

CULTURES IN CONFLICT

The Problem of Discourse

Robin Ridington

ON JANUARY 12, 1987, Mr. Justice George Addy of the Federal Court of Canada began hearing a breach of trust suit against the federal government. The suit had been initiated by Chiefs Joseph Apsassin and Gerry Attachie, representing the Blueberry River and Doig River bands of Cree and Dunne-za Indians, who live in the north Peace River area of British Columbia. The case is referred to as *Apsassin v. The Queen*. The Indians claimed that the Government of Canada had failed to honour its fiduciary responsibility, as required by the Indian Act, in negotiating the surrender of IR-172, land reserved to the bands under the terms of Treaty 8, signed in 1899.

Lawyers for the two bands asked the judge to review evidence relating to a meeting called by the Indian agent which took place on September 22, 1945. Following that meeting, documents authorizing the land surrender were submitted to a justice of the peace in Rose Prairie, British Columbia, for authentication. The government then transferred title from the Department of Indian Affairs to the Veterans' Land Administration and made land available to veterans through a "soldier's settlement" program. In the 1950s and 1960s, substantial quantities of oil were discovered beneath the former reserve lands.

The trial lasted forty days. As it opened, the plaintiffs' lawyers, Leslie Pinder and Arthur Pape, explained the issues upon which their clients sought judgment. Leslie Pinder summarized the central issue as follows:

The lawsuit was based on the fact that the Federal Crown, having a fiduciary obligation to understand these People, breached that obligation, and failed to obtain the consent to this transaction . . . failed to act as a proper fiduciary ought to have acted in fact, gave away the estate of these People (their inheritance), to itself, sold the land to itself in a conflict of interest, and robbed these People of an adequate future and a proper land base.

Arthur Pape pointed out that Mr. Justice Dixon of the Supreme Court of Canada had ruled in a related case to the effect that

The purpose of this Surrender requirement in the Indian Act is clearly to interpose the Crown between the Indians and prospective purchasers or leasees of their land so as to prevent the Indians from being exploited. . . . The fiduciary obligation is the law's blunt tool for the control of this discretion.

Pape identified the issue of communication between cultures as being central to a decision about whether the surrender was taken as a responsible exercise of the government's trust responsibility.

Did the fiduciary give prudent advice to the person owed the duty, and was the transaction, in fact, a prudent one in the best interest of the person to whom the duty was owed? . . . The Court must first understand who those People were and how they would have come to such a Surrender gathering, with what assumptions and knowledge, and then to look at what the Crown Agent did and ask whether that would have fulfilled the duty of explaining to these People what their rights and possibilities are, and explaining to them whether such a thing might be a prudent thing for them to do. . . . The Court has to find out in the Eighties who those People had been 40 years before, and that involves both the Elders giving evidence and experts like Hugh Brody giving evidence, trying to assist the Court to understand that.

Pinder and Pape explained in their opening statement that "the problem of discourse" was central to the case. They argued that, in order to judge whether the surrender was valid under the terms of the Indian Act, Mr. Justice Addy would have to understand the ways in which hunting peoples of the Canadian subarctic make decisions in matters of vital concern to them. He would have to understand Dunne-za/Cree discourse and how it relates to the discourse of his own legal tradition. The trial ended on March 27, 1987. On November 4, 1987, Mr. Justice Addy gave his decision. He dismissed the claim of the Indians. His decision is under appeal. In his judgment he wrote that

[The Dunne-za/Cree] had no organized system of government or real law makers. They also lacked to a great extent the ability to plan or manage, with any degree of success, activities or undertakings other than fishing, hunting and trapping. It seems that many of their decisions even regarding these activities, could better be described as spontaneous or instinctive rather than deliberately planned.

Regarding his assessment of the testimony elders gave at the trial, he wrote:

Due to the manner in which these witnesses testified and in the light of the evidence from witnesses from the defense and certain documentary evidence . . . I am forced to the conclusion that their testimony was founded (and, in most cases, perhaps unconsciously) on the fact that oil was discovered on the reserve some thirty years later, rather than on a true recollection and description of what actually took place at, and previous to, the surrender meeting in 1945. It is perhaps a case of the wish being father to the thought.

They were certainly not what might be termed disinterested witnesses since some 324 million dollars was being claimed on behalf of the Band which now numbers about 300 members. It is of some significance also that none of these witnesses stated

that they or anyone else had actually informed either Mr. Grew or Mr. Gallibois that they were not consenting nor did they state that they had publicly spoken out against the surrender in the presence of Mr. Grew or Mr. Gallibois.

The judge evaluated the testimony of anthropologist Hugh Brody about Dunne-za/Cree culture as follows:

[Brody] impressed me as an informed champion and an enthusiastic supporter of the native [*sic*] peoples' cause generally and of the Dunne-za Cree in particular but, by the same token, as a person who conspicuously lacked the objectivity required of an expert witness on the subject of whether informed consent was obtained in 1945 as well as on the actual importance to the plaintiff Band of IR-172 at that time.

In August 1988, I organized a conference within the International Summer Institute for Structural and Semiotic Studies (ISISSS) at the University of British Columbia entitled "Cultures in Conflict: The Problem of Discourse." One session within that conference brought together people who had been involved in the Dunne-za/Cree case. I was particularly anxious to review this problem of discourse, because I have known the Indians who were plaintiffs in this case over a period of thirty years and was puzzled by the conclusions Mr. Justice Addy drew from the evidence presented to him. I have written extensively about the Dunne-za in the form of scholarly papers and most recently in a narrative ethnography, *Trail to Heaven*. I attended nearly every day of the court proceedings and took extensive fieldnotes.

IT MAY SEEM ODD for issues heard before a federal court judge to appear in an issue of *Canadian Literature*, but perhaps the judge thought it odd to be asked to consider the problem of discourse in his courtroom. A central issue of the trial was both anthropological and literary in that it focused critical attention on conflicting modes of discourse. The Indians asked us to listen to them. They asked us to understand the way they arrive at decisions. They asked us to accept their decisions regarding IR-172, a piece of land they call "the Place Where Happiness Dwells."

Discourse is a problem, but it is also, and more fundamentally, a powerful and enabling form of human communication. Human communication is more than the simple transfer of objective information between impartial and interchangeable intelligences. Humans do not just copy and transmit information in the way that one computer communicates with another. Human communication also creates a point of view or a context within which information becomes imbued with meaning. Human communication is a cultural accomplishment and a means of defining cultural identity. As Nuu-Chah-Nulth elder Simon Lucas said in a speech at a benefit for Meares Island, from which I quoted at the beginning of the conference:

“It’s important that we remain different. That way, you and I will get to know the meaning of understanding. What it means to understand another man’s culture.”

Through our discourse with one another we negotiate a world in which we can understand our differences. Discourse establishes the syntax we use to create meaning and comprehension. It uses metaphors that layer one set of meanings on top of another for synergistic effect. Two speakers, or two cultures, are more than the sum of their parts. Discourse is only a problem when we talk past one another or, worse, use talk to suppress another person’s ability to express himself or herself freely. Discourse is as old as language. It is as fundamental to human experience as is culture. It is also as new and as fragile as each new breath of life. We create our culture in the act of speech and in the intersubjectivity of discourse. We negotiate and perform our cultural reality in communication with one another. We create shared but separate realities through the discourse of our conversations with one another.

The original Latin meaning of discourse is “a running to and fro.” We run to and fro with ideas and understandings in the ongoing discursive intersubjectivity that pervades normal everyday life. Discourse is essential to the typically human, dynamic interaction and feedback between culture and experience which first evolved within the cultures that hunting and gathering people negotiated with one another thousands of years ago. Discourse is the form that enables people to communicate freely while at the same time living responsibly within a nourishing and sustaining social order. Discourse connects people of different generations as well as those who are in face-to-face contact.

The oral traditions of people who are native to this land are a form of discourse that connects them to the land and to the generations that have gone before. Their discourse has given them a highly developed form of government that is different from our own. Their discourse honours individual intelligence rather than that of the state. Their discourse also demands a responsibility to past generations, to the land, and to generations as yet unborn. Their discourse honours and enables both individuality and social responsibility.

The discourse of Native people takes place within real time, but it is meaningful in relation to a time of mind, a mythic time. Performer and listener share both a common time frame and a complementary knowledge of that mythic world. They share a common responsibility to the names that are fabulous in their lands. Their relationship to the names and to one another is conversational. The “running to and fro” of their conversation takes place in the same time as their common experience, but it also takes place in the time of their ancestors. The names of these ancestors and their lands are parties to the conversation. The discourse of Native people is meaningful because they share a common and complementary point of view, a common time and place in the world, a common or complementary set of ideas

about how to interpret experience, and a common responsibility to the land and its government.

Discourse is essential to the typically human, dynamic interaction and feedback between culture and experience that first evolved within the cultures that hunting and gathering people negotiated with one another thousands of years ago. The oral traditions of these people allowed them to be remarkably flexible, adaptable, and ready to take advantage of variations in the resource potential of their environments. We know from contemporary ethnography (see Ridington 1988a for a review of this literature) that knowledge necessary for informed decision making is widely distributed among adult members of small-scale hunting and gathering communities. The egalitarianism found in these communities functions successfully because individuals are expected to be in possession of essential information about their natural and cultural environment. Discourse within such oral cultures is highly contexted and based on complex, mutually understood (but often unstated) knowledge.

Hunting and gathering people typically live in kin-based communities where most social relations take place between people who know one another well. Because people share knowledge of one another's lives, they code information about their world differently from those of us whose discourse is conditioned by written documents. They know their world as a totality. They know it through the authority of experience. They live within a community of shared knowledge about the resource potential of a shared environment. They communicate knowledge through oral tradition. They organize information through the metaphors of a mythic language. They reference experience to mutually understood information. They communicate with considerable subtlety and economy.

Hunting and gathering people code information in a way that is analogous to the distribution of visual information in a holographic image. If you take a small scrap of a hologram and look at it carefully, you can reconstruct the entire image it represents. In contrast, if you take a small scrap of an ordinary photograph, all you have is that portion of the visual field represented by the scrap. A hologram codes information differently from a photograph. Its image gets grainier and grainier as the sample is reduced, but it remains an image of the totality.

People like the Dunne-za/Cree live storied lives. You are a character in every other person's story. You know the stories of every person's life. You retain an image or model of the entire system of which you are a part. Each person is responsible for acting autonomously and with intelligence in relation to that knowledge of the whole. Each person knows how to place his or her experience within the model's meaningful pattern. Each person knows the stories that connect a single life to every other life. People experience the stories of their lives as small wholes, not as small *parts* of the whole. The stories of lives are not meaningless components of a

coded message analogous to phonemes; rather, they are metonyms, small examples of a meaningful totality.

Oral performance in a small-scale hunting and gathering culture plays creatively upon a mutually understood totality. Each performer's speech evokes and is meaningful in relation to everything that is known but, for the moment, unstated. Each story contains every other story. Each person's life is an example of the mythic stories that people know to exist in a time out of time. Experience within a closely contexted oral culture is meaningful in relation to a totality that is taken for granted. Storied speech is an example of that totality, not simply a part of it. Storied speech makes subtle and esoteric references to common history, common knowledge, common myth. Each person is, therefore, responsible for acting autonomously and with intelligence in relation to that knowledge of the whole. From within the familiarity of shared, culturally constructed metaphors and assumptions, the essentially creative and transactional quality of human communication may not be obvious. It is only when we attempt discourse with people who are unwilling to listen to our words, to understand our experiences, that we find ourselves talking at cross purposes. Attempted discourse between different cultures may create conflict, ambiguity, even oppression. The "cultures in conflict" conference looked at examples of discourse between cultures and peoples who have found themselves in conflict with one another. It also looked at the possibility for communication that Simon Lucas articulated, the discovery of "what it means to understand another man's culture."

The Conference

THE FOLLOWING IS AN ACCOUNT of the trial as discussed in the "Cultures in Conflict" conference. Participants in the session in order of their appearance were as follows:

- Robin Ridington, anthropologist and convenor of session;
- Gerry Attachie, plaintiff and chief of the Doig River band;
- Hugh Brody, anthropologist and expert witness at the trial;
- Arthur Pape, counsel for the Dunne-za/Cree;
- Leslie Pinder, counsel for the Dunne-za/Cree.

The following narrative combines excerpts from the 1988 conference, field-notes I took at the 1987 trial, and my own interpretations of the texts created in this discourse. Chief Gerry Attachie of the Doig River band described his understanding of issues raised by the case following my introduction to the session.

GERRY ATTACHIE: Yeah, OK, I guess. What happened was, we, back in 1945 we lost a good land there. Just about eight miles north of Fort St. John. We, seven

bands that signed a treaty back in 1899. Seven bands in Fort St. John area. And, we, we had eighteen section of land there, just north of Fort St. John, about seven miles. And we live there all our lives, and up until 1945, we lost it and then, the government promise our people that time they could get lot of money, and then, so they give up the good land and then, later on, they been promise that they could get lot of money every year and then for a couple of years they receive, I believe, ten dollars apiece each person.

Later on money stop coming in so they kind of wonder why they don't get anymore, and then, I remember, ever since I remember back about in the late fifty, people were, they could get together lot of times, just amongst themselves our people, and then they said that, "I wonder what happen," they say. "We don't get any more money," and then, but just amongst themselves they discuss this problem, and then, off and on we could mention that they been promise that they could get a lot of money every year a long time. I don't know how long. Finally, uh, I got involved with the band way back in 1974 and I try to find out what happen to IR-172 and then, one day I pick up a, I borrow a book from the library and it's called *Peacemaker*, which was written in Peace River country there in the Fort St. John area. And, I come across one, like, story about IR-172, Fort St. John. They call us Fort St. John Beaver band, about that time. They still call us today Fort St. John Beaver band. And, I read in that paper, in the book, it says that the land been sold 1945 and then later they discover that the mineral rights which up to that IR-172 were forgotten here.

Then, there's lot of oil over there, and gas. Then, I remember what people were complaining about like, before. And, one day, I sat down with some elders, and then they told me exactly what happen, and then, about that time, my grandmother was still alive, and then every time I take her to town and then she said, this was, "We lost a good land," she said. And then, then she tell me a story about how people get together there every year. They celebrate and then people all have a good time together there. And, but after 1945 when the land been sold and then people never get together again. Even relatives. They don't see each other again and then some of them died. Like, I just talk to some farmers around there, just recently. They said, one time there were about four or five hundred tipis, they say, and then they could hear drums about twenty miles away. People were having a pow-wow in there. Our people.

Anyway, I — after I found out what happen to IR-172 — I set a meeting with Indian Affairs superintendent that work in Fort St. John. His name was Johnny Watson, and then I told him that, we set a date and then we sat down and we talk about IR-172 and then he said, "There's something wrong in here," he said. "Something happen in here." And, so, he brings out all the documents. About three feet high papers. And, oh boy [he laughs] then was how it's all started, and we got a lawyer and then we hire a local lawyer there. His name is Gary Collison and then he start

doing some research and then, came to Vancouver, I believe up in here. And, he done some work on that about a week, I guess. And then, later on, we got another lawyer, which is Art and Leslie and Rick, Rick Salter, too. And we start this case about back in about 1977, and '78, and then we finally went to court 1987, January, January out here, and we bring our elders, too. We bring some people that were there that time when the Surrender took place, and we, we learn a lot in court and then we went through pretty, pretty rough, rough, hard time and took us forty days, I believe.

We were in court for forty days, and after, we had some elders there and then later on they were pretty they were disappointed because what happen was they believe that the judge and the justice lawyer didn't believe them, when they have their testimony. They, they think the elders were lying and then they, they felt bad about it. Like, our, our people you know, you ask them, if you ask them too many question and then they might you know, sometime they get upset. One question over and over again and then like John Davis. When we're, we're doing discovery and then, one of the elders, name of John Davis, that, we going to meet again I told him one morning and then he said, "How many meetings we have to go through," he said, and then, he's getting tired. When, like our people, you know, if they say something, you know, they don't want to repeat things over and over again, 'cause. Anyway, we done a lot of work in here and then hopefully we'll get something out of this in the end. And, well.

Yeah, I just want to say another thing. We, we had people that were at the 1945 Surrender. We had people that, still around. They were, they're still alive, and hopefully that they could settle this while they were, while they're still alive and we also, last few years, when we start working on this case, a lot of people were want to get involve. The people that were there. That time. And just, just recently there's some farmers, local people in Fort St. John that, when they heard about this case that we lost the first round and then they, they, they really feel, they were upset. They said that, you know, they told me that we were beat and then, they say that hopefully you people get something out of this cause, you know, they, they felt really bad, and we, we had some people that were involve that time. Some people from outside, like teachers and some priest, Catholic priest. They, they had good testimony, and we tape some of them and then we, what I believe is we should have these people before the court case, and then would have been different too.

ONE OF THE PEOPLE Gerry mentioned was an elder named John Davis. The following are excerpts from his testimony as led by lawyer Arthur Pape.

A.P.: John Davis, I want you to tell the judge stories about when you were a little

boy and no whitemen were in your country. Tell the judge where you and your family lived when you were a little boy, before the whitemen came.

J.D.: Long time ago, when there was no whitepeople, there were two stores. One of the storekeeper's name was Davis. What I can remember I will say. What I do not remember, I will not say. I cannot read and write. I only can remember. Before the whitemen came, we were bush people. When they came, where we live, they said, "This my land," and we have no more. We can't read or write. We only can remember it. Since not too long ago that my people started to go to school.

A.P.: Tell the judge when you saw the whitepeople come in big boats up the river.

JUDGE: When he's going into a long answer, ask him to stop so she [the translator] can repeat.

A.P.: John Davis. Try and say your stories a little bit at a time so Lana [Lana Wolf, the translator] can tell us what you are saying. Please tell us again about the boats because we didn't understand it all.

J.D.: Big boat come. People started having things that they didn't have.

A.P.: What did the boat look like?

J.D.: White boat. In the back of it there was a wheel, like a wagon wheel.

A.P.: Did the boat have a pipe on it like a stovepipe?

J.D.: Yes, two. One is used for horn.

A.P.: What did it sound like when it made its noise?

J.D.: It made a sound like a cow.

A.P.: When whitepeople came, what did they do on the land?

J.D.: First time two men came and they started building cabins.

JUDGE: We should know how old you are.

A.P.: The judge wants to know how old you are. Can you tell him?

J.D.: I don't know my age.

JUDGE: For the record, let's say he looks old to me. He's not a teen-ager.

A.P.: When those whitepeople came, what was the place where your family lived in the summer?

J.D.: Place we call, Indian Lands.

[*break*]

A.P.: John Davis. When Dr. Brown [former Indian agent] talked to [Chief] Succona, was there an interpreter to tell Succona what Dr. Brown was saying?

J.D.: A guy named Johnny Beatton.

A.P.: When Johnny Beatton talked for Dr. Brown, could the Indians understand what Dr. Brown was saying?

J.D.: Johnny Beatton could speak a little bit of Beaver.

A.P.: Did you sometimes hear Johnny Beatton speak for Dr. Brown?

J.D.: No, I can't understand English.

A.P.: Did you understand Johnny Beatton when he spoke Beaver?

J.D.: Yes.

A.P.: Can you tell some things that Johnny Beatton said in your language for Dr. Brown?

J.D.: About the land. People don't want to sell, but it was still sold.

A.P.: What did Johnny Beatton tell Succona for Dr. Brown when he talked to him about the land?

J.D.: Indian Boss wants to sell the land.

A.P.: What did Johnny Beatton say in your language would happen after you sold the land?

J.D.: Before he translate that for Dr. Brown, that person wasn't alive.

A.P.: I don't understand, John Davis. Could you say that again?

J.D.: Johnny Beatton was speaking for people. He was helping the Indian people for long time. The Small Indian Boss wasn't helping.

A.P.: Do you know the name of the Small Indian Boss?

J.D.: Gallibois. Yes, Gallibois.

JUDGE: Is Gallibois the Small Indian Boss?

J.D.: He was the Indian Boss but he never help Indians.

[break]

A.P.: John Davis. What did Johnny Beatton say to Succona about selling the land?

J.D.: He told him not to sell it. The Indians are poor.

JUDGE: Did he hear Johnny Beatton say anything to Succona?

A.P.: The story you have just told about Johnny Beatton. Did you hear him say that to Chief Succona?

J.D.: I was there. I hear.

A.P.: Did Johnny Beatton say those things in your language when he talked to Succona?

J.D.: He speak a bit Beaver.

A.P.: Where was the place you were when you heard Johnny Beatton talk about that to Succona?

J.D.: Moose Creek, Moose River.

A.P.: What time of year? What season?

J.D.: Summertime.

A.P.: What did Succona want to do when he talked to Johnny Beaton about the land?

J.D.: He told him not to move, that he should stay where he is and build cabins.

JUDGE: Not sure. What did Succona say?

J.D.: Johnny Beaton told him but he didn't want to.

JUDGE: What did Succona say?

J.D.: He just want to go out hunting and he sold the land.

A.P.: Why did he want to sell the land?

J.D.: "Gonna be lots of money," the Indian Boss told him. They just took it. They never saw nothing.

FOLLOWING GERRY'S DESCRIPTION of his experience as plaintiff in the case, anthropologist Hugh Brody told the story of being an "expert witness."

HUGH BRODY: Well, I'll begin. I think I'll just tell the story of the trial as I experienced it, and a very awful experience it was, too. First of all, I think it's really important to say that trials, that court procedures, public hearings, are very seductive for persons like me. I've spent fifteen, twenty years having the extraordinary privilege of living with, working with, Native peoples in northern Canada, and all the time, there is this growing sense of doubt about what on earth it is that really I'm up to, and whether really I should be doing it, and to what extent it's exploitative. The doubt, I'm sure as in all anthropologists, grew and grew in me, grows and grows in me, so when a court case comes along, it's seductive because it seems to allay the doubt. Here at last is something the people themselves have initiated. It was Gerry and his fellow chiefs and elders who wanted this action. Their lawyers and they themselves say there's something I can do to help with this action. So here at last is a place to put all this anthropology. A place where it might actually do something, where it might right a wrong a wrong which in the course of my work I've heard a lot about. A chance to explain, in a place where it needs to be explained, some of what I've been lucky enough to learn about.

Leslie and Art came to me and said they wanted an opinion for the court case which touched on many things, including the nature of leadership and decision making in Dunne-za/Cree society, an opinion which touched also on the nature of the use to which IR-172 had been put over the years and the place it had in the Dunne-za/Cree economy in the 1940s. Here were subjects which the people themselves had wanted to get across to the outside world, and I think parenthetically it's terribly important to know that many Dunne-za and other northern Native

peoples that I've met feel that if only the white world knew more, it would be a juster world. They equate knowledge with justice, and I've often been pressed by people I've worked with to make the information available as publicly as I can, to write accessible books, to make films, so as others will know, and if they know, they'll treat aboriginal people better.

So, the motivation for writing the opinion was very strong for me, and I was very optimistic about doing it. I wrote an opinion in which I try to describe the complicated nature of decision making in Dunne-za/Cree society, the complexity of the authority and lack of authority system; the richness and subtlety of an economy that required that reserve land in the 1940s as a summer gathering place; the spiritual dimensions to that summer gathering place; why those drums were heard twenty miles away (that Gerry was talking about); what those drums really meant not just as music, but as metaphor, as stories, as knowledge, as economic reality, all intertwining in that very complex way that they do in northern hunting systems. And I wrote an opinion which also explained something about the use of the lands in the economy as a whole. It's a short opinion, about forty pages long.

Prior to giving evidence, I went to the Court to sit in on some of the elders giving evidence. Elders like John Davis, whom Gerry mentioned, but others, and some of the young people giving evidence. And I was confronted by the extreme unpleasantness (for me, and I speak for myself), the extreme unpleasantness of the setup.

The judge represents that world to whom they have to tell it. Elders who are interrupted, not only by the judge's manner, but also by the lawyers for the Crown. Elders whom I'm sure have never been interrupted, as Robin was saying [in my introduction to the conference], when telling these stories being interrupted every second sentence. The interpreter struggling to make sense of what's being said. An atmosphere in which nothing can stand as a fact, and yet the people speaking in the court believing in facts more, perhaps, than any other peoples in the world, peoples for whom truth is always the objective, constantly being accused of untruthfulness either directly or in implication.

You have a sense of the impossibility of it that's hard to communicate. And sometimes a sense of the hopelessness of it. And you can't — I found it almost impossible to stop wondering, "What really should be done in this court?" When I got on the stand, I was led by Art, very skillfully, through what it was I had to say about leadership and decision making, and as always, when talking about these things, I got excited about it. Enthusiastic. And I remember in particular two things that I think serve as illustrations of the whole problem of the procedure, at least from my point of view, and perhaps more generally than that.

First, I tried to convey to the judge what it was like to be at the receiving end of Dunne-za decision making. So, you come into a Dunne-za community, or you're living in a Dunne-za community, and you're trying to plan your life. And the

people whom you're dependent upon don't make decisions in a way with which people like us are familiar. So I tried to take him, as it were, through a hunting trip. I tried to take him out hunting by telling him a typical hunting trip story, and as I remember it, I told it very fully, and at considerable length, and with a great deal of excitement.

The judge's reaction to all the stuff I, and of course others, had told him about decision making, was to say, in effect, "Well, it seems to me that there isn't a society there. I mean, if they don't make decisions coherently, if there isn't someone responsible for making a decision, if there isn't a leader who says, 'Well we're going to do X' and others who follow, then there isn't a society. Sounds like chaos, and I find it very hard to believe." And in fact, at one point, as I understood it (though Art and Leslie can correct me if I'm wrong), what I said about decision making seemed to dispose him towards dismissing the whole action. I mean, if there isn't any society that's coherent and makes decisions the way ours does, then how can they be bringing an action to the courts?

So, far from managing to take the judge on a hunting trip, far from succeeding in bringing him into some sort of connection with Dunne-za culture and thinking, I managed to alienate him, I think very deeply. And when I read his judgment, that suspicion was somewhat confirmed. I mean, he dismissed my evidence, sort of out of hand.

The second example that might attempt to explain the use to which IR-172 (the land that was stolen, or taken) had been put in the 1940s, it was, as I said earlier, as a summer gathering place. In these documents to which Gerry referred, it's many times noted that it was only used for the odd few weeks of the year, but, of course, hunter-gatherer culture requires places you use for an odd few weeks of the year as part of an annual system which exists as a whole, and if you pluck out one segment of the annual system, you can threaten the whole system. If you pluck out the summer gathering place, which is the one spot where all the various bands, and indeed other groups, meet, in order to exchange crucial information and goods, then you are really mounting a fairly direct assault against the system as a whole.

I tried to explain all this (led by Art) again quite fully and talked about the difference between summer uses and winter uses, which, in relatively modern times, reduces to a difference between summer hunting and winter trapping. This was done very carefully and it's very concrete evidence which, you would think, no one would have too much difficulty with. Under cross-examination, the lawyer, one of the lawyers for the Crown, produced a map which had been made as part of a research project which I had helped coordinate in the late seventies, a map which showed all the trapping areas of all the Dunne-za/Cree People and he pointed out with some satisfaction that on this map IR-172, the lands in question, didn't seem to figure, and therefore appeared to show to the Court that IR-172 wasn't an important place, and somehow, and this is where we again come to the problem

of discourse, I didn't seem able to be able to show him that his map was of trapping, which is, of course, the autumn-winter-and-early-spring part of the seasonal round and not the summer part of the round, so that IR-172's absence from a trapping map was exactly what we should have expected!

There's something about the legal procedure that is terribly at odds with Dunne-za/Cree and other hunter-gatherer and probably all other Indian cultures, and it's the nature — let me say that again: it's the extent to which the court procedure is a game. We met earlier this morning, Gerry and Leslie and Art and I, and someone was saying (I think that's Gerry) that John Davis, one of the elders who gave evidence, didn't seem to be taken seriously, or didn't seem to be trusted by the lawyer for the Crown. And it struck me suddenly that lawyers for the Crown, when cross-examining, or all lawyers when cross-examining, neither trust nor mistrust. It hasn't anything to do with believing or not believing. It's simply a game that's being played with facts — with arguments. The job of a cross-examining lawyer is to discomfort, to unsettle, to confuse.

Elders from the Dunne-za/Cree bring their case to the Court because they believe there's some direct relationship between knowledge and justice, but that cross-examining procedure, and perhaps the whole court procedure, actually breaks any such simple equation. As you experience it on the stand, you don't feel a relationship between knowledge and justice. What you feel is someone playing games with you. And elders (and I can just about cope with that), but elders in the Dunne-za/Cree *can't* cope with it. They sense that they're being played with in some way, and they might come to the conclusion that they're being mistrusted, disliked, doubted by the cross-examining lawyer. And that will, in fact, cause them to fall silent and that happened several times in the case that if somebody doesn't believe what you're saying, you shut up. That's the dignified thing to do. But of course that's failing to play the game completely. That's the thought I think I want to leave everyone with. [applause from the audience]

GERRY HAD BEEN LISTENING attentively as Hugh Brody told his story. He asked to conclude with a few further thoughts:

GERRY ATTACHIE: Yeah. I just want to say one thing before we leave here. In the early, in the late 1800, in Peace River country (they call that Peace River cause Beaver Indians made peace with Cree Indians, so they call it Peace River), anyway, in the early 1800, late 1800, the Hudson's Bay Company had a trading post at Peace River. I guess by that time they were, they were starving, and our people were supporting them. Like, they hunt for them. Make drymeat for them. Grease. And I had a, this guy named Johnny? Johnny Beatton? [question put to Robin Ridington who responds, "Frank Beatton"]

Frank Beaton, yeah, Frank Beaton. I had his diary here; I had it at Robin's place here. It's his diary from 1860 to 1923. He, he's running the Hudson's Bay, Hudson's Bay Company. He's working for Hudson's Bay Company. In the late 1800, our people were hunting for them. They that's how they survive. But nothing been, you don't read it in the paper. I found a diary after that court court case, and then, when I mention, when I was reading the diary to our elders, I took them back, way back and then, they, they remember, when our people were hunting for early traders.

And, I just want to say one thing. We, we had treaty rights. We had rights, but we have to fight for it all the time. Every time you turn around, you got to fight. And then I was in the AFN [Assembly of First Nations] meeting in Edmonton, early this spring and then I talk to some of the elders and they told me that, "We always going to be small," they told me, "'cause Government they have power in a piece of paper." That's how we lost first round in this case. They believe the papers more than the elders' testimony. It's, it's pretty sad, you know. Thank you.

Conclusion

GERRY MADE FOUR IMPORTANT and related points in his concluding remarks:

1. The Dunne-za and Cree established peaceful relations with one another long ago. They did so as sovereign nations.
2. When the whitemen came, Indians provided for them from the store of their accumulated knowledge. "They were starving, and our people were supporting them. . . . they hunt for them."
3. Although he did not say so explicitly, the indirect and intended implication of Gerry's discourse was to remind us all that Indians who feed one another and live in peace feel responsible to one another. When you feed someone you expect that person to feed you, if and when he or she is able.
4. Gerry's experience in court confirmed what he and the elders had learned when they lost their land in the first place. Whitemen believe paper over the testimony of people who speak from experience. "'Government they have power in a piece of paper.' That's how we lost first round in this case. They believe the papers more than the elders' testimony. It's, it's pretty sad, you know. Thank you." It's pretty sad, you know. John Davis said:

What I can remember, I will say.
 What I do not remember, I will not say.
 I cannot read and write.
 I can only remember.
 Before the whitemen came, we were bush people.
 When they came, where we live they said,
 "this my land."
 And we have no more.
 We can't read and write.
 We only can remember it.
 Since not too long ago
 that my people started to go to school.

YOU ARE READING THE WORDS of John Davis in a journal called *Canadian Literature*. You can read and write. It is quite some time ago that our people started to go to school. You can read and write, but you can also remember. You can remember that John Davis is a man of knowledge. He is a man who gained knowledge through his experience of life in the bush. You can remember that his people helped the early fur traders. He and the Dunne-za who went before him took care of the whitepeople when they were new to the country. They fed the strangers from their knowledge of the land. They fed them as people with whom discourse was possible. They expect a return of that consideration. Reading his words brings you into his world. Reading his words begins a return of the discourse. John Davis understands his life in relation to the world as a whole. Gerry Attachie understands what his grandmother told him about the Place Where Happiness Dwells. He does not understand why the government should hold power over him from a piece of paper. He does not accept something that is unintelligible to him or his people.

Canadian literature begins in the discourse that Native people have with one another and with the sentient persons of their environment. It begins in the highly contexted language of their myth. It begins in the discourse of oral tradition. Literary critics need not be as literal-minded as judges. We can understand that people like John Davis make decisions on the basis of knowledge, not instinct. We understand that paper can carry lies as well as truth. We need not be constrained by our culture's privileging of paper so as to "believe the papers more than the elders' testimony." The problem of discourse is more general than any problematic of literary criticism. It is a human problem. It is also a human glory.

You have read what I have written from my knowledge of Dunne-za/Cree life. You have attended to the words of Gerry Attachie, John Davis, and Hugh Brody. I will leave you with a question. How can we know what happened on September 22, 1945? How can we know what it meant to the people who were there?

Did the Dunne-za/Cree knowingly surrender the Place Where Happiness Dwells?
Did the trial resolve the problem of discourse or merely reproduce it? You be the
judge.

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