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## Docket Entry 416K - Filed Transcript of Proceedings Volume XI

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

AT TACOMA

FILED IN THE  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

QUINAULT TRIBE OF INDIANS,  
et al,

Intervenor-Plaintiff,

v.

STATE OF WASHINGTON,

Defendant,

THOR C. TOLLEFSON, et al,

Intervenor-Defendants.

FEB 12 1974

EDGAR SCOFFIELD, CLERK

By                      Deputy

CIVIL NO. 9213

TRANSCRIPT OF PROCEEDINGS

September 8, 1973

Tacoma, Washington

THE HONORABLE GEORGE H. BOLDT  
UNITED STATES DISTRICT JUDGE, Presiding

416 k

Vol. XI

Exhibit #3

P R O C E E D I N G S

September 8, 1973  
9:00 o'clock a.m.

(Appearances as heretofore  
noted in Volume I.)

(All parties present.)

CARROLL L. RILEY,

having been previously sworn, resumed the stand and  
testified further as follows:

CROSS-EXAMINATION (Continued)

BY MR. PIERSON:

Q Dr. Riley, I believe toward the end of your  
testimony we were speaking of your written  
direct testimony at page 25. You have the page?

THE COURT: I have it.

A And I have it.

Q All right, and down at line 23 you make the  
statement:

"A person who built a fish trap or  
spearing platform might claim that this fish  
trap or spearing platform was his as long  
as he used it. Gibbs, for example, in his  
1877 report indicates this."

Now, have you had occasion over the

1 evening break to find where in Gibbs' 1877 work  
2 he made that statement?

3 A. Yes, I have gone over the Gibbs' 1877 account,  
4 and to just make it -- double check it --

5 THE COURT: You will have to speak louder,  
6 Dr. Riley.

7 A. (Continuing) I was leaning back in my chair inad-  
8 vertently, and just to make a double check I  
9 went over the Gibbs' earlier report, and in the  
10 railroad report Gibbs, as near as I can tell,  
11 does not say that. He talks about land rather  
12 than about fishing operations of any sort. If  
13 you took that in context with other things that  
14 Gibbs said, you might be able to draw that conclu-  
15 sion, but I would prefer not to draw that conclu-  
16 sion, if it please the Court, and as a continuation  
17 on Gibbs and as a remark yesterday -- there was  
18 a triangular discussion with Judge Boldt, Mr.  
19 Pierson and myself about the meaning of treaty.  
20 I would at this particular time like to throw  
21 in one more.

22 In the Gibbs' report, 1855 report, there  
23 is a statement, and I think I had probably better  
24 read it:

25 "They live almost altogether among the

1 whites, or in their immediate neighborhood, taking  
2 and selling salmon, or doing occasional work, and  
3 for the rest letting out their women as prostitutes.  
4 No essential advantage would, it is feared, be  
5 obtained by removing them to any one location,  
6 where they would not long remain away from their  
7 old haunts, and probably the assignment of a few  
8 acres of ground for their villages and cemeteries  
9 and the right of fishing at customary points,  
10 would effect all that could be done."

11 Now, Gibbs is talking about the Cowlitz  
12 who are neighbors of the Nisquallys to the south.  
13 I will point out that this is not directed at the  
14 question of Mr. Pierson which I have answered in  
15 the negative.

16 Q Well, let me ask you about that, Dr. Riley. Do  
17 you know of a treaty with the Cowlitz?

18 A Do I know of a treaty with the Cowlitz? I have  
19 not reviewed the treaty with the Cowlitz. I don't  
20 believe there was a treaty with the Cowlitz.

21 Q And to the extent George Gibbs is talking about  
22 customary points, he is talking about provisions  
23 for a tribe with whom there wasn't a treaty?

24 A That would be true, yes, sir.

25 Q And was that before or after the treaties executed

1 in this case?

2 A That was before the treaties were executed in  
3 this case. I am sorry, sir, what do you mean,  
4 "in this case"? Do you mean the Point No Point --

5 Q I mean the time the treaties were signed in this  
6 case. Was it before all of them?

7 A Yes, it was before.

8 Q And his report, you say, is 1855. Is it reporting  
9 events which occurred in 1855?

10 A 1854, 1855. The material in this railroad report  
11 is really 1854. The publication date, I believe,  
12 is 1855.

13 Q And do you have the page number from which you  
14 read?

15 A Yes, sir, I do. It is page 34, and it is plaintiffs'  
16 document 9. Now, it may not be page 35 in plaintiffs'  
17 document 9, because I am simply using my own copy  
18 with the notation of the plaintiffs' document.

19 Q To go back then to my original question, Dr. Riley,  
20 do I understand you correctly that you can find  
21 no support for the statement you made in your  
22 direct testimony at lines 23 through 26 on page  
23 25?

24 A That is correct, sir, Gibbs does not make that  
25 statement.

1 Q Yesterday we spoke about your statement where  
2 you cite Olson on page 26, at lines 22 through 27,  
3 and you speak of his characterization of Quinault  
4 ownership and exclusive right as a great joke,  
5 and if you recall I asked you whether you knew  
6 whether Dr. Olson had retracted that statement.

7 I would like to ask you in preparation  
8 for your testimony on the Quinault report, to  
9 examine the Indian Claims Commission testimony  
10 of Dr. Olson to determine whether or not he has  
11 retracted that statement?

12 A Yes, sir, I would be happy to do so. Am I hearing  
13 wrong or did you say page 26? If you said page  
14 26, I am sorry, sir. All right.

15 Q Okay.

16 A May I examine the document?

17 Q Yes, we have a copy of the Indian Claims Commission  
18 testimony which will be available for you to  
19 examine.

20 Now, in your work in preparation for  
21 your testimony, both oral and written in this  
22 case, since March have you had occasion to examine  
23 the sources cited by Dr. Lane in her various  
24 reports?

25 A I have examined some of them. I have not examined

1 all of them. I have examined, of course, the  
2 ones that are in evidence. I have examined a  
3 number of others that are cited in the bibliography.  
4 I have not examined all of them.

5 Q Now, you personally have done more work with the  
6 Makah than any other tribes in this case, haven't  
7 you?

8 A I am not sure I have. I did about a month of  
9 field work with the Makah, perhaps a little more  
10 than that, and I did work with groups around  
11 the Makah. I did a fair amount of work with  
12 the Lummi, perhaps a month or two.

13 Q And you have published an article about the Makah,  
14 have you not?

15 A That's right, sir.

16 Q And you haven't published any articles about other  
17 tribes in this case, have you?

18 A No, although as I drew attention to the court,  
19 articles about other tribes will be published, is  
20 being published now.

21 Q I would like to direct your attention, if you will,  
22 to Exhibit USA-21, which is Dr. Lane's Makah  
23 report, at page 51.

24 A Yes.

25 Q And this is part of the references that Dr. Lane



1 gives for her report, and the second one is the  
2 unpublished diaries of James G. Swan. Have you  
3 had occasion to consult those?

4 A. I have consulted a large amount of Swan material.  
5 I am not sure I have consulted those unpublished  
6 diaries.

7 Q. If I told you that the only place that they are  
8 located is the University of Washington, would  
9 that help you determine whether you consulted  
10 them?

11 A. No, because I worked with the University of  
12 Washington to some degree in 1952.

13 Q. But you don't recall whether you have consulted --

14 A. I don't recall, that's right.

15 Q. The item just under that is Vasilii Tarakanov,  
16 and it is taken from a published worked entitled,  
17 "Descriptions of Remarkable Shipwrecks, St.  
18 Petersburg, 1853."

19 Did you have occasion to consult that  
20 in your Makah writings?

21 A. I have never consulted the full documents. I  
22 have read precis of that document.

23 Q. Whose precis?

24 A. I am not sure I can pronounce the name. I have  
25 it here. Why don't I simply give it to you later,

1 if that would be proper?

2 Q That's right, fine. In your examination of  
3 Dr. Lane's reports, Dr. Riley, have you examined  
4 her limited list of some of the principal fishing  
5 areas of the tribes that she studied?

6 A I have read her reports, yes.

7 Q And have you checked her reports in that regard  
8 against the data that she used?

9 A No, I'm sorry, but the question seems a little  
10 wide to me. I have read her reports. I have  
11 read the other documents. I have not made a point  
12 by point check of Dr. Lane's reports with other  
13 documents.

14 Q Well, but it is accurate to say that in at least  
15 a general way you have checked it against the  
16 other documents for all the reports she has given?

17 A No, I don't think so, I think you are saying the  
18 same thing that you said in the last question,  
19 and I believe my answer would be the same, sir.

20 Q Well, if I understand you correctly you said  
21 you didn't make a point by point examination, but  
22 that you have read the documents and in a general  
23 way that you had checked them against what she  
24 has said; is that correct?

25 A Perhaps, that is only partially correct. Perhaps

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it would be easier if I would explain what I did do.

Q Yes, and relate it, if you will specifically to her limited list of some of the principal fishing areas of each of the tribes which she studied.

(Continued on next page.)

Etl

1 A Relating to the tribes which she studied?

2 I was asked first of all by the Department of Fisheries  
3 and the Department of Game --

4 THE COURT: I don't think that would be helpful. I  
5 wish you would confine yourself. It is a rather narrow  
6 question, and Counsel has the right to ask it, and you  
7 have the obligation to answer it specifically, if you can.

8 Now, the question is repeated so as to  
9 indicate the narrow range of the question that you put.

10 THE WITNESS: Yes, sir. Would you repeat  
11 the question?

12 Q (By Mr. Pierson) The question is have you had occasion  
13 in any way to consider in your examination the limited  
14 list of some of the principal fishing places of the  
15 tribes studied by Dr. Lane and reported on in USA-21  
16 through 30.

17 THE COURT: Exhibit number of course?

18 MR. PIERSON: Yes.

19 THE COURT: That calls for a yes or no.  
20 Then if there is an explanation you can give it.

21 THE WITNESS: Yes.

22 The direct answer to that is no, with a  
23 caveat and an explanation.

24 The caveat is if I understand the question  
25 correctly.

1           The explanation is that I read Dr. Lane's  
2 report, and then refreshed myself on a section, but  
3 only a section which was available to me which the  
4 limited time I had made available to me of this area.

5 Q (By Mr. Pierson) Let's confine the question even more,  
6 Dr. Riley.

7           Did you check her list, limited list, of some  
8 of the principal places against the documents which she  
9 attached to her reports?

10 A IN order to clarify further, could you tell me which  
11 document?

12 Q Well, some of the documents that include lists of  
13 fishing sites in appendices to the reports. In the body  
14 of the report, Dr. Lane lists some of the principal  
15 fishing places of the tribes she is speaking about.

16           My question is whether you checked those  
17 statements in the text against the lists or maps  
18 included in the appendices.

19 Q Is there any great secret about who compiled these, sir?

20           THE COURT: You must answer the question,  
21 please, and not respond with a question. If you don't  
22 understand the question, you can say so, and it will be  
23 clarified. But you must not respond to a question by  
24 asking another, unless it's in clarification. If it is  
25 something about the significant of this area, it is not

1 for you to be concerned with.

2 THE WITNESS: I understand that, your Honor.

3 THE COURT: Yes.

4 THE WITNESS: May I respond to your question  
5 with a request for clarification.

6 What are we talking about?

7 Q (By Mr. Pierson) We are talking about those appendices  
8 attached to some of the reports in Exhibits USA-21  
9 through 30, and those appendices which list or map some  
10 of the principal fishing sites of the tribe being  
11 studied and reported upon.

12 There are statements in the text of the  
13 report as to the locations of some of those principal  
14 fishing places.

15 My question is, have you had occasion at any  
16 time to check those appendices against statements made  
17 in the text?

18 A My answer to this is that there are a great number of  
19 appendices, and I have checked some and I have not checked  
20 others.

21 Q Could you tell us which ones you have checked, please?

22 A Yes.

23 Your understand, Counsel, that that will require  
24 going through the document?

25 MR. MCGIMPSEY: Your Honor, I feel that the record

1 should show at this point that the trial of this matter  
2 was set prior to the time that all of Dr. Barbara  
3 Lane's material was available to the defendants, and  
4 that the defendants have had only a couple or three  
5 months, May, June, July and August -- four months  
6 in which to prepare this.

7 MR. PIERSON: The record should also reflect  
8 that at least since February, 1972, three of Dr. Lane's  
9 reports have been in the hands of the defendants.

10 THE WITNESS: The first appendix to Dr. Lane's  
11 report is following page 51 of the Makah report. It  
12 is a map of Tatoosh Island.

13 Q (By Mr. Pierson) And there is a list at Appendix 1 that  
14 goes nine pages.

15 A That is not identified as to authorship in the appendix.  
16 Would you identify it for me?

17 Q The question is whether you checked that in your text.

18 A I read both the text and the appendix, yes.

19 Q And did you check it against her statements as to the  
20 locations of some of the principal fishing places of  
21 the Makah Tribe?

22 A I really don't think my answer can be expanded beyond  
23 that.

24 THE COURT: Then I take it the answer is no,  
25 other than to have looked at the appendix?

1 THE WITNESS: Yes, I looked at both the text  
2 and the appendix.

3 Q (By Mr. Pierson) Let's move next to the report on the  
4 Quileute, the nearest appendix, beginning page 18,  
5 which is a testimony reportedly, of Benjamin Harrison  
6 Sailto in 1941, and it speaks of fishing sites and  
7 villages.

8 My question is the same: Did you check that  
9 against the statements in the text?

10 A I have read the text, and the appendix.

11 I'm really not trying to be obtuse. I'm not  
12 quite sure what you are getting at.

13 THE COURT: It isn't a question of what he  
14 is getting at. It is a question of your answering yes  
15 or no, did you do a certain thing.

16 Now, you have said that you read the text  
17 and the appendix. Did you do anything else to check the  
18 veracity of the data given in support of the --

19 THE WITNESS: No, sir, Judge Boldt. It's  
20 my understanding that that is not his question. His  
21 question, as I understand it, is did I check the appendix  
22 against the text; not attempt to check the veracity of  
23 the appendix.

24 Is that not so, Mr. Pierson?

25 Q (By Mr. Pierson) Your Understanding is correct, Dr. Riley.



1 We will get to that other question later.

2 A I did, of course, check the text against the appendix  
3 in that sense.

4 Q Did you find any errors in her statements in the text?

5 A No.

6 Q Next is the Skokomish.

7 A I can hasten this by saying no to all of them. I did  
8 not find any errors between text and appendix.

9 Q Now, the question that the Court was interested in,  
10 and I am interested in:

11 Did you check the veracity or the validity  
12 of the statements in the appendices as to the locations  
13 of the sites described in those appendices?

14 A I can give opinion as to the veracity of an appendix  
15 if you would like to go appendix by appendix.

16 Q The first question was whether you checked.

17 A Well, I think that here we are somewhat getting off the --

18 THE COURT: I don't know why you hesitate to  
19 answer simple questions of this kind, Doctor. It is  
20 disturbing me.

21 THE WITNESS: All right. Yes, I did.

22 THE COURT: I might as well tell you so right  
23 now.

24 THE WITNESS: Yes, sir.

25 THE COURT: If you persist in appearing to dodge

1 questions, answers to questions of this kind, it will  
2 bear heavily on my appraisal of your credibility,  
3 and I might as well say so right at this moment.

4 THE WITNESS: All right, sir.

5 I will say yes.

6 Q (By Mr. Pierson) You did check.

7 Let's go report by report, starting with the  
8 Makah.

9 Did you find in your opinion as an  
10 anthropologist that the appendices there had veracity  
11 and validity?

12 A In my opinion, on the Makah, all these are not labeled  
13 and although you do not wish to give me the label, I  
14 believe this would be Waterman list.

15 My opinion -- and I said this opinion  
16 yesterday -- is that all lists taken this late in time  
17 are open to question.

18 Q Do you have any indications that the appendices, if it  
19 is Waterman, in the Makah report is in any way inaccurate?  
20 If you do, please tell the Court what contemporaneous  
21 documents historical reconstructions, or informant  
22 testimony leads you to that conclusion.

23 A There are no contemporaneous documents that give detailed  
24 lists of any kinds of fishing sites for the Makah.  
25 There are no contemporary documents.

1 Q My question really was whether you have any indications  
2 from any anthropological sources that the information  
3 given in the appendices to the Makah report, assuming  
4 it is from the Waterman transcript, the monograph,  
5 that indicates that those things included in the  
6 appendices are inaccurate as to the sites there described.

7 A Since Judge Boldt wishes me to give you a yes or no  
8 answer --

9 THE COURT: Read it, please.

10 (Pending question read by Reporter.)

11 THE WITNESS: I have no indication one way  
12 or the other.

13 Q (By Mr. Pierson) Turning to the next report, which is  
14 the Quileute and Hoh, starting at page 18, the appendices  
15 includes transcripts of information given by, first,  
16 Benjamin Harrison Sailto and Jack Ward, and they are  
17 given, as I understand that, in March of 1942.

18 My question is the same:

19 Do you have any indications from any of the  
20 anthropological sources which you as an expert would  
21 rely upon that indicate that the statements given  
22 therein describe the sites and places and villages  
23 are inaccurate?

24 A Except inasmuch as the statements of Mr. Salto mentions  
25 areas that are mentioned at treaty times, or near treaty

1 times, I have no such information one way or another.

2 Q Let's talk about that exception.

3 Could you describe to me in your own words  
4 how that exception indicates an inaccuracy?

5 A I said yes or no, which implies not an inaccuracy or  
6 an accuracy, but simply the fact that as of 1941, it  
7 is very difficult to know what the situation was in 1855.

8 Q My question was, in addition to your feeling that  
9 those informants are somehow relatively unreliable, are  
10 there any other sources that you would rely upon as an  
11 anthropologist that have indicated to you that there is  
12 any inaccuracy in their statements?

13 That calls for a yes or no answer.

14 A No, sir, because it's a two-part question, and the first  
15 part puts words in my mouth which I didn't say.

16 Q Let's just take the second part.

17 A Well, let's take the first part, because the first part  
18 gets into the matter of my understanding of the  
19 reliability of the informant.

20 I don't know the informant. So, I don't know  
21 if he's reliable or not.

22 The second part is this: No one in 1941 can  
23 with certainty say what was the situation in 1855.

24 I thought this was brought out by Dr. Lane over and over  
25 again. It's repeated three times in her testimony, and  
she talked about it at great length.

1 Q (By Mr. Pierson) Just to it clear so that I  
2 understand you, Dr. Riley, if in 1940 there were  
3 living an Indian who lived in 1855, is it possible  
4 that you would say that that person could speak  
5 with certainty about what happened in 1855?

6 A In 1940 there would be no Indian living in 1855  
7 except a child and a child by the ordinary uses  
8 of any culture, he learns from his parents. So  
9 that a child would be involved in getting his  
10 information from his elders.

11 Q Suppose the child worked a fish weir as a child,  
12 would his description as to where that fish weir  
13 was and how it was operated, assuming he lived  
14 in 1940, be accurate or credible in your view?

15 A If a child worked a fish weir in 1855, it would  
16 have a higher degree of accuracy, although, I must  
17 point out to you that people do forget.

18 Q All right.

19 A And particularly people over a long span of years  
20 tend to forget.

21 Q Let's go to the second part of the question now  
22 as to the appendices in the Quileute and Hoh  
23 report, which is marked as Exhibit USA-22, have  
24 you found in any sources which you would determine  
25 credible as an anthropologist any indications

- 1           that the statements given therein are inaccurate?
- 2   A    This is a transcript of Sextus Ward at Laa Push
- 3           on October 15, 1941 --
- 4   Q    I think we can shorten this considerably, Doctor,
- 5           if you tell me yes or no in answer to the question
- 6           and then I will be happy to have you explain it.
- 7   A    Well, I don't think these really can be given
- 8           in a yes or no. Frankly, the --
- 9   Q    Well, I'm not asking you to say yes or no about
- 10           the testimony except to the extent of asking
- 11           you whether you have found any indications in any
- 12           anthropological sources which you would find and
- 13           rely upon that would indicate that the statements
- 14           therein are inaccurate.
- 15   A    There simply is very scanty anthropological evidence
- 16           for Quileute fisheries in and around 1855.
- 17   Q    Dr. Riley --
- 18   A    Dr. Ward, who is 90 years old and familiar with the
- 19           usual fishing places of the Quileutes, says that
- 20           his memory is kind of dim.
- 21   Q    Dr. Riley, the question is: Have you found any
- 22           indications in any anthropological sources which
- 23           you would rely upon to indicate that any of the
- 24           statements in this append ces are inaccurate,
- 25           yes or no?

1 A I can't answer yes or no.

2 THE COURT: Go ahead to another question.

3 Q (By Mr. Pierson) For the Skokomish report,  
4 the appendices for the Skokomish report, those  
5 include maps by W.W. Elmendorf, diagrams, pictures,  
6 descriptions of the locations of the village  
7 sites and fishing sites; my question in regard  
8 to that appendix is the same question as I asked  
9 you for the first two, have you found any information  
10 any indication in any of the anthropologically  
11 reliable sources to indicate that the statements  
12 and the descriptions and maps given therein are  
13 inaccurate? Again, that calls for a yes or no  
14 answer.

15 A Well, if it calls for a yes or no answer, I must  
16 decline because I think it calls for an explanatory  
17 answer.

18 THE COURT: Dr. Riley, I have explained  
19 to time and again, you heard me explain it to  
20 other witnesses during these several days that  
21 you have been here at this trial, that a witness  
22 should answer the question yes or no if it is  
23 capable of being answered, then he may go on to  
24 qualify, explain it, go on ad infinitum. I have  
25 not cut off any witness from going on and on and

1 sometimes rather far afield from the question.  
2 I am perfectly willing for you to express any  
3 views you have on any subject, but again I must  
4 insist that at some time or other you come to  
5 an unqualified answer to questions that appear to  
6 be capable of that in my judgment, and it is  
7 my judgment in this respect that is controlling  
8 here.

9 THE WITNESS: Yes, sir.

10 THE COURT: If you do recognize that,  
11 I think we will save a great deal of time and you  
12 will be far more helpful in resolving the serious  
13 questions involved in this case if you do that.

14 THE WITNESS: Yes, sir. You do understand,  
15 though, sir, that the questions are phrased in  
16 such a way that one needs an explanation. Would  
17 it satisfy Your Honor if I --

18 THE COURT: I am not to be satisfied in  
19 this respect. I am only trying to explain to you  
20 the method of interrogation in a United States  
21 District Court. Wherever you may have testified  
22 in other courts or Claims Commission or wherever,  
23 in a United States District Court the witnesses  
24 are required to make categorical answers, however  
25 disagreeable it is to them, if that is possible.



1 On the other hand, if a categorical answer is  
2 not possible, the witness may say so and offer  
3 his explanation. However, the explanation had  
4 better be an explanation of why the question can't  
5 be answered categorically, because otherwise, the  
6 same question, you may be sure, will be repeated  
7 endlessly until a categorical answer is given.

8 These are all matters that courts and  
9 jurors and other fact finders take heavily into  
10 account in weighing whether or not the witness  
11 is freely and openly responding to inquiry.

12 THE WITNESS: Yes, sir. May I then  
13 answer these questions all -- and so we won't  
14 have to go over them page by page, may I --

15 THE COURT: If you want to give a  
16 general answer to all these several -- Mr. Pierson,  
17 explain what the points now are that you are  
18 talking about so there will be no misunderstanding.

19 MR. PIERSON: Very well, Your Honor.

20 Q. (By Mr. Pierson) My purpose, Dr. Riley, is to  
21 go through each one of the appendices in each of the  
22 reports which recites any information about  
23 village sites or fishing sites or places of fishing  
24 for any of the tribes studied by Dr. Lane.

25 A. Yes.

1 Q My question as to each will be whether in your  
2 examination or your experience in anthropological  
3 fields, you have found any indication from any  
4 sources which you would rely upon to indicate  
5 the statements given therein are in any way in-  
6 accurate?

7 A Yes. Let me at the direction of Judge Boldt --

8 THE COURT: Just a moment, you said yes,  
9 did you really mean yes, I understand the question?

10 THE WITNESS: Yes.

11 THE COURT: You didn't mean to answer  
12 the question that way?

13 THE WITNESS: No, sir, I didn't.

14 At the direction of Judge Boldt and  
15 on his explanation of how things are run in these  
16 courts, may I give you a categorical note to all  
17 of these documents that date from the late nineteen  
18 teens onward, and I believe all of them do with  
19 the possible exception of one or two, and then may  
20 I explain why I'm giving you this answer and  
21 qualify it, this answer?

22 THE COURT: You certainly may.

23 Q (By Mr. Pierson) My only request is in addition  
24 would be for you to also give an explanation and  
25 an answer as to any of the sources which may date

1 before the nineteen teens.

2 A You may ask me on those, you have a right to ask  
3 me anything you want to. But anything before the  
4 nineteen teens why don't we consider separately,  
5 would that be all right?

6 Q That's fine, Dr. Riley.

7 A I have said in my response to Dr. Lane's testimony  
8 and my own direct testimony, and I have said  
9 in writings and I have said elsewhere, and I  
10 think it is a general anthropological premise  
11 that statements taken from informants long after  
12 the -- long after the fact are apt to be -- are  
13 apt to be not necessarily biased, but they must  
14 be used with great care because the informants  
15 themselves are not talking within the context of  
16 the culture in which they are describing, that is,  
17 let's place this in Western Washington.

18 People like Mr. Ward, the Quileutes,  
19 and other informants, which I believe are in this  
20 testimony in this green document of Dr. Lane's,  
21 which is an exhibit, are people who have -- who  
22 are living in American culture, and I think that  
23 it can be reasonably well documented that they  
24 are participants in American culture, they are  
25 citizens of America, they speak English, they

1 have a variety of a modern great religion, they  
2 use American dress, they use American clothing,  
3 they use American concepts, they drive on American  
4 highways, they not all of them speak the Indian  
5 language, I don't know how many do and how many  
6 don't, and I don't know how many speak them well.

7 But, at any rate, Indian culture, and  
8 this is a general opinion of anthropologists who  
9 have worked in this area, Indian culture in  
10 Western Washington is broken down.

11 Now, we are asking these people to give  
12 us an opinion on what the situation in Western  
13 Washington was as of 1855. Now, you are asking  
14 me to agree with you that what these people say  
15 are correct, or at least you are asking me to  
16 agree with you that what Dr. Lane interprets is  
17 correct from what these people have told -- either  
18 have told her or have put in documents of one  
19 sort or the other. Most of these are, in fact,  
20 documents.

21 I would suggest to you, and I think here  
22 we are getting to the heart of the question, I  
23 would suggest to you that what the important point  
24 here is that I do not believe one can rely totally  
25 on any of these documents, and one can rely

1 less on the testimony of Mr. Sextus Ward in  
2 1940 than one can rely on contemporaneous documents.  
3 Unfortunately, we don't have contemporaneous docu-  
4 ments.

5 The situation, it seems to me, that  
6 you have touched on and Judge Boldt has touched  
7 on, the very clear issue that this case is about,  
8 at least from the anthropological point of view --

9 Q Dr. Riley, I wonder if instead of telling me  
10 what issue I have touched on, we can just get to  
11 the question of whether in any of your anthropoli-  
12 cal experience you have found any evidence indicating  
13 that any statements by any Coast Salish Indians  
14 from nineteen teens to present regarding the loca-  
15 tion of the village sites, fishing sites, places  
16 of movement, have been inaccurate checked against  
17 whatever anthropological sources you might find?

18 A The answer is we don't know. We can check their  
19 accuracy but we can't check their inaccuracy. We  
20 are trying to prove a negative.

21 Q All right. And what I'm asking you to do is to  
22 advise the court whether you have them ever to  
23 be inaccurate.

24 A Sir?

25 Q I'm asking you to say whether you have ever found

1           them -- those statements which I described, to  
2           be inaccurate?

3       A.    Certainly, many times. I have had many informants --

4                       THE COURT: Are you speaking of the  
5           specific items that we are now talking about in  
6           Dr. Lane's report? If so, tell us what they  
7           are. That is the nub of the problem that we  
8           have at the moment with respect of the manner of  
9           your interrogation and of your testimony in this  
10          respect.

11                      Let me explain it this way, you have  
12          not only explained it today, but I have read  
13          every word of your report in which you outline  
14          these very factors that cast doubt upon the  
15          statements, written or oral, of persons who  
16          lived long after the event. I understand that,  
17          I would understand it even if you hadn't told  
18          me. It is common sense that errors of all kinds  
19          creep in in those circumstances. I know that.  
20          What the point that Mr. Pierson is trying to get  
21          you to respond to is: Have you found anywhere  
22          in any material anything that positively negatives  
23          the statements that are contained in Dr. Lane's  
24          report? That's all he's asking you.

25                      THE WITNESS: Yes, sir, and I can indeed

1 answer that, and I can answer it very quickly,  
2 the answer is no, our evidence is so lacking.

3 THE COURT: That is what this whole  
4 matter has been about, sir.

5 THE WITNESS: Thank you.

6 THE COURT: Go ahead.

7 (Continued on next page.)

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1 Q In your testimony, Dr. Riley, I believe at several  
2 places you speak of rights, and at one point there is  
3 a question of title regarding Indian fishing, and  
4 what the United States was trying to do.

5 Would it be accurate in your understanding  
6 to say that it was the intention of the United States  
7 to extinguish Indian title to land in the treaties  
8 involved in this case?

9 A Yes, sir.

10 Q Now, have you in your anthropological studies generally  
11 or in your preparation for this case had any occasion  
12 to compare the treaty of the United States with Ottoes  
13 and Missourias Indians against the provisions of the  
14 treaty involved in this case?

15 A Let me answer that no. I have looked at them, but I  
16 would prefer to answer it no, because I don't remember  
17 them, really.

18 Q Could the clerk hand the witness Exhibit PL-1, and  
19 this, Dr. Riley, is a letter from Mr. Mix giving  
20 instructions to Governor Stevens, dated August 30, 1854,  
21 and I would like to direct your attention to the second  
22 page. I believe it is the fifth paragraph, beginning,  
23 "thosenegotiated by Superintendent Palmer..." Do you  
24 have that?

25 A The sixth paragraph is: "It is desirable also..."



1 Now, let me see.

2 MR. PIERSON: May I approach the witness,  
3 your Honor?

4 THE COURT: You may.

5 Q It is the second paragraph on the third page, and in  
6 that paragraph, Dr. Riley, to paraphrase, Mr. Mix is  
7 speaking about the fact that he is forwarding the text  
8 of a recently negotiated and signed treaty between the  
9 Ottoes and Missouriias and Superintendent Palmer.

10 Now, do you know what the provisions of the  
11 treaty forwarded to Governor Stevens were, or have you  
12 seen them?

13 A NO, sir.

14 Q Are you aware that none of those treaties included a  
15 treaty fishing rights clause similar to the one at issue  
16 in this case?

17 A Yes, that was brought out on testimony a few days ago.

18 Q And do you agree with that?

19 A I haven't seen the treaties, but I see no reason to deny it.

20 Q In your earlier testimony, where you gave your opinion  
21 about the meaning of some of the terms in the treaty  
22 fishing rights clause, were you drawing on your under-  
23 standing of the events surrounding the forwarding of that  
24 Ottoes and Missouriias treaty to Governor Stevens?

25 A No.

1 Q I would like to direct your attention to, Dr. Riley, if  
2 you will, to Dr. Lane's volume, and her summary which  
3 is the first section in the volume marked USA-20,  
4 at page 12. Do you have the page?

5 A Yes, I do.

6 Q In the second full paragraph there, she makes the  
7 following statements:

8 "Fishing methods varied according to the  
9 locale, but generally included trapping, dipnetting,  
10 gillnetting, reefnetting, trolling, longlining,  
11 jigging, setlining, impounding, gaffing, spearing,  
12 harpooning, raking, and so on."

13 In your preparation for this case, and your  
14 anthropological studies generally with respect to the  
15 Coast Salish culture, do you have any information or  
16 indication that that statement is inaccurate?

17 A I do not.

18 Q And I would like to ask you the same question about the  
19 following paragraph, which I would read:

20 "Species of fish taken, again varying  
21 according to locale, included salmon and steelhead,  
22 halibut, cod, flounder, lingcod, rockfish, herring,  
23 smelt, eulachon, dogfish, trout and many others."

24 And my question is the same.

25 A I do not.

1 Q On the following page 13, Dr. Lane makes the following  
2 statement:

3 A You understand that not all fish were taken in all  
4 areas, and Dr. Lane, I think, made that clear.

5 Q The statement she made that I just read, you have no  
6 anthropological evidence that it is inaccurate?

7 A As a generality for the whole area.

8 Q Again on page 13, the second full paragraph:

9 "Available evidence suggests that Indian  
10 fishing increased in the pretreaty decade for  
11 three major reasons: (1) to accommodate increased  
12 demands for local non-Indian consumption and for  
13 export; (2) to provide money for the purchase of  
14 introduced commodities like calico, flour and  
15 molasses: and (3) to obtain substitute non-Indian  
16 goods for native products no longer available  
17 because of non-Indian movement into the area."

18 My first question is, just the overall one,  
19 do you have any anthropological evidence that that  
20 statement is inaccurate?

21 A That simply cannot be answered with a yes or no answer.

22 Q Could you answer it?

23 A I would.

24 THE COURT: Could you break it down?

25 THE WITNESS: I would like a clarification, first,

1 if I may.

2 Q Certainly.

3 A May I take these one by one?

4 Q Certainly.

5 THE COURT: You mean the parenthesis 1, 2 and 3?

6 THE WITNESS: Yes.

7 THE COURT: I was going to suggest that it  
8 might help you answer the question.

9 THE WITNESS: "Available evidence..." as a  
10 preface to number (1), I would say that available  
11 evidence does not in fact indicate an increase in Indian  
12 fishing. On number (1) I would say there is no question  
13 but what Indian fishing, but what Indians were  
14 interested in non-local products. We have ample  
15 documentation of that to the Hudson Bay's records, and  
16 that goes back before settlement of Washington. It goes  
17 back to the 1830's.

18 Number (2), the Indians -- I would expect  
19 Number (2). At the moment I can't think if a particular  
20 bit of evidence on calico, but I certainly would accept it.

21 I don't understand number (3). Would you  
22 explain to -- what non-Indian goods are, and tell me  
23 what time frame we are involved in.

24 Q The time frame in which the statement was made in this  
25 report, Dr. Riley, which I believe you said you have read.

1 A I am assuming it is 1855, but I would like verification  
2 on that.

3 Q Let's assume it is treaty times, which we will define  
4 as 1850 to 1860.

5 A Would you list those non-Indian goods?

6 Q Do you know of any non-Indian goods?

7 A I mean, sorry, would you list those native products  
8 that are no longer available?

9 Q Do you know of any native products that are no longer  
10 available as a result of non-Indian settlement in the  
11 Coast Salish area?

12 A YOU are asking me for a yes or no?

13 Q I certainly am.

14 A To a particular statement. I am asking you to clarify  
15 the statement, sir.

16 Q Well, in order to clarify it, I want your understanding  
17 as an anthropologist, and a person who claims to have  
18 studied this area intensively, and I want to know  
19 whether you know of any native goods, those manufactured,  
20 cultivated, domesticated, manufactured by the natives  
21 which were not extant or eliminated by the influx of  
22 non-Indian settlers?

23 A Right, that is not -- I can think of none as of treaty  
24 times. There weren't that many Americans in the area  
25 at treaty times.

1 Q Would you say that the decline which you find in Indian  
2 culture advanced at treaty times still is true, even  
3 though none of their goods, none of their manufacture,  
4 none of their native, domestication had been eliminated  
5 or done away with by non-Indian settlers?

6 A We are talking about material objects, Indian material  
7 objects here?

8 Q That is correct.

9 A And these are normally the results of the environment.  
10 The environment had not changed that much by 1855.  
11 I stick by my answer. I stress my answer. In fact, I  
12 don't recall any, any single Indian goods that had  
13 disappeared by 1855.

14 Q And you considered that factor when reaching your  
15 conclusion that aculturation had advanced considerably?

16 A Aculturation?

17 Q Excuse me, during treaty times.

18 A There is no question but what aculturation advanced.

19 Q The question is whether you considered the fact.

20 A Indeed I did.

21 Q All right, now, let's assume that that paragraph that  
22 I read to you is applied as of the decade 1843 to 1850.  
23 Would you still disagree that Indian fishing had  
24 increased?

25 A Again we have no particular evidence, no evidence that

1 Indian fishing had increased. I would agree on one,  
2 I would agree on two. I would disagree on three.

3 Q I am talking about the increase in Indian fishing. You  
4 say there is no available evidence to support that.  
5 Can you give us a citation to any anthropological  
6 source indicating that the statement that the Indians'  
7 fishing had increased is inaccurate?

8 A Well, you are asking me to cite a negative, and I can't  
9 cite a negative.

10 Q No, I am asking you to prove a negative by just showing  
11 some instance, just one instance that statement is  
12 inaccurate.

13 A My guess is that Indian fishing had decreased, not  
14 increased, because Indian population had decreased. This  
15 is --

16 THE COURT: You didn't answer the question.  
17 This is a habit of yours, and you find it difficult to  
18 overcome it, and I have habits of the same kind, so that  
19 I am quite understanding of habitual speech; but again  
20 you have not answered the question, and the question was  
21 very precise and specific and in clear English. Read it.

22 THE WITNESS: I remember the question, and  
23 the answer is no.

24 May I stand on the question?

25 THE COURT: Certainly. If you have anything to

1 say about it, I am always interested to hear it.

2 THE WITNESS: May I say that in my opinion  
3 there was a tailing off of, decrease of Indian  
4 population, and as a corollary to that increase in  
5 Indian population, a general increase in Indian activities,  
6 including fisheries during that period.

7 Q Now, you are telling us that there was an increase.  
8 Did you mean to say increase?

9 A No, no, no, decrease.

10 THE COURT: You used "increase" each time you  
11 spoke.

12 THE WITNESS: I am sorry, I meant decrease.

13 Q Do you have any evidence to support your statement that  
14 the level of Indian fishing decreased, and if you do,  
15 please cite us to those sources.

16 A No.

17 Q Turning to page 15, if you will, of Dr. Lane's summary,  
18 the paragraph second to the last on the page she begins:

19 "There was clearly misunderstanding of  
20 Indian concepts of fishing 'rights' and there was  
21 evidently no perception of Indian self-regulation.  
22 It was incorrectly assumed that the Indians recognized  
23 no private rights in taking fish."

24 Do you agree or disagree with that statement?

25 A I agree.



1 Q Second part of the sentence:

2 "There was evidently no perception of Indian  
3 self-regulation." Do you agree or disagree with  
4 that statement?

5 A I agree. Now, having agreed may I qualify this?

6 They -- I am not clear what self-regulation means, and  
7 they --

8 Q May I define it for you, Dr. Riley?

9 A Yes.

10 Q Any activity which in any way controls the time, place,  
11 manner or volume of taking fish.

12 A There was evidently no perception of Indian self-  
13 regulation.

14 Q Do you agree with that, with the definition I have  
15 given you of Indian self-regulation?

16 A I agree, but point out to you that our records are very  
17 incomplete.

18 Q The next sentence:

19 "It is incorrectly that the Indians  
20 recognized no private rights in taking fish."

21 My question to you is do you agree or do you  
22 disagree?

23 A I disagree. There is a statement in Gibbs (1877) --

24 which is a plaintiff's exhibit -- and I don't know the

25 number, which mentioned a family -- and by family I think

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1 one could extrapolate individual control -- of shore  
2 areas.

3 Q That seems to support the statement, Dr. Riley.

4 A Yes. I said I agree.

5 Wait a minute. I'm sorry. I disagree. It is  
6 incorrectly assumed, Mr. Pierson, is what the statement  
7 says. It is incorrectly assumed, and I take that to mean  
8 at treaty times.

9 Q And do you know of any other statements besides that one  
10 of his that indicates that they realized or recognized  
11 private rights in taking fish?

12 A I know of no other statement.

13 Q Do you know what Indians he was speaking of when he  
14 said that?

15 A I do.

16 Q Which Indians?

17 A Makah.

18 Q And do you know whether it applied or would apply in any  
19 way by implication that you as an anthropologist might  
20 draw to any of the other Indian tribes in this case?

21 A I do not believe so, except that he did mention one of  
22 the Sound groups, I think Snoqualmie, out of the claimed  
23 area. In general, I think it would not apply.

24 Q In your understanding as an anthropologist and your  
25 interpretation of the treaty phrases of the provision for

1 the right of taking fish at issue in this case, is it  
2 your view that what was secured to the Makahs in that  
3 provision is any different than what was secured to the  
4 other Indians in this case?

5 A The treaty phraseology of the Makah -- I'm sorry.

6 In answer to your question, it is my under-  
7 standing that the Makah treaty is the same as the  
8 other, and the implication, I would simply say that there  
9 is a slight rewriting to get rid of the word "horses."  
10 There apparently were no horses with the Makah.

11 Q Let me ask the question as directly as I can. I want  
12 your interpretation of what was secured; not what the  
13 language was.

14 The question is: In your view, were any  
15 different rights being secured in the Makah treaty than  
16 were being secured in the other treaties at issue in  
17 this case with respect to fishing rights?

18 A No, no.

19 Q Moving, if you will, to page 16, at the very top.

20 THE COURT: Which section?

21 MR. PIERSON: In the summary, your Honor,  
22 USA-20, Dr. Lane's summary report. We have just been on  
23 page 15. We are now moving to the top of page 16.

24 THE COURT: I thought you had switched to  
25 some other area. Thank you.

1 Q (By Mr. Pierson) At the top it says:

2 "The fishing areas used were basically of  
3 five kinds: (1) fresh water lakes, (2) fresh  
4 water streams and creeks draining into the various  
5 inlets; (3) shallow bays and estuaries; (4) the  
6 inlets and the Sound; and (5) The Straits and ocean."

7 Now, considering the context in which that  
8 statement was made, do you agree or disagree?

9 A I agree with that statement quite firmly.

10 Would you tell me the context in which it was  
11 made?

12 Q It was made in the summary report of Dr. Lane, which  
13 you have read and you have studied.

14 A That's the only context?

15 A Yes, I agree, sir.

16 Q Turning, if you will, to page 19, under the heading where  
17 it says : "Controls over Indian Fishing," Dr. Lane states:

18 "Indian control was accepted, customary  
19 modes of conduct, rather than by formal regulations  
20 involving enforcement and sanctions."

21 Do you agree or disagree?

22 A I agree with sentence one. I would like amplification on  
23 sentence two.

24 Q Formal regulations would be those which would either be  
25 in writing or were directly recognized as binding on

1 everyone and managed either the time, place, manner  
2 or volume of take of fishing or the people taking.

3 A Did you say writing?

4 THE COURT: I think they have misheard each  
5 other. I understood the Doctor to say that he agreed  
6 with the first sentence under the heading "control."

7 THE WITNESS: Yes, sir.

8 MR. PIERSON: That is all I was asking about.

9 THE COURT: You apparently misunderstood his  
10 response.

11 I was correct in what you said?

12 THE WITNESS: You were correct.

13 THE COURT: Then he refers to the second  
14 sentence in which he asks for clarification.

15 THE WITNESS: I mistook, in my half-blind way,  
16 a comma for a period.

17 I accept the first phrase, set off by the comma.

18 Q (By Mr. Pierson) It would help things, Dr. Riley,  
19 if you would read the sentence that you agree with.

20 A Yes, I will.

21 "Indian control was by accepted, customary  
22 modes of conduct rather than formal regulations.  
23 involving enforcement and sanctions."

24 No, that is the same.

25 Q Do you agree or disagree?

1 A I agree with that, sir. But you read two sentences.

2 Q That's the only sentence I read to you.

3 Let's turn over to the second page following  
4 that, page 20.

5 Dr. Riley, page 20. Do you have it?

6 A May I ask, we are obviously -- I'm sorry. This is really  
7 my fault, because --

8 THE COURT: Don't be concerned about that.  
9 You may ask anything you wish.

10 THE WITNESS: May I ask a clarifying question  
11 on the last four?

12 One problem, may I say this -- I don't know  
13 whether it needs to be on the record or not -- but one  
14 problem is that when trying to talk into the mike and  
15 read --

16 THE COURT: Disregard the mike. I can hear  
17 you very well if you keep your voice up.

18 THE WITNESS: All right, thank you.

19 THE COURT: If that bothers you, turn it off  
20 or whatever.

21 THE WITNESS: I asked you about the phrase  
22 involving enforcement and sanctions, and I asked you to  
23 clarify that. You said that there were sanctions in  
24 writing. I asked in puzzlement whether you really meant  
25 writing.

1 A Yes, I did. But that was only one of the things I  
2 referred you to.

3 Q I see. Let's assume that we are just talking about  
4 writing.

5 A Then we are talking about post-Governor Stevens times?

6 Q No. We are talking about treaty times.

7 THE COURT: Well, we have gotten in difficulty  
8 here. Let me try to get on with this.

9 As I understand it, you agree without any  
10 qualification whatever in the sentence:

11 "Indian control --" of fishing, of course --  
12 "was by accepted, customary modes of conduct rather  
13 than by formal regulations involving enforcement and  
14 sanctions."

15 No problem about that?

16 THE WITNESS: No problem, except the last four  
17 words I asked for clarification. The confusion came when  
18 I --

19 THE COURT: All right.

20 THE WITNESS: -- when I looked at the wrong  
21 place on the page.

22 THE COURT: No, his request is with respect  
23 to the last four words, which read: "...regulations  
24 involving enforcement and sanctions."

25 Would you explain what you have in mind or what

1 you understand those words to mean.

2 MR. PIERSON: Yes. I would add the word  
3 immediately before it, as well, which is the word "formal."

4 What I understand those terms to connote is  
5 either written regulations of some kind involving  
6 enforcement and sanctions or some direct, universally  
7 understood and followed group of controls over conduct.

8 THE WITNESS: I will accept the second part  
9 of that. I will not accept the first part.

10 Q (By Mr. Pierson) Why wouldn't you accept the first part?

11 A Because you did not have a system of writing, and the  
12 Indians did not write the English language previous to the  
13 government's written treaties, and the white involvement  
14 in the Western Washington area.

15 Q Did they write Indian language?

16 A NO, sir.

17 Q Turning to page 20, if you will, third paragraph, I would  
18 like to take the sentences one by one, first:

19 "Generally, individual Indians had primary  
20 use rights to locations in the territory where  
21 they resided..."

22 Do you agree or disagree?

23 A Yes.

24 Q Second part:

25 "...and secondary use rights in the natal



1                   territory (if this was different) or in territory  
2                   where they had consanguineal kin."

3   A   Yes, sir.

4   Q   Do you agree?

5   A   I do.

6   Q   Second sentence:

7                   "Subject to such individual claims, most  
8                   groups claimed exclusive fall fishing rights in the  
9                   waters near to their winter villages."

10  A   Yes, sir.

11                   I need to qualify this entire paragraph when  
12                   you are finished. However, yes, to your question.

13  Q   You agree. Last sentence:

14                   "Spring and summer fishing areas were often  
15                   more distantly located and often were shared with  
16                   other groups."

17  A   Yes, sir.

18  Q   Now, would you like to qualify the whole paragraph?

19  A   I would like to qualify and clarify.

20                   We are not here on the kind of rights people  
21                   had with kin in other villages. The informant testimony  
22                   is quite strong that there were such rights. I do not  
23                   know what kind it was. No one really is certain what  
24                   kind it was.

25                   "Exclusive," I think needs a word of

1 clarification. Exclusive, yes, a winter village, they  
2 had an essential use to the area in their village.

3 However, this in a sense contradicts the  
4 statement above that consanguineal kin could come in;  
5 that is, kin from other villages, in this case.

6 I am not defining consanguinity. I am  
7 defining kin as you see it here.

8 Q Dr. Riley, I wonder if I might stop you here.

9 The first sentence speaks of primary and  
10 secondary use rights, and the secondary use rights are  
11 the ones which mention the rights or activities of  
12 consanguineal kin.

13 A Thank you very much, sir.

14 Q My question is, when you are explaining exclusive, are you  
15 referring to the first part of that first sentence  
16 or the second part involving secondary use rights?

17 A What I am talking about your question on exclusive,  
18 I answered yes, and that I understood to be natal rights,  
19 village areas, in other words.

20 Q You indicated that exclusive word was somehow in conflict  
21 with the first sentence, and I would like you to  
22 explain which part of the first sentence you are talking  
23 about.

24 A In the second sentence, which I also agree to, I think  
25 it follows my data as well as everybody else's data, that

1 kin who had rights in other villages did in fact, go to  
2 those areas, or could go to those other areas, to take  
3 fish.

4 Q My question really was, do you find that the first and  
5 second sentences are in conflict in any way? If you do,  
6 which part of the first sentence are you talking about  
7 being in conflict with the second?

8 A I simply wanted to make clear that people from other  
9 villages did not have primary rights in villages where  
10 they had kin. I don't think there was any real dis-  
11 agreement here. It is just a matter of clarification.

12 THE COURT: I think he has concluded. PUT  
13 another question, please.

14 Q (By Mr. Pierson) Now, you said that it is not clear  
15 what kind of rights there were with respect to kin, and  
16 then you referred to evidence from informants.

17 Do you have any other evidence upon which you  
18 base your opinion besides the evidence of the informants  
19 that you spoke of?

20 A Well, virtually every anthropologist that has worked in  
21 Western Washington has decried the fact that we have  
22 very fragmentary evidence from the 1850's.

23 In other words, the '50's was the period  
24 of the aculturation of the Indian groups.

25 Q My question was whether you had any other information or

1 data or indications upon which you base your opinion  
2 about no clear kind of evidence about the rights of  
3 kin other than informant testimony that you referred to.

4 A My answer was that any anthropologists, all anthropologists  
5 who work in this area have had these problems. If  
6 you want me to name a few, I will be very happy to:  
7 Marion Smith --

8 Q Dr. Riley, I am trying to get my hands on any other  
9 evidence besides informant testimony that you have for  
10 that statement that you made in qualifying your answer  
11 to these three sentences, any other evidence besides  
12 informant testimony. Do you have any whatever? Do you  
13 have any other such evidence?

14 A Yes. The statement of Marian Smith in Puyallup Nisqually,  
15 which is entered as a defense exhibit, decries the  
16 difficulty of finding this.

17 Phillip Drucker, who is an expert non-  
18 Western Washington indeed, but on the area just north of  
19 here feels that much of the evidence about social  
20 organization of Puget Sound Indians is irretrievably lost.

21 I believe that irretrievably is his word.

22 Epeir has so indicated, if you would examine  
23 works like Gunther and the Clallam Ethnography, if you  
24 examine, although I haven't read it recently, I believe  
25 there is a section -- if not a section, at least statements

1 in Elmendorf as of the difficulty of doing such work.

2 Bernard Stern of the Lummi has made this kind  
3 of statement, particularly in terms of reefnetting.

4 Q Dr. Riley, do any of those sources that you have just  
5 cited rely on anything else except informant testimony?

6 A They all rely on the base documents. All people who  
7 have worked seriously in Western Washington do, as well  
8 as informant testimony.

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10 (Continued on the next page.)

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1 Q And directing your attention to your statement  
2 qualifying your answer to the paragraph that we  
3 have read on page 20 where you said that there  
4 is no clear kind of evidence about the rights  
5 among native kin?

6 A Yes, that's correct.

7 Q My question is: Do any of these sources, which  
8 you cite, rely on anything besides informant  
9 testimony when speaking of those rights as among  
10 kin?

11 A Oh, I see what you mean, to rely on, you mean draw  
12 from. They all are -- or at least people who  
13 work in Western Washington, I won't sweepingly  
14 say they all understand the rather fragmentary  
15 nature of the base documents, and by base documents  
16 I mean documents at treaty times.

17 Q Let's see if we can get right on the money, Doctor,  
18 I want to know whether you know whether any of  
19 them have relied -- when speaking of the lack of  
20 clear kind of evidence on right as between kin,  
21 whether you know whether any of them have relied  
22 on anything besides informant testimony, and I'm  
23 trying to get a yes or no answer, and you can  
24 follow from there.

25 A Well, in line with Judge Boldt's directions, the

1 answer would be no, and the clarification would  
2 be this: all of them rely on informant testimony,  
3 and I'm accepting Drucker, who is summarizing a  
4 more general situation, and on informant testimony,  
5 and they have a mish-mash -- they obviously cannot  
6 go back to the base documents to clarify this  
7 confused situation in the informant testimony.

8 Q Now, my next question in this regard is, Dr. Riley,  
9 can you give any of us any lead to any data besides  
10 informant testimony on this aspect of rights as  
11 between native kin? That calls for a yes or no  
12 answer.

13 A Yes. Of course, the writings of all these various  
14 people, some of them going back into the Twenties.

15 Q Anything besides writings of the people you have  
16 named?

17 A Writings of people in doing Western Washington  
18 anthropology.

19 THE COURT: And do I understand you to  
20 mean by that, if not be sure to say so, that in these  
21 writings that you have cited, there will be some-  
22 thing other than informant information?

23 THE WITNESS: In the writings themselves  
24 there is.

25 THE COURT: If we read all of these papers,

1 will we find anywhere in them anything that  
2 purports to bear upon the rights among kin of  
3 the native population that is other than ~~is~~ based  
4 on informants' statements at some time or other?

5 THE WITNESS: Well, obviously, I can't  
6 speak through every single page, but in general,  
7 I would say no.

8 THE COURT: Thank you.

9 MR. PIERSON: I'm about to move on to  
10 something else which may take some time. Maybe  
11 we could have the morning break now?

12 THE COURT: Yes, we will do that. We will  
13 resume at a quarter to 11:00.

14 (Recess taken.)

15 THE COURT: Resume, please.

16 Q (By Mr. Pierson) Dr. Riley, I would like to turn,  
17 if you will, to page 24 of Exhibit USA-20,  
18 Dr. Lane's summary report, pages 24 -- do you have  
19 the page -- and that is the section that begins  
20 with the title Roman Number II: "The Negotiations  
21 and Execution of Treaties."

22 I would like to ask you just a general  
23 question that might be able to shortcut some  
24 specific questions. My intention is to ask you  
25 whether you agree or disagree with the statement



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made in this section which cover pages 24 through 29, and maybe you can tell me as a general matter whether there are any statements in there you disagree with; and if there aren't, we can move on to something else.

A. Could we take them one by one?

THE COURT: Well, the point of it is, Doctor, would you like to glance through the entire matter, pages 24 to 31?

THE WITNESS: If it please Your Honor, I would like to read it before disagreeing or agreeing with particular items.

THE COURT: That is quite proper. The point of it is, have you got your copy of this?

THE WITNESS: Yes, sir.

THE COURT: Have you got it with you?

THE WITNESS: Yes.

THE COURT: Did you mark somehow in it the areas of disagreement?

THE WITNESS: I'm sorry, I don't have my own personal copy, I have --

THE COURT: Where is your personal copy, is it here?

MR. CONIFF: The witness was supplied with Dr. Barbara Lane's report in individual packets

1 as they become available, and we did not have  
2 extra copies of the green volume to supply to  
3 the witness.

4 THE COURT: Did you use that method  
5 of going through her material, marking it as,  
6 frankly, I do in such cases, I go through and  
7 mark those areas where I have questions or where  
8 I think otherwise from whatever I may be reading.  
9 Did you use that method?

10 THE WITNESS: I used that method in part,  
11 sir. The question is really academic because  
12 this particular -- my copy of this particular  
13 exhibit is in Tacoma.

14 Q (By Mr. Pierson) Dr. Riley, did you read this  
15 section marked Roman II before you came into  
16 the court today?

17 A I did not before I came to the court today.

18 Q All right. And I'm not asking you for specifics,  
19 did you note any items of disagreement at the  
20 time that you read it?

21 A My answer is that I don't remember.

22 THE COURT: I take it from that that  
23 you are not now presently conscious of any portion  
24 that you did disagree with, is that right, suffi-  
25 ciently to be able to identify it?

1 THE WITNESS: I am not. It is a very  
2 large document, I'm not quite clear --

3 THE COURT: I would suggest that at  
4 the recess, which will be forthcoming, and un-  
5 fortunately, I suspect you will still be under  
6 interrogation by that time, I suggest you re-read  
7 this material and take one of counsel's copies  
8 and mark it so that we can quickly get to the  
9 meat of the coconut and not spend our time running  
10 through it sentence by sentence and can quickly  
11 go to those parts that you wish to make some comment  
12 about or wish to disagree with or whatever.

13 THE WITNESS: I certainly will, sir.

14 THE COURT: That will give you a good  
15 change to do that. If you need a little extra  
16 time for that, we will allow for that. All right.

17 Q. (By Mr. Pierson) So you know precisely what I  
18 have in mind, it is pages 24 through 29 of USA  
19 20 in their entirety.

20 THE COURT: Or, in other words, the entire  
21 section Roman II?

22 MR. PIERSON: That is correct, Your Honor.

23 THE COURT: All right. Go ahead. If  
24 you have any doubt about it, I am sure your counsel  
25 can explain it to you.

1 THE WITNESS: I have no doubt about it,  
2 Your Honor.

3 THE COURT: Fine. Go ahead then.

4 Q (By Mr. Pierson) I would like to turn to your  
5 written direct testimony, Dr. Riley, at page 30  
6 and I would like to start at line 6 and read a  
7 set of questions and answers and then ask you  
8 some questions about it:

9 "Q In your opinion, was there such  
10 an aboriginal entity as the Muckleshoot Tribe?

11 "A No. In my opinion, there was no  
12 such an entity.

13 "Q Why do you say that?

14 "A I don't believe that there was  
15 tribal organization in Western Washington  
16 with the probable exception of the Makah.

17 "Q Would you state whether or not  
18 in your opinion the present day Muckleshoot  
19 group are in part at least descendents of  
20 Indians who were parties to the treaty of  
21 Point Elliott and Medicine Creek?

22 "A I would think that to be very, very  
23 likely."

24 My first question, Dr. Riley, is: Is  
25 it accurate to say that the only reason that

1 you say there was no aboriginal entity known as  
2 the Muckleshoot Tribe, in your opinion, is that  
3 no other tribe in the area had an organization  
4 except the Makah?

5 A. No, that's not quite accurate. In explanation,  
6 there are two parts to that question, I will  
7 answer them both very briefly, the first answer  
8 is that whereas other tribes were at least spoken  
9 of, considered as tribes by the treaty commissioners  
10 and in the years following the treaties, they  
11 remained tribes, and in an American legal sense,  
12 the Muckleshoots did not until a number of years.

13 Muckleshoots was originally, as Dr.  
14 Lane pointed out and has been pointed out by a  
15 number of anthropologists, was originally a place  
16 name and it was not until 1870, I think, and my  
17 memory may be a little faulty, but around 1870  
18 the term "Muckleshoot Tribe" was used. That is  
19 my first opinion.

20 My second answer is the one you asked,  
21 I don't think there were tribes in this area and  
22 there were no tribes and Muckleshoot could be  
23 considered no tribe.

24 Q. Dr. Riley, you are aware, are you not, that the  
25 preambles to the treaties involved in this case

1           named certain bands and tribes?

2    A.    Yes, that's correct, sir.

3    Q.    And that the names given in some cases correspond

4           to the names of tribes who are plaintiffs in

5           this case?

6    A.    You are using the word "village" in terms --

7    Q.    I'm asking you whether the names --

8    A.    Yes, yes. Now, may I ask a question on clarifica-

9           tion?

10   Q.    Yes.

11   A.    You are referring to the various bands, "bands,"

12           as tribes here?

13   Q.    I'm referring to the names given to the preamble

14           of the treaties which say, "bands and tribes,"

15           and it is true, is it not, in some cases names

16           given there correspond with the names taken by

17           some of the plaintiff tribes in this case?

18   A.    That's true.

19   Q.    Okay. And it is true, is it not, that some of

20           the names given in those preambles do not correspond

21           with the names of some of the plaintiff tribes

22           in this case?

23   A.    That's true.

24   Q.    And that is true of tribes in addition to the

25           Muckleshoot Tribe, is it not?

1 A That's true.

2 Q Now, have you undertaken ever to examine whether  
3 any members of any of the bands named in the  
4 treaty of Point Elliott or the Treaty of Medicine  
5 Creek have descendants who are members of the  
6 present day Muckleshoot Tribe?

7 A No, I have not.

8 Q Have you undertaken --

9 A May I amplify that? I have not done geneologies  
10 on the Muckleshoot Tribe. I have attempted to  
11 trace a little bit through the time what happens  
12 to the bands on the White River and on the  
13 Green River, and what I accepted as being the  
14 predecessors of the modern Muckleshoots in part.

15 Q Have you ever examined the testimony of Dr. Lane  
16 given in State versus Moses or any of the exhibits  
17 she presented there regarding the geneology of  
18 the four defendants in that case?

19 A I have not.

20 Q Do you have any idea whatever, Dr. Riley, that  
21 any of the members of the present day Muckleshoot  
22 Tribe are not descendants of people who were members  
23 of the tribes and bands named in either the  
24 Medicine Creek or the Point Elliott Treaties?

25 A I havenot.

ET6

1 Q Could you please tell the Court what is the basis  
2 of your opinion given at page 30 of your direct  
3 testimony, line 16,

4 "I would think that to be very, very  
5 likely."

6 A I think it bolstered your position, Mr. Pierson.  
7 I think that at least part of the people in  
8 the modern group called the Muckleshoot Tribe  
9 are in part at least descendents of Indians who  
10 were parties to the Treaty of Point Elliott and  
11 Medicine Creek.

12 Q My question really, Dr. Riley, is: What is the  
13 basis of your statement given on that line, that  
14 it is very, very likely?

15 A There is a continuity just brought out very  
16 well in the case yesterday, which is documented  
17 in my Muckleshoot account, which is in evidence,  
18 and is documented in Dr. Lane's Muckleshoot account,  
19 that there were people living on Muckleshoot  
20 prairie from late 1860s, at any rate, and that they  
21 considered themselves Indians of the region.

22 Q And that is the basis of your opinion?

23 A That is a basis of my opinion, yes.

24 Q Do you have any other bases that you can tell  
25 us about besides that one?



1 A. In my Muckleshoot report, there is a certain  
2 amount of documentation which can be used for  
3 that.

4 Q. And you relied upon that?

5 A. I relied upon that, yes, sir.

6 Q. Are there any other bases upon which you relied?

7 A. None that I can think of now.

8 Q. In your examination and research regarding the  
9 present day Muckleshoot Tribe both for this  
10 trial and your report on the Muckleshoots, did  
11 you ever have occasion to examine maps which were  
12 used as a proposal for the expansion of the  
13 Muckleshoot Reservation?

14 A. I did not.

15 Q. Are you aware that there was such a proposal?

16 A. I might have been aware of it. My answer, I  
17 think, would be, no, in absolute terms.

18 Q. All right.

19 A. And a clarification statement on that is simply  
20 that I was interested primarily in the treaty  
21 times, and in the case of the Muckleshoot, and  
22 the post treaty times, and then by using a section  
23 of evidence of the major writers bringing the  
24 Muckleshoot and indeed bringing the other tribes  
25 up to the modern day tribe in the modern sense,

1 of course.

2 Q Now, you have had occasion to read Dr. Lane's  
3 Muckleshoot report, have you not?

4 A Yes, sir.

5 Q Can you tell the court when you first saw that  
6 report?

7 A It came rather late. The reports dribbled in to  
8 me over a period of about two months. This one --  
9 I am not sure when it appeared, but it was some-  
10 time in July, I think.

11 Q I am talking about the report of Dr. Lane on the  
12 identity and treaty status of the Muckleshoot  
13 Tribe, which is Exhibit USA-27A, and I would like  
14 you to tell us as best you can how long ago it  
15 was that you first saw that report.

16 A I am sorry, sir. When you say, "Muckleshoot  
17 report," I assume the --

18 THE COURT: Well, just turn to the  
19 exhibit, is the quickest way to the number that  
20 was given you. What was that number?

21 MR. CONIFF: 27A. I might point out  
22 to the court and the witness that there was more  
23 than one Muckleshoot report prepared by Dr. Lane.

24 THE COURT: If you would take the  
25 exhibit number that Mr. Pierson gave you I think

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it would be the quickest way to get at it.

MR. CONIFF: 27A.

THE CLERK: In the green book.

THE WITNESS: Oh, you are referring to the basic Muckleshoot report.

Q I am referring to USA-27A.

A Are we in conflict?

Q I don't know, Dr. Riley. I am just trying to find out if you have ever seen that.

THE COURT: Find it first before we talk any more about it. 27A purports to be now in the green book, so labeled. All right, go ahead.

THE WITNESS: Yes, sir.

Q All right, you have seen that?

A Yes, sir, that is what we have been talking about for the last three or four questions, is it not?

Q That is correct.

A Thank you, sir.

Q When did you first see it?

A Well, you gave me that question about a minute or two ago and I said, to the best of my knowledge, it was in July.

Q Of this year?

A Of this year, possibly August, but probably July.

Q And have you examined it before?

1 A. Yes, I have, sir.

2 Q. And do you recall whether you ever disagreed with  
3 anything in that report?

4 MR. MCGIMPSEY: I object. That is too  
5 broad a question.

6 MR. PIERSON: I am just asking his  
7 recollection.

8 THE COURT: If you don't recall, just  
9 say so.

10 A. Yes, I don't recall if I disagree with specific --  
11 with given specific points on given pages in  
12 the report. I would add that in general, I agree  
13 with the report in general. I agree with most  
14 of Dr. Lane's reports.

15 In fact, the differences are not, are  
16 not factual.

17 Q. Could you turn to page 41 in that report, please?

18 A. This is of the Muckleshoot?

19 Q. That's correct. And at the bottom of page 41  
20 there is a section that gives opinions and it  
21 moves over to page 42, and there are one, two,  
22 three, four, five, six, seven paragraphs where  
23 she states her opinions.

24 Now, just drawing on your recollection  
25 of your examination of this report, do you recall

1 ever having disagreed with any of the statements  
2 in those paragraphs?

3 A. I have not disagreed with those. I have some  
4 question on the last one. I don't know what  
5 the Bureau of Indian Affairs -- this is on page  
6 42, the end of page 42, I don't know what the  
7 Bureau of Indian Affairs and predecessor government  
8 agents have always regarded the Muckleshoot  
9 Reservation. Other than that, I really don't  
10 disagree with that.

11 Q. All right, in the preparation of your Muckleshoot  
12 report and preparation for this trial in your  
13 examination of this report, USA-27A, did you  
14 consult the history of governmental recognition  
15 or lack thereof, of what is known as present day  
16 Muckleshoot Tribe?

17 A. No, sir. May I expand?

18 Q. Certainly.

19 A. For previous work that I did on Muckleshoot, this  
20 was not a question at all. We were interested  
21 in the period around treaty times. For this  
22 trial I have not --

23 Q. Are you aware, Dr. Riley, of any statements by  
24 Governor Stevens following or shortly following  
25 the execution of the treaties in this case where

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Governor Stevens states that he has treated with all the tribes in Western Washington the ceded areas?

A. I don't recall the explicit statement. Perhaps if you would read it to me I would identify it.

Q. I am looking at a volume, EXPLORATION AND SURVEYS FOR A RAILROAD ROUTE FROM THE MISSISSIPPI RIVER TO THE PACIFIC OCEAN, Volume 12.1, pages 188 through 189.

A. Sir, is this PL-9?

THE COURT: Where is the Exhibit number list?

MR. PIERSON: May I have a minute, Your Honor?

THE COURT: Certainly. Would that have been a government USA number?

MR. PIERSON: I'm trying to find out, Your Honor.

THE COURT: Why don't you turn to something else. Maybe I can find it in this list somewhere.

Q. Very well, the pages I am after are 188 to 189. Now, Dr. Riley, I am going to read you some statements taken from outside of Dr. Lane's reports which relate to the treaties involved

1 in this case, and I want you to tell the Court  
2 whether you agree or disagree with them.

3 The first one --

4 A. Would you identify them, sir?

5 Q. I will identify them afterward. I just want  
6 you to say whether you think you agree with them.

7 The first one is,

8 "The gathering of food from open lands  
9 and streams constituted both the means of  
10 economic subsistence and the foundation of  
11 a native culture."

12 Now, as it applies in a general manner  
13 to the tribes in this case, would you agree or  
14 disagree?

15 A. Read that statement once more. I was trying to  
16 place it while you were reading.

17 Q. (Reading)

18 "The gathering of food from open lands  
19 and streams constituted both the means of  
20 economic subsistence, and the foundation of  
21 a native culture."

22 A. I will agree with, and I would like to comment.

23 Q. Do so.

24 A. I would agree, but I think it must be in the  
25 context of Indian social organization .

1 Q All right, and the next statement,

2 "Preservation of the right to gather  
3 food in this fashion protected the Indians'  
4 right to maintain essential elements of  
5 their way of life as a complement to the  
6 life defined by the permanent homes, allotted  
7 farmlands, compulsory education, technical  
8 assistance and pecuniary awards offered in  
9 the treaty."

10 A Sir, that is a long statement. It would be better  
11 if I could read it myself.

12 Q I will read it to you again and again. If you  
13 would like we can take it piece by piece. I  
14 would prefer not to tell you where it comes from  
15 until I get your answer whether you agree with  
16 it or not.

17 A Okay.

18 Q (Reading)

19 "Reservation of the right to gather  
20 food in this fashion protected the Indians'  
21 right to maintain essential elements of their  
22 way of life."

23 A I can't agree or disagree, because I don't quite  
24 know what it means in this particular sentence.  
25 I might in the larger context.



1 Q Well, as applied generally to the tribes in this  
2 case and assuming the context being that in which  
3 the first sentence which you agreed with was made,  
4 and the remainder of the sentence here --

5 MR. CONIFF: Your Honor, I am going to  
6 object, because I believe that the sentence  
7 as I recall Mr. Pierson's reading of it implies  
8 certain notions regarding law, reservation of  
9 right and that sort of thing. I can't recall  
10 exactly what he has read, but as I recall it does  
11 imply a knowledge or at least an area of expertise  
12 on the part of witnesses familiar, as being  
13 familiar with law. I don't believe the witness,  
14 you are offering him for that purpose.

15 THE COURT: Well, it is possible, I  
16 suppose, that construction could be placed upon  
17 it.

18 MR. PIERSON: Your Honor, I am just asking  
19 for his anthropological view and his understanding  
20 of rights as the U.S. Commissioners and the Indians  
21 understood them. I am not asking him for a legal  
22 point of view.

23 THE WITNESS: Well --

24 THE COURT: I think that the objection  
25 should be overruled. If you want to read it again,

1 now, so that you keep firmly in mind --

2 Q The statement is,

3 "Reservation of the right to gather  
4 food in this fashion protected the Indians'  
5 right to maintain essential elements of their  
6 way of life as a complement to the life  
7 defined by the permanent homes, allotted farm-  
8 lands, compulsory education, technical  
9 assistance, and pecuniary rewards offered  
10 in the treaty."

11 I am asking you just for your view as  
12 an anthropologist concerning the Indians' way of  
13 life and what was given and secured and taken  
14 away in the ceding of the treaties.

15 A I would say yes, with this comment, that the --  
16 I understand their reservation of Indians'  
17 accustomed way of life or whatever this is, referr-  
18 ing back to the first sentence which I have now  
19 forgotten, of course, means the taking of various  
20 kinds of foodstuffs.

21 Yes, of course I do.

22 Q Okay, and for your information that quote is from  
23 the case of State versus Tinno, an Idaho case.

24 The citation is 494 Idaho 759. Now,  
25 Dr. Riley, the next statement:

1 "The right to resort to fishing places  
2 in controversy..."

3 And here I have reference to whatever  
4 you know about the fishing places of the  
5 predecessors of the plaintiff tribes,

6 "The right to resort to the fishing  
7 places in controversy was a part of larger rights  
8 possessed by the Indians upon the exercise of  
9 which there was not a shadow of impediment, and  
10 which were not much less necessary to the existence  
11 of the Indians than the atmosphere they breathed."

12 Now, in your view as an anthropologist  
13 and an expert, would you agree or disagree with  
14 that?

15 A Yes, I would disagree and suggest that the  
16 treaty wording is probably more to the point in  
17 this case, just the wording, the article in the  
18 various treaties.

19 THE COURT: In what specific particular  
20 do you disagree?

21 THE WITNESS: In the article that  
22 refers to usual and accustomed grounds. This  
23 seems to imply that people could go anywhere they  
24 wanted to and take food.

25 Q And can you give us any particular phrase in the

1 treaty which you think conflicts with that state-  
2 ment?

3 MR. CONIFF: I believe the witness has  
4 just done so.

5 THE COURT: Yes, he has referred to the  
6 usual and accustomed places.

7 Q All right, the next statement speaks of that  
8 provision.

9 "The treaty was not a grant of rights  
10 to the Indian, but grant of rights from them,  
11 a reservation of those not granted."

12 As an anthropologist do you agree or  
13 disagree?

14 MR. CONIFF: I again would like to  
15 renew my objection. This is clearly in an  
16 area of law, is the treaty a reservation of right  
17 or grant of right.

18 THE COURT: If he has no view as an  
19 anthropologist, that will be that. That will end  
20 it.

21 (Continued on next page.)  
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THE WITNESS: I think Judge Boldt's point is very well taken.

Let me as an anthropologist state I have no view of this matter of law of what is rights to or rights from.

Q (By Mr. Pierson) And as an anthropologist, you don't have any other understanding of the meaning of that term as used in the treaty?

A What term are we talking about.

Q The term we are talking about in this case, the right to take fish at usual and accustomed fisheries is further secured to the Indians in common with all citizens of the Territory.

A I have no legal interpretation of that at all.

Q Do you have an anthropological interpretation?

A I gave my anthropological interpretation yesterday, and it was that anthropologically I felt that usual and accustomed was probably counterposed to unusual and unaccustomed.

Q In all of the breadth of your anthropological view, would you disagree as an anthropologist with the statement I have just read?

MR. CONIFF: Your Honor, the witness has answered that question.

THE COURT: Well, what he is trying to get at,

1 do you have any view from the standpoint of an anthropologist  
2 with respect of the meaning of this clause, other than  
3 as you expressed yesterday, I believe, with respect to  
4 the meaning of usual and accustomed as contrasted to  
5 unusual and unaccustomed? Do you have any view other  
6 than that from the standpoint of anthropology concerning  
7 the meaning of these words?

8 THE WITNESS: From the standpoint of  
9 anthropology, I think that would be my view, sir.

10 THE COURT: Thank you.

11 Go ahead.

12 Q (By Mr. Pierson) Your next statement, Dr. Riley -- and  
13 I am just asking you as an anthropologist, and any view  
14 I am asking for is not a legal view, but your view as  
15 an anthropologist who has studied these treaties and  
16 the tribes involved:

17 "Reservations were not of particular parcels  
18 of land and could not be expressed in deeds as  
19 being between private individuals."

20 A It's my anthropological understanding that this is true.

21 Q "The reservations were in large areas of territory,  
22 and the negotiations were with the tribe."

23 A You talk only of the claimed area?

24 Yes, that's my view that that is true.

25 I would add a caveat: that the tribes were

1           were made by the treaty commissioners.

2       Q    And speaking of the treaty provisions and the treaties,  
3           they reserved rights, however, to every individual  
4           Indian as so described therein?

5       A    That is somewhat legal terminology, and I am not sure  
6           I understand it.

7       Q    So, you don't have an anthropological view?

8       A    I'm not sure I understand the question.  It's phrased  
9           in what seems to me somewhat legal terminology.  Perhaps  
10          if you would rephrase it, I would understand it.

11      Q    I am asking for your anthropological view about rights  
12          among Indians and whatever it was that the treaty  
13          commissioners had in mind.

14                        "They," -- the treaties -- "reserved rights,  
15                        however, to every individual Indian as though  
16                        described therein," meaning in the treaties.

17      A    I believe that would be fair to say.

18      Q    (Reading:)

19                        "There was an exclusive right of fishing  
20                        reserved within certain boundaries."

21                        I'm only asking you for your anthropological  
22                        view.

23      A    I would say no to that in the sense that it doesn't  
24          actually appear in the treaty.  I would say, however,  
25          yes to it in that it's my understanding that the reservations

1           were intended to be exclusive to Indians.

2   Q   As for your information, that is from the case of United  
3       States v. Winans, 198 U. S. 371 (1905).

4                       Now, in your understanding as an anthropologist,  
5   Dr. Riley, do you think the following statement is  
6   accurate as describing circumstances surrounding and  
7   the treaties themselves:

8                       "It is clear that the reservation was intended  
9       only as a residence, and the Indians were to remain  
10      free to roam and fish at their usual places."

11   A   That is my belief from the wording of the treaties.

12   Q   Incidentally, that is from the case of Skokomish Indians  
13       v. France, 320 Fed. 2d 205, Ninth Circuit, (1963)

14                       "From the earliest known times up to and  
15      beyond the time of the treaties, the Indians  
16      comprising each of the tribes in this case were  
17      primarily a fishing, hunting and gathering people,  
18      dependent almost entirely upon the natural animal  
19      and vegetative resources of the region for their  
20      subsistence and culture."

21   A   I would disagree with that. The reason I would disagree  
22      with it is this: First of all, there were attempts,  
23      strong attempts, which are documented in any annual  
24      report of the reports of the Commissioner of Indian  
25      Affairs from the 1855 period on, of attempts to make the



1 Indians farmers. The only failure was in the case of  
2 the Makah.

3 The second reason I would disagree is that  
4 at least some of the informants that I worked with  
5 in the 1950's -- that are talking about a broad scope  
6 of time -- did have farming patches.

7 Q Let's talk about the time of the treaties only.

8 A Before the treaties?

9 Q Yes. Up to 1855.

10 A Yes, sir. I would agree that farming, although fairly  
11 important -- and I think that is documented in my  
12 report -- is minor to catching salmon.

13 Q Let's talk about that statement.

14 A Or is relatively less important than catching salmon.

15 Q Let's talk about that statement as applied to the life  
16 of the predecessors of the plaintiff tribes in this case.

17 A Yes, sir.

18 Q Prior to the treaty, would you agree or disagree, up  
19 to 1855?

20 A I would agree, with the addition that farming should be  
21 put in.

22 Q Now, do you know of any tribes or the predecessor tribes  
23 of the plaintiffs in this case who after the treaty  
24 were subjected to these attempts to make them farmers  
25 where the attempts failed?

1 A Where the attempt failed?

2 Q Correct.

3 A I don't know this for certain, but it is my understanding  
4 that it failed with the Makah. There was vast  
5 criticism on the part of people who were associated  
6 with the Makah, including the Makah farmer; that is,  
7 the government farmer. The Makah land wasn't suited  
8 for farming.

9 Q Now, as to any of the other --

10 A I would make this one addendum to that: The Makah from  
11 quite early times -- in terms of the treaty, that is,  
12 from 1850 or before -- were raising potato patches.

13 Q I'm talking about attempts of the government to make  
14 them farmers which you referred to --

15 A I understand.

16 Q Let's talk about the Quinaults.

17 A All right.

18 Q Was there a successful attempt to make them farmers?

19 MR. CONIFF: Objection, your Honor. This Quinault  
20 testimony is to be brought in at a later date, after the  
21 Doctor has had an opportunity to review USA-53.

22 THE COURT: Pass it for that purpose.

23 Q (By Mr. Pierson) Was there a successful attempt to make  
24 the Hoh farmers?

25 A There was an attempt. I don't know how successful it was.

1 Q Was there a successful attempt to make the Quileute  
2 farmers?

3 A I can make this answer for all of them if you don't  
4 want to go through. There was an attempt. I don't  
5 know how successful it was. There is documentation on  
6 that in the report to the Commissioner of Indian  
7 Affairs.

8 Q Well, my question is, to your recollection and your study  
9 of this material, through all of your experience as  
10 an anthropologist involved in the Coast Salish area,  
11 when was an attempt to make the Indians who were  
12 predecessors to the plaintiff tribes in this case  
13 successful to make them farmers?

14 A When was the attempt successful to make them farmers?

15 Q Yes.

16 A I don't know that they ever completely became farmers,  
17 but I think they all farmed. It's not all farmed --most  
18 of them farmed.

19 Q I am trying to use your term when you said that they  
20 didn't succeed with the Makah. I want to know in your  
21 understanding of that term, "succeeding" did they  
22 succeed with any other of the predecessors of the  
23 plaintiff tribes in this case, according to your  
24 recollection?

25 A I haven't reviewed the documents for the very last part of

1 the 19th and the 20th Century in any detail. At least,  
2 I haven't done so recently.

3 There are accounts in the 1850's of the  
4 amount of acreage that was under farm. 1858 is a good  
5 year for these accounts, because many of the agents  
6 had it.

7 Q Dr. Riley --

8 A I'm sorry.

9 Q -- I'm just trying to get to your word "success."

10 MR. CONIFF: Your Honor, I believe the witness  
11 was giving him an explanation and responding directly  
12 to his question, and he hasn't completed it.

13 THECOURT: I think whatever he has to say on  
14 it, we should hear.

15 MR. PIERSON: All right.

16 THE WITNESS: In 1858 reports by people like  
17 Agent Fay, Agent Gasnell, Agent Simmons, who was, of  
18 course, at that time kind of a super-agent, who reported  
19 to the Oregon agency, there was reports of attempts to  
20 make the Indians farmers.

21 I would point out that the failure of the  
22 crops, particularly the potatoes, in the spring of 1857  
23 worked very serious hardship on the Indians. It  
24 happened to coincide with the failure of the salmon  
25 So you can't balance out which of these factors were more

1 important.

2 What I feel to be the case is that farming  
3 remained important until the present day, and fishing  
4 remained important until the present day.

5 Q now, let's go back to your use of the term "succeed."  
6 When you say that the attempts to make the Makah farmers  
7 did not succeed, it is the use that you made of that  
8 term which I would like for you to define. Did any  
9 of the attempts as to any of these tribes who were  
10 predecessors to the plaintiff tribes in this case to make  
11 them farmers succeed?

12 A Judge Boldt has asked me to give a yes or no to this,  
13 and I will give a no answer. Then may I ask a question?

14 THE COURT: Did in your opinion the attempt  
15 to make farmers of a particular tribe, one or more of  
16 the plaintiff tribes, succeed within the meaning of that  
17 term as you used it with respect of the Makah --

18 A In respect to the term --

19 THE COURT: Answer yes, and then of course,  
20 you will be asked to identify who it is.

21 THE WITNESS: In respect to the term as I used  
22 it with the Makah, the answer would be yes. Throughout  
23 the 19th Century, all of the Indian groups were  
24 actively encouraged to farm, and did farm and used  
25 farming as one source of their income.

1                   If by succeed, you mean they stopped fishing,  
2                   the answer is no.

3   Q   And when you say "succeed" as to those tribes, do  
4                   you mean that farming became the predominant item of  
5                   subsistence and economic livelihood as compared to fishing?

6   A   As of what date are you speaking, sir?

7   Q   Let's talk about 1840 to 1855.

8   A   No.

9   Q   Let's talk about 1855 to 1875.

10   A   Possibly.

11   Q   Give me the tribes, please.

12   A   The tribes? Possibly the tribes that were most influenced  
13                   by contact with the agents. That would be the downriver --  
14                   well, it would be the Nisqually and the Puyallup.

15   Q   Any other tribes?

16   A   And the other tribes that are in the downriver portions  
17                   of the rivers that run into Puget Sound. That would  
18                   include the Duwamish and so forth.

19                   Now, "succeed" is a loaded word here, and  
20                   that is the one you are interested in.

21                   THE COURT: I think we have passed that point.  
22                   We are talking now about if farming seemed to be the  
23                   dominant -- that was the word used -- the dominant  
24                   occupation of the Indians in question.

25                   THE WITNESS: Yes.

1 As to that, sir, I don't know, and I would  
2 say that I don't know. I would further say that I don't  
3 think anyone knows. The reports are there. They list  
4 the number. They list the amount of acreage. They  
5 list the crops. They are often quite large. They do  
6 not list the fishing in general.

7 THE COURT: From your rather extensive  
8 research as to the tribes, which you relate in your direct  
9 testimony and again in your report as a whole -- which  
10 I remember rather sharply, because I read it last  
11 evening -- did you find anyone of the plaintiff tribes  
12 at this time which could be said to have agriculture,  
13 farming as the predominant factor in their way of  
14 livelihood?

15 THE WITNESS: Yes. It would be impossible  
16 to say.

17 THE COURT: As to any single one of them?

18 THE WITNESS: As to any single one of them.

19 THE COURT: Thank you. Go ahead.

20 Q (By Mr. Pierson) The next sentence I would like to ask  
21 you about, Dr. Riley is:

22 "They," -- being the Indians, and let's  
23 confine that to the precursors of the plaintiff tribes  
24 in the period 1840 to 1855 -- " were heavily dependent  
25 upon such fish, being the fish in the rivers and the

1 Sound and the streams and the coast for their subsistence  
2 and for trade and for their trade with other tribes  
3 and later with the settlers."

4 A I believe this to be true, and I believe it to be true  
5 even for 1840.

6 May I ask you to give me the page again?  
7 I seem to have inadvertently slipped over my --

8 Q I'm reading you from a court decision which tries to  
9 describe the life of Indians.

10 A Yes, I believe that to be true.

11 Q Is it untrue for any period since 1855 after any of the  
12 plaintiff tribes or their predecessors?

13 A As for commercial fisheries, I am not competent to answer  
14 that. As for subsistence, it is my belief that most or  
15 all Puget Sound Indians were and continued to be salmon  
16 fishermen, or some kind of fishermen.

17 Q Next sentence, and it is speaking of Indians again.  
18 Let's apply it to the period 1840 to 1855, and the  
19 predecessors or the treaty tribes in this case:

20 "They cured and dried large quantities of  
21 fish for year round use."

22 A I believe that to be true.

23 Q (Reading:)

24 "With the advent of canning technology in  
25 the last half of the 19th Century, the commercial

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1 exploitation of the salmon resources by non-Indians  
2 increased tremendously."

3 A I can't comment on that.

4 Q The Indians --

5 A That's an exhibit, Plaintiff's Exhibit.

6 Q No, I'm asking you whether you agree or disagree with  
7 that statement.

8 A I said I had no evidence on that. I don't know anything  
9 about canneries.

10 Q The following statement relates to that, and it says:

11 "Indians fishing under their treaty secured  
12 rights also participated in this expanded commercial  
13 fishery and sold many fish to non-Indian packers  
14 and dealers."

15 Confining your answer to the period between  
16 1840 and 1855, do you agree or disagree?

17 MR. CONIFF: Objection to the form of the  
18 question inasmuch as it refers to treaty secured rights.

19 MR. MCGIMPSEY: I further object in that the  
20 question makes reference to canning, and he is  
21 referring to a period in which there is a document in  
22 evidence that indicates that there was no canning  
23 process in that period.

24 THE COURT: I will have to ask you to read the  
25 question again in the light of these objections.

1 MR. PIERSON: I think the objection Counsel  
2 for the Department of Game raises is accurate, and  
3 if I change the accent to 1855 up to and including  
4 1890, we are talking about the canning, I believe the  
5 exhibit shows that it came in evidence in the 1870's  
6 and the 1880's, and looking at that period of time --

7 THE COURT: Re-frame it all in one piece  
8 for the witness so there will be no doubt about what  
9 the question is, please.

10 MR. PIERSON: I will try to resolve the  
11 objection the Department of Game counsel has as well.

12 Q (REading:)

13 "With the advent of canning technology in  
14 the latter half of the 19th Century, the commercial  
15 exploitation of the salmon resources by non-  
16 Indians increased tremendously. Indians fishing  
17 under their claimed treaty secured rights also  
18 participated in this expanded commercial fishery  
19 and sold many fish to non-Indian packers and  
20 dealers."

21 A All right. I have no information on that.

22 THE COURT: Are you totally unaware of that  
23 matter of Indians selling fish to non-Indian packers?

24 THE WITNESS: Are we on the record?

25 THE COURT: Oh, yes, sure we are on the record.

1 THE WITNESS: I have read of it, but I can't  
2 quote my sources, and I'm generally aware of it.

3 But in the context of this trial, I would  
4 have to say that I am not.

5 THE COURT: In other words, during your  
6 investigation leading to your report in this particular  
7 case, you did not come across any information  
8 concerning that circumstance?

9 THE WITNESS: I didn't investigate that far  
10 out in time for that matter.

11 THE COURT: Go ahead.

12 Q (By Mr. Pierson) You did investigate during that period  
13 of time for the, what you called the decline of Indian  
14 culture, did you not?

15 A Yes, sir.

16 Q And would the fact that Indians were selling fish to  
17 non-Indian canners and packers, would that be an element  
18 that you would want to consider in determining whether  
19 their culture declined?

20 A NO, sir.

21 Q Next statement --

22 A Pardon me, sir, this has nothing to do with culture  
23 decline. In fact, if anything, it has to do with the  
24 aculturation. If Indians sell fish to non-Indians, it  
25 isn't an acultured process, as we understood this word

1 in this courtroom.

2 Q Did you consider the fact that they sold fish to non-  
3 Indian packers and canners during this period as an  
4 item showing aculturation by the Indians?

5 A Certainly that shows aculturation by Indians.

6 Q Does it show aculturation by non-Indians?

7 A To the extent that non-Indians are buying from Indians,  
8 it shows aculturation by non-Indians.

9 Q To the extent that they are relying on the Indians to do  
10 the fishing, that shows aculturation of non-Indians as  
11 well, does it not?

12 A To the extent they are utilizing Indian fisheries, yes,  
13 or Indians fishing in fisheries, that's correct, yes.

14 Q Next statement:

15 "During the negotiations which led to the  
16 signing of the treaties, the tribal leaders expressed  
17 great concern over their right to continue to resort  
18 to their fishing places and hunting grounds."

19 Based upon the evidence which you have examined, in  
20 your opinion as an anthropologist, do you agree or  
21 disagree?

22 A Among the Makah and the Meninick meetings -- let me answer  
23 no, and then let me expand.

24 Among the Makah and the Meninick meetings, there is  
25 some worry about fishing grounds among the Clallam and

1 Skokomish that the treaty of Point No Point -- there  
2 is some concern about whites moving into the areas, and  
3 also about rivalry between the Skokomish and the  
4 Clallams and the fact that they did not get along very  
5 well.

6 Generally speaking, there was not expressed,  
7 at any rate, in the minute of the meetings, which are  
8 all in evidence, a great concern over fisheries, except  
9 in terms of general statements, like he wanted to hunt  
10 and fish and to take fish at accustomed places, et cetera.  
11 This is -- do you understand my phraseology, not the  
12 phraseology of the documents?

13 Q Yes. And the two examples you gave were in the Clallam  
14 Treaty and the Makah Treaty. Do you know of any other  
15 examples that you can recall where there was anything  
16 approaching or appearing to be an assurance of the  
17 kind that we are speaking of here -- I'm sorry -- and  
18 expressed concern about the Indians?

19 A There may well have been expressed concern in the  
20 Medicine Creek and in the Point Elliott treaties. You  
21 were asking me of the intensity of this concern?

22 Q No, I'm just asking you whether it was ever expressed,  
23 to your knowledge.

24 A It was expressed, yes.

25 Q Is there any treaty involved in this case, and I can name

1           them for you, if you like, where that concern was not  
2           expressed, to your knowledge?

3    A    I would have to re-read the treaties. Perhaps if you  
4           would name them --

5    Q    The Treaty of Medicine Creek.

6    A    In the Treaty of Medicine Creek there was no concern.

7    Q    There was no concern expressed?

8    A    Right.

9    Q    And the Treaty of Point No Point?

10   A    In the Treaty of Point NO Point, there were concerns  
11           expressed, but as I have said, that the context of the  
12           expression is the Clallam coming into Makah -- I'm  
13           sorry, coming into -- let me rephrase that.

14                    It was Clallam coming into Skokomish, into  
15           Hood Canal, Skokomish, and some worry there would be  
16           warfare, or at least there would be trouble of some sort,  
17           and there was also some worry about the whites coming  
18           into the area.

19                    At one point the Skokomish Indians suggested  
20           that they share the whole thing with the whites, and one  
21           of the Treaty Commissioners said no, that wouldn't  
22           work, the whites would soon take over everything, and  
23           it would be better for them to have a reservation where  
24           they could be protected.

25   Q    The Treaty of Point Elliott.

- 1 A I was talking of Point No Point.
- 2 Q I'm asking you now about the Treaty of Point Elliott.
- 3 A I don't remember any specifically.
- 4 Q The treaty with the Quinaults.
- 5 A Again, I don't remember any specifically.
- 6 Q The treaty of Neah Bay.
- 7 A We discussed that, haven't we? That is the treaty of  
8 the Makah. In that a number of people expressed the  
9 desire to fish and expressed the desire to take  
10 whale on the shores, and Stevens says, as I recall, fishing  
11 with the whites, and they finally said yes. That was  
12 certainly one of the kinds of -- there were certainly  
13 expressions on the part of the Indians of some concern.
- 14 Q The treaty with the Yakima?
- 15 A I have never read the treaty with the Yakima.
- 16 Q Have you read any of the documents describing the  
17 negotiations leading up to the treaty with the Yakima?
- 18 A No. I really do not know anything about the Yakima,  
19 anything that is not correct. Of course, I know a little  
20 about the Yakimas, but nothing to answer your question.
- 21 Q Do you know whether the Indian speeches or speech  
22 communication at the negotiations at the Treaty of  
23 Medicine Creek is recorded anywhere?
- 24 A The Treaty itself or the negotiations or both?
- 25 Q The communication of speech by the Indians negotiating for

1 the Treaty of Medicine Creek.

2 A To the best of my knowledge, it is not. I know of no  
3 place.

4 Q The next statement, speaking of the tribes or their  
5 predecessors involved in this case, and the time of the  
6 treaties and the signing and negotiation of them, "they  
7 were reluctant to sign the treaties until given  
8 assurances that they could continue to go to such  
9 places," that meaning their fishing places and hunting  
10 grounds, and take fish and game there.

11 Do you agree or disagree?

12 A Yes, that seems to be the thrust of that article in the  
13 treaties, which assures Indians their accustomed and  
14 -- usual and accustomed rights to fishing grounds and  
15 hunting and berrying places.

16 Q So you agree with that?

17 A That the Indians were worried about it, oh, yes.

18 Q I'm talking about the statement, do you agree or disagree?

19 A I'm sorry, would you rephrase the statement? I think  
20 I agree with you.

21 THE COURT: Read the statement again.

22 Q (By Mr. Pierson) "They were reluctant to sign the  
23 treaties until given assurances that they could continue  
24 to go to such places and take fish and game there."

25 A I'm not sure we can draw that conclusion there from the



1 various treaty documents. These treaties had people  
2 who were reluctant to go places because they alleged --  
3 they proposed -- they were really developed later on,  
4 they weren't alleged, that closed reservations were on  
5 salt water, and some of them were upriver. There was  
6 a reluctance, as I pointed out to you a few moments ago,  
7 of groups that were not friendly to each other settling  
8 in the same area, and the like.

9 It is very difficult to say to what degree of  
10 reluctance the Indians had, they seemed to be very  
11 cheerful in signing these treaties at the end.

12 There was discussed for a day or two, certainly  
13 this was a factor.

14 Q Is there any other material besides the minutes of the  
15 treaty negotiations upon which you would rely in stating  
16 whether you agree or disagree with that statement?

17 A The minutes of the treaty certainly are the primary  
18 materials. There is, of course, the discussion in Swan  
19 of the abortive treaty that Governor Stevens tried to  
20 sign, and that was part of my answer.

21 There are discussions by Hazard Stevens, who  
22 was a boy at the time, who was the son of Governor Stevens.  
23 There were discussions by people like Ezra Meeker, an  
24 old time settler, who was rather critical of the -- of  
25 some of the treaty provisions, particularly the inability

1 of the treaty people to understand the upriver and  
2 downriver so-called stick Indians and the Indians on  
3 the bays and inlets.

4 There was an account of Gibbs, the '77 account  
5 of Gibbs.

6 Q And you draw upon these sources in determining whether  
7 to agree or disagree with the statement I read to you?

8 A I draw on those sources, yes.

9 THE COURT: I think all you have said, however,  
10 is that you are not sure that you can agree. Maybe that  
11 is just a figure of speech, but did that adequately  
12 express your thought?

13 THE WITNESS: Yes, I believe Mr. Pierson said  
14 was that a major issue, and I said well, it was an issue  
15 but I'm not sure it was a major issue. There were a  
16 number of issues.

17 Q (By Mr. Pierson) My question was, Dr. Riley, whether it  
18 is possible for you to draw on all the background and  
19 resources which you have had available through your  
20 long experience in this area to agree or disagree  
21 with that statement.

22 THE COURT: And to that, as I recall you said  
23 that you are not sure that you can agree, and does that  
24 express your thought and understanding of the matter  
25 as best you can put it?

1                   THE WITNESS: I suppose the record will  
2                   express it, but you might read the statement again, if  
3                   you wish.

4           Q    (By Mr. Pierson) Certainly. "They," being the Indians,  
5                   "were reluctant to sign the treaties until given  
6                   assurances that they could continue to go to such places  
7                   and take fish and game there."

8           A    Yes, they were reluctant to sign the treaties in some  
9                   cases. The Treaty of Chehalis was not signed at all.  
10                   The reason they were reluctant to sign, that had nothing  
11                   to do with fisheries as near as I can figure out from  
12                   the extant evidence, it was that the Indians downriver  
13                   did not want to live with the Indians upriver.

14                   The other treaties, they were not in fact  
15                   reluctant to sign, in fact they were very eager to sign,  
16                   and the treaty documents bear this out, this is with  
17                   great authority, if the speeches of various of the leaders  
18                   who did sign, telling how good their hearts were to  
19                   the whites, and I think this was one of the factors  
20                   that they took into account in signing those treaties.

21                   I think they were very canny people, given  
22                   their cultural lives, but I think there were other  
23                   factors, and I really don't know, and I don't think that  
24                   there is anything in the treaty documents and in the  
25                   literature of that period that gives any indication of

1 of those factors except the Chehalis Treaty, which was  
2 in fact, not signed at all.

3 Q Dr. Riley, I want you to listen to another series of  
4 statements, and let's assume that this is an accurate  
5 recitation of the written description of what happened  
6 in the negotiations with the treaty at Point No Point.

7 The Indians were concerned --

8 THE COURT: Excuse me, do you understand that  
9 you are required now to assume that this is an accurate  
10 statement?

11 THE WITNESS: I do, sir.

12 THE COURT: Then you express an opinion based  
13 on that assumption.

14 THE WITNESS: Yes, sir.

15 Q (By Mr. Pierson) "The Indian parties to the treaty of  
16 Point No Point were concerned with possible loss of their  
17 sources of food - 'berries, deer and salmon.' The first  
18 to speak said in part: 'I wish to speak my mind as to  
19 selling the land. Great Chief, what shall we eat if we  
20 do so? Our only food is berries, deer and salmon -  
21 where then shall we find these? I don't want to sign  
22 away all my land, take half of it, and let us keep the  
23 rest. I am afraid that I shall become destitute and  
24 perish for want of food.'

25 "After the Indians had been assured that the

1 reservation would be only a place at which they  
2 must make their homes, the Indians discussed  
3 the proposal among themselves, and on the following  
4 day assented to the Treaty. At that time one of  
5 the tribes said: "My heart is good. I am happy  
6 since I have heard the paper read, and since I  
7 have understood Governor Stevens, particularly since  
8 I have been told that I could look for food where  
9 I pleased and not in one place only."

10 The description continues later on:

11 "'We are willing to go up the canal since we  
12 know we can fish elsewhere- We shall only leave  
13 there to get salmon, and when done fishing will  
14 return to our houses.'

15 Are you familiar with that description?

16 A Yes.

17 Q And does hearing that refresh your recollection as to  
18 whether you can agree to the statement about the  
19 assurances given in any of the treaties involved in  
20 this case?

21 A Well --

22 THE COURT: The question is, is your memory  
23 refreshed by this?

24 THE WITNESS: Yes, my memory is refreshed.  
25 That is my answer to your question, my memory is refreshed.

1 Now, may I expand on that? That of course, is a part  
2 of the treaty, and I was trying to talk to the treaty  
3 as a whole, and I don't question that the Indians were  
4 interested in having salmon -- having rights to take  
5 salmon on Hood Canal and in the river. If that is a  
6 question, I say yes, of course.

7  
8 (Continued on the next page.)

ET9

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1 Q The question was --

2 THE COURT: And I take it then in  
3 connection with the statement you made a few  
4 moments ago that their joy, their readiness to  
5 sign the treaties was predicated on the proposition  
6 that they had been guaranteed these very rights  
7 that we are speaking of, right?

8 THE WITNESS: I think this was a factor.  
9 I think there was several other factors, and  
10 one that has not even been touched on here is  
11 the fact that Americans were moving into this  
12 area and the Indians were in fact worried about  
13 being pushed off the lands, so to speak.

14 Q Were they worried about being pushed out of  
15 their usual and accustomed fishing sites?

16 A That may also be.

17 Q In your opinion as an anthropologist, was it so?

18 A In my opinion as an anthropologist, that was so.

19 Q All right, now, you said that the quote I gave  
20 you was part of the treaty. You don't mean part  
21 of the terms?

22 A Part of the treaty documents. I think that is  
23 what you referred to earlier.

24 Q All right, now the last statement I would like to  
25 read to you is -- and this is in the context of

1           assurances given and concern expressed regarding  
2           continuation of fishing at usual and accustomed  
3           places:

4                         "The official records of the treaty  
5                         negotiations prepared by the United States  
6                         representatives reflect this concern and  
7                         also the assurances given to the Indians  
8                         on this point as inducement for their  
9                         acceptance of the treaties."

10                        Now would you agree or disagree with  
11                        that statement as descriptive of negotiations  
12                        and signing of the treaties involved in this case?

13   A.   Yes, would you read that once more? I may be  
14       getting a little tired, but I kind of missed  
15       that first sentence.

16   Q.   (Reading)

17                        "The official records of the treaty  
18                        negotiations prepared by the United States  
19                        representatives reflect this concern and  
20                        also the assurances given to the Indians  
21                        on this point as inducement for their  
22                        acceptance of the treaties."

23   A.   I think that is one of the inducements.

24   Q.   Well, do you agree or disagree with the statement?

25   A.   Do I agree or disagree with the statement? I



1 agree with the statement and I qualify it by  
2 saying that that was an inducement.

3 Q Now, you mentioned earlier a work by Hazard Stevens.  
4 Could you tell us where we could find that?

5 A I quoted in my bibliography on the Makah. I  
6 do not have it, and it is, I suspect, not available  
7 to this court. It could be obtained easily enough.

8 Q All right, and did it have anything to do with  
9 the treaties involved in this case?

10 A I quoted it only in one, one way and that was in  
11 terms of --

12 THE COURT: But you haven't answered,  
13 now.

14 THE WITNESS: Yes, my answer is yes.

15 THE COURT: If it did have to do with it.

16 THE WITNESS: Yes, they -- I can't give  
17 you the quote by Hazard Stevens, but in my Makah  
18 article, which is in evidence, there is a statement  
19 by Hazard Stevens that indicates reminiscing --  
20 Hazard Stevens is a son of Governor Stevens --  
21 reminiscing on the Makah treaty and the Makah  
22 situation, there is a statement indicating that  
23 rights, village rights or beach rights may have  
24 been a part or may have been brought up at that  
25 treaty. We know from other documents that they

1           were.

2           Q.    All right, and this is the Treaty of Neah Bay  
3           we are talking about?

4           A.    This is the Treaty of Neah Bay.

5           Q.    Are there any other treaties involved in this case  
6           to which your quotation and citation of Hazard  
7           Stevens work is relevant?

8           A.    Not this particular quotation.

9           Q.    Do you have your report with you?

10          A.    Yes, I do, sir.

11                           THE COURT: The Makah report, you mean?

12          Q.    I'm talking about the report where you quoted  
13          Hazard Stevens, or do you just simply cite  
14          Hazard Stevens?

15          A.    It is not a report, it is an article in ethno  
16          history. I have it here.

17          Q.    You have the place where you quoted or cited  
18          Hazard Stevens?

19          A.    I can find it very readily.

20          Q.    Do you have it, Dr. Riley?

21          A.    Yes.

22          Q.    What page of Hazard Stevens did you quote?

23          A.    It is page 77 on this defense exhibit, which  
24          I do not have labeled.

25          Q.    Now, at anytime in your writings have you quoted

1 any other portion of Hazard Stevens?

2 A I have quoted Hazard Stevens extensively in  
3 testimony about Indian Claims Commission, but  
4 whether I have in writings or not, I do not at  
5 this time know. I am not sure.

6 Q And this is the work of Hazard Stevens as of 1900?

7 A That's right, yes, sir.

8 Q Do you recall him making this statement at page  
9 477:

10 "It was intended only for a place of  
11 residence..." being the Makah reservation,  
12 "with enough cultivatable land for potatoes  
13 and vegetables, and, what was more important,  
14 to prevent their being crowded off by fishing  
15 establishments. The land was unfit for  
16 agriculture, being rocky and sterile with  
17 an annual rainfall of 122 inches, and reserve  
18 was all they needed, for the Makahs are  
19 bold and skillful fishermen and sailors,  
20 accustomed to ventures 30 to 50 miles out to  
21 sea in their large canoes and take the whale  
22 and halibut. While in shore they hunt seal  
23 and sea otter and catch salmon."

24 Do you recall him making that  
25 statement?

1 A I don't recall it at the moment. Will you assure  
2 me that is a statement by Hazard Stevens?

3 Q Well, I can't assure you that it is, because I  
4 don't have his work in my hand. I have what  
5 purports to be a quotation from page 477.

6 My only question to you was whether  
7 you recall him making that statement or anything  
8 like it.

9 A No, it has been many years since I read Hazard  
10 Stevens.

11 MR. PIERSON: I think this is a good  
12 breaking point.

13 THE COURT: We will take a noon recess  
14 now. I think it is quite important, Doctor, that  
15 you go over that section, Roman numeral II, Dr.  
16 Lane's summary with a view of narrowing down the  
17 points where you either disagreed or wished to  
18 make some comments or the like, so that we can  
19 quickly pick that up when we come back, and you  
20 can give it to us and we can get on with the  
21 business.

22 Would you like to have, say, fifteen  
23 minutes extra just to be sure you have time to do  
24 that?

25 MR. CONIFF: I would so request the court.

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ET10a

THE COURT: All right, we will resume  
at 12:45, which is a quarter to one.

(Noon Recess.)

T10b

AFTERNOON SESSION

September 8, 1973  
12:45 o'clock p.m.

CROSS-EXAMINATION (Continued.)

BY MR. PIERSON:

Q Let's take up that now, Dr. Riley. If you will,  
turn to page 24 of Exhibit USA-20, Dr. Lane's  
summary, and my first question to you is: Have  
you indicated any areas of disagreement or places  
that you would like to comment in those papers?

A Shall I go through --

Q Is the answer yes?

THE COURT: He asked you if you have some.

THE WITNESS: My answer, of course, is  
yes and no. It is a long document, and much of  
it I agree with, and some of it I disagree with,  
and if you wish I will give you the --

THE COURT: That is the answer to the

1 question. He asked you if you had some places  
2 where you wished to comment or disagree or the  
3 like, and it is obvious you do.

4 THE WITNESS: Yes.

5 THE COURT: All right, go ahead.

6 Q. Now if you can, Dr. Riley, I would like to take  
7 the ones with which you disagree first.

8 A. Yes.

9 Q. Okay, and proceeding through those pages, let's  
10 start with the first one. Yes, indeed, at the  
11 very beginning on:

12 A. (Reading) "II, Negotiation and Execution of the  
13 Treaties," at the top of page 24 of this  
14 exhibit, under "Purpose of Treaty as a Whole,"

15 "The Indians had received constant  
16 assurance from white settlers and from govern-  
17 ment representatives that they would be com-  
18 pensated for lands which were being settled  
19 on and for loss or destruction of native  
20 property incident to white settlement."

21 The assurances from government represen-  
22 tatives I do not object to. The assurances from  
23 white settlers, the constant assurances from  
24 white settlers, considering that there were 2,000  
25 white settlers, I would consider an extreme

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statement. Individual white settlers.

Q Dr. Riley, can you give us some estimate of how many assurances from white settlers you are aware of in this regard?

A I am aware of no hard and fast assurances of any white settlers of this type.

Q Do you know of any assurances of any kind from white settlers?

A I am sorry, no, I do not.

Q All right, could you continue on? Have you finished your comment on that sentence?

A Yes, sir, the rest of that I accept.

Q The rest of that paragraph?

A I am sorry, when I say the rest of that, I have marked in red, and of course the marking in red is only on my copy, down through the quote from Gibbs.

Q That is with the exception of what you said about that first sentence, down through the quote on page 24 from Gibbs you agree?

A Yes.

Q Was your answer yes?

A Yes, sir.

In the second --

"The United States was concerned to ..."

1 in my section, it is actually paragraph i,2,3,

2 "The United States was concerned to  
3 extinguish Indian title to the land in  
4 Washington territory legally," ellipses.

5 I would accept to the statement on page 25  
6 where you have the letter of Many Penny to  
7 Stevens stressing that he should extinguish  
8 Indian title as soon as possible.

9 Q I don't understand maybe, Dr. Riley. Are you  
10 saying that there is something in there that  
11 you disagree with?

12 A I am sorry, I said I accept --

13 Q I would like you just to give, if you would,  
14 those portions where you noted a disagreement.

15 A Oh, I see. I am sorry. All right. On the  
16 lower portion of page 25, after the quote from  
17 Starling, Indian Agent,

18 "There is no record of the Chinook  
19 jargon phrase actually used in the treaty  
20 negotiation."

21 I think that has been taken up since.  
22 There certainly is one, and I believe that that  
23 was corrected in the treaty of Point Elliott.  
24 There is a page or two of Chinook jargon with  
25 the English translations. That is not the treaty,



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but the treaty negotiations.

Q Yes, and that Chinook jargon phrase which is translated into English does not describe any of the terms of the treaty fishing rights provisions we are about in this case, does it?

A That is correct.

Q So to the extent that sentence says there is no record of the Chinook jargon phrase, the right of taking fish at all usual and accustomed grounds and stations is further secured, there is no record of the Chinook jargon phrase used for that language. Is that a correct statement?

A Excuse me, sir. What -- the statement you have made is correct, and let me read you the statement that I objected to.

Q All right.

A (Reading)

"There is no record of the Chinook jargon phrase actually used in the treaty negotiation."

Now --

Q And that statement, Dr. Riley, under the heading of "B" " Meaning of 'the right of taking fish, at all usual and accustomed grounds and stations, is further secured' "

1 A. That is correct, sir.

2 Q. And do you know of any place in the negotiation  
3 literature or informant testimony or historical  
4 reconstruction where you have seen the Chinook  
5 jargon used to translate that phrase?

6 A. I have not. If by that phrase you mean the  
7 phrase on taking a fish --

8 Q. All right, could you indicate your other areas  
9 of disagreement?

10 A. I will.

11 On page 26, and I believe this gets  
12 somewhat into the heart of the anthropological  
13 disagreement in this case. The second line of  
14 the first sentence,

15 "It is my opinion that no restrictions  
16 were indicated by the commissioners or  
17 contemplated by the Indians."

18 Q. To correct you, Dr. Riley, it is "no such restric-  
19 tions."

20 A. (Reading)

21 "The treaty commissioners knew that  
22 fish were important to the Indians not only  
23 from the standpoint of their food supply and  
24 culture but also as a significant element  
25 of trade with the settlers."

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I would make two points. I will take the last one first.

The second sentence I do not object to except significant, is, it seems to me, a word that needs more refining. In the first sentence it is my opinion that no such restrictions were indicated by the commissioners or contemplated by the Indians, it is my opinion that we really do not have enough documentation to make such a definitive statement.

Q. Do you know of any indication in contemporaneous documents, information from informants or historical reconstruction which indicate that that statement is inaccurate?

A. I do not, and I would point out to you that this is a, when did you stop beating your wife, question. I know of no statement in any contemporaneous documents in which it is spelled out as accurate. It was clearly labeled as Dr. Lane's opinion and it is her right and my opinion is also given.

THE COURT: The net result --

MR. PIERSON: Let me ask you, Dr. Riley, --

THE COURT: The net result of what you have said about this second sentence on page 26,

1 as I understand it, is that you think the expression  
2 of this opinion is not, that there is not  
3 sufficient evidence to express an opinion.

4 On the other hand, you have no specific  
5 evidence to the contrary.

6 THE WITNESS: That is right, sir.

7 THE COURT: Thank you.

8 Q. Maybe I misunderstood, Dr. Riley, I thought you  
9 said your opinion had been given.

10 A. I beg pardon?

11 Q. Did you say earlier in your answer that your  
12 opinion had been given on this issue?

13 A. I don't understand the distinction.

14 Q. Well, I thought you said, referring to Dr. Lane's  
15 opinion and then you said, "My opinion has also  
16 been given."

17 A. Yes, just recently in testimony.

18 Q. All right.

19 A. Thirty seconds ago. Has now been given.

20 Q. The opinion you are talking about is that you don't  
21 think the available evidence warrants an opinion  
22 at all?

23 A. Yes, this question of available evidence I imagine  
24 will come up several times in this case, and  
25 it is extremely important, because the available

1 evidence is in fact rather scanty.

2 THE COURT: Well, that is one reason  
3 why I intrude each time, to be sure that I under-  
4 stand, and hopefully the record will let anybody  
5 understand what our meaning is in this particular  
6 area. I hope you wan't consider that by asking  
7 questions somehow or other I am critisizing  
8 you or anything of that kind at all. All right.

9 THE WITNESS: In the last sentenee of  
10 the first paragraph,

11 "I believe that both parties intended  
12 the Indians to continue full use of their  
13 fishing places, even though most lands adjacent  
14 to fishing waters were ceded."

15 I did'nt object to the statement as  
16 such, because it seems to me that the treaty  
17 documents, actually that the printed draft of the  
18 treaty indicates that, but I would also point out  
19 that the words, "in common" are important there,  
20 and I believe that both parties intended the  
21 Indians to continue full use of their fishing  
22 places in common with all citizens of the territory.

23 Q Are those all your comments on that paragraph?

24 A Yes.

25 Q Did you indicate where else you disagree?

1 A. Yes, sir. The last paragraph of page 26 and  
2 first paragraph of page 27. No, well, the first  
3 paragraph, the first sentence on page 27, the  
4 first paragraph and the first sentence. But the  
5 first sentence of the last paragraph on page  
6 26,

7 "There is no clear evidence as to  
8 whether 'in common' was intended to connote  
9 fishing at the same place or on the same run  
10 or at the same place on the same run, or  
11 something else."

12 I disagree. There is no evidence  
13 and I think my disagreement would -- perhaps  
14 I don't have any disagreement here with Barbara  
15 Land, but in terms of other parts of this document  
16 she seems to be suggesting that a somewhat more  
17 formalized situation than we have -- I would,  
18 I would stress this as the kind of thing I would  
19 tend to do all through, we have a really scant  
20 number of documents, documents of all kinds,  
21 not just government documents and treaty documents,  
22 but documents from Indian agents, from citizens,  
23 alas, not documents from Indians, but we have  
24 a series of documents, and they are on these  
25 problems, and on practically all problems that we

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would like to consider today such as social organization, political organization, and the like. They simply do not give us the kind of detailed data we would like.

ET10b

(Continued on next page.)

1 THE COURT: I wonder, Doctor, if you noticed  
2 that word "clear"? You see, the fourth word from the  
3 very beginning of the sentence there? "There is no  
4 clear evidence as to whether 'in common with,' and so  
5 on.

6 Now, clear evidence, of course is somewhat  
7 more probable and indisputable, or substantial in  
8 weight as evidence. That is all the sentence says.

9 Surely you don't disagree with that?

10 THE WITNESS: I'm glad your Honor drew this  
11 to my attention. My disagreement, actually, is with the  
12 next word, "evidence." I don't think we have any evidence.

13 Q (By Mr. Pierson) You don't think there is any evidence  
14 of what "in common with" meant?

15 A I don't think there is any evidence that the words,  
16 "in common with" were expanded to connote fishing at  
17 the same place or on the same run or at the same place  
18 at the same run, or something else.

19 Q Maybe I misunderstand you, Dr. Riley. The question that  
20 is being directed here is whether "in common with"  
21 connoted those things.

22 The statement is "There is no clear evidence  
23 on that question."

24 My question is, do you think that there is  
25 any evidence on that question?



1 A You have just rephrased my answer, Mr. Pierson.

2 Q Then all you have to say is, "Yes, I am correct."

3 A Yes.

4 Q Now, where else do you disagree?

5 A It's really the same kind of disagreement. At the  
6 bottom of page 27, there is, in the last paragraph  
7 the statement:

8 "In my view, the most likely Indian inter-  
9 pretation of the 'in common' language would be  
10 that non-Indians were to be allowed to fish without  
11 interfering with continued pursuit of traditional  
12 Indian fishing. I think it most likely that the  
13 government intended for non-Indian participation  
14 in fishing."

15 Q I'm sorry, Dr. Riley. You missed two words, "...intended  
16 to provide for..."

17 A I'm sorry.

18 "...provide for non-Indian participation  
19 in fishing with no thought that this would require  
20 any restriction of Indian fishing."

21 I do, in fact, agree with that, and I agree  
22 with it perhaps for different reasons than Dr. Lane,  
23 and I will -- at least, one different reason from Dr.  
24 Lane.

25 It is my feeling, my belief, that as of 1855

1 the number of Indians was so small -- in fact, even  
2 the number of settlers was so small -- that there was  
3 no vision on the part of the treaty commissioners  
4 about the possible necessity of restricting the  
5 fisheries.

6 This is brought out in one of the plaintiffs'  
7 exhibits, the exchange of letters between Stevens and  
8 Fowler in 1856, when Stevens was interested in  
9 getting rights or developing commercial fisheries.

10 Stevens, as comes through rather clearly  
11 in most of these documents was, in fact, very interested  
12 in the Indians. He asked Fowler if the Indians would  
13 suffer if this kind of white commercial fishery --  
14 large-scale fishery, were to be started in this area.

15 Fowler's answer, as I recall -- and I don't  
16 have the document with me at this moment -- was "No,  
17 in our time," a very interesting phrase, "In our time,  
18 no."

19 Q Dr. Riley, are you aware of any conflict between Indians  
20 and non-Indians concerning fishing at any of the Indians'  
21 principal or usual places of fishing prior to the treaty?

22 A Prior to the treaty? Prior to 1855?

23 Q Yes.

24 A There is the account of Hitchcock and the Makah on a  
25 date of about 1850. To what extent that was a dispute over

1 fisheries, a dispute over the land that Mr. Hitchcock  
2 was using, or both, I don't know. But there certainly  
3 was that.

4 I imagine there were others. At the  
5 moment, I cannot think of them.

6 Q And is it your understanding as an anthropologist that  
7 one of the purposes of the treaty fishing rights  
8 clause was resolved to protect against such conflicts?

9 A It is my belief that the government was attempting to  
10 protect the Indians in fishing in their usual and  
11 accustomed places and protect them against whites, but  
12 allow them to fish in common with whites.

13 Q And in protecting and allowing that in common fishing,  
14 it was intended to resolve the conflicts that existed  
15 between Indians and non-Indians?

16 A This is not stated in any of the treaty documents, per se.  
17 There are accounts, scattered accounts of it, a number  
18 of accounts of it in the R.C.I.A. documents, and there  
19 obviously were problems.

20 Dr. Lane has documented some of them or has  
21 discussed some of them.

22 It is my belief that Governor Stevens hoped  
23 to resolve these. I would say that they were not  
24 resolved because of splits -- "split" really is not a  
25 good word -- because of the different emphases and

1 different areas of control of the Indian agents and  
2 the state and the Federal Governments, the territorial  
3 or Federal Governments.

4 Q What I'm trying to get at, Dr. Riley, is whether it was  
5 the intention of the government treaty commissioners  
6 by thus protecting the Indians to resolve the conflicts  
7 which had previously existed, to their knowledge  
8 between non-Indians and Indians regarding fishing?

9 A My answer is yes, with the understanding that they were  
10 trying to protect both Indians and citizens.

11 Q And what were they trying to protect the citizens from?

12 A They were trying to make sure that the citizens received  
13 their fair share of the fisheries, if you wish. In  
14 common with, if it means nothing else, must be taken  
15 to mean that.

16 Q Why do you say that?

17 A Well, would you expound on that just a little?

18 Q It's a very simple question. You made a statement that  
19 in common with means, or must be interpreted to mean --

20 A I'll give you a simple answer, then. It's my opinion.

21 Q What is it based upon?

22 A It's based on a whole series of things, actually. It's  
23 based on the number of complaints of the citizens,  
24 of which you have people like Swan in his early book  
25 articulating. You have people like Swan and Riley, which

1 Dr. Lane pointed out yesterday, in the Puyallup case.  
2 You have people like Hitchcock who was quite perturbed  
3 and angry as to his inability to establish a Makah  
4 fishery.

5 I am sure there are others. These occur to  
6 me at the moment.

7 You also have the report of the treaty  
8 documents themselves. You also have the 1855 report of  
9 Stevens, which is largely Gibbs' railroad report.

10 The 1854 report of Stevens contains a section  
11 on which he gives his philosophy of Indian life. He  
12 wants to turn them into good citizens, educate them,  
13 make them into agriculturalists, blend them with the  
14 people.

15 He is concerned, very concerned, about the  
16 Donation Act, very worried about it. He points out  
17 that the Donation Act has opened up land that has not  
18 as yet been treated for, and this is bound to create  
19 problems.

20 Manypenny to Stevens, in the documents I  
21 just mentioned, treaty documents, brings up the same  
22 point.

23 Q What else do you base your opinion on?

24 A Do you want more?

25 Q I want all you have, Dr. Riley.

1 A I'm giving you a series. I'm sure there are more, but  
2 I would say that if you asked me to completely document  
3 every statement I would have to go over the records.  
4 If you wish, I will.

5 Q To your recollection, Dr. Riley, in light of these things  
6 that you have just cited to us, or any of your other  
7 experiences, have you come across a statement by anybody  
8 contemporaneous with the negotiation and signing of  
9 these treaties which says in common with was intended  
10 to grant to the non-Indians a fair share?

11 A I know of no such statement.

12 Q Now, do you have any idea where any of the plaintiff  
13 tribes or their predecessors in this case, where were  
14 located their usual and accustomed fishing places at  
15 treaty times?

16 A The documentary record at treaty times is extremely scant  
17 on that. I mentioned yesterday and Dr. Lane, I believe,  
18 also mentioned yesterday, the map of Gibbs that she  
19 found recently, listing the Suak-Suiattle Tribe.

20 We know from Margaret Smith's statements and  
21 from statements of Haeberlin and Gunther, and from  
22 statements of Gunther and from statements of Olson and  
23 from statements of other anthropologists that there was  
24 a tendency to put villages and fishing, fish weirs,  
25 fish traps on small rivers, near the mouth of small

1 rivers, where villages were located.

2 That evidence indicates that at about the  
3 time of the treaty -- I forget the date of that map,  
4 but it is in that general period --

5 Q Dr. Riley, I might be able to shortcut this a little bit.

6 THE COURT: I think so. I am afraid we have  
7 wandered off the question quite a ways. I may be  
8 wrong, but it's my recollection that we are outside  
9 of the bounds of the question.

10 Q (By Mr. Pierson) I was just trying to get at, as a  
11 preliminary question, whether you as an anthropologist  
12 know or have an opinion or view about where the usual  
13 and accustomed fishing places of the treaty tribes  
14 involved in this case were at treaty times.

15 A I have an opinion about where some of them were.

16 Q Now, from all of the sources that you have cited to us,  
17 about complaints of citizens involving conflict between  
18 Indians and non-Indians, are any of them specific to  
19 any of the usual and accustomed places, that you know of?

20 A Well, as a spot answer, I can't remember any that are not,  
21 except perhaps the Makah one. It's not quite clear  
22 from the documents where the Makah one was.

23 Q All right.

24 A In the treaty documents concerning the Medicine Creek  
25 Treaties, where Gibbs is forced to move boundary lines

1 because of a previous settlement, a previous land claim,  
2 I suppose, by Riley and Swan, I think this likely would  
3 constitute one, but nowhere in the document does it say so.

4 Q Isn't it true, Dr. Riley, that the Puyallup reservation  
5 where it was initially situated, was put where it was  
6 so it could be next door to the Swan and Riley claims  
7 so that Swan and Riley could use the Indians to fish  
8 for Swan and Riley?

9 A I don't recall that document. It certainly was  
10 placed next door to that. That is, I don't recall the  
11 documentation of the last part of your answer, but the  
12 first part of your answer, certainly, yes. Perhaps  
13 it's the other way around. It was put next to the  
14 Puyallups, yes.

15 Q And if the purpose was so that Swan and Riley could  
16 utilize the Indians' labor to haul the seines, would  
17 you call that a conflict between Indians and non-Indians  
18 over a usual and accustomed fishing place of the  
19 Puyallups?

20 A No, I would not call that a conflict if this were true.

21 Neither of us have mentioned the real  
22 conflict, which came in the fall and winter of 1855,  
23 and the winter and spring of 1856, when the members  
24 of the Sound Indians rose in revolt and attempted to  
25 drive the whites out. I would call that conflict, and I



1 think the documentation on that is adequate

2 Q Was that before or after the signing of the treaties?

3 A That was after the signing of the treaties, but not  
4 long.

5 Q Now, as I understand it, you have given Swan's works  
6 Swan and Riley's fishery, Hitchcock, Stevens, 1854  
7 letter to Gibbs, Manypenny's letter to Gibbs. Could  
8 you when you get an opportunity, when you recall, for  
9 the Quinault testimony, please try to find for us the  
10 place in those reports or documents where there is an  
11 itemization of conflict between Indians and non-Indians  
12 at usual and accustomed fishing places of the Indians.

13 A I didn't say usual and accustomed fishing places in the  
14 first place, sir. I will within the context of my  
15 statement be happy to do that.

16 Q All I'm interested in is those places where you know or  
17 have a view to be usual and accustomed places.

18 I am not interested in any other locations.

19 A All right.

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(Continued on the next page.)

22 ET 11

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1           MR. CONIIEF: May I ask a clarification  
2 question, are you asking him -- the witness,  
3 Mr. Pierson, to identify as many usual and  
4 accustomed places as possible or simply those  
5 places where there may have been or where the  
6 witness believes there is evidence of conflict?

7           MR. PIERSON: I'm asking in terms of whether  
8 he knows today or in his experience has an  
9 opinion that there were usual and accustomed  
10 places of any of the plaintiff tribes and predeces-  
11 sors, where in the documentary authority or  
12 whatever it is that you cited to us, there is  
13 evidence of a conflict between Indians and non-  
14 Indians at those places.

15 Q    (By Mr. Pierson) Do you understand that, Dr. Riley?

16 A    I do.

17 Q    Now, I think we were on page 26 and 27 of USA-20.

18 A    Yes.

19 Q    I would like you to continue indicating where you  
20 have places of disagreement.

21 A    Well, as we pointed out this morning, we have  
22 no knowledge that any Indian present at any of  
23 the treaties understood English.

24           The treaty documents indicate at least  
25 one Indian understood English.

1 Q Is this the fellow named Jack, who was a Clallam  
2 at the Treaty of Neah Bay?

3 A No, this is -- I don't really recall his name,  
4 but he was a Snohomish Indian at the Treaty  
5 of Point Elliott who was said to understand English  
6 and who was made aware of the treaty provisions and  
7 because of his awareness of the treaty provisions,  
8 the people gathered there, most of them, certainly  
9 not all of them, but many of them, perhaps most  
10 of them, speaking dialects that were mutually  
11 intelligible.

12 Q Was this John Taylor?

13 A That's right, sir.

14 Q All right. Do you know from your experience and  
15 research whether he translated into the English  
16 language any of the terms of the treaty?

17 A I do not, sir, and none of the treaty documents  
18 that I have read indicate that he did or didn't.

19 Q Do any of the treaty documents indicate what  
20 Indian languages or dialects he spoke in addition  
21 to English?

22 A Snohomish.

23 Q Any others?

24 A Chinook jargon, I believe.

25 Q Any others?

1 A. None to my knowledge.

2 Q. All right. Now, do you know of any other instances  
3 where any Indians at treaty times from any of  
4 the documentation that you can find and rely  
5 upon spoke English?

6 A. No, sir. At treaty times?

7 Q. Yes.

8 A. If at treaty times we spread the thing a little  
9 bit, Gibbs mentions that Yellow Coon, who died  
10 in 1853, Gibbs 1857, died in 1853 of a terrible  
11 smallpox epidemic that hit the Makah, spoke English.

12 Q. Do I understand you, correctly that he died before  
13 the treaty negotiations?

14 A. Yes. I said if by treaty, we mean the treaty  
15 period.

16 Q. All right. Do you have any other evidence that  
17 in 1855-56 any Indians spoke English?

18 A. No, no direct evidence.

19 Let me make two points there because  
20 the question is somewhat misleading, one, that  
21 again our documentation for this period is rather  
22 poor --

23 THE COURT: There is no need of emphasizing  
24 that, Doctor. I think we all are aware of the  
25 fact that the available evidence is far from

1 what we would like to have. So don't emphasize  
2 that. You have repeated it, Dr. Lane has  
3 repeated it many times. I think you both agree  
4 on that subject.

5 THE WITNESS: I think we, yes, sir.

6 THE COURT: All right, go ahead.

7 THE WITNESS: The second thing is that  
8 as I pointed out in my direct testimony and I would  
9 perhaps amplify it a little bit here, Indians --  
10 a number of Indians, not all of them, but a  
11 number of them, had been in contact with people  
12 who spoke English for a long, long time, and  
13 based on my own experience in other parts of the  
14 world and experience of other anthropologists  
15 the experience of missionaries and missionary  
16 doctors and governmental officials and other kinds  
17 of people, no doubt in a situation where you have  
18 the necessity of communication and in a situation  
19 where the one group is technologically superior  
20 to the other group, you would expect to find the  
21 language of the technologically superior group  
22 spoken especially if that group is -- particularly  
23 the Americans after the treaty with Britain and  
24 considered themselves owners of the country.  
25 I would be very, very surprised and I would be --

1 in fact, I would really wouldn't believe at all  
2 there were not Indians who could not speak English  
3 at any of those and all of those meetings.

4 Q All right. Now, let's talk about the Hudson  
5 Bay institution at Fort Nisqually.

6 A Yes.

7 Q Is it true that Dr. Tolmie spoke Chinook jargon  
8 and the Nisqually?

9 A I'm not sure about the Nisqually, I know he spoke  
10 Chinook jargon, certainly, and I don't question the  
11 fact that Chinook jargon was used.

12 Q Do you have any indication that he spoke English  
13 with any of the Indians?

14 A I don't have any. This line of questioning really  
15 we developed some minutes ago, and I said I had  
16 no other evidence of the people speaking English  
17 with Indians.

18 Q And you also spoke of missionaries, do you hve  
19 any indication that any of the missionaries spoke  
20 anything but Chinook jargon to the Indians?

21 A Yes, sir. The missionaries at -- on Whidby's  
22 Island, Father Blanchette spoke the Nisqually,  
23 that is -- that's what Gibbs called the Nisqually  
24 Nation, the Puget Sound Salish.

25 Q Do you have any evidence that he spoke English

1 to them?

2 A That he spoke English?

3 Q Yes.

4 A My guess is his original language was French,  
5 but I offhand can't think of any evidence that  
6 he spoke English. I'm sure we could find out for  
7 you one way or the other, and I'll be happy to do  
8 so if you wish.

9 Q You have expressed the opinion that you find it  
10 very difficult to reach the conclusion that  
11 some of the Indians didn't speak English?

12 A Yes, sir.

13 Q And you say the same is true with respect of  
14 speaking French?

15 A No, sir.

16 Q Why?

17 A Because there weren't that many French-speaking  
18 people around. There may have been people who  
19 did speak French, Swan, for example, in his 1857,  
20 I think it is report says that the Indians find  
21 it easier to speak French than they do to speak  
22 English because the phonetic system is near to  
23 Salish -- or he didn't say Salish -- but near to  
24 the English -- to the Indians' tongue.

25 Q Do you know of any other examples where non-Indians

1 spoke either Chinook jargon or -- let's confine  
2 it to Indian languages. YOU talked about Whidby's  
3 Island and talked about Fort Nisqually, where  
4 else do you know of that non-Indians spoke Indian  
5 language to Indians?

6 A. Hitchcock claimed to have been able to speak  
7 about five different languages. I'm a little  
8 bit skeptical about that, it may be that he did.  
9 It may be that he learned languages very rapidly,  
10 but at least he made that claim.

11 Q. All right. Now, let's take the two examples  
12 you have given us for Father Blanchette on  
13 Whidby's Island and tell me at Nisqually. My  
14 question is directed to your concept of the  
15 aculturation, would you say that those two men  
16 were aculturated?

17 A. I would say that to the extent that Mr. Tolmie  
18 spoke an Indian language he was aculturated with  
19 Indians, and indeed, to the extent he spoke  
20 Chinook jargon, and the same thing is true of  
21 Father Blanchette. It seems to me that what we  
22 are dealing with is very specialized people here.  
23 One is a fur trader whose job is to spend years  
24 trading with the Indians, and the other is a  
25 priest.



1 Q. These people had such extensive contacts spoke  
2 the Indian Language to the Indians and not French  
3 or English, isn't that correct?

4 A. No, I didn't say that. IN fact, I don't recall  
5 that Tolmie spoke Nisqually, although he may well  
6 have. I have read, I think, most or all of Tolmie's  
7 materials, and I simply don't recall. He  
8 certainly spoke Chinook jargon, he didn't like  
9 to, so he may well have spoken Nisqually.

10 Blanchette is simply doing what people  
11 -- what missionaries oftentimes try to do, which is  
12 to translate the Bible into a native language and  
13 speak in a native language in order to get the  
14 message across.

15 Q. Okay. And so that I understand you and the  
16 concept of aculturation, you would say that at  
17 least as to Father Blanchette, he was aculturaed  
18 by his contact with the Indians as evidenced by the  
19 fact that he spoke English, or pardon me, native  
20 languages to the Indians?

21 A. Yes. He had some elements f Indian, and to say that  
22 he is aculturated is not true, of course. He  
23 was a member of the Roman Catholic Church on a  
24 mission. He was trying to aculturate other  
25 people, that's his job.

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Tolmie's job was to buy furs.

Q All right. Now, when you say "Hitchcock," do you by any chance mean Hancock?

A What did I say?

Q You said Hitchcock.

A I'm sorry, Hancock, the early settler in Washington State.

Q Now, could you continue on and give us your disagreements again going back to page 27 of Dr. Lane's summary report of USA-20 and continue where you disagree?

THE COURT: I think 27 has surely been covered, hasn't it?

THE WITNESS: Yes, sir. Well, I think perhaps at this trial the question of jargon languages shouldn't be gone into too much.

Q (By Mr. Pierson) Well, Dr. Riley --

A It is a subject, but let me identify it for you, if I may, sir.

Q Let me ask you a question about that statement.

Upon what do you base your opinion that Chinook jargon should not be inquired to at this trial?

A No, I didn't say Chinook jargon, I said jargon languages, and it was simply a foundation for

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what I intended to say a little later. I hadn't identified the --

Q Could you tell us why you make that statement about jargon languages?

A Yes. Let me develop that as I go on.

First, let me be sure I know what you are talking about --

THE COURT: On either page 28 or 29?

THE WITNESS: Yes, sir, I'm trying to do that.

THE COURT: All right, so I can get the thrust of what you are saying about it.

THE WITNESS: Mr. Pierson interrupted me, it's the second paragraph on page 29.

THE COURT: Is everything up to there acceptable to you or are you jumping out of order now?

THE WITNESS: No, I'm going through them in order, and I have made comments as I go along, and where I don't object to, I will not comment on.

THE COURT: All right, thank you.

THE WITNESS: "Chinook jargon, a trade medium of limited vocabulary and simple grammar,

1 is inadequate to express precisely the legal  
2 language embodied in the treaties. It's inad-  
3 equacy was commented upon by both Indians and  
4 non-Indian witnesses to the treaty negotiation."

5 Q Dr. Riley, so the record will show what you  
6 are reading, you are reading from Dr. Lane's report,  
7 page 29?

8 A Yes, sir.

9 THE COURT: The first paragraph that  
10 starts on page 29, you have just read it, I have  
11 followed your reading of it.

12 THE WITNESS: Dr. Lane and I have both  
13 commented on the difficulty, in fact, the impossi-  
14 bility of getting across legal concepts across  
15 cultures from the whites to the Indians, and of  
16 course, these concepts in English in common  
17 law, which I will say to Mr. Pierson before he  
18 asks me, I really am a layman, surely are impossible  
19 to explain to an Indian.

20 In terms of Chinook jargon, I do not  
21 know Chinook jargon. I have looked over some  
22 vocabularies and that's about all I have done.

23 I have talked to profession Jacobson  
24 many, many years ago about it, but the conversation  
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I put in simply for the record, I can't repeat any of the things we discussed, but I have used -- I'm not clear in my own mind that Dr. Lane has ever used a jargon, and she may well have been one of those experts, I myself used -- and in fact, was at one time rather fluent in jargon, which at least two linguists --

THE COURT: The Chinook jargon?

THE WITNESS: No, sir. As I say, I have never -- I do not know the Chinook jargon. But I do know a jargon language, and in the early 1950s, I did ask two linguists to compare my jargon with Chinook jargon, and they both said it was simpler, and in their minds, I don't --

(Continued on next page.)

ET12

1 Q Which was simpler, Dr. Riley?

2 A The language I had. They, the two linguists, I don't  
3 think, either were competent in Chinook jargon, but  
4 they were linguists -- the jargon I used was a  
5 jargon in jungles of South America, and it is a mixture  
6 of Cariban and Spanish, and it is amazing, it was  
7 amazing to me how much you can get across in this jargon.  
8 I didn't try to put any treaties in it.

9 Q Dr. Riley, I think the statement has to do with the legal  
10 language and expressing it precisely, the legal  
11 language.

12 A Yes, sir, it seems to me that at least some of the legal  
13 language is very simple, and some of it may be more  
14 complex. Terms like "in common" with have a layman's  
15 connotation, a layman's understanding of in common  
16 with.

17 They, a word like, a phrase like usual and  
18 accustomed has, I believe, a layman's connotation, and  
19 that is where one usually and accustomedly goes, and  
20 I could, I could translate concepts of that kind of  
21 complexity in --

22 Q Chinook jargon?

23 A In a jargon, and I am questioning whether it could not  
24 be translated into Chinook jargon.

25 Q But you don't know Chinook?

1 A I don't know Chinook.

2 Q So you can't give an opinion?

3 A That's right. I can give an opinion about jargon,  
4 languages.

5 THE COURT: Except to the extent that two  
6 linguists as yet undisclosed and whom we can't cross  
7 examine, expressed the thought to you that the jargon  
8 that you used in Africa was more difficult than --

9 THE WITNESS: No, was simpler.

10 THE COURT: Simpler, other than that, you have  
11 no basis for making a judgment about that, do you?

12 THE WITNESS: Other than that, and knowing  
13 another jargon language.

14 Q Now, do I understand that you agree with Dr. Lane's  
15 statement there or, that you disagree?

16 A I agree if the word "precisely" is used. I don't believe  
17 that Chinook jargon could be used to translate precisely  
18 into the legal language.

19 THE COURT: That is all the sentence says.

20 Q So you agree?

21 A Yes.

22 Q Would you continue on to show us what other disagreements  
23 you have?

24 A Let me say one more thing about that. Musn't we make  
25 a distinction about a precise legal definition and a

1 definition that people will understand? What I think  
2 I was saying to you is that it is my belief that the  
3 language in Chinook jargon could have been understood  
4 in layman's terms.

5 I do not think, as Dr. Lane does not think,  
6 it could have been understood in legal terms.

7 Q So it would be accurate to say you agree with this.  
8 Surely Western Washington Indians, even with linguistic  
9 fluency, could not understand English common law?

10 A Yes, yes.

11 Q You make that statement at lines 28 through 30 of page  
12 27 in your testimony?

13 A Yes, sir, I won't look it up if you assure me that I did.

14 Q I assure you that you did.

15 Could you continue on and indicate where  
16 you disagree, and we only have to go to the bottom of  
17 page 29.

18 A Oh, thank you.

19 THE COURT: From the middle of the page down.

20 THE WITNESS: I don't disagree with any further  
21 but may I make an addendum?

22 Q Certainly. O

23 A On page 28, if I can find it --

24 THE COURT: Had you finished here? Why don't  
25 we finish now here, and come back later? We are going



1 to back up anyway. Let's do it all at one time.

2 THE WITNESS: I have only one point that I  
3 wanted to make.

4 THE COURT: Thank you.

5 THE WITNESS: In the first paragraph of  
6 D, on page 28;

7 "'Head chiefs' were chosen by Simmons and  
8 Stevens. The 'subchiefs' and 'leading men' were  
9 selected by Simmons and Stevens. The basis for  
10 choice..."

11 Q Pardon me, Dr. Riley, "sometimes with the aid of the head  
12 chiefs."

13 A With the aid of the head chiefs, thank you.

14 "The basis for choice was friendliness to  
15 the Americans, real or apparent, status in their  
16 communities and ability to communicate in Chinook  
17 jargon."

18 I am not quite clear on the last part of that,  
19 whether all of these people that are listed or even  
20 most of them that are listed in the treaty documents  
21 were able to communicate fluently in Chinook jargon,  
22 but they may well have been.

23 Q Is there anything in that fact which leads you to dis-  
24 agree with those statements you have just read?

25 A Well, I am simply expressing an opinion here, that we don't

1 have any evidence on this matter for all of the people  
2 involved as of treaty times.

3 THE COURT: The matter being, whether or not  
4 they communicated in Chinook jargon?

5 THE WITNESS: Yes, elsewhere in Dr. Lane's  
6 testimony she and I may be quoting her wrongly, and if  
7 I am I apologize, she suggested that perhaps not many,  
8 too many people spoke Chinook jargon. I simply draw  
9 the Court's attention to this as a question on my part  
10 for lack of evidence.

11 "The basis of choice was friendliness to  
12 Americans." This is true of Seattle. I don't know of  
13 documentation or if it is true of some of the others.  
14 Tat-kan-em, for example who is the chief of the  
15 Snoqualmie, assigned to the Snoqualmie and the Skykomish  
16 was perhaps friendly to Americans, but his brother had  
17 been hanged by the Americans.

18 Chief Leschi, who appears as the third  
19 signator of the Medicine Creek document, I do not believe  
20 was friendly to the Americans. At least he became the  
21 leader of the revolt, which broke out shortly afterward.

22 Q: Dr. Riley, isn't it true that the reason that Leschi  
23 also participated in that revolt was because of post-  
24 treaty events?

25 A: It was dissatisfaction in post-treaty times, yes. There

1 was very little time between the treaty and the revolt,  
2 only a few months, of course.

3 Q Do you have any evidence that at the time the treaty was  
4 negotiated and signed, that Leschi was unfriendly to  
5 the Americans?

6 A No, sir, I have no evidence that he was unfriendly to  
7 the Americans, and I am glad you mentioned that because  
8 that is a point I am trying to make.

9 Well, the Judge asked me not to make that.  
10 We don't have much evidence about a lot of things.

11 Q Do you agree with the statement that one basis for  
12 selection of headchiefs and subchiefs was friendliness  
13 to Americans?

14 A I didn't, I didn't question that. Let me answer the  
15 question yes, and then qualify it. I don't question  
16 that some of the chiefs and headchiefs were friendly to  
17 Americans.

18 I am suggesting that we have no data about  
19 most of them, one way or the other.

20 Q Dr. Riley, I am not asking you whether in fact you have  
21 evidence that they were friendly, but whether you agree  
22 with the statement that that was one of the bases for  
23 selecting them as headchiefs and subchiefs. Do you  
24 agree with that statement?

25 A I am sorry, I think I answered your question, but I will

1 answer it again. I agreed with the question, with the  
2 statement that we really have no evidence about most  
3 of the signators of the treaty, their attitudes toward  
4 Americans and American attitudes toward them.

5 Q I am going to try just one more time.

6 MR. MCGIMPSEY: I am going to object.

7 THE COURT: It is important to answer  
8 precisely, and I am not irritated about it, but I am  
9 trying to explore every possible nuance of anything  
10 about this matter that we are now talking about, because  
11 after all, this is one of the principal responsibilities  
12 that the Court is going to have in this case, not  
13 only in this court, but in any other court that it goes  
14 to, and for that reason, I am willing to listen long  
15 beyond what I normally would in response to these matters,  
16 to avoid any possible preclusion of anything that anybody  
17 wants to say about it that is anywhere near what I  
18 consider to be relevant.

19 I want to have eventually from you in each  
20 instance a precise answer to it, without necessarily  
21 enumerating other things you already said.

22 Now, the precise question here again, now,  
23 state it once and for all, as this will be the end of  
24 it, and then you can say anything additional you want,  
25 once you have answered it one way or the other.

1 Q The question is directed to the statement which you have  
2 called attention to on page 28 of USA-20, where Dr.  
3 Lane says,

4 "The basis for choice were..." and she lists  
5 three different things, one of them is friendliness to  
6 Americans.

7 My question is, do you agree with her  
8 statement that that was one of the bases for choice of  
9 headchiefs and subchiefs?

10 A No. I said yes, I have said that three times, really,  
11 as the record will show.

12 THE COURT: You just said no and then you  
13 say yes. I don't mean to be funny about it. It is  
14 just confusing in the record when we read that  
15 transcript, Doctor. I have read thousands and tens of  
16 thousands of pages of transcript, and believe me, I  
17 know that it is very difficult to interpret what some  
18 witnesses have said, and some of them experts, by the  
19 way, from what appears in the transcript, which is why  
20 I keep interrupting, with the hope that we will get a  
21 record that will be understandable to others who may  
22 have to use it, besides myself.

23 If you will read the answer, you will see  
24 what I am talking about.

25 (Answer referred to read by Reporter.)

1 THE WITNESS: Oh, I am sorry I --

2 Q I am referring to page 28, USA-20, statement of Dr. Lane,  
3 the basis for choice were friendliness to Americans and  
4 two other factors are listed.

5 My question is, do you agree with the  
6 statement as to whether friendliness to Americans was  
7 one of the bases for choice of headchiefs and sub-  
8 chiefs?

9 A It was my belief that I said yes all of these times  
10 and Judge Boldt says that I really said no, but I do  
11 say yes, and may I qualify that?

12 Q Certainly.

13 THE COURT: To the extent of not repeating  
14 what you have said at considerable length again, now,  
15 if you have got something new to add to it that you  
16 haven't already expressed, for goodness sakes, say it.

17 THE WITNESS: We have a great many signatories  
18 to those treaties, and we have no idea to what extent  
19 the commissioners knew most of them.

20 THE COURT: But I take it you will agree  
21 that that was one of the bases on which they, the  
22 commissioners selected the people to come to represent  
23 the Indians?

24 A I believe so, sir.

25 THE COURT: All right, go ahead.

1 Q Now, for that subsection, Roman Numeral II, continuing  
2 in USA-20, from pages 24 through 29, do you have any  
3 other indications of disagreement or comment with  
4 respect to the statements given therein?

5 A No, sir.

6 Q I would like to turn, Dr. Riley, if you would, to page  
7 27 of your written direct testimony.

8 A Yes, sir.

9 Q At the very bottom, after you have commented -- well,  
10 I will read it, from page 27, line 28:

11 "Surely Western Washington Indians, even  
12 with linguistic fluency, could not understand  
13 English common law. It was also not possible for  
14 either the Governor's party nor the Indians to  
15 predict the future fantastic growth of this area.  
16 In that sense, all documents of this sort surely  
17 must be reinterpreted every generation, or every  
18 few generations."

19 My question is, about that last statement,  
20 would you please tell the Court how as an anthropologist  
21 or upon what basis you offer that view?

22 A Yes, that goes over, by the way, for the record on page 28.

23 THE COURT: But all he is asking you about now,  
24 and I understand it, is this one matter with respect to  
25 your opinion.

1 THE WITNESS: Yes, sir.

2 THE COURT: That these treaties should be  
3 reinterpreted at periodic intervals.

4 THE WITNESS: Yes, sir, well, all documents  
5 of this sort, which would include treaties -- this is  
6 an anthropological answer, not a legal answer -- it  
7 seems to me that with changing conditions, there must be  
8 changing attitudes about such things as treaties, and  
9 the Constitution of the United States, as an example,  
10 which has many, or the several changes over a period of  
11 one hundred years. That is all I meant, really.

12 Q Let me see if I can ask you a little more about that.

13 A Yes.

14 Q Is there anything in any other of the anthropological  
15 evidence that you have ever been able to find to indicate  
16 that there was an intention either on behalf of the  
17 government or on behalf of the Indians that there would  
18 subsequently be reinterpretations of that clause in the  
19 treaty which says "The right of taking fish at all usual  
20 and accustomed grounds and stations is further secured  
21 to the Indians in common with all citizens of the  
22 territory"?

23 A There is not, to my knowledge.

24 Q Would you kindly tell us upon what anthropological  
25 evidence you base your opinion that that phrase, that

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1 clause, should be reinterpreted for every generation  
2 or every few generations?

3 THE COURT: If you believe that.

4 THE WITNESS: I believe that I did tell you,  
5 sir, but I'll try again.

6 It isn't so much me speaking as an  
7 anthropologist as me speaking as simply a citizen. We  
8 all know that there are changes, that the world changes  
9 constantly.

10 What is a correct document at one period  
11 is not useable another period. The Magna Carta would  
12 not work in England today, surely. That is all I meant.  
13 I don't know what you mean, really, by anthropological  
14 evidence, because I'm simply expressing a general  
15 opinion as an educated citizen of the United States.

16 Q (By Mr. Pierson) Well, what I am after is you said  
17 initially, as I understand it, you were going to give  
18 me an anthropological answer, and I want to see if  
19 I can get my hands on what anthropological experience  
20 or background you drew upon in giving that answer.

21 Can you give me anything of that kind?

22 MR. CONIFF: Your Honor, the witness has  
23 answered the question twice.

24 THE COURT: I think he has indicated that  
25 he cannot.

1 THE WITNESS: I have indicated that I am  
2 answering as a citizen, which is the same thing, yes.  
3 I am not answering as an anthropologist.

4 THE COURT: Are you about at a subject break  
5 there?

6 MR. PIERSON: Yes, your Honor.

7 THE COURT: Are you near finishing?

8 MR. PIERSON: I would guess I will be another  
9 half hour.

10 THE COURT: Let's take the recess anyway.  
11 Fifteen minutes. We will resume at ten minutes after  
12 two.

13 (Recess.)

14 MR. PIERSON: Your Honor, I have decided  
15 to terminate my examination. Mr. Getches is going to  
16 take over.

17 THE COURT: Mr. Getches.

18  
19 CROSS EXAMINATION

20 BY MR. GETCHES:

21 Q Dr. Riley, you indicated in your testimony yesterday  
22 that you were an anthropologist with a great deal  
23 of field experience.

24 What was the first field work you did in the  
25 case area?

- 1 A The first field work I did in the case area was in the  
2 general area of Puget Sound, from Lummi through the  
3 Nisqually.
- 4 Q When was this?
- 5 A This was in 1952.
- 6 Q Was this in connection with the work you did on  
7 contract with the government?
- 8 A Yes, sir.
- 9 Q Related to the Indian Claims Commission?
- 10 A Yes, sir.
- 11 Q Was all of your field work in the case area done in  
12 connection with those reports for the Federal Government?
- 13 A All of my field work has been done in that way, yes.
- 14 Q And this furnished the basis for your testimony, which  
15 was offered for the purpose of resisting claims by  
16 the tribes in this area; is that right?
- 17 A Yes, sir.
- 18 Q The claims that the tribes brought against the Federal  
19 Government, and the Federal Government retained you  
20 to testify on the Government's behalf?
- 21 A Yes, sir; retained me to research and testify, yes sir.
- 22 Q Calling your attention to the Stillaguamish Tribe,  
23 is it your understanding that the present day Stillaguamish  
24 Tribe is a successor to a tribe called the Stollaguamish  
25 spelled differently in the treaty at Point Elliott?

1 A Yes, sir. I would say yes, and I would make this  
2 clarifying statement:

3 "The Stillaguamish Indians were and all  
4 the Indians of the Sound did intermarry. So, there  
5 are mixed bloodlines in all of them."

6 Q But the present day Stillaguamish generally descended  
7 from that group named in the preamble to the treaty  
8 at Point Elliott; is that right?

9 A That would be my opinion, sir.

10 Q Now, with respect to the Suak-Suiattle Tribe which you  
11 have mentioned a couple of times before in your  
12 testimony, that present day entity is traceable to the  
13 Sakumehu, is that true?

14 A I have never done field work in the Suak-Suiattle.  
15 I was asked to research the Skagits, which at that time,  
16 I think included the Suak-Suiattle. The Suak-Suiattle  
17 in my informants' information, and from the documents  
18 of the time, represented a particular village high on  
19 the Skagit River, the Skagit drainage.

20 Dr. Lane has put in evidence -- which I see no  
21 reason whatsoever to contract -- that there was a  
22 Suak village in that Upper Skagit drainage.

23 Q And that group was included in the treaty at Point Elliott?

24 A I would have to look at a copy of the treaty to say yes  
25 or no on that one.

1 Q If I told you reliably that the Sakamehu were named  
2 in that particular treaty, you wouldn't have any  
3 quarrel with the fact that they were parties to that  
4 treaty?

5 A I would accept your word.

6 Q Now, Mr. Pierson questioned you at some length  
7 regarding the Muckleshoot Tribe, and a statement made  
8 in your written testimony at page 30, line 16.

9 You state in answer to the question:

10 "Would you state whether or not in your opinion  
11 the present day Muckleshoot group are in part,  
12 at least descendants of Indians who were parties  
13 to the treaty at Point Elliott and Medicine  
14 Creek"?

15 " A I would think that to be very, very likely. "

16 Can I assume from your answers to Mr.  
17 Pierson's questions that there is really no doubt that  
18 they were parties to that treaty?

19 A I think it would be very, very likely.

20 Q But would you also say that there is no doubt that  
21 they were?

22 A We are playing around with semantics here. Since I  
23 have not taken detailed genealogies of the Muckleshoot,  
24 I would simply say that, based on my capacity as an  
25 anthropologist in this area, I would believe so.

1 Q In other words, you have been given no reason to doubt  
2 that?

3 A No.

4 Q At several places in your written testimony, you have  
5 indicated that there was an intent on the part of the  
6 United States to make farmers or agriculturalists out  
7 of the Indians in the case area.

8 Is that right?

9 A Yes, sir.

10 Q Now, you also indicated in answer to some questions asked  
11 by Mr. Pierson that this policy was varied in degrees  
12 of success or failure throughout the case area.

13 Is that a fair statement?

14 A I'm not sure what I said in response to Mr. Pierson.  
15 I do feel that it was not a complete success if the  
16 intention of the treaty commissioners was to stop their  
17 fishing eventually.

18 Q You stated, I believe, that there was possible success  
19 at a couple of locations that you mentioned by name.  
20 But if you were to speak generally, would you say that  
21 the policy of making agriculturalists or farmers out  
22 of Indians was generally a success or generally a  
23 failure?

24 A Let me say generally a partial success. During the  
25 period from 1855 on, a whole series of new crops were

1 added that the Indians took up. There was additional  
2 emphasis on farming during the reservation period.

3 There was, of course, a great emphasis on  
4 the part of the Indian commissioners to make the Indians  
5 into farmers, as Dr. Lane has pointed out, a kind of  
6 a general policy, and I point out, too, kind of a  
7 general policy of the Federal Government.

8 It certainly had some success. It was not  
9 a total success.

10 Q Generally would you say it was a success or a failure?

11 A I don't think one could characterize it as a success  
12 or a failure, because I think what we are dealing with  
13 here is additional food resources or a series of food  
14 resources.

15 To that extent, it was a success.

16 Q Would you say categorically that it was the intent in  
17 all of these treaties equally to make farmers of the  
18 Indians in the particular areas covered?

19 A I'm less sure about the Makah than the others. I think  
20 that was the general intent in all of the area covered,  
21 all of the claimed area, and beyond.

22 The government, I think, had second thoughts  
23 in the Makah case.

24 Q Do you think there was any difference in the intention  
25 on the United States part with respect to the tribes

1 nearer the coast than those on the interior, the other  
2 side of the mountains?

3 A No. I don't think the United States felt that there  
4 was any difference in policy, but they did understand  
5 that there were differences between the tribes, that  
6 is, to say, tribes that back from the rivers, or back  
7 from the bays and inlets, and tribes that were near.

8 That is expressed, for example, in Gibbs  
9 1877.

10 Q Are you saying that the intent with respect to those  
11 closer to the water was less to make them farmers  
12 than it was with those on the interior?

13 A No, sir, I didn't say that. I say quite the opposite  
14 as a matter of fact. I said as far as anyone can  
15 interpret the treaties, and the treaty minutes, the  
16 intent was blanket.

17 The Indians were to be made into farmers  
18 and hopefully into citizens.

19 Q Do you think that the treaty commissioners and other  
20 government representatives at that time realized that  
21 they would not be able to make farmers of the people  
22 that were along the fishing waters to the same extent  
23 that they would those on the interior?

24 A Apparently not, because in the documents following the  
25 treaty, the various reports of the Commissioner of Indian



1 Affairs, there are long sections about how agriculture  
2 is being imposed on this, that, and the other group,  
3 or rather, agriculture is being encouraged.

4 Agriculture, of course, was already there.

5 There was a great deal of pride in their  
6 statements, such as in the Simmons (1858) report that  
7 hopefully, maybe not in this generation, but in the  
8 following generation, we could do something about these  
9 Indians and turn them into the proper kind of citizens.

10 Q I would like to direct your attention to Y-4, Exhibit  
11 Y-4, at page 117.

12 Have you found the page?

13 A Yes, sir, I have found it.

14 Q Beginning at the fourth full paragraph, this is the  
15 record of the treaty at Walla Walla.

16 Is it your understanding that these treaty  
17 proceedings took place after the treaties over on the  
18 western side of the State, Puget Sound area?

19 A The document in question would seem to so state.

20 Q The document reads:

21 "My friends, I have held four councils on  
22 Puget Sound. I have made treaties with all the  
23 Indians on that Sound. They number more than all  
24 the tribes here present.

25 "They have all agreed, should the President

1           decide, to go on one reservation. That reservation  
2           is only about one-fiftieth part as large as this.

3           "They have, however, a few horses and  
4           cattle. They have not 300 head. They take salmon  
5           and catch whales and make oil. They ask for no  
6           more land. They think they haveland enough."

7           "You will be farmers and stock raisers and  
8           wool growers. You will need more."

9           Does that indicate to you any different  
10          intention on the part of the government representatives  
11          with respect to the treaties negotiated on the eastern  
12          side of the mountains and those negotiated on this side?

13        A   Well, it doesn't seem to square with the promises made  
14          to the Indians on the Puget Sound side; that they would  
15          have sufficient land in the treaties.

16          I think what we have here is I think it's  
17          a matter of hyperbole, in which the treaty negotiator,  
18          Governor Stevens, is indicating how well off the Walla  
19          Walla people are in terms of the Sound people.

20          I'm not sure you can draw much more about  
21          that, except, of course, the matter of catching salmon.  
22          This reads more as if he is talking about the Makah  
23          treaty than anything else.

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24  
25

1 Q Does he refer to one treaty or --

2 A No, he refers to four, I'm sorry, I'm saying  
3 it sounds like it.

4 Q Are you aware that approximately 1860 -- are  
5 you acquainted with James Swan, first of all?

6 A Yes, sir.

7 Q What was his position in the territory?

8 A James Swan came to the Western Washington terri-  
9 tory I believe in 1853 and settled at Chillwater  
10 Bay for a while where he stayed traveling around  
11 for a period of some years. Later on, he was  
12 stationed on the Makah reservation, and unless  
13 I check my sources, I can't say for sure, I  
14 think he had an official position of some kind.  
15 Whether he was -- I don't know if he was an  
16 Indian agent or not, but he was in some official  
17 position.

18 Later on, in the latter part of the  
19 19th century, he moved down the coast and settled  
20 at one of the towns in the eastern part of the  
21 coast.

22 Q Would you be surprised to learn that he in 1860  
23 recommended that annuities be paid to the  
24 tribes in the western part of the State in the  
25 form of fishing gear primarily?

1 A All of them?

2 Q Primarily.

3 A I don't know the document, at least I am not --

4 Q Well, would you be surprised, based upon your  
5 studies, that he would make such a recommendation?

6 A He might well make such a recommendation to the  
7 Makahs. I would be surprised if he made the  
8 recommendations to the other tribes.

9 Q Would you be surprised if he said in a letter to  
10 his superiors, "It is proper to remark that the  
11 wants of the coast tribes who are fishing people  
12 are altogether different from the tribes of the  
13 interior who are a hunting people, and the articles  
14 I have enumerated," referring to the fishing  
15 articles, "as well as those I have manufactured for  
16 them, I have strictly followed what, in my  
17 judgment, are the most useful articles that  
18 can be distributed among them either as gifts  
19 or in payment of annuities. My judgment is based  
20 on my experience and observation among them during  
21 my residence on the coast."

22 Does that come at all as a surprise to  
23 you that he would make those recommendations?

24 A Yes. Again, I think he probably was speaking  
25 only about the Makah. This kind of statement,

1 by the way, is fairly common in that period of  
2 time of the distinction between the superior  
3 Salish and Sahaptin people on the one hand and  
4 the coast tribes on the other hand -- the coast  
5 and Puget Sound tribes on the other. When he  
6 says "coast Indians," I imagine he is speaking  
7 about the Makah. That was in 1860, he was  
8 actually at Neah Bay.

9 Q Well, sir, unfortunately I am reading from a  
10 letter that is not in evidence, but it is dated  
11 Port Townsend, Washington Territory, January  
12 31, 1860. Would that indicate he was referring  
13 to the Makah?

14 A Not knowing the circumstances of the letter, not  
15 having the letter at hand, I don't know.  
16 I'm thinking in terms of coast tribes. Usually  
17 when people at that period talked about coast  
18 tribes, they talk about tribes on the coast,  
19 not about tribes on the Puget Sound, nor in fact  
20 about tribes on Hood Canal or the Straits of  
21 Juan de Fuca.

22 Q Now, when we refer to Coast Salish Tribes, we  
23 are referring to all the tribes in the case area,  
24 are we not?

25 A Yes, and I don't believe it says Coast Salish.

1 Q Yes. But I'm asking you when we are referring  
2 to Coast Salish, we are referring to a linguistic  
3 not a geographical situation?

4 A It is part geographical, but it is linguistic  
5 as opposed to interior Salish.

6 Q You stated earlier in your testimony today  
7 that farming was relatively minor in the period  
8 following the treaties compared to Salmon fishing,  
9 was this true of the pre-treaty period as well?

10 A Yes, I think it was relatively minor.

11 Q And did it continue to be relatively minor for  
12 the period following the treaties for as long  
13 as you have any knowledge of the area?

14 A Well, they attempt -- the government agent mentioned  
15 that farming obviously had some effect, and it  
16 became less and less minor as time went on.

17 It was my testimony earlier to Mr.  
18 Pierson that fish always remained very important  
19 to the Coast Salish.

20 Q And they were of primary importance at the time  
21 the treaties were negotiated?

22 A I believe they were, yes. Gibbs and others  
23 state categorically that they were, and I think  
24 that they were. But this doesn't preclude the  
25 fact that there were other foods, and there is

1 ample evidence for that, and Mrs. Gunther has  
2 been very interested in finding different kinds  
3 of foods, and she has a long list of foods.

4 I mentioned yesterday Smith and Rivera  
5 who suggested that where a salmon were very  
6 important it was necessary to have other foods  
7 to get a balanced diet.

8 Q But there is no doubt that the anadromous fish  
9 in the diet of the people remained of primary  
10 importance while the other foods were secondary,  
11 isn't that right?

12 A Yes, they were certainly one of the most impor-  
13 tant elements of the food except in the Makah  
14 area where halibut was.

15 Q You have eluded to and I think cited in your  
16 written testimony as well as Professor Wayne  
17 Suttles, and he is generally acknowledge as  
18 an authority on Coast Salish, is he not?

19 A I would consider him one of those who is an  
20 authority on Coast Salish, yes, sir.

21 Q I would like to read you a statement and ask you  
22 the extent to which you agree or disagree, and  
23 there is a statement from an article by Mr.  
24 Suttles which is in evidence as BSA-49. Would  
25 you care to follow along? This is at page 515

1 of USA-49.

2 On page 515, beginning the paragraph,  
3 "It is doubtful whether the earlier  
4 white authorities clearly understood the  
5 nature of Coast Salish inter-village relations.  
6 Possibly some did and were consciously attack-  
7 ing the native culture by restricting  
8 relations between villages. But it is more  
9 likely the major policies were made at the  
10 higher level for a variety of Indian groups  
11 at once without knowledge of the conditions."  
12 Do you agree with that statement by Professor

13 Suttles?

14 A. Yes, I do in general. I might add to that, and  
15 this in no way contradicts the statements that  
16 there seems to have developed two kinds of  
17 settlers and two kinds of agents.

18 One kind which you could call pro-Indian  
19 and the other kind you could call anti-Indian  
20 in terms of the long term goals of the Indians.

21 I'm not perhaps sure that some of the  
22 pro-Indians may have been anti-Indian, but at  
23 any rate, that is the digression, I do agree.

24 Q. You have indicated in your testimony that the  
25



1 largest autonomous group in the Coast Salish  
2 political structure was the village?

3 A. Yes, sir.

4 Q. Now, Professor Suttles at an earlier place in  
5 the same article, page 512 states:

6 "The village was not aboriginally a  
7 self-contained unit."

8 It continues on page 513, "It appears  
9 that at the time of the white settlement,  
10 the whole area formed a social continuum  
11 within which the village was only one of  
12 several equally important social groups.  
13 We can distinguish at least one other kind  
14 of a group, a non-discreet, non-localized  
15 property holding kin group."

16 It continues further down the page, "Indivi-  
17 dual and family ties were strong between  
18 villages as within the village."

19 It concludes, "There was no office of  
20 village chief and no village council. Coopera-  
21 tion was ad hoc leadership was for specific  
22 purposes."

23 Now, do you agree or disagree with that  
24 quotation?

25 A. I disagree with it in part. I feel that

1 Dr. Suttles, while he is stating the complexity  
2 of the situation rather clearly, is over formalizing  
3 the status somewhat.

4 He mentions four different levels,  
5 you read parts of the four levels of the social  
6 group, the village, the house group, and I forget  
7 what else, but what I have been trying to say  
8 all through this period, and what I was trying  
9 to say in my direct testimony and what I quoted  
10 Drucker on and Marian Smith on this morning is  
11 that -- and what I could also quote Suttles on,  
12 I suppose since we just read an account by him  
13 on page 515, is that because of the rapid decultura-  
14 tion and collapse of native society, statements  
15 such as this are highly inferential.

16 I certainly respect Dr. Suttles' right  
17 to make this kind of statement, and I don't  
18 disagree with most of it. I do disagree with the  
19 idea of the extended family as the land holding  
20 unit, no families, of course, were tied to villages.

21 Q You have pointed out some disagreements you  
22 have with Professor Suttles. What are the  
23 bases of your disagreements in terms of documentary  
24 or authoritative source report?  
25

1 A I have listed a few of the documents which  
2 state the lack or at least possibly of identifi-  
3 cation for this period. It is primarily  
4 based on the fact that I feel with rapid acultura-  
5 tion you cannot make these fine distinctions  
6 on the basis of present day studies.

7 This has been the position I have  
8 felt for many years.

9 Q So you base this opinion primarily on the fact  
10 that you believe there is rapid deculturation  
11 and collapse of native society in your words?

12 A I don't believe -- there is no question but  
13 what there has been rapid deculturation and a  
14 collapse to a very large degree of native society  
15 from treaty times on, and I'm not the only one  
16 that believes it.

17 Q What other authorities share that view?

18 A I have cited two just a minute ago, I cited  
19 Drucker's statement and I cited a statement of  
20 Marian Smith.

21 Q Incidentally, how long has Professor Suttles  
22 been working in the Coast Salish area?

23 A I believe Dr. Suttles began work -- I believe  
24 in the Forties, possibly in the early Fifties,  
25 but I think it was in the Forties.

1 His dissertation at the University of  
2 Washington is called the -- perhaps Dr. Lane  
3 can correct me if I'm wrong in this, but it is  
4 the "Economic Life of the Haro and Rosario  
5 Straits."

6 That was done somewhere around 1950.  
7 It is being published in the next few months  
8 along with materials of mine and others because  
9 it was part of the Indian claims case here.

10 Q Would you say that Professor Suttles' work in  
11 the Coast Salish area has been rather continuous  
12 since his first contact in the Forties or early  
13 Fifties?

14 A I really haven't followed Professor Suttles' career,  
15 sir.

16 Q And you mentioned a Mr. Drucker?

17 A Phillip Drucker.

18 Q Phillip Drucker. What is the extent of his work  
19 in the Coast Salish area?

20 A Phillip Drucker to the best of my knowledge, has  
21 not worked in the Coast Salish area. His major  
22 work has been with the Nootkan people, which, of  
23 course, would include the Makah.

24 I was quoting this morning from a  
25 rather general book of Dr. Drucker for the

1 American Museum of Natural History in  
2 which he tried to delineate the Northwest Coast  
3 subculture areas.

4 Q But his work in part, at least, you disagree with  
5 Professor Suttles on the view that the village  
6 was not the largest autonomous political unit  
7 in aboriginal Coast Salish society, is that right?

8 A No, I think we a little bit are talking at  
9 cross purposes. The village is a territorial  
10 unit, that is, it's a spot and it has land.  
11 Kinship relationships may be spread out all over  
12 the Sound. There are responsibilities, reciprocal  
13 responsibilities in these kinship ties, but to  
14 call a kin group a political organization, it  
15 seems to me gets into a kind of ridiculousness  
16 that Dr. Lane characterized.

17 Q Well, just so I get this straight, you disagree  
18 with Professor Suttles?

19 A I disagree on this point.

20 Q You disagree that the village was not an aboriginal  
21 self-contained unit?

22 A Yes, and I disagree on the grounds that the  
23 evidence simply is not available to us. Dr. Suttles  
24 is using informant evidence in the Forties, Fifties  
25 and Sixties, and this is a construct, this is

1 a model and I believe Dr. Suttles would tell  
2 you that. A lot of writing is not intended to  
3 be absolute truth, it is intended to be a  
4 model for somebody else to shoot at. I'm shooting  
5 at it.

6 Q You have agreed with Professor Suttles when he  
7 says that it is doubtful whether the earlier  
8 white authorities clearly understood the nature  
9 of "Salish inter-village relations"?

10 A I think we all agree on that.

11 Q Now, could it be partly this misunderstanding  
12 that has led you to your disagreement with him?

13 A My disagreement -- let me phrase it one more  
14 time, sir, is that the evidence for aboriginal  
15 Coast Salish life is very scanty, the Coast  
16 Salish are put on reservations, they started to  
17 become or were in the process of becoming aculturated  
18 very early in the times, and the evidence for  
19 Coast Salish is very scanty.

20 Q Well, if you don't agree with Professor Suttles  
21 completely, would you agree that there were in  
22 aboriginal times regularized relations between  
23 several villages and that this feature in society  
24 was central to the character of the Coast Salish  
25 as a group or groups of people?

1 A I don't know how central it is, but I will  
2 certainly agree there were regularized kin rela-  
3 tionships between several villages in the Coast  
4 Salish, yes.

ET15

5 (Continued on next page.)  
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1 Q Were there inter-village ties, exemplified by  
2 various ceremonies as well?

3 A Yes, there were.

4 Q Weren't these ceremonies important because they  
5 afforded regular vehicles for redistribution  
6 of goods between groups in different areas?

7 A Yes, sir, that is true. You are speaking primarily  
8 of the potlatch, and again I would stress to you,  
9 as I stressed to Mr. Pierson yesterday, that  
10 the potlatch is primarily a focus on a village  
11 or on a house in the village, but that kinsmen  
12 would come in from the outside, and it is my  
13 belief, and I assure you that that is -- that there  
14 was really very little evidence on anything about  
15 the potlatch. People from the outside who were  
16 kinsmen of the rich individuals in the house  
17 giving the potlatch would help out.

18 Of course, other village members would  
19 help out, and the focus, the physical focus of  
20 the potlatch was the village.

21 Q Well, in some, then, would you be willing to say  
22 that even though there might have been a lack  
23 of permanent political authorities, that  
24 the Coast Salish had a pattern of distinctive  
25 ties that bound them together as an identifiable



1           entity?

2    A    I would, I would need to qualify that.

3                   THE COURT: If you were to take identity  
4    and say group, would that help?

5                   THE WITNESS: I would say it this way,  
6    Judge Boldt --

7                   THE COURT: Yes.

8                   THE WITNESS: I would say that marriage  
9    was, the ideal of marriage would be outside the  
10   village, and some marriages were up and down  
11   river systems and some were up and down the  
12   Sound, so that people did have contacts outside  
13   their village with other villages. To that  
14   extent, what Mr. Getches says is correct.

15   Q    Do you agree with the statement then?

16   A    I believe there was another part of the statement  
17   that I objected to.

18                   MR. GETCHES: Will it be possible to  
19   have the statement read back?

20                                   (The last question was read  
21                                   back by the Reporter.)

22   A    Yes, I would say no to the part where you are  
23   saying the Coast Salish had ties that bound them  
24   together as an identifiable entity, if by  
25   "Coast Salish" you mean all the Coast Salish.

1 Q Identifiable entities.

2 A Various groups within the Coast Salish, various  
3 families is what I mean, yes, sir.

4 Q And these groupings went beyond villages?

5 A Yes, sir.

6 Q Are you aware that both Professor Suttles and  
7 Professor Elmendorf agree on this super village  
8 organization concept?

9 A Yes, sir. Mr. Pierson last pointed out to me  
10 where Professor Elmendorf feels a number of villages  
11 in the lower Skokomish Valley may have had an  
12 extended -- is this what you mean? I am sorry.

13 Q Well, we have explored some of Professor Suttles'  
14 view on the question of a super village form of  
15 organization among the Coast Salish, and I am  
16 asking you if you are aware that Professor Elmendorf  
17 shares that view.

18 A I don't think Professor Suttles means a super  
19 village in the sense that Professor Elmendorf  
20 meant a super village. In those villages at the  
21 lower part of the Skokomish River, I think that  
22 Professor Elmendorf was talking about an extended  
23 village, and what I said to Mr. Pierson was that  
24 I did not feel that we have today sufficient evidence  
25 to make this kind of statement, outside of the

1 Makah. That is a Makah pattern, and it is not  
2 a Coast Salish pattern.

3 Q So it is your opinion that Professor Elmendorf  
4 would not share that view of Suttles?

5 A Well, no, I don't believe that is -- I don't  
6 believe that is my opinion, sir, but I suppose  
7 the record will say what I said.

8 THE COURT: Let's hope so.

9 Q Dr. Riley, you stated earlier in your testimony  
10 that Indian culture in Western Washington has  
11 broken down, and just a few moments ago indicated  
12 reference to a collapse in native society and  
13 reference to rapid aculturation.

14 In your earlier statements today you  
15 said that this is the general opinion of anthropol-  
16 ogists. Can you cite me to the anthropologists  
17 who share this opinion for the case area?

18 A Certainly, Marian Smith and her Puyallup - Nisqually,  
19 in a very poetic way in the introduction says  
20 this. Stern indicates this. Gunther indicates  
21 this, both in her Nisqually and in the Haverland  
22 and Gunther report.

23 Q What do these reports say, do they say that there  
24 has been breakdown of Indian culture in Western  
25 Washington?

1 A We have the Smith in evidence. I-f I might read it,  
2 it is defense Exhibit Number, perhaps Mr. Coniff  
3 can give it to me.

4 MR. CONIFF: G-27.

5 A (Continuing) I think that's rather poetic,  
6 and Smith's work was done in the 1930s, I believe,  
7 on Puyallup - Nisqually aculturization.

8 This is the result of work done  
9 in 1935. That is thirty-eight years ago.

10 "Puyallup-Nisqually culture is gone.

11 With the exception of a small group who still  
12 live on what is left of the Nisqually  
13 Reservation, the people own their homes and  
14 are scattered among rural and urban whites  
15 from whom they can scarcely be distinguished.  
16 If the old life has come alive again, and  
17 to me it certainly seems most vivid, it is  
18 due to the real and intelligent interest of  
19 my informants, especially of Jerry Meeker,  
20 John Mill Cane, William Wilton, and Peter  
21 Kalama. They offered their memories, their  
22 hospitality and their friendship, and this  
23 book is a monument to the culture into  
24 which they were born and which they saw  
25 vanish before their eyes."

1                    These were very old people in 1935.

2 Q    Now, are you aware of authorities that take  
3       a distinctively different view on this issue?

4 A    I don't believe there are any authorities that  
5       take a distinctively different view on the issues  
6       that Western Washington culture has largely  
7       broken down as of 1973.

8 Q    Well, I would like to call your attention to  
9       page 516.

10                   THE COURT: I assume you are referring  
11                   to Indian culture?

12                   THE WITNESS: Yes, sir. Native culture.

13 Q    I would like to call your attention to page 516  
14       of USA-49, Dr. Suttles article. Dr. Suttles  
15       there says,

16                   "Today, in spite of an almost complete  
17                   replacement of material goods and a century-  
18                   long conflict between white and native beliefs  
19                   and practices, basic features of social  
20                   organization remain."

21 A    It's larger part has broken down. I can document  
22       elements of Indian culture that have not broken  
23       down. I visited and took part in the activities  
24       of the Indian Shaker Church, for example, at one  
25       time -- this is 20 years ago. I suppose it is

1 still going on. I can as an anthropologist  
2 could see the Indian elements of that church,  
3 the spirit dancing part of it, but it still is  
4 within the framework of the Christian religion.

5 Q Could you name some of these other elements  
6 of native culture that have not broken down?

7 A Yes, I think Indians wear traditional western  
8 European clothing. I think they normally speak  
9 English. I think they utilize in one way or  
10 another the economic system of America.

11 Q I am asking for ways, you said you knew several  
12 ways in which native cultures have not broken down.

13 A Oh, I am sorry, has not broken down.

14 Q Right.

15 A I am sorry, I missed the "not," it is entirely  
16 my fault.

17 Oh, I can mention a few. Mrs. Sheldon  
18 the wife of Bill Sheldon, the "Chief" of the  
19 Snohomish, maintains some Indian ways, including  
20 her reluctance to speak English, except she  
21 spoke it to me because I didn't speak Snohomish.  
22 This was over 20 years ago, of course. If you  
23 would like I can dredge a few more.

24 Q Yes, I would like to know other elements in the  
25 native culture that you have observed that persist

1 today.

2 A. That persist today?

3 Q. That's right.

4 A. This is, of course, the most, in some ways the  
5 most important one of all, and that is the feeling  
6 of Indianness, which I assume is one of the  
7 reasons for this trial.

8 Well, at this point, not thinking  
9 well on my feet, I'm sure there are a few more.

10 THE COURT: Well, Dr. Riley, I think  
11 you and Dr. Lane and every other authority  
12 that has been quoted, remarked that the pretrial  
13 treaty Indian culture had a salient feature to  
14 it in that fishing at their usual and accustomed  
15 places was the principal feature of that culture,  
16 right?

17 THE WITNESS: Yes.

18 THE COURT: All right, now, in what  
19 respect, if any, has that feature of their  
20 culture altered?

21 THE WITNESS: Well, I really can't  
22 speak of the Indians of 1973. The people that  
23 I knew in the 1950s fished primarily with American  
24 or Western gear. They did fish, however.

25 THE COURT: That is the all important part

1 of my question, with respect to their interest  
2 in and desire and effort in fishery.

3 How much, if any, has that diminished?

4 THE WITNESS: I think there is really  
5 ample testimony as to my opinion, and I simply  
6 say that I think fishing is still quite important.

7 Of course, other people fish, non-Indians  
8 fish also.

9 THE COURT: And, of course, also the  
10 Indians have been prevented from fishing to  
11 a considerable extent by restrictions of one  
12 sort or another, have they not?

13 THE WITNESS: Sir, I really don't know.  
14 This was not part of my preparation.

15 THE COURT: All right, go ahead, try to  
16 finish if you can with this witness today.

17 Q You said that you were unable to answer completely  
18 for 1973 because your direct and immediate  
19 perceptions were based on your field work in the  
20 1950s?

21 A That's right, sir.

22 Q And it is also based on that work, that you  
23 answer in your direct written testimony, page  
24 22, beginning at line 25,

25 "Western Washington Indians wear



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Western clothes, use Western technology, speak English, share in Western religious traditions, are United States citizens and generally speaking, look at the world through Western-European eyes."

Is that not your answer?

A. Yes, we discussed that a few minutes ago and I started to, misunderstanding your question -- I started to list the ways in which Indians have become Americanized.

That is my position, yes, sir, I think it is everybody's position.

(Continued on next page.)

Et16

1 Q Do you think it's everybody's position, and you are  
2 including in that statement other anthropologists?

3 A I don't believe there is an anthropologist worthy of  
4 that anthropologist's salt who denies that the  
5 Western Washington Indians as of 1973 are not very  
6 largely aculturated.

7 Q Are you aware of work done by George Pettitt concerning  
8 the Quileute?

9 A Would you refresh my memory on that, sir?  
10 I have had so many names and places and tribes thrown  
11 at me today that I am getting a little weary.

12 Q Are you aware of work done by George Pettitt,  
13 concerning the Quileute?

14 THE COURT: What kind of a work? A book or  
15 a monograph or --

16 MR. GETCHES: Writings and field work.

17 THE WITNESS: I would have to look in my notes,  
18 frankly.

19 THE COURT: But you don't recall it?

20 THE WITNESS: I don't recall at the moment.

21 Q (By Mr. Getches) Have you heard of Mr. Pettitt?

22 A Again, I would have to look at my notes before I  
23 responded about Mr. Pettitt.

24 Q Well, would you be surprised that Mr. Pettitt, who did  
25 extensive field work with the Quileute in recent years,

1 has concluded that the Quileute have shown a commendable  
2 attitude in utilizing specific traits of white culture,  
3 but they have not yet integrated these into a pattern,  
4 much less accepted the aspirations that may give  
5 purpose to their existence in a white society?

6 Would you take issue with that statement of  
7 Mr. Pettitt's?

8 A I would take issue, perhaps not so much with the  
9 statement, as with an interpretation of it, which would  
10 indicate that the Quileute Indians did not participate  
11 in white society.

12 The ones that I met in the 1950's  
13 certainly did participate in white society, and  
14 Western European society.

15 Q Well, let me read the statement again. I don't think  
16 that's what he said. He said that they have shown a  
17 commendable aptitude in utilizing specific traits  
18 of white culture, but they have not yet integrated these  
19 into a pattern, much less accepted the aspirations that  
20 may give purposes to their existence in a white society.

21 A Yes. That does not seem to me to be inconsistent  
22 with my position. But, further than that, I would like  
23 to examine the documents.

24 Q You have heard of Dr. Suttles. Now, he said at page  
25 516, which we quoted before today, that in spite of an

1 almost complete replācement of material goods in a  
2 century-long conflict between white and native beliefs  
3 and practices, basic features of native social  
4 organization remain.

5 A Well, sir, if you want me to say that there is Indian  
6 in the sense that the Indians do have traits that are  
7 proper to them, I will say so.

8 Q I think you have itemized the ways in which Western  
9 Washington Indians have become aculturated, and you  
10 have listed such things as living in rural and urban  
11 areas, next to non-Indians, using modern technology,  
12 speaking English, wearing Western clothes.

13 Aren't these really elements of a material  
14 culture that you are referring to?

15 A Those are elements of a material culture. Religion,  
16 of course, is not an element of material culture.

17 As far as social organization is concerned,  
18 for the most part, obviously, Western Washington Indians  
19 do live in a white socio-political organization.

20 They must, and they had to, for a hundred  
21 years, because they are part of it, citizens of it,  
22 citizens of the United States.

23 In the tribal geneologies that I attempted --  
24 and I did not work very extensively at this -- I will  
25 say that there is on the part of my informants some

1 confusion of the Western European kinship terminology  
2 and the Indian kinship terminology.

3 You may, of course, at your leisure ask  
4 Barbara Lane, Dr. Lane, if she has the same problem.

5 In all of this talk about aculturation,  
6 I have worked with groups that are not aculturated,  
7 and to me these are very aculturated people.

8 Q But aren't you referring primarily to elements of a  
9 material culture?

10 A No. I'm referring to across the board. You are picking  
11 out items of Indianness, which perhaps will exist for  
12 another fifty or a hundred years. One doesn't know  
13 about these things.

14 But I am talking across the board.

15 Q You are including in that ideas, beliefs the values,  
16 and so forth, as well as elements of a material culture?

17 A I'm including everything, yes sir, material culture,  
18 social and political organization, religion.

19 Q You are basing your opinions primarily on the outward  
20 manifestations of what that present day Indian culture  
21 is, are you not?

22 A Not really. I'm basing my opinion on two things. I'm  
23 basing my opinion, first on field work done in Western  
24 Washington at a much earlier time than this, when  
25 aculturation presumably had not proceeded so far; that is,

1 the period of the fifties.

2 Second, I'm basing my observation on comparison  
3 of other cultures that I have known, and I have known  
4 several and worked with several.

5 Q Are you aware of Indian religious and ceremonial  
6 practices that go on today?

7 A Today? No.

8 Q You are not aware of distinct Indian practices?

9 A I'm not aware of the Indian situation as of 1973.

10 Q You did mention the Shaker Church.

11 A I attended a meeting of a Shaker Church in 1952, I think  
12 it was. I'm assuming the Shaker Church is still  
13 operating.

14 Q But your statement that you are not aware of these  
15 things continuing, does that stem in part from the  
16 fact that you haven't done any field work in this area  
17 since the fifties?

18 A That is true.

19 Q I see. I

20 A I might add this: that aculturation in a situation  
21 like this, where the dominant culture simply gets  
22 bigger and bigger, normally is a one-way street, and the  
23 movements away from it are usually artificial movements.  
24 I have observed some of these in the past, and I have  
25 written about some of them.

1 Q You said one thing a moment ago:

2 That Indians with respect to social organiza-  
3 tion are completely aculturated because they are  
4 American citizens operating in our political system.

5 Is that right?

6 A I never said that Indians were completely aculturated.

7 I said that the Western Washington group of Indians  
8 were largely aculturated.

9 Q But with respect to social organization, you said that  
10 they had been aculturated for some time, I think.

11 A Yes; for a hundred years, one hundred twenty years.

12 Q That's doesn't necessarily mean that they have abandoned  
13 their traditional forms of social organization, does it?

14 A Well yes. In effect, it does. The reason I have for  
15 saying that is the problems that people, even as far  
16 back as Haeberlin and his material in the nineteens  
17 had in getting really good information on social and  
18 political organization, and it also is reflected in the  
19 fact that people like Smith considered that that is  
20 very difficult if not impossible, to go back to the  
21 realities of the social organization.

22 That does not mean, by the way, that there  
23 may not be elements of social organization. That is  
24 something else again.

25 Q Then isn't it possible that people can be bicultural in

1 the same way that they are bilingual?

2 A It is very difficult in a situation like this, because  
3 you have the overwhelming weight of the major culture.  
4 You have a stringent Indian decline, period after the  
5 treaty. So, the descendants of modern Indians are  
6 from a much more narrow base than at treaty times.

7 You have, of course, a very large and  
8 complex group of society.

9 Q Do you think it is possible to be bicultural in the same  
10 way it is to be bilingual?

11 A Are you talking about this area, or are you asking me  
12 a general question?

13 Q A general question.

14 A As a general question, I would have to say that I think  
15 people would tend to lean to one or the other culture,  
16 although I believe I have known a few people that are  
17 bicultural.

18 Q In your field work in this area and other perceptions  
19 of the Coast Salish area, have you noticed or perceived  
20 that Indians have a desire to maintain their reservations

21 A Well, I don't specifically --

22 THE COURT: Are you referring now to the  
23 plaintiff tribes?

24 MR. GETCHES: Yes, yes.

25 THE WITNESS: I'm speaking of the period of the



1 fifties. We do understand that.

2 I don't specifically remember reservations,  
3 although I would assume that they did. They were  
4 extremely conscious of their rights, and many of the  
5 Indian people that I worked with were very much up  
6 on the current litigation. I might add that many of  
7 them were very poor, and with reason.

8 They were on current litigation.

9 As I said in previous testimony and as  
10 exemplified by such things as Duwamish v. the United  
11 States in the twenties, and then the trials going back  
12 before that, the Indian has been forced by the peculiar  
13 and really kind of outrageous status that he has been  
14 put in by the Federal Government, he has been forced  
15 to litigate, to fight these claims, fight in the courts

16 He tries fighting -- I'm not talking about  
17 Western Washington, although it happened in Western  
18 Washington -- he tried fighting outside the courts, and  
19 of course, the terrible weight of the culture of America  
20 was such that he could not lose. He got Custer, and  
21 that is his main glory.

22 But the Indian has been subjected -- and  
23 I'm talking only about Western Washington Indians --  
24 the Indian has been subjected throughout the United  
25 States to an Indian policy that began before the signing

1 of the Washington treaties which had as its intent  
2 making him into a citizen.

3 Governor Stevens indicates that for  
4 Western Washington, and it is certainly no secret. It  
5 is talked of again and again in various parts of the  
6 country, making him into a citizen, educating him,  
7 and if he wasn't a farmer, making him a farmer, making  
8 him, as Col. Simmons suggested in 1858, and as other  
9 people have suggested at other times for other areas  
10 take the little children and take them away to school  
11 and do not let them see their parents, and do not let  
12 them speak their language. Make them speak English.

13 This was the policy of the United States.  
14 It was a cruel policy. It was a policy of the United  
15 States until the 1930's.

16 Q Would you include in this litany of cruel policies and  
17 the adverse weight to which Indians have been subjected,  
18 prohibitions and laws of states that have prevented them  
19 from fishing as they did traditionally?

20 A I don't know any of the laws, sir. I don't think I  
21 should answer that question.

22 Q Finally, doesn't the great enthusiasm, the great fervor,  
23 and interest that Indians in this case area have  
24 evidenced concerning their fishing rights demonstrate a  
25 desire to maintain that aspect of their way of life?

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MR. CONIFF: Objection, your Honor.

It calls for speculation on the part of the witness.

MR. GETCHES: I am asking him as an anthropologist whether in his opinion and based on his perceptions of Indians in this case area, that their desire to retain the ability to fish as they did traditionally evidences a continuation of their culture and way of life.

THE COURT: If you have any views on that, you may express them.

THE WITNESS: Thank you, sir.

Since I have not worked with the Indian population since the 1950's, and since I know very little except what I read in the newspapers, of subsequent movements, of political movements by Indians in this area, I don't think I would be competent to answer that.

MR. GETCHES: I have no further questions.

THE COURT: Anything for plaintiffs?

MR. HOVIS: Yes, your Honor. I have some questions.

THE COURT: Let's try to finish, if we can, with this witness.

ET17

## 1 CROSS-EXAMINATION

2 BY MR. HOVIS:

3 Q Doctor, in your training as an anthropologist  
4 and in your fieldwork, have you had any training  
5 in the linguistic field?6 A Any training in linguistic fields, consists of  
7 three courses or seminars in basic linguistics,  
8 which I have mostly forgotten.9 Q So you wouldn't be familiar with the fact that  
10 in the Pacific Northwest, including both this  
11 case area and the interior tribes, that we have  
12 the largest group of language stocks of anyplace  
13 in the United States of America? Did you learn  
14 that?15 A Well, I have always been under the assumption  
16 that California had the largest group, but I  
17 certainly wouldn't want to argue that there are  
18 certainly a large number of groups in the Western  
19 Washington area.20 Q In your study -- in your basic study wasn't that  
21 cited as a basic anthropological principal to  
22 indicate that a large population at least at one  
23 time would occupy an area in which there were  
24 many language stocks?

25 A I'm sorry, would you repeat that? I seem to have

1 missed the first part.

2 THE COURT: Rephrase it or restate it.

3 Q. (By Mr. Hovis) As a basic anthropological  
4 principal is it not true in the areas where there  
5 is a large number of language stocks that it  
6 indicates a dense population existed at one time?  
7 Yes or no.

8 A. The answer is no, and the comment on the answer  
9 is this, it may or it may not. The California  
10 area, which I indicated had the largest number  
11 of linguistic stocks to my knowledge in North  
12 America, and certainly they do not have anything  
13 like the population of certain other areas in  
14 North America.

15 Q. Basically, your training has been as an archeologist,  
16 has it not?

17 A. No, sir, my training has been as an ethnologist,  
18 and ethnohistorian and as an archeologist in about  
19 that order.

20 Q. I see.

21 A. In the last ten years I am switching the order,  
22 I am becoming more and more of an ethnohistorian.

23 Q. Now, isn't it true that the archeological finds  
24 at least in this area show there was a large  
25 population here at one time?

1 A. I dont think one can draw that conclusion from  
2 the archeological finds in this area. By "this  
3 area" do yoy mean Western Washington?

4 Q Yes, I do, sir.

5 A There has been very little archeology done.

6 Q Now, if you would turn to page 52 of the pretrial  
7 order where it is an agreed statement of fact  
8 that under the tribes under the Yakima treaty  
9 and the tribes that were confederated into the  
10 Yakima Indian Nation, which is the plaintiff  
11 in this case, contain Salish speaking, Sahaptin  
12 Speaking and Chinook speaking tribes.

13 Are you familiar at all with any of  
14 these languages?

15 A Do I speak them?

16 Q No, I mean could you describe as to their relative  
17 difficulty or do you have any familiarity at  
18 all with any of these languages?

19 A No.

20 Q You would not be able to -- do you have any  
21 familiarity to say that the Chinook and Salish  
22 languages are two of the most difficult languages  
23 that there are to speak?

24 A I would not have that information. I don't  
25 even understand the question and tend to question

1 it by saying all languages are difficult or  
2 all languages are easy depending on when you  
3 learn to speak them.

4 Q And you wouldn't be able to say whether there  
5 was any meshing between the three languages  
6 or whether they are separate and apart languages?  
7 You don't have any information in that regard?

8 A Well, I do have information in that regard. The  
9 Chinook, the Sahaptin and the Salish -- I  
10 assume we're talking about interior Salish are  
11 separate languages, yes.

12 Q Now, there was some discussion today about the  
13 Chinook jargon and discussion about the Chinook  
14 jargon, if you wished to make a comparison  
15 and wished to look at what people who spoke  
16 Chinook in 1855 had available to them, what source  
17 would you use to find those words?

18 A Are we speaking of Chinook language or Chinook  
19 jargon?

20 Q The Chinook jargon only.

21 A There are lists in Gibbs of vocabularies of  
22 '55, '56, well, actually that wasn't published  
23 until later. There is some Chinook in Winthrop  
24 and there are mentions of Chinook jargon in the  
25

1 various accounts of people like Gibbs and  
2 Stevens and the treaty reports.

3 In 1855, I really don't know where  
4 I would look in 1855 for the most complete  
5 vocabulary of Chinook. Possibly in James Swan.  
6 I'm not quite clear when that book was published,  
7 it may have been 1857.

8 Q He didn't publish the dictionary did he?

9 A No.

10 Q For example, if I wanted to help this Court under-  
11 stand the words that were used and I wanted to  
12 look at a dictionary, look at a dictionary, a  
13 list of words that were commonly used in Chinook  
14 jargon around this area, around 1855, 1856,  
15 1857, around those times, to find out whether  
16 "usual" was in the dictionary, whether "accustomed"  
17 was in the dictionary, whether "citizens" was  
18 in that dictionary, whether "territory" was in the  
19 dictionary, what would be my best source? What  
20 would be the thing I should go and look to which  
21 would be of assistance to this court and bring  
22 forth and put it in evidence here?

23 A We are talking about 1973?

24 Q No, I'm talking about a contemporary document around  
25 this time, a contemporary dictionary.



1 A. I would think Gibbs.

2 Q. Now, if I might ask you to turn -- perhaps  
3 without wasting any time, are you familiar with  
4 the treaty signatures of the Yakima Treaty,  
5 where they came from?

6 A. No, sir, I'm not.

7 THE COURT: Since it is a matter of  
8 record, you could tell him if you want and  
9 go from there.

10 MR. HOVIS: I was going to go through  
11 the various signatures of the Yakima Treaty  
12 as to where they came from and what language  
13 they spoke, could you be of any help to us in  
14 that regard, Doctor?

15 A. I don't believe I could without looking at it.

16 Like Dr. Lane, I have not addressed  
17 myself to the Yakima. I don't feel that I am  
18 expert on the Yakimas.

19 THE COURT: That is one reason I was  
20 trying to cut it down, because I remembered you  
21 said that.

22 Q. So all of your direct testimony, that you put  
23 forth in this case and in your report that is  
24 G-21 all of these things have no relevancy whatsoever  
25 to the Yakima Treaty or the Yakima Indian Nation

1 or the tribes that were confederated in the  
2 Yakima Indian Nation?

3 A They have relevance only in the sense that  
4 people called Klickitat or Yakima may have  
5 gotten into the west. But they certainly don't  
6 have relevancy in terms of more Eastern Washington.

7 Q And, of course, you are familiar with the fact  
8 that the Klickitats were in this case area  
9 and it has been agreed to by all parties in this  
10 case that they fished at places on the streams  
11 within the Puget Sound area? You are familiar  
12 with that fact?

13 A Yes, I am familiar with that fact.

14 Q And you heard the testimony of Dr. Lane with  
15 regard to the fact that the maps show there  
16 were 400 Klickitats and showed the rivers on  
17 which they were fishing.

18 Do you have any evidence that would  
19 be contrary to the evidence that she produced that  
20 she happened to stumble across in her main theme  
21 of inquiry?

22 A That particular map I don't remember, But I certainly  
23 do know that the Sahaptin speaking people fished  
24 in Western Washington across the Cascades.  
25

1 Q In your general study in this field and particularly  
2 I notice in your report you have cited the  
3 work of Verna Ray on the cultural relationships  
4 in the plateau of northwestern America --

5 A Are we referring to an exhibit?

6 Q No, this is not an exhibit, but I'm talking about  
7 your report. This was cited in your bibliography.

8 A I think we all know what you mean you are  
9 referring to, the report that was placed in evidence  
10 the other day.

11 Q Yes, your G-21.

12 MR. CONIFF: May we make sure the  
13 witness has G-21 in his possession?

14 THE WITNESS: I'm sorry, I don't seem to.

15 (Document handed to witness.)

16 Q (By Mr. Hovis) It may have been some time since  
17 you have read that but let me start out with some  
18 basic facts, in your study of anthropology is it  
19 not true that the Indians of the interior, and  
20 particularly the Indians we call now the Yakima  
21 Indian Nation, had a stronger political organization  
22 than existed in the coastal area?

23 A I really am not an expert on Indians of the interior.  
24 I would like to be excused from answering that  
25 question.

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2 I notice in your report you have cited the  
3 work of Verna Gray on the cultural relationships  
4 in the plateau of northwestern America --

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7 your report. This was cited in your bibliography.

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9 referring to, the report that was placed in evidence  
10 the other day.

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12 MR. CONIFF: May we make sure the  
13 witness has G-21 in his possession?

14 THE WITNESS: I'm sorry, I don't seem to.

15 (Document handed to witness.)

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17 you have read that but let me start out with some  
18 basic facts, in your study of anthropology is it  
19 not true that the Indians of the interior, and  
20 particularly the Indians we call now the Yakima  
21 Indian Nation, had a stronger political organization  
22 than existed in the coastal area?

23 A I really am not an expert on Indians of the interior.  
24 I would like to be excused from answering that  
25 question.

1 Q And you have no understanding whatsoever, in your  
2 studying of anthropology as to the political  
3 organization of the Indians in plateaus in compari-  
4 son with the coastal Salish tribes?

5 A Only a very general knowledge. If the  
6 Court wishes me or you wish me to say a few words  
7 on it, I will, but it is -- very generally, it is  
8 not expert testimony.

9 Q I would like with that caveat, for what assistance  
10 you can be to the Court in this regard to ask  
11 you is it not true that they had a stronger  
12 political organization in the plateau -- particularly  
13 the Yakima Indian Nation and the tribes that now  
14 make up the Yakima Indian Nation had a stronger  
15 political organization, stronger tribes, stronger  
16 confederacies, if you please?

17 A Yes. What I intended to do was draw your attention  
18 to the book of Phillip Drucker that I referred to  
19 earlier in which he said that he believed that  
20 the Coast Salish formed a southern province of the  
21 north coast, really, with interior people, and  
22 he listed a number of reasons why they were  
23 interior people originally, originally interior  
24 people and kind of a very formulated social organi-  
25 zation. But I can't recall if he discussed

1 political organization. At any rate, I'm only  
2 givingyou this secondhand and that is not expert  
3 testimony. Aside from that, I really would wish  
4 not to answer that question. I don't feel I  
5 can answer it as an expert.

6 (Continued on next page.)

ET 18

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1 Q All right, Doctor, I don't wish to pressure you, take  
2 your limitations here again.

3 I am going to ask you, if you want to be  
4 helpful to this Court, in talking about the culture  
5 relations in the plateau of Northwestern America,  
6 could you suggest to me what I could put in as an  
7 exhibit, what writing I could best inform this court  
8 about those culture relations.

9 A I would think that writings of people like Vern Ray of  
10 the collection of material, the collection in the  
11 general series of anthropology, edited by Leslie Stier,  
12 and those two come to mind immediately.

13 Of course, there are earlier materials,  
14 Lewis & Clark, which I am sure you know of.

15 Q Now, excuse me, had you completed your answer, Doctor?

16 A Yes, thank you.

17 Q Thank you for your assistance, Doctor.

18 A I don't qualify any of these people as experts. I am  
19 simply trying to help you out, Mr. Hovis. Again, let  
20 me stress that this is not an area of my expertise,  
21 including an expertise on the writers.

22 Q Now, is it not a basic principle of your discipline,  
23 Doctor, that races or groups venerate the things that  
24 support life, like, I might say in our culture, we  
25 may worship the almighty dollar, perhaps.

- 1 A I think your question is probably correct, Mr. Hovis.  
2 Of course, what supports life, will, a conception of  
3 what supports life will vary from group to group.
- 4 Q Correct, but with that basic principle, is it not true  
5 that the Indians in the case area had a salmon cult  
6 or a ceremony where the first salmon were anxiously  
7 awaited and were gravely celebrated every year?
- 8 A You are asking me a question in an area in which I have  
9 no expertise. However, first salmon rites were known  
10 in Western Washington.
- 11 Q I was talking about the case area.
- 12 A I see.
- 13 Q And what other foods were celebrated in the case area?
- 14 A There were no other foods celebrated that I know of.  
15 Making this statement late in the day off the top of  
16 my head, certainly none as important as salmon.
- 17 Q Now, did the Indians in the case area have any  
18 celebration of pork, spuds, turnips, any such foods as  
19 this, such as we may do at Thanksgiving, or grains?
- 20 A Not to my knowledge. Mr. Hovis, there is a point of  
21 information that you probably should have. The  
22 celebration, the ritual celebration of the food does not  
23 necessarily indicate primacy in a group.
- 24 I draw your attention to the Irish, who  
25 until about the sixteenth or seventeenth century were



1 very, very avid salmon eaters. With the introduction  
2 of those white or American potatoes, they became  
3 potato eaters, and until the potato blight of the  
4 mid-1850's, that was their major food, and if you are  
5 asking me to document that, I will decline, but I  
6 will say that as general knowledge, the Irish to this  
7 day -- and this I do know of my own observation,  
8 practice an attenuated form of the first salmon rite.

9 The first salmon caught in Irish waters  
10 in various places is ritually taken and sold, usually  
11 for an incredibly high price, 1000 pounds, 2000 pounds  
12 or more, by avid bidders, and the bidders eat the  
13 salmon.

14 Q And it is likewise true that if we want to go back 1000  
15 years, 2000 years, Doctor, that salmon were a principal  
16 part of the diet of people who lived in Ireland?

17 A The Irish had a mixed diet. Salmon was important,  
18 particularly in the west, and it was the west to which  
19 I was referring. I didn't -- I am happy you brought  
20 that up, because I didn't clarify it. The Irish were  
21 of course agricultural, and probably their most important  
22 single commodity was the cow. Most of the Irish ritual  
23 surrounds cattle, and has for probably 2500 years.

24 Q Doctor, you are to tell me, and this is an anthropological  
25 fact, that the Irish 2500 years ago, as a principal part

1 of their diet, ate beef?

2 A The Irish as of 2500 years ago -- certainly the Irish  
3 of 2000 years ago had as a principal part of their  
4 diet, and beef was very very important to them, and  
5 it continues to be important along with salmon, along  
6 with cereal foods, until today.

7 THE COURT: I wonder if we hadn't better --  
8 I am afraid we are going to get around to the Vikings,  
9 and I don't want to hear about them.

10 MR. HOVIS: I am sorry. It was a fabulous  
11 statement, to me.

12 THE COURT: Let's try to move on. How much  
13 longer do you think you will be?

14 MR. HOVIS: Just a few more questions.

15 Q And then these have to do with the discovery and  
16 exploration of this area which you are talking about  
17 in your report, and you have also discussed in your  
18 direct testimony a little bit about sovereignty, how  
19 the United States was dealing with Britain and some of  
20 these other people, but dealing differently with the  
21 Indian nations in this area.

22 I would like to ask you on what discovery,  
23 or exploration is the right of the United States to this  
24 particular area based?

25 A I would have to give you a layman's impression, and I will

1 give you a layman's answer, a series of explorations  
2 but particularly Lewis & Clark.

3 Q Now, did Lewis & Clark pass into the case area?

4 A Not really, not at all.

5 Q Not at all?

6 A Not as far as I know.

7 Q Now, what other American discovery in this case area  
8 gives the United States a right to rely on, as you  
9 are talking about in regard to the sovereignty in this  
10 area?

11 MR. CONIFF: May I have the question read back?

12 MR. HOVIS: I will strike it.

13 THE WITNESS: As documented.

14 MR. MCGIMPSEY: Objection, your Honor,  
15 objection. Just a minute. I believe he is calling for  
16 a legal conclusion when he asked for what right the  
17 United States has to rely on for sovereignty.

18 THE COURT: I can imagine that that would be  
19 very helpful to us, and I am not sure that this witness  
20 is qualified in that area. Are you qualified as a  
21 historian as well as an anthropologist?

22 THE WITNESS: Well, I am historical  
23 anthropologist, and I can mention some of the people  
24 that were in the area, but the conclusions drawn from it,  
25 I don't think I can do.

1 THE COURT: To what discovery or the like  
2 that the United States might have asserted is a basis  
3 for its right? Do you feel any competence to answer  
4 that?

5 THE WITNESS: I don't feel any competence.  
6 The Spanish were the first people in the area.

7 THE COURT: Yes, that is in the record.

8 Q The Spaniards, the Spaniards were the first Europeans  
9 in the area?

10 A Yes, I am sorry, when I say first people, it was in the  
11 context of your last question. I meant the first  
12 European nation in the area. There were, of course,  
13 Indian people also in the area before that.

14 Q And then Russia was the next group that was in the  
15 area?

16 A In the named area?

17 Q Yes.

18 A No, I would think American and British, and then  
19 Russian.

20 Q So at least the treaties, there were treaties that  
21 were made in which both Spain and Russia gave up their  
22 claims to Britain and the United States for this  
23 particular area?

24 A Yes, that is my understanding.

25 Q And in the treaty with Russia, in 1824, Russia reserved

1 the right to trade with the Indians in this area, did  
2 it not, in the case area? Are you familiar with that?

3 A I haven't read the treaty.

4 Q But at least you are familiar with it, with the fact  
5 that in 1818 the United States of America and Britain  
6 agreed to joint occupancy of the case area?

7 A I have forgotten the fact, but I will accept your word  
8 for it. In terms of the Russians trading in the area,  
9 it seems to me that there were subsequent Russian  
10 Hudson Bay Company agreements where the Hudson Bay  
11 supplied Russia from the area with various foods that  
12 they needed and restricted Russian trade in the area.

13 You would have to check that with the Hudson  
14 Bay documents, but I believe that is the case.

15 Q Now, was there any change by convention or treaty of  
16 the treaty with Russia, that you know of?

17 A Not that I know about, because I am not really acquainted  
18 with that treaty.

19 Q At this time the northern-most boundary of the Oregon  
20 territory or country then was 54-40, which is now the  
21 baseline of Alaska. You are familiar with that, Doctor?

22 A The 54-40 concept? Yes.

23 Q So from all of this country, as you stated, or as I am  
24 saying to you, in 1818 was agreed to be in joint  
25 occupancy by the United States of America and Britain.

1 Do you recall that in your --

2 A I don't. I think I went over that and said I didn't  
3 recall it, but I will accept your statement of it.

4 Q Now --

5 THE COURT: Well, in any case, assume it.  
6 Have you got some question?

7 MR. HOVIS: Yes, I do.

8 THE COURT: Because the questions you are  
9 trying to bring out, there are better and quicker  
10 ways of doing it.

11 Q Up until 1846 this joint occupancy continued, did it  
12 not?

13 A That is correct.

14 Q And during all of this time Great Britain or the  
15 British were attempting to limit the settlement by whites  
16 in this area north of the Columbia, were they not?

17 A I don't know that of my own knowledge, because I don't  
18 know that part of the history, but it would -- I do  
19 know that there was an active, a very active competition  
20 of the two two countries to get settlers or to get  
21 people of, their own nationals into the country, and  
22 it would follow from that the British would try to  
23 limit at least the Americans, Americans coming into the  
24 area.

25 (Continued on the next page.)

1 Q And if we might run through some of the trading  
2 posts that were involved in this area: Fort  
3 Nisqually, Fort Vancouver, in the Oregon Trail,  
4 Fort Walla Walla, Fort Colville, and all of the  
5 forts that we call forts, which are trading posts,  
6 were all British Hudson Bay Company posts, were  
7 they not?

8 A That is correct. You are aware -- and I won't  
9 take the time of the Court -- that there were two  
10 companies at one time competing in this area,  
11 but the Hudson Bay Company won out.

12 Q At least after 1818-1824?

13 A Yes, right.

14 Q So that there was no settlement in this case  
15 area by any Americans until after 1846, was there?  
16 And I'm talking about M.T. Simmons being the  
17 first group.

18 A I quite frankly don't know when the first American  
19 came into this area.

20 THE COURT: Assume that that is the case.

21 THE WITNESS: I will assume that is the  
22 case.

23 THE COURT: That doesn't, of course,  
24 prove it. But for the purpose of the question.  
25 I think we can get on much faster.

1 Q (By Mr. Hovis) Now, if we might move to the  
2 organization of Washington territory in 1853,  
3 do you know the boundaries of the Washington  
4 territory as it was organized by Congress at that  
5 time?

6 A No, sir, I don't.

7 Q Were you familiar with the fact that when it was  
8 organized it had the smallest non-Indian population  
9 of any territory that was ever organized by the  
10 Congress of the United States?

11 A I wasn't familiar with the fact, but it would seem  
12 to fit with other facts that I know.

13 Q Now, were you familiar with the census that was  
14 taken by the United States Marshall, J. Patton  
15 Anderson, when he was first appointed in 1853?

16 A I don't remember this particular census, but  
17 I'm sure I have seen it because I have gone through  
18 all censuses in the Washington area.

19 Would you repeat that name, please?

20 Q J. Patton Anderson.

21 A J. Patton Anderson.

22 Q And that was, I think you have testified on your  
23 direct examination, somewhere in the neighborhood  
24 of 4,000 people in all of Washington territory?

25 A I said 2,000 people, I think, and was really talking



1           only of Western Washington. That was a figure,  
2           a ball park figure.

3   Q    So, you had 2,000 people in the case area in about  
4           1855?

5   A    That was what I suggested. That may not be correct,  
6           but it was a rough figure that I gave.

7   Q    That is non-Indian, 2,000 non-Indians?

8   A    Oh, yes.

9   Q    Now, there were no whites located in any area in  
10           which members of the Yakima Indian Nation were  
11           at that time; is that not true?

12   A    I don't know.

13   Q    Do you have any evidence that any Yakima Indians  
14           in this area were in contact with whites or had  
15           whites living among them?

16   A    I have no evidence that any Yakima Indians had  
17           whites living among them. They were in contact  
18           with, of course, the Evans party.

19                    We are talking about treaty times,  
20           of course?

21   Q    Yes.

22   A    There were Yakima who were in the Western Washington  
23           area that were in contact with whites at least  
24           as early as about 1853. Winthrop notes some,  
25           for example.

1 Q I'm talking about there was no settlers among  
2 their villages or where they were living?

3 A Sure, I don't know. I'm not competent to discuss  
4 the Yakima on their home grounds.

5 THE COURT: Well, it is 4:00 o'clock  
6 now. I think if there is anything further that  
7 you have, Mr. Hovis or anyone else has we will  
8 defer it until Dr. Riley returns.

9 MR. CONIFF: I have discussed that with  
10 Dr. Riley, and he advised me that he should be  
11 able -- correct me if I am wrong, Dr. Riley -- he  
12 should be able to prepare his comments and perform  
13 the research by working tomorrow and Monday and  
14 would be available Tuesday to complete this area  
15 of the case.

16 Am I correct in making that statement,  
17 Dr. Riley?

18 THE WITNESS: Yes, I could do that.

19 MR. CONIFF: I would also like to point  
20 out that the area would include cross-examination  
21 of Dr. Barbara Lane, any possible rebuttal of  
22 Dr. Riley, and I would like to have the Court note  
23 that I have not had redirect yet on Dr. Riley.

24 THE COURT: Yes. I have that in mind.  
25 I meant to include you by my sweeping invitation

1 everyone that has anything further to clarify.

2 MR. PIERSON: The only other thing I  
3 would add is that some requests were made of  
4 Dr. Riley for information that he would provide  
5 us at that time. I would just like to add that  
6 part.

7 THE COURT: Very well. We will recess  
8 now until 9:00 a.m. Monday morning next, and  
9 I trust that you will be able to get some sort  
10 of rest out of the rest of the weekend and come  
11 back refreshed and ready to carry on with our work.

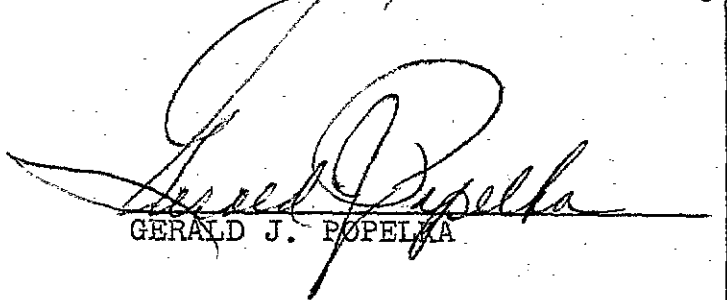
12 (At 4:00 o'clock p.m. proceedings  
13 in the above case were recessed  
14 until Monday, September 10,  
15 1973, at 9:00 o'clock a.m.)  
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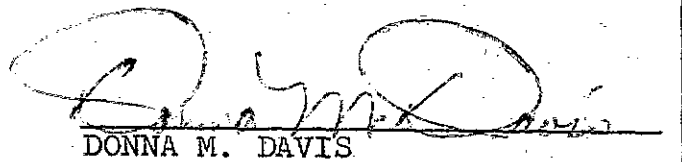
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C E R T I F I C A T E

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

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I N D E X

WITNESS:

CROSS

CARROLL RILEY

2263-Pierson  
2414-Getches  
2456-Hovis

Legend:

C-Coniff

D-Dysart

H-Hovis

G-Getches

P-Pierson

S-Sennhauser

Z-Ziontz

McG-McGimpsey