring together this evidence and to present it in  
3 a court of law, and I assumed that it would be used.

4 Q Did the United States Government ever tell you or imply  
5 to you that your testimony was to be used to compensate  
6 Indians for the taking of fishing rights?

7 A No, I didn't say that, sir. I simply said that they  
8 asked me to study the economic situation, including  
9 fishing.

10 In specific answer to your question, no one  
11 has made that representation to me.

12  
13 (Continued on the next page.)

ET21

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1 Q At page 9, line 5, in answer to a question,  
2 which I don't think needs to be read, I would  
3 like to read you testimony and ask you some  
4 questions about it.

5 "In anthropology we have a tendency  
6 to make a truism the fact that the Northwest  
7 Coast was one of the very heavily populated  
8 areas of American north of Mexico. This  
9 is argued on several grounds. The high  
10 salmon yield of the rivers, rich offshore  
11 fisheries, abundant food in the prairies  
12 and woodlands and rich shellfish grounds.  
13 The modern ethnologists have reinforced  
14 this idea by collecting lists of fishing  
15 places, sites, gathering places for given  
16 groups of Indians. Just for example,  
17 from Dr. Lane's report, Elmendorf listed  
18 179 named areas for the Skokomish. Waterman,  
19 for the Upper Sound, listed some 150. Dr.  
20 Lane, herself, speaks of the 'dense populations'  
21 (Lane summary, pages 8 and 9).

22 "There are also long lists of place  
23 names given by Ballard, Marian Smith, and  
24 in fact, by myself in previous Indian claims  
25 testimony. Inpoint of fact, in the

1           period of the treaties, 1854-55, there was  
2           really not a dense population on the  
3           Western Washington coast and place names  
4           listed thus may be somewhat misleading."

5           Do you have anything to indicate, Dr.  
6           Riley that the Indians in this area at treaty  
7           times were moving about and using fishing areas  
8           to evidence the density of their population?

9           A. I'm not trying to be obtuse, but I simply  
10          want to clarify the question, you are asking me  
11          is our--- does the reduced populations in my  
12          mind mean a reduced use of areas, is that the  
13          question?

14          Q. That's not what I'm asking. I'm asking whether  
15          you have any evidence whether the Indians in this  
16          area of treaty times were moving to their various  
17          fishing sites for the purpose of evidencing  
18          dense populations?

19          A. That the Indians were moving to their fishing  
20          site for the purpose of evidencing dense popula-  
21          tions? I would think not.

22          Q. Do you have any indication from any evidence that  
23          they were moving from these various fishing  
24          places in and around the area to evidence the fact  
25

1       that they were using those sites in order to  
2       make a record for treaty times?

3       A.   No, of course not.

4       Q.   Do you have any evidence in any of the data or  
5       any information or documents or sources that you  
6       have studied which would indicate that the  
7       Indians considered some sites as frequently used  
8       and other sites as different in kind because  
9       they were infrequently used?

10      A.   In the documents of the treaty days, I don't  
11      recall that that particular kind of distinction  
12      is made except perhaps in the wording of the  
13      treaty documents themselves. Subsequently,  
14      as I have just said above, there has been a  
15      tendency for anthropologists, including myself,  
16      to collect from informants a series of place  
17      names which in the minds of the informants  
18      were especially important either as a site to  
19      villages or site of fish weirs, site of a particularly  
20      good climbing ground or berry grounds, et cetera.

21      Q.   My question was really directed to the frequency  
22      of use and to these documentary sources which  
23      you find more reliable than informants, whether  
24      any of them indicate to you that the Indians, who  
25

1 were parties to these treaties, made a distinc-  
2 tion in kind between places that they frequently  
3 used and places that they infrequently used.

4 A. The Indians themselves made these distinctions,  
5 yes. In a number of cases, Indians desired  
6 to be at particular places where they could fish.  
7 That was in the minutes of the various treaties,  
8 particularly the Point No Point, and the treaty  
9 of Neah Bay, there are such reflections.

10 This kind of material appears in the  
11 early documents of Indian agents, that Indians  
12 desired to be in given areas that surrounded  
13 or was near their old villages.

14 There is a great deal of evidence of  
15 that kind scattered throughout the documents  
16 that Indians did consider some places more  
17 important than others.

18 The burial grounds were considered  
19 important, this kind of thing.

20 Q. Could you give me the sources that you rely upon  
21 in saying that the Indians considered frequently  
22 used sites for fishing more important than those  
23 sites that they used less frequently?

24 A. Oh, I'm sorry, I can't do that. You are asking me  
25 to give you a source in which the Indians

1 themselves made a distinction of this sort,  
2 and I don't believe there are any such materials.

3 If I understnad your question, a  
4 document in which an Indian would say to Governor  
5 Stevens, "Look, Point A. is very important to me,  
6 Point B I don't care about," I don't believe  
7 that we have this kind of evidence.

8 Q Do you have any evidence of a non-Indian  
9 describing -- without the testimony or statement  
10 of an Indian in a contemporaneous document  
11 describing how any Indians consider frequently  
12 used fishing sites more important than infrequently  
13 used sites?

14 A No, I don't recall such evidence.

15 Q Turning your attention to your term "historical  
16 reconstruction" would it be accurate to say  
17 that as a concept or a precept of the use of  
18 this methology in anthropology, that if the  
19 data upon which the historical reconstructor  
20 relies is faulty or inaccurate, the reconstruction  
21 is also faulty or inaccurate?

22 A All reconstructions are faulty and inaccurate.  
23 The best that we can ever do with the past is  
24 to produce a model and the model never is  
25 reality. We try to get as near reality as we can.

1 Q Is there a direct connection between the accuracy  
2 of the data relied upon and the accuracy of the  
3 reconstruction?

4 A There is a relationship.

5 Q And isn't it accurate to say that George Gibbs  
6 and others, commented on the inaccuracy of  
7 population estimates upon which Mr. Kroeber  
8 and Mr. Mooney and Mr. Taylor made their  
9 population estimates for the Coast Salish culture?

10 A No, sir. Mr. Kroeber and Mr. Mooney were  
11 estimating populations as of 1780. I don't think  
12 Mr. Gibbs made any such comments on the populations  
13 in 1780.

14 Mr. Taylor -- Dr. Taylor depended  
15 to some degree on Gibbs and others of the treaty  
16 period, he also depended upon the population  
17 figures, the censuses of the Hudson Bay Company.

18 Q What data did Kroeber and Mooney rely upon when  
19 they made their 1780 figures?

20 A I don't know, but I don't know what -- Kroeber  
21 has an extensive bibliography from his national  
22 cultural areas. Mooney's population figures  
23 I don't think are very extensively documented.  
24 I have those, by the way, if you'd like to have  
25 that document in evidence. I have the Mooney

1 document.

2 Q I would like to know whether you checked the  
3 conclusions of Kroeber and Mooney against  
4 their data lists.

5 A Taylor did, I did in one or two cases, I did  
6 with the Cowlitz, and this material is unpublished.

7 It's in the transcripts of the very  
8 extensive documents on the Cowlitz. On Taylor's  
9 approach there are three articles that are  
10 all in evidence here as Defendants' exhibits and  
11 can be examined.

12 Q In what other cases did you check Kroeber and  
13 Mooney's conclusions against their data?

14 A I'm sorry, I'm not sure -- did I say I checked  
15 Kroeber and Mooney's conclusions?

16 Again, let me say that Kroeber and  
17 Mooney were not interested in the 19th century,  
18 they were interested in a dateline of 1780.

19 Mooney makes that dateline, I don't  
20 think he mentioned it, but Kroeber, I think he  
21 follows Mooney's figures. I checked data for  
22 the period about 1820 to 1830 on up to the  
23 treaty times, and I believe we have the documents  
24 here that Dr. Taylor did the same thing coming to  
25



1 much the same conclusion, and inescapable  
2 conclusion.

3 Q Do you disagree with Mr. Gibbs' statement as  
4 of 1855 that all the prior population estimates  
5 were inaccurate?

6 A All estimates for that period are inaccurate,  
7 some less accurate than others.

8 Hudson Bay figures, as far as that  
9 goes, are probably the most accurate.

10 Q And your historical reconstruction about how  
11 many people were in the Coastal Salish culture  
12 is directly inaccurate according to its data,  
13 is it not?

14 A Yes. I think I heard you right, let me say that  
15 both Gibbs' 1855 census figures and Gibbs' 1877  
16 figures probably are not accurate.

17 I would say one further thing about  
18 Mooney and Kroeber, as I pointed out in my  
19 testimony, they base -- regardless of the base  
20 on which they made their estimates, that basis  
21 extended over the whole North American continent.  
22 So the comparisons that I made are still valid.

23 I would make one other further point --

24 Q Let me see if I can stop you on that statement, are  
25

1 your comparisons valid if the conclusions  
2 you reached in terms of numbers are inaccurate?

3 A. No ,no, the conclusions I reached were not in  
4 terms of numbers, but in terms of percentages.

5 Are we talking about the same thing, sir?

6 Q. Certainly we are.

7 Page 11 of your testimony at line 6  
8 I see the number 7,559, at the bottom I see  
9 8,687, and those look like numbers to me, Dr.  
10 Riley.

11 A. I was discussing page 10, which leads into that  
12 which is a percentage figure, and it addressed  
13 itself to the statements that very often have  
14 been made that there was a dense population.  
15 I simply said this is not a dense population,  
16 and I took a series of percentage figures to  
17 demonstrate that. I do think they demonstrate  
18 it.

19 There is, however, one important point  
20 that should be made in regard to that material  
21 on page 10, and that is that whereas the 1780  
22 line is all right as simply a date picked out  
23 of the hat, if we are comparing one aboriginal  
24 situation against the other at the latest time  
25

1 at which they were aboriginal, generally  
2 speaking, we would have to compare the Western  
3 Washington Indians as they were about 1830...  
4 to 1840 or even 1845, and if we do that, then  
5 the percentages that I have go way down even  
6 with these bolstered Mooney and Kroeber figures.  
7 There are still less people in Western Washington  
8 per square kilometer than there are in northern  
9 Baja, California, which is a desert. If you  
10 were to take the figures of Western Washington  
11 as of 1840 or 1845, that would go even lower.

ET22 12

(Continued on next page.)

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1 Q Figures of Mooney and Kroeber are estimates,  
2 are they not?

3 A All population figures of that time are estimates,  
4 sir.

5 Q And you say that Kroeber and Mooney's conclusions  
6 are estimates upon estimates?

7 A Yes. I do not consider them correct.

8 Q Page 12, line 18, if I may.

9 MR. CONIFF: I believe the witness  
10 hadn't completed his answer.

11 THE WITNESS: There is one other way  
12 one might get at that. It is a rather interesting  
13 way. Mr. Eells, who was a missionary and was  
14 associated with the Skokomish agency and was  
15 a census taker for the Clallam as of 1880,  
16 makes in a publication in 1897 which is not  
17 in evidence but which can be put in evidence,  
18 takes the Gibbs' 1877 figures, which he says he  
19 thinks are too low, and compares them with the  
20 Indian -- Bureau of Indian Affairs' census of  
21 1885, which he said, I believe indicates is more  
22 or less correct in 1855, according to the Gibbs'  
23 figures of 1877.

24 That is the Gibbs' 1877 figures. There  
25 were not 6400 Indians in the three treaty

1 areas that Eells deals with. That is in the  
2 Medicine Creek, the Point Elliott and Point No  
3 Point Treaties.

4 In 1855 the population had dropped to  
5 2795. That is, the more you expand the Gibbs  
6 figure, the more chunky is the dropoff in popula-  
7 tion in the intervening 20 years.

8 For that reason, I do not believe it  
9 is too far out of line, but I do think it is  
10 somewhat low.

11 Q And the dropoff you just spoke of is post treaty  
12 dropoff?

13 A Yes.

14 Q Looking at page 12, if you would, line 13,  
15 you say the bands or villages of these various  
16 groups of Indians in the Western Washington area  
17 were located for the most part near one of the  
18 available food sources. There were other reasons  
19 for locating villages.

20 An obvious one is for defense. Another  
21 one is protection from the elements, but food  
22 resources were probably the most important single  
23 factor, and over on page 17, if you look at line  
24 16, you say,

25 "I would think that as far as the food

1           economy itself was concerned that people  
2           would tend to concentrate on the areas near  
3           their homes.

4           I believe that the main villages  
5           of these Indians were built where they were  
6           because of the ready availability of food  
7           sources of one kind or another."

8           Dr. Riley, do you know of any instance  
9           when any of the sites of the villages of any of the  
10          tribes in this case or the tribes from whom they  
11          claim to hold title were located away from the  
12          water sources?

13        A    In the Makah, essentially, yes. Other than that,  
14           as a snap answer I would say that they were all  
15           on the water courses.

16           That may not be correct, but I can't  
17           think of exceptions at the moment.

18        Q    And isn't it true that the location with respect  
19           and for the purpose of being close to food  
20           resources was for the purpose of being close to  
21           food resources, was for the primary purpose of  
22           being close to the fish food resources?

23        A    Fish were very important, yes. I think that would  
24           be true.

25        Q    Would you agree then with the statement of George

1 Gibbs that for the Indian treaty tribes in this  
2 case that salmon was the great staple?

3 A No one has ever contested that salmon was not  
4 the great staple. I simply tried to point out  
5 there wre other foods as well. I don't think  
6 anyone is contesting that, either.

7 Q Looking, if you will, at your testimony at page  
8 20, line 7-- well the question begins, at line 4:

9 "Q Do you have any inforation as to the  
10 usage that the Indians made of the internal  
11 organs, such as livers of salmon or of other  
12 anadromous fish they caught?

13 "A I believe Dr. Lane in her report  
14 does mention the use of livers in the Sauk-  
15 Suiattle area. I was under the impression  
16 from my own field work that, generally speaking,  
17 the inside of fish were cleaned out and the  
18 flesh only was used."

19 Do you have any evidence, Dr. Riley,  
20 to indicate that the inside of fish were used?

21 A The inside of fish were used?

22 Q Yes, hearts or livers.

23 A I quoted Dr. Lane, sir, who reports use of liver  
24 in the Sauk-Suiattle.

25 Q And then you say you were under the impression

1 from your field work that generally speaking the  
2 inside of fish were cleaned out and flesh only  
3 was used.

4 Where do you get that impression?

5 A I got that impression from my own field work, from  
6 discussions with informants, trying to project  
7 back into treaty times.

8 Q Are you familiar with the statement of George  
9 Gibbs that the heart was always roasted?

10 A Would you read the context of that, sir? It  
11 seems to me that that was a special case. I may  
12 be wrong.

13 Q Looking at Exhibit G-4, line 196, you said you  
14 thought it was with respect to a special example  
15 on the Quinault.

16 A I beg your pardon?

17 Q What context do you recall that being in?

18 A May I see the Bibbs? I am not quite clear of  
19 the context, sir.

20 Is this 1877 or Gibbs 18 --

21 Q It is Gibbs' work published in 1877 from evidence  
22 he gathered in 1855, and he is speaking of prac-  
23 tices of the Indians, as I understand it here,  
24 and down in the middle of the first complete  
25 paragraph he says, the heart was always roasted



1 and eaten.

2 A What page, sir?

3 Q 196. In the paragraph that begins with the  
4 sentence, "As the salmon formed the most important  
5 staple of subsistence, so with them are connected  
6 the greatest number of superstitions."

7 And a third of the way down that para-  
8 graph is the statement, "The heart was always  
9 roasted and eaten for fear a dog should eat it  
10 and no more salmon would be taken."

11 A He is discussing the situation at the Dalles, is  
12 he not, and he is discussing the first salmon  
13 rite, I believe, is he not?

14 Q Would this be distinguishable from your conclusions  
15 about the Coast Salish area?

16 A I don't -- we are talking about a ceremonial  
17 situation, sir.

18 The first salmon was had. Its heart  
19 eaten. I was discussing this on page 20 of my  
20 written testimony as a general dietary practice,  
21 not a ritual practice.

22 Q Well, maybe I don't understand. Are you at page  
23 20 of your testimony disagreeing with Dr. Lane's  
24 statement of the use of livers by the Sauk-Suiattle?  
25

1 A I was -- I was really puzzling, because of one  
2 bit of data, one article actually, and that  
3 is an article by Smith and Rivera.

4 Rivera is -- which is in evidence  
5 as one of the defense documents. Rivera was  
6 a biological chemist from Columbia or Barnard,  
7 I think, and she and Marian Smith did a study  
8 on the food taking of Coast Salish peoples and  
9 she made the point that it was very important  
10 for the Indians to have foods that would give  
11 them vitamins, particular vitamin C.

12 Further went on to say that since the  
13 salmon either always or normally were cleaned,  
14 that is the innards were taken out, that they  
15 did not produce the necessary trace minerals and  
16 vitamins and further suggested that the introduc-  
17 tion of the potato, which Dr. Suttles has written  
18 about, began to come into the Puget Sound in the  
19 1840s, perhaps even earlier, that the potato  
20 filled an important ecological niche with the  
21 Indians. This was the context in which my statement  
22 was made, sir.

23 Q Isn't it true that Dr. Smith notes that the  
24 Nisquallys ate the entrails of salmon?

25 A Dr. Smith says she has conflicting evidence on this.

1 Q Directing your attention to what is USA-26,  
2 which is the Puyallup report, of Dr. Lane, page  
3 66, and the quotation there is from Marian  
4 Smith's study that you have been talking about,  
5 page 66.

6 A Yes, sir.

7 Q At the bottom of the page, letter H:

8 "The situation in regard to the eating  
9 of salmon entrails is somewhat clouded,"  
10 and then she said, "A Nisqually informant  
11 offered the information that salmon hearts  
12 and livers were strung to a tanned cedar  
13 bark and smoked."

14 Do you have any reason to doubt that  
15 statement regarding the Nisqually?

16 A Marian Smith herself seems to doubt it when  
17 she states that the eating of salmon entrails  
18 is somewhat cloudy. There is continuation of  
19 that, I believe, is there not.

20 The Chehalis word, and I wouldn't  
21 try to pronounce it, for salmon heart was recognized  
22 as Chehalis, but the meaning was not known.  
23 There seemed little doubt that the fresh intestines  
24 of Tyee salmon were cleaned and boiled with the  
25 gills or roasted. Again, we are dealing it seems

1 to me in occasional things, and I would point out  
2 that this is in contradiction to the rather  
3 clear statement of Marian Smith in the work  
4 she did with Rivera.

5 Q Isn't that quotation from her work with rather a --

6 A No, no, no, that quotation is from Puyallup-  
7 Nisqually.

8 Q Are you aware that George Gibbs noted that the  
9 Nisqually had the same practices with respect to  
10 salmon hearts as we quoted from his page 196?

11 A Are we not still talking about the first salmon  
12 rites here?

13 Q So they did use salmon entrails?

14 A Well, I don't believe I ever said categorically  
15 that they didn't. This page in my report is  
16 very, very modestly stated, and it is stated  
17 as a question, and I began by quoting Dr. Lane,  
18 and I don't question Dr. Lane's data.

19 Q Page 18, if you will, of your direct testimony,  
20 line 19. You say,

21 "By the time of white settlement in that  
22 area in the late 1840s and 1850s, probably all  
23 the Indians had either seen or heard of the  
24 Europeans and Americans, and from 1855 on, I would  
25

1 think that it would have been a very remote  
2 individual that had not had some contact with  
3 the settlers."

4 What documentation do you have that  
5 probably all of the Indians had seen Europeans  
6 or Americans?

7 A That is speculation, and isn't essentially phrased  
8 in a speculative form. There may have been an  
9 occasional Indian that had not seen settlers.  
10 Settlers certainly were moving very freely around  
11 the Sound at that period.

12 Q Do I understand that that statement about whether  
13 they had seen Europeans and Americans is specula-  
14 ting?

15 A I said it would have been a very remote individual.  
16 That, I believe to be speculative, yes. May I  
17 correct --

18 Q My question is: What documentation do you have  
19 for that statement?

20 A Documentation is simply the general documentation  
21 of people coming into the area making the settle-  
22 ments and moving around. If nothing else, most  
23 of the Indians saw the treaty parties, as  
24 thousands of them -- their testimony yesterday was  
25

1 to the effect that there were something like  
2 three thousand at the Point Elliott Treaty.  
3 I don't understand, perhaps, the contention  
4 of you, sir. You are saying that there are  
5 lots of Indians that hadn't seen them?

6 Q My question, Dr. Riley, is documentation for  
7 your statement that probably all of the Indians  
8 in the area had seen Europeans or Americans in  
9 the 1840s and 1850s.

10 A Yes, sir, in this case I think it would be the  
11 totality of documents to that time, giving the  
12 movement of settlers and auxiliary individuals  
13 in that area.

14 I will readily concede that there  
15 were some areas that were much more heavily  
16 contacted than others at this period.

17 The Stillaguamish River area, for  
18 example, was rather lightly contacted, Upper  
19 Skagit -- and since I am -- I have mentioned  
20 the Upper Skagit, let me make one clarification,  
21 if I may, for the record, when I say that I agreed  
22 with Dr. Lane, I meant I agree with Dr. Lane  
23 that she gave the evidence about salmon livers.  
24 It was not an intention to give a blanket endorse-  
25 ment to Dr. Lane's opinion.

1 Q Isn't it true also that there were coast tribes which  
2 had no contact with the Americans and Europeans  
3 at the time most of these treaties were executed?

4 A There may have been some Indians in the Upper Quinault  
5 and Quillayute areas that had had little or no contact.

6 What is the date again? Excuse me.

7 Q You say the 1840's and the 1850's.

8 A In the late 1840's, and the 1850's. In other words,  
9 over a period of 15 years, yes. The breakoff date in  
10 the context of my statement would be 1860.

11 I suspect that even the coast groups had  
12 been drawn into the orbit of American life to some  
13 degree by 1860. Again, the documentation is essentially  
14 all the documentation for that area for that time.

15 Q Isn't it true that there were a large portion of  
16 Indians that weren't in any of the treaty grounds, and  
17 that this was commented on by the Commissioners?

18 A I don't know how large they were, but there certainly  
19 were portions who were not at the treaty grounds, and  
20 there were also groups that came in late, as in the  
21 Medicine Creek Treaty.

22 Q And your statements in that paragraph in your answer  
23 on page 18 still hold as part of your answer to the  
24 question of when was the Western Washington Indian first  
25 introduced to non-Indian people?

1 A The late 1840's and 1850's, would, in the context of  
2 my answer, have been the period when most Indians would  
3 have been contacted. I don't say all. One couldn't  
4 say all. You are arguing essentially a negative.

5 Q What evidence have you that probably all of the Indians  
6 had heard of Europeans and Americans by 1855?

7 A Well, no direct evidence for it, but I would draw your  
8 attention to the testimony of Dr. Lane and to various  
9 documents in this case which indicated that Indians  
10 did move around very freely, and they certainly  
11 exchanged information with one another.

12 Since I assume that no one in this court  
13 believes that Indians are idiot children, I fail to see  
14 how they could have avoided hearing of such a momentous  
15 thing.

16 Q How many Indian informants did you speak to or interview  
17 in the course of the preparation of your reports for  
18 the Indian Claims Commission cases?

19 A I don't have my case books, and I don't have the lists  
20 of informants. I can give you a kind of an estimate.

21 It would be in the nature of oh, perhaps 40,  
22 maybe. At this point, I can't identify them because  
23 when I went into the trials, I used only initials,  
24 the idea of course being that the privacy of informants  
25 should be respected.



1                   Unfortunately I have lost my informant list  
2 over the years, and I can't always untangle the initials.  
3 A few I know; most I don't any more.

4                   But the answer I gave you would be relatively  
5 correct.

6 Q   How many of those told you that they look at life  
7 through western European eyes?

8 A   I don't think any of them ever phrased a statement  
9 like that. That's my secondary analysis of the situation.

10 Q   Can you tell the Court why you can reach such a judgment  
11 of modern -day, but you can't get behind the minds of  
12 the Indians as of treaty times?

13 A   Very easily.

14                   When speaking about modern things to modern  
15 Indians, one is talking with people about what they know.  
16 When speaking about things that happened a hundred years  
17 ago, the modern Indians or modern anybody else, one is  
18 speaking of the traditions and, oftentimes, traditions  
19 of traditions.

20                   Informants of mine have told me what they  
21 heard from their fathers when they were young, and when  
22 they were young, it was still a rapidly aculturating  
23 situation.

24 Q   So, you would say that the informants, at least in this  
25 respect were more reliable than documentary evidence?

1 A Well, you are taking my statement out of context, first  
2 of all. I was talking about the situation of 1855.

3 If we are studying the Indian groups today,  
4 or any other group today, then an informant's  
5 reliability becomes a very different thing.

6 Q Because you are speaking of what has happened to them  
7 alone?

8 A Because you are speaking about what is happening to  
9 them as ongoing cultural beings, yes.

10 Q Would it be accurate to say, then, that informants  
11 who lived or witnessed things at treaty times would  
12 be more reliable than modern day informants?

13 A They might well be, although if their memories were  
14 being taxed 50 years after the date, and that 50 years  
15 was a time of rapid aculturation, I would want to examine  
16 each particular case before giving an answer.

17 Q Isn't that really true of your use of all those sources  
18 documentary evidence and historical reconstruction and  
19 informants; that you have to examine the use of each  
20 with great care?

21 A Mr. Pierson, I have never said anything to the contrary.  
22 I heartily endorse that. Dr. Lane made the same point.

23 We wouldn't be in greater agreement.

24 Q Page 19, the last line, going over to page 20, the first  
25 three lines:

1 "One would assume also from the treaty  
2 documents dealing with blacksmiths that, at least  
3 those Indians who had horses were quite interested  
4 in utilizing the white techniques of handling horses."

5 What besides the statements in the treaties  
6 do you have to document or to support that statement?

7 A The horse was getting into western Washington the  
8 early 19th century. It was becoming a prestige item,  
9 and particularly so in the groups in the backriver  
10 areas.

11 It is mentioned, for example, at some length  
12 by Gibbs -- I think this was brought out this morning --  
13 in his strong desire to see Upper Puyallup and Nisqually  
14 peoples have grounds for their horses.

E24-1 15 Is that a proper response to your question?

24-2 16 Q That doesn't answer my question. I want to know how  
17 you documented that outside of the language of the  
18 treaties, there are indications that the Indians wanted  
19 these white techniques?

20 A Wanted white techniques of handling horses? Oh, yes.

21 Offhand, I can't think of a documentation for  
22 that. I would be very surprised if they didn't, by  
23 the way.

24 Q Page 21, at line 12, you say:

25 "In my opinion there very likely were some

1 Indian domestication of animals, because the Hudson  
2 Bay post at Nisqually was in the process of  
3 raising and selling domesticated animals.  
4 Tomie (1878) reports that some 3000 sheep were  
5 sold in the 1854."

6 Do you have any evidence, Dr. Riley, that  
7 any of those sheep were raised by Indians?

8 A No, I do not have evidence that they were raised by  
9 Indians. I am somewhat doubtful that they were raised  
10 by Indians. I think I say that somewhere here.

11 Q Do you have any evidence that those sheep were sold to  
12 Indians?

13 A Not to Indians. The Hudson Bay Company was interested  
14 in selling to the Russians, for one thing. They had  
15 a commercial agreement with the Russians.

16 This particular group of sheep, as I  
17 remember, from the Tolmie document, was sold either into  
18 Oregon or California. They weren't sold to Indians,  
19 as far as I know.

20 Q Isn't it true that they were driven down to the  
21 Willamette Valley because they couldn't be sold up in  
22 Nisqually?

23 A This could well be. I don't recall the date.

24 Q What is there in that fact of the driving out of those  
25 3000 sheep which leads you to the statement that the

1 Indians domesticated animals?

2 A We know that Indians domesticated the horse. This is  
3 documented by Gibbs. It appears in a number of the  
4 treaty documents. It appears in Winthrop. It  
5 appears in a number of the earlier reports of the  
6 Indian acts. We know that. I don't know about other  
7 animals, and it seems to me that I do not claim that  
8 other animals were domesticated. At least, I don't  
9 claim there is any evidence for it.

10 Q My question is, Dr. Riley, of what relevance is that  
11 statement about 3000 sheep to your statement that Indians  
12 domesticated animals?

13 A It has this relevance: It indicates that farming and  
14 herding techniques were well advanced in the lower part  
15 of the Puget Sound, and the middle part of the Cowlitz  
16 Valley in pretreaty times.

17 One of the ways in which aculturation  
18 proceeds is contact.

19 Q Page 25, Dr. Riley, of your testimony, you are speaking  
20 of fish traps. You say, down at line 26:

21 "However if a person utilized a fishing  
22 platform for a while and then left it -- if Gibbs  
23 is correct -- other people could use it."

24 According to your understanding of the use  
25 of fish traps, Dr. Riley, did a user's rights or use or

1 control over the use of fish traps die when he left?

2 A This was Gibbs' statement, of course, rather than mine.

3 It is my belief that the whole situation  
4 of use and other rights in this area is very cloudy.  
5 I really am not sure in my own mind about that  
6 particular question.

7 Q Do you know of any evidence he gives that when an  
8 Indian left the weir, he controlled, his rights died?

9 A I don't seem to have given a page citation to this.  
10 I am not quite sure what I was referring to. If you  
11 would like, I will look it up overnight and see if I  
12 can have it. I'm sorry.

13 We weren't referring to dying in this, were  
14 we? The answer to that, then, is no, I don't.

15 Q And do you have any indication that after he left, he  
16 would lose control over those people who used it?

17 A That a person who put up a fish weir would lose control  
18 over the other people who used it?

19 Q After he left.

20 A I don't think that situation is at all clear.

21 Q And do you have any citations in Gibbs? Can you find  
22 the one that substantiates your statement here or refers  
23 to if Gibbs is correct?

24 A Yes. That's what I suggested; that since I don't have a  
25 page reference that I look it up tonight and give it to

1       you first thing in the morning, if that is satisfactory.

2               MR. PIERSON: All right.

3               THE COURT: We will recess now until nine o'clock  
4 tomorrow morning. I trust that all goes well with  
5 all of you while we are apart.

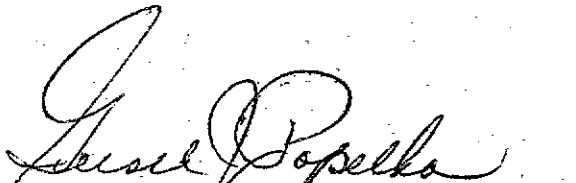
6               (At 4:00 o'clock p.m, proceedings in the  
7 above matter were recessed to Saturday,  
8 September 8, 1973, at 9:00 o'clock a.m.)  
9

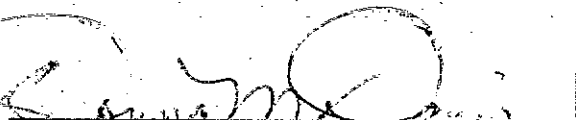
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C E R T I F I C A T E

We, the undersigned official court reporters in and for  
the United States District Court for the Western District  
of Washington, do hereby certify and affirm that the foregoing  
transcript of proceedings is a true and accurate transcription  
of our shorthand notes of the matters herein reported.

  
ELINOR HOLLOWAY

  
GERALD J. POPELKA

  
DONNA M. DAVIS



I N D E X

WITNESS:                      Direct      Cross      Redirect      Recross

BARBARA D. LANE                      2123-McG

2125-H  
2141-Z

CARROLL L. RILEY      2157-C  
2172-McG

2180-P

EXHIBITS                      ADMITTED

F-15A                      2135  
F-15B                      2135  
F-39                      2149

G-22 through G-27                      2160

D-1                      2166

Legend:

C-Coniff  
D-Dysart  
H-Hovis  
G-Getches  
P-Pierson  
S-Sennhauser  
Z-Ziontz  
McG-McGimpsey