

Creating the Image of the Savage in Defence of the Crown: The Ethnohistorian in Court

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Introduction

Comprehensive land claims cases invariably raise fundamental historical questions. For instance, did the plaintiffs have an organized society located in the claims area at the time of initial European contact? The court is expected to rule on these and other historical issues after weighing conflicting briefs submitted by experts for the plaintiffs and the defendants. The expert witnesses, who often are academics, find themselves in the unusual circumstance of having to do ethnohistory in an adversarial environment where their personal credibility and that of their report are sharply challenged. I will feature aspects of my involvement as an expert witness for the Gitksan and Wet'suwet'en and emphasize some of the problems that I encountered when working under these unusual circumstances. In this way I hope to highlight some of the issues that ethnohistorians must confront when they act as expert witnesses.

The Gitksan and Wet'suwet'en Claim

The Gitksan-Wet'suwet'en Chiefs and Houses claim ownership to a 57,000 square kilometre area of British Columbia that is nearly the size of the province of New Brunswick. They are also asking for court recognition of their joint jurisdiction in this territory. The defendants in the action are the province of British Columbia and the federal government. If the Gitksan-Wet'suwet'en ultimately succeed in their legal struggle they will establish an important precedent because the government of British Columbia has steadfastly refused to recognize Aboriginal title since it joined Confederation.

In their opening statement the hereditary Chiefs asked the court to reject evolutionary notions of culture history that cast Aboriginal societies at a lower stage of development. Instead they asked to have their culture regarded as being equal to that of Europeans at the time of contact in terms of civil institutions and ideas of private property.¹ In making their plea, the Chiefs noted that traditionally Houses and clans were the two

most important social units of their societies, and the Houses were the land-owning units. They added that:

the formal telling of the oral histories in the feast, together with the display of crests and the performance of the songs, witnessed and confirmed by the chiefs of other Houses, constitute not only the official history of the House, but also the evidence of its title to its territory and the legitimacy of its authority over it. ... The witnessing and validation of the House's historical identity, territorial ownership and spirit power is integral to the feast. But also integral is the House's demonstration of its prosperity through a distribution of its wealth. A House's wealth is directly linked to its territory.²

For these reasons, the Chiefs want a land settlement rather than compensation.

The Position of the Crown

The government of British Columbia's response to the Gitksan and Wet'suwet'en action has four major components: (1) It denies the existence of Aboriginal title. (2) It asserts that if such title did exist, the colonial government extinguished it before British Columbia joined Confederation, or by the terms of union when the province joined Confederation. (3) It contends that if Aboriginal title somehow survived Confederation it was voluntarily extinguished by the Gitksan and Wet'suwet'en when they supposedly accepted Indian reserves. (4) It asserts that the Gitksan and Wet'suwet'en no longer have a distinct way of life on the land. It has been replaced by Indian reserves, cars, public education, Christianity, the wage economy and provincial jurisdiction over hunting and trapping.³

The federal government largely copied the province's defence, focusing on the loss of the traditional way of life.

My Involvement

The hereditary Chiefs asked me if I would be willing to research and write a report dealing with the early Hudson's Bay Company (HBC) fur trade in their region since the officers and men of this company were the first Europeans to establish direct contact with the Gitksan and Wet'suwet'en in their ancestral territory. The Chiefs wanted me to search for any evidence that showed that their ancestors exercised their title in the claims area. They wanted to know how their people had responded to the economic changes that the fur trade brought. I agreed to do the

research with the understanding that I would be free to draw my own conclusions from the materials I examined. We also decided that it would be best to have me work independently of other researchers who were helping them so that my interpretations could stand alone. Accordingly, I did not read any of the other reports before submitting my final opinion and appearing on the witness stand, nor did I attend the trial before that time.

I began my research by examining the primary sources to formulate an impression about the nature of the local economy at the time of initial European contact. Afterward I reviewed the secondary literature dealing with the region. The most important of the primary records proved to be those of William Brown, a chief trader of the HBC, who established Fort Kilmaurs (Old Fort Babine) on Babine Lake in 1822. He was the first European to visit Gitksan-Wet'suwet'en territory and leave a written account of his observations. Subsequently I discovered that all the important ethnographic studies of the region, such as those of A.G. Morice,⁴ Diamond Jenness,⁵ Irving Goldman⁶ and Julian Steward,⁷ had not used this material because it was unavailable to them. More recent writers, most notably Vernon Kobrinski⁸ and Charles Bishop,⁹ draw heavily on these earlier published ethnographies, but ignored the critical Brown material.

My first report covered the period 1822 to 1910. Following my usual practice, I circulated preliminary drafts to several of my academic colleagues and to the hereditary Chiefs for their comments. I considered all the suggestions that I received and prepared a final report, which I submitted to the Gitksan and Wet'suwet'en on 16 January 1985. Two years later I revised and shortened this report to focus mostly on the 1820s, because the Gitksan and Wet'suwet'en retained Robert Galois, an historical geographer, to deal with the late 19th century.¹⁰ It was my shortened version that the Gitksan and Wet'suwet'en submitted in evidence.

My report made several major points. When Brown entered Gitksan-Wet'suwet'en territory he was intent on establishing a solid fur trade there. Accordingly, he paid considerable attention to the resources of the region and to those aspects of Gitksan-Wet'suwet'en culture that would have a direct bearing on the fur trade. For this reason he wrote extensively about their land tenure system. Brown observed that the Babine, the Gitksan (who he called the Atnah) and the Wet'suwet'en (who he named the Hot'sett) lived in villages. Within the villages there were Chiefs and "men of property" or "nobles" who controlled the territories surrounding the villages.¹¹ For the Wet'suwet'en, who spent the winter in a large village on Simpson's River (the Bulkley River) called

Hot'sett, Brown listed three Chiefs and eighteen men of property in order of their social rank, and he described their seating arrangement at feasts. He observed that the "men of property" tightly controlled access to their domain. More specifically, Brown noted that the "nobles" regulated the number of beaver that their followers could take off their respective lands. The men of property barred most of the adult men without a "land stake" from trapping these animals because the nobles husbanded beaver for its meat, which they prized as an important ceremonial food, particularly at funeral feasts. Of considerable importance to the Wet'suwet'en, Brown outlined a feasting and house territory system that was very similar to the one the hereditary Chiefs described in their opening statement 170 years later.

Brown provided much additional information about the local Native economy and society pertinent to the current case. His journals, letters and reports made it clear that the Babine, Wet'suwet'en and Gitksan villages were linked together in a feasting and trading network. When conflicts broke out between the various villages, the feasts afforded one way of resolving them. Because peace and order were highly valued, sometimes the people held those Chiefs who were renowned peacemakers in higher regard than their social rank called for.

Regarding coastal trading relationships, Brown made it clear that all the Indians in the region already were obtaining some trading goods from the coast. However, the Gitksan-Wet'suwet'en had not become dependent on these goods in any way. Rather, this external or long-distance trade was a luxury trade. His observations established that the coastal Tsimshian were just beginning to venture inland to the upper Skeena River for exchange purposes.

The Cross-Examination

It took two days to give my main evidence. The cross-examination lasted an additional two days. Two separate teams of lawyers challenged me and my opinion; the provincial team began the questioning and the federal team concluded it. The provincial cross-examination covered many issues. One of the topics of greatest interest to the provincial Counsel concerned the impact that the maritime (from the west) and land-based (from the east) fur trades may have had on the region before Brown appeared on the scene. One of the primary purposes of two full days of questions seemed to be to suggest that the Gitksan and Wet'suwet'en cultures had already changed in major ways by the early 19th century because of European expansion beginning with the Russian's advance across the Bering Strait in 1741.¹² The province hypothesized that the Russian movement southward, and the development of the maritime fur

trade after Captain James Cook's visit in 1778, provoked considerable conflict in the interior, caused village and tribal dislocations, and brought about economic dependence on the newcomers.¹³ They also posited (largely drawing on the works of Morice, Jenness, Steward, Goldman, Garfield and Kobrinski, and Bishop) that the Wet'suwet'en society had adopted many key elements of their culture from Tsimshian speakers, mostly the Gitksan, and they implied that this borrowing largely took place during the protocontact and early contact periods, when the maritime fur trade supposedly strengthened economic links to the coast.¹⁴

The province argued that they have discovered "no conclusive evidence [without specifying what that would be] that suggests that, before the advent of European influence in the claim area, the Gitksan and Wet'suwet'en lineages and families identified ownership rights to large and precisely defined tracts of hunting territories."¹⁵ In the presumed absence of "conclusive evidence," the province's lawyers suggested that there would have been no need for a sophisticated and elaborate body of rules governing access to resources for extensive and defined tracts of land until the advent of the fur trade. To support this economic determinist position the province primarily relied on the works of Julian Steward and John W. Adams. Julian Steward had done field work among the Carrier in 1940, and he postulated that the House territory system he found there had developed in response to the early land-based fur trade.¹⁶ Adams, on the other hand, analyzed trap-line territories created amongst the Gitksan after 1925 and concluded that the land use practices which he observed had developed in response to the fur trade.¹⁷ Besides citing these two ethnologists, Counsel referred to some of the literature dealing with the eastern subarctic that suggested that the fur trade altered traditional land tenure arrangements in that region. In these ways Counsel attempted to discredit my opinion that the Gitksan and Wet'suwet'en had good reason to husband their beaver before the advent of the European fur trade.

In a series of replies I reiterated that Brown made it abundantly clear that the Wet'suwet'en protected their beaver in order to make sure that they had enough meat for their feasts. For this reason, it could be held that the fur trade merely gave the Wet'suwet'en additional cause to continue an established conservation practice. I suggested that Steward may have drawn the same conclusion if he had had access to the Brown material. Furthermore, considering that the House territory-feasting complex was so well developed amongst the Wet'suwet'en by 1822, it seems unlikely to me that such a central element of the culture had developed only in the previous half-century following the establishment of the maritime fur trade.

I also pointed out that it is very risky to draw ethnographic parallels

between the eastern subarctic and Gitksan-Wet'suwet'en territory, given the very different environmental, cultural and historical circumstances that characterized the two regions.¹⁸ Regarding the question of dependency, I stated that there was no evidence suggesting these Indians had become reliant on European articles before Brown's arrival. In fact, Brown and his predecessors Alexander Mackenzie, Simon Fraser and William Stuart, all of whom visited Carrier territories farther east, made it clear that Indians of the New Caledonia region (the area between the Coast and Rocky Mountains) had few trade goods in their possession in the late 18th and early 19th centuries.¹⁹ Also, Brown and other HBC officers repeatedly complained that the Babine, Wet'suwet'en and other western Carrier groups were lazy and spent too much time feasting and gaming instead of trapping and trading. The cumulative impression that the early HBC traders leave is that fur trading was a peripheral, not central, aspect of Indian life in the 1820s. Writing in 1829, HBC Governor George Simpson stated that the volume of trade between Gitksan and Wet'suwet'en territory and the coast had been greatly exaggerated by previous observers.²⁰ He also observed that it was the Iroquois hunters the North West Company had sent into New Caledonia just before 1821 who had taken the greatest toll on beaver.²¹ In short, it seems most likely that the Gitksan and Wet'suwet'en were not dependent on the fur trade by 1822 and they had not depleted their beaver in response to it.

I continued by adding that if, for the sake of argument, one accepted the province's economic deterministic outlook, it was not necessary to look to the European fur trade to find a reason for the Gitksan and Wet'suwet'en to develop a House territory scheme to manage local beaver and other fur and game resources. Similar to other subarctic people, the Carrier wore beaver cloaks, and those of other furs, in the winter at the time of initial contact.²² However, as the fur traders themselves pointed out, western New Caledonia was not rich in beaver nor in other small and large game animals, considering the size of the Native population that was supported by the salmon fisheries. So fur and game resources were scarce and, quite apart from the interest in beaver meat, the Gitksan and Wet'suwet'en had a good economic reason to operate the House territory system Brown described before the advent of the European fur trade.

The frequency and intensity of violence was another issue that took up much time during the cross-examination. It was apparent to me that the Counsels for the Crown had two major objectives in mind when they pursued this line of questioning. They hoped to raise doubts about the reliability of Brown as an observer and they tried to suggest that the area was in a state of turmoil at the time of first contact. I think this line of inquiry also reflected an underlying and disturbing attitude of Crown

Counsel toward Native people—that they were revengeful and violence prone before the "civilizing" influences of European missionaries and government officials modified their behaviour.

It was primarily the Counsel for the federal government who pressed this issue. He began his cross-examination by raising doubts about the locations of the villages Brown described in his correspondence in the 1820s. In doing so Counsel used the observations of visitors who came after Brown.²³ During this questioning the federal Counsel paused to note every incidence of violence mentioned in his sources, beginning with HBC trader Joseph McGillivray's account of his visit to a Wet'suwet'en village (presumably Hagwilgate) near Rochers Deboules on the Bulkley River in 1833. He began by reading the following excerpt from McGillivray's journal:

Towards evening we arrived at Rochers Deboules, where we found about 20 Indians ... of the Babine Tribe, who threatened destruction to us, and came rushing like wild beasts, armed with muskets. After our guides had explained to them who we were, they became pacified. I shook hands with them individually, and gave them each a bit of tobacco. They told me not to be surprised to find them under arms, especially as they dreaded to be attacked for the murder committed, which I mentioned on the 18th.²⁴

Counsel then asked me, "That's a common enough experience of explorers, isn't it, to be met with by an armed party coming close to a village?"²⁵ This suggestion ignored the fact that Brown had not had such experiences. I added that it was remarkable how peaceful European exploration of Native country had been.

He then turned to other episodes that took place several decades later, beginning with the visit of Major William Downie, who had been sent by the colonial government to explore the Skeena River in 1859. Counsel read an excerpt from Downie's description of his approach to a village he called Kittcoonra:

We were taking a rest on the river bank, when my Indian companions suddenly gave a cry of alarm, and looking up I perceived that a whole band of Natives, inhabitants of the village, were running down towards us, evidently with no friendly intent; for they were all well armed and shouting furiously, and behind them came the women and children, ready to carry away the plunder after the fray.²⁶

After this passage Counsel remarked, "Now, -- that's sort of reminiscent of McGillivray's experience on approaching Rochers de Boules, isn't it?"²⁷

He then continued with the Downie journal, reading this description of the major's arrival at another village:

As we neared the village [Nass Glee] we fired our pistols in the air. The effect might have been likened to what might be produced by poking with a stick in an ant hill. In a moment we were surrounded by all the braves in the settlement. They came rushing towards us armed with guns and long bowie knives, but seeing that we manifested no fear they quieted down.²⁸

Counsel then quipped: "and that sounds like the welcome he had got--on the Skeena at that earlier village doesn't it?"²⁹

In reply to Counsel's comments about these episodes I pointed out that conditions had changed drastically in the area between Brown's time and the 1850s. Meanwhile, warfare had become more commonplace as coastal groups, particularly the Legiac Chiefs from the Fort Simpson area, and others struggled to gain control of the inland trade.³⁰ Furthermore, I noted that Downie had not announced what his intentions were when he approached the village and fired his pistols into the air.³¹

Counsel's attention now shifted to Father LeJacq's visit to the Skeena Forks area in 1869. Although he introduced this account primarily to make the point that the priest did not mention a Gitksan village (Gitanmax) being present at the Skeena Forks, even though Brown located it there, Counsel took advantage of the opportunity to address the issue of violence again. He pointed out that, while visiting Hagwilgate, LeJacq learned that some Tsimshian had come to the village the previous autumn (1868) to trade. A fight broke out, leading to the deaths of three Wet'suwet'en. While the missionary was at the village two Nishga envoys arrived to deliver the following message to his hosts:

We come ... on behalf of our Nation, to find out what your intentions are. Our warriors are camped one day's walk from here, there are 300 of them. They sent us ahead to say: Do you want to trade? We have goods. Do you want to fight? We have rifles.³²

The lawyer then asked me: "is that the manner, insofar as you know, in which international trade in this area was carried on?"³³

I reiterated that this was an era of widening conflict for reasons that I had already discussed. I also pointed out that some of the violence that

characterized the period related to the widespread consumption of alcohol that had become all too common. This had not been a feature of the regional trade in Brown's day.³⁴

After dealing with the McGillivray, Downie and LeJacq material, Counsel then announced that he was ready to focus his attention on the issue of violence in Gitksan and Wet'suwet'en society. He started by asking me to agree with the proposition that: "where you have a reciprocal killing system, a murder leads to another and retaliation after that and so on, until there is a peace treaty cobbled together."³⁵

I replied by referring to observations of Brown I had cited in my opinion. Brown recorded incidents in which the Indians resolved conflicts through feasts, thereby avoiding blood-feuding. So, although the potential for revenge killing existed, the Gitksan and Wet'suwet'en did have the institutional means to prevent, or end it. Also, I reminded Counsel that trade was very important to these societies and blood-feuding threatened to disrupt it. Therefore, the Gitksan and Wet'suwet'en had a strong incentive to control violence.³⁶

Undeterred, Counsel proceeded to dredge up more incidents of brutality, or threatened brutality. The first involved an episode at Stuart's Lake in 1828 in which the trader reported that the local Indians feared an attack by the Fraser Lake people. When I pressed him, Counsel had to concede that apparently no attack ever came. The next event he raised also took place in 1828. According to HBC records, some Wet'suwet'en Chiefs killed an employee named Duncan Livingston. Counsel then noted that the Wet'suwet'en feared Company reprisals and suggested that their fear revealed the "state of the Native mind." In other words, since they revenged deaths of their own loved ones, they expected the Company would do likewise. I pointed out to him that the Indians had a better reason to fear the traders. Local Company men (with James Douglas' blessing) had already killed one of two Indians whom they thought responsible for the murders of two servants at Fort George in 1823. Furthermore, by August 1828, a company employee named Waccan had killed one of Livingston's assailants, even though the Wet'suwet'en had already taken the life of the other murderer.³⁷

Counsel pressed on, turning to a disturbance that took place at Fort Babine in 1828-29. In the autumn of 1828, a Babine Lake Indian named Who'Kuch shot a Wet'suwet'en Chief by the name of Matt. In September 1828, the HBC trader at Fort Babine, William Pamburn, wrote to William Connolly at Fort St. James and informed him that the Babine feared an attack from Matt's friends in revenge. Regarding Pamburn's remarks, Counsel observed: "That's just in the sequence of events, I am just pointing out that Matt has been killed and that the wheel turns another

half turn, or there is now a necessity for a further killing, isn't there?"³⁸ He then proceeded to note that seventy Wet'suwet'en subsequently did arrive to avenge Matt's death. But their intended victim Who'Kuch managed to frustrate them by barricading himself so that they could not reach him. According to Pamburn's account of the incident, the Wet'suwet'en gave up their pursuit of Who'Kuch after they "plundered much of the Indians belonging to this post of nearly everything they had."³⁹ Counsel concluded that the only reason the Wet'suwet'en did not make good on their threats was that they had been unable to do so. Furthermore, he accepted Pamburn's account of the episode at face value by reiterating that the Wet'suwet'en "plundered" the local Indians before they left.

I raised several objections to the manner in which the federal Counsel interpreted this event. I pointed out that Who'Kuch could not have barricaded himself indefinitely. Therefore, if the Wet'suwet'en were adamant about blood-revenge, they could have waited. The fact was, they left once they had obtained enough material goods from the local Indians in compensation. The information Counsel provided was not adequate to determine whether the fort Indians from whom the Wet'suwet'en obtained the goods were relatives of Who'Kuch. In all likelihood they were. Also, Connolly's assertion that the Wet'suwet'en "plundered" the Babine may well have been an exaggeration. Connolly had hoped to obtain the provisions the Wet'suwet'en took away. In other words, it is reasonable to suppose that he was not an impartial observer to the episode in question and Counsel failed to provide enough information to interpret it in a proper context. What is significant is that a revenge killing did not take place.

After discussing this episode at length, federal Counsel finally openly expressed the purpose of his series of questions when he queried:

I put it to you, Dr. Ray, ... the whole point of the cross-examination, or one of the points anyhow, [is] that this was a very fragile system and it was interrupted by such things as a single killing. ... Do you agree that the reciprocal killing system had that effect?⁴⁰

I suggested to Counsel that his underlying thesis seemed to be that the Gitksan and Wet'suwet'en had no way of maintaining peace and order and that all they did was kill each other. I stated that I rejected this notion and observed that he sustained it only by ignoring other observations in the HBC records, which showed that these people were generally peaceful. Certainly the institutions for maintaining order were not

infallible; some killings did occur, just as they do in any society.⁴¹

Counsel did not change course. After citing one more murder that took place at Fort Connolly in 1829, apparently the result of a long-simmering dispute between fort Indians and the Gitksan, he remarked: "That was a—is a demonstration of the—I put it to you, of a warlike nature of the Gitksan ... that [their] endemic violence was based on a fair degree of truculence."⁴²

Once again I pointed out to Counsel that he did not have enough information about the episode to make conclusions about the nature of the Gitksan. For instance, he did not know why the Gitksan were angry with the Fort Connolly Indians. Also, I noted that Fort Connolly was on the Gitksan-Sekani boundary and, therefore, that it may have been an area of tension. To this last observation Counsel retorted: "It's a sort of Dodge City of Gitksan country, is it?"⁴³

The last encounter the lawyer wanted to discuss was one that had taken place at Kispiox and was described by Reverend Robert Tomlinson, a colleague of William Duncan. When Tomlinson visited Kispiox, a Chief from a village at the head of the Nass River appeared across the river. This Chief had fled from Hagwilgate, where he had been trading, and the villagers were pursuing him. The Chief asked the Kispiox for refuge. Counsel read to the court the portion of Tomlinson's account that related what subsequently happened:

The burden of his cry was to beg them to bring him off in a canoe at once, as the Agwilkets were on his track and intended to shoot him. Only those who are acquainted with the Indian character know how soon a tumult is excited among them. The scene which followed must be witnessed to be appreciated—men shouting and moving in all directions—some getting their guns and knives—some daubing their faces black and red and tying up their hair with ermine skins.⁴⁴

Once the fugitive was safely in the village, Tomlinson explained what had caused the uproar:

A young man, head chief of the Kitsilass, who had been invited by the Agwilgates to be present at a giving away of property by them, began quarrelling about a drum. Words soon led to blows, and the Agwilgate Indian, getting the worst of it, drew his knife and stabbed this chief. He retaliated by striking another man on the head with an axe. The friends of this man, supposing him to be killed, retaliated by stabbing the chief's wife—and thus the row

became general. The Kitlachdamix chief (the fugitive) had a narrow escape, as there is an old blood quarrel between his family and the Agwilkets. ...

The excitement among the Kispiox when they heard of the fight, was very great. Feeling that something ought to be done, I called a meeting. The house was soon filled with men. Only a few of the old men sat; the others were too excited to sit down. I felt it was a critical moment. I felt my own weakness and inability to curb the wild passions swelling in the bosoms of those around me.⁴⁵

Tomlinson then proceeded to describe how he managed to persuade the Kispiox people not to go on the warpath.

When he finished recounting the minister's description of this episode, Counsel added:

Now, that had a happy ending and there was no more violence than had been reported. He [Tomlinson] went to tend the wounded and sure enough these people had been hacked and stabbed, as described, as he found victims. *But I'm putting that to you to ask you whether you agree that there was a certain excitability and ferocity that led the whole village.* ... [emphasis added]⁴⁶

At that moment Counsel was interrupted by an observer in the courtroom gallery who shouted "shame" and stalked out. When the proceedings resumed I told Counsel that I objected to the thrust of his argument, which, to my mind, suggested that the Gitksan and Wet'suwet'en had no organized society and that they were by nature inclined to have violent outbursts.

The discussion of violence resumed, but after a length of time, the judge interjected:

Maybe I can ask you this, Dr Ray: Mr. Macaulay [the federal Counsel] has been suggesting a tendency toward violence and you have been resisting that and you are saying that wasn't the state of things, or at least it wasn't the normal diet for the period you are talking about. Yet, there seems to be some pretty strong suggestions that there was warfare on the Skeena, and I take it you are saying that was at some later time?⁴⁷

I replied by saying I that thought the portrayal of Indian society as being a violence-prone one was an ethnocentric point of view. I noted that I

did discuss violence in my opinion, but I also made it clear that feasting provided one way of dealing with the problem. Murders did not always lead to revenge killings by the offended relatives. Concerning the frequency of conflicts, I reminded the court that during the cross-examination I had noted that the level of tension increased after Brown's time because of the rise of the Legiac Chiefs on the coast, the growing use of alcohol in the fur trade, and the growing number of white settlers and colonial officials who were trespassing on Indian land in the late 19th century. With this exchange the cross-examination on this topic ended.

Ethnohistory in the Court Room

Ethnohistorians face serious problems when attempting to address significant ethnohistorical issues in the adversarial environment of the courtroom. When cross-examining witnesses it is acceptable procedure for Counsel to introduce whatever materials they believe are relevant. However, as we have seen, because lawyers have little familiarity with the methodology of the historian, they run the considerable risk of taking documents out of their archival and historical context in the mistaken notion that the record can speak for itself, particularly if it speaks to a point they are trying to make. As we have seen, too often they do not consider the background of the author; they do not ask themselves why the document was written; and they do not consider what kinds of biases are evident.

A more particular problem that I had to confront was the Crown Counsel's attempt to interpret history backwards. I presented a report that dealt with a specific period of time, the 1820s, in order to establish a base line from which to measure change. But Crown Counsel mostly selected documents from later years in their effort to throw doubt on my opinion, which did not accord with their assumptions about the character of the contact culture of the Gitksan and Wet'suwet'en. They were either unaware, or they were unwilling to admit, that local conditions had changed substantially after the 1820s and, therefore, the later record did not necessarily contradict the earlier one I used.

It is clear that the cross-examination process poses certain risks for the ethnohistorian acting as an expert witness. In their efforts to challenge the credibility of expert opinion, opposing lawyers clearly will take extreme positions as part of a strategy. In reply the ethnohistorian has to be very careful not to over-react and take a stance that is unwarranted in light of the evidence that is available.

Even more worrisome for the ethnohistorian is that the adversarial environment of the courtroom does not encourage the opposing parties involved in a legal action to try resolving their differences in

interpretations to come to a better understanding of the history in question. Instead, lawyers champion different points of view. Judges, in turn, have the responsibility of reaching their own conclusions after hearing conflicting lines of evidence and expert opinion. In the end, it is the judges' interpretations that strongly influence the Native group involved in the court proceeding. Chief Justice McEachern's decision in the Gitksan-Wet'suwet'en trial illustrates the problems that this adversarial/interpretive process poses for Aboriginal peoples. He summarized his view of traditional Gitksan-Wet'suwet'en culture and life in the following terms: "it would not be accurate to assume that even pre-contact existence in the territory was in the least bit idyllic. The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation was not uncommon, wars with neighbouring peoples were common, and there is no doubt, to quote Hobbs [Hobbes], that Aboriginal life in the territory was, at best, "nasty, brutish and short."⁴⁸ Thus, after 374 days of trial covering all aspects of Gitksan-Wet'suwet'en history in depth, Justice McEachern still held the same Eurocentric view of Native people that has been an unfortunate judicial and political tradition in British Columbia since the colonial era.⁴⁹

Notes

An earlier version of this paper was presented at the 1989 Annual Meeting of the American Society for Ethnohistory, Chicago, 4-6 November 1989.

- 1 "Opening Statement of the Gitksan and Wet'suwet'en Hereditary Chiefs to Chief Justice McEachern of the Supreme Court of British Columbia," 11 May 1989, pp. 14-15.
- 2 "Opening Statement of the Gitksan and Wet'suwet'en Hereditary Chiefs," p. 23.
- 3 For a statement of the government's position see "Opening Statement on Behalf of the Defendant by D.M.M. Goldie, Esq, Q.C., Supreme Court of British Columbia (before the Chief Justice), Between Delgamuukw and Her Majesty the Queen in Right of British Columbia and the Attorney-General for Canada," Proceedings at Trial, no. 250, 10 July 1989.
- 4 Father A.G. Morice published a number of works dealing with the New Caledonia area and the Carrier. His best known work is *The History of the Northern Interior of British Columbia* (Smithers: Interior Stationery, 1970). Reprint of original edition published in Toronto, 1904.
- 5 Diamond Jenness, "The Carrier Indians of the Bulkley River: Their Social and Religious Life," *Bureau of American Ethnology Bulletin* 133. Anthropological Papers no. 25 (Washington D.C.: Smithsonian Institution, 1943).

- 6 Irving Goldman, "The Alkatcho Carrier of British Columbia," in *Acculturation in Seven American Indian Tribes*, edited by Ralph Linton (Gloucester: Peter Smith, 1963), pp. 332-86.
- 7 Julian H. Steward, "Carrier Acculturation: The Direct Historical Approach," in *Evolution and Ecology: Essays on Social Transformation by Julian Steward*, edited by Jane Steward and R. Murphey (University of Illinois Press: Chicago), pp. 188-99. This piece was written twenty years after Steward did his Carrier research, and was first published in Stanley Diamond, ed., *Essays in Honor of Paul Radin* (New York: Columbia University Press, 1961).
- 8 Vernon Kobrinski, "The Tsimshianization of the Carrier Indians," *Proceedings of the Ninth Annual Conference Prehistory of the North American Sub-Arctic: The Athapaskan Question* (Calgary: Archaeological Association of the University of Calgary, 1977), pp. 201-10.
- 9 Charles A. Bishop, "Limiting Access to Limited Goods: the Origin of Stratification in Interior British Columbia," *The Development of Political Organization in Native North America*, edited by E. Tooker (New York: American Ethnological Society, 1979), pp. 148-61.
- 10 Robert Galois, "The History of the Upper Skeena Region, 1850-1927," February 1989, Vancouver, B.C.
- 11 Arthur J. Ray, "The Early Economic History of the Gitksan and Wet'suwet'en Territory," prepared for the Gitksan and Wet'suwet'en Tribal Council, 16 January 1985 (revised 29 January 1987), p. 111.
- 12 Sheila P. Robinson, "Protohistoric Developments in Gitksan and Wet'suwet'en Territories," 12 May 1987, p. 1. Some of this questioning was based on the erroneous belief that the Russians had crossed the strait in 1641.
- 13 The major source that they cited in support of this idea is George MacDonald, "The Epic of Nekt: The Archaeology of Metaphor," in *The Tsimshian: Images of the Past, Views for the Present*, edited by M. Seguin (Vancouver: University of British Columbia Press), pp. 65-81. In fairness to MacDonald it should be pointed out that the provincial Counsel minimized the fact that MacDonald had cautioned that insufficient archaeological research had been done in the region to properly outline the elements of the protohistoric regional economy. Furthermore, MacDonald spoke mostly about movements along major trading trails.
- 14 Robinson, pp. 33-4.
- 15 Robinson, p. 6.
- 16 Steward, p. 191.
- 17 John W. Adams, "The Politics of Feasting among the Gitksan," Ph. D. dissertation, Harvard, 1969, pp. 14 and 42.
- 18 For the transcript of this exchange see Supreme Court of British Columbia, no. 0843 Smithers Registry, Between Delgamuukw and Her Majesty the Queen, Proceedings at Trial, vol. 204, pp. 13574-80, and vol. 205, pp. 13615-20, (hereafter Proceedings at Trial).

- 19 Arthur J. Ray, "Changing Man/Land Relationships in the Canadian Fur Trades: A Comparative Examination of Subarctic Land Tenure Systems," presented at the Association of American Geographers Annual General Meeting 19-22 April 1990, Toronto, Ontario.
- 20 Ray, "Changing Man/Land Relationships."
- 21 E.E. Rich, ed., *Simpson's 1828 Journey to the Columbia* (Toronto: The Champlain Society, 1947), p. 17.
- 22 W. Kaye Lamb, *Simon Fraser: Letters & Journals, 1806-1808* (Toronto, 1960), p. 231.
- 23 Brown visited Gitksan country travelling along the length of the Babine River. However, he never visited the forks of the Skeena River and Bulkley River.
- 24 Proceedings at Trial, vol. 205, p. 13633.
- 25 Proceedings at Trial, vol. 205, p. 13633.
- 26 Proceedings at Trial, vol. 205, p. 13633.
- 27 Proceedings at Trial, vol. 205, p. 13641.
- 28 Proceedings at Trial, vol. 205, p. 13641.
- 29 Proceedings at Trial, vol. 205, p. 13641.
- 30 Proceedings at Trial, vol. 205, p. 13641.
- 31 Proceedings at Trial, vol. 205, p. 13642.
- 32 Proceedings at Trial, vol. 205, p. 13651.
- 33 Proceedings at Trial, vol. 205, p. 13651.
- 34 Proceedings at Trial, vol. 205, p. 13651.
- 35 Proceedings at Trial, vol. 205, p. 13668.
- 36 Proceedings at Trial, vol. 205, p. 13668.
- 37 Rich, ed., *Simpson's 1828 Journey*, 27n.
- 38 Proceedings at Trial, vol. 205, p. 13674.
- 39 Proceedings at Trial, vol. 205, p. 13674-5, and 13677.
- 40 Proceedings at Trial, vol. 205, p. 13678.
- 41 Proceedings at Trial, vol. 205, p. 13679.
- 42 Proceedings at Trial, vol. 205, p. 13681-2.
- 43 Proceedings at Trial, vol. 205, p. 13682.
- 44 Proceedings at Trial, vol. 205, p. 13684.
- 45 Proceedings at Trial, vol. 205, p. 13684-5.

- 46 Proceedings at Trial, vol. 205, p. 13686.
- 47 Proceedings at Trial, vol. 205, p. 13699.
- 48 "Reasons for Judgment of the Honourable Chief Justice Alan McEachern," Supreme Court of British Columbia, no. 0843, Smithers Registry, 8 March 1991, p. 13.
- 49 For a discussion of this tradition see, Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1949-1989* (Vancouver: University of British Columbia Press, 1990).