1-1-1998

Constructing Tribal Sovereignty for the 21st Century: The Story of Lawmaking in *Chilkat Indian Village, IRA v. Johnson*

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Attorney Tony Strong had only minutes to figure out a way to stop Michael Johnson’s hired van from entering his native village of Klukwan, Alaska and removing the most revered artifacts the village owned.¹ “Have Uncle Albert go cut some trees down [and] fell them across the road,” he told his sister Lonnie on the phone.² His sister, who had called Tony in Washington, D.C. to get his lawyerly advice, ran to her Uncle Albert’s house and said, “Tony said you should fell some trees across the road.”³ Uncle Albert grabbed his chain saw, felled the trees, and laid them across the road so that the van arriving to appropriate the totems could not enter the village.⁴ For almost two months after the attempted incident, villagers would not allow anybody to enter the village unless accompanied by someone who was trusted not to remove the artifacts.⁵

The phone call was attorney Tony Strong’s first alert to art dealer Michael Johnson’s attempts to remove the Chilkat Indian Village’s Whale House artifacts.⁶ It was 1976 and his sister, admittedly distressed, said, “they [Stella Johnson and another man] are coming into town to steal the Whale House artifacts. . . . They’re on their way in the van now. And everybody’s upset. They don’t want it to go. And they don’t know what to do.”⁷ Tony shuffled a series of thoughts through his head: (1) there was no time to go to a judge and ask for an injunction⁸ and

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² Id.
³ Id.
⁴ See id.; see also Chilkat Indian Village, IRA v. Johnson, 20 I.L.R. 6127, 6131 (1993) [hereinafter Chilkat III].
⁵ See Strong, supra note 1, at 1; see also Chilkat III, 20 I.L.R. at 6181.
⁶ See Strong, supra note 1, at 1.
⁷ Id.
⁸ See id.
(2) calling law enforcement would have created a jurisdictional question over who had authority within the Klukwan village—the State Troopers or the City of Haines police. The most effective solution would be to have his Uncle Albert block the village entrance. After all, Tony reasoned, if the village of Klukwan was sovereign, it should have an absolute right to determine membership because of its inherent tribal sovereignty.

For many villagers, blocking the village entrance was the preface to a seventeen-year saga and nine-year court battle. Chilkat Indian Village, IRA v. Johnson (Chilkat III) would not only settle questions of ownership but would do so by acknowledging that identity plays a key role in the determination of tribal ownership issues and sovereignty. Chilkat III's most evident success was the establishment that Alaskan tribes have civil jurisdiction over their land and can enforce their civil laws against non-natives who are not tribal members.

The legal story of Chilkat III demonstrates that tribal identity is determined through the semiotic process of storytelling and through exchanges of dialogue. Semiotic theory analyzes the exchange of signs (words or legal arguments) in communication that establishes meaning. The Chilkat people's definition of identity is reinforced

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9 See Chilkat III, 20 I.L.R. at 6127; Strong, supra note 1, at 1. Note the interchangeable use of the words Chilkat and Klukwan. When the village of Klukwan created its Indian Reorganization Act (IRA) government in the 1950s, it was given the title of "Chilkat Indian Village." In this Note, the word "Chilkat" will be used when referring to the case name and to the IRA village name. See Chilkat III, 20 I.L.R. at 6172; Strong, supra note 1, at 1. The Village of Klukwan, as most villagers refer to it, is in the Chilkat River Valley. See Strong, supra note 1, at 2. "Chilkat" means "river that provides life," and appropriately, the Chilkat River is the carrier of every anadromous species of salmon that exists in the Northwest. See id. Chilkat Indian Village is the last remaining village of the Chilkat Indians, once the most powerful of 17 Tlingit tribes. See Marilee Enge, Battle Over a Birthright, ANCHORAGE DAILY NEWS, Apr. 4, 1993, at A1 (hereinafter Enge, Battle Over a Birthright). A large population of Tlingit Indians inhabited the southeast tip of the Alaskan panhandle and some Tlingits lived as far north as the Yukutat on the Gulf of Alaska. See id.

10 See Chilkat III, 20 I.L.R. at 6131; Strong, supra note 1, at 1.

11 See Chilkat III, 20 I.L.R. at 6131; Strong, supra note 1, at 1. The tree felling incident was in its own right an exercise of tribal sovereignty. By locking the appropriators out of the village, villagers exerted their inherent right to keep non-members out. Testimony indicated that this was Michael Johnson's second unsuccessful attempt in 1976 to remove the totems. See Chilkat III, 20 I.L.R. at 6131. The first attempt was thwarted when villagers placed skiffs in front of the door to the Whale House to block entry. See id.

12 See Chilkat III, 20 I.L.R. at 6127–42.

13 See id.

14 See id. at 6130–37. See generally Richard Delgado, Storytelling for Oppositionists and Others: A Plea for Narrative, 87 MICH. L. REV. 2411, 2413 (1988). Delgado believes that storytelling reinforces community building: "stories build consensus, a common culture of shared understandings, and deeper, more vital ethics." Id. at 2414.

15 See ROBERTA KEVELSON, THE LAW AS A SYSTEM OF SIGNS 5, 33 (1988); Dragan Milovanovic,
both through oral testimony given in court and through text, as in the actual case opinion.\textsuperscript{16}

In \textit{Chilkat III}, two legal communities with different conceptions of justice, tribal customary law, and dominant federal law, melded to construct tribal sovereignty.\textsuperscript{17} The fundamental tension in \textit{Chilkat III} was that there were different community understandings of the value and boundaries set for communication.\textsuperscript{18} The meanings of "ownership" and "property" collided in the clash of Western inheritance laws and tribal customary law.\textsuperscript{19} In an effort to have its own interpretive system acknowledged, the Chilkat village was prompted to adopt the dominant culture's system of law by creating a court in which to settle its claims.\textsuperscript{20} What resulted from the fusion of both legal processes was the construction of tribal sovereignty and the emergence of a revolutionary definition of justice.\textsuperscript{21} The Chilkat village's definition of justice encompassed community identity within the legal setting.\textsuperscript{22}

Oftentimes, law replaces weapons by substituting language to create dominance.\textsuperscript{23} Yet, the sovereignty created in the \textit{Chilkat III} tribal court presents a bird's-eye view of how a subordinated culture redefined the legal cultural construction given to it by the dominant culture.\textsuperscript{24} In \textit{Chilkat III}, identity of the community resided through the artifacts, creating communal interests within the artifacts.\textsuperscript{25} Western property notions of possession and control were balanced with the discourse of identity.\textsuperscript{26} Storytelling testimony in court propounded that identity was not something owned, but shared.\textsuperscript{27} In order to determine whether the artifacts were property within the meaning of the tribal Artifacts Ordinance, one needed to discover how identity lay within


\textsuperscript{17} \textit{See generally Chilkat III,} 20 I.L.R. at 6127–42.

\textsuperscript{18} \textit{See id.}

\textsuperscript{19} \textit{See id.} at 6130–37.


\textsuperscript{21} \textit{See Chilkat III,} 20 I.L.R. at 6130–37.

\textsuperscript{22} \textit{See id.}

\textsuperscript{23} \textit{See Jeanne Louise Carriere, Representing the Native American: Culture, Jurisdiction, and the Indian Child Welfare Act,} 79 \textsc{Iowa L. Rev.} 585, 589 (1994). Subject-Object opposition theory can be compared with semiotic theory due to the similar inquiry into sign systems and cultural construction of identity. \textit{See id.} at 585–97.

\textsuperscript{24} \textit{See Chilkat III,} 20 I.L.R. at 6130–37; Carriere, \textit{supra} note 23, at 585–97.

\textsuperscript{25} \textit{See Chilkat III,} 20 I.L.R. at 6130–37.

\textsuperscript{26} \textit{See id.}

\textsuperscript{27} \textit{See id.}
the artifacts. This could only be done by semiosis, or dialogue. Since law is a semiotic function, the legal arena was able to facilitate the dialogue.

Law is fundamentally a semiotic process because it is always changing. Moreover, the reinterpretation of existing law creates new law. Similarly, definitions of identity are continually reinterpreted in accordance with the changing signs of communities. Language is the carrier of meaning, and since both creation of law and identity are semiotic processes, language serves as a tool and linchpin to facilitate the evolution of both constructs.

A grievance commonly shared by many Indian communities is the existence of an unstructured legal identity within the American legal system. This article tells the story of Chilkat III through a semiotic process. Chilkat III is an exemplary starting point from which to analyze how two court systems may operate within different sign meanings, yet transform the signs in order to achieve a similar interpretive understanding. In short, this process explores the cultural and legal construction of a tribal court and therefore, of sovereignty. Comprised within this legal account are numerous stories which create the Chilkat village’s present legal reality. Part I will discuss the artifacts, the players, the procedural history, and some of the legal rhetoric used by both sides to advance their cases. Part II will address semiotic theory as applied to the Chilkat III case, and Part III will focus on the narrative and dialogue used by the plaintiffs during the litigation phase to establish community values concerning tribal property.

28 See id.
29 See id.
30 See KEVELSON, supra note 15, at 5-6.
31 See Robin Paul Malloy, A Sign of the Times—Law and Semiotics, 65 Tul. L. Rev. 211, 214 (1990) (reviewing ROBERTA KEVELSON, THE LAW AS A SYSTEM OF SIGNS (1988)). Law, when viewed as a semiotic process, “is not predetermined; it is contingent and is not a self-contained system of inquiry.” Id. at 215.
32 See Delgado, supra note 14, at 2411-18; Malloy, supra note 31, at 215.
33 See KEVELSON, supra note 15, at 5-6, 38; Malloy, supra note 31, at 214.
34 See Chilkat III, 20 I.L.R. at 6127-42.
35 See id.
36 See id. at 6130-37. Judge Bowen allowed narrative accounts to enter the courtroom in order to rectify the Klukwan sign system. See id.
37 See Carriere, supra note 23, at 594-96.
38 See Chilkat III, 20 I.L.R. at 6127-42.
I. SETTING THE STAGE FOR CONSTRUCTION

A. The Artifacts

One April night in 1984, Bill Thomas, his Uncle Clarence, and two members of the Chilkat village removed the Whale House artifacts from the Whale House and drove to the City of Haines. Their strategy was to remove the totemic poles and rain screen while the majority of the villagers were out playing Bingo. The nine-foot tall spruce totems were wrapped in carpet padding and the eleven-by-sixteen foot rain screen was dismantled. The artifacts were transported to a motel in Haines where art collector Michael Johnson was eagerly awaiting the treasures. A week later, Johnson delivered a van carrying the artifacts to Seattle by an Alaska state ferry.

The thieves took extraordinary steps to protect the artifacts because of their inherent spiritual meaning and age. The rain screen is a carved mural of the Rain Spirit with a passageway that the Whale House Chief once used to reach his private quarters. The four totems are of great significance to the villagers because the totems depict the four main groups that comprise the Whale House. Each post, colored in faded vermilion and blue, depicts a mythic story about how the Ganaxteidi came north to the Chilkat River Valley generations ago.

The totems were made as roof pillars for the Whale House, a historic ceremonial house within the Raven Clan. They were made of spruce to allow for greater detail. Marilee Enge, a journalist who covered the Chilkat III trial, writes that each post is an “intricate mosaic

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59 See id. at 6136; Enge, Battle Over a Birthright, supra note 9, at A1.
60 See Marilee Enge, Clan’s Artifacts Returned, ANCHORAGE DAILY NEWS, Oct. 4, 1994, at A1 [hereinafter Enge, Clan’s Artifacts].
61 See id.
62 See id.
63 See Chilkat III, 20 I.L.R. at 6136; Enge, Battle Over a Birthright, supra note 9, at A1.
64 See Chilkat III, 20 I.L.R. at 6131; Enge, Battle Over a Birthright, supra note 9, at A1.
65 See Enge, Battle Over a Birthright, supra note 9, at A1. “Anna Katzeek testified that she understood the artifact known as the rain screen to depict the ‘rains-falling of the rains in the great flood which covered the earth, which the Tlingit people witnessed.’” Chilkat III, 20 I.L.R. at 6135 n.24.
67 See id.
69 See Enge, Master Carver, supra note 46, at A1.
of animal, human and otherworldly creatures that flow from one into the other. Every space has a form or a figure that gives the totems their beauty and enriches their tales.\textsuperscript{50} The Sea Creature Post tells the story of the sea monster Guankadeit.\textsuperscript{51} Guankadeit holds a whale in its mouth and within the whale’s tail appears the sad face of a woman.\textsuperscript{52} Apart from oral tradition, these totems remain the history books of the Chilkat culture which has no written language.\textsuperscript{53}

The leader of the Ganaxteidi clan commissioned the totems from Kadjisdu.axtc, a man considered to have been the best carver of the Northwest.\textsuperscript{54} As a result, the totems are the most desirable carvings in the Northwest Coast.\textsuperscript{55}

A series of black and white photos published in the mid-1980s by two Juneau photographers made the totems known to the art world.\textsuperscript{56} Due to their fame, Michael Johnson would be able to sell the artifacts to the highest bidder, a task that would not be difficult since art collectors, art galleries, and universities\textsuperscript{57} nationwide had already expressed an interest to buy them.\textsuperscript{58}

\textsuperscript{50} Id.
\textsuperscript{51} See id.
\textsuperscript{52} See id.
\textsuperscript{53} See Enge, \textit{Battle Over a Birthright}, supra note 9, at Al.
\textsuperscript{54} See Enge, \textit{Clan’s Artifacts}, supra note 40, at Al; Enge, \textit{Master Carver}, supra note 46, at Al.
\textsuperscript{55} See Enge, \textit{Clan’s Artifacts}, supra note 40, at Al.
\textsuperscript{56} See Enge, \textit{Master Carver}, supra note 46, at Al.
\textsuperscript{57} See Chilkat Indian Village, IRA v. Johnson, 20 I.L.R. 6127, 6137 (1993) [hereinafter Chilkat III]; see also Marilee Enge, \textit{Collecting the Past}, ANCHORAGE DAILY NEWS, Apr. 6, 1993, at Al [hereinafter Enge, \textit{Collecting the Past}]. Note the demand of the Whale House artifacts and the villagers’ resistance to sale over the past century. See Enge, \textit{Collecting the Past}, at Al. In the early 1900s, the University of Pennsylvania hired Louis Shortridge to work as an agent for its archaeological department and to acquire as many Tlingit artifacts as possible. See id. Louis Shortridge was born in 1882 into a noble Tlingit family. See id. His father, George Shortridge was a Chilkat chief, the \textit{hisatsi}, or keeper of the Whale House. See id. Shortridge acquired 232 Northwest treasures and meticulously recorded the stories that accompanied each of them. See id. As a result, the University of Pennsylvania has the most extensive collection of Tlingit artifacts in the United States. See id. During an expedition in 1922, Shortridge met with the leading men of the Ganaxteidi tribe and urged them to sell the Whale House objects. See id. He offered $3,500 and, like Michael Johnson, attempted to convince the leaders that the artifacts “will stand as evidence of the Tlingit claim of a place in primitive culture.” See id. Shortridge was turned down, and this rejection led to his lifelong quest to acquire the artifacts. See id. Shortridge continued to negotiate year after year, and each year his efforts caused greater animosity within the Chilkat region. See id. Shortridge lost his job in 1932 due to the Great Depression and returned to Alaska shortly thereafter. See id. He furthered his unpopularity by becoming a government stream guard whose responsibility was to prevent fishing in closed areas. See id. In 1937, he was found on the ground with a broken neck near his cabin in Sitka. See id. A local school teacher took him to a hospital where he died 10 days later. See id. Enge writes that the story among Natives is that Shortridge was killed, most probably by people who accused him of selling out his heritage. See id.
\textsuperscript{58} See Enge, \textit{Battle Over a Birthright}, supra note 9, at Al.
The thieves also attempted to remove a fourteen-foot feast dish carved in the shape of a woodworm, but its bottom was rotted out and they were unable to remove it without it crumbling.\textsuperscript{59} Enge's sensitive reporting links the plight of the woodworm with the villagers' struggle.\textsuperscript{60} Enge wrote:

The story of the woodworm tells how the Ganaxteidi clan, which includes the members of the Whale House, came north to the Chilkat region from Prince of Wales Island. The myth is also portrayed on one of the house posts. "A chief's daughter found the worm in a woodpile and kept it as a pet, secretly feeding it until it grew very large. She loved it and sang a little song that still is sung by Tlingit mothers. But when her family discovered the worm, they reacted with dread. Her uncle called a meeting, and people decided that the woodworm must be destroyed before it killed everybody in the village. While the girl was lured from home, the village men brought their sharp wooden spears against the worm, and killed it. The chief's daughter was devastated. The event so divided the village that her family, the Ganaxteidi clan, left and migrated north." Today, the Ganaxteidi people are once again divided, this time by the carvings created nearly two centuries ago to depict their history and to bring them together.\textsuperscript{61}

Unlike Enge's belief that the carvings were the cause of community dissociation, it was the concept of individual ownership, introduced by art dealer Michael Johnson, that caused division among community members.\textsuperscript{62} In 1976, Michael Johnson attempted to convince Estelle Johnson, the niece of a previous Whale House Keeper, that she was the rightful owner by descent of the Whale House artifacts.\textsuperscript{63} Mr. Johnson then financed an action in federal court to determine ownership rights.\textsuperscript{64} When the Ninth Circuit Court of Appeals found that the tribal court had jurisdiction to decide ownership issues, Michael Johnson approached the Chilkat III tribal defendants and

\textsuperscript{59} See id.; see also Chilkat III, 20 I.L.R. at 6136.
\textsuperscript{60} See Enge, Battle Over a Birthright, supra note 9, at A1.
\textsuperscript{61} Id.
\textsuperscript{62} See generally Chilkat III, 20 I.L.R. at 6136; Enge, Battle Over a Birthright, supra note 9, at A1.
convinced them to sell him the artifacts.\textsuperscript{65} Mr. Johnson's persistence in acquiring the artifacts continued throughout the most recent action instituted in 1990.\textsuperscript{66} When defendant Bill Thomas wrote Mr. Johnson a letter informing him that the artifacts were no longer for sale, Mr. Johnson responded with a threatening letter that said he was not going to "'get shafted.'"\textsuperscript{67}

\textbf{B. Applicable Law}

After the first attempt to remove the artifacts in 1976, the village was prompted to create an Artifacts Ordinance which prohibited the removal of clan property without first requesting and obtaining permission from the tribe's governing body, the Chilkat Indian Village Council.\textsuperscript{68} The 1976 Artifacts Ordinance read:

\begin{quote}
No person shall enter onto the property of the Chilkat Indian Village for the purpose of buying, trading for, soliciting the purchase of, or otherwise seeking to arrange a removal of artifacts, clan crests, or other traditional Indian art work owned or held by members of the Chilkat Indian Village or kept within the boundaries of the real property owned by the Chilkat Indian Village, without first requesting and obtaining permission to do so from the Chilkat Indian Village Council.\textsuperscript{69}
\end{quote}

Aware that it would need a judicial body to uphold the ordinance, the Council also passed the Tribal Court Ordinance 80–001, authorizing the establishment of a tribal court.\textsuperscript{70} The Tribal Court Ordinance was enacted in 1980 after approval by the Bureau of Indian Affairs and subsequent to an amendment of the tribe's constitution.\textsuperscript{71} It established trial and appellate courts of record; the requirements to qualify as a tribal court judge; appointment of judges \textit{pro tem} ("as was required in [\textit{Chilkat III}] where the sitting judges might have had or be perceived to have a conflict"); and most importantly, it addressed the applicable law for cases brought into the Chilkat court's jurisdiction.\textsuperscript{72} The law as

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{65} See \textit{id.}; \textit{Chilkat III}, 20 I.L.R. at 6136.
  \item \textsuperscript{66} See \textit{Chilkat III}, 20 I.L.R. at 6136.
  \item \textsuperscript{67} See \textit{id.}
  \item \textsuperscript{68} See \textit{id.} at 6129; Strong, \textit{supra} note 1, at 8.
  \item \textsuperscript{69} \textit{Chilkat III}, 20 I.L.R. at 6136.
  \item \textsuperscript{70} See \textit{id.}
  \item \textsuperscript{71} See \textit{id.} at 6130.
  \item \textsuperscript{72} See \textit{id.}
\end{itemize}
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applied would include applicable Tlingit custom law. Criminal jurisdiction was specifically disclaimed under Article III of the ordinance; however, civil jurisdiction was retained under Article VII, Section (1)(b), which provided that "pending the adoption of tribal procedural rules 'the Federal Rules of Civil and Appellate Procedure, insofar as they are applicable and compatible with Tlingit custom and law, shall be followed in the Trial Court and Court of Appeals of the Chilkat Indian Village.'"74

The Artifacts Ordinance served as a linchpin for all further court action since it established a written sovereignty, which both federal and state courts would be reluctant to override.75 The Ordinance however, would not deter Michael Johnson from scheming his way into ownership.76

C. Procedural Background

To fully understand how the legal framework of Chilkat III resulted from the enactment of the Artifacts Ordinance, it is necessary to summarize the procedural history that led to Chilkat III.77 After the 1984 removal of the artifacts, the Chilkat Indian Village filed an action in federal district court against Michael Johnson and his corporation.78 The Tribal Council requested monetary and injunctive relief based on the Council's allegations that Mr. Johnson had violated the 1976 Artifacts Ordinance.79 The district court enjoined Mr. Johnson in both his personal and corporate capacities from selling or disposing of the totems and rain screen.80 The court further enjoined fourteen more defendants (Tlingit defendants), all of whom were members of the Whale House.81 The court then dismissed a summary judgment motion brought by the Chilkat Indian Village under 18 U.S.C. § 1163 (which prohibits embezzlement and theft from Indian tribes), holding that 18 U.S.C. § 1163 does not create a private cause of action in federal court.82 A separate memo issued by the court stated that the court

73 See id. at 6129–30.
75 See id. at 6127–28; Strong, supra note 1, at 8.
76 See Chilkat III, 20 I.L.R. at 6130.
77 See Strong, supra note 1, at 8.
78 See Chilkat III, 20 I.L.R. at 6127.
79 See id.
80 See id.
81 See id.
lacked subject matter jurisdiction for the remaining claims, that the 
artifacts were communally owned and that the defendants’ removal of 
the artifacts created a conversion claim arising under state rather than 
federal law.83

The Ninth Circuit Court of Appeals affirmed the dismissal under 
18 U.S.C. § 1163 as well as the dismissal against the fourteen Tlingit 
defendants but reversed on the village’s claim against Michael Johnson 
and his corporation, holding that “the tribe’s enforcement of its ordi­
nance against those non-Indian defendants raised federal questions.”84

More importantly, in remanding the case to the district court, the court 
of appeals delineated the issue which would be decided in Chilkat III: 
the village’s power to enforce its ordinance and apply it to non-Indi­
ans.85 The court further noted that within the locus of enforcing its 
ordinance lay questions concerning whether the village was a federally 
recognized tribe, “whether it possess[e] general legislative powers, 
or jurisdiction over the artifacts and defendants in particular, and 
whether its fee lands constitute[d] Indian Country . . . .”86

On remand, Johnson moved for summary judgment on the prem­
ise that even if the tribal court had the power to enforce its ordinance 
against him, he did not violate the ordinance.87 The district court 
rejected Johnson’s argument on the basis that if the village possessed 
sufficient attributes of sovereignty, then tribal remedies would have to 
be exhausted before the district court had jurisdiction.88 The court 
then requested that both parties brief the court as to the issues of the 
village’s retained sovereign authority.89

The district court granted the village’s motion for summary judg­
ment on issues of tribal sovereignty and exhaustion, holding that “acts 
of Congress and the executive lead this court to conclude that Chilkat 
Indian Village has been recognized as a tribe by the federal govern­
ment.”90 The court noted that tribes possess civil regulatory and judicial

83 See Chilkat Indian Village v. Johnson, 870 F.2d 1469, 1474 (9th Cir. 1989) [hereinafter 
Chilkat II]; Chilkat III, 20 I.L.R. at 6127.
84 See Chilkat III, 20 I.L.R. at 6128 (citing Chilkat II, 870 F.2d at 1475).
85 See Chilkat II, 870 F.2d at 1474.
86 Chilkat III, 20 I.L.R. at 6128 (citing Chilkat II, 870 F.2d at 1474).
87 See id.
88 See National Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 856–57 (1985); 
Chilkat III, 20 I.L.R. at 6128.
89 See Chilkat III, 20 I.L.R. at 6128.
90 Id.
authority in civil matters over non-Indians and held that the power to pass the ordinance: 91

was part of the retained, inherent power of the Chilkat Indian Village. In addition, it would appear that under its constitutional power, Chilkat Indian Village had the power to prevent the sale or disposition of any assets of the Village without the consent of the Council. The court further agrees that alleged acquisition by a non-Indian of the artifacts in question would constitute conduct that would have some direct effect on the welfare of the tribe . . . 92

The court also found the village-owned fee lands at Klukwan to be Indian Country as defined by 18 U.S.C. § 1151. 93 The court's determination that the Chilkat Indian Village was Indian Country was a key point in bringing the defendants under the jurisdiction of tribal law. 94 Technically, the land from which the artifacts were removed had to constitute a "dependent Indian community" under the 18 U.S.C. statute. 95 The defendants countered with the argument that the Alaska Native Land Claims Settlement Act (ANCSA) 96 extinguished any authority that a village could have over a defined territory. 97 Since nothing in the ANCSA preamble indicated a "clear and plain" intention to abrogate or limit a treaty right, the court held that the status of Klukwan as a dependent Indian community was not extinguished by the ANCSA. 98

92 Chilkat III, 20 I.L.R. at 6128 (quoting Montana, 450 U.S. at 545).
93 See id.
94 See id.
97 See Chilkat III, 20 I.L.R. at 6128. The Alaska Native Land Claims Settlement Act (ANCSA) expressly extinguished all aboriginal titles to land in Alaska, but provided for the establishment, under state law, of village and regional corporations in which enrolled Natives would receive corporate stock. See CANBY, supra note 95, at 236. Chilkat village is one such corporation. Native corporations then receive title to their land in fee. See id. The Ninth Circuit recognizes a federal trust responsibility similar to that of tribes in other states towards these corporations, even in light of the ANCSA. See id.
Pursuant to the rules of the tribal court, which require the exhaustion of remedies, the district court submitted the pending issues to the tribal court in Chilkat III. 99 Plaintiff Michael Johnson filed his complaint in the Chilkat tribal court on January 8, 1990. 100 That same day, the duly appointed chief judge and alternate chief judge of the court recused themselves since they would be witnesses at the trial. 101 Judge Bowen, a Klallam Indian from Washington’s Olympic Peninsula and a Juneau attorney, was appointed justice to the court by operation of the Chilkat Indian Village Resolution No. 90–0006. 102

All Tlingit defendants represented themselves during the trial. 103 Michael Johnson however, refused to appear at trial. 104 The trial deadline was further extended by Mr. Johnson’s failure to comply with discovery requests and by other delays based on what Judge Bowen later found to be “unsubstantiated and likely disingenuous reasons.” 105 The trial finally began on January 18, 1993, and took four weeks to complete. 106

This Note is concerned with the following issues decided at trial: (1) whether the Whale House rain screen and four house posts constituted “artifacts, clan crests, or other Indian art works” within the meaning of the relevant tribal ordinance; [and] (2) whether the tribe ha[d] the power to enforce the ordinance against the defendants, including the non-Indian art dealer Michael Johnson and his corporation. 107

Prior to discussing the plaintiff’s discourse, it is necessary to lay the foundation of semiotic theory.

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99 See id.
100 See id.
101 See id.
103 See Chilkat III, 20 I.L.R. at 6129.
104 See id.
105 Id.
106 See id. at 6130.
107 Id.
II. THE CLASH BETWEEN TWO DIFFERENT INTERPRETIVE COMMUNITIES

A. Semiotics: The Basics

Semiotics studies the creation, development and evolution of signs used in communication.108 A sign is an "intellectual idea" that is defined with respect to the expectations of a particular community.109 Notable semiotic theoreticians include Felix Cohen, Wesley Hohfeld, Saussure, Charles Sanders Peirce, and Umberto Eco.110

Legal semiotics requires that all sign systems emanate from natural language or be expressed through natural language.111 The semiotic method assumes that the users of signs (words or legal arguments) are operating on a mutual understanding of the sign.112 Semiotic methodology examines the exchange of signs within communication and the manner in which sign systems evolve as members of communities "continually reassess their future goals and values and attempt to reinterpret existing codes of rules and values to meet current changing needs and wants."113 The process is dialogic in nature, and language becomes the carrier of exchange.114

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109 See KEVELSON, supra note 15, at 285–86; Malloy, supra note 31, at 213–14; Paul, supra note 108, at 1782. Paul argues that "despite the fancy label, legal semiotics holds significant potential for bringing together people of diverse training and background in ways that will foster a true sense of intellectual community." Id.; see also Douglas W. Maynard, Narratives and Narrative Structure in Plea Bargaining Language, in LANGUAGE IN THE JUDICIAL PROCESS 65, 67 (Judith N. Levi & Anne Graffam Walker eds., 1990). Stories may have different significance depending on the group to which they are told. Tellers may also verbalize a story "precisely to discover with recipients, what evaluation should be made of it." Id. at 67.
111 See KEVELSON, supra note 15, at 5.
113 KEVELSON, supra note 15, at 33; see also GARTH GILLIAN, FROM SIGN TO SYMBOL 7 (1982). "The sign defines its spread and signifying extension in and through the interpretant toward which it looks for its essential clarification and for its ultimate grounding as a significant utterance within human discourse." See GILLIAN, supra, at 7.
114 See KEVELSON, supra note 15, at 6.
What links semiotics to law is that "[s]igns designate aspects of the real world through contractual action, through a kind of trust" that others in our community are operating in our same qualitative likenesses and differences.\textsuperscript{115} Analyzing Chilkat III through the semiotic method is appropriate because semiotic theory, like the Chilkat cultural/legal perspective, focuses on a community understanding of events and consequential justice, and not on individuals.\textsuperscript{116} This perspective can be contrasted with Euro-American legal culture which focuses on the construct of "an atomized individual, holding rights against the world, including his own community."\textsuperscript{117}

Since we are concerned with the definition of sovereignty, it is key to view how each legal culture, whether Native American or Euro-American, constructs sovereignty.\textsuperscript{118} The Native American construct of sovereignty imputes subjectivity because it focuses on tribal autonomy or self-determination.\textsuperscript{119} Yet this construction of sovereignty is not consistent with the construction of the "I" in dominant legal discourse.\textsuperscript{120}

Through the lens of legal semiotics one cannot refer to an individual fact, but only to what one’s community has perceived to be factual through relations that it has previously observed.\textsuperscript{121} Take, for example, the village’s perception of Mr. Johnson as a thief, versus the outside world’s perception of Mr. Johnson as an art dealer on a culturally justified mission to salvage decaying artifacts.\textsuperscript{122} Because Mr. Johnson tried to remove the artifacts, his name could only exist within a

\textsuperscript{115}See Malloy, supra note 31, at 213 (quoting Roberta Kevelson, Charles S. Peirce’s Method of Methods 5–6 (1987)). "Legal Semiotics holds that in each case there is a legal event, in which legal discourse is one kind of legal act, and that legal procedures, as communicative events in which both legal actors and nonauthorized persons participate, are exchanges of official messages by means of verbal and nonverbal signs and are also legal acts of a nonverbal kind." Kevelson, supra note 15, at 5.


\textsuperscript{117}Carriere, supra note 23, at 596.

\textsuperscript{118}See id.

\textsuperscript{119}See id. at 595.

\textsuperscript{120}See id. "The subject, whether an individual or a group, constitutes the ‘I’ of the sentence for the discourse and is empowered to act and speak in it. The discourse thus constitutes the subjectivity of those that participate in it." Id. at 591.

\textsuperscript{121}See Kevelson, supra note 15, at 6, 285–86. Paul notes that legal scholars "emphasize the ways in which legal concepts draw meaning from their place within broader legal argument, just as semioticians have stressed the ways in which words take meaning from their place within a larger linguistic system." Paul, supra note 108, at 1782.

negative context when spoken by the Klukwan community.\textsuperscript{123} This paradigm exemplifies how a fact can only exist when mirrored against human experience.\textsuperscript{124}

Just as communication is a semiotic process, so is the legal system.\textsuperscript{125} Stated simply, law is the prototypical code of reference.\textsuperscript{126} Law seems static, but it is only static in hypothetical terms because decisions are continually reinterpreted to reflect current societal views.\textsuperscript{127} It is when social consciousness remains static that communicative reality, and therefore law, becomes static.\textsuperscript{128}

The concept of a legal system, consisting of interrelating communicative processes between legal discourse and legal practice, functions almost universally as a model of dialogic thought development."\textsuperscript{129} Two fundamental assumptions of semiotics are:

(1) All communication is a process of exchange of meaningful signs, and signs and sign systems such as natural language mediate between communicating persons and those objects in the phenomenal, physical world of experience to which they refer; and

(2) All human societies have developed complex systems of both verbal and nonverbal sign systems which are not static, but which evolve continuously to correspond with and to represent changing social norms and the evolving, growing social consciousness of any given community.\textsuperscript{130}

In the same vein, law is a locus for new ideas and relationships that emerge from the social consciousness of any given community.\textsuperscript{131} This locus develops and exists as a system of sign exchanges, and therefore, "the law is a semiotic process."\textsuperscript{132} By analyzing the artifacts as signs in their own right, as well as the concept of tribal sovereignty as a legal sign, one is forced to reckon with the Chilkat III tribal court

\textsuperscript{123} See id.
\textsuperscript{124} See Kevelson, \textit{supra} note 15, at 6, 285–86.
\textsuperscript{125} See id. at 4–6.
\textsuperscript{126} See id. at 4.
\textsuperscript{127} See Malloy, \textit{supra} note 31, at 214–15.
\textsuperscript{128} See id.
\textsuperscript{130} Kevelson, \textit{supra} note 15, at 4.
\textsuperscript{131} See Malloy, \textit{supra} note 31, at 214.
\textsuperscript{132} Id.
Through semiotic inquiry, one is able to decipher the underlying legal relationships and reconstruct the legal dialogue in the Chilkat III case. The Chilkat III court case broke the barriers of legal stasis by challenging the Euro-American notions of sovereignty and ownership operating in the village. Villagers challenged the dominant legal construction of sovereignty with principles of tribal law and won.

III. THE LITIGATION PHASE

What separates Chilkat III from other cases is its creation of an arena of adjudication—a tribal court—from which to watch the fundamentally semiotic discourse of law unravel itself to create new meaning. This arena allowed the Chilkat III court to characterize its own legal issues, mainly “(1) whether the artifacts constitute[d] ‘artifacts, clan crests, or other Indian art works’ within the meaning of the relevant tribal ordinance [and] (2) whether the tribe ha[d] the power to enforce the ordinance against the defendants and Michael Johnson . . .”

Strict rules of evidence were not imposed by the Chilkat III court. As Judge Bowen wrote in his decision, “The only rule of

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136 See Kevelson, supra note 15, at 273–86; Malloy, supra note 31, at 214. Rosemary Coombe suggests that “the social world is constituted only in and through representational relations of difference that are constantly shifting in our all-too-human efforts to give meaning to its terms.” Rosemary Coombe, Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue, 69 Tex. L. Rev. 1853, 1856 (1991). Seemingly subjective, the politics of legal semiotics could inevitably assume the politics of postmodernity which could be highly detrimental to the growth and change of signs defined within a community. See J.M. Balkin, The Promise of Legal Semiotics, 69 Tex. L. Rev. 1831, 1851 (1991). The postmodern condition perceives the individual self as a creation of social construction. See id. Balkin states: “if the self is socially constructed, and if the self’s freedom is its freedom as a socially constructed individual, one might easily defend existing social customs and practices because they are the basis of our individual authenticity and freedom.” Id. In this example, semiotics analysis turns upon itself because individuals defend their social customs as the only true expressions of their individuality and authenticity, therefore resisting change. See id. at 1851.

137 See id.; Johnson v. Chilkat Indian Village, 457 F. Supp. 384, 386 (D. Alaska 1978). Judge Von Der Heydt wrote, “In order to provide a forum for the resolution of disputes such as the one presented here, the Council has passed a resolution providing for the composition and jurisdiction of a tribal court.” Johnson, 457 F. Supp. at 386.

138 Chilkat III, 20 I.L.R. at 6130.

139 See id.
evidence at trial was relevancy.\textsuperscript{140} This strategy proved to be very effective in determining issues of ownership because inherent within ownership principles lie the precepts of sovereignty.\textsuperscript{141}

Previous judges had ignored historical testimony which was essential in determining ownership.\textsuperscript{142} During Johnson v. Chilkat Indian Village, Judge Von Der Heydt attempted to resolve the issues of ownership.\textsuperscript{143} After Martha Willard, an elder of the Ganaxteidi clan and member of the Whale House had been on the stand for six hours reciting genealogical testimony, the judge turned to Ms. Willard's attorney and said, "Is there some way you can shorten this testimony?\textsuperscript{144}" Tony Strong recalls that Ms. Willard's attorney asked her to shorten her story, to which she responded that she could not.\textsuperscript{145} Upon further insistence by her attorney, Ms. Willard finally agreed to abbreviate her testimony.\textsuperscript{146} Nevertheless, she continued testifying for another six hours.\textsuperscript{147} Humorous as the tale may be, only historical testimony could reveal who, if anyone, had tribal title to the land.\textsuperscript{148}

Robert Cover has argued that courts are jurispathic because they destroy law that naturally develops in small communities of people mutually committed to a cause.\textsuperscript{149} They do so by removing "uncertainty, lack of clarity, and difference of opinion about what the law is"—all key elements for the growth of law.\textsuperscript{150} Within a semiotic system, however, uncertainty is what generates different interpretive communities.\textsuperscript{151} In Johnson v. Chilkat, Martha Willard needed to relay the history of the totems in order for the judge to understand ownership issues.\textsuperscript{152} Her testimony would reveal the community identity that resided within the totems and help determine the rightful, matrilineal caretakers of the totems.\textsuperscript{153} Yet Judge Von Der Heydt did not want to listen to the

\textsuperscript{140} Id.
\textsuperscript{141} See generally id. at 6130–37.
\textsuperscript{142} See Strong, supra note 1, at 14.
\textsuperscript{143} See id.
\textsuperscript{144} Id.
\textsuperscript{145} See id.
\textsuperscript{146} See id.
\textsuperscript{147} See Strong, supra note 1, at 14.
\textsuperscript{149} See Cover, supra note 129, at 40–44.
\textsuperscript{150} Id. at 40.
\textsuperscript{153} See Strong, supra note 1, at 14.
confusing genealogical monologues or her story as to why her own history resided within the totems.154 "Meaning," in his courtroom, would come from clear, not necessarily convincing, testimony as to who was the rightful owner.155 Ownership would then determine sovereignty.156 Judge Von Der Heydt appropriately decided that issues dealing with the conversion of property were not for state courts to decide.157 The issues belonged within Chilkat's tribal court jurisdiction.158

The hours of testimony recited in Chilkat III are proof that tribal courts are jurisgenerative.159 Since "tribal customary law is capable of reflecting the law created by the relatively small tribal communities," this capacity has "more potential to be jurisgenerative than federal and state courts."160 Tribal courts are able to reflect the law by allowing narrative to enter into the courtroom.161 Semiotics links narrative and law together since narrative is necessary for the conveyance and creation of legal concepts.162 Cover's 1983 article lies squarely within today's articulations of legal semiotic process:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. . . . Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but . . . signs by which each of us communicates with others.163

Storytelling, both through oral testimony and through Judge Bowen's written decision, played a key role in Chilkat III's tribal justice system.164 One of the most important issues to be determined was the meaning that the artifacts imparted to the community.165 Once meaning was established, it would be possible to rule on the totems' status

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154 See id.
155 See id.
156 See generally Johnson, 457 F. Supp. at 384–89.
157 See id. at 387.
158 See id.
159 See Nell Jessup Newton, Memory and Misrepresentation: Representing Crazy Horse, 27 CONN. L. REV. 1003, 1004 n.2 (1995).
160 Id.
161 See id.
163 Cover, supra note 129, at 4.
165 See id.
as “property” within the meaning of the Artifacts Ordinance. Judge Bowen’s court used accessible cultural forms to express identity, community, difference and meanings of property. Members of the tribe were given the opportunity to convey stories about the meaning that the artifacts had within the community.

Objectivity is the goal of legal writing. However, objectivity is often limiting in its quest to determine truth or identity. In presenting neutral points of view, legal writing and discourse neglect to question the “moral and political value judgments that lie at the heart of any legal inquiry.” Legal writing and discourse typically consist of a linear construction with a limited vocabulary of signifiers. This limitation in vocabulary occurs because legal education requires students to “internalize a number of legal signifiers that have particular content [signified]. The multiaccentual nature of the sign is given a uniaccentual reading.” The law student then internalizes these “juridically defined (circumscribed) words, which become the basis of understanding. The student learns how these words are connected in linear form to produce acceptable legal discourse.”

Property is one of the terms that the Western legal world has internalized as having a prescribed meaning. Even though definitions of property have changed throughout history, one dominant meaning exists during a specific period of time.

The storytelling testimony in Chilkat III fragmented the linear definitions of property and ownership proffered by the defendants by

166 See id. at 6137.
167 See Coombe, supra note 134, at 1855. This argument counters Rosemary Coombe’s belief that post-modernism has stifled a community’s ability to use accessible cultural forms. See id. My argument pulls from Nell Newton’s belief that tribal courts tend to be jurisgenerative. See Newton, supra note 159, at 1005 n.2.
168 See Chilkat III, 20 I.L.R. at 6130–37. Sherwin writes, “[i]f reality and meaning depend, to a significant extent, on perceptual and cognitive constructions, it becomes of no small interest to learn what interpretive frameworks are at work in specific legal contexts. One way to express this inquiry is to ask: what kinds of stories, and what modes of storytelling, are being used by lawyers, judges, and others within the legal system to construct and convey meaning.” Sherwin, supra note 16, at 717.
169 See Delgado, supra note 14, at 2441.
170 Id.
171 See Milovanovic, supra note 15, at 80–81.
172 Id. at 80.
173 Id. Legal semioticians have noted that lawyers and judges “employ a relatively small handful of argument forms to justify rule choices in many different areas of doctrine.” See Balkin, supra note 134, at 1835.
174 See Kevelson, supra note 15, at 240–41.
175 See id.
imparting subjectivity into the inquiry of the totems' status as "artifacts." Community standards and each person's individualized account defined the artifacts as items of property. Storytelling subverted objectivity by allowing the witnesses' value judgments to enter into legal discourse. Storytelling dialogue follows from semiotic theory because the semiotic perspective of property "attempt[s] to show that property in law is not one idea only" but "a multitude of ideas, or systems of thought, each of which is represented by this general term property." Judge Bowen's opinion provides a discussion section which the judge terms a "chronological account of the testimony and documentary evidence presented at trial which is relevant" to the issues presented in the case. The story-like narrative of Judge Bowen's opinion sets it apart from the standard state or federal court opinion. Judge Bowen recounts the four-week trial by summarizing the testimony of each witness in the same order that it was given in court. He describes witness testimony at length, notes the dress and appearance of witnesses, and relays his opinions of witnesses credibility. Through the storytelling method, the opinion almost becomes a healing ceremony of its own.

The trial began with the testimony of Joe Hotch, President of the Chilkat Indian Village Council and leader of the Whale House. Mr. Hotch's function as a storyteller was to lay down the foundation of Chilkat social structure and tribal law. He provided information about the tribe's governing body and demographics. More importantly, like most witnesses, he stated the identity of his mother and father. Determining lineal relationships was important because the Tlingit defendants claimed rightful ownership of the artifacts by ma-

177 See id.
178 See Delgado, supra note 14, at 2441.
179 KEVELSON, supra note 15, at 242.
180 Chilkat III, 20 I.L.R. at 6130.
181 See id. at 6130–37.
182 See id.
183 See id.
184 See id.
185 See Chilkat III, 20 I.L.R. at 6131.
186 See id.
187 See id.
188 See id.
trilineal descent. The defendants argued that, as members of the Whale House, they owned the rights to sell the artifacts. Traditionally, under the Tlingit matrilineal system of descent, Tlingit males moved to the house of their maternal uncle between the ages of eight and twelve, where they were raised and instructed about their clan and tribal law. They would then become members of the house to which their uncle belonged. As Judge Bowen noted, "This simple accounting of the witness's matrilineal background is significant within the context of this case because it logically follows that [the witness] would consider the Tlingit defendants . . . to be members of the Valley House; not the Whale House."

Tlingit social structure works in this manner: there are two Tlingit moieties, Raven and Eagle. It follows that all Tlingits are either of the Raven moiety or Eagle moiety. Members of one moiety may not marry within their moiety but must marry a person of the opposite moiety. There are also clans within each moiety and "[a]lthough identification by Tlingits as members of a particular village is very significant for many purposes, the clan is the primary and most important affiliation for Tlingits." There are several clans within the Eagle moiety, but "perhaps conveniently, all Ravens in Kukwan are members of the Ganaxteidi Clan." Lastly, different house groups exist within each clan. Among these houses are the Killer Whale House, the Bear House, the Frog House, and the Valley House. It is also important to note that Tlingit society functions as a meritocracy, "where one achieves high status not through physical wealth but through good deeds." Unlike a caste system, "one can change his or her status through the nature of their [sic] deeds."

By having the witnesses recount their matrilineal background, true members of the Whale House would be revealed. Determining

189 See id. at 6131 n.15.
191 See id. at 6131 n.15.
192 See id.
193 Id. at 6133 n.21.
194 See id. at 6131.
196 See id.
197 Id.
198 Id.
199 See id. at 6131–37.
201 See id.
202 See id. at 6133 n.21.
the real members of the Whale House would not justify property rights to the artifacts, however, because Mr. Hotch and many other witnesses had yet to define the artifacts as "clan trust property"—property in which every Tlingit had a vested spiritual interest. The term "clan trust property" is comprised of the words appropriated from Western law that helped the Chilkat III plaintiffs' define and win their case.

Throughout the trial, the plaintiffs fostered their belief that the artifacts are inherently community property, yet they adopted a westernized property concept for the Chilkat III decision which inherently represents an alternative meaning of property and ownership. Rosemary Coombe has argued that the postmodern subject who occupies space within our culturally commodified society must inevitably resort to "engagement with commodified cultural forms" when taking political action. In order for the Chilkat community to restore its notions of community property, it had to use the discourse of commodified cultural forms in legal action, thereby using the term "clan trust property."

Mr. Hotch defined "clan trust property" as property that belongs to the entire clan, which cannot be disposed of without consent of the clan. Artifacts become "clan trust property" when they are presented "in a ceremony in which members of the opposite 'tribe' (i.e., in this case members of clans of the Eagle moiety) are invited . . . ." Mr. Hotch said that the Whale House artifacts were subject to this process and that the artifacts played a central role in numerous ceremonies in which he participated. As a hitsati, or leader of the Whale House, Mr. Hotch had a "duty under tribal law to care for the property of the house and clan, and ha[d] no right to sell or otherwise dispose of clan property."

More importantly, the artifacts do not just have "great spiritual significance to the Ganaxteidi Clan, which has primary custodial rights over them," but the tribe on the whole also has an interest in the

203 See id. at 6131.
204 See id.
205 See Chilkat III, 20 I.L.R. at 6131.
207 See Chilkat III, 20 I.L.R. at 6131.
208 See id.
209 Id.
210 See id.
211 Id.
artifacts because of their inherent "healing quality." Mr. Hotch and other witnesses recalled that:

when a member of an opposite clan (of the Eagle moiety) died, and a potlatch was held as a part of the progression of Tlingit funeral arrangements, members of the grieving clan would be brought before the rain screen and told that it constituted medicine which would relieve the loss of their clan member.

Mr. Hotch recalled that the artifacts were even used during a Peace Party ceremony in 1976 intended to heal wounds resulting from contacts with Michael Johnson. Representatives of both clans attended the ceremony and both clans agreed that the artifacts should not be removed. After the Peace Party, Mr. Hotch wrote a letter to Michael and Sharon Johnson in which he stated: "These artifacts are a part of our Tlingit needs to retain, as they represent our past and our future within the art itself. . . . A Tlingit selling its tribal artifacts is degrading its entire clan, much more the Tlingit nation." Ironically, Michael Johnson dismissed the concepts of communal identity that Mr. Hotch stressed and replied with his commodified notions of "world property" by writing, "Tlingit art is now recognized by all the art authorities of the world as one of the greatest that ever existed and is important to the whole history of mankind. . . . I would never attempt to purchase objects from a clan keeper without the consent of the entire clan."

Andrew Hope III, a Tlingit writer and scholar, testified that the artifacts could not be owned due to their spiritual characteristics. In testifying about the ceremonial process that the artifacts underwent, he said, "the spirits of ancestors are honored, and those spirits are warmed and like to be around clans crests such as the Whale House artifacts." Mr. Hope further expressed his view, "that such objects, which can include songs and stories, cannot be 'owned'; there is no way to put a price on the spirits, and certainly no hitsati, i.e., caretaker

212 See Chilkat III, 20 I.L.R. at 6131.
213 Id.
214 See id. at 6132.
215 See id.
216 Id. (emphasis added). Tlingit may also be spelled Thlinget.
217 Chilkat III, 20 I.L.R. at 6132.
218 See id. at 6134.
219 Id.
of a tribal house, has the right to unilaterally dispose of clan crest objects.\footnote{220}

A recurring theme within the trial was that the artifacts themselves constituted a story; that below their surface lay words.\footnote{221} Elder clan member, George Stevens, Sr., recalled his mother's deathbed words: "[t]here's a story on the screen and our respect is on it. Without this screen and the corner posts, this house is going to be like a house with ghosts—a weird place."\footnote{222} Mr. Stevens further noted that he felt compelled to testify against the Tlingit defendants to honor his mother's words.\footnote{223} Viewing this statement through a semiotic perspective, it follows that his mother's words were immortalized within the artifacts themselves.\footnote{224} When referring to the artifacts as "clan trust property," Mr. Stevens testified that "as a matter of tribal law, no one individual could sell the artifacts, and that the artifacts represent the history of the Ganuxteidi Clan."\footnote{225}

David Katzeek, the son of a member of the Ganuxteidi Clan explained that the primary significance of the artifacts is "knowing who you are . . . with us, these particular artifacts tell a story. . . . When you’re selling an artifact . . . you’re not only getting rid of a piece of wood . . . you’re getting rid of the music, the song, the dance, and the good, the bad, and the ugly."\footnote{226}

Mr. Stevens and Mr. Katzeek’s words bring into play the concept that language is not the only form of semiotic signs, but that symbols, such as artifacts, are signs too; within those signs lie innumerable stories infused with meaning.\footnote{227} Ruth Kasko, a village member, compared the artifacts as signs to the American Flag.\footnote{228} Ms. Kasko's point was that as Americans, it is hard to imagine who we are without the flag.\footnote{229} For the Chilkat community, the artifacts represented their entire history, and within that history lay their identity.\footnote{230} Selling the artifacts would mean selling their history to the Western world, and as Andrew Hope III stated, the artifacts, which included stories, could not be

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\footnote{220 Id.}
\footnote{221 See id.}
\footnote{222 Chilkat III, 20 I.L.R. at 6134.}
\footnote{223 See id.}
\footnote{224 See id.}
\footnote{225 Id.}
\footnote{226 Id. at 6135.}
\footnote{227 See Chilkat III, 20 I.L.R. at 6135.}
\footnote{228 See id.}
\footnote{229 See id.}
\footnote{230 See id.}
"owned." By selling the artifacts the community would be condoning ownership. In sum, the community's testimony relayed semiotic thought in that the artifacts, like words, are semiotic signs that carry identity, an identity that can only be defined in reference to a community's standards.

CONCLUSION

The worm dish's story (the worm dish being the one artifact that was unable to be removed because of its rotting bottom) serves to remind Klukwan villagers that a community can be torn apart if a bad seed is nourished. Hundreds of years ago, the worm, which was secretly fed by a young villager, almost ate the entire community. Today, Michael Johnson's notion that the artifacts could be sold and therefore owned, grew so large that it threatened to destroy the community once more. At the end of his opinion, Judge Bowen writes:

All members of the village continue to rely on the artifacts for essential ceremonial purposes. The artifacts embody the clan's history. Just as earlier attempts to remove the artifacts caused injury to the tribe through friction and clashes among tribal houses and clans, a fortiori, the 1984 removal in violation of the tribe's 1976 ordinance had a direct effect on the health and welfare of the tribe.

The artifacts themselves served as the means to draw the community back together. By allowing witnesses to recount the meaning that the artifacts imparted to the community, the Chilkat III court validated the Chilkat community's existing norms. The tribal members' testimony, along with the actual artifacts, stood as signs of these norms. More importantly, the Chilkat III court's final judgment established new value for the Chilkat community—the value of its inherent tribal sovereignty.

231 See id. at 6134.
233 See ECO, supra note 110, at 152, 192-216; KEVELSON, supra note 15, at 5.
234 Chilkat III, 20 I.L.R. at 6139.