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IN THE FEDERAL COURT OF CANADA
(TRIAL DIVISION)

BETWEEN:

THE HAMLET OF BAKER LAKE, et al
Plaintiffs

-and-

THE MINISTER OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT, et al
Defendants

* * *

Held before The Honourable Mr. Justice
P. M. Mahoney, at 330 University Avenue,
8th Floor, Toronto, Ontario, May
28th - 31st and June 1st, 1979,
inclusive.

* * *

APPEARANCES:

A.E. Golden, Esq., D. Estrin, Esq.,	for the Plaintiffs.
L.P. Chambers, Esq., D.T. Sgayas, Esq.,	for the Minister of Indian Affairs and Northern Development.
Ms. Price	for Essex Minerals Company Ltd.
W.C. Graham, Q.C. Esq., R.W. Cosman, Esq.,	for Pan Ocean Oil Limited, Cominco Ltd., and Western Mines Ltd.
T.G. Heintzman, Esq., Ms. Marvyn K. Koenigsberg	for Urangesellschaft Canada Ltd. and Noranda Exploration Co. Ltd.

VOLUME VII

Monday, May 28, 1979

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Name of Witness

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Peter Usher

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Exhibit No.

Description

Page No.

P-8

Summary: Caribou harvests
and numbers of hunters.

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---Upon resuming at 2:00 p.m., May 28th, 1979.

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THE COURT: Just before you start, Mr. Golden, I should indicate that following the meeting with counsel, that the hours of sitting for the current week will be from 9:30 until some time between 12:30 and 1:00 and then from 2:00 to 5:00 in the afternoon. We may want to vary that for next Monday morning. We will think about that as we approach the weekend.

MR. GOLDEN: My Lord, Mr. Estrin will be examining our next witness.

MR. ESTRIN: Dr. Usher?

PETER USHER, CLAYTON, ONTARIO: SWORN

THE COURT REGISTRAR:

Mr. Usher, will you state your name, complete address and occupation for the court?

THE WITNESS: My name is Peter Usher; my address is R. R. 2, Clayton, Ontario. I am a Socio-Economic Consultant in the city of Ottawa.

MR. GRAHAM: My Lord, I have an objection as to the nature of the evidence to be given by Dr. Usher, and I would appreciate an opportunity to express it before my friend begins.

THE COURT: By all means.

MR. GRAHAM: My Lord, in my view the case is one in which the Plaintiffs are seeking a declaration for an aboriginal interest

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in the lands in question and an injunction to restrain the Defendant government from granting permits to mining companies which they say interfere with such rights.

Dr. Usher's Affidavit does not address itself to the question either as to the nature of the aboriginal interests which the Plaintiffs are seeking to assert in this action, which is their claimed usufructuary right to hunt and fish in the area claimed, nor to the question as to whether any mining activities interfere with such rights, but rather to the much larger question as to what the future development of society in Baker Lake will be if mining activities are to be carried on. It directs itself not only to the question of that mining activity alone, but also if Your Lordship looks at paragraph thirteen to the consequences of any possible accompanying public service activity, such as roads and other services which might be introduced by the government. Mr. Usher is obviously of the view that this would have far-reaching consequences on Inuit society as he chooses to see it and chooses to advance its protection.

My objections to this evidence, which is highly prejudicial, are

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based on three grounds. They are: (1) It is irrelevant to the issues before this court. This court is often called upon to make decisions which will have far-reaching consequences to a party if it is not successful, but it would be unusual in the extreme for the court to hear evidence as proof of the existence of a right that it will be material left well off if it is not successful in asserting that claim. That is basically what Mr. Usher is saying. Conversely, it opens up the suggestion that the mining companies should call evidence as to the effects of an adverse decision on them and on their employees and workers who are dependent upon this activity in Baker Lake for jobs and the preservation of, to some extent, their way of life.

(2) It is highly speculative in nature. How can this court in a hearing of this nature examine the host of collateral issues related to such statements as we find in paragraph eleven in respect of "the responsive governments, as agents of social change, to development activity in the north". Such issues might appropriately be canvassed at an inquiry into the social and other consequences attendant upon construction of a mine in the area, or perhaps before a parliamentary committee charged with

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planning the future of the north, but if Your Lordship is going to be put in a position of hearing this evidence, I presume that you would also want to hear evidence as to what form that future development will take and, given the complexity of such an issue, that would prolong these hearings considerably and might require an examination of the equally relevant issue: what would the results be to Canadian Society as a whole in the context of present energy requirements if these Plaintiffs are successful and other groups follow suit thus bringing to a halt an activity of vital importance to the Canadian economy throughout an enormous part of our country.

This evidence is both irrelevant and likely to lead to the examination of issues, which, while certainly interesting, are political and sociological in nature, as well as being entirely outside the scope of the question before Your Lordship, namely whether these Plaintiffs have an aboriginal interest in the lands in question, and, if so, have they demonstrated that an injunction in the terms asked is necessary to protect such rights.

I suggest to Your Lordship that my friend in choosing to call this evidence has confused the role of the court of tests on

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an interlocutory injunction, i.e., balance of convenience test or irreparable harm test, with the tests on a permanent injunction at this stage of the hearing, and I submit this evidence, evidence of this expert, has in the Affidavit which Your Lordship has -- it is neither relevant nor should be heard.

THE COURT: Does anyone else have a comment on that?

MR. HEINTZMAN: My Lord, I will say Mr. Graham said very eloquently my reaction to the Affidavit as well.

THE COURT: Mr. Chambers?

MR. CHAMBERS: It is also my view. In addition, I would like to point out, or make a further objection, that a lot of the statements made in the Affidavit concern matters of sociological nature. This witness is not a sociologist and, therefore, will not be able to give expert opinion in a field which is not his expertise. I could address several paragraphs of his Affidavit, My Lord, but no use -- no purpose would be served. In fact, the entire Affidavit is direct towards the sociological consequences of what happened if hunting activity increased. This is just an additional objection I make to the introduction of this evidence by this witness, My Lord.

THE COURT: Insofar as the

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Affidavit is objected to on the grounds of
relevance, I really think Mr. Graham, you are
stating a point which Mr. Chambers stated
at the beginning of the hearings in Baker Lake,
that the scope of this hearing, for better or
for worse, has been allowed to stray somewhat
beyond what may well turn out to be the
relevant issues and matters in this case.
However, I suppose at this stage of the
proceedings is something we can only regret
was not cleaned up by way of a preliminary
determination of law earlier on. Perhaps
the scope of the hearing ought to have been
limited; but it wasn't. I personally am
not disposed to exclude this type of evidence
at this time. At the same time, I am
reserving your objection and am very much
mindful of what Mr. Chambers' initial objection
was to a good deal of the evidence that we have
already heard. If you feel bound to call
reply evidence, of course, it will be admitted.
I am sorry to put that burden on you.

MR. GRAHAM: My Lord,
I wonder if I can speak to that, because that
is the position we are worried about. I agree
with Your Lordship == I think Your Lordship's
comments are more than appropriate. We found
ourselves in Baker Lake in a position and we
were concerned about the admissibility of certain

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evidence. All counsel said it was an unusual circumstance and an unusual situation, and it was a smooth process of the trial, and not to cause a great deal of problems within the community of Baker Lake that we would register objections at the beginning and carry on and then the evidence would go in, leaving, of course, to Your Lordship the problem -- the rather unfortunate problem of later winding out that problem -- and we will be able to help Your Lordship out with that in legal argument. But now, My Lord, we find ourselves in a more unusual context, if you like, with this difference, that the other witness' evidence might be prejudicial--and we can argue with Your Lordship whether it should be heard or not -- this witness' evidence, if he sticks to what he says in his Affidavit, is not only highly prejudicial and almost inflammatory to the society, but something with which no way we can come to grasp. For Your Lordship to say,"You can call reply evidence," I think you will appreciate when you look at something like the Berger Inquiry or the Cluff Lake Inquiry -- which took six months for the environmental impact studies to be filed -- this man's evidence is of a nature of a sociologist environmental impact study. In order to meet that kind of case, we

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would have to put in evidence maybe that would go on for weeks -- or so that we can prepare ourselves properly. We are not dealing with the same types of objection that we've raised and put on the record before. Those were questions of simple fact. I think we are all content to deal with that. However, here we are talking about very vital issues, which we would be put in a position of not being able to grapple with. If Your Lordship is to be told, as a suggestion in the Affidavit, that -- if you look at paragraph thirteen, "... administrative growth which will inevitably follow in the wake of mining exploration and development, will have cumulative and far more serious impacts than will any of the individual components or activities of exploration and development itself." Is this witness going to come forward now today and tell us what the government is going to do before anyone is found -- before any environmental impact studies are filed? We know an inquiry will have to be held. That's what we are getting into, My Lord, and that is the problem. I cannot help Your Lordship.

THE COURT: His evidence in chief is limited to what is in his Affidavit by the rules. Now, what may come out on

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cross-examination, of course, I have nothing to say. But, that is the opinion that he has expressed and that is as far as his evidence in chief can go, according to the rules. If he's not cross-examined, this is what I am left with by way of his evidence. It may be rather devoid of supporting material from which I can judge whether or not those opinions are well founded or otherwise.

MR. GRAHAM: I will certainly take Your Lordship's words. Thank you.

THE COURT: The rule on expert evidence is rather explicit in that respect.

MR. GOLDEN: My Lord, in fairness to the witness and his evidence, which I understand Your Lordship is now disposed to admit --

THE COURT: Oh yes.

MR. GOLDEN: I will not belabour this argument. However, this argument is not arguement based on urging Your Lordship to admit his evidence, but however, I should point out that the issues in the action were in the process of being shaped -- although the pleadings are certainly broad enough to encompass this kind of evidence quite clearly -- allegations of damage to the community, allegations of damage

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to the community, allegations of damage to the individual Plaintiffs and Dr. Usher's evidence certainly clearly directs itself to questions of damage. Now, insofar as it goes into the future, we are content not to press it. In fact, it was put in rather for the sake of completeness and developing a narrative rather than for the sake of trying to prove something before this court. Perhaps it was done not with the greatest of wisdom, but with the idea beyond to provide a full picture. We don't very often have time to hear the evidence, and it just gives us a chance to explore some of these things with him.

May I just deal with the other question, however. Insofar as the evidence brought before this court does not relate to the legal right, that is provide a factual basis for the legal right which is commonly referred to as an aboriginal right, and insofar as it does not relate to the interference of that right, insofar as it does not relate to damage caused by that interference, we do not wish to rely upon it. We want to make it clear right here and now. Perhaps it might have been better done at another time, but I was reflecting on this last week when I was preparing for this week,

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and it occurred to me we are here dealing with a question at law in a court of law. The Plaintiffs come here seeking a legal remedy based upon a legal right. We are as much as humanly possible in the rather vague areas of trying to learn about what we are deciding or what we are coming to decide, but trying very hard to keep the issues, ones of fact of law -- I agree with my friend Mr. Graham this is not a judicial inquiry, nor do we intend it should become one. It was a convenient opportunity -- my friend did not tell me he was going to give it to me, so now that he has, I have taken it upon myself to make that point.

THE COURT: Mr. Estrin?

I should indicate to you, Mr. Estrin, that I am quite prepared, subject to anything either counsel have to say, to take the Affidavit as read and to have you highlight particular points that you wish to highlight. On the other hand, you are quite at liberty to have the witness read his entire Affidavit, if that is what you wish to do.

EXAMINATION IN CHIEF

MR. ESTRIN: Thank you,

My Lord. I had no intention of asking the witness to read it. I am pleased My Lord has said that. I was going to ask that very thing,

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P. Usher, ex in chf
(Estrin)

that My Lord would take it as read. I do intend to ask the witness to highlight certain aspects of it. My Lord, Dr. Usher's Affidavit was Exhibit A -- and I'm not sure which is his Curriculum Vitae and I am not sure it was filed at the time the original Affidavit was.

THE COURT: Yes, his Curriculum Vitae is Exhibit A to the Affidavit.

BY MR. ESTRIN:

Q. You have a copy of it, Dr. Usher?

A. I do.

THE COURT: It includes a long list of publications as well.

AFFIDAVIT

I, PETER USHER, socio-economic consultant, of the Township of Ramsay, in the County of Lanark, make oath and say as follows:

I am a socio-economic consultant in the City of Ottawa, and as such have knowledge of the matters hereinafter deposed to.

Now shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of my curriculum vitae.

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years made extensive studies of the impact of social, economic and technological change on the native peoples of northern Canada.

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My research and study indicate that the land and the resources and the way of life they sustain are of crucial importance to the native population's well-being as a people.

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To the Inuit people, the hunting of large mammals, and in the case of Baker Lake, caribou, is a core activity by which societal values and behavior are instilled in Inuit children and by which social links and obligations between adult members are perpetuated.

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Hunting is a core focus of life for the Inuit as a people, not only for sustenance but as the basis of their socio-economic system.

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While it is true that the Inuit rely more on wage labour today than they did several years ago, their reliance on the land and its resources for sustenance, and as the basis of their socio-economic system, remains of crucial importance.

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Hunting continues to be an important activity, although modern equipment such as snowmobiles and rifles allows people to accomplish the same work in less time.

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P. Usher, ex in chf.
(Estrin)

The Inuit people engage in wage labour in order to obtain cash to buy the supplies necessary for hunting, whereas formerly they had traded furs for these necessary supplies.

Visible signs of what is commonly viewed as "modernization" among native people, such as the adoption of southern dress and technological items, do not necessarily imply the abandonment of their core values and their socio-economic system of material production.

Economic development including mining activity in the north has a profound impact on Inuit life and culture in two important ways. One is the direct effects of both physical activity on the land and resources of the Inuit, and the presence of a significant number of southern transients as an intrusion in Inuit communities. The second is the response of governments, as agents of social change, to development activity in the North. The typical constellation of responses, by its nature, places great stress on Inuit people to abandon their existing socio-economic system in favour of a non-indigenous and externally directed and controlled socio-economic system. Both of these things

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diminish the Inuit peoples' own sense of freedom and independence, and have detrimental effects on their sense of self-worth and well-being.

The history of western-white interaction with the native peoples of the Canadian North shows that despite an initial crisis period with respect to resource use, reliance on the land for sustenance continues. After an initial downturn in the production of trade goods (e.g. furs) as opposed to domestic food production, there is often a re-establishment of traditional land use patterns. This revival is only possible, however, as long as there has been no long term adverse impact on the land and its resources.

The consequential support activities related to transport, services and general population and administrative growth which will inevitably follow in the wake of mining exploration and development, will have cumulative, and far more serious impacts, than will any of the individual components or activities of exploration and development itself. The normal regulatory and legal procedures do not allow any party to address this larger question, but it must lie behind the concerns expressed by the residents of Baker Lake.

Examination of the impact

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of resource development on other Inuit communities in northern Canada discloses that land use regulation is generally inadequate to protect the Inuit interest in the land and its resources, for the reasons mentioned above, as well as the difficulty of enforcing these regulations adequately, and finally because the Inuit interest does not necessarily admit multiple use in the fashion conceived by the federal government.

I am familiar with situations in other native communities affected by the removal by pollution or otherwise of the traditional native food supplies, and would say that this has directly resulted in very serious social problems.

I believe that the effect on the Inuit of the Baker Lake area of not being able to hunt caribou would result not only in a loss of food causing dietary problems, but would also have a profoundly disruptive effect on their culture and would be a matter of great social and economic trauma.

I would urge that when considering the effect of socio-economic and technological development on native peoples,

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P. Usher, ex in chf
(Estrin)

that we err on the side of caution, in order to preserve the land and resources on which the Inuit continue to depend for their sustenance and culture.

I make this Affidavit pursuant to Rule 482 of the Federal Court Act, and for no other or improper purpose.

BY MR. ESTRIN:

Q. Dr. Usher, before we turn to your evidence, I would just like to ask you about a few aspects of your experience in the area in which you do your consulting. I note your Masters and Ph.D. thesis involved studies in the Northwest Territories. Can you briefly just describe those studies?

A. Yes. My Masters thesis concerned the native economy at Coppermine-Holman Region in the Western Arctic, and my doctoral thesis concerned native economy and traditional resource use at Banks Island on the Northwest Territories.

Q. Looking at page two, am I correct that you spent a number of years with the Department of Indian and Northern Affairs in various communities doing research work?

A. Yes. I spent about

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ten years on and off with the Department.

Q. When I look at the list of publications, I take it that much of the research that you did during these years in the Arctic has been published?

A. Yes.

Q. Looking at the heading Publications, there is one I want to ask you about, The Bankslanders, Economy and Ecology of a Frontier Trapping Community. Can you perhaps describe that in a little more detail?

A. Well, that was basically for my doctoral thesis, published by the Department of Indian Affairs. It dealt with the history of the community and the history of resource use in particular, and the impact of development on that community and changes in resource use that might result.

Q. On the next page I see that you have a publication entitled Historical Statistics Approximating Fur, Fish and Game Harvests within Inuit Lands of the N.W.T. and Yukon. Can you tell us briefly what that study involved?

A. Well, that, along with some other studies that I have done, are

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concerned with reconstructing the historical pattern of resource use in the territories by examining all available sources, records, chiefly government records, of native harvesting, and making some kind of evaluation of the validity of these records and presenting as comprehensive a body of information as possible.

Q. One more matter I want to ask you about arising from your curriculum vitae, and that is with regard to the report of the Mackenzie Inquiry, Volume 2. I gather you have had some input into that report, the Berger Report?

A. I was chiefly responsible for preparing background material for the second chapter on mineral resources that concerned both the traditional -- existing patterns of resource use and development possibilities of renewal resources in the Mackenzie district.

Q. My Lord, I would ask that the witness then be qualified as an expert in native harvesting and the impact on native people of socio-economic and technological change based on his experience contained in the curriculum vitae.

MR. CHAMBERS: My Lord, at this time I must respectfully review my

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objection. While I am prepared to recognize this witness as an expert in economics and geography, I do object to him being offered as a person having education or skill in sociology and in biology. Therefore, I object to any evidence that this witness has to offer -- any expert opinion evidence this witness has to offer with respect to any questions relating to sociological aspects of his study, or of the matters involved, or of the biological aspects, namely, the impact of any activity on the caribou.

15 MR. GRAHAM: I certainly support that, My Lord, and I object to any evidence which this witness would offer as to what is going to happen in future as well. I do not think he is qualified to do that either.

20 MR. HEINTZMAN: My position is the same, My Lord.

THE COURT: I will reserve on the objection.

25 MR. ESTRIN: Thank you, My Lord.

BY MR. ESTRIN:

30 Q. Now, Dr. Usher, I take it from your curriculum vitae that much of your work has been in the Western Arctic. Nevertheless, you are prepared, as I understand

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it in your Affidavit, to comment on the subject matter generally, that is, of the effect -- the effects that you have witnessed on native harvesting of technological change, and you have come here for that purpose?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now, as a result of your own work and of professional work in the same area by others, I understand you have arrived at certain conclusions regarding the role of native harvesting in the fourth quarter of the twentieth century in the Canadian north, conclusions I believe you feel are relevant to the issues we are going to be addressing here. I wonder if you have such conclusions, if you can give them to us?

A. Yes. These are conclusions, I guess, that I have come to in the last number of years really working very closely with a number of colleagues in the social and economic field.

Based on a fairly exhaustive review of the kinds of evidence that have been put forward by social scientists, both academically and things of this nature, it seems to me that the general thrust of

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considerable number of recent studies which have been sponsored by both government, native organizations and so on, have led to I think three major conclusions with regard to the place of hunting and so on in native society today and the impact of development activity on them. The first, I think, is that --

THE COURT: Excuse me.

Just a moment, Dr. Usher.

MR. GRAHAM: My Lord,

maybe my friend can point to us where in the Affidavit we are going. I am perhaps lost and I apologize for that.

THE COURT: The requirement

of Rule 482 is that the expert's certificate or Affidavit contain a full statement of the proposed evidence in chief of the witness.

You are entitled to highlight any parts of the Affidavit, and you are entitled to read the Affidavit in fully, if that is what you wish to do. However, that is as far as Dr. Usher's evidence in chief can go under the rules.

MR. ESTRIN: Yes, I

appreciate that, My Lord. Mr. Graham's objection is appreciated. I have certainly no intention of leading the witness beyond the content of the Affidavit.

BY MR. ESTRIN:

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Q. Dr. Usher, in regard to the conclusions that you have arrived at, are they stated in various ways in the Affidavit that you have sworn to in this matter?

A. Oh yes. I suppose this is by way of summarizing whatever fifteen points or so in the Affidavit.

MR. ESTRIN: Since that is the case, My Lord, I don't believe that there is anything going beyond the content.

THE COURT: Well, I, with Mr. Graham, was looking here to see where this statement was either set forth or paraphrased in the expert Affidavit. I couldn't find it. Perhaps you can indicate to us just where it is.

MR. ESTRIN: My Lord, it is rather difficult since I have not heard the conclusions that he was about to state. As I say, I appreciate the rule and I appreciate Mr. Graham's objection and My Lord's concern. As you said, we are entitled to highlight or emphasize anything in the Affidavit. I was simply trying to have the witness assist the court in that regard. If after hearing the answer it is beyond what's in here, I am sure

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THE COURT: Go ahead for a little bit, but your quickest route to this

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might be to have him read his whole Affidavit.

BY MR. ESTRIN:

Q. Well, Dr. Usher, I would like you to tell us -- if you can summarize -- as I understand you can -- there are three principles that you have concluded that underpin the statements made in your Affidavit. Can you state them shortly for us?

A. Yes. My apologies, My Lord, if my preamble was, I suppose, related to point three.

THE COURT: Dr. Usher, you let your counsel apologize if he feels it necessary. You don't have anything to apologize for.

THE WITNESS: I think the first main point is that there is a growing body of evidence of increase -- of certainly continued, and in some instances, increased economic social and psychological reliance by native people on their traditional lands and resource space.

I think the second point is that, although we quite commonly observe in the north what is frequently referred to as modernization or a cultururation, that underneath that lies a continuing social dependance on what we might call traditional activities of hunting in particular, the business of

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subsistence production, if you like, as opposed to -- or as distinct from, I should say, the production of goods for exchange -- for example, furs, or whatever -- for trade, and that the underlining point here is rather than looking at modernization as some kind of a continuous scale from very primitive to very modern, which you can measure in terms of people's adoption of certain habits or abandonment of certain habits, that we must look at the core values and core social arrangements which relate directly to the traditional activities, whether those still exist or not. That, it seems to me, is the measure of so-called modernization or cultururation, rather than these other features.

The third point is that the expansion of large scale resource exploitation and extraction in the north provides direct competition in a new distinctive new way to the traditional activities in the sense that they compete for the essentials of production which are land, labour and capital.

BY MR. ESTRIN:

Q. Now, you have stated in your Affidavit, Dr. Usher, that hunting to Inuit people -- hunting of large animals is a

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core activity. I understand you to have previously published statistics which you have compiled on the extent of caribou hunting in the Baker Lake area, and that you have recently updated those statistics. Is that correct?

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A. I have.

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Q. My Lord, I'm showing you a document entitled Baker Lake, Northwest Territories, Caribou Harvests and Numbers of Hunters. It is a two page document. Is that a document you prepared, Dr. Usher?

A. Yes.

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Q. My friends have copies of it, My Lord. Dr. Usher can explain what it is. I ask it be made the next exhibit.

THE COURT: P-8.

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MR. HEINTZMAN: My Lord, I reserve my objection as to the admissibility of the information contained in it. If my friend seeks to have it marked so that we can have it in front of us, that is satisfactory, but I will be objecting to the admissibility to the evidence or I may object.

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THE COURT: On what grounds, so we have that down?

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MR. HEINTZMAN: Until I learn -- if these are government statistics or reliably known information, even though Dr.

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Usher did not personally prepare them, I am prepared to have him put them in; but if they appear to be unreliable sources then I may object to the evidence.

THE COURT: Yes.

MR. GRAHAM: For myself,

My Lord, I mean, we were handed this as we came in court this afternoon. It may be of use to the court in coming to the conclusion of the case, but the first view and expansion of the Affidavit are --

THE COURT: Mr.Graham

also objects that the evidence in chief is not in compliance with Rule 482. We will reserve and mark it as an exhibit. P-8.

EXHIBIT NO. P-8: Summary:
caribou harvests and number of
hunters.

BY MR. ESTRIN:

Q. Dr. Usher, can you tell us what the data is that we have on this exhibit that we are calling P-8, please, and where it comes from?

A. Yes. The first two columns, which say GH1 at the top refer to general hunting licences and these are issued by the government of the Northwest Territories annually. What I have tried -- and the two most important

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columns are those, and plus the going over somewhat further, the GHK kill statistics, which are government figures recording the harvest of caribou.

Now, in terms of some background of this, I have tried to compile these figures from as early as we have them. There are a couple of sources which I could not investigate which are not easily accessible to me or probably to anyone. These same figures can be found by and large but not completely in a publication of mine which is referred -- in fact, I think you asked me about it in the historical statistics -- they are explained in length in there. I have merely added a couple of things to them. Basically, I have taken the NWT -- the game office maintain regular records annually of, first of all, the number of general hunting licences issued. In some instances, the number of general hunting licences returned -- that is to say, the way the system works is that people, upon renewing their licence, were asked to make an Affidavit Declaration of the number of animals they had harvested the previous year under the previous year's licence. These records were maintained either by the RCMP or the game officer or whatever government

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representative was appropriate and forward it on to the game office in Fort Smith originally and laterally Yellowknife. The government statistics are incomplete. The block of years up to 1952 is material that, when I worked for Indian Affairs, I arranged with GNWT to have their record put on a computer tape, and these are from the print out of that. Unfortunately, the original records have long since been lost in moves between offices. That accounts, I believe, for the absence of general hunting licence kill statistics from 1952 to 1963, which is an unfortunate gap in the data because I think it is a critical time period. The figures from 1963 onward are derived from an annual compilation done by the government of the Northwest Territories called kill statistics derived from general hunting licence returns. Some of those statistics are reproduced also in some of the other reports that you -- that maybe on the record as far as this court is concerned with regard to Baker Lake -- reports by Stager and IDS. In any event, what I have done here is in those instances where we have records of the number of hunting licences returned, that is the number of individuals reporting caribou kills in anyone year, I have then projected out the average kill per

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hunter. Now, basically what we have is one block of data from about 1941 to 1952, and another block of data from the early sixties, practically up to the present time. I should perhaps add that the most recent years -- in the most recent years -- and I have discussed this with Mr. Stuart, who is the game officer in Baker Lake -- I discussed this with him by phone on Friday -- that they no longer use --

MR. HEINTZMAN: I don't think that evidence is admissible.

THE COURT: That is hearsay.

THE WITNESS: Fine.

BY MR. ESTRIN:

Q. Well, Dr. Usher, in compiling the recent statistics, did you also have regard to the published reports of the NWT?

A. I quickly checked over the two recent reports prepared by the games officer of Baker Lake. I should specify perhaps that I did not get these exact figures. I got them from the report. I did not get them by phone from the games officer, I got them from the reports, except for the fact that the last figure of hunters reporting, I was told on the phone that there is a misprint in the report and that's one hundred and forty-six.

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Maybe that is not admissible but --

THE COURT: It is one hundred and forty-six in your summary.

THE WITNESS: That's right.

THE COURT: It is in the report?

THE WITNESS: It's one hundred and sixty-six in the report. For the years that we don't have any information, that is chiefly 52 to 63, I referred to the report by Brack and MacIntosh, which was a government report done in the early sixties on the economic situation in the Keewatin -- I refer to table five on page nineteen -- that is the source of column four which says, "AES", which is area economic survey. In examining the sources of that table, it says, "Compiled from various sources including Banfield, Kelsall, RCMP reports and unpublished data in DNA files", so that I am personally unable to tell you which figure comes from which source. I had put them in because that's information that is available.

Now, what do we see in these figures? Obviously there is a lot of variability in the kill from year to year, and there are a number of reasons for that.

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If we look at the average per hunter, we are looking at fifty, sixty, forty per hunter in the average 1940s or so. In more recent years for which we have relatively little data, rather less than that, ranging high teens, low twenties. I don't know whether you want me to refer to that right now or not.

BY MR. ESTRIN:

Q. What are you able to say with regard -- is there anything significant or not to the numbers of returned GHGs, general hunting licences, as opposed to the numbers issued in the Baker Lake area in recent times?

A. If we look at the four years of return -- of issue versus return -- judging from my use of -- comparing this to my experience with other communities, is that that is a fairly high reporting rate. We are looking at about eighty percent return there. That is a fairly high reporting rate compared to a lot of other native communities.

Q. What significance is that, if any, with regard to reliability to these figures?

A. Well, I think there are three questions one always raises in using these statistics in terms of their reliability --

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three major sources of error. One, is that -- and you will see that in a number of these cases -- if we look at the GHK kill statistics, especially from 63 onwards, except for the four years, we really have no idea how many people are reporting these kills and, therefore, even assuming that -- which is not necessarily correct -- that those reporting are representative samples of the entire hunting population, we do not know the size of the reporting sample and, therefore, we do not know how to project these figures out to a total. If those years are typical then eighty percent may be a ball park sort of estimate on that score.

Now, there are two other sources of error which these figures tell us nothing about. I don't know whether you want me to go into that or not.

Q. Perhaps you could just briefly mention it.

A. Briefly the other two sources of error are that those -- this concerns those people who actually do report -- make that Affidavit Declaration that I mentioned before -- they would either -- through an honest failure of memory simply not correctly report the total that they harvested -- and based on my use of these data

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in other areas, I would guess that in the case of small game that is much more significant factor that people tend to underestimate their harvest simply by failing to remember. In the case of caribou, I don't think it is -- of any large game I don't think it is as significant as that. So, while we would expect some underestimation due to that factor, I do not think it is a large factor.

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MR. GRAHAM: I wonder

if my friend has qualified this witness to speak to Inuit and other people in the north -- what they do as a practice when they fill out the forms, My Lord.

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THE COURT: No. We have some evidence that will seek to indicate better the hunter the worse his memory. What he got in past years has been direct evidence from the hunters.

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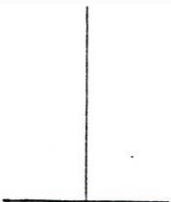
MR. GRAHAM: It's like one of my fishing trips, My Lord, what I tell my wife and what I tell the fishermen -- the game must be pretty difficult.

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THE WITNESS: I don't know whether to comment on that. I mean, I write these kinds of reports about these matters in the normal course of my work.

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BY MR. ESTRIN:



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P. Usher, ex in chf
(Estrin)

Q. And your previous work
in that regard has been published, I take it,
by the government?

A. Yes.

Q. The numbers reported
in the Baker Lake area in the forties as compared
to the seventies, there seems to be a significant
drop in the kill, according to these statistics.
Are you able to comment then as to whether or
not caribou hunting in the Baker Lake area
based on these statistics is still a core
activity in that area?

A. There is nothing
in these statistics that suggests to me that
it is not. I think there are a number of
explanations of the decline in the average
kills per hunter. The ones that would come
to my mind are, first of all, that in that
first block of years that we are looking at,
people also fed caribou to their dogs. I
suspect that that practice disappeared by
and large sometime during the years in which
our data -- for which we don't have data.
That is one reason that I would expect the
caribou kill to decline.

Another is -- I am
saying this on general ground of the general
experience in the north rather than the

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specifics of Baker Lake -- which I have not personally studied, but in reading the material that I have on Baker Lake -- it is consistent with this interpretation, and that is, that at the time that people began to move into Baker Lake, when they were still using dog teams, they were undoubtedly in those first few years less able to reach the caribou that they had formerly done so -- the caribou populations that they had formerly harvested -- in other words, the area of land used by those people probably contracted to a degree at that time at about the time that -- well, actually it would be somewhat into the second block of data that I would guess the introduction of snowmobiles at Baker Lake came in, somewhere in the late sixties, early seventies -- that you would have two things working here: one, all of a sudden you would not need as many caribou because you don't have dogs to feed; and at the same time, land formerly unused for a short period during that kind of crisis period of moving into the settlement, it is possible for people to get back into those areas and harvest them by virtue of the increased range which a skidoo would give them. I think those two things are at work there. Unfortunately, without the complete

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P. Usher, ex in chf
(Estrin)

run of data we have to speculate somewhat as to the middle period as to what's going on.

Q. Dr. Usher, you have done a study with regard to snowmobiles and its development into native economy which we have referred to in your curriculum vitae.

What effects have you observed of the introduction of the use of snowmobiles on the native harvests?

A. I studied that on Banks Island in the Western Arctic and particularly I have obviously followed with interest whatever information I can get from other parts of the north, and in conversation with other people who studied these things. The information seems to be fairly consistent. That is, instead of using the snowmobile to increase harvests, to increase total production, it is to achieve the same levels of production in a shorter period of time. Obviously one of the great impacts of this is that the people have -- in having that extra time many people who are able to continue hunting even while assuming -- either wage employment or increased leisure time or whatever else they choose to do -- but I think the most important conclusion is that by and large we do not see great increases in production, even though that is enabled

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714.

P. Usher, ex in chf
(Estrin)

by the skidoo, that is not what people choose
to use it for.

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Q. In your Affidavit,
you talked about the reliance of the people
on the land in its resources for sustenance.
Again, in your curriculum vitae, you have
done some work, as I understand it, with
regard to the nutritional value of harvest
food, native food. Are you able to assist
the court with regard to the nutritional
value --

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MR. CHAMBERS: I object,

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My Lord.

THE COURT: Yes. Is
this witness a qualified nutritionist?

MR. ESTRIN: Dr. Usher
perhaps -- if I could, My Lord, ask him what --

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THE COURT: Pursue it,
yes.

MR. ESTRIN: -- what he
has done in this area.

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THE COURT: Yes. The
value of his evidence in this area, I think you
owe it to yourself to get it on the record,
whatever it would be that might allow the
court to judge its value.

BY MR. ESTRIN:

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Q. Dr. Usher, could you

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P. Usher, ex in chf
(Estrin)

tell us what you have done in this area of the nutritional value of native food, native harvesting?

A. Well, I am certainly not a qualified nutritionist and my use of such data as nutritionists produced is obviously second hand use of these data. I have discussed them with nutritionists as to the validity of the way in which I have used them in certain instances so that I feel at least comfortable that I have not gone off track. Obviously I am not qualified to generate such data and I have never pretended to do that. The reason I have used them is chiefly in looking at the value of how do we evaluate country produce, that which does not enter the market place. And I think the nutritional value of country food as it is communicated to us by nutritionists is an important thing to consider in making that evaluation. I have also been concerned in some work that I am currently engaged in to look at changes in food consumption in dietary patterns as a consequence of socio-economic change and development impact and so on. That is not a study of nutrition per se, I suppose.

Q. I didn't intend, My Lord, to take the witness into the nutritional value per se, but it was in the

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(Estrin)

area that the witness has commented on previously. Are you able to give us your conclusions in that regard as to how one does valuate -- is there an adopted technique, some consensus amongst persons who are called upon to valuate the value in economic terms as to how --

THE COURT: That obviously invokes a hearsay answer.

MR. ESTRIN: Perhaps I can put it another way.

Q. Dr. Usher, what technique do you use to valuate the harvesting of native people. Perhaps you can tell us how that compares to other techniques?

A. You would like me to comment on the technique of evaluating -- put a dollar value on country produce?

Q. Yes.

A. There are, I think, two major considerations in doing this -- three major considerations really. I think that certainly as far as northern country produce is concerned, there is general agreement among those who have worked with the data that -- well, let me put it this way, there is a choice of two values that you can use for any product, which is domestically produced you can say, and

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then let's take the example of potatoes. The farmer that produces potatoes and does not sell them but consumes them himself foregoes the sale value of those potatoes. Alternatively, it can be said that the farmer who produces the potatoes for himself and does not buy them at the store doesn't have to spend however much per pound to buy them at the store. Now, those are two different values. It depends on the context in which you are making the evaluation. It is in the course of recent years as those who have dealt with the data who, I think, buy and large, have come to agree that the second value, the replacement value that is, is the real measure of benefits to the producer of that commodity. The issue is not what he would have sold it for -- and in particular in the far north many of these commodities -- well, there are two reasons not to use the sale value of the product -- one is that it is theoretically incorrect, and the second is that you cannot get data for it in the north because in many instances it is not the practice or don't have legal facilities to sell these commodities and, therefore, we cannot in the market place establish the producer value. So, assuming that we are going then to use a substitution value, we must

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(Estrin)

then decide what is the substitution which is appropriate. I think the generally agreed theory is that the element of scarcity in these commodities is the protein. So, what we will be looking at is really what are the substitutes of protein for country food -- caribou, fish, whatever. Therefore, we have quite a range. I mean, we can look at soy meal or something like that -- from that right down to porterhouse steak and rib eye and such. I think it is generally agreed among people who deal with these data that obviously meat has to be considered a substitute and not some kind of a soy meal or whatever kind of protein substitute we might use down here. Then it becomes a question of -- we get into a little -- you know, I don't want to burden you with a lot of tedious stuff -- how you decide what cuts of meat are appropriate and so on.

MR. GRAHAM: Perhaps in view of the witness' comments that I do not want to burden you with a lot of tedious stuff -- I apologize for so many objections -- the witness said he is not a nutritionist.

THE COURT: Yes.

MR. GRAHAM: Then my friend says, "What do nutritionists think about this?" I would think it is generally opinion,

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and this is what we are getting into.

THE COURT: I think the witness' answers at the present time are within the confines. I don't have that objection. I still have very great reservation, Mr. Estrin, about the whole thing, roaming so far beyond -- this is not the kind of evidence in chief that is contained in his Affidavit. I am conscious of the objections that have been taken on that ground. I have it in my mind that as Dr. Usher goes on -- you will have to cope with that in argument if not now. Mr. Chambers?

MR. CHAMBERS: My Lord, I am sorry, but I also must make an objection at this point because I do not see where in his Affidavit there is any such evidence being offered as to dollar value of caribou meat as opposed to, I suppose, what the witness' testimony at the moment is directed towards. I don't see anything at all in the Affidavit like this at all.

THE COURT: You may, Mr. Estrin, regard this as terribly important in terms of corroborating what the direct evidence of the Inuit witnesses in Baker Lake was -- I don't know, but certainly that was the effect of their evidence. They did give us some view -- straightforward evidence on

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the importance of the caribou in their household economics, if I can use that term.

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MR. ESTRIN: Yes, My Lord.

Well, we need not spend much more time on the topic. In reply to my friends, I do believe the subject matter is addressed both in paragraph seven and sixteen. I am simply asking the witness to tell us how -- and there is one other aspect, of course, that we must keep in mind -- this is simply not simply an action for declaration but also an action for an injunction.

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15 THE COURT: Yes.

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MR. ESTRIN: And in regard

to one of the aspects of harm that we allege, of course, is that there is an interference with the basic food supply which, in this case is caribou. When it comes to the court's discretion, if the court goes to the issue of granting an injunction certainly it is incumbent upon us to do that.

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THE COURT: I think Mr.

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Graham made the point that pertains to the Interlocutory Injunction. When you get to the fact whether or not there should be a permanent injunction, you are either entitled to it in law or it doesn't really matter how much harm the other guy's activity is doing if

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P. Usher, ex in chf
(Estrin)

he has a right to do them. Anyway, go ahead,
Mr. Estrin.

BY MR. ESTRIN:

Q. Perhaps, Dr. Usher,
you were at the point of talking about what it
is -- what is the key element one looks at if
country food source is displaced. I believe you
said that was protein. Can you just perhaps
briefly summarize how you would go about,
putting into dollar terms, without -- I'm
not asking, Dr. Usher, that you put a dollar
value on caribou harvest in Baker Lake, but
simply asking how it was done.

A. Yes. I guess the
final point is that having determined the
substitute -- what the appropriate substitute
is -- then, I believe, that it is appropriate
to look at the relative protein value of content
of country meat as compared with the item we
are choosing as a next best substitute.

Now, not all of my
colleagues agree with me. I must tell you
that. Some do and some don't. That is the
situation. Those are the ways I would choose
to derive -- to make such an estimate if I
were called upon to do so. I think there is
further research necessary in the area of
protein content. That is quite obvious. I

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don't think anybody really has a handle on it.
I don't want to make it sound as though we are
all agreed on this issue.

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Q. Dr. Usher, in your
Affidavit you addressed the issue of how
activities, such as mining or any other
activity on the land, may create a conflict,
as I think you said, with the native economy.
Perhaps you can expand on that. That is,
as I understand it, one of the conclusions
you stated at the beginning, that there can
be conflicts between activities using the land
and the native economy. Can you give us any
examples of what you had in mind?

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A. I'm probably wondering
what I can say that will not be objected to.

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I suppose I should outline
what I mean by competition for land, labour and
capital --

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Q. Please.
A. -- as developing
activity proceeds.

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Q. Yes.
A. Obviously there is
competition not simply for the resource in
particular that whoever is seeking -- whether
it is a mineral resource or so on -- it is
the surface use of the land which is also at

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issue. That's perhaps more important than the competition for further resource in particular, but it does mean there is increasing alternate and sometimes conflicting uses of the land, and by implication the resources the land sustains.

The competition for labour is, I think -- has more to do in the first instance with competition for -- I am just wondering how to put this best -- obviously the policies that have led up to mineral development in the territories are predicated on the idea that native -- this is the underlining burden of government policy -- that the proper future for native people is to be employed in some form of industrial endeavour -- I use industrial in a larger sense, I do not mean just on the production line.

MR. CHAMBERS: I object to this, My Lord. This witness is not qualified to testify as to what government policies are.

MR. ESTRIN: My Lord, we are with the government --

THE COURT: Perhaps you can give whatever evidence you are going to give on the basis that you assume that that's the government policy and go from there. I think it is fair enough. We don't know if the

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P. Usher, ex in chf
(Estrin)

government's policy is still what it was a week ago, do we?

THE WITNESS: I will try and put a historic view on that policy.

BY MR. ESTRIN:

Q. Yes.

A. Let me backtrack a bit. The nature of the traditional economy for certainly during the twentieth century has been an economy which has two foci -- one of which is the production of goods for subsistence consumption, that is hunting and fishing, and the other is production of goods for exchange, that is fur trapping -- almost exclusively fur trapping in the case of Baker Lake I would guess -- that the competition for labour is, in some instances, engendered simply by employment opportunities providing in any particular year or whatever a superior means of getting income than the subsistence producing -- than the exchange producing sector. These decisions, however, that the individuals make about which he will participate in -- the outcome of making that decision is not always seen, and it only becomes evident somewhat later that you might have backed the wrong horse. Well, that is the individual's prerogative, I suppose. I think if we look at the policies of not only

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employment, but of education and training it is to lead people out of subsistence and exchange production into industrial employment. Once those policies have been implemented to a certain degree that is no longer a matter of so much a matter of individual free choice, that is what you are faced with, and that is what you go into which may or may not be to your particular advantage or to the advantage of the society to which you belong.

The competition for capital I think has to do with the fact that -- as the orientation of the local economy is more and more geared towards the industrial sector, that there is less and less capital available to it to develop either the subsistence or the exchange producing sectors. In the most general way that is the source of competition in this area.

Q. Well, in this case the Plaintiffs are putting forward a concern about activity on the land surrounding the community that they now live in. Are you able to relate that concern to this kind of competition that you were talking about?

A. Well, I suppose in terms of the first question, land, as this kind of development proceeds, I think, is quite

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P. Usher, ex in chf
(Estrin)

obvious that there will be an increasing
codification, if you like, of the allocation
of the resources inland that the defacto use of
the land up until now or very recently by native
people has been, in a sense, an unrestricted
enjoyment of the full and complete use and
access to all that land and all of those resources.
I would guess what we are seeing now is a
progressive restriction on all those -- many
of those types of access.

Q. Now, in your work in
the area which you practice, you have stated
that you are familiar with situations in other
communities affected by the removal, by pollution
or otherwise, which is traditional native food
supplies, and that this has direct results in
very serious social problems. Can you elaborate
on that for us?

A. Yes. I am thinking
particularly of some work I am currently engaged
in at Grassy Narrows and White Dog Reserves in
Northwestern Ontario, where in trying to determine
the impact of the loss of the fishery to those
people we have obviously had to look at a
number of other social and economic impacts in that
area, trying to sort out just which ones
carry weight. I think our conclusions at this
point are that the evidence points very strongly to

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the loss of the fishery, rather than a number of -- in addition to, if you like -- but very strongly in addition to a number of other impacts such as relocation, provision of schools, road construction, increased access of non-natives to the community, and a host of other changes which have occurred in this community -- in the two communities -- that the loss of the fish, in particular, can be related to a number of exceedingly alarming social indicators -- I refer to violent death, alcohol abuse, increased hospitalization, accidents due to alcohol, child neglect, and a number of other social statistics -- well, obviously alarming to the people who are suffering them. We see in a general way the same sorts of things in communities such -- the larger communities in the Northwest Territories, for example, where it seems to me there are two very important characteristics of let's say places like Churchill, Frobisher Bay, Inuvik, in which the people who live there, for a variety of reasons, have rather less access, not simply to the food source, but to be able to practice in a serious and consistent fashion, a way of life which is based on getting those things, as well as the increased presence of non-native peoples in the midst of these communities. It is

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a very commonly observed sentiment in the smaller communities in the north that people are alarmed at the possibility their communities would become like Frobisher Bay, Churhill, Inuvik. I have observed this for a decade now in many parts of the north. It seems to me the common denominator -- one of the important common denominators is the loss of not only traditional food sources, as a source of sustenance, but as a basis for economic activity.

Q. Dr. Usher, there is just one more area I would like to ask you about, and that is changes in the style of hunting that have taken place by native people in the Northwest Territories over the years. There has been a technological change, I take it, from the way they used to hunt to the way they hunt now. Can you tell us about that, and can you tell us whether in your observation this change in technology has led -- what impacts this has had on, I think the term you used, rationality of hunting -- whether you can explain that concept for us?

A. Well, it is obvious to everybody that there have been many critical changes in the hunting technology of native peoples. I suppose chiefly it is the use of

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rifles, fish nets, traps and laterally skidoos
 -- I think they have made a tremendous impact.
 I think what is important here is the fundamental
 stragey of hunting remains the same, and that
 is, one hunts to one's needs. If a particular
 new technological device allows you to hunt
 more efficiently or to do the same thing in a
 shorter period of time or, if for some reason
 the availability of resource means you don't
 have to go as far to get it then you will not
 go as far to get it -- those kinds of things
 -- all these new introductions then seems to
 me do not in some way denote a lessening
 dependence on hunting as a core activity, or
 a lessening dependence on country food as a
 protein source. It simply means the way people
 do it changes, in the same way we do not farm
 the way our grandfather's did -- they do not
 hunt the way their grandparents do. I think
 the underlying principle is that one hunts
 to one's needs, and it continues -- perhaps
 by the same token that -- I see very little
 evidence to support the view that allowing
 new forms of technology will merely lead
 to over hunting or mis-use of the resource
 -- a kind of maluse in view of the relationship
 between hunters and their resource base.

Q. Unless there is anything

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P. Usher, ex in chf
(Estrin)

else you would like to add, Dr. Usher, those
are all of my questions.

A. That's fine.

MR. ESTRIN: Stay there,
please.

THE COURT: Are we still
with the same batting order as we were last
week? Mr. Graham, you may lead cross-examination.

CROSS-EXAMINATION

BY MR. GRAHAM:

Q. Mr. Usher, I take it
your experience has been mostly in the western
Arctic?

A. Yes.

Q. Have you ever been to
Baker Lake?

A. No, I have not.

Q. Have you ever been in
the Keewatin?

A. Yes, I have.

Q. What part?

A. I have been to Rankin
Inlet, Coral Harbour, Eskimo Point; those three
communities.

Q. When you were in the
Western Arctic. I believe you acted as an advisor
to and representative of COPE at certain
meetings, directed towards land claims. Is that

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correct?

A. Not really land claims, no. I did work for COPE for part of the time I was in the Western Arctic. I was chiefly involved with the Berger Inquiry and not so much with land claims. I also worked for the federal government when I was in the Western Arctic.

Q. Can you tell us what COPE is?

A. It is commonly referred to as COPE, Committee for Original Peoples Entitlement.

Q. Do you recall giving evidence before the Berger Inquiry that you acted as a representative on behalf of trappers for COPE?

A. I do.

Q. You do recall giving that evidence?

A. Yes. Maybe I better clarify one small point -- I don't know whether it is significant -- but I wasn't strictly speaking as a representative of the trappers when I gave the evidence, I was a staff person for COPE working on the inquiry. And I don't think it would be quite proper to say that I was a representative of the trappers. I'm not

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P. Usher, cr-ex
(Graham)

sure what -- whether that is significant or not.

Q. You worked on the staff of COPE?

A. Yes, I did.

Q. For how long?

A. Twenty-seven months, I think.

Q. In respect of the

--

A. In respect of the

Berger Inquiry.

Q. In respect of the

land claims as well?

A. I worked for the

Inuit Tapirisat previously in connection with The Land Use and Occupancy Study.

Q. In paragraph nine of your Affidavit you refer to the Inuit people engage in wage labour for hunting. I take it you would agree with me that some cash is necessary to the Inuits if they are to permit them to hunt in order to purchase snowmobiles, ammunition, and so on?

A. Absolutely.

Q. I take it also from your experience, and some of your other writings that you've had an opportunity to look

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P. Usher, cr-ex
(Graham)

at, that wage labour has largely replaced trapping as a source of cash income for the purposes of purchasing those items we just spoke of?

A. I would say largely, yes. Now, that depends on the community. But as a general statement, I would say largely, if you refer to the north as a whole.

Q. Well --

A. In a sense that if you look at the volume of income generated by wage labour as opposed to volume of income generated by trapping, yes, that's correct.

Q. At least in respect of the Western Arctic you stated that you're generally -- the general decline in traffic for the purpose as a prime source of cash -- I believe that's the way you put it there?

A. Yes.

Q. What about Baker Lake? What did you look at in Baker Lake to determine what the relationship between trapping and cash income would be to the people that lived there?

A. Well, I have read a couple of reports on Baker Lake, and I am familiar with the general literature on the communities, and certainly it indicates that

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trapping is also a much less important activity there than it perhaps once was in the sense that it provides obviously a much smaller proportion of cash income at Baker Lake than it did perhaps twenty or fifty years ago.

Q. Right. What were those reports you looked at?

A. The IDS Report, Stager's Report -- I haven't reread it thoroughly -- but Brack's Report, which I was quite familiar with at the time, and Vallee's Report which I also have not reread lately but am familiar with.

Q. When you say in your Affidavit there is a "wage labour provides a source of cash income for people in Baker Lake," what wage labour are you talking about there?

A. I would have to look back at the particular tables in the report. I assume, if I recall, chiefly some part-time casual employment, some as government employment, so on.

Q. You don't remember now what wage labour you were talking about in paragraph seven of your Affidavit?

A. Well, I would have to look at the table specifically.

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P. Usher, cr-ex
(Graham)

Q. Did you look at other sources of cash income? Did you look at social assistance programs? Government payments? Welfare? Family allowance?

A. Notspecifically, but I think there are tables in some of those reports.

Q. Did you consider that a source of cash for the community for purposes we've been talking about?

A. Well, it obviously is a source of cash for them.

Q. Did you look --

A. In what proportions at this particular date, I couldn't tell you off the top of my head.

Q. Did you consider what the social consequences of that would be when you were considering the relationship between wage economy and hunting economy?

A. The social consequences?

Q. The social assistance programs, government payments, welfare, family allowance?

A. I have considered it in a general way, obviously, throughout the north. I don't know that I turn my facts --

Q. For the purposes of this

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P. Usher, cr-ex
(Graham)

Affidavit that is before the court at the moment,
did you consider it?

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A. I suppose it ran
through my head. I'm not sure what you're

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Q. Okay. Can you tell
us when it ran through your head what the
effect of it was in terms of the conclusions
you have come to in your Affidavit that is
before us?

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A. I am not sure it
does affect the conclusions. Perhaps you could
suggest how.

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Q. I am not here to
suggest the answers to my own questions. Thank
you, Mr. Usher. Now, if mining activities

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MR. ESTRIN: My Lord,
in an oblique way I think the witness was
kindly asking Mr. Graham to restate the question.
Certainly I did not understand it.

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THE COURT: If Mr. Graham
wanted to know the answer to the question
and couldn't understand it then he should not
-- that's about where we are at.

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MR. GRAHAM: If the
witness wishes I could have the reporter read
it back. Do you wish to have the question read

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back to you by the reporter?

THE WITNESS: Well, I heard your words. I am not confused about what you said. I am not quite sure what meaning to attach to it and, therefore, how to answer it.

BY MR. GRAHAM:

Q. All I want is your evidence. I want you to give me an answer to the question. If you cannot answer it then just tell us you cannot answer it and we will go on to something else.

A. Am I correct in thinking what you want to know is, does the consideration of social assistance, if one included that in paragraph nine, would that affect my conclusions? Would that affect my statement?

Q. The question which I asked you is, whether you considered the question of welfare payments or social assistance in arriving at your conclusions?

A. In a general way, yes.

Q. That was the answer you gave me before. I asked you what was the way -- what was the way and what conclusions did they affect?

A. Well, I don't see that

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it affects what I have said here particularly.

I could spend some time telling you what my observations of the role of social assistance is a form of cash in that sort of economy.

Q. I am back to the potatoes or any of those comparisons. No. It is in respect to the conclusions expressed in this Affidavit, Mr. Usher, that I am interested in, and those alone.

A. I don't think it would affect my conclusions.

Q. Okay. Dr. Usher, if you stew with me for a minute that we can show mining activities do not interfere with hunting or may be made with proper regulations compatible with hunting, do you see that as a reasonable source of wage income for the Baker Lake people to be able to continue their purchasing these essential items so they may go on hunting and fishing as in the past?

A. I should qualify my answer with the fact that I do not really accept your hypothesis. But let's assume that I do.

THE COURT: Yes.

THE WITNESS: Okay.

Rephrase then -- accepting that hypothesis,

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what are you asking me precisely?

BY MR. GRAHAM:

Q. I am asking you, accepting the hypothesis, that it may be shown that mining does not interfere with hunting, fishing or may be regulated in such a way not to interfere with hunting and fishing, that income -- wage income earned by the members of the Baker Lake community, through mining activities, would represent a reasonable source of wage income for the purposes of purchasing snowmobiles, ammunition, gas, along the lines we were discussing?

A. Yes. Well, I would have to give you a qualified answer on that. The reason is this: that it's quite obvious from the experience in the north that in some instances, I guess, certain types of what we might call wage employment seem to be compatible with pursuing hunting activities. Others are not. In the absence of knowing, you know, any company's particular employment programs, it would be difficult for me to answer that question. I could think of some reasons why it might be and some why it would not be.

Q. Without knowing that type of information, it would be very difficult to postulate what the future is going to hold

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for this community or what the future is going to bring in terms of the way in which it would affect the community, would it not?

MR. ESTRIN: My Lord, Mr. Graham is cross-examining as to the future, which we tried very carefully to avoid. Now, if you want to get into the future in cross-examination, I guess we will be able to do it in re-examination.

THE COURT: That may be. That is, of course, your right in re-examination if you feel there is something unclear. The Affidavit has been taken as read and, therefore, the prognostications are in evidence for what they are worth -- they are a proper subject of cross-examination. Do you remember the question?

THE WITNESS: I think I do. I think that, you know, the experience with Northern Development is general enough that one can make certain suppositions. I would not sit here and say absolutely for sure something would happen in the future without knowing a lot more about specifics. I can merely tell you what questions I would ask of the proposed development to satisfy a concern that these negative impacts not occur. That is all I can really do.

BY MR. GRAHAM:

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Q. That is all any reasonable man can do at this stage, isn't it?

A. Yes.

Q. Thank you.

A. Except that one is armed with previous experience to inform one's questions as to the future, as any reasonable man would do.

Q. Well, Henry Ford said that history is bunk, but you are telling us you are of not that view, Mr. Usher, is that what you are telling us?

A. No, I do not think history is bunk.

Q. What about government regulations in respect of hunting? You addressed yourself to some of the things which affect hunting patterns of the Inuit. Do the government regulations affect them to some extent as well?

A. Well, obviously government regulations affect them. Perhaps you could be a bit more specific.

Q. Well, what may be hunted, what times of year, may be hunting musk-ox -- as against killing musk-ox -- have you directed your attention to that in some of your previous writing in the way it would affect the community?

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Q. And you would agree with me that those regulations also affect what wildlife the people live on, what their diet consists of, how they are going to hunt, where they are going to hunt?

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A. Oh well, yes. Degree is another matter, but obviously those things have an impact. They are designed to do that.

15

Q. Prohibitions against shooting of musk-ox would affect the diets of the community which had been previously living off musk-ox, would it?

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A. It's not my impression that musk-ox -- well, I guess I should not say going back to past 1917 -- I think what is important here is that there is a certain flexibility in being able to shift from one resource to another that all hunting societies have, and that is the very basis of the viable hunting society. So, some things are of significance, and others are relatively insignificant in terms of those types of regulations.

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Q. Right. And that would --

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A. I cannot say anything very general.

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P. Usher, cr-ex
(Graham)

Q. That affects their dietary, like you told us about in The Land Use Study about the regulation restricting collection of geese eggs -- I forget the name of the island --

A. Banks Island.

Q. That changed the diets for the people there, didn't it?

A. But nothing significantly, because that was a very reasonable peripheral resource.

Q. But that was part of their diet before, and the regulations stopped it?

A. Yes. Certainly.

Q. Now, my friend asked you a question which he led by saying that you had done studies in respect of use of snowmobiles in hunting. I think he was referring to your study on Banks Island, which you did in respect of trapping, was it not?

A. Yes.

Q. Have you studied the effect of the use of the snowmobile in actually hunting caribou?

A. No. Well, when I published those results I directed my

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attention to trapping. But, in looking at the -- in my knowledge of the hunting returns at Banks Island, for example, going well past that study up to the mid seventies, it's never been my impression that the snowmobile itself was responsible for either increased or decreased harvest of caribou in the sense the people would have got either more or less with snowmobiles than they did with dogs. It is somewhat -- I have gone hunting with those people both by dogs and by snowmobiles, so I have had occasion to observe what people do on the hunt. There are a number of other complicating factors. If you were to ask me what is the impact -- what was the impact of the snowmobile in the early seventies, I would have to be a little careful about making a --

Q. Well, without you subliming to me what questions I should ask you, what about -- as I understand the importance of your evidence it increases the area which is accessible to the community, the use of the snowmobile, as opposed to when people were dependent on dogs? Is that correct?

A. I think that's correct. I think the importance of that fact lies in there was a certain period in the

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experience of many of these communities where nearby areas were over harvested and more distant ones were under harvested. I think what the snowmobile has allowed is more evenly distribution of hunter effort.

Q. Have you been able to look at how much further one can go in a day by use of snowmobile, as opposed to a dog team? Can you give us a radius around the community of something?

A. Well, I have in the case of Banks Island. I don't have the figures with me. The environmental -- the terrain conditions and snow conditions, so on -- there is such a variation in that it would not be sensible for me to give you a pat answer to that.

Q. Would it be substantially more or just talking about something smaller?

A. Under most circumstances, under the ones I am most familiar with, it is substantially more. No question.

Q. Would the fact that now you have a large number of people situated in one community which can go out to a larger area with snowmobiles, as opposed to the previous situation where you have dots of people located in different areas dependent

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upon the dog team, what effect does that have on the hunting?

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A. Well, I think that what it means -- certainly in the case of the Western Arctic is that it means that hunting effort is about as evenly distributed now from one single point as it was thirty years ago from maybe a dozen points.

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Q. So, the actual ability to get at the caribou has not in any way been restricted by the fact everybody is living in the same community?

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A. It was initially, but the snowmobile has allowed people to overcome that.

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Q. And does it also allow people, as a rule, to hunt in the same area?

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A. In the same area as what?

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Q. As where one hunter will come back and find part of the kill, he's had a successful day and, therefore, may enable others to follow out where the kills are being made?

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A. I don't think that is a significant factor.

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Q. Did you have any

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P. Usher, cr-ex
(Graham)

opportunity to do any studies of the Baker
Lake people in terms of what their actual
5 hunting practices are at the moment -- at
this time?

A. Nothing beyond
what I have read in the literature.

10 Q. Now, have you any
knowledge about what happened in the past
when caribou migration routes changed and
communities were deprived of access to the
caribou?

15 MR. ESTRIN: Well, there
are two questions there, My Lord. He is
asking the witness whether he agrees that
caribou routes have changed in the past or
the latter question.

20 MR. GRAHAM: I'm sorry.
Would you agree with me that in the past
caribou migration routes have changed?

25 THE WITNESS: Well, I
understand that to be the case. I think that
I should make clear that my own personal
experience with caribou and caribou hunting
is in areas where the migration characteristics
of the herd are rather different than those
that I understand are typical in Keewatin. So,
you know, my knowledge is from the same reading
30 you have done, I suppose.

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P. Usher, cr-ex
(Graham)

BY MR. GRAHAM:

Q. Right. And the problem is that in the Keewatin we have the Kaminuriak and Beverly Herd which don't perform in the same way as those other herds you looked at and those other people?

A. I think there is some important difference and, obviously, I would want to look more carefully before I jump.

Q. You have not had a chance to study Baker Lake?

A. I have not done a first hand study with Baker Lake, no.

THE COURT: I think if you are going to change the subject matter that this might be our opportunity for our mid afternoon break.

MR. GRAHAM: Thank you.

---Short recess

---Upon resuming after recess

---PETER USHER, recalled

BY MR. GRAHAM:

Q. Dr. Usher, are you aware of the provisions of the environmental assessment process that prevail in the Northwest Territories?

A. Not chapter and verse.

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Q. Are you aware generally of an Environmental Assessment Review Process that exists?

A. Yes.

Q. Would you agree with me before a mine could be constructed in Baker Lake area there would have to be an inquiry -- an examination of the type of factors that you referred to in your Affidavit?

MR. ESTRIN: My Lord, that is asking the witness to draw a conclusion of law. The fact of the matter is there is no law.

THE COURT: That's about as much a question of law as to ask him whether the speed limit is one hundred kilometers an hour. He is either aware or he isn't.

MR. ESTRIN: He can be aware of the process, but whether or not an inquiry would be required is a misstatement.

THE COURT: I don't know.

MR. ESTRIN: Well, it is My Lord.

THE COURT: By all means get in the box, Mr. Estrin.

MR. ESTRIN: With the authority having written the articles on the subject, My Lord, I can say --

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P. Usher, cr-ex
(Graham)

THE COURT: Well, perhaps you can clear this up in re-examination. I don't think your question -- your objection is well taken on the point of invoking an opinion of law.

MR. ESTRIN: All right.

THE COURT: I am sure Mr. Graham is not anxious to follow a false trail either. If you can enlighten him as to what the process is, maybe he would appreciate it.

MR. GRAHAM: If my friend wants to take the oath and give evidence as to articles he read and wrote, we will have him in due time.

Q. Can you answer the question?

A. I'm sorry, I have lost it a bit. You better repeat it.

Q. Are you aware whether there would be an inquiry -- as to the likelihood as to an inquiry into the issues that you raise in your Affidavit, prior to there ever being a mine in the Northwest Territories?

A. Under the ERP process?

Q. Yes.

A. Well, I couldn't answer as to whether that's mandatory or not. What I

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would be concerned about is that in my reading of the ERP process -- and I followed one of them in ponding fairly recently, with some interest -- is that there is no automatic provision for a revision of socio-economic factors as opposed to environmental ones. I don't think it would be automatic at all.

Q. By socio -- I'm sorry

--

A. Socio-economical as opposed to environmental considerations.

Q. By that you mean sort of the direction in which society is going to evolve or not evolve along the lines you referred in your Affidavit?

A. Not exclusively. Even human use of resources -- I'm not sure how thoroughly that would be dealt with in such an inquiry -- I must admit I am speculating here, but that's my reading of the situation.

Q. It would depend in the way in which the inquiry would be conducted?

A. Yes, but I suppose more importantly whether it is mandatory or not.

Q. And one of your concerns is whether there would be an examination as to what the ultimate nature of society would be -- Inuit society would be as a result of these investigations of it?

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P. Usher, cr-ex
(Graham)

A. I perhaps should --

I would like to be a little more restrictive of that and say a consideration of what in fact the impacts of development would be because that surely is the subject of such a hearing. It is for the Inuit to say what shape their society ought to go in, not me or not a court of law either, I suppose.

MR. GRAHAM: Thank you very much.

THE COURT: Mr. Heintzman?

CROSS-EXAMINATION

BY MR. HEINTZMAN:

Q. Do you have Exhibit P-8 in front of you?

A. If you are referring to my -- I'm sorry, which one is P-8?

Q. It's this.

A. Yes, I do.

Q. Can you tell me the area that is covered by these statistics?

A. Approximately. You mean verbally describe it or show you on a map?

Q. Verbally describe it.

A. Not being thoroughly familiar with the lakes and rivers and so on of

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the region, it is a little difficult. It is the general area around Baker Lake. It would be much easier to show you on a map.

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Q. Do we have one of the exhibits here?

THE COURT: You'd better have all of them here.

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THE WITNESS: I will show you specifically what the earlier block of statistics -- I understood to refer to at the time that I wrote the report, which was referred to by counsel here on historical statistics. I would have to modify that in view of the subsequent findings of the Land Use and Occupancy Study, but in a general way, I can tell you the area that they referred to.

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BY MR. HEINTZMAN:

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Q. Are they the same area, the earlier statistics and later statistics?

A. By and large.

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Q. What do you mean by "by and large"?

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A. Well, what I mean is that there is a more or less core area of Baker Lake use which goes back through certainly living memory and which would not have been used by other groups. In other words, when we -- well, it is a little difficult. There is a certain

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754.

P. Usher, cr-ex
(Heintzman)

imprecision in these statistics.

Q. Does it include the

Garry Lake area?

A. I think it does.

Q. Right up north of

Garry Lake then?

A. Not to the coast.

Q. How far north of

Garry Lake does it go?

A. I couldn't tell you

in miles right now without looking on the
map.

Q. Does it go up to

and include Garry Lake? Do you know?

A. To my knowledge,

yes, it does.

Q. Both for the older

statistics and for the more recent?

A. I would think so,

but I can't be certain of that.

Q. Does it include

the Back River area?

A. I would have to

look at a map. What do you mean by the "Back
River area"?

Q. Well, the area up

to and including Back River?

A. I would still prefer

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755.

P. Usher cr-ex
(Heintzman)

to look at a map.

Q. Perhaps we can look
at a map.

A. If I can look at a
map --

THE COURT: I think
probably P-6 is the larger -- takes in the
larger area, so we can start with it. I think
one of our problems is the Back River goes on
and off the other -- the only other one that
is in evidence.

MR. HEINTZMAN: Can we
use this, My Lord?

THE COURT: Sure.

THE WITNESS: I can read
it from there.

THE COURT: You are
entitled to leave the stand and go over to
the map.

MR. HEINTZMAN: Would
you like the stand moved, My Lord, or go over?

THE COURT: I think if
you move it very far it will be out of sight.
That is the problem with the box there. That's
fine with me. Feel free, Dr. Usher, to go over.
Once you see this, you will appreciate the
problem I am anticipating. I think you can get
rid of a lot of the left side of that map. That

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goes a long way west of anything we are talking about.

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THE WITNESS: If this is all being done for my benefit, I could just refer to the map in the back of the Land Use Atlas.

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MR. HEINTZMAN: It is for His Lordship's benefit.

THE COURT: Both counsel and I have to see what you are referring to.

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BY MR. HEINTZMAN:

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Q. Starting with the earlier years, can you tell me what areas are included within the returns which are referred to on Exhibit P-8?

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A. I don't know if this provides a very good comparison, but in this publication of historical statistics I drew a map -- which is essentially the sort of resource shed, if you like, of each community -- the objective of this is to take the thirty Inuit regions -- and in order to geographically allocate these game returns -- therefore, I drew this map -- boundaries are somewhat imprecise -- but if we follow this map here, it would appear that they go -- where is the boundary of the Keewatin -- no, it is further east than that -- very roughly here.

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P. Usher, cr-ex
(Heintzman)

Q. Now, you have got your hands in the middle of the word "Thelon" on the map?

A. That's right. It would include the eastern part of the Thelon Sanctuary. I would guess it would go -- this is Garry Lake here. That's Garry Lake?

Q. That's right.

A. This is the Back River. It would include the area north -- some of the area north of the Back River, north of Garry Lake, and not as far up as Chantrey Inlet?

Q. How far up Chantrey Inlet?

A. This map is so imprecise and such a small scale, I cannot tell you. But, roughly here and up into here a bit and not as far east as Wager Bay.

Q. I'm sorry, you are fingering up near --

A. Baker Lake. This is very rough. I cannot say exactly. Let me pause.

Q. Yes.

A. This is a map that I drew based on other information available to me, then the Land Use and Occupancy Study. So, it seems to me that these are -- this map would have to be re-interpreted in the light of

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the Land Use and Occupancy Study. The methodology of how this map is arrived at is described in detail in this report. If you want me now just to describe it in a very general way where those boundaries go, that is the best I can do.

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Q. All right. Continue.

By the way, just for the record, when the witness was referring to this map, he was referring to a map that he's holding in his hand, not to the map Exhibit P-6. Perhaps you can refer to Exhibit P-6. We were up near Wager Bay.

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A. Not as far east as Wager Bay, but back of Wager Bay and come down I suppose maybe half way -- just a second -- well, maybe half way from Baker Lake to the coast, down here, down back of the Hudson Bay coast.

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Q. Would it include the areas marked A and B in the area of the Kaminuriak calving grounds?

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A. It would include part of those areas, but not necessarily all. It would include certain of the western half, probably the Kaminuriak Lake -- but I would have to refer back to another map that I don't have here to answer that -- and down,

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not as far south -- I don't think it would include Henik Lake, Neultin Lake, Ennadai -- it would be more of that area and then back up to here.

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Q. Now, are these statistics derived from where the hunter comes from, or from what?

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A. They are derived from -- I would have to check in this volume here -- I am thinking back to the methodology of how we prepared this computer thing. It

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seems to me that it was based on where the hunter reported; that is, where the hunter turned in his licence. What I can tell you for the years 1941 to 53 or 52 is that the following points, following trading posts or settlements if you like, were included in the Baker Lake region. In other words, every one

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of these licence returns -- like, there are several thousands or several hundred for a year in a territory-- we allocated them by these geographic districts depending where the licence report was made.

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Q. Stopping right there. On that little map you had in your hand, it looked as though you had excerpted out, for instance, areas which appear to relate to Eskimo Point and Rankin Inlet?

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A. Yes, absolutely.

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Q. So, if people from those two communities were in fact hunting in Baker Lake area, you have taken their statistics and applied them to Eskimo Point, let's say?

A. No. It would be where they reported. Now, it is possible that somebody traded into Eskimo Point after having spent a year in Baker Lake. That is possible. I would have to look back and check the methodology thoroughly, but seems to me we would have said, okay, this is a self cancelling error factor which we have no control over and we will base it on where people reported their harvests.

Now, they did in fact report them at a few other places that are no longer existing. If you want me to list them, I will.

Q. I don't think that's necessary. I just wanted to get the methodology, and that is, if a person reported in at Rankin Inlet, you, on your survey, allocated his hunt to Rankin Inlet, no matter where he did his hunting?

A. Well, there is no way of knowing from the data where he did his hunting. We have to make an assumption if he

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761.

P. Usher, cr-ex
(Heintzman)

traded into Eskimo Point that he lives in
the Eskimo Point region.

Q. All right. Now,
for 1951-52, you have a kill of fifteen hundred
and eighteen. Is that correct?

A. Yes.

Q. And for 1952-53, you
have twelve thousand two hundred?

A. Yes. Let me explain
again. That figure of twelve thousand two
hundred is -- I think I mentioned earlier --
from the Area Economic Survey Report, and I
referred you to the table, and the sources
for the table as a whole are listed but I
don't know which individual figures are from
which source, so I don't know the specific
source of that rather large figure.

Q. Does it relate to
the Baker Lake area, or does it relate to
some larger area than Baker Lake?

A. No. The table,
which I can produce for you, lists Baker
Lake, Chesterfield Inlet, Tavani, Padlei,
Eskimo Point, Kazan, Rankin Inlet, Whalecove -- lists
them all separately, and it lists the table
called the Human Utilization of Caribou and
it gives the number of caribou used in each
of those years. You can have this table if you

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P. Usher, cr-ex
(Heintzman)

like.

Q. May I see that?

A. This is the table from
the Brack Report.

Q. So, that you have
taken the twelve thousand two hundred for
Baker Lake?

A. That's right.

Q. For 1952-53?

A. Now, how accurate
that figure is, I haven't the faintest idea.

Q. Well, assuming that
it is accurate, what do you have to say about
the figure 1951-52 of fifteen hundred and
eighteen, and the figure of 52-53 of twelve
thousand two hundred? Was it just a good
year like ten times as good a year as 53-54 --
I'm sorry, 52-53?

A. You are necessarily leading
me into speculation here, not having
been present at either of those years in Baker
Lake and not having any real knowledge how
the 52-53 figure was derived. I can speculate,
if you like.

Q. No, I do not want
you to speculate.

A. I cannot account for it.

Q. If the figure twelve

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thousand two hundred was a good reliable figure for harvests in or about those years, then, the figure of fifteen hundred and eighteen represented a minuscule amount of the actual kills taken in 51-52; is that not correct?

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A. Yes, but I do not accept your hypothesis. That figure is so much at variance with the rest that I have strong reason to doubt it.

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Q. I will take the figure of five thousand in 1955-56.

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A. Probably not unreasonable. You have several five thousand figures in the years before. I don't know.

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Q. So, really these figures seem to jump all over the place; don't they?

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A. Well, whether the actual kill jumps as much as these figures do, I would doubt it.

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Q. Isn't it a fact that the reliability of the report is seriously in question with respect to the number of caribou taken in the Keewatin?

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A. Of these earlier returns or any particular?

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Q. Earlier or later.

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P. Usher, cr-ex
(Heintzman)

A. Well, yes, I discussed that to some extent earlier. I think there is some question as to their reliability if you are asking me to put an estimate as to how far that --

Q. Well, one of the witnesses in Baker Lake, Mr. Ungungai, said there was a serious problem with respect to reporting; would you agree with that?

A. Yes, I would agree with that.

Q. You are aware, I would presume, that the IDS Study estimated the amount of caribou taken by the Baker Lake people in 1975 or 76 as forty-one hundred?

A. Yes.

Q. And do you accept that as a reliable estimation of the caribou take for that year?

A. In the light of the other figures for recent years and the reporting rate and what I would take to be the inaccuracies in these figures, I would have some question in my mind about how reliable that is. I was thinking about it this morning, and one of the things that crossed my mind as to why it might not be reliable is that it's not clear to me -- you

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have to be very careful when you are designing a questionnaire that says, "How many animals did you get?"

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because there is very often, in my experience of administering such questionnaires, a confusion on the informant's mind as to whether you are referring to the number of animals that he and

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his hunting party took or the number of animals that he actually took home. Now, if it is the former, you are running into a lot of double counting, as you can imagine. It is necessary

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to be precise on a questionnaire. Whether the IDS questionnaire was precise, I have no way of knowing from reading the text.

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Q. Are you familiar with the IDS people? Are they reliable in preparing questionnaires?

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A. Well, I don't know them personally. I gather it is a reliable outfit. There are not that many people with this kind of experience.

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Q. I appreciate that. Their methodology was to have a census done of the community and apply --

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A. Yes.

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Q. -- the questionnaires by the percentage reporting out of the population and coming up with a total probable caribou take of forty-one hundred?

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A. Yes, but they did one other thing which I would also -- I have not been able to check -- I would sort of like to know about -- and that is having interviewed heads of households seems to me that the procedure should be to multiple by the total number of heads of households, rather than the total population. I would raise that question. Now, what this means --

Q. They multiplied by the hunter families; isn't that the same thing?

A. No. Can I just check?

Q. Yes. Page 65.

A. But they estimated the population of the hunter families, they didn't estimate the number of hunter families. There is a difference between number of households and number of people.

Q. Within a ball park figure, are you prepared to accept the forty-one hundred figure or not?

A. Well, I am faced with the problem of seeing that there is a fairly consistent reporting in the GHL statistics of fifteen hundred to twenty-five hundred and, then, this figure here of forty-one hundred, and quite frankly, without knowing in more detail, I am not sure which one to accept.

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767.

P. Usher, cr-ex
(Heintzman)

Q. I see. Now, you have testified about the relationship of the Inuit to the caribou. I take it you would acknowledge that the particular relationship most appertains to this particular group of Eskimos or Inuit who live inland, rather than to Inuit generally?

A. It is my understanding that of the total protein in their diet caribou is a higher proportion than coastal Eskimos, if that is what you are telling me, yes.

Q. So, the particular phenomenon we are concerned with in this case, is something that is rather particular to this area, to these people, which is not particular to the areas you have studied in the Western Arctic.

A. No, that is not the case. In the Western Arctic the degree of dependence upon caribou meat is very high for human food. People do not eat -- very rarely eat mammals in the Western Arctic, so that the human consumption in that respect, is more similar to Baker Lake than to the coast community.

Q. Well, then, you have studied, you say, some inland peoples and not just coast peoples?

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P. Usher, cr-ex
(Heintzman)

A. They are not inland people, it's just that is their particular preference. That is their orientation.

Q. And in discussing, what I think you called the strategy of hunting, you have said that even though Europeans have given to the Eskimo, to the Inuit, more modern technological weapons, means of transportation, the strategy remained the same -- the effect is about the same; is that the burden of your evidence?

A. In a general way, yes.

Q. Well, would you agree with me that that, insofar as it applies to the rifle, is just not correct, that with the invent or the advent of the rifle the Inuit were provided with a weapon which resulted in a very substantial decrease in the caribou herd from, let us say, 1900 to, let us say, 1920s and thereafter?

A. Well, that argument is certainly made in the literature, but my reading of the literature comes to no conclusive proof of that, and it would be risky in the extreme to say conclusively that the reason for the decline of certain caribou herds, if indeed there was a decline --

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there is some doubt in some instances about that -- is directly attributable to the repeating rifle. It is not one hundred percent clear to me. There are certainly people who argue that, but also people who argue the opposite.

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Q. Well, are you familiar with the writings of Mr. Birket-Smith?

A. I am familiar with some of them.

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Q. And he is probably the greatest expert in the study of the sociological and economical aspect of the Eskimos, Inuit, in this area; isn't that correct?

A. I don't know if I can go along -- I don't -- look, I do not want to detract from any particular observer, but you have to place these people in their time and place and so on. There is an awful lot of work done in the region since then that's probably more relevant.

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Q. Well, he was with Mr. Rasmussen on the Great Fifth Thule Expedition which went through this area and lived in this area in the 1920s?

A. Yes.

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Q. Is that correct?

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Q. Please let me read to you what he says. He provided a study of these people which is four, five volumes in length; is that not correct?

A. Yes.

Q. He writes on page 135, "Although every winter it happens that one or two families within the caribou Eskimo country second to hunger, and this is not exclusively due to lack of economy with the supplier. These bad periods, however, have doubtless become worse during the lifetime of the last generation, which is perhaps due to no small extent to the introduction of the rifle among both the Eskimo and the Indian, because it is liable to mislead into heedless slaughter." Do you agree with that or disagree with that?

A. Well, I don't necessarily agree with it. I don't know the specifics of the decline of the caribou herd in the Baker Lake area. However, I can certainly tell you that contemporaneous to Birket-Smith were a number of other observers who attributed the decline of the caribou in other areas not to the repeating rifle at all, but --

Q. I'm not talking about repeating rifle, we are talking about a

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P. Usher, cr-ex
(Heintzman)

rifle?

A. A rifle, whatever.

For example, a Mr. W. H. P. Hoare, who is a well known person with the federal government -- one of the early observers in the 1920s, -- he travelled all across the Arctic spent several years in the Arctic and came to the conclusion the reason the caribou no longer crossed the Coronation Gulf and the Queen Maud Sea was because of trading posts that had been built there, human activity; that was his conclusion. A lot of people doubt that too. What I am suggesting to you is, that there are any number of hypotheses. And my point is, that they remain hypothesis at this time.

Q. I suppose nothing is ever certain, but there is no question that the caribou still come into this country -- into this area. The question is how many of them are there. I am putting it to you that one of the reasons there are less caribou now than there were one hundred years ago is primarily due to the rifle?

A. Well, I cannot agree with that.

Q. Can you disagree with it? Do you disagree with it?

A. Let's put it this

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way: I can think of other explanations, and not being totally familiar with all the data from that region, would not be able to say which of those reasons would be the most important. I think -- this is going on everywhere with caribou populations. Biologists still today do not agree with the cause of the decline, even in very current declines such as in Alaska.

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Q. You mentioned the report of Mr. Vallee, which is entitled Kabloona and Eskimo in the Central Keewatin?

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A. Yes.

Q. Is that considered to be one of the definitive analyses of the sociological and economic situation in the central Keewatin area?

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A. It is a very significant contribution to the literature. It is not necessarily that everybody would agree with it.

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Q. I suppose not everybody agrees with everything?

A. No.

Q. But is it not clear that Mr. Vallee ascribed the decline of the caribou to the advent of rifle?

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A. You would have to

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read me that section. I don't remember.

Q. Well, page 36 after

saying that originally caribou were hunted with bow and arrow and lance, talks about the fact that that necessitated hunting at the crossings. Before the introduction of the rifle, hunting required the engagement of game at close quarters, etc. He then says that it is not known precisely when the rifle was first introduced to the Eskimos in this region, but it was certainly long before the opening of the twentieth century. Then he quotes Banfield to say that the sharp demands for caribou meat from the whalers and traders before and around the turn of the century led the Eskimos to slaughter in much greater number of animals than they were once to do in earlier times, and this is one of the historical causes for the spectacular depletion in caribou which later decades of this century have witnessed. Then he goes on and refers to -- on page 38 and says that the caribou also became an object of exchange for traders and whalers crew, that the total kill per hunter grew so large the death rate of the species came to approximate and eventually overtook the birth rate. Then he cites statistics that would indicate the caribou herd fell from a

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million seven hundred and fifty thousand in the Central Eastern Arctic in 1900 to six hundred and fifty thousand in 1948?

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A. Well, Dr. Vallee would

have relied at that time on much of the evidence -- much the same evidence that any social scientist would have relied on. I suspect that those figures are familiar to me. The figure of one and three-quarter million would be Ernest Thomas Seton's figure from the

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turn of the century, which was a complete guesstimate -- complete guesstimate. No

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biologist necessarily accepts it today. The figure of six hundred and odd thousand is based on the early work of the Canadian Wildlife Service, which is -- I am sure the

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people who did it would be the first to admit there are many problems in making population estimates of this, particularly in the late forties with the equipment they had. These estimates have been refined and made over and over again and so on.

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Q. The point I am

seeking to make is that the rifle in my question to you has effected a traumatic change in the life on the central barren.

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Let me read to you what he says at page

37. He says that hunting became more

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individual and did not require the mutual assistance in co-operative effort of former years. Game could be killed from longer distances than in the past. Each bullet was a missile and a hunter could carry many times the number of missiles than he could in former times. Therefore, given the same effort and luck a much more numerous kill became probable with the rifle.

A. Well --

Q. I am putting that as a proper proposition to you.

A. Let's take it in parts. The individualization of hunting is certainly correct. The fact that the rifle allowed people to theoretically kill more animals, obviously that's theoretically correct, in the same way I suggested earlier it is quite theoretically correct for somebody who uses a snowmobile to harvest a heck of a lot more game than they used to. The point of the studies is that they do not, in fact, seem to. I think we would have to look at the introduction of the rifle and say, well, if that were true of the snowmobile -- and we know that's true of the snowmobile, or we have pretty good evidence -- was it true of the rifle? Was there something different when

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rifle was introduced? I cannot go along. I am not denying the possibility that the rifle may have been responsible for some of these things. What I am suggesting to you is that on the basis of present evidence and the best theoretical interpretation we have of this problem, we are not in a position to make that definitive statement.

Q. I see. Well, aside from the elimination of dogs as a consumer of caribou, are the Inuit consuming less?

A. Quite possibly.

Q. So they are dependent now on other kinds of food?

A. Certainly there is a much greater range of imported foods available. I think there has obviously been -- this has been reported everywhere -- an increased use of certain carbohydrates, particularly flour, sugar, rice -- those sorts of commodities. The result of that is that there is some decline in the use of -- once the diet is no longer one hundred percent protein obviously there is a reduction in the need of daily intake of protein. But, in terms of the protein component of the diet, it seems to me there is no less dependence now than there ever was.

Q. But, the percentage of

protein that those people are eating is going down?

A. Let's say that it obviously is no longer one hundred percent. Whether there is a long-term trend that suggests it is going down, I have to see the evidence for that. I am not aware of such evidence.

Q. You will agree with me, will you not, sir, that the number of people hunting off these caribou is dramatically increasing?

A. It's certainly increasing, yes.

Q. Well, the figures Birket-Smith came up for for the entire Caribou-Eskimo population was five hundred. Do you recall that from his book?

A. I don't recall it but I will accept you --

Q. Now, we know there are one thousand people living in Baker Lake itself?

A. I don't know if there are but for the sake of argument --

Q. We know there are substantial populations living off the same caribou, Chesterfield Inlet, Eskimo Cove, Rankin

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P. Usher, cr-ex
(Heintzman)

Inlet, do we not?

A. Off the same two
herds.

Q. Off the same two
herds.

A. Baker Lake people
don't rely -- which herd are you talking about?

Q. Well, the latter
communities live off the Kaminuriak Herd?

A. Yes.

Q. As do the Baker Lake
people in part?

A. Yes.

Q. So, not only do we
have the Baker Lake people living off at least
in part on the Kaminuriak Herd, but the other
communities on the Arctic -- on the Hudson
Bay coast?

A. Yes.

Q. And I put it to
you that if those people continue to hunt
caribou, to sustain themselves with protein
as they used to in the numbers they are now
that they could not possibly sustain themselves
on the caribou?

A. I'm not sure I accept
that. The fact that people are not feeding
caribou to dogs means an enormous reduction in

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the number of caribou that people need. Secondly,
the fact that people are now using a certain

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proportion of carbohydrates in their diet
means an even greater reduction of protein
intake. I believe I am correct in saying
this. If, for example, -- well, a lot of

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the figures, for example, which have been
reconstructed for the probable intake of
Inuit and aboriginal times of meat, run, you
know, five to seven pounds a day, and mind

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you that is half meat, half fat. If you
introduce -- if you feed a guy two pounds of

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bread, he doesn't go on to eat three pounds
of caribou on top of that, so there is a
inproportionate reduction in the need for
protein intake if you have made any part of

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your consumption carbohydrates. So, in fact,
the necessity for protein is rather less than
it was. There is another thing which must be

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considered and that is that Birket-Smith --
I don't know this for a fact in the case of
Baker Lake but I know it is a fact in many

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other parts of the Arctic -- that the figures of
Inuit population which are given -- it is quite
common the arguments you are making that you

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start from a certain date when there were very
few Inuit and you look now and there are lots
and say -- you project the thing up and say,

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well, they are going to run out of resources.

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What we forget is that if you go back far enough in many instances there were just as many Inuit as there are today. To give you an example, the people in the western Arctic, there were probably twenty-five hundred people in 1850. By 1910 there were four hundred.

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Now there are about twenty-five hundred. So, there is the same number now that there was one hundred and twenty-five years ago.

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Q. But living in an entirely different way?

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A. Yes, but they need less than they needed one hundred years ago.

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Q. All I'm saying is that because of the skidoo and because of bread and other things they are able to eat the caribou and not destroy them; isn't that correct?

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A. What I'm suggesting is that it's not one -- one cannot assume -- well, it's precisely the argument I am making, that one cannot assume that the introduction of new technology results in the devastation of people's game resources.

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Q. Thank you.

A. New hunting technology.

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781. P. Usher cr-ex
(Heintzman)

Q. I finished my
examination, sir.

A. New hunting technology.

THE COURT: Mr. Chambers,
unless you have a very few minutes, we should
adjourn. But on the other hand --

MR. CHAMBERS: I should
not be more than five, ten minutes at the
very most, My Lord.

THE COURT: I think
perhaps we can try to finish with Dr. Usher if
at all possible.

MR. ESTRIN: I may have
a couple of minutes of re-examination.

THE COURT: I appreciate
that. It is a shame to call him back if he's
only being called back for fifteen minutes in
the morning.

MR. ESTRIN: I think we
would all appreciate that.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q. Dr. Usher, please
look at Exhibit P-8.

A. These are these
figures again?

Q. Yes. Tell me, after
the years column, there are two other columns.

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There is group GHL; what does that mean?

A. General hunting licence.

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Q. And they are subdivided into issued and returned; what is the difference between them?

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A. Because everybody is supposedly issued with a general hunting licence at the beginning of the season, July or whatever.

Q. Yes.

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A. What return means

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is the number of people who came in the following season when they got their new licences and actually made the Affidavit Declaration I referred to earlier. Not everybody does that. Some people lose them, some people don't make it. So, there is a difference in the two figures; but we don't have figures for all of those things.

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Q. But, in any event,

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the figures under the issued subcolumn indicate the number of general hunting licences issued at Baker Lake in the various years?

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A. Right.

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Q. And that starts in 57 to 58. There are no similar figures for the earlier years down to 1940-41. However,

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between 1941 and 42 and 51 and 52 there are these returned?

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A. That's right. We don't know the number that were issued in those years.

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Q. But on the basis of comparison, I suppose with the figures pertaining to 68 through 72, 73, the two subsequent figures are a reasonable proximity; are they not? I mean, the comparison, return to issue?

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A. That's fair enough, yes.

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Q. You will see, sir, that between 1941-42 and 74-75 there has been an increase of licences issued roughly between 1959 in 1941-42 to 1955 and 1974-75; correct?

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A. Yes.
Q. In fact, you can see a doubling of the figures -- issued figures between 1957 and 58 on the one hand, and 1974 and 75 on the other?

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A. Right.
Q. More than double, twice, one hundred and fifty-five?

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A. Yes.
Q. So, in any event,

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you can see that within a time span of fifteen years there has been a doubling or more than doubling of the number of hunting licences issued; correct?

A. Yes.

Q. Did you attempt in any way to base this study on that fact?

A. I don't -- what do you mean? How do I interpret that or what significance do I attach to it?

Q. Yes.

A. I'm not sure what significance to attach to it.

Q. Did you conduct a study taking this document into account? Did you try to correlate --

A. Here at Baker Lake?

Q. Yes.

A. No, I did not make such a study.

Q. Now, you will see from the third column GHL, general hunting licence, kill statistics?

A. Yes.

Q. Now, I believe you said that these figures are not too reliable in view of the fact that there are some

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under reporting of kills, if I understand you
correctly?

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A. I think that's correct.

Q. In fact, is it not
true that this -- these figures represent a
very serious under reporting of kills?

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A. Well, I hesitate
to make that conclusion based on the information
that I have from Baker Lake.

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Q. The degree of
this estimation is also in general, irregular
and unpredictable; would you agree with that?

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A. I'm sorry, which
is irregular and unpredictable?

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Q. The degree of
under estimation is serious -- I'm sorry,
is in general irregular and unpredictable?

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A. As a general
statement for use of general hunting licence
returns -- in fact, I believe I am quoted
to that effect in the Baker Lake Report --
when I look at these data specifically --
well, I wouldn't make such a categorical
statement unless your --

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Q. All right, sir.

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I refer you to your publication, Historical
Statistics, Approximating Fur, Fish, Game
Harvests, etc. which is number A20 in your list

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of publications in your curriculum vitae?

A. Yes.

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Q. Starting at page

20, and I am quoting there, you say that there are some very substantial sources of error in the general hunting licence returns, and they can be used only with extreme caution. One may

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assume that there are errors and omissions in transcription, as in the case with the fur export tax return. Their significance is

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similar, minimal however. Far greater significance is the fact that not all licences

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were returned. There is no penalty for failing to return any expired licences when applying for a new one, and hence, their return is usually incomplete. In some instances, the

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great majority of licences seem to have been returned, but the more usual rate of return was rarely greater than fifty percent. In

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some instances, there are no returns for settlement or district. A further major source of error is that the Declarations

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were made from memory at the time the licences -- licence was turned in. Many people did not keep track of the number of animals obtained

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over a year, although there is some evidence that the tendency to do so is greater with regard to fur, game, etc., and even though

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those who may not always be able to remember the totals accurate. During the late 1950s and sixties some attempt was made by the Game Management Division to hand out record keeping booklets with the general hunting licence, but in those settlements, few hunters maintained records from these books, and even fewer returned at the end of the year. An additional problem is with some species, particularly caribou and geese, licence holders may have deliberately underestimated their take for fear of restrictive action or regulation on the part of the government. In final, the significant source of error was introduced in the process of transcribing the data from the original ledger sheet to computer. C. Smith et al, 1973, volume 2.

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Now, for these reasons you said, the general hunting licence returns are considered to be serious underestimates of total harvests. The degree of underestimation is in general irregular and unpredictable. You made the statement, did you not, in this publication?

A. Yes.

Q. And they referred to in the Northwest Territories as a whole?

A. They refer to the

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data base of the territories as a whole.

Q. Would you, therefore, agree with me, sir, that columns and figures, such as those represented on Exhibit P-8 under GHL kill statistics are, therefore, totally unreliable?

A. No. No, I would not.

Q. In making any prognostication about the trend of kills?

A. Oh no, absolutely not.

Q. You would not?

A. No, I would not. I think I said in my evidence in chief earlier -- I made all these points that you have just read here, basically, but I tried to make them more specific for Baker Lake. For example, you will see where I say that the more usual rate of return was rarely greater than fifty percent. These would suggest the returns for Baker Lake are in the order of eighty percent. So, we would immediately have to say the returns for Baker Lake may be more accurate.

The second source, is, you know, this business of the Declaration thing made from memory. I mentioned that earlier. I think, again, that as I suggested earlier, that

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the recollection of caribou is probably more accurate than the recollection of some of other species in terms of actual -- the ability to remember these things. The deliberate non-reporting factor is one which I have no direct means of estimating for Baker Lake and I would guess is the most serious source of underestimate in these figures. Okay?

Q. Yes.

A. Now, what I do think -- and it seems to me that I have said this, and if not in this report, then in other reports dealing with a similar subject -- is that I don't think we can rely on the take for any one year and say that was the take. What I think we can do is look at these figures and say there is over the long-term a certain consistency in the trend, and therefore, even if the absolute numbers are incorrect -- if there is a very discernible trend, I think we ought to pay at least some attention to that trend -- I don't want to read too much into it -- but these are the best figures we have. I am not suggesting -- in all of the stuff I have ever written, I have never suggested that these were the things you should hold up and say, that is the caribou kill in Baker Lake. All I am saying is that these are the best records that

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there are anywhere. You can make of them what you want.

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Q. Am I to understand you correctly, sir, that even if you say the degree of underestimation is in general irregular and unpredictable that, nevertheless, these figures in columns three I refer to, can be used for any -- to establish any trend?

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A. Well, that is a general statement which has to do, first of all, with the whole range of species and the whole range of communities in the NWT. If you look at one set of data for one community, you may or may not be able to find greater regularity than that.

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Q. I am referring, of course, to caribou, sir, in particular.

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A. I know.

Q. You appreciate that.

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And I appreciate that these kill statistics refer to all kinds of game?

A. Which kills?

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Q. Exhibit P-8?

A. That's caribou.

Q. Only caribou?

A. Straight caribou.

It says caribou harvests at the top.

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Q. Well, in your

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publication -- the excerpts of which I have just read to you a minute ago, you refer to caribou; don't you?

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A. Where? I certainly refer to caribou at various points in the report, but perhaps you can be specific.

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Q. The passage that I quoted to you about the substantial errors of hunting licence returns, etc., and where you talk about these errors, you were talking about caribou; were you not?

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A. Among other things.

Q. Among other things?

A. Yes.

Q. But caribou certainly?

A. Well, I think you

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have missed the point that I've just tried to make. This is a very general statement about all communities and all species.

Q. Yes, including caribou?

A. No. You misunderstand

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me. I am suggesting that when you disaggregate this whole body of data and look specifically at any one community and any one species you may or may not find greater regularity and predictability than is suggested on this general data as a whole. Do you see the difference?

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Q. Well, I am trying to

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get from you a statement, in spite of your statement that the degree of underestimation is in general irregular and unpredictable that you would, nevertheless, use the kill statistics, column three in Exhibit P-8, as reliable enough to prognosticate a trend of?

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A. Not prognosticate.
I have no prognosticated anything. If I take prognosticate to mean to predict about the future, I am interpreting -- making a hypothesis which might explain the observable differences in these data. Quite frankly, I see no contradiction between what I wrote here and what I am saying about these figures. I don't see any contradiction at all.

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Q. Well, what reliance do you place, if any, on column three? What does it tell you? Was there a decline in the number of caribou killed or not?

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A. Well, you see, that is the most basic statement that you can make on these data.

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Q. So you are saying there was --

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MR. ESTRIN: Let the witness answer the question, please.

THE COURT: The accuracy requires that that be called for. Column three

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P. Usher, cr-ex
(Chambers)

is hunter.

THE WITNESS: Yes.

THE COURT: The third
column in which any numbers appear.

THE WITNESS: Yes. I
think the only inference I would care to make
from these data are that if we look at a general
average for the 1940s and a general average for
the 1960s and early seventies --

BY MR. CHAMBERS:

Q. Of reported kills?

A. Of reported kills.

I think we are on safe ground to say that
people are taking less caribou now in the
region of Baker Lake than they took in the
1940s. I am not saying anything more nor less
than that. I think you can say that based
on these data. I would not care to say a
heck of a lot more.

Q. Now, you already said
that you conducted no particular study with
respect to the community of Baker Lake. Is that
correct?

A. That's correct.

Q. Do I take it that
you did not study -- not only did you not
study caribou or population decline or increase
or whatever, but do I take it you also did not

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examine or investigate the population growth
in the area and how it may have affected the
caribou hunted in the area? You made no such
studies?

A. You mean did I
personally conduct a census at Baker Lake?

Q. Yes.

A. The answer is no.
In reviewing the literature, I have observed
that there are statements in the literature
about population change in Baker Lake. I am
familiar with those changes in a general sort of
a way.

Q. So all you can tell
us is what other publications say?

A. That's correct.

Q. You yourself did
not conduct a study?

A. No.

MR. CHAMBERS: Thank you,
sir.

THE COURT: Mr. Estrin?

MR. ESTRIN: Thank you,
My Lord.

RE-EXAMINATION

BY MR. ESTRIN:

Q. You were asked by Mr.
Graham, Dr. Usher, about your experience in the

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north and, in particular, Baker Lake. When was
the last time you were in the Northwest
Territories?

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A. About 18th of May.

Q. Where were you?

A. Pond Inlet, North

Baffin.

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Q. Mr. Graham put to

you an assumption that perhaps mining activity
could be compatible with the hunting activity,
and accordingly asked you to deal with the
proposition that accordingly employment

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opportunity provided by mining would be
helpful to the Inuit people in terms of their
hunting economy. Can you discuss this in
terms of -- do you have anything further to

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say about this in terms of the Inuit concept
of multiple use of land, or is there such a
concept in Inuit thinking?

A. I would be very

surprised if there were such a concept in
Inuit thinking. I have not seen any evidence
of it in my conversations with people from
all over the Arctic in a sense that, you know,
government and industry commonly take
multiple use to mean --

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Q. Well, Mr. Graham's

concept asked you to assume a multiple use

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concept where there would be mining activity
co-existing with the Inuit hunting and trapping.

Are you able to comment on that?

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A. Well, I think there

are two types of co-existence here: one is
the question of whether, in an environmental

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sense, the land consisting both hunting and
mining -- that's one question; the other is

in a social sense, whether it is realistic
to expect that both can be done at the same

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time or whether one eventually subsumes the

other. I think they are two separate questions.

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Q. Can you help us with
regard to the latter issue and based on
experience?

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MR. HEINTZMAN: My Lord,

I object to the evidence. Mr. Estrin went

through this whole issue in chief and the

witness is incompetent to handle that kind

of a question as to whether there could be

both activities carried on at the same time.

Certainly that has not been demonstrated.

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He dealt with this whole issue in chief.

THE COURT: That's true,
but it doesn't make it improper re-examination.

If he feels there is anything in doubt --

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BY MR. ESTRIN:

Q. Do you have my question

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in mind?

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A. Yes, I do. It is an exceedingly difficult question to answer. Under certain conditions -- well, let's start with one assumption. It is agreed that Inuit people seek some kind of cash income in order to pursue their hunting activities, among other things. The question then arises where does one derive this income, and what is the best place to derive it, and what is the way in which it is most compatible to derive that income and maintain your private activity, which is hunting. I don't know that -- well, I think there are serious questions raised with certain types of industrial employment as to whether that is possible, and if it is possible, whether, in fact, it is the most desirable way to do it. I think there is certain criteria by which you can judge that. But, to me, in a certain way, I would say, it is kind of a case by case decision. You cannot just say, well, mining exploration is absolutely incompatible or is totally compatible. I think it's not as easy as that and I don't think I should make a general statement. So, I am not sure where that leaves us.

Q. I don't know

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whether you can tell us or not, but is there any previous experience in the north where this has been tried to be introduced and what the results were?

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A. Well, we have had a lot of experience of wage labour being incompatible with hunting. We have some experiences where it is, I suppose, but I don't know whether you want me to go through some of those experiences.

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Q. Not at this late hour. I don't know whether on the basis of those experiences, whether you can draw any conclusions or not?

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A. I think the one important thing to keep in mind is this: it is often assumed that the wages which are introduced into a community are somehow a net benefit to the community. They are most definitely not a net benefit. They may -- I'm sorry, I may have used the wrong term -- the question whether they are a net

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benefit is another thing. If one hundred thousand dollars of wages is ejected into a community every month, we have to balance that off against the degree to which people are no longer able to go out hunting and provide for their families properly. Now,

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in many, many cases in the western Arctic
where people used to talk about -- they took
a job for a while and found there was no
point in taking the job because their family
went in the hole at the store while they were
earning money because the head of the household
could not hunt properly. That is something
to be considered.

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Now, these industrial
activities are not one hundred percent at odds
with that but it is a serious consideration.

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Q. Mr. Heintzman asked
you about this twelve thousand two hundred
kill figure in relation to these other figures.
I would like to ask you, statistically is that
figure consistent or inconsistent with the
other figures?

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A. Well, it is certainly
inconsistent with the other figures, but
why, I don't know. That is another question.
I don't even know the source of it.

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Q. Mr. Heintzman tried
to get you to agree that forty-one hundred
would be an accurate figure for the kill in
Baker Lake in 1975, based on the IDS Study.
Looking at your kill figures, and keeping
in mind your testimony that previously there
were dogs in Baker Lake used by the people and

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now there are no dogs being used -- or at least being fed on caribou, can you comment on the drop in the two thousand or under

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two thousand as compared to the four thousand?

MR. HEINTZMAN: My Lord,

is Mr. Estrin asking the witness to answer the question in one way or not? Keep in mind the dogs and give us an answer, that's not a proper question, especially in reply.

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THE COURT: That is

very leading.

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MR. ESTRIN: I'm sorry.

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I did not mean it to be leading in that sense.

Q. Dr. Usher, you have

told us what the situation is back in the forties, in terms of the use, feeding of caribou to dogs. We now know that predominant transportation is skidoo, which we have to assume doesn't use caribou. Now, what can you say accordingly, is there any way you can evaluate the four thousand figure estimated by IDS in relation to these other kill statistics, keeping that transition in mind?

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A. Well, maybe I can

put it in some kind of perspective in this way. If we look at the recent years, let's

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say roughly as an average we are looking at two thousand animals a year, and let's say the weight is one hundred pounds, so we are looking at two hundred thousand pounds of caribou meat for a community maybe at that time of eight hundred. Two hundred and fifty pounds of caribou per capita, not counting the fish -- it might be higher, it might very well be higher. But, I can tell you, two hundred and fifty pounds is already high compared to the figures that we find for many other native communities all across -- and there are a number of harvest studies we can refer to, such as James Bay, Northern Quebec, you know, stuff we know from the Western Arctic, and various -- lots of stuff in the literature, where, you know, we find we are looking at anywhere from two hundred to five hundred pounds of meat per capita production still to this day in a lot of these communities. So, I would say given in that light, these kinds of figures are not unreasonable. Now, whether that tells you which to rely on, four thousand or two thousand, I cannot answer that.

MR. ESTRIN: Thank you.

Those are my questions.

THE COURT: Thank you,

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Dr. Usher. Thank you for your evidence and for being here a long afternoon. We will recess now until 9:30 in the morning. Unless there is some reason why Dr. Usher should not be excused --

MR. GOLDEN; There is no reason why he should not be excused, My Lord. With respect to timing, I have had some information about the travelling of our next witness, and he probably will not be our next witness, but it might be a little easier on us if we were allowed to commence at 10:00 o'clock tomorrow morning. The reason for that is that he arrives by plane at seven o'clock in the morning on an overnight flight.

THE COURT: Fine, we will recess until 10:00 tomorrow.

---COURT ADJOURNED TO
May 29th, 1979, at
10:00 a.m.

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HAMLET OF BAKER LAKE
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