

In the Matter Of:  
The Chippewas of Saugeen First Nation et al v.  
Attorney General of Canada et al.

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DAY 72 VOL 72  
January 13, 2020

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Toronto, ON M5K 1A2  
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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CHIPPEWAS OF SAUGEEN FIRST NATION, and THE  
CHIPPEWAS OF NAWASH FIRST NATION  
Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE  
CORPORATION OF THE COUNTY OF GREY, THE  
CORPORATION OF THE COUNTY OF BRUCE, THE  
CORPORATION OF THE MUNICIPALITY OF NORTHERN  
BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF  
SOUTH BRUCE PENINSULA, THE CORPORATION OF THE  
TOWN OF SAUGEEN SHORES, and THE CORPORATION OF  
THE TOWNSHIP OF GEORGIAN BLUFFS  
Defendants

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and  
SAUGEEN FIRST NATION  
Plaintiffs

- and -

THE, ATTORNEY GENERAL, OF CANADA and HER MAJESTY  
THE QUEEN IN RIGHT OF ONTARIO  
Defendants

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--- This is VOLUME 72 / DAY 72 of the trial  
proceedings in the above-noted matter, being  
held at the Superior Court of Justice, 330  
University Avenue, Courtroom 5-1 Toronto,  
Ontario, on the 13th day of January, 2020.

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B E F O R E:

The Honourable Justice Wendy M. Matheson

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A P P E A R A N C E S :

Renée Pelletier, Esq, for the Plaintiffs,  
& Jaclyn McNamara, Esq., the Chippewas of  
Saugeen First Frist  
Nation, and the  
Chippewas of Nawash  
First Nation.

Michael Beggs, Esq., for the Defendant,  
& Michael McCulloch, Esq., Attorney General  
& Barry Ennis, Esq., of Canada.  
& Alexandra Colizza, Esq.

Peter Lemmond, Esq., for the Defendant,  
& Richard Ogden, Esq. Her Majesty the  
Queen in Right of  
Ontario.

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I N D E X

PAGE

WITNESS: ALEXANDER VON GERNET

Examination in-chief by Mr. Beggs..... 9306

|    | INDEX OF EXHIBITS |                                   |      |
|----|-------------------|-----------------------------------|------|
|    | NO. /             | DESCRIPTION                       | PAGE |
| 1  |                   |                                   |      |
| 2  |                   |                                   |      |
| 3  | H-3               | List of documents to be marked as | 9307 |
| 4  |                   | exhibits.                         |      |
| 5  | 4455              | Document number S0111.            | 9307 |
| 6  | 4456              | Document number S044.             | 9307 |
| 7  | 4457              | Document number S0174.            | 9307 |
| 8  | 4458              | Document number S0189.            | 9308 |
| 9  | 4459              | Document number S0190.            | 9308 |
| 10 | 4460              | Document number S0274.            | 9308 |
| 11 | 4461              | Document number S0340.            | 9308 |
| 12 | 4462              | Document number S0352.            | 9308 |
| 13 | 4463              | Document number S0361.            | 9308 |
| 14 | 4464              | Document number S0362.            | 9308 |
| 15 | 4465              | Document number S0363.            | 9308 |
| 16 | 4466              | Document number S0397.            | 9309 |
| 17 | 4467              | Document number S0444.            | 9309 |
| 18 | 4468              | Document number S0548.            | 9309 |
| 19 | 4469              | Document number S0565.            | 9309 |
| 20 | 4470              | Document number S0722.            | 9309 |
| 21 | 4471              | Document number S0825.            | 9309 |
| 22 | 4472              | Document number S0831.            | 9309 |
| 23 | 4473              | Document number S0917.            | 9310 |
| 24 | 4474              | Document number S0951.            | 9310 |
| 25 | 4475              | Document number S0971.            | 9310 |

|    | INDEX OF EXHIBITS |                        |      |
|----|-------------------|------------------------|------|
|    | NO. /             | DESCRIPTION            | PAGE |
| 1  |                   |                        |      |
| 2  |                   |                        |      |
| 3  | 4476              | Document number S0972. | 9310 |
| 4  | 4477              | Document number S0974. | 9310 |
| 5  | 4478              | Document number S0995. | 9310 |
| 6  | 4479              | Document number S1016. | 9310 |
| 7  | 4480              | Document number S1085. | 9311 |
| 8  | 4481              | Document number S1140. | 9311 |
| 9  | 4482              | Document number S1196. | 9311 |
| 10 | 4483              | Document number S1261. | 9311 |
| 11 | 4484              | Document number S1292. | 9311 |
| 12 | 4485              | Document number S1308. | 9311 |
| 13 | 4486              | Document number S1328. | 9311 |
| 14 | 4487              | Document number S1348. | 9312 |
| 15 | 4488              | Document number S1373. | 9312 |
| 16 | 4489              | Document number S1517. | 9312 |
| 17 | 4490              | Document number S1530. | 9312 |
| 18 | 4491              | Document number S1531. | 9312 |
| 19 | 4492              | Document number S1575. | 9312 |
| 20 | 4493              | Document number S1609. | 9313 |
| 21 | 4494              | Document number S1624. | 9313 |
| 22 | 4495              | Document number S1626. | 9313 |
| 23 | 4496              | Document number S1780. | 9313 |
| 24 | 4497              | Document number S1834. | 9313 |
| 25 | 4498              | Document number S1847. | 9313 |

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INDEX OF EXHIBITS

| NO. / | DESCRIPTION  | PAGE |
|-------|--|------|
| 4499  | Document number S1906.   | 9314 |
| 4500  | Document number S1914.   | 9314 |
| 4501  | Report entitled "Indigenous<br>Stories and Oral Traditions<br>(Selected Extracts from Giant<br>Beavers and Colossal Dams)" by<br>Alexander Von Gernet dated<br>January 18th, 2019. | 9317 |
| I-3   | Table of correlation between the<br>traditions of Lenore Keeshig and<br>Dr. Francine McCarthy.   | 9357 |
| J-3   | Document depicting a Google<br>Earth image from Dr. von Gernet.  | 9367 |

09:54:56 1 --- Upon commencing at 10:23 a.m.

10:23:32 2 THE COURT: Morning, Mr. Beggs.

10:23:33 3 Technology problems this morning, sir?

10:23:37 4 MR. BEGGS: Yes, I'm afraid so, Your

10:23:38 5 Honour.

10:23:39 6 THE COURT: It is Monday but I would

10:23:40 7 ask starting tomorrow that you get your team

10:23:42 8 here no later than 9:30 to make sure your

10:23:45 9 technology is working. We'll make sure that the

10:23:48 10 court is open at that time. You can --

10:23:55 11 actually, before you bring your witness forward,

10:23:57 12 I understand from Mr. Registrar there is a group

10:24:00 13 of documents you'd like to mark; is that

10:24:01 14 correct?

10:24:02 15 MR. BEGGS: Yes, that's correct, Your

10:24:03 16 Honour.

10:24:04 17 THE COURT: Do you have a list for me?

10:24:06 18 I know you gave one to Mr. Registrar. Do you

10:24:08 19 have another copy?

10:24:26 20 Subject to any submissions, what I

10:24:28 21 would propose to do, Mr. Beggs, is have your

10:24:31 22 list marked as a lettered exhibit, after which

10:24:34 23 Mr. Registrar will give you the exhibit numbers

10:24:37 24 without reading all of the description so you

10:24:40 25 can proceed, and at an appropriate time he will



1 see that those details all get input into the  
2 electronic database.

3 Anyone have a problem with that? No?  
4 No. All right. Mr. Registrar, what is the next  
5 lettered exhibit?

6 THE REGISTRAR: Lettered Exhibit H-3.

7 EXHIBIT NO. H-3: List of documents to  
8 be marked as exhibits.

9 THE COURT: Please go ahead, Mr.  
10 Registrar, when you are ready and give us the  
11 numbers that we should use for each document  
12 number.

13 THE REGISTRAR: Document number S0111  
14 is going to be Exhibit 4455.

15 EXHIBIT NO. 4455: Document number  
16 S0111.

17 THE REGISTRAR: Number S044, Exhibit  
18 4456.

19 EXHIBIT NO. 4456: Document number  
20 S044.

21 THE REGISTRAR: Document S0174,  
22 Exhibit 4457.

23 EXHIBIT NO. 4457: Document number  
24 S0174.

25 THE REGISTRAR: S0189, Exhibit 4458.

10:25:47 1 EXHIBIT NO. 4458: Document number  
10:25:47 2 S0189.  
10:25:52 3 THE REGISTRAR: Document number S0190,  
10:25:56 4 Exhibit 4459.  
10:25:57 5 EXHIBIT NO. 4459: Document number  
10:25:58 6 S0190.  
10:26:01 7 THE REGISTRAR: Document number S0274,  
10:26:01 8 Exhibit 4460.  
10:26:02 9 EXHIBIT NO. 4460: Document number  
10:26:03 10 S0274.  
10:26:04 11 THE REGISTRAR: S0340, Exhibit number  
10:26:07 12 4461.  
10:26:07 13 EXHIBIT NO. 4461: Document number  
10:26:07 14 S0340.  
10:26:10 15 THE REGISTRAR: S0352, Exhibit 4462.  
10:26:14 16 EXHIBIT NO. 4462: Document number  
10:26:14 17 S0352.  
10:26:15 18 THE REGISTRAR: S0361, Exhibit 4463.  
10:26:20 19 EXHIBIT NO. 4463: Document number  
10:26:20 20 S0361.  
10:26:21 21 THE REGISTRAR: S0362, Exhibit 4464.  
10:26:25 22 EXHIBIT NO. 4464: Document number  
10:26:25 23 S0362.  
10:26:26 24 THE REGISTRAR: S0363, Exhibit 4465.  
10:26:30 25 EXHIBIT NO. 4465: Document number

10:26:30 1 S0363.

10:26:31 2 THE REGISTRAR: S0397, Exhibit 4466.

10:26:35 3 EXHIBIT NO. 4466: Document number

10:26:35 4 S0397.

10:26:36 5 THE REGISTRAR: S0444, Exhibit 4467.

10:26:40 6 EXHIBIT NO. 4467: Document number

10:26:40 7 S0444.

10:26:42 8 THE REGISTRAR: S0548, Exhibit 4468.

10:26:47 9 EXHIBIT NO. 4468: Document number

10:26:47 10 S0548.

10:26:49 11 THE REGISTRAR: Document number S0565,

10:26:51 12 Exhibit number 4469.

10:26:55 13 EXHIBIT NO. 4469: Document number

10:26:55 14 S0565.

10:26:56 15 THE REGISTRAR: S0722, Exhibit number

10:27:00 16 4470.

10:11:41 17 EXHIBIT NO. 4470: Document number

10:11:41 18 S0722.

10:27:03 19 THE REGISTRAR: S0825, Exhibit number

10:27:06 20 4471.

10:27:07 21 EXHIBIT NO. 4471: Document number

10:27:07 22 S0825.

10:27:09 23 THE REGISTRAR: S0831, Exhibit 4472.

10:27:13 24 EXHIBIT NO. 4472: Document number

10:27:13 25 S0831.

10:27:14 1 THE REGISTRAR: S0917, 4473.  
10:27:19 2 EXHIBIT NO. 4473: Document number  
10:27:19 3 S0917.  
10:27:20 4 THE REGISTRAR: S0951, Exhibit number  
10:27:23 5 4474.  
10:27:25 6 EXHIBIT NO. 4474: Document number  
10:27:25 7 S0951.  
10:27:26 8 THE REGISTRAR: S0971, 4475.  
10:27:29 9 EXHIBIT NO. 4475: Document number  
10:27:29 10 S0971.  
10:27:31 11 THE REGISTRAR: S0972, Exhibit 4476.  
10:27:35 12 EXHIBIT NO. 4476: Document number  
10:27:35 13 S0972.  
10:27:36 14 THE REGISTRAR: S0974, Exhibit 4477.  
10:27:40 15 EXHIBIT NO. 4477: Document number  
10:27:40 16 S0974.  
10:27:42 17 THE REGISTRAR: S0995, Exhibit 4478.  
10:27:45 18 EXHIBIT NO. 4478: Document number  
10:27:45 19 S0995.  
10:27:46 20 THE REGISTRAR: S1016, Exhibit number  
10:27:51 21 4479.  
10:27:51 22 EXHIBIT NO. 4479: Document number  
10:27:51 23 S1016.  
10:27:53 24 THE REGISTRAR: S1085, Exhibit number  
10:27:57 25 4480.

|          |    |                                      |
|----------|----|--------------------------------------|
| 10:27:58 | 1  | EXHIBIT NO. 4480: Document number    |
| 10:27:58 | 2  | S1085.                               |
| 10:28:00 | 3  | THE REGISTRAR: S1140, Exhibit number |
| 10:28:03 | 4  | 4481.                                |
| 10:28:04 | 5  | EXHIBIT NO. 4481: Document number    |
| 10:28:04 | 6  | S1140.                               |
| 10:28:05 | 7  | THE REGISTRAR: S1196, Exhibit number |
| 10:28:09 | 8  | 4482.                                |
| 10:28:10 | 9  | EXHIBIT NO. 4482: Document number    |
| 10:28:10 | 10 | S1196.                               |
| 10:28:11 | 11 | THE REGISTRAR: S1261, Exhibit number |
| 10:28:14 | 12 | 4483.                                |
| 10:28:15 | 13 | EXHIBIT NO. 4483: Document number    |
| 10:28:15 | 14 | S1261.                               |
| 10:28:16 | 15 | THE REGISTRAR: S1292, Exhibit number |
| 10:28:19 | 16 | 4484.                                |
| 10:28:20 | 17 | EXHIBIT NO. 4484: Document number    |
| 10:28:20 | 18 | S1292.                               |
| 10:28:21 | 19 | THE REGISTRAR: S1308, Exhibit number |
| 10:28:25 | 20 | 4485.                                |
| 10:28:26 | 21 | EXHIBIT NO. 4485: Document number    |
| 10:28:26 | 22 | S1308.                               |
| 10:28:27 | 23 | THE REGISTRAR: S1328, Exhibit number |
| 10:28:30 | 24 | 4486.                                |
| 10:28:32 | 25 | EXHIBIT NO. 4486: Document number    |

10:28:32 1 S1328.

10:28:32 2 THE REGISTRAR: S1348, Exhibit number

10:28:35 3 4487.

10:28:36 4 EXHIBIT NO. 4487: Document number

10:28:36 5 S1348.

10:28:37 6 THE REGISTRAR: S1373, Exhibit number

10:28:40 7 4488.

10:28:42 8 EXHIBIT NO. 4488: Document number

10:28:42 9 S1373.

10:28:43 10 THE REGISTRAR: S1517, Exhibit number

10:28:46 11 4489.

10:28:48 12 EXHIBIT NO. 4489: Document number

10:28:48 13 S1517.

10:28:48 14 THE REGISTRAR: S1530, Exhibit number

10:28:52 15 4490.

10:28:53 16 EXHIBIT NO. 4490: Document number

10:28:53 17 S1530.

10:28:56 18 THE REGISTRAR: S1531, Exhibit number

10:28:59 19 4491.

10:29:01 20 EXHIBIT NO. 4491: Document number

10:29:01 21 S1531.

10:29:01 22 THE REGISTRAR: S1575, Exhibit number

10:29:05 23 4492.

10:29:06 24 EXHIBIT NO. 4492: Document number

10:29:06 25 S1575.

|          |    |                                      |
|----------|----|--------------------------------------|
| 10:29:07 | 1  | THE REGISTRAR: S1609, Exhibit number |
| 10:29:09 | 2  | 4493.                                |
| 10:29:11 | 3  | EXHIBIT NO. 4493: Document number    |
| 10:29:11 | 4  | S1609.                               |
| 10:29:11 | 5  | THE REGISTRAR: S1624, Exhibit number |
| 10:29:14 | 6  | 4494.                                |
| 10:29:16 | 7  | EXHIBIT NO. 4494: Document number    |
| 10:29:16 | 8  | S1624.                               |
| 10:29:17 | 9  | THE REGISTRAR: S1626, Exhibit number |
| 10:29:20 | 10 | 4495.                                |
| 10:29:22 | 11 | EXHIBIT NO. 4495: Document number    |
| 10:29:22 | 12 | S1626.                               |
| 10:29:23 | 13 | THE REGISTRAR: S1780, Exhibit number |
| 10:29:26 | 14 | 4496.                                |
| 10:29:27 | 15 | EXHIBIT NO. 4496: Document number    |
| 10:29:27 | 16 | S1780.                               |
| 10:29:28 | 17 | THE REGISTRAR: S1834, Exhibit number |
| 10:29:31 | 18 | 4497.                                |
| 10:29:34 | 19 | EXHIBIT NO. 4497: Document number    |
| 10:29:34 | 20 | S1834.                               |
| 10:29:34 | 21 | THE REGISTRAR: S1847, Exhibit number |
| 10:29:37 | 22 | 4498.                                |
| 10:29:39 | 23 | EXHIBIT NO. 4498: Document number    |
| 10:29:39 | 24 | S1847.                               |
| 10:29:39 | 25 | THE REGISTRAR: S1906, Exhibit number |

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4499.

EXHIBIT NO. 4499: Document number  
S1906.

THE REGISTRAR: And the last one is  
S1914, Exhibit number 4500.

EXHIBIT NO. 4500: Document number  
S1914.

THE COURT: Thank you, Mr. Registrar.

THE REGISTRAR: Thank you, Your  
Honour.

THE COURT: Mr. Beggs, is there  
anything else before we ask the witness to come  
forward?

MR. BEGGS: It can be either before or  
after but I wanted to ask, it has been the  
practice and agreement among counsel that the  
evidence on voir dices have been made evidence  
in the trial, and I just wanted to confirm  
whether that's the case for Dr. von Gernet or  
alternatively ask that it be.

THE COURT: Plaintiffs' counsel?

MS. PELLETIER: I would actually  
prefer that, Your Honour.

THE COURT: You won't have to redo  
your cross-examination.



10:30:45 1 MS. PELLETIER: Exactly.

10:30:45 2 THE COURT: All right. So I just put  
10:30:46 3 on the record that the testimony of this witness  
10:30:49 4 in the voir dire will form part of his evidence  
10:30:52 5 in this trial.

10:30:55 6 Also while we're at it, put on the  
10:30:57 7 record that I made a ruling on October 21, 2019,  
10:31:01 8 that disposed of both the motion and the issues  
10:31:06 9 raised on that voir dire in relation to the  
10:31:10 10 tendering of this gentleman as an expert  
10:31:12 11 witness.

10:31:13 12 I did accept his tender as set out in  
10:31:17 13 some detail in my ruling, which I will not  
10:31:20 14 repeat this morning.

10:31:22 15 Having said all of that, we move  
10:31:24 16 directly to his examination in-chief. And he's  
10:31:29 17 still under oath. I'll remind him of that as he  
10:31:31 18 walks forward. I see him in the back row.

10:31:35 19 Dr. von Gernet, as you come forward  
10:31:38 20 you are still under oath.

10:31:41 21 Is there anything else, Mr. Beggs,  
10:31:42 22 before we begin?

10:31:44 23 MR. BEGGS: Only to mention that  
10:31:46 24 Dr. von Gernet's qualification is available at  
10:31:49 25 Exhibit V-1, if we need reminding of it.

10:31:54 1 THE COURT: You mean the tender?

10:31:56 2 MR. BEGGS: The tender, yes.

10:31:56 3 THE COURT: Or the accepted tender.

10:31:58 4 MR. BEGGS: The one that was accepted  
10:31:59 5 by Your Honour, yes.

10:32:00 6 THE COURT: There is one other thing  
10:32:01 7 that I wish to raise which relates to  
10:32:03 8 Dr. von Gernet's testimony. I haven't gone  
10:32:05 9 through this lengthy list of consent exhibits  
10:32:08 10 that were just marked. Do they include the  
10:32:10 11 roughly 30-page report of this gentleman that  
10:32:14 12 was not the subject of an objection and  
10:32:20 13 otherwise available to put into evidence, if you  
10:32:22 14 are requesting that it be put in?

10:32:24 15 MR. BEGGS: Yes, Your Honour, it is  
10:32:25 16 not on that list but I would request that his  
10:32:28 17 extracted report be made the next exhibit.

10:32:31 18 THE COURT: All right. Well, I'm  
10:32:32 19 going to ask for a better description of it than  
10:32:39 20 that.

10:32:39 21 MR. BEGGS: Yes, Your Honour.

10:32:39 22 THE COURT: But you can deal with it  
10:32:41 23 when you make the request.

10:32:44 24 MR. BEGGS: Yes, Your Honour.

10:32:45 25 THE COURT: I assume it has a title of

10:32:46 1 some kind.

10:32:47 2 ALEXANDER VON GERNET:

10:32:47 3 PREVIOUSLY AFFIRMED.

10:32:50 4 EXAMINATION IN-CHIEF BY MR. BEGGS:

10:33:53 5 Q. If we can call up SC0172.

10:33:56 6 THE COURT: Is there a date on that  
10:33:56 7 document? Yes, January 18th. Okay. You could  
10:33:56 8 read the description there.

10:33:56 9 MR. BEGGS: Yes, Your Honour. It is a  
10:33:57 10 report entitled "Indigenous Stories and Oral  
10:33:59 11 Traditions (Selected Extracts from Giant Beavers  
10:34:05 12 and Colossal Dams)" by Alexander von Gernet,  
10:34:15 13 dated January 18th, 2019. May I request that  
10:34:16 14 this be made the next exhibit, Your Honour?

10:34:18 15 THE COURT: And I understand that  
10:34:19 16 there is consent to this forming part of this  
10:34:21 17 gentleman's testimony, is that correct?

10:34:24 18 MS. PELLETIER: That's correct, Your  
10:34:25 19 Honour.

10:34:25 20 THE COURT: Thank you for confirming  
10:34:25 21 that. Mr. Registrar, what is the next exhibit  
10:34:26 22 number?

10:34:27 23 THE REGISTRAR: Exhibit 4501.

10:34:29 24 EXHIBIT NO. 4501: Report entitled  
10:34:32 25 "Indigenous Stories and Oral

10:34:32 1 Traditions (Selected Extracts from  
10:34:32 2 Giant Beavers and Colossal Dams)" by  
10:34:32 3 Alexander Von Gernet dated January  
10:34:32 4 18th, 2019.

10:34:32 5 THE COURT: Thank you. Please go  
10:34:40 6 ahead.

10:34:41 7 BY MR. BEGGS:

10:34:42 8 Q. Thank you, Your Honour.

10:34:42 9 Dr. von Gernet, did you have the opportunity to  
10:34:44 10 read the Reasons of this Court dated October  
10:34:46 11 21st, 2019, with respect to your evidence?

10:34:50 12 A. Yes, I did.

10:34:58 13 Q. Now, I'd like to touch on how you  
10:35:03 14 started in this litigation, without going on to  
10:35:06 15 the material that was covered in the motions.

10:35:09 16 THE COURT: Just before you do that,  
10:35:10 17 sir, I'm going to remind you about our large  
10:35:13 18 courtroom and difficulty hearing and ask you to  
10:35:16 19 both bring your chair closer to the microphone  
10:35:19 20 and bear in mind that even the individuals in  
10:35:22 21 the very last row need to be able to hear you  
10:35:25 22 clearly. Please go ahead, Mr. Beggs.

10:35:28 23 MR. BEGGS: Thank you, Your Honour.

10:35:29 24 BY MR. BEGGS:

10:35:30 25 Q. Dr. von Gernet, you were asked to

1 conduct research and write a report for this  
2 litigation; is that correct?

3 A. That's correct.

4 Q. And for that purpose did you  
5 review the 2019 expert report of Dr. McCarthy?

6 A. I did.

7 Q. And did you also review material  
8 previously written by Lenore Keeshig?

9 A. I did.

10 Q. I'm going to take you through a  
11 series of different oral traditions described by  
12 Lenore Keeshig, and I would state that I use her  
13 full name because there are several different  
14 individuals named Keeshig in this litigation.

15 And I would ask you, Dr. von Gernet,  
16 if you conducted research into each of these.  
17 The first is, "Nanabush and the Giant Beaver"?

18 A. Yes.

19 Q. And you compared the material  
20 from Lenore Keeshig with that of Dr. McCarthy,  
21 is that correct?

22 A. That's correct.

23 Q. And second is "Nanabush Grieves",  
24 did you look at that one?

25 A. Yes.

10:36:39 1 Q. And the third one perhaps doesn't  
10:36:41 2 have a title but is about a tunnel. Did you  
10:36:44 3 look at a tradition dealing with that?

10:36:46 4 A. Yes, I did.

10:36:47 5 Q. And a tradition dealing with a  
10:36:51 6 great flood?

10:36:52 7 A. Yes.

10:36:53 8 Q. And a tradition or an account  
10:36:55 9 dealing with islands once connected to the  
10:36:56 10 peninsula?

10:36:57 11 A. Yes.

10:37:11 12 Q. You did additional research into  
10:37:13 13 claims that weren't -- which you've now been  
10:37:17 14 advised are not part of the evidence of Lenore  
10:37:29 15 Keeshig?

10:37:30 16 A. I'm not sure what you might be  
10:37:37 17 alluding to. I know that I did some research  
10:37:40 18 looking at an alleged parallel between certain  
10:37:46 19 waterfalls that were alluded to in several  
10:37:51 20 Anishinaabe stories and certain geological  
10:37:58 21 evidence.

10:37:58 22 Q. Thank you, Dr. von Gernet. I  
10:38:00 23 won't be touching on that tradition as it wasn't  
10:38:04 24 raised by Lenore Keeshig.

10:38:06 25 But if I could just ask you, do you

1 have a term for these traditions that are  
2 associated with thousands of years of  
3 historicity?

4 A. Yeah. I once described them back  
5 in the 1990s as long-term oral traditions as  
6 opposed to short-term oral traditions.

7 Long-term oral traditions are ones  
8 where the temporal framework is measured in many  
9 centuries or even millennia as opposed to  
10 shorter-term traditions.

11 When they're really long, as in many  
12 millennia, I would -- I have more recently  
13 referred to them as deep-time oral traditions.

14 Q. And what would be the approach  
15 you would take to analyzing such deep-time oral  
16 traditions?

17 A. Well, there are many different  
18 ways in which oral traditions can be examined,  
19 and all of them have legitimacy in various  
20 academic and nonacademic settings.

21 You can look at them from religious  
22 perspective; you can look at them from a  
23 folkloristic (sic) perspective; you can look at  
24 them from a psychological perspective; from the  
25 perspective of internal meanings and symbols;

10:39:55 1 you can look at them from a philosophical  
10:40:00 2 perspective. There are many different ways in  
10:40:02 3 which you can look at them.

10:40:08 4 My concern in the research that I did  
10:40:09 5 in relation to these proceedings was only when  
10:40:13 6 it comes to claims that are made that the  
10:40:20 7 traditions have historicity.

10:40:24 8 Historicity is a term that's used in  
10:40:28 9 my field and in historical fields to describe  
10:40:35 10 the truth content of the traditions in terms of  
10:40:45 11 what actually happened in the past. In other  
10:40:50 12 words, claims that are made that their content  
10:40:54 13 contains evidence of actual events that are  
10:40:57 14 independent of the human mind, they're external  
10:41:03 15 to the human who has related the story. And in  
10:41:10 16 that sense, they're not -- they contain  
10:41:14 17 information that is not the product of later  
10:41:18 18 times, or later imaginations. They, in fact,  
10:41:23 19 contain some kind of historical content which,  
10:41:28 20 as I said, is external to the human mind.

10:41:35 21 So the approach that I take in this  
10:41:39 22 instance is the consequence of the stories being  
10:41:45 23 framed and presented as having historicity.

10:41:51 24 And so when -- under that condition,  
10:41:53 25 when a claim is made that a tradition has



10:41:57 1 historicity then your approach necessarily is  
10:42:01 2 different from one when the claim is made that  
10:42:04 3 the tradition is somehow metaphorical of  
10:42:11 4 something else, or it's symbolic, or it's a  
10:42:15 5 present understanding of what might have  
10:42:17 6 happened, or it's a reflection on the past, or  
10:42:20 7 it's a -- has some kind of didactic function, or  
10:42:28 8 any of the other reasons why humans create oral  
10:42:31 9 traditions.

10:42:32 10 Q. But if I can interrupt you there,  
10:42:37 11 so is it your understanding that the oral  
10:42:39 12 traditions that I've just identified by Lenore  
10:42:42 13 Keeshig are associated -- or are -- there's an  
10:42:47 14 assertion that they were -- that they have  
10:42:50 15 historicity, as you said?

10:42:53 16 A. There is no question that the  
10:42:56 17 combination or correlation of the evidence  
10:43:01 18 between Lenore Keeshig and the evidence of  
10:43:06 19 Francine McCarthy are intended to advance a  
10:43:11 20 claim of historicity in the sense that the  
10:43:15 21 geological evidence is presented in support of  
10:43:26 22 that historicity.

10:43:28 23 Q. Now, you prepared a chart that  
10:43:30 24 reflected that. Unfortunately, we're having  
10:43:32 25 some technical difficulties with that, but if

10:43:35 1 that gets resolved we'll bring that chart  
10:43:38 2 forward at that time.

10:43:39 3 Sorry, so I interrupted you. You said  
10:43:49 4 that having determined that these are claims  
10:43:51 5 asserting historicity you had a different  
10:43:54 6 approach than traditions which do not assert  
10:44:01 7 that?

10:44:02 8 A. Yes. I mean once someone,  
10:44:06 9 whether it's the raconteur himself or herself or  
10:44:10 10 an outsider, employs a story, or myth, or  
10:44:20 11 narrative, whether it's Indigenous or not, to  
10:44:25 12 advance a claim that it contains evidence of  
10:44:30 13 actual historical or other events that happened  
10:44:33 14 in the past, then you approach that quite  
10:44:38 15 differently than you would if that claim had not  
10:44:41 16 been made.

10:44:48 17 Q. Now, in the voir dire that was  
10:44:50 18 held several months ago you stated that oral  
10:44:54 19 traditions should be assessed on a case-by-case  
10:44:56 20 basis. Is that true of deep-time oral  
10:44:59 21 traditions as well?

10:45:00 22 A. Yes, absolutely. The one thing  
10:45:05 23 that I have always stressed, in my research and  
10:45:09 24 again in the work that I did in relation to  
10:45:10 25 these proceedings, is that once should never

10:45:14 1 have an a priori stance on the matter of whether  
10:45:21 2 any given oral history or tradition has  
10:45:24 3 historicity. It needs to be assessed on a  
10:45:33 4 case-by-case basis.

10:45:36 5 And the reason why I emphasize that is  
10:45:37 6 that, in my experience, it is -- there have been  
10:45:45 7 cases in which oral traditions do seem to have  
10:45:49 8 information that comes from the past and is not  
10:45:52 9 merely an invention of the present in which the  
10:45:56 10 tradition is told.

10:46:00 11 And, on the other hand, we also have  
10:46:02 12 ample cases in which the oral traditions that  
10:46:09 13 are claimed to contain information about the  
10:46:11 14 past turn out to be demonstrably false in that  
10:46:17 15 regard. So the fact that we can even have one  
10:46:19 16 or two examples in each category suggests that  
10:46:23 17 we should dispense with any kind of a priori  
10:46:25 18 position on it and look at each case on a  
10:46:29 19 case-by-case basis.

10:46:37 20 Q. Is there an academic debate on  
10:46:39 21 the reliability of deep-time oral traditions?

10:46:42 22 A. Yes. One of the things that --  
10:46:43 23 when I was originally confronted with this claim  
10:46:48 24 of deep-time oral traditions in this case, I  
10:46:56 25 immediately sensed that, you know, this is such

1 an extraordinary claim that it's easy to just  
2 simply dispense with it and say, you know, this  
3 is just nonsense. How can that possibly be that  
4 you have got, you know, these oral traditions  
5 going back 8 to 11,000 years?

6 But to counter that, in my own  
7 experience, having been exposed to this  
8 literature for decades, there is in fact a  
9 scholarly debate about this so we shouldn't  
10 dismiss this at all.

11 In fact I take it very seriously,  
12 which is why I spent many months of research and  
13 wrote a 350-page opinion on it. I did not  
14 dismiss this outright at all. I took it very  
15 seriously, precisely because, (a), there is a --  
16 it would be scientifically inappropriate to  
17 simply dismiss something based on your intuition  
18 that it might be nonsense.

19 But, secondly and most importantly,  
20 there are -- there is in fact a scholarly  
21 literature that's extant and that precedes the  
22 events of this litigation on the very issue of  
23 whether there can be deep-time oral traditions.

24 And, in fact, there are scholars who  
25 are credentialed to have advanced such positions

1 in various academic settings, and at the same  
2 time there are also blistering critiques of  
3 those efforts.

4 So in the context of an academic  
5 dispute, I think it would be inappropriate for  
6 me, or anyone else, to simply dismiss this  
7 material out of hand. It must be seriously  
8 considered.

9 And there is another very good reason  
10 why it needs to be seriously considered, and  
11 that is that the events in question, which are  
12 the ones that are advanced in the claim,  
13 occurred in a temporal timeframe that overlaps  
14 with early human history in Ontario.

15 So it is at least theoretically  
16 possible to have eyewitnesses to the early  
17 Holocene, that is the period between 8,200 years  
18 ago and about 11,700 years ago.

19 That time period happens to coincide  
20 with the emergence of the evidence that we have  
21 of some of the earliest inhabitants, human  
22 inhabitants of the Province. So that  
23 theoretical possibility exists and that is  
24 another reason why we need to consider this  
25 seriously.

1 In other contexts that theoretical  
2 possibility does not exist. For instance, there  
3 are cases in the west where Indigenous peoples  
4 are familiar with certain strange animals which  
5 were part of their mythology, and these animals  
6 actually don't exist in the paleontological  
7 record at the time that Europeans lived at any  
8 point in time in North American history. They  
9 are so many millions of years old that they --  
10 the stories could only have emerged after the  
11 fact and not at the time when these animals  
12 existed.

13 So in that case you could easily at  
14 least dispense with the theoretical possibility,  
15 but in this case you can't do that.

16 We have to take this seriously and I  
17 have, which is, again, why I stress that I spent  
18 an awful lot of time looking at this in  
19 considerable detail.

20 Q. Now before we go to the specifics  
21 of the conditions, I'd like to still touch on a  
22 few more of the aspects of your general  
23 approach. Could you tell me what a skeptical  
24 approach is to oral traditions?

25 A. Well, I use -- I mean it's very

10:51:42 1 important in science in general to have a  
10:51:45 2 skeptical approach. It's not that you adopt a  
10:51:56 3 skeptical position. I don't adopt skepticism as  
10:52:01 4 a position; that would be quite unscientific  
10:52:04 5 because that already sort of leads to a  
10:52:12 6 confirmation bias.

10:52:16 7 Rather I follow Michael Shermer's  
10:52:20 8 definition in that skepticism in science is a  
10:52:23 9 methodology, it's not a position. In fact it's  
10:52:25 10 one of the most important methodologies of  
10:52:27 11 science.

10:52:30 12 You do not take anything on its face  
10:52:32 13 but you examine it critically. And that, of  
10:52:39 14 course, makes a scientific inquiry quite  
10:52:45 15 different from, say, a religious stance, which  
10:52:51 16 often does not take skepticism as its main  
10:52:56 17 method of arriving at any kind of truths.

10:53:02 18 So I think it's important to recognize  
10:53:05 19 that I am a skeptic from a methodological  
10:53:09 20 standpoint but not as a position, per se.

10:53:13 21 Q. And does a -- does skepticism  
10:53:17 22 methodologically have any pejorative  
10:53:21 23 implication?

10:53:21 24 A. No. In science, in fact, it has  
10:53:23 25 a very positive -- since it's one of the

10:53:25 1 hallmarks of science it's -- it would be  
10:53:28 2 difficult to suggest that it was pejorative in  
10:53:32 3 any scientific enterprise.

10:53:41 4 Q. Do any of these traditions that  
10:53:42 5 we've mentioned in this case fit under a term  
10:53:45 6 called "geomythology"?

10:53:51 7 A. Yes. Not all of them but some of  
10:53:53 8 them certainly do.

10:53:57 9 And geomythology is not really  
10:54:00 10 something that many people may have heard of  
10:54:04 11 before so I go to some length to define what it  
10:54:11 12 is.

10:54:16 13 Q. Where does the term come from,  
10:54:17 14 "geomythology"?

10:54:19 15 A. Well geomythology, as far as we  
10:54:22 16 can tell, it goes back to a -- we're not sure  
10:54:26 17 exactly where it originated but we know who  
10:54:28 18 popularized it originally, and that was a  
10:54:33 19 geologist by the name Dorothy Vitaliano. And  
10:54:45 20 she wrote a very influential book back in the  
10:54:48 21 1970s called "Legends of the Earth".

10:55:00 22 Q. And how did she define  
10:55:04 23 geomythology?

10:55:05 24 A. Well, geomythology for Vitaliano  
10:55:09 25 refers to two different things. In general, in



10:55:16 1 its broadest sense what it really referred to  
10:55:19 2 was any kind of geologically-inspired folklore,  
10:55:24 3 regardless of its origins. That's in its  
10:55:28 4 broadest sense. That was her broad definition.

10:55:33 5 But then she went on to define two  
10:55:36 6 different types of geomythology. The one type  
10:55:46 7 is myths or stories containing information about  
10:55:53 8 actual geological events that may be witnessed  
10:55:58 9 by various groups of people. So these would be  
10:56:07 10 people who are on the ground witnessing some  
10:56:09 11 geological upheaval that was significant enough  
10:56:13 12 to be witnessed within a human lifetime.

10:56:15 13 And that's the one that many people or  
10:56:18 14 many scholars who focus on geomythology, those  
10:56:23 15 are the types that are most compelling to them  
10:56:27 16 and the ones that they tend to gravitate  
10:56:30 17 towards.

10:56:30 18 But they often neglect the other type  
10:56:32 19 that Vitaliano identified. The other type are  
10:56:34 20 what are called "etiological" or "explanatory"  
10:56:34 21 myths, and these purport to explain the origins  
10:56:50 22 of striking features of the landscape.

10:56:53 23 So they also deal with geology and the  
10:57:00 24 landscape but they're intended to explain their  
10:57:04 25 origins after the fact. Long after nature

1 formed these features stories are told which  
2 try, in some entertaining or meaningful way, to  
3 explain how these things originated. And, as I  
4 said, those are referred to as "etiological".

5 There is a whole genre of fiction  
6 which is -- which Rudyard Kipling produced  
7 called "Just So" stories, and those are in the  
8 nature of explanatory or etiological myths.  
9 They are stories that explain the origins of  
10 many different things.

11 And I can get into some examples of  
12 those, but at this point what I wanted to do is  
13 simply emphasize that the definition of  
14 geomythology is two fold; it's not just the  
15 things that are actually observed at the time in  
16 which the geological events occurred, but also  
17 etiological or explanatory stories which people  
18 come up with after the fact in order to explain.

19 The first type, the ones that are  
20 referred to as -- or the first ones, the ones  
21 dealing with the actual geological events  
22 witnessed at the time are often referred to as  
23 euhemeristic. It comes from the Greek  
24 mythographer known as Euhemerus, who thought  
25 that all myths are based on actual historical

10:59:33 1 events and actual personages who lived in the  
10:59:38 2 past.

10:59:38 3 Essentially a euhemeristic approach to  
10:59:42 4 mythology is one that is an historical  
10:59:45 5 understanding of mythology as opposed to any  
10:59:48 6 other kind of understanding. It looks at myths  
10:59:51 7 as having historicity.

10:59:52 8 And so clearly the deep-time oral  
10:59:57 9 traditions, claim as advanced in these  
11:00:02 10 proceedings, falls under the euhemeristic  
11:00:08 11 approach to this but completely neglects the  
11:00:15 12 etiological possibilities.

11:00:23 13 Q. Before we get into those  
11:00:24 14 possibilities perhaps I'll return to what you  
11:00:27 15 said earlier about -- well, let's start with the  
11:00:36 16 giant beaver. Is it impossible that an oral  
11:00:41 17 tradition records events such as an encounter  
11:00:45 18 with the giant beaver from 10,000 years ago?

11:00:49 19 A. Is it impossible?

11:00:49 20 Q. Impossible.

11:00:49 21 A. No, it's not impossible. Not at  
11:00:52 22 all.

11:00:53 23 Q. Was there such a creature as a  
11:00:56 24 giant beaver?

11:00:56 25 A. There was. It's actually quite

1 well known. One of the Pleistocene megafauna,  
2 *Castoroides ohioensis*, is the Latin binomial.  
3 "Castor" refers to beaver, and "oides" is a  
4 Latin term that is often used to modify a  
5 generic name. In this case it would be "like  
6 beaver".

7 So it's not a beaver, it's like a  
8 beaver. "Oides" modifies *Castor* as being  
9 "like". So *Castoroides ohioensis* is the  
10 species name, because one of the first ones  
11 found was in Ohio so they -- often species are  
12 identified after the type specimen as it's  
13 known, in this case in Ohio.

14 Q. You said it's like a beaver, is  
15 it related to the beaver we know?

16 A. No. Well, unless you go back a  
17 very long time when there's common connections  
18 between all these species, but it's not actually  
19 a cast or genus. It's not the same genus.

20 The beaver is *Castor canadensis*, which  
21 is the -- so the genus itself is also -- the  
22 genus *Castor* is different from the genus  
23 *Castoroides*. As I said, *Castoroides* is "like".

24 Because it was found in the 19th  
25 century and had no precedent before that they

11:02:55 1 had to come up with a name. And so the genus --  
11:02:58 2 they basically said, Well, it's like a Castor,  
11:03:02 3 because it had such similarities to it but it's  
11:03:06 4 not actually related to it.

11:03:09 5 Q. Are there still giant beavers  
11:03:11 6 today or *Castoroides ohioensis*?

11:03:15 7 A. There are a few cryptozoologists  
11:03:15 8 who suggest there are but science has yet to  
11:03:25 9 find one.

11:03:26 10 Q. When does science regard them as  
11:03:27 11 having been extinct?

11:03:29 12 A. Generally it's understood to be  
11:03:31 13 some 10,000 years ago, although that's just  
11:03:34 14 based on, you know, the end of the Pleistocene.  
11:03:36 15 At some point shortly after the end of the last  
11:03:42 16 ice age they are presumed to have died out.  
11:03:46 17 There is certainly no fossilized or skeletalized  
11:03:50 18 (sic) remains that date after that.

11:04:00 19 Q. Where, generally, were these  
11:04:01 20 giant beavers located in North America?

11:04:03 21 A. They were located in various  
11:04:03 22 parts of North America, including as far west as  
11:04:07 23 the northwest coast; and as far east as Nova  
11:04:11 24 Scotia; as far north as Ontario, and as -- I  
11:04:20 25 believe they range into the -- at least into the

11:04:24 1 middle States if not the southern States.

11:04:29 2 Q. You said they had been found  
11:04:29 3 in -- or that they were in Ontario. Have  
11:04:32 4 fossils been found in Ontario?

11:04:34 5 A. Yes. There have been two  
11:04:37 6 specimens that were recovered. One of them is  
11:04:41 7 from a temporal context that's so long ago that  
11:04:48 8 it doesn't overlap with humans.

11:04:51 9 The other one possibly does overlap in  
11:04:56 10 time with humans; at least there is that  
11:05:03 11 possibility.

11:05:04 12 There are -- as far as I know there  
11:05:06 13 are no *Castoroides ohioensis* specimens that have  
11:05:13 14 actually been found on archeological sites, but  
11:05:16 15 they are -- they are relatively rare to begin  
11:05:19 16 with but they have been found.

11:05:25 17 Q. Now, when you refer to humans at  
11:05:27 18 that time period what type of humans would they  
11:05:31 19 be?

11:05:32 20 A. These are what's referred to as  
11:05:33 21 "Paleo-Indians" in my field. They are  
11:05:40 22 linguistically and culturally undifferentiated  
11:05:49 23 in the sense that you cannot identify what  
11:05:52 24 culture they had or what languages they spoke,  
11:05:54 25 at least not ones that we are familiar with

11:05:58 1 today.

11:05:59 2 And you can't dig up the languages or  
11:06:02 3 you can only dig up a little bit of their  
11:06:04 4 material culture. So we don't really know much  
11:06:08 5 about them. And other than in a general sense  
11:06:15 6 you cannot really link them to any modern  
11:06:18 7 populations.

11:06:20 8 So they are -- that's why  
11:06:24 9 archeologists use the term "Paleo-Indians" as  
11:06:28 10 opposed to some modern cultural or linguistic  
11:06:34 11 designation.

11:06:39 12 Q. And when did Paleo-Indians first  
11:06:41 13 appear in the Great Lakes area, or the records  
11:06:46 14 have traces of them?

11:06:48 15 A. Well, it was basically during the  
11:06:51 16 early Holocene as soon as you have -- obviously  
11:06:57 17 they could not have existed at the time when you  
11:07:00 18 had ice sheets that were a kilometre thick  
11:07:03 19 covering the area, so it was after the retreat  
11:07:06 20 of those glaciers that you begin to have the  
11:07:12 21 possibility of a human presence.

11:07:14 22 And indeed the archeological record  
11:07:17 23 reflects a Paleo-Indian presence after 11,000  
11:07:25 24 years ago or so, so you begin to get a pretty  
11:07:34 25 good sign that there are humans here.

11:07:37 1 Q. Is there an overlap between the  
11:07:39 2 giant beaver and Paleo-Indian presence?

11:07:42 3 A. As I said, we don't actually have  
11:07:44 4 any kind of archeological evidence of the giant  
11:07:53 5 beaver on human archeological sites, but one can  
11:07:56 6 assume that if they -- these giant beavers did  
11:07:59 7 make it into the early Holocene they would have  
11:08:11 8 been seen by early Paleo-Indians. So there  
11:08:15 9 still remains a theoretical possibility that  
11:08:17 10 they existed.

11:08:18 11 As I said, the date of around 10,000  
11:08:21 12 years for their demise is just a guess; and  
11:08:32 13 because it's just a guess I would not rule out  
11:08:34 14 overlap.

11:08:35 15 Q. And while we're on this  
11:08:40 16 chronological time period, we've heard about the  
11:08:43 17 collapse of the Nadoway Barrier from  
11:08:46 18 Dr. McCarthy. Is it possible that Paleo-Indians  
11:08:50 19 coincided with the collapse of the Nadoway  
11:08:52 20 Barrier?

11:08:53 21 A. Well, I think there's no  
11:08:54 22 question, because in the case of the Nadoway  
11:08:56 23 Barrier we at least have a pretty good date for  
11:08:59 24 it, which is around 9100BP.

11:09:06 25 So given that date, and the fact that



11:09:11 1 you've got Paleo-Indians in Ontario and Michigan  
11:09:17 2 long before that, it's quite conceivable and  
11:09:22 3 possible that Paleo-Indians were eyewitnesses to  
11:09:32 4 the Nadoway Barrier.

11:09:34 5 Q. And going back to the giant  
11:09:36 6 beaver for a moment, you said it was  
11:09:41 7 theoretically possible that Paleo-Indians  
11:09:42 8 observed the giant beaver. Is there other  
11:09:49 9 alternatives that could demonstrate that --  
11:09:57 10 sorry, that could explain an oral tradition  
11:09:59 11 concerning a giant beaver?

11:10:01 12 A. Absolutely.

11:10:03 13 Q. Could you give us some of those  
11:10:05 14 alternatives?

11:10:13 15 A. Well, this is where the whole  
11:10:17 16 thing becomes intellectually fascinated.  
11:10:20 17 Because of the plethora of alternatives we have  
11:10:30 18 to begin to think of probabilities as opposed to  
11:10:33 19 possibilities. There are so many different  
11:10:34 20 possibilities to explain the existence of a  
11:10:37 21 giant beaver in a story that's told in more  
11:10:41 22 recent times.

11:10:54 23 I went through all the different  
11:10:55 24 possibilities that come to mind, based on an  
11:11:03 25 understanding of the record, and I could

1 probably summarize them, which I originally did.

2 So there are -- I came up with --  
3 after a lot of research I came up with at least  
4 five different possibilities which are viable  
5 alternatives to the deep-time oral traditions  
6 claim.

7 So keep in mind now that there are  
8 Anishinaabe stories which allude to or have  
9 specific references to what in English  
10 translation are referred to as giant beavers.

11 And the claim is that these references  
12 or allusions are to the genus and species that  
13 are referred to earlier, *Castoroides ohioensis*,  
14 as opposed to the beaver that we know today  
15 which is *Castor canadensis*.

16 So is that the only possibility? No,  
17 of course not. There are many other  
18 possibilities.

19 And the five most important ones that  
20 I discussed in great detail in my original  
21 report was, first, since the adjective "giant"  
22 in the Anishinaabe myth tells us nothing about  
23 the genus or the species or antiquity, it may  
24 simply refer to an abnormally large, modern  
25 beaver.

1 It happens that the largest of modern  
2 beaver that have been recorded by biologists,  
3 and by early observers, is not that far from the  
4 lower end of the size of the giant beaver known  
5 to the fossil record, that is *Castoroides*  
6 *ohioensis*.

7 Secondly, the sightings of giant  
8 beaver by Anishinaabe peoples have been recorded  
9 in the 21st century, in the 20th century, in the  
10 19th century. And those gave rise to stories  
11 about them. I give examples of that.

12 I gave examples of that in the  
13 research that I did in the report that I wrote.  
14 And for this reason alone this mythical giant  
15 beaver need not hark back to the early Holocene  
16 because we have actual reports of Anishinaabe  
17 people seeing these giant beavers.

18 Now, we don't know if they are  
19 *Castoroides ohioensis* or *Castor canadensis* but  
20 they are described as giant beavers. And the  
21 sightings have been made in recent times, in the  
22 last few centuries, and they have told stories  
23 about them.

24 Thirdly, there is, in fact, a long and  
25 voluminous literature on the manner in which

1 stories about giant animals and other beings  
2 originate from the discovery of fossils. This  
3 happens throughout the world.

4 Many of the folk tales of ancient  
5 China and of Europe originated in the discovery  
6 of fossilized remains, which stimulated these  
7 stories. The same holds true in the Americas.

8 And I uncovered numerous stories that  
9 are demonstrably linked to the discovery of the  
10 fossils, because some of these stories actually  
11 mention the fossils themselves; and others are  
12 told after having seen these fossils.

13 So we know that this phenomenon exists  
14 and that it exists in various parts of the  
15 world. And we have actual evidence of it  
16 existing as a phenomenon in North America.

17 And, in fact, there are stories that  
18 Anishinaabe people -- I should say that Mi'kmaq  
19 people on the east coast told of actually having  
20 recovered fossils of ancient beavers that were  
21 gigantic in size. So we actually have records  
22 in which Indigenous peoples uncovered what they  
23 believed to be giant beavers.

24 Since we don't have the actual  
25 specimens we can't confirm what species they

1 belong to but, according to their stories, they  
2 found fossils that were of gigantic size and  
3 this stimulated stories that they told about  
4 them.

5 Q. If I could interrupt for a  
6 moment, would an individual or an Anishinaabe  
7 individual be able to identify that they were  
8 looking at a giant beaver bone as opposed to  
9 another animal?

10 A. I don't see any reason why not,  
11 because we actually have -- well, first of all  
12 the reason why *Castoroides* was called  
13 *Castoroides* to begin with was because an  
14 observer looked at a few bones; they were  
15 basically some pieces of a skull and some teeth  
16 and said, Hey, these look like a really big  
17 beaver.

18 So that's how the type specimen was  
19 identified to begin with. There's no reason why  
20 Indigenous peoples wouldn't have the same  
21 empirical response to that empirical  
22 observation.

23 And, in fact, we do have an instance  
24 where a paleontologist up in the Yukon took a  
25 very small piece of a big beaver and showed it

11:19:04 1 to the local Indigenous people in the Yukon and  
11:19:06 2 they said, Hey, that looks like a really big  
11:19:09 3 beaver. This was not *Castor canadensis*, this  
11:19:17 4 was the *Castoroides ohioensis* that they were  
11:19:23 5 shown and they immediately, out of the blue,  
11:19:23 6 identified it and said, yeah.

11:19:25 7 So the short answer is, absolutely.  
11:19:26 8 If any -- if any Anishinaabe person had found  
11:19:35 9 any portion of a giant -- of a giant beaver,  
11:19:37 10 they would have recognized it as a beaver.  
11:19:43 11 That's a fair conclusion to reach.

11:19:52 12 I should also emphasize that the  
11:19:55 13 discovery of a giant beaver piece, or a bone, or  
11:20:00 14 a fossil in and of itself does not necessary --  
11:20:06 15 is not necessarily a requirement to coming up  
11:20:09 16 with a story about giant beavers.

11:20:12 17 All it takes -- and we've seen this  
11:20:16 18 happen in other parts of North America, all it  
11:20:18 19 takes is the discovery of very large fossil  
11:20:21 20 bones of any species anywhere; doesn't have to  
11:20:25 21 be a beaver; any species, including mammoths,  
11:20:28 22 mastodons, which are much more ubiquitous in the  
11:20:33 23 record; large bears, there are also Pleistocene  
11:20:41 24 bears which are huge proportion. Any type of  
11:20:44 25 megafauna of the past and you come up with

1 stories about how all of the animals in the past  
2 were gigantic.

3 And, indeed, according to the Jesuits  
4 in the 17th century when they interviewed some  
5 of the Inuit, who at that time were referred to  
6 as the "montagnais" by the French, they told the  
7 Jesuits that every species in the past, the  
8 first representative of every species in the  
9 past was a giant and that the first beaver was  
10 the size of a cabin.

11 And in the 20th century -- that was in  
12 the 17th century that they were saying this. In  
13 the 20th century anthropologists went back and  
14 interviewed other Inuit elders and they also  
15 said, you know, in the past we had giant  
16 creatures.

17 So it doesn't necessarily require the  
18 actual discovery of a specific species to make  
19 the -- to leap to the informed conclusion that  
20 there were giants in the past of which their  
21 descendants are only small.

22 So that's the third possibility.

23 Now, I should say that there is a  
24 lengthy scholarly literature that goes back at  
25 least a century in which there was a debate

1 about whether stories about giant animals were  
2 inspired by the eyewitness observations of those  
3 animals or whether they were inspired by fossils  
4 found later.

5 And that literature is well known in  
6 my field, and I looked at that literature  
7 because -- at a considerable degree in relation  
8 to the research I did in these proceedings.

9 And I found that there is no -- no one  
10 has come up with a method to distinguish those.  
11 How can we possibly know whether any given story  
12 was the consequence of an eye-witness  
13 observation ten thousand years ago or the  
14 consequence of a reconstruction of what might  
15 have happened based on the vestigial clues that  
16 are found in the present?

17 And I keep saying this over and over  
18 again, and that is that Indigenous peoples, you  
19 know, had the same brains, the same ability to  
20 make observations about the environment, put two  
21 and two together as do modern geologists. They  
22 didn't have the technology, of course; they  
23 didn't have all the fancy equipment that modern  
24 geologists have and modern paleontologists have,  
25 but they had the same means to make inferences



1 about what might have happened.

2 And when you find evidence in your --  
3 in the world in which you live, and you are very  
4 in tune with your environment, you begin to  
5 think about what may have happened in the past  
6 based on clues that you see in your environment,  
7 just as geologists might reconstruct the early  
8 Holocene using clues that they see in the  
9 environment today.

10 Q. Now, I think you have given us  
11 three of the alternatives that you identified?

12 A. Yes. There is a fourth one.  
13 The -- what I call the "augmentation of  
14 corporeal size", that is turning a regular-sized  
15 creature into a larger one may have been a folk  
16 motif intended to enhance the dangers and  
17 obstacles that our culture hero was obliged to  
18 overcome.

19 So qualifying the Anishinaabe beaver  
20 as "giant" may simply reflect some tendency to  
21 enlarge the potency of the mythical being rather  
22 than some empirical observation of an extinct or  
23 even extant species.

24 And we see this in some of these  
25 stories. If you look at these stories very

1 carefully you'll often find that, you know, it's  
2 a story about a culture hero chasing one of  
3 these giant creatures.

4 It wouldn't be such a story if the  
5 culture hero didn't have a commensurate foe.  
6 The culture hero, such as Nanabush, which is  
7 most of the Anishinaabe stories are about,  
8 Nanabush is often described as a giant. In some  
9 cases -- in some stories he's described as a  
10 giant hare or a giant rabbit.

11 Doesn't make much sense for a giant to  
12 be pursuing a little regular beaver. A giant  
13 needs a commensurate foe, so you make the  
14 species that he's constantly battling with large  
15 as well.

16 And we see this as a folk motif  
17 throughout Indigenous North America where a  
18 culture hero often battles giants as a  
19 consequence of the story having to have a very  
20 large foe.

21 So that I think is a -- is another  
22 possibility. And, again, I've got many other  
23 reasons which I went into in great length, but  
24 that's the long and short of it is that it's a  
25 folk motif which is not uncommon at all. It's

1 found all over North America.

2 And then, fifthly, another one which  
3 must be seriously entertained as a possibility,  
4 is that the Anishinaabe story is the consequence  
5 of cultural diffusion. That is an  
6 anthropological term which refers to a culture  
7 borrowing something from another culture as  
8 opposed to independently inventing it.

9 The fact is, is that there are stories  
10 about culture heroes and giant beavers all  
11 across North America. And one of the things  
12 that I did in this particular research was to  
13 try and find as many stories like this as I  
14 could, no matter where they were in North  
15 America. And I began finding them.

16 There are stories about giant beavers  
17 on the west coast told by Indigenous peoples out  
18 there. There are stories about giant beavers on  
19 the east coast told by the Mi'kmaq, among  
20 others. There are stories about giant beavers  
21 told among the Inuit, among the Algonquin of the  
22 Ottawa Valley. There are stories like this all  
23 over the place. Why is that?

24 Well, in many cases that I've examined  
25 they appear to have come up independently of one

1 another, that is the cultures themselves came up  
2 with these stories without having been  
3 influenced by any of the others. And, of  
4 course, you can demonstrate that pretty clearly  
5 in cases as disparate as the west coast and the  
6 east coast.

7 But I cannot rule out the possibility  
8 of cultural diffusion of each and every case.  
9 So we must still keep in mind the possibility  
10 that the Anishinaabe stories were -- or pieces  
11 of them, or the references to giant beavers were  
12 borrowed from neighbouring groups who had  
13 similar stories.

14 And the reason why we can't rule this  
15 out is because it is a demonstrable fact that  
16 Anishinaabe storytellers appropriated stories  
17 from other cultures.

18 There are quite a number of  
19 Anishinaabe stories which actually originated in  
20 Europe; there is a couple even that originated  
21 in Africa, and that's not uncommon.

22 There are, you know, throughout the  
23 history of the record of Indigenous narratives,  
24 we find influences from other cultures. So  
25 cultural diffusion is another possibility that

1 we cannot ignore.

2 Q. Now, before we go into the next  
3 steps in your methodology I'd like to address a  
4 few points before we move on to the stories of  
5 the dam and the Nadoway Barrier. We mentioned  
6 the Anishinaabe several times. The Anishinaabe  
7 has been defined by different witnesses,  
8 differently in this proceeding. Could you tell  
9 us what you mean when you refer to Anishinaabe?

10 A. Well, I use "Anishinaabe" as a  
11 term that originates as a linguistic  
12 classification. Anishinaabe people are people  
13 who speak or spoke Anishinaabemowin, which is  
14 the Anishinaabe language.

15 And as, such, they are members of the  
16 Algonquian language family, which also includes  
17 non-Anishinaabe speakers such as the Mi'kmaq and  
18 the Algonquians, going all the way down to North  
19 Carolina and as far west as Alberta.

20 So Anishinaabe is a language which is  
21 comprised of a group of dialects; and this group  
22 of dialects is associated with particular groups  
23 or bands or First Nations in various parts of  
24 eastern North America, more particularly in the  
25 areas of the Great Lakes and the Ottawa River.

1 I don't mean by the term "Anishinaabe"  
2 a polity, that is it doesn't refer to a Nation.  
3 In fact, the -- there are modern constructions  
4 which are referred to as "Nations", but these  
5 are, as I've said, modern. Anishinaabe peoples  
6 were grouped into various disparate bands  
7 located in various different parts of the Great  
8 Lakes and surrounding regions. They never  
9 formed a Nation, per se, but rather were  
10 independent of one another, although sometimes  
11 bands would get together to pursue  
12 sociopolitical or military interests.

13 They were connected -- some of them  
14 were connected to one another through clan  
15 lineages because Anishinaabe peoples practiced a  
16 form of clan exogamy, which meant that people  
17 married out of their clans.

18 And since women generally, after  
19 marriage, ended up in the bands of their  
20 husbands and their children would become members  
21 of their husband's clans, you had some dispersal  
22 of the clans into various bands, for women at  
23 least temporarily.

24 So there was some social interaction  
25 between these bands but for the most part they

11:35:44 1 were independent of one another until long after  
11:35:50 2 European contact when you begin to get  
11:35:53 3 considerable population movements resulting in  
11:35:55 4 division and fusion of groups that eventually  
11:36:05 5 merged as the modern First Nations.

11:36:12 6 Q. So going back to the beavers for  
11:36:14 7 a moment, you -- prior to doing this research  
11:36:17 8 for this litigation had you done any research on  
11:36:20 9 oral traditions concerning beavers?

11:36:24 10 A. Yes. Back in 1996 I did a study  
11:36:35 11 in which I looked at -- my study back in '96 was  
11:36:50 12 an interdisciplinary review of all of the  
11:36:53 13 literature on both long-term and short-term oral  
11:36:56 14 traditions and oral history.

11:37:00 15 And during the course of that  
11:37:01 16 literature review, which was quite extensive at  
11:37:04 17 the time, I encountered a scholarly literature  
11:37:11 18 that dealt with the issue of whether the  
11:37:15 19 allusions that -- the frequent allusions in the  
11:37:18 20 mythology of the Americas to giant animals had  
11:37:23 21 some kind of historicity, or reflected  
11:37:28 22 eyewitness observations which were handed down  
11:37:34 23 intergenerationally from generation to  
11:37:37 24 generation over the course of thousands of  
11:37:39 25 years.

11:37:40 1 So there was already an existing  
11:37:41 2 literature that I examined back in 1996. And at  
11:37:45 3 the time, after having looked at that  
11:37:48 4 literature, I concluded that these arguments  
11:37:54 5 were intriguing, but at the same time I reported  
11:38:06 6 back then that I didn't think that these  
11:38:08 7 traditions could be used as evidence for the  
11:38:10 8 existence and the persistence of some kind of  
11:38:16 9 long-term memory going back to the Paleo-Indian  
11:38:20 10 period.

11:38:24 11 So I was referring to these traditions  
11:38:26 12 and the arguments made about them that referred  
11:38:28 13 to mammoths, mastodons and giant beavers in  
11:38:32 14 particular.

11:38:39 15 Since I published that back in '96 I  
11:38:41 16 kept looking out for other literature and other  
11:38:43 17 arguments that would convince me otherwise.  
11:38:50 18 Because one thing I want to stress of course is  
11:38:52 19 that I have always been prepared to change my  
11:38:55 20 views on this if any new argument or evidence is  
11:39:06 21 sufficient to convince me. Again, I kept that  
11:39:18 22 option open precisely because of the theoretical  
11:39:20 23 possibility that this could happen, that you  
11:39:23 24 could -- because of the fact that early humans  
11:39:32 25 and these giant creatures existed and overlapped



1 in their existence. It's theoretically  
2 possible.

3 So, but since that time I didn't find  
4 any kind of evidence that would convince me that  
5 that actually happened.

6 So when I was first confronted with  
7 this in these proceedings and I heard about the  
8 efforts to put together the Anishinaabe stories  
9 about giant beavers and the geological or  
10 paleontological evidence of *Castoroides*  
11 *ohioensis*, I again was intrigued and decided,  
12 you know what? I'm going to look into this  
13 again. Even though I've looked into it before  
14 I'm going to look into it again. And this time  
15 I'm going to focus specifically on all of the  
16 different stories told by Anishinaabe peoples on  
17 this subject.

18 MR. BEGGS: Your Honour, I see I've  
19 gone beyond the usual time for a break. Would  
20 now be convenient to take a break?

21 -- RECESSED AT 11:40 A.M. --

22 -- RESUMED AT 12:07 P.M. --

23 THE COURT: Please go ahead.

24 MR. BEGGS: Thank you, Your Honour.

25

12:10:33 1 BY MR. BEGGS:

12:10:35 2 Q. I'd like to call up SC1610.

12:10:41 3 THE COURT: Are you going to use the  
12:10:42 4 exhibit number or is it something new?

12:10:44 5 MR. BEGGS: It's something new. I'm  
12:10:46 6 going to ask for it to be made a lettered  
12:10:48 7 exhibit. It's the chart I referred to this  
12:10:52 8 morning.

12:10:53 9 THE COURT: I assume this has been  
12:10:54 10 provided to other counsel? Yes.

12:11:30 11 BY MR. BEGGS:

12:11:32 12 Q. Dr. von Gernet, this is a chart  
12:11:35 13 taken from your original report. We've removed  
12:11:42 14 the references to the Great Falls from the chart  
12:11:46 15 that you prepared. Does this otherwise look  
12:11:49 16 like the chart that you prepared in your  
12:11:51 17 original report?

12:11:58 18 A. Yes. There's seven items on the  
12:12:00 19 list, but items 2 and 3 look like they've been  
12:12:04 20 removed. And I'm assuming those are -- those  
12:12:06 21 are correlations that were originally made based  
12:12:16 22 on stories that Lenore Keeshig was supposed to  
12:12:24 23 tell, according to a 2018 memorandum, as  
12:12:30 24 correlated with geological information and the  
12:12:33 25 McCarthy report of 2019, but as I now understand

12:12:39 1 it the references to "Great Falls" don't appear  
12:12:49 2 in the actual testimony.

12:12:54 3 Q. Yes.

12:12:55 4 MR. BEGGS: Your Honour, if we could  
12:12:56 5 mark this as a lettered exhibit? It is a table  
12:12:59 6 of correlation between the -- well, between the  
12:13:10 7 traditions of Lenore Keeshig and Dr. Francine  
12:13:20 8 McCarthy.

12:13:22 9 THE COURT: Any objection?

12:13:23 10 MS. PELLETIER: No, Your Honour.

12:13:24 11 THE COURT: Mr. Registrar.

12:13:25 12 THE REGISTRAR: Lettered Exhibit I-3.

12:13:27 13 EXHIBIT NO. I-3: Table of correlation  
12:13:29 14 between the traditions of Lenore  
12:13:29 15 Keeshig and Dr. Francine McCarthy.

12:13:29 16 BY MR. BEGGS:

12:13:30 17 Q. Now, Dr. von Gernet, in the left  
12:13:32 18 column you had the topics, is that correct? Of  
12:13:39 19 Lenore Keeshig?

12:13:39 20 A. These were the titles of the  
12:13:42 21 stories as they were -- as found in the 2018  
12:13:49 22 memorandum, which was more or less a will-say  
12:13:54 23 kind of statement prepared prior to the trial.

12:13:59 24 And they -- so I'm just basically  
12:14:08 25 quoting from the plaintiffs' memorandum. And

12:14:14 1 they are also the -- they are consistent with  
12:14:19 2 the manner in which they were described in the  
12:14:22 3 original 2016 report that I had looked at when I  
12:14:26 4 started this project, the report that Lenore  
12:14:31 5 Keeshig originally had submitted. So that's the  
12:14:44 6 Anishinaabe side of the equation.

12:14:46 7 And then on the right-hand side are  
12:14:48 8 summary statements. Those that are verbatim are  
12:14:58 9 in italics and in quotes, and the paraphrasing  
12:15:01 10 is not, as found in the McCarthy 2019 report.

12:15:06 11 So the reason why I created this  
12:15:08 12 table, to begin with, is simply to illustrate  
12:15:10 13 what I meant by the deep-time oral traditions  
12:15:14 14 claim, that is correlating these parallels or  
12:15:28 15 ostensible parallels between stories -- between  
12:15:32 16 specific things that are told in these stories  
12:15:35 17 and specific geological or environmental traits,  
12:15:43 18 as reported by a geologist.

12:15:49 19 Q. And you conducted your research  
12:15:51 20 and prepared your report based on these  
12:15:53 21 premises, I take it?

12:15:58 22 A. Yes. Of course, I had no  
12:16:00 23 advanced knowledge whatsoever as to how this  
12:16:03 24 claim was actually going to be stated by anyone.  
12:16:10 25 I knew how it was stated originally, in other

1 words, how it was stated in a 2016 report by --  
2 or a 2013 report by Lenore Keeshig and how it  
3 was stated in a 2018 report by Dr. McCarthy.

4 But once those reports were removed  
5 from -- or were retracted as part of these  
6 proceedings I could only assume that the two  
7 data sets that you see here would be used in  
8 some form of argument; and it didn't matter to  
9 me whether that argument came from a lawyer, or  
10 from a scientist, or from someone else, my  
11 approach remains the same.

12 So once you create this kind of  
13 correlation, no matter who does it, what you're  
14 basically saying is that the Anishinaabe stories  
15 have historicity in some way or another.

16 They may also contain other things.  
17 They may have all kinds of other reasons for  
18 telling them; but if one of them is the  
19 preservation of some kernel of historical truth,  
20 in the sense of what actually happened in the  
21 past, and it is asserted that they contain  
22 fragments of eyewitness memories, which are  
23 communicated intergenerationally over the course  
24 of millennia, then you have what amounts to a  
25 deep-time oral traditions' claim which must be

12:18:02 1 rigorously scrutinized in the fashion that I  
12:18:05 2 have proposed.

12:18:09 3 Q. So returning to the story of  
12:18:13 4 Nanabush and the giant beaver, if I can call up  
12:18:16 5 your extract report, which is now Exhibit 4501?  
12:18:34 6 And if I could go to page 3 of the document,  
12:18:36 7 which might be page 5 of the PDF.

12:18:52 8 There is a section in this extract  
12:18:55 9 report entitled "Myths Inspired by Beaver  
12:18:58 10 Bones", and it refers to Glooskap and some giant  
12:19:05 11 beavers. Is this an example of the material you  
12:19:11 12 were using -- you were describing this morning  
12:19:13 13 with respect to fossils?

12:19:26 14 A. Yes. This exhibit is a selection  
12:19:28 15 from my much longer, 350-page report, which does  
12:19:32 16 not include my opinions but simply reiterates  
12:19:40 17 some of the evidentiary basis for those  
12:19:42 18 opinions, including some of these other stories  
12:19:45 19 that are told elsewhere.

12:19:49 20 So here is an example that you have on  
12:19:51 21 this page of a story that was told --

12:20:08 22 Q. Do you want to scroll down?

12:20:09 23 A. Well, this comes from 1869, as  
12:20:12 24 you can see. And it's -- and it relates how  
12:20:21 25 there was a -- a spring thaw and it tore up the

1 earth and laid bare what are described as:

2 "The huge bones of the beaver  
3 upon whose flesh Glooskap and his  
4 guests had feasted, monstrous thigh  
5 bones, the joints being as big as a  
6 man's head and teeth in huge  
7 proportion."

8 So here you have a reference to some  
9 kind of large bones being laid bare.

10 So earlier, before the break, I was  
11 describing how there is a very long literature  
12 showing how these kinds of experiences have led  
13 to the production of stories about giant animals  
14 in the past.

15 There's a researcher by the name of  
16 Mayor who went through a lot of this stuff and  
17 ended up writing an entire book on it. So I  
18 went through the literature and looked for these  
19 kind of stories.

20 Q. If I could go to page 5 of the  
21 document, which is page 7 of the PDF? You have  
22 a story describing -- described by Egerton  
23 Ryerson Young. Could you explain that story  
24 briefly?

25 A. If I can see it. Oh, I see.

12:22:13 1 Yeah. This was the -- this involved  
12:22:16 2 the Saulteaux, who are also Ojibwe and hence  
12:22:26 3 Anishinaabe, and -- although these lived in  
12:22:35 4 Manitoba.

12:22:38 5 And so here is an individual who was  
12:22:40 6 given, or shown a book which fascinated him  
12:22:46 7 because it had a lot of these descriptions and  
12:22:53 8 pictures describing these extinct monsters of  
12:23:01 9 old times.

12:23:02 10 And then not long thereafter the  
12:23:04 11 household started listening to a Nanibozhu  
12:23:10 12 story, which is Nanabush, which he had secured  
12:23:14 13 from some famous old Indian, as he says.

12:23:19 14 So this is an example of how these  
12:23:24 15 stories can either originate or are enhanced by  
12:23:30 16 the discovery or knowledge of the discovery of  
12:23:38 17 ancient fossils of large beings. And it's often  
12:23:51 18 not possible to distinguish those that  
12:23:54 19 originated with eyewitness observations from  
12:23:57 20 those that were inspired by the discovery of  
12:24:02 21 fossilized remains of these creatures.

12:24:12 22 So there's a -- and there can also be  
12:24:14 23 a feedback. So there may have been stories  
12:24:16 24 which were already extant about ancient  
12:24:19 25 creatures and then hearing about new discoveries



12:24:21 1 feeds back into them; functions to either  
12:24:26 2 strengthen a belief in the historicity of the  
12:24:34 3 stories or it creates elaborations of the  
12:24:41 4 stories based on the new information. So one  
12:24:44 5 must always be mindful of these issues when it  
12:24:48 6 comes to trying to reconstruct how these stories  
12:24:53 7 originated.

12:24:59 8 Q. I would like to turn now to the  
12:25:01 9 stories concerning the giant beaver and the dam.  
12:25:05 10 Some excerpts of these stories start on page 6  
12:25:08 11 of this PDF -- 6 of the document, page 8 on the  
12:25:14 12 PDF at the bottom. But, first, did *Castoroides*  
12:25:28 13 *ohioensis* build dams?

12:25:34 14 A. As far as we know they did not.  
12:25:37 15 An examination of their dentition suggests that  
12:25:42 16 they were not actually chewers of wood the way  
12:25:47 17 modern beavers are. There isn't -- there is no  
12:25:52 18 evidence whatsoever that they built dams.

12:25:55 19 I think one of the things one has to  
12:25:59 20 recall in this connection is that the claim  
12:26:05 21 that's made in relation to this -- these stories  
12:26:08 22 about giant beavers and dams is -- has two  
12:26:13 23 distinct assertions about the historicity.

12:26:18 24 The first assertion is, of course,  
12:26:20 25 that the giant beaver part of the story refers

1 to *Castoroides ohioensis*, so that's one  
2 assertion.

3 The second assertion, of course, is  
4 that the enormous dam that's associated with  
5 this giant beaver was a geological feature known  
6 as the Nadoway Barrier; that's a different  
7 claim.

8 And I want to be clear about this  
9 because it doesn't appear that the claim is  
10 being made that the *Castoroides ohioensis*  
11 actually built the geological feature called the  
12 Nadoway Barrier. I don't think that anyone has  
13 actually made that claim.

14 So what happens then is you attribute  
15 historicity to the idea of the giant beaver.  
16 You take the reference to the giant beaver as  
17 being *Castoroides ohioensis* but you don't make  
18 the claim that the giant dam is a beaver dam,  
19 even though the story says it's a beaver dam.  
20 Because there is simply no way, of course, that  
21 anyone can make that kind of reasonable  
22 argument.

23 There are no beavers known to science  
24 who would have the capacity to build something  
25 of the scope of the Nadoway Barrier which, when

12:28:08 1 it burst, brought down the lake level down 45  
12:28:13 2 metres.

12:28:14 3 So I don't think that anyone is  
12:28:15 4 suggesting that *Castoroides ohioensis* actually  
12:28:21 5 built the Nadoway Barrier. One is seen more  
12:28:26 6 literally and the other isn't. The giant beaver  
12:28:31 7 is seen literally as *Castoroides ohioensis* or as  
12:28:36 8 an eyewitness description, but the dam is not  
12:28:43 9 actually seen as being a real beaver dam.

12:28:47 10 So I just want to make that clear, at  
12:28:50 11 least that's the way that I understand the  
12:28:51 12 argument; I may be wrong but that's what I got  
12:29:03 13 out of it.

12:29:09 14 Q. I'd like to call up a map that  
12:29:10 15 you prepared, it is SC109. Can you tell us what  
12:29:33 16 this is?

12:29:34 17 A. This is a Google Earth image that  
12:29:36 18 I simply downloaded from Google Earth and then  
12:29:38 19 I, for illustrative purposes and so that we  
12:29:42 20 would all know the geography, I simply  
12:29:44 21 superimposed on that image the place names that  
12:29:49 22 I referred to in my evidence.

12:29:54 23 So what you have on the large body of  
12:29:57 24 water, obviously, is the eastern most end of  
12:30:03 25 Lake Superior; and the geography that you see in

12:30:07 1 the midsection is where it becomes the  
12:30:13 2 St. Mary's River; and eventually to the lower  
12:30:18 3 right it empties quite a bit further down into  
12:30:22 4 Lake Huron.

12:30:26 5 And you see the relationship between  
12:30:27 6 the area where the presumed geological feature  
12:30:32 7 was, that is the Nadoway Barrier, which is seen  
12:30:36 8 here in brown or orange depending on the  
12:30:36 9 resolution of your screen, and you see how it  
12:30:36 10 relates to Sault Ste. Marie.

12:30:57 11 And the arrow pointing south of Sault  
12:30:59 12 Ste. Marie is where the rapids used to be.  
12:31:02 13 Since that time, of course, there's been  
12:31:03 14 construction of the seaway, and the canals, and  
12:31:05 15 dams, and things have interfered with the  
12:31:08 16 topography, but back in -- before construction  
12:31:16 17 begins there was a series of rapids which, of  
12:31:19 18 course, led to the name Sault, the French word  
12:31:26 19 for rapid section of water; and that is located  
12:31:30 20 28 kilometres downstream from the Nadoway  
12:31:33 21 Barrier.

12:31:34 22 The Nadoway Barrier is thought to  
12:31:38 23 reach from Gros Cap which is, of course, in  
12:31:45 24 Ontario, to Nadoway Point. Nadoway incidentally  
12:31:49 25 is simply the -- an Anishinaabemowin term for

1 Iroquois. So that's Iroquois Point and that's  
2 in the U.S.

3 MR. BEGGS: Your Honour, I wonder if  
4 we could make this is a lettered exhibit as  
5 well.

6 THE COURT: Is there another verb that  
7 you want to use? I know it's Monday.

8 MR. BEGGS: Can we make it the next  
9 lettered exhibit?

10 THE COURT: Any objection?

11 MS. PELLETIER: No objection, Your  
12 Honour.

13 THE COURT: Mr. Registrar.

14 THE REGISTRAR: Lettered Exhibit J-3.

15 EXHIBIT NO. J-3: Document depicting a  
16 Google Earth image from  
17 Dr. von Gernet.

18 BY MR. BEGGS:

19 Q. Now, what is your understanding  
20 of where Lenore Keeshig's story is located?

21 A. Well, the story of Nanabush and  
22 the giant beaver, as related by Lenore Keeshig,  
23 is one of the many versions that I looked at.  
24 And that particular version has the Nadoway --  
25 or, sorry, has the dam somewhere in the vicinity

1 of where you see that Nadoway Barrier, although  
2 it's not quite clear because the language of the  
3 story is actually a little less definitive, but  
4 it's somewhere in that vicinity.

5 Q. Setting aside for the moment the  
6 oral traditions which are farther afield, I  
7 believe in your extract report you have 17  
8 variants of the story, is that correct?

9 A. Yes.

10 Q. And do all of the variants locate  
11 the dam at the Nadoway Barrier point?

12 A. No. I mean, some variants don't  
13 even speak of a dam. There are other variants  
14 that do speak of a dam, that mention a dam.

15 I think our earliest one has them --  
16 in fact most of the 17th, 18th and 19th century  
17 versions of it -- all of those versions don't  
18 have a dam at where the Nadoway Barrier is but  
19 rather have a dam at Sault Ste. Marie, which is  
20 28 kilometres downstream. Some of them have a  
21 dam in addition to that elsewhere, further  
22 downstream, downstream from Garden River. And,  
23 of course, there are many Anishinaabe stories  
24 about dams elsewhere in the region.

25 So there's stories of these giant

12:35:52 1 beaver dams at the other end of Lake Superior;  
12:35:56 2 there are stories of them along the Ottawa  
12:36:01 3 system; along the Mattawa French River system;  
12:36:12 4 there's even Anishinaabe stories about such dams  
12:36:23 5 in Northwestern Ontario or Manitoba.

12:36:25 6 So the locations of dams varies  
12:36:28 7 considerably from place to place depending on  
12:36:31 8 the story, which is not at all surprising.  
12:36:35 9 Because, in my view, these were not in the  
12:36:40 10 nature of euhemeristic stories at all but rather  
12:36:46 11 they were etiological in nature. And I defined  
12:36:51 12 those two terms earlier.

12:37:01 13 So the storytellers would simply  
12:37:03 14 relate these stories in places where they wanted  
12:37:05 15 to tell an interesting story, and where they  
12:37:08 16 were trying to explain the origins using a story  
12:37:15 17 about the features in the local landscape. So  
12:37:25 18 depending on where you are, or where the  
12:37:27 19 storyteller is focusing on you put a dam there.

12:37:30 20 The reason why the Sault was the usual  
12:37:35 21 location for a dam is because that is the place  
12:37:37 22 where you dramatically see Lake Superior  
12:37:49 23 draining its waters into Lake Huron, although at  
12:37:55 24 that point you can neither see Lake Superior nor  
12:37:58 25 Lake Huron.

1                   Anyone who has travelled through there  
2 understands that the water is coming from Lake  
3 Superior and is going to Lake Huron.

4                   So often the dams that are specified  
5 in stories at that location refer to the origins  
6 of the rapids, and more specifically the origins  
7 of the rocks in those rapids, which are  
8 variously described as the remnants of a beaver  
9 dam or an effort by Nanabush to squash a beaver  
10 dam. But, as I said, that's only one location.  
11 There are many other locations for these types  
12 of dams.

13                   And most of the stories, incidentally,  
14 do not just refer to dams they refer to many  
15 different features of landscape. The dams  
16 have -- the rapids in this case just happen to  
17 be one of the many natural features.

18                   These stories also accounted for other  
19 features in the landscape upstream and  
20 downstream. So to focus only on the dam part of  
21 the landscape is to -- really to misunderstand,  
22 I think, the reasons why these etiological  
23 narratives were produced to begin with. They  
24 were produced in order to tell a story to an  
25 audience about how -- what caused the



12:39:43 1 origination of various parts of the landscape.

12:39:50 2 And so there's hardly a feature -- and  
12:39:54 3 many other observers have noted this, I give  
12:39:58 4 many examples of this. Many have noticed that  
12:40:02 5 there's scarcely a single feature of the  
12:40:06 6 landscape in lake -- in the Lake Superior region  
12:40:11 7 which doesn't have a story associated with it  
12:40:14 8 about Nanabush and his exploits, whether they be  
12:40:19 9 in relation to beavers or not. Many of them  
12:40:23 10 have nothing to do with dams and beavers but  
12:40:26 11 with other things.

12:40:29 12 So these etiological narratives are  
12:40:33 13 ubiquitous throughout the Lake Superior region.  
12:40:38 14 And so this particular one that refers to the --  
12:40:43 15 to a dam in the vicinity of the Sault is only  
12:40:47 16 one of many, many of these.

12:40:51 17 Q. Taking a step back for a moment,  
12:40:56 18 you refer to storytellers giving variations.  
12:41:02 19 Did -- in your experience and research do  
12:41:10 20 storytellers have license to change the details  
12:41:16 21 of stories they relate?

12:41:18 22 A. Well, it's -- I think it's a  
12:41:19 23 well-known fact. I don't know about giving them  
12:41:30 24 a license to but I know, as an empirical fact,  
12:41:33 25 that when you look at all different variations

1 of these stories they deviate in small or large  
2 degrees.

3 And the scholarly opinion on this is  
4 pretty much unanimous, Anishinaabe storytellers  
5 told stories to suit a variety of audiences and  
6 change the details of their stories to suit  
7 particular contingencies.

8 So there is no such thing as a single  
9 cannon, if you will, of Anishinaabe mythology,  
10 rather there is a corpus of thousands of  
11 different stories that, in some cases, follow  
12 general trajectories that have common themes in  
13 them, or have a common plot, or have a common  
14 end point and beginning point but there are so  
15 many different details along the way that are  
16 changed.

17 So it's not like somebody who has, you  
18 know, memorized the Qur'an and, you know, has  
19 sort of tried to reiterate it verbatim every  
20 time and ...

21 Q. If I could refer you to some  
22 research you produced where you located -- could  
23 I call up Exhibit 4462? Have you read this  
24 article?

25 A. Yes.

12:44:06 1 Q. Can you tell us who  
12:44:07 2 Mr. Chamberlain was?

12:44:09 3 A. Well, he was an early  
12:44:10 4 anthropologist/folklorist. And he just -- I  
12:44:19 5 mean the Journal of American Folklore was,  
12:44:21 6 during this time period, a very -- probably the  
12:44:25 7 most-used outlet for recording and transmitting  
12:44:43 8 Indigenous narratives in the academic community.

12:44:47 9 Q. And the title of this article,  
12:44:48 10 "Nanibozhu Amongst the Otchipwe, Mississagas and  
12:44:55 11 other Algonkian Tribes". Who is Nanibozhu?

12:45:00 12 A. Nanibozhu is one of the countless  
12:45:01 13 orthographies used to describe what today might  
12:45:07 14 be more popularly known as Nanabush.

12:45:10 15 There are hundreds of different  
12:45:14 16 spellings of this so that's just one of them.  
12:45:16 17 And of course "Otchipwe" in the title refers to  
12:45:22 18 the Ojibwe; and the "Mississagas" of course are  
12:45:26 19 also Ojibwe, they are just the Mississaugas  
12:45:30 20 of -- they are the Anishinaabe people of  
12:45:41 21 southern Ontario; and the "Algonkian", he used  
12:45:45 22 an anachronistic spelling for Algonkian. He's  
12:45:51 23 referring there to the language family rather  
12:45:53 24 than a particular group.

12:45:55 25 Q. If we could scroll down to page

1 195 of the document? At the final sentence on  
2 this page -- and this was research you located,  
3 is that correct?

4 A. Yes. I actually referenced this  
5 in my original report and quoted from this as  
6 one of the examples of a scholarly assessment of  
7 these stories.

8 Q. Because this is short I'll just  
9 read it:

10 "No doubt each narrator tells the  
11 story in his own way, omits some  
12 points that seem to him of little  
13 value or interest, and by and by  
14 inserts into legend incidents which do  
15 not occur in its archaic form. But  
16 then he may deem it necessary to give  
17 a local coloring to the tale and may  
18 be willing even to point out the exact  
19 spots where the events narrated took  
20 place."

21 Is this an example of what you were  
22 just talking about?

23 A. Yes. I mean, they're -- I can  
24 point to numerous other examples in the work of  
25 more modern scholars who basically say much the

12:47:42 1 same thing.

12:47:42 2 Q. And are any of those scholars  
12:47:49 3 Anishinaabe themselves?

12:47:49 4 A. Yes, absolutely.

12:47:51 5 Q. So -- okay.

12:48:06 6 So what was involved in the task of  
12:48:08 7 gathering all these variations and stories?

12:48:14 8 A. Well, the task was in response,  
12:48:16 9 first of all, to the idea that you can just  
12:48:20 10 take -- you can cherry-pick one particular  
12:48:23 11 narrative and suggest that it is somehow -- that  
12:48:33 12 you can gather some form of historicity from its  
12:48:36 13 details. And I object to that methodology  
12:48:41 14 because if, in fact, specific details in the  
12:48:46 15 story matter, which they do in this case, then  
12:48:54 16 you better be sure that you've got all the  
12:48:56 17 different variants of that story because details  
12:49:00 18 vary.

12:49:02 19 And so the first task in this kind of  
12:49:05 20 investigation is always to seek out any and all  
12:49:11 21 other versions of the same story, or a similar  
12:49:18 22 story.

12:49:22 23 And the purpose for that is to find  
12:49:24 24 the outer limits of the variability, but also to  
12:49:32 25 contextualize these stories to see all the

12:49:37 1 different contexts in which they are told, and  
12:49:39 2 look at all their different content and see what  
12:49:45 3 it is that they're actually trying to do in  
12:49:47 4 these stories. What's the purpose of these  
12:49:50 5 stories? You don't get that necessarily just by  
12:49:55 6 looking at one of them.

12:49:58 7 Now sometimes it happens because of  
12:50:02 8 the exigencies of history that you're only  
12:50:07 9 confined to one, you don't really have any  
12:50:10 10 choice. In this case we have the luxury of a  
12:50:15 11 corpus of stories not only told by Anishinaabe  
12:50:22 12 who are local to the Great Lakes but by other  
12:50:26 13 Indigenous peoples throughout the continent.

12:50:30 14 And so my first task, to answer your  
12:50:33 15 question, was to go out into that literature,  
12:50:36 16 which is incredibly voluminous, and seek out as  
12:50:42 17 many of these stories as I could possibly find  
12:50:45 18 in the time I was given.

12:50:50 19 And I started finding them, one after  
12:50:53 20 another; some of them in obscure publications;  
12:50:55 21 some of them in well-known publications. But  
12:51:00 22 the leg work of science requires no less. This  
12:51:06 23 is an absolutely fundamental first step. You  
12:51:11 24 need to do this first if you are going to in any  
12:51:14 25 way assess the credibility of a claim about the

12:51:21 1 historicity of any one of these stories.

12:51:33 2 Q. How far afield did you find  
12:51:35 3 stories of this nature?

12:51:36 4 A. Well, I started, of course, with  
12:51:38 5 the Anishinaabe literature, which in and of  
12:51:39 6 itself is quite voluminous. Not as voluminous,  
12:51:43 7 I must concede, as the Iroquoian literature,  
12:51:47 8 which I've also been exposed to over the  
12:51:50 9 decades, but nevertheless still there is an  
12:51:54 10 enormous number of publications.

12:51:59 11 And keep in mind that I'm not just  
12:52:01 12 talking about publications that are modern  
12:52:04 13 records of stories, I'm talking about going back  
12:52:07 14 through the ethnohistorical literature, back as  
12:52:10 15 far back as the 17th century when we have the  
12:52:13 16 first literate observers who started recording  
12:52:16 17 such stories. So this was a massive task to try  
12:52:20 18 and go through this stuff.

12:52:23 19 I can't -- because of the size of the  
12:52:26 20 literature base I can't guarantee that I found  
12:52:29 21 each and every one, but I tried to be as  
12:52:35 22 comprehensive as possible and certainly did not  
12:52:37 23 exclude anything that I didn't (sic) find that  
12:52:39 24 was germane and relevant.

12:52:47 25 And then beyond that I wanted to know

12:52:49 1 what are the outer limits of the -- of this  
12:52:52 2 whole idea of a culture hero fighting a giant  
12:52:56 3 beaver who creates a giant dam? And I found  
12:53:01 4 that the outer limits go well beyond the  
12:53:04 5 Anishinaabe. And that's how I started getting  
12:53:07 6 into the literature across the continent. And I  
12:53:13 7 began finding stories like this elsewhere.

12:53:22 8 Q. If I could call up your extracted  
12:53:26 9 report, Exhibit 4501, and go to page 15 of the  
12:53:30 10 document? You have a picture there. Can you  
12:53:46 11 tell us what this is?

12:53:51 12 A. Yes. This is in modern Nova  
12:53:55 13 Scotia and the Minas Channel is a portion of the  
12:54:01 14 Bay of Fundy. So, if you can imagine, most of  
12:54:10 15 the Bay of Fundy is actually to the lower left  
12:54:13 16 of this image. This is another Google Earth  
12:54:22 17 image that I downloaded and then applied my own  
12:54:24 18 labels on it, again to give you a geographical  
12:54:27 19 sense of where the location of these stories  
12:54:29 20 are.

12:54:30 21 And what you have here is a passage  
12:54:38 22 between the Minas Channel and what's called the  
12:54:40 23 Minas Basin. So the Minas Channel that you see  
12:54:44 24 at the bottom, which is part of the Bay of  
12:54:45 25 Fundy, if you continue that south you will end



12:54:49 1 up in the Atlantic Ocean, but if you go through  
12:54:52 2 the Minas Passage into the Minas Basin you end  
12:54:57 3 up at a dead end; that's basically the end of  
12:55:00 4 the waterways.

12:55:08 5 And what happens, as many of you may  
12:55:10 6 know, is that the Bay of Fundy has the highest  
12:55:12 7 tides in the world. And during high and low  
12:55:15 8 tides there is a massive displacement of water  
12:55:19 9 that occurs between the Minas Channel and the  
12:55:22 10 Minas Basin.

12:55:26 11 There are such extraordinary tidal  
12:55:30 12 surges that flow in the Minas Passage that some  
12:55:34 13 have estimated that the amount of water that  
12:55:36 14 goes through there is actually -- amounts to the  
12:55:41 15 water that flows through most of the rivers in  
12:55:44 16 the world. It's just a massive amount of water  
12:55:54 17 that involves a rising and lowering of the water  
12:56:00 18 level in these channels on a daily basis.

12:56:12 19 Now, the reason why I put this in here  
12:56:13 20 is there is a version of a Mi'kmaq myth in which  
12:56:17 21 Glooskap, who is the Mi'kmaq equivalent of  
12:56:22 22 Nanabush, is battling with a giant beaver. And  
12:56:26 23 there was a beaver dam where I've indicated it  
12:56:31 24 more or less in the vicinity of this Minas  
12:56:36 25 Passage. And the remains of that beaver dam,

1 according to the story, are what is now known as  
2 Cape Split. And you'll notice Cape Split there  
3 is a peninsula that juts out rather dramatically  
4 into the Minas Channel. And if you can imagine  
5 that having shifted as a consequence of a flow  
6 of water that went through the Minas Passage.

7 Now, this can be correlated, if you  
8 wish, with geological evidence because it  
9 happens that there is evidence that there used  
10 to be an obstruction where you see that orange  
11 or brown line that I've drawn between Partridge  
12 Island and Cape Blomidon. There is geological  
13 evidence that at one time there was an  
14 obstruction there, similar to sand berms and  
15 other kinds of obstructions that you see  
16 elsewhere in the region of Atlantic Canada; and  
17 this was several thousand years ago. So it is  
18 tempting to see the beaver story that the  
19 Mi'kmaq have of a dam being in that vicinity and  
20 correlating it with the geology. In fact at  
21 least one scholar has tried to do that.

22 My point here is that there are  
23 numerous places throughout North America where  
24 these conditions prevail, that is you have got a  
25 narrow place between two larger bodies of water,

1 whether it be Lake Superior and Lake Huron, or  
2 the Minas Channel and the Minas Basin, or many  
3 of the countless other places, you have these  
4 features of the environment where you see a  
5 narrowing and you also see a large amount of  
6 water flowing through these places.

7 Now, a euhemeristic explanation would  
8 be that the Mi'kmaq story is an eyewitness or  
9 contains an eyewitness kernel of observation  
10 from the time when there was an actual barrier  
11 there in the ancient past.

12 But an etiological explanation, which  
13 in my view is far more plausible, is that if  
14 you're going to create a story about your  
15 dramatic environment this is exactly where you  
16 would place a beaver dam. Because this -- what  
17 this is is precisely the geography of the pond  
18 and stream, which is -- which was known to every  
19 Indigenous individual throughout history in  
20 North America who lived, on a daily basis, with  
21 *Castor canadensis*, the modern beaver.

22 If you are going to come up with a  
23 story these places is where you do it. And  
24 indeed that's, in fact, what's happened over and  
25 over again and quite independently of one

01:00:34 1 another.

01:00:41 2 So to suggest that one has historicity  
01:00:50 3 and the other may not is simply to be arbitrary  
01:00:54 4 about the whole thing.

01:00:55 5 And conversely, to suggest that these  
01:00:57 6 are all eyewitness descriptions of actual dams  
01:01:04 7 thousands of years ago is, in my view, to --  
01:01:07 8 requires a stretch of credulity, that all of  
01:01:11 9 these individual occasions where this occurs was  
01:01:15 10 all the result of thousands of years of  
01:01:19 11 intergenerational transmission of oral  
01:01:22 12 tradition.

01:01:29 13 To me this whole thing is utterly  
01:01:33 14 fascinating, which is why I spent a lot of time  
01:01:35 15 on it. But, as I concluded, to omit an  
01:01:47 16 etiological explanation for this and only focus  
01:01:52 17 on a euhemeristic explanation I think is bad  
01:01:57 18 science.

01:01:58 19 Q. On what basis did you --

01:02:04 20 THE COURT: Let me just pause there.  
01:02:05 21 Go ahead if you wish. It's 1:00 o'clock.

01:02:08 22 MR. BEGGS: No, now would be --

01:02:10 23 THE COURT: If you are wrapping  
01:02:11 24 something up, by all means.

25

01:02:15 1 BY MR. BEGGS:

01:02:16 2 Q. Just a single question then. On  
01:02:17 3 what basis do you conclude that this story would  
01:02:21 4 have arisen independently of the other ones  
01:02:24 5 you've located?

01:02:26 6 A. Well, I can't rule out completely  
01:02:31 7 the possibility of cultural diffusion, but this  
01:02:35 8 is pretty far remote in time and place in terms  
01:02:43 9 of the way these stories were constructed.

01:02:48 10 This was a late 19th century story.  
01:03:03 11 It's simply not possible that the 17th century  
01:03:06 12 story that I have among the Anishinaabe can be a  
01:03:11 13 derivative of this one, unless we are missing a  
01:03:20 14 similar story from the 17th century in the  
01:03:22 15 Mi'kmaq record.

01:03:29 16 But we have pretty good  
01:03:31 17 ethnohistorical records for the Mi'kmaq in the  
01:03:34 18 17th and 18th century and it doesn't occur there  
01:03:37 19 at all. So I'm inclined to think that it arose  
01:03:40 20 independently, but I can't rule out cultural  
01:03:43 21 diffusion, for example, in the other direction,  
01:03:46 22 from the Anishinaabe to the Mi'kmaq. I just  
01:03:51 23 can't rule that out.

01:03:52 24 But I think it's more probably that  
01:03:56 25 this was a matter of independent invention,

01:04:00 1 particularly since I find stories about giant  
01:04:07 2 beavers being used in stories about the origins  
01:04:15 3 of natural features as far as the west coast.  
01:04:23 4 There's no way that you can connect those to the  
01:04:25 5 Anishinaabe.

01:04:28 6 I'm just giving you here an example,  
01:04:30 7 because it is a dramatic one of Nova Scotia, but  
01:04:33 8 I could give you ones from the west as well.

01:04:37 9 Q. Thank you.

01:04:37 10 MR. BEGGS: I think, Your Honour, may  
01:04:39 11 we now have the lunch recess?

01:04:43 12 THE COURT: Yes. 2:15.

01:04:45 13 -- RECESSED AT 1:04 P.M. --

02:14:49 14 -- RESUMED AT 2:18 P.M. --

02:18:16 15 MR. BEGGS: Thank you, Your Honour.

02:18:18 16 BY MR. BEGGS:

02:18:21 17 Q. Dr. von Gernet, we were talking  
02:18:24 18 about the giant beaver and the Nadoway Barrier  
02:18:33 19 topic and I wanted to ask, would it have been  
02:18:36 20 necessary for anyone to have actually seen the  
02:18:39 21 Nadoway Barrier in order to formulate a story  
02:18:42 22 about a giant dam there?

02:18:47 23 A. No, it would not have been  
02:18:49 24 necessary to actually eyewitness the emergence  
02:18:55 25 or destruction of the barrier in order to

02:18:57 1 formulate a story about an obstruction in that  
02:19:03 2 vicinity.

02:19:05 3 Q. What do you base that conclusion  
02:19:06 4 on?

02:19:15 5 A. Well, because the nature of  
02:19:15 6 etiological narratives is such that you use  
02:19:20 7 clues in the environment to reconstruct what  
02:19:28 8 might have been; and this happens all over the  
02:19:32 9 world. There are so many places in the Americas  
02:19:42 10 where this is demonstrably the case.

02:19:45 11 And there are also, of course, cases  
02:19:46 12 in the old world where stories about barriers  
02:19:51 13 were invented. And we know that the barriers  
02:19:58 14 that did exist at those locations could not have  
02:20:02 15 been witnessed by any human.

02:20:08 16 Q. We'll just take a moment. I'm  
02:20:10 17 trying to call up a picture. Do you recognize  
02:20:35 18 this picture?

02:20:36 19 A. Yes.

02:20:37 20 Q. What is it a picture of?

02:20:39 21 A. It's a picture that I included in  
02:20:45 22 my original report, which is a NASA image of the  
02:20:51 23 Mediterranean and the Atlantic Ocean with the  
02:21:03 24 Strait of Gibraltar connecting the two.

02:21:06 25 So you have the Atlantic Ocean at the

02:21:07 1 lower left and the Mediterranean at the upper  
02:21:07 2 right and you see the narrow straits between  
02:21:10 3 them.

02:21:11 4 And that's -- again, if you were  
02:21:18 5 familiar with, say, beavers and dams you'd put a  
02:21:24 6 beaver dam right where those narrows are because  
02:21:27 7 that -- this is on a very large scale, what it  
02:21:32 8 would look like as a pond and stream.

02:21:41 9 Now, in the case of the Mediterranean,  
02:21:42 10 of course, they didn't have beaver stories, but  
02:21:47 11 what they did have was stories of other culture  
02:21:49 12 heroes. They didn't have Nanabush but they had  
02:21:53 13 others.

02:21:55 14 And Mediterranean peoples actually  
02:21:57 15 came up with their own stories about how that  
02:22:00 16 narrow opening emerged. There was a -- the  
02:22:11 17 Roman playwright Seneca the Younger, for  
02:22:14 18 example, had a hero, whom we know as Hercules;  
02:22:21 19 and he purportedly smashed through a mountain to  
02:22:25 20 create this water passage between those two big  
02:22:29 21 bodies of water. There are also Greek  
02:22:32 22 historians that came up with stories similar to  
02:22:35 23 that.

02:22:37 24 And, of course, there are other  
02:22:38 25 stories, even the -- I found stories even among



02:22:43 1 Arab authors who had stories about Alexander the  
02:22:46 2 Great. It was said he reached the end of the  
02:22:52 3 Mediterranean Ocean and he saw how peoples (sic)  
02:22:55 4 in both Africa and in what is now Spain, or  
02:22:58 5 Europe, were fighting against one another and  
02:23:00 6 he -- in order to separate them he, Alexander  
02:23:04 7 the Great, was said to have smashed or opened or  
02:23:11 8 created a gap between the two continents.

02:23:16 9 So the reason I point to this kind of  
02:23:20 10 story is because there's a good example of how  
02:23:27 11 ancient peoples came up with stories that are  
02:23:29 12 etiological in nature. And in this instance we  
02:23:35 13 can say with certainty that it could not have  
02:23:37 14 been based on an eyewitness observation because  
02:23:43 15 the time when the Mediterranean was separated  
02:23:49 16 from the Atlantic Ocean occurred 5.33 million  
02:23:54 17 years ago, which is long before any homo sapiens  
02:24:05 18 could have seen this.

02:24:09 19 So the answer is, yes, you can --  
02:24:13 20 people can and do come up with stories about  
02:24:18 21 barriers across small channels that separate  
02:24:26 22 larger bodies of water, because the human  
02:24:30 23 imagination leads us to do so in various parts  
02:24:40 24 of the world.

02:24:41 25 The fact that we can document this in

02:24:43 1 other parts of the world is a good indication  
02:24:44 2 that it's part of the human capacity to imagine  
02:24:49 3 this. So you do not need an eyewitness  
02:24:53 4 observation of an actual barrier in order to  
02:24:56 5 postulate an existence for it.

02:25:04 6 Q. Do you have any examples of  
02:25:05 7 people making such a guess with respect to the  
02:25:08 8 Nadoway Barrier?

02:25:11 9 A. Well, there were many instances  
02:25:16 10 that I found in the record of non-Indigenous  
02:25:20 11 peoples who made that connection. For example,  
02:25:24 12 Henry Schoolcraft who was a very interesting  
02:25:31 13 character. He was appointed as the first Indian  
02:25:38 14 Agent at Sault Ste. Marie by the Americans, on  
02:25:46 15 the American side; and he married into an  
02:25:52 16 Anishinaabe family and he was there for decades.

02:25:57 17 And he talked a great deal about his  
02:25:59 18 experiences travelling through there. And he  
02:26:03 19 specifically talked about the area between Gros  
02:26:11 20 Cap and Nadoway Point, and he envisioned that  
02:26:18 21 area as being like the pillars of Hercules.

02:26:29 22 And the pillars of Hercules is  
02:26:31 23 actually a reference to the Strait of Gibraltar,  
02:26:34 24 which I just mentioned. To this day the  
02:26:46 25 Strait -- it's large geographical features on

02:26:56 1 either side are referred to sometimes as the  
02:26:58 2 "Pillars of Hercules".

02:27:06 3 And for Schoolcraft that area between  
02:27:09 4 Nadoway Point and Gros Cap reminded him of that;  
02:27:13 5 he wasn't the first one, in fact his  
02:27:15 6 father-in-law had also alluded to this.

02:27:24 7 In fact, there were quite a number of  
02:27:25 8 Europeans who travelled through that area who  
02:27:27 9 commented on the dramatic features of the  
02:27:31 10 landscape and who made allusions to it being a  
02:27:35 11 place that was ripe for culture heroes who  
02:27:40 12 had -- would be engaged with that environment in  
02:27:51 13 the past.

02:27:52 14 And according to Schoolcraft -- in  
02:27:54 15 fact what's interesting is he actually  
02:27:57 16 postulated the possibility of the two sides of  
02:28:01 17 that narrow channel between Nadoway Point and  
02:28:07 18 Gros Cap as once having been together.

02:28:11 19 Now, Schoolcraft was not an eyewitness  
02:28:13 20 to the Holocene and he was a European, and none  
02:28:18 21 of his European ancestors would have been  
02:28:22 22 eyewitnesses to the early Holocene in that area;  
02:28:24 23 and yet he had no problem envisioning that at  
02:28:27 24 some point in time those two places had been  
02:28:30 25 connected by some kind of barrier and that some

02:28:32 1 kind of massive geological event had forced them  
02:28:40 2 apart in some way, as he understood it.

02:28:42 3 Q. Would Indigenous people have been  
02:28:44 4 capable of making the same conclusions?

02:28:46 5 A. Well, absolutely. I mean, to  
02:28:48 6 suggest otherwise would be to deny them the same  
02:28:51 7 kind of -- (a) the same kind of empirical  
02:28:56 8 observations of the local landscape and, (b),  
02:28:59 9 the ability to analyze -- to create analogies  
02:29:04 10 between what they experienced in the present and  
02:29:08 11 what they imagined in the past.

02:29:18 12 Their experience was basically beaver  
02:29:20 13 ponds on a small scale and the way that dams  
02:29:31 14 were made at narrowings of streams in order to  
02:29:37 15 impound waters on one side. And they knew the  
02:29:42 16 consequences of a dam breaking; they had seen  
02:29:48 17 this thousands of times in their lifetime and  
02:29:50 18 hundreds of thousands of times in their  
02:29:53 19 collective experiences. They had also seen the  
02:29:56 20 behaviour of isthmuses and sand banks and all  
02:30:06 21 kinds of natural features.

02:30:07 22 So these kinds of every-day  
02:30:09 23 experiences in the local landscape inspire ideas  
02:30:23 24 about what happened in the past. It is a form  
02:30:25 25 of analytical reasoning. What you see on a

02:30:29 1 small scale in your daily life you imagine on a  
02:30:32 2 much larger scale in the past.

02:30:34 3 So the forming and destruction of dams  
02:30:38 4 that you see on a daily basis in your experience  
02:30:45 5 with beavers naturally becomes a great way to  
02:30:49 6 tell a story about larger features of your  
02:30:53 7 landscape.

02:30:56 8 And because the features of your  
02:30:58 9 landscape are so large it requires an upscaling  
02:31:04 10 of both your culture heroes and their foes.  
02:31:15 11 Hence, you have a Hercules in the Mediterranean  
02:31:18 12 and you have a giant Nanabush and a giant beaver  
02:31:30 13 in the Great Lakes.

02:31:31 14 Q. Now, in the 17 variants that  
02:31:34 15 you've analyzed of the Anishinaabe traditions do  
02:31:40 16 you know how many of them involved a female  
02:31:44 17 companion left near the dam?

02:31:51 18 A. Not offhand but I do recall  
02:31:58 19 having talked about that.

02:32:27 20 Yes. So there's -- common to seven of  
02:32:30 21 the variants was a reference to a dam  
02:32:37 22 specifically at the Sault.

02:32:45 23 And in eight variants the culture  
02:32:47 24 hero's wife -- or, sorry, the culture hero's  
02:32:49 25 female companion was either a wife, or a mother,

02:32:54 1 or a grandmother, depending on the version; and  
02:33:01 2 she's left at or near the dam to prevent the  
02:33:04 3 beaver from escaping.

02:33:06 4 And then in six variants, it's her  
02:33:10 5 incompetence that results in her severe injury  
02:33:14 6 or death at the hands of Nanabush. So, for  
02:33:19 7 example, in one story Nanabush simply kills her  
02:33:22 8 for letting the beaver escape; in another he  
02:33:29 9 hits her very hard drawing blood and the blood  
02:33:33 10 ends up being the reason why there are red rocks  
02:33:36 11 in Lake Superior, which today are called Picture  
02:33:40 12 Rocks and part of a U.S. National Park.

02:33:50 13 So again, keep in mind these are  
02:33:51 14 etiological narratives so many of these things  
02:33:54 15 are actually part of the story of why there are  
02:33:55 16 red rocks, for instance; or why there is a  
02:33:58 17 certain shaped kind of rock formation in another  
02:34:01 18 place; or why there are rapids at the Sault; or  
02:34:04 19 why -- you know, there is just innumerable  
02:34:08 20 different origins for various features.

02:34:18 21 So when an incident occurs the  
02:34:20 22 female -- the female who accompanies Nanabush  
02:34:24 23 often becomes part of the landscape as a  
02:34:28 24 consequence of her actions, which were to  
02:34:32 25 release this giant beaver or not stop the

02:34:37 1 creature.

02:34:40 2 So when you have that kind of detail,  
02:34:42 3 you've got all of these various details  
02:34:47 4 involving female companion and very specific it  
02:34:55 5 raises the probability that the stories are  
02:35:00 6 connected to one another; they are unlikely to  
02:35:03 7 have had independent origins.

02:35:06 8 Earlier we talked about how the  
02:35:08 9 Mi'kmaq version probably has an independent  
02:35:10 10 origin from these ones, but some of these  
02:35:14 11 variants that I looked at among the Anishinaabe  
02:35:16 12 seemed to be connected to one another.

02:35:18 13 Now, other Anishinaabe versions of  
02:35:21 14 Nanabush and the giant beaver are not -- do not  
02:35:24 15 seem to be connected. For example, there's a  
02:35:27 16 story told in the Thunder Bay region which I  
02:35:33 17 don't believe is connected to the one that's  
02:35:36 18 told more towards the Ottawa River because it  
02:35:42 19 doesn't contain a confluence of these same types  
02:35:44 20 of details.

02:35:45 21 So these are the kinds of comparisons  
02:35:53 22 that one needs to make if one is to derive any  
02:35:57 23 meaning from details of these stories.

02:36:07 24 Q. Now, did you -- in preparation  
02:36:09 25 for your testimony did you review the evidence

02:36:11 1 given by Lenore Keeshig, the transcript of that  
02:36:15 2 evidence?

02:36:24 3 A. Well, in preparation for my  
02:36:26 4 original report I only had Keeshig's earlier  
02:36:31 5 report and the will-say.

02:36:32 6 Since that time, and since I completed  
02:36:34 7 my research, I've been given a transcript of her  
02:36:43 8 viva voce testimony in these proceedings and I  
02:36:48 9 have read them, yes.

02:36:49 10 Q. Do you recall her in that  
02:36:50 11 testimony referring to a metaphor of people  
02:36:53 12 gathered around a campfire?

02:36:56 13 A. Yes, I do.

02:36:57 14 Q. And how did you understand that  
02:36:58 15 metaphor?

02:37:00 16 A. Well, as I recall this was in  
02:37:03 17 response to a question about, well, what do you  
02:37:05 18 make -- or what do the Anishinaabe make of  
02:37:10 19 variations in stories? And I think she conjured  
02:37:15 20 up the image of a campfire in which various  
02:37:26 21 participants are encircled.

02:37:31 22 And the metaphor that he used is that  
02:37:33 23 somebody on one side of a campfire will see an  
02:37:36 24 event in one way, or see the campfire in one  
02:37:38 25 light and somebody on the opposite side will see



02:37:41 1 it in a different light, and somebody sitting in  
02:37:43 2 the back row of a circle may see it in yet a  
02:37:47 3 different light.

02:37:48 4 And that's basically the notion of a  
02:37:51 5 perspectival understanding of the same event.  
02:37:59 6 It's sort of like the Rashomon effect. Some of  
02:38:05 7 you may recall the Japanese movie Rashomon in  
02:38:12 8 which there was a murder and the story is told  
02:38:15 9 from various different perspectives; each one  
02:38:17 10 has a totally different understanding of what  
02:38:19 11 happened because they saw it from different  
02:38:21 12 angles. So it's that same sort of thing.

02:38:26 13 My understanding of her testimony is  
02:38:28 14 that various storytellers will -- or the  
02:38:33 15 emergence of disparate types of stories are the  
02:38:41 16 consequence of different eyewitnesses seeing the  
02:38:44 17 same thing from different perspectives.

02:38:46 18 Q. Would that apply here of  
02:38:48 19 different eyewitnesses having seen the same  
02:38:50 20 event?

02:38:50 21 A. Well, no, because we're not  
02:38:53 22 talking about different -- well, it's difficult  
02:39:02 23 to suggest that the same event would have led to  
02:39:08 24 all of these different dissimilarities.

02:39:13 25 For example, many of these individuals

02:39:15 1 referred to a dam at the Sault and then a few of  
02:39:19 2 them refer to a dam at Nadoway, which is 28  
02:39:23 3 kilometres away. Those are two entirely  
02:39:28 4 different places; although, mind you, over time  
02:39:31 5 these things can change, and that's my whole  
02:39:35 6 point.

02:39:36 7 It's not so much -- the differences  
02:39:38 8 between the stories are not attributable to  
02:39:44 9 differences in original eyewitnesses witnessing  
02:39:47 10 the same event, what they are attributable to  
02:39:52 11 are different storytellers telling stories in  
02:39:58 12 different ways. One must always be cognizant of  
02:40:01 13 this salient fact, and I'm astonished that  
02:40:05 14 people forget this.

02:40:09 15 Every oral tradition is a product of  
02:40:14 16 the present in which it is told and, as such, it  
02:40:21 17 is subject to the intervention of the  
02:40:24 18 storyteller who tells the story in that present.  
02:40:34 19 To claim that it contains historical information  
02:40:37 20 or eyewitness information about the past is  
02:40:40 21 something that needs to be demonstrated not  
02:40:42 22 assumed, because the story itself is a product  
02:40:45 23 of the present in which it's told.

02:40:51 24 And, as we discussed earlier,  
02:40:53 25 different storytellers will tell stories in

02:40:56 1 different ways and that is why you have changes  
02:40:57 2 in detail. And sometimes it's Nanabush's  
02:41:00 3 mother, sometimes it's his wife, sometimes it's  
02:41:06 4 his grandmother, sometimes there's a dam at one  
02:41:08 5 place, sometimes it's at another.

02:41:11 6 The groups that told the story who  
02:41:12 7 live around Sault Ste. Marie obviously localized  
02:41:15 8 it in their local geography; groups that told a  
02:41:19 9 similar story along -- in the Ottawa Valley  
02:41:21 10 watershed had dams in the Ottawa Valley  
02:41:23 11 watershed; and groups that told it at the  
02:41:29 12 western end of Lake Michigan had dams at the  
02:41:33 13 western edge of Lake Michigan.

02:41:35 14 So depends where the storyteller is,  
02:41:37 15 where they tell the story, the context of when  
02:41:39 16 they are telling it. These variations have  
02:41:43 17 nothing to do with variations in perspective at  
02:41:46 18 the time of the eyewitness accounts, if they  
02:41:48 19 were, in fact, eyewitness accounts.

02:41:59 20 Q. And of the variations around  
02:42:01 21 Sault Ste. Marie what is the earliest recorded  
02:42:04 22 variation that you found?

02:42:07 23 A. Well, the earliest one that I  
02:42:36 24 found is in a 1669 record of the Jesuit Allouez,  
02:42:40 25 and that particular story is quite clearly an

02:42:51 1 etiological narrative.

02:42:55 2 It tries to account for various  
02:43:01 3 features of the landscape, most notably the  
02:43:04 4 rapids at the Sault. And it's -- it actually  
02:43:09 5 pinpoints the locations of these -- of two  
02:43:12 6 different beaver dams, not one but two, with  
02:43:16 7 surprising specificity.

02:43:23 8 Neither one is positioned where  
02:43:25 9 scientists presume the Nadoway Barrier is;  
02:43:28 10 rather one dam is located, as I said, 28  
02:43:31 11 kilometres downstream at the Sault and the  
02:43:34 12 second one is another 16 kilometres further  
02:43:36 13 downstream at another narrowing in the vicinity  
02:43:43 14 of Garden River, which is where there is an  
02:43:49 15 Anishinaabe First Nation living today.

02:43:57 16 So our earliest variant actually has  
02:44:00 17 two different dams and they are not at the  
02:44:03 18 location where the Nadoway Barrier is thought to  
02:44:10 19 have existed.

02:44:18 20 Q. I'd like to now turn to one of  
02:44:20 21 the other oral traditions which you have  
02:44:22 22 analyzed. If I could turn to the one which has  
02:44:24 23 been called "Nanabush Grieves"? You're familiar  
02:44:38 24 with what this oral tradition was, is that  
02:44:40 25 correct?

02:44:41 1 A. Yes. So this particular one,  
02:44:48 2 this is the kind of story that is actually more  
02:44:58 3 of a snippet, or a fragment rather than a story.  
02:45:01 4 The story of Nanabush and the giant beaver,  
02:45:04 5 aside from being longer, is also clearly an  
02:45:07 6 etiological tale, whereas this one is a snippet  
02:45:13 7 from something and we have no idea what the long  
02:45:15 8 version looks like.

02:45:16 9 I've been unable to locate any other  
02:45:21 10 similar snippets and stories elsewhere so it's  
02:45:29 11 kind of something that is on its own.

02:45:32 12 So the only thing I had to go on was  
02:45:34 13 the version that was reported by Lenore Keeshig,  
02:45:43 14 so I looked at it in some detail.

02:45:56 15 Q. You said you weren't able to find  
02:45:58 16 it. You did search for other --

02:46:00 17 A. Absolutely. I searched for  
02:46:01 18 variants of all of the different stories that  
02:46:04 19 have been used in the deep-time oral traditions  
02:46:13 20 claim. We had that table earlier that you  
02:46:15 21 showed of the various -- of the various aspects  
02:46:19 22 of that claim so I looked for variants of all of  
02:46:24 23 them.

02:46:24 24 And, of course, when it comes to the  
02:46:31 25 floods and that sort of thing I must confess

02:46:33 1 that I didn't look at every single one, because  
02:46:35 2 it happens that flood stories are ubiquitous  
02:46:36 3 among all Indigenous peoples throughout the new  
02:46:46 4 world; and it would have required thousands of  
02:46:54 5 pages to summarize those because they are in  
02:46:58 6 every single culture that I know of in  
02:47:00 7 Indigenous North America, aside from perhaps the  
02:47:04 8 Inuit, have flood stories of some sort. As I  
02:47:08 9 said, they're ubiquitous so I didn't bother to  
02:47:12 10 go through all of those.

02:47:13 11 But for all of the other stories I  
02:47:16 12 tried to find variants of all of them that I  
02:47:18 13 could find. So I did search for something that  
02:47:25 14 looked like the variant that Ms. Keeshig was  
02:47:28 15 told as a child, or she was told by I think it  
02:47:39 16 was Rose Nadjiwon, an Elder, who told her this  
02:47:45 17 story about the salty tears.

02:48:00 18 Q. And what was your  
02:48:00 19 understanding -- instead can we call up the  
02:48:03 20 transcript of the evidence of Lenore Keeshig,  
02:48:05 21 the final transcript? It's day 28, July 16,  
02:48:14 22 2019. And it would be page 2809.

02:48:35 23 You based your research on -- not on  
02:48:37 24 the testimony but on the written materials you  
02:48:40 25 received before you said, is that correct?

02:48:42 1 A. Yes. Yes.

02:48:47 2 The story was only available to me in  
02:48:50 3 the form of the transcript in her original  
02:48:58 4 report, which was later removed from these  
02:49:05 5 proceedings but which had been intended to be  
02:49:08 6 her testimony.

02:49:09 7 Q. Can we scroll down this page a  
02:49:11 8 bit? So there's a question at line 18 alluding  
02:49:22 9 to the story about the Bay turning salty and  
02:49:25 10 how -- and can you tell us first how you heard  
02:49:28 11 about that story?

02:49:34 12 We can scroll down and if you can take  
02:49:36 13 a look at this material and let us know if you  
02:49:38 14 want us to scroll up.

02:49:44 15 A. You can scroll up. This is more  
02:50:06 16 or less consistent, if not verbatim, with what I  
02:50:10 17 knew from her written testimony in her report.

02:50:14 18 Q. And does it convey the same --  
02:50:16 19 does it convey the sense of what Rose Nadjiwon  
02:50:22 20 viewed the historicity of her story as?

02:50:26 21 A. Yeah. I mean, this is what  
02:50:27 22 impressed me the first time around, is that the  
02:50:33 23 Elder from which she obtained this story or  
02:50:37 24 snippet did not believe these stories to be true  
02:50:44 25 but rather that they were simply meant to keep

02:50:50 1 children quiet and make them laugh. In other  
02:50:54 2 words, this was a work of fiction that was used  
02:50:58 3 for entertainment purposes.

02:51:01 4 Q. And did that factor into your  
02:51:03 5 analysis at all?

02:51:04 6 A. Well it does because it's not  
02:51:12 7 just what an Elder -- it's not the -- it's not  
02:51:15 8 just the content of what an Elder gives as a  
02:51:18 9 story, it's also the context in which she gives  
02:51:22 10 it and the meaning that she gives to it. These  
02:51:24 11 are all part of the wider context in which the  
02:51:28 12 story is told.

02:51:31 13 So -- and parenthetically it's not at  
02:51:35 14 all unusual to find Nanabush stories which were  
02:51:39 15 created specifically for entertainment purposes;  
02:51:41 16 that's not unusual at all. I found many  
02:51:46 17 different places in the Anishinaabe literature  
02:51:49 18 where Nanabush stories are told for no other  
02:51:56 19 purpose than for entertainment. And they  
02:51:59 20 contain, for example -- and we have no idea, in  
02:52:03 21 some cases, how old some of these are, although  
02:52:12 22 there are allusions to the fact that they can be  
02:52:14 23 made up at any time.

02:52:15 24 So, for example, we have stories about  
02:52:16 25 Nanabush playing baseball; we have stories about



02:52:20 1 Nanabush loaning money from his bank account to  
02:52:29 2 a poor individual.

02:52:31 3 So Nanabush stories can be made up at  
02:52:35 4 any time for entertainment or for whatever other  
02:52:37 5 purposes. This is not -- we don't need  
02:52:40 6 necessarily to think of these in a -- in the  
02:52:44 7 context of historicity to begin with. And so  
02:52:46 8 this is not inconsistent with that.

02:52:53 9 And I can understand why Nanabush  
02:52:57 10 figures prominently in the repertoire of  
02:53:00 11 Anishinaabe literature because it's -- because  
02:53:07 12 those kinds of stories, if not the stories  
02:53:10 13 themselves, but those kinds of stories have been  
02:53:13 14 around for centuries.

02:53:15 15 Q. If we can scroll down to the next  
02:53:16 16 page of the transcript of Lenore Keeshig? It  
02:53:19 17 would be page 2811. And so at line 3 we have a  
02:53:31 18 question from counsel:

02:53:33 19 "QUESTION: And what is your response  
02:53:33 20 to Rose having said these stories were  
02:53:33 21 just told to make them laugh or keep  
02:53:33 22 them quiet?"

02:53:33 23 And the answer is:

02:53:33 24 "ANSWER: Well, my father said a  
02:53:33 25 similar thing one time. I was with

02:53:33 1 him and with Dr. Blasco and my dad  
02:53:33 2 said I didn't believe the stories.  
02:53:33 3 And Dr. Blasco just kind of went...he  
02:53:33 4 was kind of shocked. And then Rose  
02:53:33 5 said the same -- basically the same  
02:53:33 6 thing.

02:53:33 7 And then I realized that the  
02:53:33 8 residential school and the mission  
02:53:33 9 school teachings were that our  
02:53:33 10 stories -- well, let's put it this  
02:53:33 11 way. And I was told the same thing  
02:53:33 12 when I went the school, that we were a  
02:53:33 13 primitive culture, that our stories  
02:53:33 14 were figments of a primitive  
02:53:33 15 imagination and we had no  
02:53:33 16 civilization.

02:53:33 17 So when I realized then that our  
02:53:33 18 Elders kept on to those stories  
02:53:33 19 thinking that they were quaint little  
02:53:33 20 legends, and didn't really understand,  
02:53:33 21 you know, the treasures that they held  
02:53:33 22 for us."

02:54:35 23 Do you have any comment on the  
02:54:36 24 suggestion that stories may have historicity,  
02:54:39 25 even if the tellers didn't realize it?

02:54:43 1 A. Well, you have to think of the  
02:54:45 2 profound implications of this. If at any point  
02:54:52 3 in time in the history of the storytelling a  
02:54:56 4 raconteur believes that the story that he or she  
02:54:59 5 is telling is no more than fiction, what are the  
02:55:03 6 chances of it being handed down for the purposes  
02:55:10 7 of retaining historicity?

02:55:16 8 As I said earlier, these stories could  
02:55:18 9 be changed at any time by anyone because their  
02:55:23 10 function -- because it depended on their  
02:55:29 11 function, it depended -- it didn't depend on  
02:55:32 12 their content.

02:55:34 13 And it strikes me as a little peculiar  
02:55:41 14 that a modern observer can suggest that an Elder  
02:55:51 15 is mistaken about the historicity of a story  
02:55:57 16 that they are telling for a particular purpose.

02:56:06 17 You have to think of the implications  
02:56:12 18 of that. Let's say this happened over and over  
02:56:15 19 again over the course of several centuries,  
02:56:19 20 because the residential school system is one  
02:56:22 21 thing but Anishinaabe people have been exposed  
02:56:25 22 to non-Anishinaabe views of the world for  
02:56:29 23 centuries, long before the residential school  
02:56:36 24 system. In the 19th century most of the  
02:56:38 25 Anishinaabe historians were actually Methodists.

02:56:44 1 So it's a -- I mean, to me it's -- it  
02:56:53 2 actually has an alarming implication to -- it  
02:56:56 3 should have an alarming implication for anyone  
02:56:59 4 who makes the claim that these stories have  
02:57:01 5 historicity to suggest that somehow the  
02:57:05 6 historicity is hidden in the stories.

02:57:10 7 The very fact that they're not  
02:57:12 8 recognized as historical is in and of itself  
02:57:21 9 evidence against treating them as if they were  
02:57:24 10 some kind of canon that is handed down from  
02:57:28 11 generation to generation as containers of  
02:57:37 12 historical facts.

02:57:51 13 Q. I would like to take you to  
02:57:52 14 another part of this transcript, and I know you  
02:57:54 15 didn't have it in your original research. If we  
02:57:56 16 can go to page 2827? Here we're referring to a  
02:58:13 17 document which was a 2006 interview with Lenore  
02:58:17 18 Keeshig. And if we can scroll down?

02:58:25 19 So there is a question at line 16:

02:58:27 20 "QUESTION: So did she say  
02:58:28 21 specifically that -- that or did she  
02:58:30 22 link that specifically to the waters  
02:58:32 23 here?"

02:58:34 24 And Lenore Keeshig answers:

02:58:36 25 "ANSWER: She said the water in the

02:58:37 1 bay area was salty or turned salty."  
02:58:42 2 And if I could call up Exhibit 4115.  
02:58:46 3 THE COURT: Just before you do that I  
02:58:47 4 think the witness well knows this, but it's:  
02:58:49 5 "She said that the water in the  
02:58:50 6 bay was salty or turned salty."  
02:58:57 7 BY MR. BEGGS:  
02:58:57 8 Q. Yes, sorry. If we can call up  
02:58:59 9 Exhibit 4115? If we could go to -- this was the  
02:59:16 10 interview that was being discussed at that  
02:59:18 11 point. If we could go to page 8, I believe, at  
02:59:30 12 the very bottom? So we have the interviewer  
02:59:42 13 Edward Koenig saying:  
02:59:45 14 "I see. So ... did she say  
02:59:47 15 specifically then that .... "  
02:59:49 16 Oh, I guess that was a direct quote  
02:59:49 17 from the previous page even though it didn't  
02:59:49 18 appear to be a direct quote.  
02:59:49 19 "... or did she link that  
02:59:49 20 specifically to the waters here?"  
02:59:54 21 If we can scroll to the answer? She  
02:59:59 22 said -- so Lenore Keeshig answered:  
03:00:00 23 "No, I did."  
03:00:03 24 And Edward Koenig said:  
03:00:06 25 "You did. Okay. So it's

03:00:08 1 possible that the story somehow links  
03:00:08 2 to salt water in other locations, but  
03:00:08 3 it's also possible that it ... "  
03:00:25 4 And Lenore Keeshig answered:  
03:00:25 5 "Well, I guess the assumption  
03:00:25 6 here is that, you know, as  
03:00:25 7 Anishinaabe-speaking people we have  
03:00:25 8 always lived around the Great Lakes.  
03:00:25 9 I guess that's what the assumption is,  
03:00:26 10 or that's my assumption."  
03:00:28 11 So were you aware when you did your  
03:00:30 12 research that it was Lenore Keeshig that gave  
03:00:32 13 the location of the -- of where the salty tears  
03:00:38 14 occurred?  
03:00:40 15 A. Well, all I had at the time was a  
03:00:49 16 quote which read -- which was four sentences  
03:00:53 17 long and it was basically:  
03:00:54 18 "Nanabush's favourite nephew  
03:00:58 19 dies. Nanabush loves his nephew very  
03:01:02 20 much and he cries a lot. When he  
03:01:03 21 cries, his tears fall like rocks and  
03:01:08 22 boulders. He cries so much that the  
03:01:09 23 water in the bay turns salty."  
03:01:13 24 Period, that's it. That's the  
03:01:13 25 snippet. So the Bay, of course, is not

03:01:18 1 specified, you know. I mean, one assumption may  
03:01:22 2 be that it's Georgian Bay, but it's just not  
03:01:29 3 specified in the actual wording of the story  
03:01:31 4 itself as it was originally written.

03:01:39 5 In my view it's -- I have a whole  
03:01:43 6 section in my original report about migration so  
03:01:46 7 that's one thing, of course. I mean, you cannot  
03:01:49 8 assume that any of these stories are about the  
03:01:52 9 local region given evidence of migration by the  
03:01:57 10 Anishinaabe themselves.

03:02:04 11 But to me that's almost beside the  
03:02:06 12 point. The geographic location is perhaps -- or  
03:02:11 13 lack thereof in terms of specificity is perhaps  
03:02:14 14 the least of the problems that this story has as  
03:02:18 15 an example of historicity.

03:02:22 16 Q. Okay. And are you aware of any  
03:02:39 17 recorded history of the saltiness or  
03:02:44 18 brackishness of the Great Lakes?

03:02:47 19 A. Well, it immediately called to my  
03:02:51 20 mind something that I had encountered decades  
03:02:57 21 ago in my research on the Algonquin, who  
03:03:07 22 Champlain met back in 1603, I believe, when he  
03:03:10 23 first arrived in the St. Lawrence.

03:03:12 24 And he was interviewing the Algonquin  
03:03:16 25 about what might lie further beyond the Lachine

03:03:18 1 Rapids; because most French had to stop at  
03:03:22 2 Lachine because they could not get any further.

03:03:25 3 And so he interviewed these Algonquin.  
03:03:28 4 And when I'm talking about Algonquin I'm talking  
03:03:28 5 about the Anishinaabe people who lived in the  
03:03:30 6 Ottawa drainage system who are today known as  
03:03:34 7 the Algonquin Nation.

03:03:37 8 And they were, of course, travelers in  
03:03:42 9 the Great Lakes region, just like many other  
03:03:46 10 Indigenous people. And they reported to  
03:03:56 11 Champlain that the waters of what is now known  
03:03:59 12 as Lake Ontario started off being somewhat fresh  
03:04:04 13 but it got increasingly brackish and finally  
03:04:07 14 quite salty the further you got west.

03:04:10 15 So it strikes me that this, if  
03:04:13 16 accurate, this kind of assessment by an  
03:04:16 17 Indigenous person or informant of the salinity  
03:04:22 18 of a fresh-water great lake in 1603, not in the  
03:04:32 19 early Holocene but in 1603, raises the whole  
03:04:36 20 problem of the subjectivity of the human pallet  
03:04:42 21 to what it regards as brackish or salty and what  
03:04:45 22 isn't.

03:04:46 23 I mean, I drink Lake Ontario water  
03:04:48 24 every day and it doesn't seem salty to me but  
03:04:51 25 perhaps it did to somebody else at some point.



03:05:03 1 So all of this is -- at the end of the  
03:05:04 2 day this is a real stretch to claim that this is  
03:05:07 3 somehow linked to an eyewitness observation by a  
03:05:13 4 human who lived over 8,000 years ago,  
03:05:23 5 particularly when we're talking about a snippet  
03:05:27 6 of four sentences from what may be a larger  
03:05:31 7 story, in a story that the Elder who told it  
03:05:41 8 understands to be as fiction. It's simply not  
03:05:51 9 very strong evidence, to put it mildly.

03:06:05 10 Q. I'd like to turn now to the oral  
03:06:07 11 tradition of floods. Now, I understand from  
03:06:14 12 what you said earlier that it wasn't the lack of  
03:06:16 13 stories that was a problem at this time but too  
03:06:26 14 many stories, is that correct?

03:06:27 15 A. Yeah. I mean, don't get me  
03:06:29 16 started on floods, you can go on forever.

03:06:34 17 The flood story, which is actually  
03:06:41 18 more specific than simply a flood, but first of  
03:06:43 19 all just to back-track a bit, flood stories are  
03:06:49 20 found all over the world. Some of the more  
03:06:53 21 famous ones are, of course, the epic of  
03:06:54 22 Gilgamesh and the entire region of the  
03:06:58 23 Tigris-Euphrates River basin is a constant  
03:07:05 24 source of flood stories. And there is, of  
03:07:07 25 course, the Biblical Noachian flood. These are

03:07:12 1 all stories that humans have told for thousands  
03:07:16 2 of years.

03:07:18 3 And in North America not surprisingly,  
03:07:22 4 as I said earlier, virtually ever Indigenous  
03:07:26 5 culture has some kind of a flood story.

03:07:29 6 And -- but it's not always just  
03:07:33 7 general flood stories, they can be surprisingly  
03:07:38 8 specific. And one of the most specific,  
03:07:40 9 interestingly enough, involves the world being  
03:07:48 10 flooded in its entirety, what was the known  
03:07:51 11 world; and along comes a culture hero who is  
03:07:59 12 floating on some kind of a raft or a --  
03:08:03 13 sometimes it's a log sometimes it's some other  
03:08:06 14 kind of structure that floats; and he's  
03:08:11 15 accompanied by various creatures who are each  
03:08:22 16 instructed to dive into the depths of the  
03:08:25 17 waters; and some animals try; they come back  
03:08:31 18 either dead or you never see them again; others  
03:08:35 19 are partially successful but not quite.

03:08:39 20 And finally there is one creature that  
03:08:42 21 manages to go down, dive down, retrieve some  
03:08:45 22 earth, bring it back up, place it on top of this  
03:08:48 23 floating structure and that becomes the basis of  
03:08:51 24 the world as we know it, or Turtle Island as  
03:09:00 25 it's known by not only Anishinaabe people but

03:09:03 1 also Iroquoians, who actually may have come up  
03:09:06 2 with that to begin with.

03:09:11 3 That story and the variety of  
03:09:16 4 variations it's so common that folklorists and  
03:09:20 5 anthropologists have written books about why  
03:09:24 6 that may be.

03:09:30 7 So, not surprisingly, the Anishinaabe  
03:09:32 8 have a story about Nanabush, who is on one of  
03:09:36 9 these floating structures and he has a number of  
03:09:42 10 animals that -- on the structure with him. And  
03:09:48 11 almost always but -- not always but usually it's  
03:09:55 12 the muskrat that ends up being the successful  
03:09:59 13 one who brings up that bit of earth to start the  
03:10:04 14 world as we know it.

03:10:09 15 The beaver tries but is unsuccessful.  
03:10:12 16 In one case it's reversed but the vast majority  
03:10:15 17 of the stories that I've studied it's usually  
03:10:18 18 the muskrat, pretty consistently the muskrat.  
03:10:21 19 And I have to say that that consistency is in  
03:10:24 20 and of itself astonishing because it shows you  
03:10:28 21 that there are some elements of traditions which  
03:10:30 22 do persist for centuries and are found across a  
03:10:40 23 wide region.

03:10:44 24 So even though, notwithstanding the  
03:10:44 25 comments I made earlier about the way stories

03:10:48 1 are changed by various storytellers, there are  
03:10:52 2 some elements to stories, and I think the diving  
03:10:56 3 muskrat is one of those wonderful examples, of  
03:10:59 4 where a story -- where a particular portion of a  
03:11:04 5 story has survived for centuries. That same  
03:11:09 6 species with few variations has remained  
03:11:18 7 unchanged.

03:11:19 8 So the bottom line is, is that we've  
03:11:22 9 got a lot of these flood stories. And the  
03:11:29 10 conclusion that I came to at the end is that in  
03:11:32 11 light of the ubiquity of these flood stories it  
03:11:36 12 would be a fool's errand to try and connect any  
03:11:39 13 of these flood stories to specific geological  
03:11:44 14 events or epochs or time periods.

03:11:57 15 The fact is, is that floods have  
03:11:58 16 plagued the human species, and whether you're  
03:12:02 17 Indigenous or non-Indigenous, for millennia it's  
03:12:05 18 not surprising that stories of floods are  
03:12:08 19 ubiquitous as a consequence.

03:12:10 20 They don't only occur between 8,000  
03:12:13 21 and 11,000 years ago. Floods occurred at many  
03:12:17 22 different times and localized, small-scale  
03:12:23 23 floods can lead to flood stories as easily as  
03:12:27 24 larger-scale floods.

03:12:37 25 Q. In one of the stories that you've

03:12:39 1 examined did you examine the views of Basil  
03:12:41 2 Johnston?

03:12:44 3 A. Basil Johnston, yes.

03:12:46 4 Q. And who is Basil Johnston?

03:12:53 5 A. Basil Johnston I think was from  
03:12:55 6 Chippewas of Nawash, and he became a -- he's  
03:13:00 7 Anishinaabe. And he -- it's the late Basil  
03:13:02 8 Johnston.

03:13:05 9 He was a prominent Anishinaabe  
03:13:10 10 storyteller, an intellectual and museum curator,  
03:13:15 11 ethnologist. He worked at the Royal Ontario  
03:13:18 12 Museum as one of their ethnologists and he wrote  
03:13:28 13 many books about Anishinaabe people. He's a  
03:13:32 14 prominent name in the Anishinaabe literature.

03:13:38 15 Q. And did he record his views on  
03:13:43 16 the flood story?

03:13:59 17 A. He did, and I want to make sure I  
03:14:01 18 don't misquote him. There is one Anishinaabe  
03:14:10 19 scholar who deems him:

03:14:12 20 "One of our greatest ancestral  
03:14:14 21 intellectuals and elders."

03:14:18 22 And he expressed, that is Basil  
03:14:20 23 Johnston expressed the view, "As a fact [...]",  
03:14:23 24 and I'm quoting:

03:14:26 25 "As a factual account of the

03:14:27 1 origin of the world and of being, the  
03:14:29 2 story has no more basis than the  
03:14:32 3 Biblical story of creation and the  
03:14:34 4 flood".

03:14:47 5 And he's talking here of the  
03:14:49 6 Anishinaabe flood story that I was just  
03:14:51 7 referring to. So this is, you know, the view of  
03:15:02 8 a prominent Anishinaabe intellectual who did not  
03:15:12 9 seem to regard the flood story as being -- as  
03:15:16 10 having historicity, at least that's what it  
03:15:23 11 seems to imply.

03:15:25 12 Q. And just for the record --  
03:15:27 13 perhaps that's not necessary.

03:15:42 14 I guess I'll move on to another oral  
03:15:46 15 tradition. This would be the oral tradition  
03:16:00 16 concerning a tunnel. Are you familiar with that  
03:16:07 17 oral tradition in this litigation?

03:16:08 18 A. Yes.

03:16:08 19 Q. Could you basically outline what  
03:16:10 20 the tradition concerns?

03:16:14 21 A. Well, this is a story that,  
03:16:17 22 again, is one of these stories that I could not  
03:16:20 23 find other variations of because it seems to be  
03:16:23 24 unique to Lenore Keeshig's world, in that it was  
03:16:34 25 her father who heard it from a relative, as I

03:16:38 1 understand it.

03:16:41 2 And it's a story about a man who lived  
03:16:43 3 on the Bruce Peninsula and somehow climbed down  
03:16:52 4 a tunnel, presumably from the vicinity of  
03:16:57 5 Tobermory, and was curious about where this  
03:17:02 6 tunnel ends. So he walks through the tunnel for  
03:17:05 7 quite a distance and eventually he meets  
03:17:09 8 somebody coming from the other side, that is  
03:17:12 9 from the Manitoulin side, because apparently  
03:17:15 10 this tunnel connected Tobermory with Manitoulin  
03:17:19 11 Island.

03:17:20 12 And somewhere in between these men  
03:17:22 13 exchanged gifts and then they returned to their  
03:17:26 14 respective homes with knowledge that there was  
03:17:29 15 this tunnel connecting Tobermory with  
03:17:34 16 Manitoulin.

03:17:35 17 So that's in essence -- I don't recall  
03:17:39 18 if that's exactly the way it was reiterated in  
03:17:43 19 her oral testimony but that's how it was  
03:17:45 20 originally expressed in her report.

03:17:55 21 Q. And did you read Dr. McCarthy's  
03:18:00 22 report? You did read Dr. McCarthy's report. Do  
03:18:02 23 you recall the portion dealing with the land  
03:18:05 24 bridge?

03:18:05 25 A. Yes. In her report there were

03:18:07 1 numerous allusions or references to pop-ups,  
03:18:09 2 which is a geological term, and also a land  
03:18:17 3 bridge which she mentioned at least nine times.

03:18:24 4 Q. If we can call up Dr. McCarthy's  
03:18:26 5 report, Exhibit 3986? If we can go to page 20  
03:18:54 6 there is a map. Can you see that map okay?

03:19:02 7 A. Yes, I can.

03:19:04 8 Q. Can you explain what your  
03:19:05 9 understanding of this map is?

03:19:06 10 A. Well, this is during the early  
03:19:09 11 Holocene and you have basically water levels  
03:19:12 12 which are different back then, as they are now,  
03:19:14 13 with the result that you've got two separate  
03:19:19 14 bodies of water where we now know Lake Huron is.

03:19:22 15 You have Lake Hough, which occupies a  
03:19:29 16 portion of what we would now call Georgian Bay,  
03:19:32 17 and then you have a separate body of water of  
03:19:36 18 which geologists refer to Lake Stanley, which  
03:19:41 19 occupies a portion of -- the northern portion of  
03:19:47 20 what is now understood to be Lake Huron.

03:19:51 21 And so there's actual land between the  
03:19:58 22 Bruce Peninsula and Manitoulin as a consequence  
03:20:03 23 of these low stands, or lower lake levels.

03:20:10 24 Q. Would it have been necessary to  
03:20:11 25 go through a tunnel to reach Manitoulin from



03:20:14 1 where Tobermory was?

03:20:16 2 A. Well, that's what immediately  
03:20:18 3 struck me, is why have recourse to a tunnel if  
03:20:21 4 you could just simply walk across the surface of  
03:20:24 5 the land? The tunnel makes much more sense in  
03:20:27 6 the context of a water barrier.

03:20:40 7 Q. The pop-up, how far do you  
03:20:43 8 understand the pop-up to extend? Does it go all  
03:20:45 9 the way to Manitoulin Island?

03:20:51 10 THE COURT: Well, Mr. Beggs, I sense  
03:20:52 11 Ms. Pelletier has been resisting the temptation  
03:20:57 12 to stand up until now.

03:21:00 13 MS. PELLETIER: Yes.

03:21:01 14 THE COURT: I suspect I know what  
03:21:01 15 she's going to say but let's find out.

03:21:01 16 MS. PELLETIER: Yes. This calls for  
03:21:01 17 evidence of a geologist, Your Honour. And up  
03:21:04 18 until this point Dr. von Gernet has been simply  
03:21:06 19 explaining what is found in Dr. McCarthy's  
03:21:09 20 report, which is fine, but if he is going to  
03:21:11 21 stray from that then it's outside of his  
03:21:13 22 expertise.

03:21:14 23 THE COURT: Mr. Beggs.

03:21:21 24 MR. BEGGS: I was simply -- well,  
03:21:22 25 although I hadn't phrased it that way I was

03:21:25 1 simply seeking what he understood from  
03:21:27 2 Dr. McCarthy's evidence, but I can move on.  
03:21:31 3 It's not a significant point.

03:21:36 4 THE COURT: All right.

03:22:07 5 BY MR. BEGGS:

03:22:07 6 Q. If we can call up Exhibit 3946?  
03:22:27 7 This is the -- this is the transcript of the  
03:22:32 8 cross-examination of Donald Keeshig. Did you  
03:22:37 9 have the opportunity to read this recently?

03:22:48 10 A. Donald Keeshig, this was  
03:22:50 11 something that happened many years ago, correct?  
03:22:52 12 It's back in 2002?

03:22:56 13 Q. That's correct, yes.

03:22:57 14 A. Yes, I read that transcript. I  
03:22:58 15 have not seen anything since. I assume that  
03:23:02 16 Donald Keeshig is no longer with us?

03:23:06 17 Q. That's correct.

03:23:07 18 A. So this is an older transcript  
03:23:09 19 from an earlier examination?

03:23:13 20 Q. Yes.

03:23:13 21 A. Yes, I have seen it.

03:23:15 22 Q. Can we go to page 43 of this  
03:23:18 23 document, and question 127? So the question to  
03:23:38 24 Mr. Keeshig is:

03:23:40 25 "Now, when you were talking about

03:23:42 1 the story back in September you  
03:23:44 2 stated, 'that means, I guess what it  
03:23:48 3 means is that the tunnel was from  
03:23:49 4 Tobermory to Manitoulin Island', and  
03:23:53 5 what I take from this, Mr. Keeshig, is  
03:23:56 6 that making the connection between the  
03:23:59 7 tunnel and it going from Tobermory to  
03:24:04 8 Manitoulin Island is an assumption on  
03:24:06 9 your part. It's 'what I guess', but  
03:24:09 10 in terms of what was actually  
03:24:11 11 contained within the story, it  
03:24:13 12 described going underground, but the  
03:24:15 13 story itself didn't specifically say  
03:24:18 14 that it was from Tobermory to  
03:24:20 15 Manitoulin Island. Is that correct?"  
03:24:24 16 The answer is:  
03:24:24 17 "No, like that's right."  
03:24:26 18 Does it affect your analysis at all to  
03:24:27 19 know that it was Donald Keeshig that concluded  
03:24:30 20 the location of the tunnel?  
03:24:40 21 A. Well, what I gather is that he's  
03:24:42 22 obviously heard the story from somebody else and  
03:24:50 23 every -- as I said earlier, every storyteller  
03:24:53 24 who retells a story may add, or subtract, or  
03:24:57 25 relocate, or do a number of different things to

03:25:01 1 the story. So I'm not surprised if there are  
03:25:03 2 certain assumptions that are put in which  
03:25:07 3 localize the story even further, which give it  
03:25:11 4 more detail.

03:25:13 5 It's -- so it doesn't really affect  
03:25:19 6 the way that I looked at the story originally.

03:25:23 7 At the end of the day I don't really  
03:25:25 8 think it matters, because if we're talking about  
03:25:32 9 a tunnel, and if it's anywhere in the vicinity  
03:25:41 10 of -- and if the tunnel -- assuming that the  
03:25:43 11 tunnel was, in fact, one that linked Tobermory  
03:25:46 12 with Manitoulin Island, it is not actually one  
03:25:50 13 of these so-called parallels with geological  
03:25:55 14 evidence. If you locate it somewhere else,  
03:26:02 15 well, perhaps it is. I don't know.

03:26:09 16 But what I find fascinating about this  
03:26:12 17 whole story is not just the story in itself as  
03:26:15 18 it was originally transcribed, and as we now  
03:26:19 19 hear it through the transcript of Donald  
03:26:23 20 Keeshig, it's how the contact with geological  
03:26:39 21 evidence has the potential to affect the way in  
03:26:42 22 which the story is told.

03:26:48 23 And as I understand it from having  
03:26:50 24 read these transcripts now, this story was not  
03:26:58 25 actually told to Lenore Keeshig by her father

03:27:01 1 directly but rather Lenore Keeshig heard about  
03:27:04 2 this story from a geologist who had heard it  
03:27:07 3 from her father.

03:27:10 4 So this kind of gives you a -- it  
03:27:14 5 makes you wonder how new information -- it's  
03:27:18 6 sort of like fossils coming into a -- suddenly  
03:27:23 7 into play into an oral tradition.

03:27:25 8 How does new information that you  
03:27:28 9 glean from other sources affect your retelling  
03:27:32 10 or telling of a story?

03:27:38 11 And as I read through Donald Keeshig's  
03:27:40 12 testimony and his remarks about -- from the  
03:27:52 13 "Daily Planet" episode, for example, you see  
03:27:55 14 this feedback effect occur. In oral  
03:28:01 15 historiography it's actually referred to as the  
03:28:03 16 "feedback effect". It is the way in which  
03:28:06 17 information from other sources feed back into a  
03:28:09 18 story.

03:28:14 19 So Donald Keeshig, who originally  
03:28:18 20 didn't put much historicity into the story, now  
03:28:21 21 suddenly sees it as containing historicity  
03:28:24 22 because he talked to Dr. Blasco, or some other  
03:28:29 23 geologist, and was interviewed for "Daily  
03:28:31 24 Planet".

03:28:32 25 So all of this affects the way in

03:28:34 1 which stories are told. So after a while you  
03:28:40 2 see how complicated it gets. It's not like you  
03:28:44 3 have this pristine kind of pre-influence story  
03:28:50 4 that comes to us from the past in some kind of  
03:28:53 5 hermetically-sealed box; that's not the way it  
03:28:56 6 works.

03:29:05 7 And one of the things that Henige, who  
03:29:08 8 is an oral historiographer, talks about is the  
03:29:13 9 importance of understanding the feedback effect  
03:29:14 10 and how that impacts on the telling of oral  
03:29:18 11 traditions.

03:29:41 12 THE COURT: Sometime around this time  
03:29:42 13 I'm going to take the afternoon break.

03:29:44 14 MR. BEGGS: Now would be convenient,  
03:29:46 15 Your Honour.

03:29:47 16 THE COURT: All right.

03:29:48 17 -- RECESSED AT 3:29 P.M. --

03:39:03 18 -- RESUMED AT 3:53 P.M. --

03:53:08 19 THE COURT: Please go ahead.

03:53:09 20 BY MR. BEGGS:

03:53:09 21 Q. Thank you, Your Honour.

03:53:10 22 Dr. von Gernet, I'd like to turn now to the  
03:53:13 23 story concerning the connection of Griffith  
03:53:13 24 Whitecloud and Hey Islands to the mainland. Are  
03:53:24 25 you familiar with that tradition -- or with that

03:53:25 1 story?

03:53:32 2 A. We don't actually have the  
03:53:33 3 tradition, we only have a secondary source who  
03:53:35 4 in 1865, I believe, said that there was such a  
03:53:46 5 tradition.

03:53:46 6 So I'm familiar with the secondary  
03:53:48 7 source that alluded to the tradition but I have  
03:53:53 8 not seen anywhere in the record where this  
03:53:55 9 tradition is actually transcribed anywhere.

03:54:06 10 Q. If we could call up Exhibit 4112?  
03:54:21 11 Could we go to page 121 of the document?

03:54:24 12 THE COURT: What is the document?

03:54:25 13 BY MR. BEGGS:

03:54:26 14 Q. Sorry, this should be "The  
03:54:30 15 Gazetteer & Directory of the County of Grey for  
03:54:36 16 1865/66" by W.W. Smith. Is this the source that  
03:55:16 17 you were referring to?

03:55:17 18 A. Yes, it is.

03:55:18 19 Q. If we could go to page 121? If  
03:55:21 20 we scroll down it starts under "Griffith's  
03:55:30 21 Island" and there is a highlighted portion. If  
03:55:40 22 you could read the highlighted portion and a  
03:55:41 23 little below that?

03:55:42 24 A. Yeah. Well, it's best to read  
03:55:44 25 the entirety after the highlight as well because

1 that illuminates it.

2 So it reads:

3 "The Indians have a tradition  
4 that all the three islands were once  
5 connected with each other and with  
6 Cape Croker Peninsula. We can say  
7 nothing as to the truth of this  
8 hypothesis for the old Indians, whose  
9 boyhood learned it from their  
10 grandfathers, can give us nothing more  
11 than the assertion of the doubtful  
12 fact. The water is, however, by no  
13 means deep between the islands, and  
14 when we remember what has been done in  
15 our own day at Long Point and Toronto,  
16 islands being made where formerly  
17 there were none, it is not impossible  
18 that a century or two ago it may have  
19 been the case."

20 Q. And what is he referring to when  
21 he's referring to Long Point and Toronto?

22 A. Well, during the 19th century  
23 when this was written there was, in fact, a very  
24 large storm actually in -- I think it was 1858.  
25 And during that storm the Toronto Islands were



03:57:06 1 separated from the mainland permanently and  
03:57:11 2 today, of course, you need a ferry to get to the  
03:57:13 3 Toronto Islands. But that was the consequence  
03:57:16 4 of a storm in 1858 that severed the peninsula  
03:57:24 5 from the rest of the mainland. So that's what  
03:57:27 6 he's referring to in terms of the Toronto  
03:57:29 7 Islands.

03:57:36 8 And the reference to Long Point is  
03:57:37 9 also a reference which, during the 19th century  
03:57:39 10 there was a gap that separated much of Long  
03:57:43 11 Point. He's referring to Long Point in southern  
03:57:47 12 Ontario. It's a point that sticks out  
03:57:50 13 prominently into Lake Erie. And today you can  
03:57:59 14 walk Long Point easily from the mainland to the  
03:58:02 15 end on a trail, but back in the 19th century  
03:58:05 16 when this was written there was a gap, an  
03:58:12 17 erosion, the location of which is still today  
03:58:16 18 known as the "gap" if you visit Long Island  
03:58:18 19 (sic).

03:58:30 20 So he reasoned, that is the writer of  
03:58:32 21 this, a guy by the name of Smith, he reasoned  
03:58:35 22 that although at first he was rather skeptical  
03:58:37 23 about this it's almost as if he says, Well, on  
03:58:40 24 the other hand there might be something to it.  
03:58:42 25 Because in his own experience he saw how islands

03:58:48 1 can form in recent memory and how, you know --  
03:58:56 2 so an observation of events in your current  
03:59:00 3 lifetime can lead you to speculate about what  
03:59:04 4 might have happened in the past.

03:59:06 5 So this is the same kind of analogical  
03:59:10 6 thinking that I was talking about earlier. So  
03:59:22 7 he reasoned that something similar could have  
03:59:24 8 happened in this Colpoy's Bay, he said a century  
03:59:27 9 or two earlier. Although it's somewhat  
03:59:29 10 immaterial what his speculation was as to when  
03:59:31 11 this could have happened, because it doesn't  
03:59:34 12 actually require this to have happened in your  
03:59:41 13 lifetime in order for you to imagine it. This  
03:59:43 14 is the same thing that I talked about earlier in  
03:59:47 15 relation to the Nadoway Barrier, it doesn't  
03:59:50 16 require you to actually have been there to  
03:59:52 17 imagine it.

04:00:01 18 It's something we talk about, but one  
04:00:07 19 of my case studies that involved Chequamegon  
04:00:09 20 Point -- and you may recall earlier, in my  
04:00:16 21 earlier testimony that there are many variants  
04:00:18 22 of Nanabush fighting with a giant beaver; and  
04:00:21 23 one of those variants is geographically located  
04:00:25 24 in southwestern Lake Superior in the Apostle  
04:00:32 25 Islands region in what is now Wisconsin.

04:00:38 1 And there Nanabush is fighting with  
04:00:40 2 the giant beaver; and there is a peninsula that  
04:00:44 3 juts out which is commonly referred to as  
04:00:50 4 Chequamegon Point, and at the end of that  
04:00:58 5 peninsula is Madeline Island, which plays a big  
04:01:03 6 role in Anishinaabe migration stories.

04:01:13 7 And Chequamegon Point is actually --  
04:01:17 8 the term comes from an Anishinaabe word for  
04:01:20 9 "soft beaver dam". And it's where Nanabush  
04:01:24 10 actually saw a dam and this dam eventually -- he  
04:01:34 11 used this dam to keep beavers from escaping.  
04:01:41 12 And the dam broke because it was made of sand,  
04:01:43 13 it's a sand bar basically. And as a consequence  
04:01:46 14 the story has the beavers escaping.

04:01:50 15 But my point is, is that this Point --  
04:01:54 16 within the experience of the last century  
04:02:00 17 Anishinaabe peoples can see that Point actually  
04:02:05 18 becoming an island and then becoming mainland  
04:02:11 19 again, and then becoming an island again and  
04:02:11 20 then becoming mainland again, over and over  
04:02:12 21 depending on how high Lake Superior gets and  
04:02:18 22 depending on the flows of rivers, and so forth.

04:02:23 23 So these kinds of experiences that you  
04:02:26 24 see on a daily basis of island formation, island  
04:02:32 25 disappearance, connections between islands and

04:02:37 1 mainland, happen in various places throughout  
04:02:42 2 Anishinaabe country all the time.

04:02:45 3 And just the way that Mr. Smith made  
04:02:49 4 an analogy here based on his experience, in my  
04:02:53 5 view there's nothing at all to prevent  
04:02:56 6 Anishinaabe people from coming up with similar  
04:02:59 7 traditions based on their experience of similar  
04:03:04 8 and analogous places where such things commonly  
04:03:08 9 occur.

04:03:13 10 So, again, that's a possibility that  
04:03:15 11 needs to be put side by side with the other  
04:03:20 12 possibility in that this is somehow an  
04:03:22 13 eyewitness, or this tradition, which we don't  
04:03:25 14 actually have, is somehow -- somehow contains a  
04:03:32 15 kernel of eyewitness observation going back to  
04:03:34 16 the early Holocene.

04:03:51 17 Q. At this point I would like to  
04:03:52 18 turn to the question of migrations. And you've  
04:04:00 19 referred a few times to your research in  
04:04:03 20 migrations.

04:04:06 21 In your extracted report, which is  
04:04:09 22 Exhibit 4501, several oral traditions about  
04:04:16 23 migrations are set out on page 45. That is just  
04:04:19 24 for reference.

04:04:22 25 Why is it important to consider the

04:04:24 1 question of migrations?

04:04:29 2 A. Well, first of all, there's an  
04:04:37 3 assumption underlying the deep-time oral  
04:04:44 4 traditions' claim which must hold to sustain it.  
04:04:52 5 And that is that, there is a resident population  
04:04:58 6 which has been telling the story in situ for  
04:05:08 7 millennia about events that happened in or  
04:05:15 8 about, or in the environs of the same area as  
04:05:18 9 much as ten thousand or more years ago.

04:05:25 10 Now, it's sometimes difficult to  
04:05:27 11 determine in such an argument whether that is  
04:05:32 12 the premise that underlies it or whether it is  
04:05:34 13 the conclusion that's reached upon determining  
04:05:40 14 historicity of the oral traditions; and so in  
04:05:42 15 that sense it can become a circular argument.

04:05:46 16 On the one hand what you're trying to  
04:05:53 17 do is show that there was this kind of resident  
04:05:54 18 population that goes back ten thousand years in  
04:05:58 19 the same area; and, on the other hand, that is  
04:06:02 20 the whole premise that underlies your inference  
04:06:04 21 that the oral traditions have historicity.

04:06:09 22 And unfortunately the oral  
04:06:11 23 traditions -- unfortunately the deep-time oral  
04:06:13 24 traditions' claim as a whole contains a great  
04:06:17 25 deal of this kind of circular reasoning.

04:06:26 1 Now, irrespective of whether it's a  
04:06:28 2 conclusion or a premise or assumption that  
04:06:30 3 underlies the whole argument its force is  
04:06:44 4 vitiated by evidence of migration.

04:06:47 5 And so the question of migration  
04:06:51 6 becomes quite important, because even the mere  
04:07:03 7 possibility of migration makes it difficult to  
04:07:07 8 conclude that the ancestors of the modern  
04:07:10 9 storytellers who told these stories were  
04:07:13 10 witnesses to these local Paleo-hydrological  
04:07:21 11 events or conditions prevailed during the early  
04:07:31 12 Holocene.

04:07:33 13 So if you are going to take these --  
04:07:34 14 you're going to cherry-pick these certain  
04:07:37 15 stories that have these alleged parallels with  
04:07:40 16 certain geological features of the environment,  
04:07:43 17 or reconstructions of geological features in the  
04:07:47 18 past, and you're going present them in a manner  
04:07:55 19 that somehow suggests an in situ presence of the  
04:08:00 20 culture of the people who tell these stories for  
04:08:04 21 over 8 millennia, then you have to ask yourself,  
04:08:09 22 well, what do you make of all the stories about  
04:08:12 23 Anishinaabe migrating?

04:08:15 24 And that's why -- that's what prompted  
04:08:17 25 me to get into the entire literature of

04:08:19 1 migrations. Because it becomes an important  
04:08:25 2 consideration when you're reviewing and  
04:08:33 3 assessing the merits of a deep-time oral  
04:08:38 4 traditions claim. At the very least I think  
04:08:43 5 this evidence should have been considered.

04:08:46 6 And one thing that immediately struck  
04:08:47 7 me about the claim is that it doesn't consider  
04:08:49 8 any alternatives, which, of course, is about as  
04:08:55 9 scientifically flawed as you could get. Because  
04:08:58 10 at the very least -- I mean, I could understand  
04:09:01 11 it if you consider them and weigh them  
04:09:03 12 differently and you weigh all the possibilities  
04:09:06 13 less than you do the historicity argument, but  
04:09:09 14 not even considering any of this stuff I think  
04:09:12 15 is scientifically flawed.

04:09:15 16 So that's why I went into this,  
04:09:17 17 because that would be the proper scientific way  
04:09:20 18 to address this situation.

04:09:23 19 Q. Thank you. I'd like to call up  
04:09:25 20 Exhibit 3998. Are you familiar with this  
04:09:36 21 article?

04:09:38 22 A. Yes. This looks like it comes  
04:09:40 23 from the northeast volume of "The Handbook of  
04:09:45 24 North American Indians" that was edited by Bruce  
04:09:48 25 Trigger.

04:09:50 1 Q. That's right, yes. Can we move  
04:09:52 2 to page 761, which I think is page 2 of the PDF?  
04:10:04 3 So in your research did you use this  
04:10:06 4 map?  
04:10:13 5 A. Yes. So, this is a map that  
04:10:14 6 occurs in one of the chapters in the handbook.  
04:10:18 7 This is a chapter that was written by, I think,  
04:10:21 8 it was Rogers who actually worked with Basil  
04:10:25 9 Johnston at the ROM. He wrote this chapter on  
04:10:36 10 the southern Ojibwa, so these are the  
04:10:40 11 Anishinaabe people of southern Ontario. And  
04:10:44 12 this is just one of many visual illustrations of  
04:10:51 13 migrations of movement, population movements of  
04:10:54 14 Anishinaabe peoples in relatively recent times.  
04:11:02 15 So it's a well-known fact, for  
04:11:03 16 example, that the Mississauga, who originated  
04:11:08 17 along the north shore of Lake Huron, ended up in  
04:11:13 18 the early 18th century along the north shore of  
04:11:18 19 Lake Ontario. And that's just one of many,  
04:11:23 20 dozens of different migrations of groups.  
04:11:32 21 We have a very good record of 17th  
04:11:35 22 century, and 18th century and even 19th century  
04:11:40 23 migrations of various Anishinaabe Bands over the  
04:11:47 24 landscape. So the story of migrations is an  
04:11:57 25 important one in Anishinaabe history.



04:12:00 1 And, in fact, most of the Anishinaabe  
04:12:06 2 historians -- and I stress here these are  
04:12:10 3 historians who were educated, they were of  
04:12:17 4 Anishinaabe heritage but they were educated by  
04:12:19 5 the Methodists often, and they wrote their own  
04:12:24 6 histories.

04:12:26 7 And when you look through those  
04:12:28 8 histories those histories are -- the themes that  
04:12:31 9 emerge in those histories are of migration and  
04:12:36 10 military conquests. They are about -- they're  
04:12:40 11 the stories that the elders spoke of that dealt  
04:12:46 12 with war and migration. Those are the two big  
04:12:50 13 themes of 19th century Anishinaabe  
04:12:52 14 historiography.

04:12:55 15 So migration has always been front and  
04:12:57 16 center in the consciousness of Anishinaabe  
04:12:59 17 people and for good reason, because some of  
04:13:01 18 these migrations were still fresh in their  
04:13:06 19 minds.

04:13:06 20 Other migrations that they talk about  
04:13:08 21 in their stories are much earlier. So not only  
04:13:12 22 in the more recent history but also in their  
04:13:15 23 earlier history, what they understood to be an  
04:13:18 24 earlier history, do migrations play an important  
04:13:22 25 role.

04:13:24 1 So when you combine this kind of  
04:13:30 2 evidence with other evidence, and here I'm  
04:13:36 3 referring to -- when I taught at the University  
04:13:38 4 of Toronto I often emphasized to my students  
04:13:43 5 that you should never ever, ever assume that any  
04:13:47 6 modern Indigenous group has been at that  
04:13:53 7 location since time immemorial, or for thousands  
04:13:59 8 of years, never, because we have so many  
04:14:09 9 examples of the movement of Indigenous peoples  
04:14:12 10 all over the continent.

04:14:15 11 The Cree moved west; Mi'kmaq moved to  
04:14:20 12 Newfoundland; Mississaugas, as I just said,  
04:14:22 13 moved to southern Ontario. I mean, I could go  
04:14:39 14 on.

04:14:39 15 That is the default position really.  
04:14:41 16 It's actually -- it would be an exception to  
04:14:48 17 find arguments that a particular group lived in  
04:14:54 18 the same place for thousands of years. That's  
04:14:59 19 just -- I think as my colleague McGhee, who  
04:15:01 20 wrote an entire article on this subject,  
04:15:06 21 suggested, that's sort of the -- he calls it the  
04:15:11 22 paradigm of Aboriginalism, the idea that you can  
04:15:17 23 actually, you know, that a people remains in  
04:15:20 24 place unchanged for thousands of years. That's  
04:15:24 25 just not a tenable proposition in light of all

04:15:29 1 the evidence that we have, including  
04:15:33 2 archeological evidence.

04:15:36 3 Q. Before we move onto the -- before  
04:15:38 4 we get into the oral traditions you mentioned  
04:15:42 5 Anishinaabe historians who were trained by  
04:15:45 6 Methodists. Can you give us some examples of  
04:15:48 7 those individuals?

04:15:49 8 A. Well, the most prominent example  
04:15:53 9 is, of course, Kahkewaquanaby, whose English  
04:15:58 10 name was Peter Jones. He is very well known to  
04:16:09 11 me because I live in Mississauga and he was the  
04:16:12 12 Mississauga who became Chief of the Credit River  
04:16:16 13 Mississaugas, which is now, of course, part of  
04:16:21 14 Mississauga. And he wrote extensively about the  
04:16:33 15 traditions of his people and about the history  
04:16:34 16 of his people.

04:16:37 17 He was not only Chief of the Band but  
04:16:39 18 he was also a Methodist Minister who converted  
04:16:47 19 most of his own population.

04:16:52 20 So that's one example. And then there  
04:16:55 21 are many, many others.

04:16:56 22 Among the important Anishinaabe  
04:16:59 23 historians is William Warren who was also, in  
04:17:03 24 part, western educated but had Anishinaabe roots  
04:17:07 25 and grew up on Madeline Island, which was an

04:17:10 1 important Anishinaabe community.

04:17:15 2 George Copway is another one. And I  
04:17:19 3 gave an extensive list in my original report.

04:17:24 4 But all of them, because they were --  
04:17:27 5 because they self-identified and had Anishinaabe  
04:17:32 6 heritage and also were literate in their day --  
04:17:42 7 this is all in the 19th century -- they were  
04:17:45 8 very interested in preserving stories that they  
04:17:48 9 had from their Elders.

04:17:50 10 And so they -- much of what we know  
04:17:52 11 about Anishinaabe history comes from Anishinaabe  
04:17:58 12 sources. It's relatively unusual in North  
04:18:01 13 America to have Anishinaabe writers -- or sorry,  
04:18:06 14 to have Indigenous writers writing their own  
04:18:09 15 history as opposed to outsiders, complete  
04:18:13 16 outsiders writing your history. So there is a  
04:18:16 17 wealth of information there that these people  
04:18:19 18 produced.

04:18:21 19 Q. Now, the oral traditions that you  
04:18:26 20 gathered and reviewed, do they indicate which  
04:18:29 21 direction people were moving from?

04:18:33 22 A. Well, that's the one thing that  
04:18:35 23 immediate -- that immediately strikes you, is  
04:18:39 24 that once humans -- or once any writer or  
04:18:44 25 storyteller imagines or recollects that their

04:18:50 1 ancestors came from somewhere else, other than  
04:18:53 2 where they are now, then you have the  
04:18:57 3 possibility of at least four cardinal directions  
04:19:00 4 from where you could come from. And, indeed,  
04:19:03 5 many of these stories come from every direction  
04:19:07 6 you can imagine.

04:19:08 7 There are stories of Anishinaabe  
04:19:10 8 migrating from the west; there are stories of  
04:19:12 9 Anishinaabe migrating from the east; there are  
04:19:14 10 stories of them coming from the north; from the  
04:19:18 11 south. Some of these, of course, are limited in  
04:19:26 12 their temporal context and so we can see that  
04:19:28 13 some of them are sort of micro migrations in  
04:19:31 14 more recent times, but others postulate grand  
04:19:34 15 migrations from distant places in ancient times.

04:19:42 16 And, of course, one of the more famous  
04:19:44 17 ones is the one related to the Midewiwin, which  
04:19:47 18 is one of the Anishinaabe religions, which  
04:19:56 19 postulates a migration from the Atlantic or east  
04:20:00 20 coast and which comes in various forms.

04:20:08 21 Q. Is one of those forms the  
04:20:12 22 Mishomis book by Edward Benton-Banai?

04:20:16 23 A. Yes, he's the one that  
04:20:19 24 popularized the Wisconsin version of that  
04:20:22 25 tradition. There are other versions as well,

04:20:26 1 but since it's -- Benton-Banai himself is from  
04:20:32 2 Wisconsin it's understandable that he  
04:20:36 3 popularized the version that he was most  
04:20:39 4 familiar with.

04:20:40 5 Q. I would like to call up the  
04:20:41 6 Mishomis book, it is Exhibit 3955. And if we  
04:21:02 7 could go to page 99? Can you tell me what this  
04:21:06 8 map shows?

04:21:10 9 A. Well, this is a map from that  
04:21:12 10 aforementioned book by Benton-Banai. And what  
04:21:16 11 he tried to do here is visualize in a modern  
04:21:24 12 cartographic context the story of the  
04:21:28 13 Anishinaabe migration from the east coast to its  
04:21:34 14 terminus, which was Madeline Island.

04:21:39 15 Recall that a few minutes ago I  
04:21:41 16 testified about that sand spit, Chequamegon  
04:21:45 17 Point, which you see -- it's not pictured here  
04:21:57 18 but you do see Madeline Island, which is right  
04:22:00 19 next to it at number 7.

04:22:02 20 So that is the end point of this  
04:22:04 21 migration is Madeline Island, where you see  
04:22:07 22 number 7, at the western end of Lake Superior.

04:22:11 23 So what Benton-Banai did is he  
04:22:15 24 basically took a story which originated with one  
04:22:18 25 of those 19th century Anishinaabe writers,

04:22:21 1 William Warren, who was born on Madeline Island  
04:22:25 2 and first told this story in a book on the  
04:22:31 3 history of his people.

04:22:34 4 And that story that William Warren  
04:22:39 5 first put to paper back in the 19th century  
04:22:43 6 became almost canonized by virtue of it being  
04:22:48 7 written down; and it became the basis of the  
04:22:53 8 telling of this story among Anishinaabe peoples  
04:23:00 9 for the next century.

04:23:02 10 And Benton-Banai is just one of the  
04:23:05 11 modern elders who recast this story for his  
04:23:12 12 audience, which was a book that this map is  
04:23:19 13 found in. So this is an illustration that he  
04:23:21 14 did to accompany the story that he told.

04:23:28 15 Q. And do all the migration  
04:23:30 16 narratives end at Madeline Island?

04:23:40 17 A. No. Some do. The ones that are  
04:23:42 18 told by those in Wisconsin do.

04:23:46 19 But this is another example in which  
04:23:47 20 when the story is told by others in other  
04:23:50 21 contexts they will have a different termination  
04:23:53 22 point.

04:23:53 23 So, for example, the Anishinaabe who  
04:23:55 24 live to the west of Lake Superior they have a  
04:24:01 25 termination point that is to the west of Lake

04:24:03 1 Superior as opposed to Madeline Island.

04:24:09 2 And others who have told the story in  
04:24:12 3 other places will include places that are not on  
04:24:18 4 this map.

04:24:23 5 And we have extensive records of these  
04:24:26 6 stories because some of them were done through  
04:24:30 7 the assistance of birch-bark scrolls, which  
04:24:33 8 contained mnemonic devices, much like you do  
04:24:39 9 with wampum belts. A wampum belt is basically a  
04:24:45 10 mnemonic device that's used to assist in the  
04:24:48 11 recall of an oral tradition.

04:24:50 12 So Anishinaabe peoples used birch-bark  
04:24:54 13 scrolls which had various symbols on them and  
04:24:59 14 figures on them, and these were used to assist  
04:25:02 15 them in the recall of oral traditions.

04:25:05 16 Mind you, the scrolls themselves often  
04:25:10 17 ended up deteriorating to the point where they  
04:25:15 18 could no longer be read. In some cases they  
04:25:18 19 were deliberately destroyed and in other cases  
04:25:24 20 the link between the oral tradition and the  
04:25:31 21 mnemonic device was lost. And you can't  
04:25:33 22 reconstruct it the way you can read  
04:25:36 23 hieroglyphics, for example, so at that point  
04:25:39 24 it's lost.

04:25:40 25 And so other elders would come up with



04:25:43 1 other traditions and create new scrolls, or  
04:25:48 2 reinterpret damaged ones or -- so the whole  
04:25:52 3 system really was one in which there was a great  
04:25:58 4 deal of creativity involved in how you would  
04:26:01 5 interpret these migration stories.

04:26:14 6 So this is just one example of quite a  
04:26:15 7 number of these migration histories that have  
04:26:19 8 variations in them depending on which Elder  
04:26:22 9 tells the story.

04:26:24 10 Q. Did Mr. Benton-Banai attribute  
04:26:27 11 any historicity to this migration story?

04:26:30 12 A. Yes, he absolutely did, as did  
04:26:32 13 William Warren who first told the story. Both  
04:26:38 14 of them tried using various clever means to  
04:26:42 15 establish the date of the migration and, more  
04:26:45 16 importantly, both of them understood these to be  
04:26:51 17 real migrations of their ancestors.

04:26:53 18 These were not, you know, some kind of  
04:26:57 19 symbolic migrations. Although they have been  
04:27:05 20 prophesied by prophets they came to pass in a  
04:27:10 21 real world, in a date-able real world. So  
04:27:15 22 Benton-Banai, as well as William Warren before  
04:27:21 23 him, tried to historicize them by actually  
04:27:33 24 dating them.

04:27:35 25 So, for example, according to William

04:27:36 1 Warren who first came up -- who first gave the  
04:27:41 2 story in print, he calculated that the migrants  
04:27:49 3 arrived at Madeline Island, that is at number 7,  
04:27:57 4 finally in 1492.

04:28:07 5 And Edward Benton-Banai, according to  
04:28:10 6 that Elder, he suggested that they arrived at  
04:28:25 7 Madeline Island around 1394. And he thought  
04:28:29 8 that the migration started around 900 AD and  
04:28:38 9 took 500 years to complete.

04:28:42 10 Now, none of these were based on any  
04:28:46 11 kind of calculations that we can put much -- we  
04:28:53 12 can't attribute much value to these calculations  
04:28:56 13 because they're based on so many different  
04:28:59 14 assumptions and on a number of errors, including  
04:29:04 15 presumed life spans of individuals and so forth.  
04:29:09 16 But my point is, is that the fact that you have  
04:29:12 17 these efforts to date the migration is a pretty  
04:29:16 18 solid indication that they attributed  
04:29:20 19 historicity to it.

04:29:24 20 They saw these as real people  
04:29:26 21 migrating in a real world, migrating from the  
04:29:37 22 east coast and ending up eventually at Madeline  
04:29:40 23 Island with stops along the way.

04:29:48 24 MR. BEGGS: Your Honour, I was about  
04:29:49 25 to start another of the oral traditions for

04:29:53 1 migration but I'm wondering if we should break  
04:29:59 2 at this time, if that's convenient?

04:30:03 3 THE COURT: Yes, we can break at this  
04:30:04 4 time. And before you leave make sure you  
04:30:07 5 just -- you don't have to do it right now but  
04:30:11 6 let Ms. Pelletier know how you're doing on your  
04:30:14 7 schedule so she will have an idea of when she  
04:30:16 8 will be reached.

04:30:18 9 I assume you're doing the  
04:30:19 10 cross-examination?

04:30:20 11 MS. PELLETIER: That's correct, Your  
04:30:21 12 Honour. Thank you for that.

04:30:21 13 THE COURT: Great. Tomorrow 10  
04:30:21 14 o'clock.

04:30:22 15 --- Whereupon the proceedings were  
04:30:22 16 adjourned at 4:30 p.m.

04:33:54 17  
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04:33:54 19  
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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified  
Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein  
set forth;

That the testimony of the witness and  
all objections made at the time of the  
examination were recorded stenographically by me  
[Note: Not all quotes have been verified  
against source document, but transcribed as  
read into the record];

That the foregoing is a true and  
accurate transcript of my shorthand notes so  
taken. Dated this 19th day of January 2020.



PER: HELEN MARTINEAU  
CERTIFIED SHORTHAND REPORTER

|   |   |   |                                    |   |
|---|---|---|------------------------------------|---|
| (   | <b>1869</b> 9360:23   | <b>28</b> 9366:20<br>9368:20 9396:2<br>9398:10<br>9400:21 | <b>4462</b> 9308:15,<br>16 9372:23 | <b>4487</b> 9312:3,4                                |
| <b>(a)</b> 9326:15<br>9390:7  | <b>18th</b> 9317:7,13<br>9318:4 9368:16<br>9383:18<br>9434:18,22                    | <b>2809</b> 9400:22                                       | <b>4463</b> 9308:18,<br>19         | <b>4488</b> 9312:7,8                                |
| <b>(b)</b> 9390:8   | <b>195</b> 9374:1   | <b>2811</b> 9403:17                                       | <b>4464</b> 9308:21,<br>22         | <b>4489</b> 9312:11,<br>12                          |
| 1   | <b>1970s</b> 9330:21  | <b>2827</b> 9406:16                                       | <b>4465</b> 9308:24,<br>25         | <b>4490</b> 9312:15,<br>16                          |
| <b>10</b> 9445:13   | <b>1990s</b> 9321:5   | <b>2:15</b> 9384:12                                       | <b>4466</b> 9309:2,3               | <b>4491</b> 9312:19,<br>20                          |
| <b>10,000</b> 9333:18<br>9335:13<br>9338:11                             | <b>1996</b> 9353:10<br>9354:2   | <b>2:18</b> 9384:14                                       | <b>4467</b> 9309:5,6               | <b>4492</b> 9312:23,<br>24                          |
| <b>10:23</b> 9306:1   | <b>19th</b> 9334:24<br>9341:10<br>9368:16<br>9383:10<br>9405:24                     | <b>3</b>  | <b>4468</b> 9309:8,9               | <b>4493</b> 9313:2,3                                |
| <b>11,000</b> 9326:5<br>9337:23<br>9414:21                              | 9426:22 9427:9,<br>15 9434:22<br>9435:13 9438:7<br>9440:25 9441:5                   | <b>3</b> 9356:19<br>9360:6 9403:17                        | <b>4469</b> 9309:12,<br>13         | <b>4494</b> 9313:6,7                                |
| <b>11,700</b> 9327:18   | <b>1:00</b> 9382:21   | <b>30-page</b><br>9316:11                                 | <b>4470</b> 9309:16,<br>17         | <b>4495</b> 9313:10,<br>11                          |
| <b>11:40</b> 9355:21  | <b>1:04</b> 9384:13   | <b>350-page</b><br>9326:13<br>9360:15                     | <b>4471</b> 9309:20,<br>21         | <b>4496</b> 9313:14,<br>15                          |
| <b>121</b> 9425:11,19   | <b>2</b>  | <b>3946</b> 9420:6  | <b>4472</b> 9309:23,<br>24         | <b>4497</b> 9313:18,<br>19                          |
| <b>127</b> 9420:23  | <b>2</b> 9356:19<br>9434:2  | <b>3955</b> 9440:6  | <b>4473</b> 9310:1,2               | <b>4498</b> 9313:22,<br>23                          |
| <b>12:07</b> 9355:22  | <b>20</b> 9418:5  | <b>3986</b> 9418:5  | <b>4474</b> 9310:5,6               | <b>4499</b> 9314:1,2                                |
| <b>1394</b> 9444:7  | <b>2002</b> 9420:12   | <b>3998</b> 9433:20                                       | <b>4475</b> 9310:8,9               | <b>45</b> 9365:1<br>9430:23                         |
| <b>1492</b> 9444:4  | <b>2006</b> 9406:17   | <b>3:29</b> 9424:17                                       | <b>4476</b> 9310:11,<br>12         | <b>4500</b> 9314:5,6                                |
| <b>15</b> 9378:9  | <b>2013</b> 9359:2  | <b>3:53</b> 9424:18                                       | <b>4477</b> 9310:14,<br>15         | <b>4501</b> 9317:23,<br>24 9360:5<br>9378:9 9430:22 |
| <b>16</b> 9398:12<br>9400:21<br>9406:19                                 | <b>2016</b> 9358:3<br>9359:1  | <b>4</b>  | <b>4478</b> 9310:17,<br>18         | <b>4:30</b> 9445:16                                 |
| <b>1603</b> 9409:22<br>9410:18,19                                       | <b>2018</b> 9356:23<br>9357:21 9359:3   | <b>4112</b> 9425:10                                       | <b>4479</b> 9310:21,<br>22         | <b>5</b>  |
| <b>1669</b> 9397:24   | <b>2019</b> 9315:7<br>9317:13 9318:4,<br>11 9319:5<br>9356:25<br>9358:10<br>9400:22 | <b>4115</b> 9407:2,9                                      | <b>4480</b> 9310:25<br>9311:1      | <b>5</b> 9360:7<br>9361:20                          |
| <b>17</b> 9368:7<br>9391:14   | <b>20th</b> 9341:9<br>9345:11,13  | <b>43</b> 9420:22   | <b>4481</b> 9311:4,5               | <b>5.33</b> 9387:16                                 |
| <b>17th</b> 9345:4,12<br>9368:16<br>9377:15<br>9383:11,14,18<br>9434:21 | <b>21</b> 9315:7  | <b>4455</b> 9307:14,<br>15                                | <b>4482</b> 9311:8,9               | <b>500</b> 9444:9                                   |
| <b>18</b> 9401:8  | <b>21st</b> 9318:11<br>9341:9   | <b>4456</b> 9307:18,<br>19                                | <b>4483</b> 9311:12,<br>13         | <b>6</b>  |
| <b>1858</b> 9426:24<br>9427:4   |   | <b>4457</b> 9307:22,<br>23                                | <b>4484</b> 9311:16,<br>17         | <b>6</b> 9363:10,11                                 |
| <b>1865</b> 9425:4  |   | <b>4458</b> 9307:25<br>9308:1                             | <b>4485</b> 9311:20,<br>21         | <b>7</b>  |
| <b>1865/66</b><br>9425:16   |   | <b>4459</b> 9308:4,5                                      | <b>4486</b> 9311:24,<br>25         | <b>7</b> 9361:21<br>9440:19,22                      |
|   |   | <b>4460</b> 9308:8,9                                      |                                    |   |
|   |   | <b>4461</b> 9308:12,<br>13                                |                                    |   |

|  |  |   |   |   |
|--|--|---|---|---|
| 9444:3<br><b>761</b> 9434:2<br><hr/> <b>8</b><br><hr/> <b>8</b> 9326:5<br>9363:11<br>9407:11<br>9432:21<br><b>8,000</b> 9411:4<br>9414:20<br><b>8,200</b> 9327:17<br><hr/> <b>9</b><br><hr/> <b>900</b> 9444:8<br><b>9100BP</b><br>9338:24<br><b>96</b> 9353:11<br>9354:15<br><b>99</b> 9440:7<br><b>9:30</b> 9306:8<br><hr/> <b>A</b><br><hr/> <b>a.m.</b> 9306:1<br>9355:21<br><b>ability</b> 9346:19<br>9390:9<br><b>abnormally</b><br>9340:24<br><b>Aboriginalis<br/>m</b> 9436:22<br><b>absolutely</b><br>9324:22<br>9339:12 9344:7<br>9375:4 9376:23<br>9390:5 9399:17<br>9443:12<br><b>academic</b><br>9321:20<br>9325:20 9327:1,<br>4 9373:8<br><b>accept</b><br>9315:12 | <b>accepted</b><br>9316:3,4<br><b>accompanied</b><br>9412:15<br><b>accompanies</b><br>9392:22<br><b>accompany</b><br>9441:14<br><b>account</b><br>9320:8 9398:2<br>9403:1 9415:25<br><b>accounted</b><br>9370:18<br><b>accounts</b><br>9397:18,19<br><b>accurate</b><br>9410:16<br><b>actions</b><br>9392:24<br><b>actual</b> 9322:13<br>9324:13 9331:8<br>9332:21,25<br>9333:1 9341:16<br>9342:15,24<br>9345:18 9357:2<br>9381:10 9382:6<br>9388:4 9409:3<br>9418:21<br><b>AD</b> 9444:8<br><b>add</b> 9421:24<br><b>addition</b><br>9368:21<br><b>additional</b><br>9320:12<br><b>address</b><br>9351:3 9433:18<br><b>adjective</b><br>9340:21<br><b>adjourned</b><br>9445:16<br><b>adopt</b> 9329:2,3<br><b>advance</b><br>9323:19<br>9324:12<br><b>advanced</b><br>9326:25 | 9327:12 9333:9<br>9358:23<br><b>advised</b><br>9320:14<br><b>affect</b> 9421:18<br>9422:5,21<br>9423:9<br><b>affects</b><br>9423:25<br><b>AFFIRMED</b><br>9317:3<br><b>afield</b> 9368:6<br>9377:2<br><b>aforemention<br/>ed</b> 9440:10<br><b>afraid</b> 9306:4<br><b>Africa</b> 9350:21<br>9387:4<br><b>afternoon</b><br>9424:13<br><b>age</b> 9335:16<br><b>Agent</b> 9388:14<br><b>agreement</b><br>9314:16<br><b>ahead</b> 9307:9<br>9318:6,22<br>9355:23<br>9382:21<br>9424:19<br><b>alarming</b><br>9406:2,3<br><b>Alberta</b><br>9351:19<br><b>Alexander</b><br>9317:2,12<br>9318:3 9387:1,6<br><b>Algonkian</b><br>9373:11,21,22<br><b>Algonquian</b><br>9351:16<br><b>Algonquians</b><br>9351:18<br><b>Algonquin</b><br>9349:21<br>9409:21,24 | 9410:3,4,7<br><b>alleged</b><br>9320:18<br>9432:15<br><b>Allouez</b><br>9397:24<br><b>allude</b> 9340:8<br><b>alluded</b><br>9320:19 9389:6<br>9425:7<br><b>alluding</b><br>9320:17 9401:8<br><b>allusions</b><br>9340:12<br>9353:19<br>9389:10<br>9402:22 9418:1<br><b>alternatively</b><br>9314:20<br><b>alternatives</b><br>9339:9,14,17<br>9340:5 9347:11<br>9433:8<br><b>America</b><br>9335:20,22<br>9342:16<br>9344:18<br>9348:17 9349:1,<br>11,15 9351:24<br>9380:23<br>9381:20 9400:7<br>9412:3 9438:13<br><b>American</b><br>9328:8 9373:5<br>9388:15<br>9433:24<br><b>Americans</b><br>9388:14<br><b>Americas</b><br>9342:7 9353:20<br>9385:9<br><b>amount</b><br>9379:13,16<br>9381:5<br><b>amounts</b><br>9359:24<br>9379:14 | <b>ample</b> 9325:12<br><b>anachronistic</b><br>9373:22<br><b>analogical</b><br>9428:5<br><b>analogies</b><br>9390:9<br><b>analogous</b><br>9430:8<br><b>analogy</b><br>9430:4<br><b>analysis</b><br>9402:5 9421:18<br><b>analytical</b><br>9390:25<br><b>analyze</b><br>9390:9<br><b>analyzed</b><br>9391:15<br>9398:22<br><b>analyzing</b><br>9321:15<br><b>ancestors</b><br>9389:21 9432:8<br>9439:1 9443:17<br><b>ancestral</b><br>9415:20<br><b>ancient</b><br>9342:4,20<br>9362:17,24<br>9381:11<br>9387:11<br>9439:15<br><b>angles</b><br>9395:12<br><b>animal</b> 9343:9<br><b>animals</b><br>9328:4,5,11<br>9342:1 9345:1<br>9346:1,3<br>9353:20<br>9361:13<br>9412:17<br>9413:10<br><b>Anishinaabe</b><br>9320:20 9340:8,<br>22 9341:8,16 |
|--|--|---|---|---|

|  |  |   |   |   |
|--|--|---|---|---|
| 9342:18 9343:6<br>9344:8 9347:19<br>9348:7 9349:4<br>9350:10,16,19<br>9351:6,9,10,12,<br>14,20 9352:1,5,<br>15 9355:8,16<br>9358:6 9359:14<br>9362:3 9368:23<br>9369:4 9372:4,9<br>9373:20 9375:3<br>9376:11 9377:5<br>9378:5 9383:12,<br>22 9384:5<br>9388:16<br>9391:15<br>9393:11,13<br>9394:18<br>9398:15<br>9402:17<br>9403:11<br>9405:21,25<br>9409:10 9410:5<br>9412:25 9413:7<br>9415:7,9,13,14,<br>18 9416:6,8<br>9429:6,8,17<br>9430:2,6<br>9432:23<br>9434:11,14,23,<br>25 9435:1,4,13,<br>16 9437:5,22,24<br>9438:1,5,11,13<br>9439:7,9,18<br>9440:13,25<br>9441:8,23<br>9442:12 | <b>anthropologi<br/>sts</b> 9345:13<br>9413:5<br><b>antiquity</b><br>9340:23<br><b>Apostle</b><br>9428:24<br><b>apparently</b><br>9417:9<br><b>applied</b><br>9378:17<br><b>apply</b> 9395:18<br><b>appointed</b><br>9388:13<br><b>approach</b><br>9321:14<br>9322:21 9323:1<br>9324:6,14<br>9328:23,24<br>9329:2 9333:3,<br>11 9359:11<br><b>appropriated</b><br>9350:16<br><b>Arab</b> 9387:1<br><b>arbitrary</b><br>9382:3<br><b>archaic</b><br>9374:15<br><b>archeological</b><br>9336:14<br>9337:22 9338:4,<br>5 9437:2<br><b>archeologists</b><br>9337:9<br><b>area</b> 9337:13,<br>19 9366:6<br>9388:19,21<br>9389:3,8,22<br>9407:1 9431:8,<br>19<br><b>areas</b> 9351:25<br><b>argument</b><br>9354:20 9359:8,<br>9 9364:22<br>9365:12<br>9431:11,15<br>9432:3 9433:13 | <b>arguments</b><br>9354:4,12,17<br>9436:17<br><b>arisen</b> 9383:4<br><b>arose</b> 9383:19<br><b>arrived</b><br>9409:23 9444:3,<br>6<br><b>arriving</b><br>9329:17<br><b>arrow</b> 9366:11<br><b>article</b> 9372:24<br>9373:9 9433:21<br>9436:20<br><b>aspects</b><br>9328:22<br>9399:21<br><b>assert</b> 9324:6<br><b>asserted</b><br>9359:21<br><b>asserting</b><br>9324:5<br><b>assertion</b><br>9323:14<br>9363:24 9364:2,<br>3 9426:11<br><b>assertions</b><br>9363:23<br><b>assess</b><br>9376:25<br><b>assessed</b><br>9324:19 9325:3<br><b>assessing</b><br>9433:3<br><b>assessment</b><br>9374:6 9410:16<br><b>assist</b> 9442:10,<br>14<br><b>assistance</b><br>9442:7<br><b>assume</b><br>9316:25 9338:6<br>9356:9 9359:6<br>9409:8 9420:15<br>9436:5 9445:9 | <b>assumed</b><br>9396:22<br><b>assuming</b><br>9356:20<br>9422:10<br><b>assumption</b><br>9408:5,9,10<br>9409:1 9421:8<br>9431:3 9432:2<br><b>assumptions</b><br>9422:2 9444:14<br><b>astonished</b><br>9396:13<br><b>astonishing</b><br>9413:20<br><b>Atlantic</b><br>9379:1 9380:16<br>9385:23,25<br>9387:16<br>9439:19<br><b>attributable</b><br>9396:8,10<br><b>attribute</b><br>9364:14<br>9443:10<br>9444:12<br><b>attributed</b><br>9444:18<br><b>audience</b><br>9370:25<br>9441:12<br><b>audiences</b><br>9372:5<br><b>augmentatio<br/>n</b> 9347:13<br><b>authors</b><br>9387:1<br><b>aware</b> 9408:11<br>9409:16<br><b>awful</b> 9328:18 | 9341:15<br>9345:13,24<br>9353:6,10,11<br>9354:2,6,9,15<br>9363:1 9366:16<br>9371:17<br>9377:13,14,15<br>9395:2 9409:22<br>9412:17,22<br>9418:12<br>9420:12 9421:1<br>9423:17<br>9427:15<br>9430:15<br>9431:18 9441:5<br><b>back-track</b><br>9411:19<br><b>bad</b> 9382:17<br><b>Band</b> 9437:17<br><b>bands</b> 9351:23<br>9352:6,11,19,<br>22,25 9434:23<br><b>bank</b> 9403:1<br><b>banks</b> 9390:20<br><b>bar</b> 9429:13<br><b>bare</b> 9361:1,9<br><b>barrier</b><br>9338:17,20,23<br>9339:4 9351:5<br>9364:6,12,25<br>9365:5 9366:7,<br>21,22 9368:1,<br>11,18 9381:10<br>9384:18,21,25<br>9388:4,8<br>9389:25 9398:9,<br>18 9419:6<br>9428:15<br><b>barriers</b><br>9385:12,13<br>9387:21<br><b>base</b> 9377:20<br>9385:3<br><b>baseball</b><br>9402:25<br><b>based</b> 9326:17<br>9332:25<br>9335:14<br>9339:24 |
| <b>B</b>   |  |   |   |   |
| <b>back</b> 9315:18<br>9321:4 9326:5<br>9330:16,20<br>9334:16 9339:5   |  |   |   |   |

|  |  |  |  |   |
|--|--|--|--|---|
| 9346:15 9347:6<br>9356:21<br>9358:20 9363:4<br>9387:14<br>9400:23 9430:4,<br>7 9444:10,13  | 15,20 9338:2,5<br>9339:6,8,11,21<br>9340:14,25<br>9341:2,4,8,15<br>9343:8,17,25<br>9344:3,9,10,13,<br>21 9345:9<br>9347:19<br>9348:12 9360:4,<br>9 9361:2<br>9363:9,25<br>9364:5,15,16,<br>18,19 9365:6,9<br>9367:22 9369:1<br>9370:8,9 9378:3<br>9379:22,23,25<br>9380:18<br>9381:16,21<br>9384:18 9386:6,<br>10 9390:12<br>9391:12 9392:3,<br>8,25 9393:14<br>9398:6 9399:4<br>9413:15<br>9428:22 9429:2,<br>9 | 9357:4,16<br>9367:3,8,18<br>9382:22 9383:1<br>9384:10,15,16<br>9407:7 9419:10,<br>23,24 9420:5<br>9424:14,20<br>9425:13<br>9444:24 | <b>binomial</b><br>9334:2  | 9407:12 9414:8  |
| <b>basically</b><br>9335:2 9337:15<br>9343:15<br>9357:24<br>9359:14<br>9374:25 9379:3<br>9390:12 9395:4<br>9404:5 9408:17<br>9416:19<br>9418:11<br>9429:13<br>9440:24 9442:9 | <b>beavers</b><br>9317:11 9318:2<br>9335:5,20<br>9338:6 9340:10<br>9341:17,20<br>9342:20,23<br>9344:16<br>9349:10,16,18,<br>20 9350:11<br>9353:6,9<br>9354:13 9355:9<br>9360:11<br>9363:17,22<br>9364:23 9371:9,<br>10 9384:2<br>9386:5 9391:5<br>9429:11,14   | <b>begin</b> 9315:22<br>9336:15<br>9337:20,24<br>9339:18<br>9343:13,19<br>9347:4 9353:2<br>9358:12<br>9370:23 9403:7<br>9413:2     | <b>biologists</b><br>9341:2  | <b>boulders</b><br>9408:22                                  |
| <b>Basil</b> 9415:1,3,<br>4,5,7,22 9434:8  | <b>began</b> 9349:15<br>9378:7   | <b>beginning</b><br>9372:14  | <b>birch-bark</b><br>9442:7,12   | <b>box</b> 9424:5   |
| <b>basin</b> 9378:23<br>9379:2,10<br>9381:2 9411:23  | <b>Beggs</b> 9306:2,<br>4,15,21<br>9314:11,14<br>9315:21,23<br>9316:2,4,15,21,<br>24 9317:4,9<br>9318:7,22,23,24<br>9355:18,24<br>9356:1,5,11  | <b>begins</b><br>9366:17   | <b>Blasco</b> 9404:1,<br>3 9423:22                                       | <b>boyhood</b><br>9426:9                                    |
| <b>basis</b> 9324:20<br>9325:4,19<br>9360:17<br>9379:18<br>9381:20<br>9382:19 9383:3<br>9391:4 9412:23<br>9416:2 9429:24<br>9441:7   | <b>beliefs</b> 9363:2  | <b>behaviour</b><br>9390:20  | <b>blistering</b><br>9327:2  | <b>brackish</b><br>9410:13,21                               |
| <b>battles</b><br>9348:18  | <b>believed</b><br>9342:23   | <b>beings</b> 9342:1<br>9362:17  | <b>Blomidon</b><br>9380:12   | <b>brackishness</b><br>9409:18                              |
| <b>battling</b><br>9348:14<br>9379:22  | <b>believes</b><br>9405:4  | <b>belong</b> 9343:1   | <b>blood</b> 9392:9  | <b>brains</b> 9346:19                                       |
| <b>bay</b> 9378:14,<br>15,24 9379:6<br>9393:16 9401:9<br>9407:1,6<br>9408:23,25<br>9409:2 9418:16<br>9428:8  | <b>belts</b> 9442:9  | <b>belong</b> 9343:1   | <b>blue</b> 9344:5   | <b>break</b> 9355:19,<br>20 9361:10<br>9424:13 9445:1,<br>3 |
| <b>bear</b> 9318:20  | <b>Benton-banai</b><br>9439:22 9440:1,<br>10,23 9441:10<br>9443:10,22<br>9444:5  | <b>body</b> 9365:23<br>9418:17   | <b>bodies</b><br>9380:25<br>9386:21<br>9387:22<br>9418:14                | <b>breaking</b><br>9390:16                                  |
| <b>bears</b> 9344:23,<br>24  | <b>belongs</b> 9343:1  | <b>body</b> 9365:23<br>9418:17   | <b>bone</b> 9343:8<br>9344:13  | <b>bridge</b> 9417:24<br>9418:3                             |
| <b>beaver</b><br>9319:17<br>9333:16,18,24<br>9334:3,6,7,8,14,  | <b>belong</b> 9343:1   | <b>body</b> 9365:23<br>9418:17   | <b>bones</b> 9343:14<br>9344:20<br>9360:10 9361:2,<br>5,9                | <b>briefly</b> 9361:24                                      |
|  | <b>belts</b> 9442:9  | <b>body</b> 9365:23<br>9418:17   | <b>book</b> 9330:20<br>9361:17 9362:6<br>9439:22 9440:6,<br>10 9441:2,12 | <b>bring</b> 9306:11<br>9318:19 9324:1<br>9412:22           |
|  | <b>Benton-banai</b><br>9439:22 9440:1,<br>10,23 9441:10<br>9443:10,22<br>9444:5  | <b>body</b> 9365:23<br>9418:17   | <b>books</b> 9413:5<br>9415:13   | <b>brings</b> 9413:13                                       |
|  | <b>berms</b> 9380:14   | <b>body</b> 9365:23<br>9418:17   | <b>born</b> 9441:1   | <b>broad</b> 9331:4   |
|  | <b>bias</b> 9329:6   | <b>body</b> 9365:23<br>9418:17   | <b>borrowed</b><br>9350:12   | <b>broadest</b><br>9331:1,4                                 |
|  | <b>Biblical</b><br>9411:25 9416:3  | <b>body</b> 9365:23<br>9418:17   | <b>book</b> 9330:20<br>9361:17 9362:6<br>9439:22 9440:6,<br>10 9441:2,12 | <b>broke</b> 9429:12  |
|  | <b>big</b> 9343:16,25<br>9344:2 9361:5<br>9386:20 9429:5<br>9435:12  | <b>body</b> 9365:23<br>9418:17   | <b>books</b> 9413:5<br>9415:13   | <b>brought</b><br>9365:1                                    |
|  | <b>both</b> 9400:9   | <b>body</b> 9365:23<br>9418:17   | <b>born</b> 9441:1   | <b>brown</b> 9366:8<br>9380:11                              |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>bone</b> 9343:8<br>9344:13  | <b>Bruce</b> 9417:3<br>9418:22<br>9433:24                   |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>bones</b> 9343:14<br>9344:20<br>9360:10 9361:2,<br>5,9                | <b>build</b> 9363:13<br>9364:24                             |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>book</b> 9330:20<br>9361:17 9362:6<br>9439:22 9440:6,<br>10 9441:2,12 | <b>built</b> 9363:18<br>9364:11 9365:5                      |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>books</b> 9413:5<br>9415:13   | <b>burst</b> 9365:1   |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>born</b> 9441:1   |   |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>bone</b> 9343:8<br>9344:13  | <b>C</b>  |
|  | <b>bottom</b><br>9363:12<br>9378:24  | <b>body</b> 9365:23<br>9418:17   | <b>bones</b> 9343:14<br>9344:20<br>9360:10 9361:2,<br>5,9                | <b>cabin</b> 9345:10  |



|   |  |   |  |   |
|---|--|---|--|---|
| <b>calculated</b><br>9444:2   | <b>Cape</b> 9380:2,<br>12 9426:6   | <b>center</b> 9435:16   | <b>character</b><br>9388:13  | 9433:4,7  |
| <b>calculations</b><br>9444:11,12   | <b>cardinal</b><br>9439:3  | <b>centuries</b><br>9321:9 9341:22<br>9403:14<br>9405:19,23<br>9413:22 9414:5   | <b>chart</b> 9323:23<br>9324:1 9356:7,<br>12,14,16   | <b>claimed</b><br>9325:13   |
| <b>call</b> 9317:5<br>9347:13 9356:2<br>9360:4 9365:14<br>9372:23 9378:8<br>9385:17<br>9400:19 9407:2,<br>8 9418:4,16<br>9420:6 9425:10<br>9433:19 9440:5 | <b>carefully</b><br>9348:1   | <b>century</b><br>9334:25 9341:9,<br>10 9345:4,11,<br>12,13,25<br>9368:16<br>9377:15<br>9383:10,11,14,<br>18 9405:24<br>9426:18,22<br>9427:9,15<br>9428:8 9429:16<br>9434:18,22<br>9435:13 9438:7<br>9440:25 9441:5,<br>9 | <b>chasing</b><br>9348:2   | <b>claims</b><br>9320:13 9322:6,<br>12 9324:4   |
| <b>called</b> 9330:6,<br>21 9331:20<br>9332:7 9343:12<br>9364:11<br>9378:22<br>9392:11<br>9398:23<br>9409:19  | <b>Carolina</b><br>9351:19   | <b>certainty</b><br>9387:13   | <b>Chaquamego</b><br><b>n</b> 9428:19<br>9429:4,7<br>9440:16   | <b>clan</b> 9352:14,<br>16  |
| <b>calls</b> 9419:16<br>9436:21   | <b>cartographic</b><br>9440:12   | <b>chair</b> 9318:19  | <b>cherry-pick</b><br>9375:10<br>9432:14   | <b>clans</b> 9352:17,<br>21,22  |
| <b>campfire</b><br>9394:12,20,23,<br>24   | <b>case</b> 9314:19<br>9325:18,24<br>9328:13,15<br>9330:5 9334:5,<br>13 9338:22<br>9350:8 9370:16<br>9375:15<br>9376:10<br>9385:10 9386:9<br>9413:16<br>9426:19<br>9428:19 | <b>Chamberlain</b><br>9373:2  | <b>chewers</b><br>9363:16  | <b>classification</b><br>9351:12  |
| <b>Canada</b><br>9380:16  | <b>case-by-case</b><br>9324:19 9325:4,<br>19   | <b>Champlain</b><br>9409:22<br>9410:11  | <b>Chief</b> 9437:12,<br>17  | <b>clear</b> 9364:8<br>9365:10 9368:2   |
| <b>canadensis</b><br>9334:20<br>9340:15<br>9341:19 9344:3<br>9381:21  | <b>cases</b> 9325:7,<br>12 9328:3<br>9348:9 9349:24<br>9350:5 9372:11<br>9385:11<br>9402:21<br>9442:18,19  | <b>chances</b><br>9405:6  | <b>child</b> 9400:15   | <b>clever</b> 9443:14   |
| <b>canals</b><br>9366:14  | <b>cast</b> 9334:19  | <b>change</b><br>9354:19<br>9371:20 9372:6<br>9396:5  | <b>children</b><br>9352:20 9402:1  | <b>climbed</b><br>9417:3  |
| <b>cannon</b><br>9372:9   | <b>Castor</b> 9334:3,<br>8,20,22 9335:2<br>9340:15<br>9341:19 9344:3<br>9381:21  | <b>changed</b><br>9372:16 9405:9<br>9414:1  | <b>China</b> 9342:5  | <b>closer</b> 9318:19   |
| <b>canon</b> 9406:10  | <b>Castoroides</b><br>9334:2,9,23<br>9335:6 9336:13<br>9340:13 9341:5,<br>19 9343:12,13<br>9344:4 9355:10<br>9363:12 9364:1,<br>10,17 9365:4,7                             | <b>channel</b><br>9378:13,22,23<br>9379:9 9380:4<br>9381:2 9389:17  | <b>Chippewas</b><br>9415:6   | <b>clues</b> 9346:15<br>9347:6,8 9385:7   |
| <b>canonized</b><br>9441:6  |  | <b>channels</b><br>9379:18<br>9387:21   | <b>choice</b><br>9376:10   | <b>coast</b> 9335:23<br>9342:19<br>9349:17,19<br>9350:5,6 9384:3<br>9439:20<br>9440:13<br>9444:22 |
| <b>Cap</b> 9366:23<br>9388:20 9389:4,<br>18   |  | <b>chapter</b><br>9434:7,9  | <b>chronologica</b><br><b>l</b> 9338:16  | <b>cognizant</b><br>9396:12   |
| <b>capable</b><br>9390:4  |  | <b>chapters</b><br>9434:6   | <b>circle</b> 9395:2   | <b>coincide</b><br>9327:19  |
| <b>capacity</b><br>9364:24 9388:2   |  |   | <b>circular</b><br>9431:15,25  | <b>coincided</b><br>9338:19   |
|   |  |   | <b>civilization</b><br>9404:16   | <b>collapse</b><br>9338:17,19   |
|   |  |   | <b>claim</b> 9322:25<br>9323:2,20<br>9324:12,15<br>9325:23 9326:1<br>9327:12 9333:9<br>9340:6,11<br>9358:14,24<br>9359:25<br>9363:20 9364:7,<br>9,13,18 9376:25<br>9396:19<br>9399:20,22<br>9406:4 9411:2<br>9431:4,24 | <b>colleague</b><br>9436:19   |
|   |  |   |  | <b>collective</b><br>9390:19  |
|   |  |   |  | <b>coloring</b><br>9374:17  |
|   |  |   |  | <b>Colossal</b><br>9317:12 9318:2   |
|   |  |   |  | <b>Colpoy's</b><br>9428:8   |

|  |   |  |  |   |
|--|---|--|--|---|
| <b>column</b><br>9357:18                                 | <b>comprised</b><br>9351:21   | <b>confronted</b><br>9325:23 9355:6  | <b>consistency</b><br>9413:19  | <b>convenient</b><br>9355:20<br>9424:14 9445:2  |
| <b>combination</b><br>9323:17                            | <b>concede</b><br>9377:7  | <b>conjured</b><br>9394:19   | <b>consistent</b><br>9358:1 9401:16  | <b>conversely</b><br>9382:5   |
| <b>combine</b><br>9436:1                                 | <b>conceivable</b><br>9339:2  | <b>connect</b><br>9384:4 9414:12   | <b>consistently</b><br>9413:18   | <b>converted</b><br>9437:18   |
| <b>commencing</b><br>9306:1                              | <b>concern</b><br>9322:4  | <b>connected</b><br>9320:9 9352:13,<br>14 9389:25<br>9393:6,12,15,17<br>9417:10 9426:5   | <b>constant</b><br>9411:23   | <b>convey</b><br>9401:18,19   |
| <b>commensurate</b><br>9348:5,13                         | <b>concerns</b><br>9416:20  | <b>connecting</b><br>9385:24<br>9417:15  | <b>constantly</b><br>9348:14   | <b>convince</b><br>9354:17,21<br>9355:4   |
| <b>comment</b><br>9404:23                                | <b>conclude</b><br>9383:3 9432:8  | <b>connection</b><br>9363:20<br>9388:11 9421:6<br>9424:23  | <b>constructed</b><br>9383:9   | <b>Copway</b><br>9438:2   |
| <b>commented</b><br>9389:9                               | <b>concluded</b><br>9354:4 9382:15<br>9421:19                               | <b>connections</b><br>9334:17<br>9429:25   | <b>construction</b><br>9366:14,16  | <b>copy</b> 9306:19   |
| <b>comments</b><br>9413:25                               | <b>conclusion</b><br>9344:11<br>9345:19 9385:3<br>9414:10<br>9431:13 9432:2 | <b>conquests</b><br>9435:10  | <b>construction</b><br>s 9352:3  | <b>corporeal</b><br>9347:14   |
| <b>common</b><br>9334:17<br>9372:12,13<br>9391:20 9413:4 | <b>conclusions</b><br>9390:4  | <b>consciousness</b><br>9435:16  | <b>contact</b><br>9353:2 9422:20   | <b>corpus</b><br>9372:10<br>9376:11   |
| <b>commonly</b><br>9429:3 9430:8                         | <b>condition</b><br>9322:24   | <b>consent</b><br>9316:9 9317:16   | <b>contained</b><br>9421:11 9442:8   | <b>correct</b><br>9306:14,15<br>9317:17,18<br>9319:2,3,21,22<br>9357:18 9368:8<br>9374:3 9398:25<br>9400:25<br>9411:14<br>9420:11,13,17<br>9421:15<br>9445:11 |
| <b>communicate</b><br>d 9359:23                          | <b>conditions</b><br>9328:21<br>9380:24<br>9432:11                          | <b>consequence</b><br>9322:22<br>9346:12,14<br>9348:19 9349:4<br>9380:5 9392:24<br>9395:16<br>9414:19<br>9418:22 9427:3<br>9429:13 | <b>containers</b><br>9406:11   | <b>correlated</b><br>9356:24 9380:7   |
| <b>community</b><br>9373:8 9438:1                        | <b>conduct</b><br>9319:1  | <b>consequence</b><br>s 9390:16  | <b>content</b><br>9322:10,12,19<br>9376:2 9402:8<br>9405:12                                  | <b>correlating</b><br>9358:14<br>9380:20  |
| <b>companion</b><br>9391:17,25<br>9393:4                 | <b>conducted</b><br>9319:16<br>9358:19                                      | <b>considerable</b><br>9328:19 9346:7<br>9353:3  | <b>context</b><br>9327:4 9336:7<br>9397:15 9402:9,<br>11 9403:7<br>9419:6 9439:12<br>9440:12 | <b>correlation</b><br>9323:17 9357:6,<br>13 9359:13   |
| <b>compared</b><br>9319:19                               | <b>confess</b><br>9399:25   | <b>considerably</b><br>9369:7  | <b>contextualize</b><br>9375:25  | <b>correlations</b><br>9356:21  |
| <b>comparisons</b><br>9393:21                            | <b>confined</b><br>9376:9   | <b>consideration</b><br>9433:2   | <b>continent</b><br>9376:13 9378:6<br>9436:10  | <b>counsel</b><br>9314:16,21<br>9356:10<br>9403:18  |
| <b>compelling</b><br>9331:15                             | <b>confirm</b><br>9314:18<br>9342:25  | <b>considered</b><br>9327:8,10<br>9433:5   | <b>contexts</b><br>9328:1 9376:1<br>9441:21  | <b>counter</b><br>9326:6  |
| <b>complete</b><br>9438:15 9444:9                        | <b>confirmation</b><br>9329:6   |  | <b>contingencies</b><br>9372:7   |   |
| <b>completed</b><br>9394:6                               | <b>confirming</b><br>9317:20  |  | <b>continue</b><br>9378:25   |   |
| <b>completely</b><br>9333:11 9383:6                      | <b>confluence</b><br>9393:19  |  |  |   |
| <b>complicated</b><br>9424:2                             |   |  |  |   |
| <b>comprehensive</b><br>ve 9377:22                       |   |  |  |   |

|   |   |   |  |   |
|---|---|---|--|---|
| <b>countless</b><br>9373:12 9381:3  | <b>creatures</b><br>9345:16 9348:3<br>9354:25<br>9362:21,25<br>9412:15  | <b>curious</b><br>9417:5  | 9444:17  | <b>default</b><br>9436:15   |
| <b>country</b><br>9430:2  |   | <b>current</b> 9428:2   | <b>date-able</b><br>9443:21  | <b>define</b><br>9330:11,22<br>9331:5                                   |
| <b>County</b><br>9425:15  | <b>credentialed</b><br>9326:25  | <b>D</b>  | <b>dated</b> 9317:13<br>9318:3,10  | <b>defined</b><br>9351:7 9369:11  |
| <b>couple</b><br>9350:20  | <b>credibility</b><br>9376:25   | <b>dad</b> 9404:1   | <b>dating</b> 9443:24  | <b>definition</b><br>9329:8 9331:4<br>9332:13                           |
| <b>court</b> 9306:2,6,<br>10,17 9307:9<br>9314:8,11,21,24<br>9315:2 9316:1,<br>3,6,18,22,25<br>9317:6,15,20<br>9318:5,10,16<br>9355:23 9356:3,<br>9 9357:9,11<br>9367:6,10,13<br>9382:20,23<br>9384:12 9407:3<br>9419:10,14,23<br>9420:4 9424:12,<br>16,19 9425:12<br>9445:3,13 | <b>Credit</b> 9437:12   | <b>daily</b> 9379:18<br>9381:20 9391:1,<br>4 9423:13,23<br>9429:24  | <b>day</b> 9388:24<br>9400:21<br>9410:24 9411:2<br>9422:7 9426:15<br>9438:6  | <b>definitive</b><br>9368:3   |
| <b>courtroom</b><br>9318:18   | <b>credulity</b><br>9382:8  | <b>dam</b> 9351:5<br>9363:9 9364:4,<br>18,19 9365:8,9<br>9367:25<br>9368:11,13,14,<br>18,19,21<br>9369:19,21<br>9370:9,10,20<br>9371:15 9378:3<br>9379:23,25<br>9380:19<br>9381:16<br>9384:22 9386:6<br>9390:16<br>9391:17,21<br>9392:2 9396:1,2<br>9397:4 9398:10<br>9429:9,10,11,12 | <b>dead</b> 9379:3<br>9412:18  | <b>degree</b> 9346:7  |
| <b>covered</b><br>9318:15   | <b>Cree</b> 9436:11   | <b>damaged</b><br>9443:2  | <b>deal</b> 9316:22<br>9331:23<br>9388:17<br>9431:25 9443:4  | <b>degrees</b><br>9372:2  |
| <b>covering</b><br>9337:19  | <b>cries</b> 9408:20,<br>21,22  | <b>dams</b> 9317:12<br>9318:2 9363:13,<br>18,22 9366:15<br>9368:24 9369:1,<br>4,6 9370:4,12,<br>14,15 9371:10<br>9382:6 9386:5<br>9390:13 9391:3<br>9397:10,12<br>9398:6,17   | <b>dealt</b> 9353:18<br>9435:11  | <b>deliberately</b><br>9442:19  |
| <b>create</b> 9323:8<br>9359:12<br>9381:14<br>9386:20 9390:9<br>9443:1  | <b>critically</b><br>9329:13  | <b>dangerous</b><br>9347:16   | <b>death</b> 9392:6  | <b>demise</b><br>9338:12  |
| <b>created</b><br>9358:11 9387:8<br>9402:15   | <b>critiques</b><br>9327:2  | <b>data</b> 9359:7  | <b>debate</b><br>9325:20 9326:9<br>9345:25   | <b>demonstrabl<br/>e</b> 9350:15  |
| <b>creates</b> 9363:3<br>9378:3   | <b>Croker</b> 9426:6  | <b>database</b><br>9307:2   | <b>decades</b><br>9326:8 9377:9<br>9388:16<br>9409:20  | <b>demonstrabl<br/>y</b> 9325:14<br>9342:9 9385:10                      |
| <b>creation</b><br>9416:3   | <b>cross-<br/>examination</b><br>9314:25 9420:8<br>9445:10  | <b>date</b> 9317:6<br>9335:18<br>9338:11,23,25<br>9443:15   | <b>decided</b><br>9355:11  | <b>demonstrate</b><br>9339:9 9350:4                                     |
| <b>creativity</b><br>9443:4   | <b>cryptozoolog<br/>ists</b> 9335:7   |   | <b>deem</b> 9374:16  | <b>d</b> 9396:21  |
| <b>creature</b><br>9333:23<br>9347:15 9393:1<br>9412:20   | <b>cultural</b><br>9337:10 9349:5<br>9350:8,25<br>9383:7,20   |   | <b>deems</b><br>9415:19  | <b>dentition</b><br>9363:15   |
|   | <b>culturally</b><br>9336:22  |   | <b>deep</b> 9426:13  | <b>deny</b> 9390:6  |
|   | <b>culture</b><br>9336:24 9337:4<br>9347:17 9348:2,<br>5,6,18 9349:6,7,<br>10 9378:2<br>9386:11<br>9389:11<br>9391:10,23,24<br>9400:6 9404:13<br>9412:5,11<br>9432:20 |   | <b>deep-time</b><br>9321:13,15<br>9324:20<br>9325:21,24<br>9326:23 9333:8<br>9340:5 9358:13<br>9359:25<br>9399:19 9431:3,<br>23 9433:3 | <b>depend</b><br>9405:11  |
|   | <b>cultures</b><br>9350:1,17,24   |   |  | <b>depended</b><br>9405:10,11   |
|   | <b>curator</b><br>9415:10   |   |  | <b>depending</b><br>9366:8 9369:7,<br>18 9392:1<br>9429:21,22<br>9443:8 |

|  |  |   |   |  |
|--|--|---|---|--|
| <b>depths</b><br>9412:16   | <b>devices</b><br>9442:8                             | 9345:18<br>9362:16,20   | 15,18,22<br>9311:1,5,9,13,<br>17,21,25<br>9312:4,8,12,16,<br>20,24 9313:3,7,<br>11,15,19,23<br>9314:2,6 9317:7<br>9360:6 9361:21<br>9363:11<br>9367:15 9374:1<br>9378:10<br>9387:25<br>9406:17<br>9420:23<br>9425:11,12 | <b>drawn</b> 9380:11   |
| <b>derivative</b><br>9383:13   | <b>dialects</b><br>9351:21,22                        | <b>discussed</b><br>9340:20<br>9396:24<br>9407:10   |   | <b>drink</b> 9410:23   |
| <b>derive</b> 9393:22  | <b>didactic</b><br>9323:7                            |   |   | <hr/> <b>E</b> <hr/>   |
| <b>descendants</b><br>9345:21  | <b>died</b> 9335:16                                  | <b>dismiss</b><br>9326:10,14,17<br>9327:6   |   | <b>earlier</b> 9333:15<br>9340:13<br>9361:10<br>9369:12 9393:8<br>9394:4 9396:24<br>9399:20 9405:8<br>9411:12 9412:4<br>9413:25<br>9420:19<br>9421:23 9428:6,<br>9,14,20,21<br>9435:21,23,24 |
| <b>describe</b><br>9322:9 9373:13  | <b>dies</b> 9408:19                                  | <b>disparate</b><br>9350:5 9352:6<br>9395:15  |   | <b>earliest</b><br>9327:21<br>9368:15<br>9397:21,23<br>9398:16   |
| <b>describing</b><br>9360:12<br>9361:11,22<br>9362:8                           | <b>differences</b><br>9396:7,9                       | <b>dispense</b><br>9325:17 9326:2<br>9328:14  |   | <b>early</b> 9327:14,<br>16 9337:16<br>9338:7,8<br>9341:3,15<br>9347:7 9354:24<br>9373:3 9389:22<br>9410:19<br>9418:10<br>9430:16<br>9432:11<br>9434:18                                      |
| <b>description</b><br>9306:24<br>9316:19 9317:8<br>9365:8                      | <b>differently</b><br>9324:15 9351:8<br>9433:12      | <b>dispersal</b><br>9352:21   | <b>documents</b><br>9306:13 9307:7  |  |
| <b>descriptions</b><br>9362:7 9382:6   | <b>difficult</b><br>9330:2 9395:22<br>9431:10 9432:7 | <b>displacement</b><br>9379:8   | <b>Donald</b><br>9420:8,10,16<br>9421:19<br>9422:19<br>9423:11,19   |  |
| <b>designation</b><br>9337:11  | <b>difficulties</b><br>9323:25                       | <b>disposed</b><br>9315:8   | <b>Dorothy</b><br>9330:19   |  |
| <b>destroyed</b><br>9442:19  | <b>difficulty</b><br>9318:18                         | <b>dispute</b><br>9327:5  | <b>doubt</b> 9374:10  |  |
| <b>destruction</b><br>9384:25 9391:3   | <b>diffusion</b><br>9349:5 9350:8,<br>25 9383:7,21   | <b>dissimilaritie<br/>s</b> 9395:24   | <b>doubtful</b><br>9426:11  |  |
| <b>detail</b> 9315:13<br>9328:19<br>9340:20 9393:2<br>9397:2 9399:14<br>9422:4 | <b>dig</b> 9337:2,3                                  | <b>distance</b><br>9417:7   | <b>downloaded</b><br>9365:18<br>9378:17   |  |
| <b>details</b> 9307:1<br>9371:20 9372:6,<br>15 9375:13,14,<br>17 9393:3,20,23  | <b>dire</b> 9315:4,9<br>9324:17                      | <b>distant</b><br>9439:15   | <b>downstream</b><br>9366:20<br>9368:20,22<br>9370:20<br>9398:11,13   |  |
| <b>deteriorating</b><br>9442:17  | <b>direction</b><br>9383:21<br>9438:21 9439:5        | <b>distinct</b><br>9363:23  | <b>dozens</b><br>9434:20  |  |
| <b>determine</b><br>9431:11  | <b>directions</b><br>9439:3                          | <b>distinguish</b><br>9346:10<br>9362:18  | <b>drainage</b><br>9410:6   |  |
| <b>determined</b><br>9324:4  | <b>directly</b><br>9315:16 9423:1                    | <b>dive</b> 9412:16,<br>21  | <b>draining</b><br>9369:23  |  |
| <b>determining</b><br>9431:13  | <b>Directory</b><br>9425:15                          | <b>diving</b> 9414:2  | <b>dramatic</b><br>9381:15 9384:7<br>9389:9   |  |
| <b>deviate</b> 9372:1  | <b>dirs</b> 9314:17                                  | <b>division</b><br>9353:4   | <b>dramatically</b><br>9369:22 9380:3   |  |
| <b>device</b><br>9442:10,21  | <b>disappearanc<br/>e</b> 9429:25                    | <b>document</b><br>9307:11,13,15,<br>19,21,23<br>9308:1,3,5,7,9,<br>13,16,19,22,25<br>9309:3,6,9,11,<br>13,17,21,24<br>9310:2,6,9,12, | <b>drawing</b><br>9392:9  | <b>east</b> 9335:23<br>9342:19<br>9349:19 9350:6<br>9439:9,19<br>9440:13<br>9444:22  |
|  | <b>discoveries</b><br>9362:25                        |   |   | <b>eastern</b><br>9351:24<br>9365:24   |
|  | <b>discovery</b><br>9342:2,5,9<br>9344:13,19         |   |   |  |

|   |   |   |  |  |
|---|---|---|--|--|
| <b>easy</b> 9326:1  | <b>emphasized</b><br>9436:4   | <b>enterprise</b><br>9330:3   | <b>errand</b><br>9414:12   | <b>event</b> 9390:1<br>9394:24 9395:5,<br>20,23 9396:10  |
| <b>edge</b> 9397:13   | <b>empirical</b><br>9343:21<br>9347:22<br>9371:24 9390:7  | <b>entertained</b><br>9349:3  | <b>errors</b> 9444:14  | <b>events</b><br>9322:13<br>9324:13<br>9326:22<br>9327:11 9331:8<br>9332:16,21<br>9333:1,17<br>9374:19<br>9414:14 9428:2<br>9431:7 9432:11   |
| <b>edited</b> 9433:24   | <b>employs</b><br>9324:10   | <b>entertaining</b><br>9332:2   | <b>escape</b> 9392:8   | <b>eventually</b><br>9353:4 9366:2<br>9417:7 9429:10<br>9444:22  |
| <b>educated</b><br>9435:3,4<br>9437:24  | <b>empties</b><br>9366:3  | <b>entertainmen<br/>t</b> 9402:3,15,19<br>9403:4                                    | <b>escaping</b><br>9392:3 9429:11,<br>14   | <b>every-day</b><br>9390:22  |
| <b>Edward</b><br>9407:13,24<br>9439:22 9444:5                                       | <b>encircled</b><br>9394:21   | <b>entire</b> 9361:17<br>9411:22<br>9432:25<br>9436:20                              | <b>essence</b><br>9417:17  | <b>evidence</b><br>9314:17 9315:4<br>9316:13<br>9318:11<br>9320:14,21<br>9322:13<br>9323:17,18,21<br>9324:12<br>9327:20 9338:4<br>9342:15 9347:2<br>9354:7,20<br>9355:4,10<br>9363:18<br>9365:22 9380:8,<br>9,13 9393:25<br>9394:2 9400:20<br>9406:9 9409:9<br>9411:9 9419:17<br>9420:2 9422:14,<br>21 9432:4<br>9433:5 9436:2<br>9437:1,2 |
| <b>effect</b> 9395:6<br>9423:14,16<br>9424:9  | <b>encounter</b><br>9333:17   | <b>entirety</b><br>9412:10<br>9425:25   | <b>Essentially</b><br>9333:3   | <b>evidentiary</b><br>9360:17  |
| <b>effort</b> 9370:9  | <b>encountered</b><br>9353:17<br>9409:20  | <b>entitled</b><br>9317:10,24<br>9360:9   | <b>establish</b><br>9443:15  | <b>exact</b> 9374:18   |
| <b>efforts</b> 9327:3<br>9355:8 9444:17   | <b>end</b> 9335:14,15<br>9341:4 9365:24<br>9369:1 9372:14<br>9378:25 9379:2,<br>3 9387:2<br>9397:12 9411:1<br>9414:10 9422:7<br>9427:15 9429:4<br>9440:20,22<br>9441:16 | <b>environment</b><br>9346:20 9347:4,<br>6,9 9381:4,15<br>9385:7 9389:12<br>9432:16 | <b>estimated</b><br>9379:13  | <b>examination</b><br>9315:16 9317:4<br>9363:15<br>9420:19   |
| <b>Egerton</b><br>9361:22   | <b>ended</b> 9352:19<br>9361:17<br>9434:17<br>9442:17   | <b>environment<br/>al</b> 9358:17   | <b>ethnohistoric<br/>al</b> 9377:14<br>9383:17   | <b>examine</b><br>9329:13 9415:1   |
| <b>elaborations</b><br>9363:3   | <b>ending</b><br>9444:22  | <b>environs</b><br>9431:8   | <b>ethnologist</b><br>9415:11  | <b>examined</b>  |
| <b>Elder</b> 9400:16<br>9401:23 9402:7,<br>8 9405:14<br>9411:7 9443:8<br>9444:6     | <b>ends</b> 9392:10<br>9413:12 9417:6   | <b>envisioned</b><br>9388:20  | <b>ethnologists</b><br>9415:12   |  |
| <b>elders</b> 9345:14<br>9404:18<br>9415:21<br>9435:11 9438:9<br>9441:11<br>9442:25 | <b>engaged</b><br>9389:12   | <b>envisioning</b><br>9389:23   | <b>etiological</b><br>9331:20 9332:4,<br>8,17 9333:12<br>9369:11<br>9370:22<br>9371:12<br>9381:12<br>9382:16 9385:6<br>9387:12<br>9392:14 9398:1<br>9399:6 |  |
| <b>electronic</b><br>9307:2   | <b>English</b><br>9340:9 9437:9   | <b>epic</b> 9411:21   | <b>euhemeristic</b><br>9332:23 9333:3,<br>10 9369:10<br>9381:7 9382:17   |  |
| <b>elements</b><br>9413:21 9414:2   | <b>enhance</b><br>9347:16   | <b>episode</b><br>9423:13   | <b>Euhemerus</b><br>9332:24  |  |
| <b>emerge</b><br>9435:9   | <b>enhanced</b><br>9362:15  | <b>epochs</b><br>9414:14  | <b>Europe</b> 9342:5<br>9350:20 9387:5   |  |
| <b>emerged</b><br>9328:10<br>9386:16  | <b>enlarge</b><br>9347:21   | <b>equation</b><br>9358:6   | <b>European</b><br>9353:2 9389:20,<br>21   |  |
| <b>emergence</b><br>9327:20<br>9384:24<br>9395:15                                   | <b>enormous</b><br>9364:4 9377:10   | <b>equipment</b><br>9346:23   | <b>Europeans</b><br>9328:7 9389:8  |  |
| <b>emphasize</b><br>9325:5 9332:13<br>9344:12                                       |   | <b>equivalent</b><br>9379:21  |  |  |
|   |   | <b>Erie</b> 9427:13   |  |  |
|   |   | <b>erosion</b><br>9427:17   |  |  |

|   |  |  |  |   |
|---|--|--|--|---|
| 9321:18<br>9349:24 9354:2<br>9415:1   | <b>exhibits</b><br>9307:8 9316:9   | <b>explanation</b><br>9381:7,12<br>9382:16,17  | 9397:18,19<br>9411:3 9430:13,<br>15  | 9386:5 9398:23<br>9416:16<br>9424:25 9425:6<br>9433:20 9440:4   |
| <b>examples</b><br>9325:16<br>9332:11<br>9341:11,12<br>9371:4 9374:6,<br>24 9388:6<br>9414:3 9436:9<br>9437:6   | <b>exigencies</b><br>9376:8  | <b>explanatory</b><br>9331:20 9332:8,<br>17  | <b>eyewitnesses</b><br>9327:16 9339:3<br>9389:22<br>9395:16,19<br>9396:9   | <b>family</b> 9351:16<br>9373:23<br>9388:16   |
| <b>exception</b><br>9436:16   | <b>exist</b> 9328:2,6<br>9385:14   | <b>exploits</b><br>9371:8  | <hr/> <b>F</b> <hr/>   | <b>famous</b><br>9362:13<br>9411:21<br>9439:16  |
| <b>excerpt</b><br>9436:16   | <b>existed</b><br>9328:12<br>9337:17<br>9338:10<br>9354:25<br>9398:19                              | <b>exposed</b><br>9326:7 9377:8<br>9405:21   | <b>face</b> 9329:12  | <b>fancy</b> 9346:23  |
| <b>excerpts</b><br>9363:10  | <b>existence</b><br>9339:20 9354:8<br>9355:1 9388:5  | <b>expressed</b><br>9415:22,23<br>9417:20  | <b>fact</b> 9322:18<br>9325:15 9326:8,<br>11,20,24<br>9328:11 9329:9,<br>24 9331:25<br>9332:18<br>9338:25<br>9341:24<br>9342:17<br>9343:23 9349:9<br>9350:15 9352:3<br>9354:24<br>9368:16<br>9371:23,24<br>9375:14<br>9380:20<br>9381:24<br>9387:25 9389:5,<br>7,15 9396:13<br>9397:19<br>9402:22 9406:7<br>9414:15<br>9415:23<br>9422:11<br>9426:12,23<br>9434:15 9435:1<br>9444:16 | <b>farther</b> 9368:6   |
| <b>exchanged</b><br>9417:13   | <b>existing</b><br>9342:16 9354:1  | <b>extant</b> 9326:21<br>9347:23<br>9362:24  | <b>father-in-law</b><br>9389:6   | <b>fascinated</b><br>9339:16 9362:6   |
| <b>exclude</b><br>9377:23   | <b>exists</b> 9327:23<br>9342:13,14  | <b>extend</b> 9419:8   | <b>fascinating</b><br>9382:14<br>9422:16   | <b>fashion</b><br>9360:1  |
| <b>exhibit</b><br>9306:22,23<br>9307:5,6,7,14,<br>15,17,19,22,23,<br>25 9308:1,4,5,8,<br>9,11,13,15,16,<br>18,19,21,22,24,<br>25 9309:2,3,5,6,<br>8,9,12,13,15,17,<br>19,21,23,24<br>9310:2,4,6,9,11,<br>12,14,15,17,18,<br>20,22,24<br>9311:1,3,5,7,9,<br>11,13,15,17,19,<br>21,23,25<br>9312:2,4,6,8,10,<br>12,14,16,18,20,<br>22,24 9313:1,3,<br>5,7,9,11,13,15,<br>17,19,21,23,25<br>9314:2,5,6<br>9315:25<br>9316:17<br>9317:14,21,23,<br>24 9356:4,7<br>9357:5,12,13<br>9360:5,14<br>9367:4,9,14,15<br>9372:23 9378:9<br>9407:2,9 9418:5<br>9420:6 9425:10<br>9430:22<br>9433:20 9440:6 | <b>exogamy</b><br>9352:16  | <b>extensive</b><br>9353:16 9438:3<br>9442:5   | <b>father</b> 9403:24<br>9416:25<br>9422:25 9423:3   | <b>experience</b><br>9325:6 9326:7<br>9371:19<br>9390:12 9391:4<br>9427:25<br>9429:16 9430:4,<br>7  |
|   | <b>experience</b><br>9325:6 9326:7<br>9371:19<br>9390:12 9391:4<br>9427:25<br>9429:16 9430:4,<br>7 | <b>externally</b><br>9437:14   | <b>feasted</b> 9361:4  | <b>feature</b><br>9364:5,11<br>9366:6 9371:2,5  |
|   | <b>experienced</b><br>9390:10  | <b>external</b><br>9322:14,20  | <b>feature</b><br>9331:22 9332:1<br>9369:17<br>9370:15,17,19<br>9381:4 9384:3<br>9388:25 9389:9<br>9390:21 9391:6,<br>8 9392:20<br>9398:3 9432:16,<br>17   | <b>features</b><br>9331:22 9332:1<br>9369:17<br>9370:15,17,19<br>9381:4 9384:3<br>9388:25 9389:9<br>9390:21 9391:6,<br>8 9392:20<br>9398:3 9432:16,<br>17 |
|   | <b>experiences</b><br>9361:12<br>9388:18<br>9390:19,23<br>9429:23                                  | <b>extract</b> 9360:5,<br>8 9368:7   | <b>factor</b> 9402:4   | <b>feedback</b><br>9362:23<br>9423:14,16<br>9424:9  |
|   | <b>expert</b> 9315:10<br>9319:5  | <b>extracted</b><br>9316:17 9378:8<br>9430:21  | <b>facts</b> 9406:12   | <b>feeds</b> 9363:1   |
|   | <b>expertise</b><br>9419:22  | <b>Extracts</b><br>9317:11 9318:1  | <b>factual</b><br>9415:25  |   |
|   | <b>explain</b><br>9331:21,24<br>9332:3,9,18<br>9339:10,20<br>9361:23<br>9369:16 9418:8             | <b>extraordinary</b><br>9326:1 9379:11   | <b>fair</b> 9344:11  |   |
|   | <b>explaining</b><br>9419:19   | <b>eye-witness</b><br>9346:12  | <b>fall</b> 9408:21  |   |
|   |  | <b>eyewitness</b><br>9346:2 9353:22<br>9359:22<br>9362:19 9365:8<br>9381:8,9 9382:6<br>9384:24<br>9387:14 9388:3<br>9389:19<br>9396:20 | <b>falls</b> 9333:10<br>9356:14 9357:1   |   |
|   |  |  | <b>false</b> 9325:14   |   |
|   |  |  | <b>familiar</b><br>9328:4 9336:25  |   |

|   |  |  |  |  |
|---|--|--|--|--|
| <b>female</b><br>9391:16,25<br>9392:22 9393:4   | 9413:9   | <b>forever</b><br>9411:16  | 9441:13  | <b>gathered</b><br>9394:12<br>9438:20                                |
| <b>ferry</b> 9427:2   | <b>floats</b> 9412:14  | <b>forget</b> 9396:14  | <b>fourth</b> 9347:12                            | <b>gathering</b><br>9375:7   |
| <b>fiction</b> 9332:5<br>9402:2 9405:5<br>9411:8  | <b>flood</b> 9320:6<br>9400:2,8<br>9411:17,18,19,<br>24,25 9412:5,7<br>9414:9,11,13,23<br>9415:16 9416:4,<br>6,9 | <b>form</b> 9315:4<br>9352:16 9359:8<br>9374:15<br>9375:12<br>9390:24 9401:3<br>9428:1   | <b>fragment</b><br>9399:3                        | <b>gave</b> 9306:18<br>9341:10,12<br>9408:12 9438:3<br>9444:1        |
| <b>field</b> 9322:9<br>9336:21 9346:6   | <b>flooded</b><br>9412:10  | <b>formation</b><br>9392:17<br>9429:24   | <b>fragments</b><br>9359:22                      | <b>Gazetteer</b><br>9425:15  |
| <b>fields</b> 9322:9  | <b>floods</b> 9399:25<br>9411:11,16<br>9414:15,18,21,<br>23,24   | <b>formed</b> 9332:1<br>9352:9   | <b>framed</b><br>9322:23                         | <b>general</b><br>9328:22 9329:1<br>9330:25 9337:5<br>9372:12 9412:7 |
| <b>fifthly</b> 9349:2   | <b>flow</b> 9379:12<br>9380:5  | <b>forming</b><br>9317:16 9391:3   | <b>framework</b><br>9321:8                       | <b>generally</b><br>9335:12,19<br>9352:18                            |
| <b>fighting</b><br>9378:2 9387:5<br>9428:22 9429:1  | <b>flowing</b> 9381:6  | <b>forms</b> 9439:20,<br>21  | <b>Francine</b><br>9323:19 9357:7,<br>15         | <b>generation</b><br>9353:23,24<br>9406:11                           |
| <b>figments</b><br>9404:14  | <b>flows</b> 9379:15<br>9429:22  | <b>formulate</b><br>9384:21 9385:1   | <b>French</b> 9345:6<br>9366:18 9369:3<br>9410:1 | <b>generic</b><br>9334:5   |
| <b>figures</b><br>9403:10<br>9442:14  | <b>focus</b> 9331:14<br>9355:15<br>9370:20<br>9382:16  | <b>forward</b><br>9306:11<br>9314:13<br>9315:18,19<br>9324:2   | <b>frequent</b><br>9353:19                       | <b>genre</b> 9332:5  |
| <b>final</b> 9374:1<br>9400:21  | <b>focusing</b><br>9369:19   | <b>fossil</b> 9341:5<br>9344:14,19   | <b>fresh</b> 9410:12<br>9435:18                  | <b>gentleman</b><br>9315:10<br>9316:11                               |
| <b>finally</b> 9410:13<br>9412:20 9444:4  | <b>foe</b> 9348:5,13,<br>20  | <b>fossilized</b><br>9335:17 9342:6<br>9362:21   | <b>fresh-water</b><br>9410:18                    | <b>gentleman's</b><br>9317:17  |
| <b>find</b> 9335:9<br>9347:2 9348:1<br>9349:13<br>9350:24 9355:3<br>9375:23<br>9376:17 9377:2,<br>23 9384:1<br>9399:15<br>9400:12,13<br>9402:14<br>9416:23<br>9419:15<br>9422:16<br>9436:17 | <b>foes</b> 9391:10  | <b>fossils</b> 9336:4<br>9342:2,10,11,<br>12,20 9343:2<br>9346:3 9360:13<br>9362:17 9423:6   | <b>front</b> 9435:15                             | <b>genus</b><br>9334:19,21,22<br>9335:1 9340:12,<br>23               |
| <b>finding</b><br>9349:15<br>9376:19 9378:7   | <b>fold</b> 9332:14  | <b>found</b> 9334:11,<br>24 9336:2,4,14,<br>16 9343:2<br>9344:8 9346:4,<br>9,16 9349:1<br>9357:21<br>9358:10<br>9377:20 9378:3<br>9386:25<br>9388:10<br>9397:22,24<br>9402:16<br>9411:20<br>9413:22<br>9419:19 | <b>full</b> 9319:13                              | <b>geographic</b><br>9409:12   |
| <b>fine</b> 9419:20   | <b>folk</b> 9342:4<br>9347:15<br>9348:16,25  |  | <b>function</b><br>9323:7 9405:10,<br>11         | <b>geographical</b><br>9378:18<br>9388:25                            |
| <b>fit</b> 9330:5   | <b>folklore</b><br>9331:2 9373:5   |  | <b>functions</b><br>9363:1                       | <b>geographicall<br/>y</b> 9428:23                                   |
| <b>flawed</b> 9433:9,<br>15   | <b>folkloristic</b><br>9321:23   |  | <b>fundamental</b><br>9376:23                    | <b>geography</b><br>9365:20,25<br>9381:17 9397:8                     |
| <b>flesh</b> 9361:3   | <b>folklorists</b><br>9413:4   |  | <b>Fundy</b><br>9378:14,15,25<br>9379:6          | <b>geological</b><br>9320:20<br>9323:21 9331:8,<br>11 9332:16,21     |
| <b>floating</b><br>9412:12,23   | <b>follow</b> 9329:7<br>9372:11  |  | <b>fusion</b> 9353:4                             |  |
|   | <b>fool's</b> 9414:12  |  | <hr/> <b>G</b> <hr/>                             |  |
|   | <b>force</b> 9432:3  |  | <b>gap</b> 9387:8<br>9427:10,16,18               |  |
|   | <b>forced</b> 9390:1   |  | <b>Garden</b><br>9368:22<br>9398:14              |  |
|   |  |  | <b>gather</b> 9375:12<br>9421:21                 |  |

|   |  |  |   |   |
|---|--|--|---|---|
| 9355:9 9356:24<br>9358:17 9364:5,<br>11 9366:6<br>9380:8,12<br>9390:1 9414:13<br>9418:2 9422:13,<br>20 9432:16,17 | 9339:5,8,11,21<br>9340:10,21<br>9341:4,7,14,17,<br>20 9342:1,23<br>9343:8 9344:9,<br>13,16 9345:9,15<br>9346:1 9347:20<br>9348:3,8,10,11,<br>12 9349:10,16,<br>18,20 9350:11<br>9353:20<br>9354:13,25<br>9355:9 9360:4,<br>10 9361:13<br>9363:9,22,25<br>9364:5,15,16,18<br>9365:6 9367:22<br>9368:25 9378:2,<br>3 9379:22<br>9384:1,18,22<br>9391:12<br>9392:25<br>9393:14 9399:4<br>9428:22 9429:2 | 9379:21<br><b>good</b> 9327:9<br>9337:25<br>9338:23<br>9383:16<br>9387:10 9388:1<br>9434:21<br>9435:17<br><b>Google</b><br>9365:17,18<br>9367:16<br>9378:16<br><b>grand</b> 9439:14<br><b>grandfathers</b><br>9426:10<br><b>grandmother</b><br>9392:1 9397:4<br><b>gravitate</b><br>9331:16<br><b>great</b> 9320:6<br>9337:13<br>9340:20<br>9348:23<br>9351:25 9352:7<br>9356:14 9357:1<br>9376:12 9387:2,<br>7 9388:17<br>9391:5,13<br>9408:8 9409:18<br>9410:9,18<br>9431:24 9443:3<br>9445:13<br><b>greatest</b><br>9415:20<br><b>Greek</b> 9332:23<br>9386:21<br><b>grew</b> 9437:25<br><b>Grey</b> 9425:15<br><b>Grievances</b><br>9319:23<br>9398:23<br><b>Griffith</b><br>9424:23<br><b>Griffith's</b><br>9425:20<br><b>Gros</b> 9366:23<br>9388:19 9389:4,<br>18 | <b>ground</b><br>9331:10<br><b>group</b> 9306:12<br>9351:21<br>9373:24 9436:6,<br>17<br><b>grouped</b><br>9352:6<br><b>groups</b> 9331:9<br>9350:12<br>9351:22 9353:4<br>9397:6,8,11<br>9434:20<br><b>guarantee</b><br>9377:20<br><b>guess</b><br>9338:12,13<br>9388:7 9407:16<br>9408:5,9<br>9416:14 9421:2<br><b>guess'</b> 9421:9<br><b>guests</b> 9361:4<br><b>guy</b> 9427:21<br><hr/> <b>H</b> <hr/> <b>H-3</b> 9307:6,7<br><b>hallmarks</b><br>9330:1<br><b>hand</b> 9325:11<br>9327:7 9427:24<br>9431:16,19<br><b>handbook</b><br>9433:23 9434:6<br><b>handed</b><br>9353:22 9405:6<br>9406:10<br><b>hands</b> 9392:6<br><b>happen</b><br>9344:18<br>9354:23<br>9370:16 9430:1<br><b>happened</b><br>9322:11 9323:6<br>9324:13<br>9346:15 9347:1,<br>5 9355:5 | 9359:20<br>9381:24<br>9390:24<br>9395:11<br>9405:18<br>9420:11 9428:4,<br>8,11,12 9431:7<br><b>hard</b> 9392:9<br><b>hare</b> 9348:10<br><b>hark</b> 9341:15<br><b>head</b> 9361:6<br><b>hear</b> 9318:21<br>9422:19<br><b>heard</b> 9330:10<br>9338:16 9355:7<br>9401:10<br>9416:25<br>9421:22 9423:1,<br>2<br><b>hearing</b><br>9318:18<br>9362:25<br><b>held</b> 9324:18<br>9404:21<br><b>Henige</b> 9424:7<br><b>Henry</b> 9388:12<br><b>Hercules</b><br>9386:18<br>9388:21,22<br>9389:2 9391:11<br><b>heritage</b><br>9435:4 9438:6<br><b>hermetically-<br/>sealed</b> 9424:5<br><b>hero</b> 9347:17<br>9348:2,5,6,18<br>9378:2 9386:18<br>9412:11<br><b>hero's</b> 9391:24<br><b>heroes</b><br>9349:10<br>9386:12<br>9389:11<br>9391:10<br><b>Hey</b> 9343:16<br>9344:2 9424:24 |
|---|--|--|---|---|



|  |   |   |   |   |
|--|---|---|---|---|
| <b>hidden</b> 9406:6   | <b>historiograph</b>  | <b>human</b>  | <b>ignore</b> 9351:1  | <b>imply</b> 9416:11  |
| <b>hieroglyphics</b><br>9442:23  | <b>y</b> 9423:15<br>9435:14   | 9322:14,15,20<br>9327:14,21<br>9331:12  | <b>illuminates</b><br>9426:1  | <b>importance</b><br>9424:9   |
| <b>high</b> 9379:7<br>9429:21  | <b>history</b> 9325:2<br>9327:14 9328:8<br>9350:23  | 9337:21 9338:5<br>9385:15<br>9387:22 9388:2                                     | <b>illustrate</b><br>9358:12  | <b>important</b><br>9329:1,10,18<br>9340:19                         |
| <b>highest</b><br>9379:6   | 9353:14 9376:8<br>9381:19 9405:3<br>9409:17   | 9410:20 9411:4<br>9414:16   | <b>illustration</b><br>9441:13  | 9430:25 9432:6<br>9433:1 9434:25<br>9435:24<br>9437:22 9438:1       |
| <b>highlight</b><br>9425:25  | 9434:25<br>9435:22,23,24<br>9437:15   | <b>humans</b><br>9323:8 9336:8,<br>10,17,18                                     | <b>illustrations</b><br>9434:12   | <b>importantly</b><br>9326:19<br>9443:16                            |
| <b>highlighted</b><br>9425:21,22   | 9438:11,15,16<br>9441:3   | 9337:25<br>9354:24 9412:1<br>9438:24  | <b>illustrative</b><br>9365:19  | <b>impossible</b><br>9333:16,19,20,<br>21 9426:17                   |
| <b>historians</b><br>9386:22<br>9405:25 9435:2,<br>3 9437:5,23   | <b>hits</b> 9392:9  | <b>hundreds</b><br>9373:15<br>9390:18   | <b>image</b><br>9365:17,21<br>9367:16<br>9378:16,17<br>9385:22<br>9394:20 | <b>impound</b><br>9390:15   |
| <b>historical</b><br>9322:9,19<br>9324:13<br>9332:25 9333:4<br>9359:19<br>9396:19 9406:8,<br>12  | <b>hold</b> 9431:4  | <b>Huron</b> 9366:4<br>9369:23,25<br>9370:3 9381:1<br>9418:14,20<br>9434:17     | <b>imagination</b><br>9387:23<br>9404:15                                  | <b>impressed</b><br>9401:22   |
| <b>historicity</b><br>9321:3 9322:7,<br>8,23 9323:1,15,<br>20,22 9324:5<br>9325:3 9333:7<br>9353:21<br>9359:15 9363:2,<br>23 9364:15<br>9375:12 9377:1<br>9382:2 9401:20<br>9403:7 9404:24<br>9405:7,15<br>9406:5,6<br>9409:15<br>9416:10<br>9423:20,21<br>9431:14,21<br>9433:13<br>9443:11<br>9444:19 | <b>holds</b> 9342:7   | <b>husband's</b><br>9352:21   | <b>imaginations</b><br>9322:18  | <b>in-chief</b><br>9315:16 9317:4                                   |
| <b>historize</b><br>9443:23  | <b>Holocene</b><br>9327:17<br>9337:16 9338:7<br>9341:15 9347:8<br>9389:20,22<br>9410:19<br>9418:11<br>9430:16<br>9432:12  | <b>husbands</b><br>9352:20  | <b>imagine</b><br>9378:14 9380:4<br>9388:2 9391:1<br>9428:13,17<br>9439:6 | <b>inappropriate</b><br>9326:16 9327:5                              |
| <b>histories</b><br>9435:6,8,9<br>9443:7   | <b>homes</b><br>9417:14   | <b>hypothesis</b><br>9426:8   | <b>imagined</b><br>9390:11  | <b>incident</b><br>9392:21  |
| <b>historiograph</b><br><b>er</b> 9424:8   | <b>homo</b> 9387:17   | <b>I</b>  | <b>imagines</b><br>9438:25  | <b>incidentally</b><br>9366:24<br>9370:13                           |
|  | <b>Honour</b><br>9306:5,16<br>9314:10,23<br>9316:5,15,21,24<br>9317:9,14,19<br>9318:8,23<br>9355:18,24<br>9357:4,10<br>9367:3,12<br>9384:10,15<br>9419:17<br>9424:15,21<br>9444:24<br>9445:12 | <b>I-3</b> 9357:12,13   | <b>immateral</b><br>9428:10   | <b>incidents</b><br>9374:14   |
|  | <b>Hough</b><br>9418:15   | <b>ice</b> 9335:16<br>9337:18   | <b>immediately</b><br>9325:25 9344:5<br>9409:19 9419:2<br>9433:6 9438:23  | <b>inclined</b><br>9383:19  |
|  | <b>household</b><br>9362:11   | <b>idea</b> 9364:15<br>9375:9 9378:2<br>9399:7 9402:20<br>9436:22 9445:7        | <b>immemorial</b><br>9436:7   | <b>include</b><br>9316:10<br>9360:16 9442:3                         |
|  | <b>huge</b> 9344:24<br>9361:2,6   | <b>ideas</b> 9390:23  | <b>impacts</b><br>9424:10   | <b>included</b><br>9385:21  |
|  |   | <b>identified</b><br>9323:12<br>9331:19<br>9334:12<br>9343:19 9344:6<br>9347:11 | <b>implication</b><br>9329:23 9406:2,<br>3                                | <b>includes</b><br>9351:16  |
|  |   | <b>identify</b><br>9336:23 9343:7   | <b>implications</b><br>9405:2,17  | <b>including</b><br>9335:22<br>9344:21<br>9360:18 9437:1<br>9444:14 |

|  |   |  |  |   |
|--|---|--|--|---|
| <b>incompetence</b> 9392:5   | <b>inference</b> 9431:20  | <b>intellectual</b> 9415:10 9416:8                   | <b>interviewed</b> 9345:4,14<br>9410:3 9423:23   | 9437:25<br>9440:14,18,21<br>9441:1,16<br>9442:1 9444:3,7,23                           |
| <b>inconsistent</b> 9403:8   | <b>inferences</b> 9346:25   | <b>intellectually</b> 9339:16                        | <b>interviewer</b> 9407:12   | <b>Island'</b> 9421:4   |
| <b>increasingly</b> 9410:13  | <b>influenced</b> 9350:3  | <b>intellectuals</b> 9415:21                         | <b>interviewing</b> 9409:24  | <b>islands</b> 9320:9<br>9424:24 9426:4,13,16,25<br>9427:3,7,25<br>9428:25<br>9429:25 |
| <b>incredibly</b> 9376:16  | <b>influences</b> 9350:24   | <b>intended</b> 9323:19<br>9331:24<br>9347:16 9401:5 | <b>intrigued</b> 9355:11   | <b>issue</b> 9326:22<br>9353:18   |
| <b>independent</b> 9322:14<br>9352:10 9353:1<br>9383:25 9393:7,9   | <b>influential</b> 9330:20  | <b>interaction</b> 9352:24                           | <b>intriguing</b> 9354:5   | <b>issues</b> 9315:8<br>9363:5  |
| <b>independentl</b>  | <b>information</b> 9322:17 9325:8,<br>13 9331:7<br>9356:24 9363:4<br>9396:19,20<br>9423:5,8,17<br>9438:17 | <b>interdisciplin</b>                                | <b>intuition</b> 9326:17   | <b>isthmuses</b> 9390:20  |
| <b>y</b> 9349:8,25<br>9381:25 9383:4,20  | <b>informed</b> 9345:19   | <b>ary</b> 9353:12                                   | <b>Inuit</b> 9345:5,14<br>9349:21 9400:8   | <b>italics</b> 9358:9   |
| <b>Indian</b> 9362:13<br>9388:13   | <b>inhabitants</b> 9327:21,22   | <b>interest</b> 9374:13                              | <b>invented</b> 9385:13  | <b>items</b> 9356:18,<br>19   |
| <b>Indians</b> 9426:3,8<br>9433:24   | <b>injury</b> 9392:5  | <b>interested</b> 9438:8                             | <b>inventing</b> 9349:8  | <b>J</b>  |
| <b>indication</b> 9388:1 9444:18   | <b>innumerable</b> 9392:19  | <b>interesting</b> 9369:15<br>9388:12<br>9389:15     | <b>invention</b> 9325:9 9383:25  | <b>J-3</b> 9367:14,15   |
| <b>Indigenous</b> 9317:10,25<br>9324:11 9328:3<br>9342:22<br>9343:20 9344:1<br>9346:18<br>9348:17<br>9349:17<br>9350:23 9373:8<br>9376:13<br>9381:19 9390:3<br>9400:3,7<br>9410:10,17<br>9412:4 9414:17<br>9436:6,9<br>9438:14 | <b>input</b> 9307:1   | <b>interestingly</b> 9412:9                          | <b>investigation</b> 9375:20   | <b>January</b> 9317:7,13<br>9318:3  |
| <b>individual</b> 9343:6,7 9362:5<br>9381:19 9382:9<br>9403:2  | <b>inquiry</b> 9329:14  | <b>interests</b> 9352:12                             | <b>involved</b> 9362:1 9375:6<br>9391:16<br>9428:19 9443:4   | <b>Japanese</b> 9395:7  |
| <b>individuals</b> 9318:20<br>9319:14<br>9395:25 9437:7<br>9444:15   | <b>inserts</b> 9374:14  | <b>interfered</b> 9366:15                            | <b>involves</b> 9379:17 9412:9   | <b>Jesuit</b> 9397:24   |
|  | <b>inspire</b> 9390:23  | <b>interfered</b> 9366:15                            | <b>involving</b> 9393:4  | <b>Jesuits</b> 9345:3,7   |
|  | <b>inspired</b> 9346:2,3 9360:9<br>9362:20  | <b>intergenerati</b>                                 | <b>Iroquoian</b> 9377:7  | <b>Johnston</b> 9415:2,3,4,5,8,<br>23 9434:9  |
|  | <b>instance</b> 9322:22 9328:2<br>9343:23<br>9387:12<br>9392:16   | <b>onal</b> 9382:11                                  | <b>Iroquoians</b> 9413:1   | <b>joints</b> 9361:5  |
|  | <b>instances</b> 9388:9   | <b>intergenerati</b>                                 | <b>Iroquois</b> 9367:1   | <b>Jones</b> 9437:10  |
|  | <b>instructed</b> 9412:16   | <b>onally</b> 9353:23<br>9359:23                     | <b>irrespective</b> 9432:1   | <b>Journal</b> 9373:5   |
|  |   | <b>internal</b> 9321:25                              | <b>island</b> 9380:12<br>9412:24<br>9417:11 9419:9<br>9421:8,15<br>9422:12<br>9425:21<br>9427:18 9429:5,<br>18,19,24 | <b>July</b> 9400:21   |
|  |   | <b>interpret</b> 9443:5                              |  | <b>juts</b> 9380:3<br>9429:3  |
|  |   | <b>interrupt</b> 9323:10 9343:5                      |  |   |
|  |   | <b>interrupted</b> 9324:3                            |  |   |
|  |   | <b>intervention</b> 9396:17                          |  |   |
|  |   | <b>interview</b> 9406:17<br>9407:10                  |  |   |

|   |  |   |  |  |
|---|--|---|--|--|
| <b>K</b>  |  |   |  |  |
| <b>Kahkewaqua naby</b> 9437:9   | 9431:17,25<br>9436:1 9443:18<br>9444:11  | <b>land</b> 9417:23<br>9418:2,21<br>9419:5  | <b>leave</b> 9445:4  | <b>life</b> 9391:1<br>9444:15  |
| <b>Keeshig</b><br>9319:8,12,14,20<br>9320:15,24<br>9323:13,18<br>9356:22 9357:7,<br>15,19 9358:5<br>9359:2 9367:22<br>9394:1 9399:13<br>9400:14,20<br>9403:16<br>9406:18,24<br>9407:22 9408:4,<br>12 9420:8,10,<br>16,24 9421:5,19<br>9422:20,25<br>9423:1,19   | <b>kinds</b> 9359:17<br>9361:12<br>9380:15<br>9390:21,22<br>9393:21<br>9403:12,13<br>9429:23   | <b>landscape</b><br>9331:22,24<br>9369:17<br>9370:15,19,21<br>9371:1,6<br>9389:10 9390:8,<br>23 9391:7,9<br>9392:23 9398:3<br>9434:24         | <b>led</b> 9361:12<br>9366:18<br>9395:23   | <b>lifetime</b><br>9331:12<br>9390:17 9428:3,<br>13  |
| <b>Keeshig's</b><br>9367:20 9394:4<br>9416:24<br>9423:11  | <b>Kipling</b> 9332:6  | <b>language</b><br>9351:14,16,20<br>9368:2 9373:23  | <b>left</b> 9357:17<br>9378:15 9386:1<br>9391:17 9392:2  | <b>light</b> 9394:25<br>9395:1,3<br>9414:11<br>9436:25   |
| <b>kernel</b> 9359:19<br>9381:9 9430:15   | <b>knew</b> 9358:25<br>9390:15<br>9401:17  | <b>languages</b><br>9336:24 9337:2  | <b>leg</b> 9376:22   | <b>limited</b><br>9439:11  |
| <b>kills</b> 9392:7   | <b>knowledge</b><br>9358:23<br>9362:16<br>9417:14  | <b>large</b> 9318:17<br>9340:24<br>9344:19,23<br>9348:14,20<br>9361:9 9362:17<br>9365:23 9372:1<br>9381:5 9386:7<br>9388:25 9391:9<br>9426:24 | <b>legend</b><br>9374:14   | <b>limits</b> 9375:24<br>9378:1,4  |
| <b>kilometre</b><br>9337:18   | <b>Koenig</b><br>9407:13,24  | <b>larger</b> 9347:15<br>9380:25<br>9387:22 9391:2,<br>6 9411:6   | <b>legends</b><br>9330:21<br>9404:20   | <b>lineages</b><br>9352:15   |
| <b>kilometres</b><br>9366:20<br>9368:20 9396:3<br>9398:11,12  | <b>L</b>   | <b>larger-scale</b><br>9414:24  | <b>legitimacy</b><br>9321:19   | <b>linguistic</b><br>9337:10<br>9351:11  |
| <b>kind</b> 9317:1<br>9322:19 9323:7<br>9325:17<br>9329:17 9331:2<br>9333:6 9338:4<br>9353:21 9354:8<br>9355:4 9357:23<br>9359:12 9361:9,<br>19 9364:21<br>9375:19 9387:9<br>9389:25 9390:1,<br>7 9392:17<br>9393:2 9399:2,<br>11 9404:3,4<br>9406:10<br>9410:16 9412:5,<br>12,14 9423:4<br>9424:3,4 9428:5 | <b>labels</b> 9378:18  | <b>largest</b> 9341:1   | <b>length</b> 9330:11<br>9348:23   | <b>linguistically</b><br>9336:22   |
|   | <b>Lachine</b><br>9409:25 9410:2   | <b>late</b> 9383:10<br>9415:7   | <b>lengthy</b><br>9316:9 9345:24   | <b>link</b> 9337:6<br>9406:22<br>9407:19<br>9442:20  |
|   | <b>lack</b> 9409:13<br>9411:12   | <b>Latin</b> 9334:2,4   | <b>Lenore</b><br>9319:8,12,20<br>9320:14,24<br>9323:12,18<br>9356:22 9357:7,<br>14,19 9358:4<br>9359:2 9367:20,<br>22 9394:1<br>9399:13<br>9400:20<br>9403:16<br>9406:17,24<br>9407:22 9408:4,<br>12 9416:24<br>9422:25 9423:1 | <b>linked</b> 9342:9<br>9411:3 9422:11   |
|   | <b>laid</b> 9361:1,9   | <b>laugh</b> 9402:1<br>9403:21  | <b>legit</b> 9321:19   | <b>links</b> 9408:1  |
|   | <b>lake</b> 9365:1,25<br>9366:4 9369:1,<br>22,23,24,25<br>9370:2,3<br>9371:6,13<br>9381:1 9392:11<br>9397:12,13<br>9410:12,18,23<br>9418:14,15,18,<br>20,23 9427:13<br>9428:24<br>9429:21<br>9434:17,19<br>9440:22<br>9441:24,25 | <b>Lawrence</b><br>9409:23  | <b>length</b> 9330:11<br>9348:23   | <b>list</b> 9306:17,22<br>9307:7 9316:9,<br>16 9356:19<br>9438:3   |
|   | <b>Lakes</b> 9337:13<br>9351:25 9352:8<br>9376:12<br>9391:13 9408:8<br>9409:18 9410:9  | <b>lawyer</b> 9359:9  | <b>legitimacy</b><br>9321:19   | <b>listening</b><br>9362:11  |
|   |  | <b>lead</b> 9414:23<br>9428:3   | <b>legit</b> 9321:19   | <b>literally</b><br>9365:6,7   |
|   |  | <b>leads</b> 9329:5<br>9387:23  | <b>legit</b> 9321:19   | <b>literate</b><br>9377:16 9438:6  |
|   |  | <b>leap</b> 9345:19   | <b>legit</b> 9321:19   | <b>literature</b><br>9326:8,21<br>9341:25<br>9345:24 9346:5,<br>6 9353:13,16,17<br>9354:2,4,16<br>9361:11,18<br>9376:15 9377:5,<br>7,14,20 9378:6<br>9402:17 |
|   |  | <b>learned</b><br>9426:9  | <b>legit</b> 9321:19   |  |

|   |  |  |  |   |
|---|--|--|--|---|
| 9403:11<br>9415:14<br>9432:25<br><b>litigation</b><br>9318:14 9319:2,<br>14 9326:22<br>9353:8 9416:17<br><b>live</b> 9347:3<br>9397:7 9437:11<br>9441:24<br><b>lived</b> 9328:7<br>9333:1 9362:3<br>9381:20 9408:8<br>9410:5 9411:4<br>9417:2 9436:17<br><b>living</b> 9398:15<br><b>loaning</b><br>9403:1<br><b>local</b> 9344:1<br>9369:17<br>9374:17<br>9376:12 9390:8,<br>23 9397:8<br>9409:9 9432:10<br><b>localize</b><br>9422:3<br><b>localized</b><br>9397:7 9414:22<br><b>locate</b> 9368:10<br>9399:9 9422:14<br><b>located</b><br>9335:20,21<br>9352:7 9366:19<br>9367:20<br>9372:22 9374:2<br>9383:5 9398:10<br>9428:23<br><b>location</b><br>9369:21 9370:5,<br>10 9378:19<br>9398:18<br>9408:13<br>9409:12<br>9421:20<br>9427:17 9436:7<br><b>locations</b><br>9369:6 9370:11<br>9385:14 9398:5<br>9408:2 | <b>log</b> 9412:13<br><b>long</b> 9321:11<br>9331:25<br>9334:17 9336:7<br>9339:2 9341:24<br>9348:24 9353:1<br>9361:11<br>9362:10<br>9387:17 9399:7<br>9405:23<br>9408:17<br>9426:15,21<br>9427:8,10,11,<br>14,18<br><b>long-term</b><br>9321:5,7<br>9353:13 9354:9<br><b>longer</b> 9360:15<br>9399:5 9420:16<br>9442:18<br><b>looked</b><br>9343:14 9346:6<br>9353:11 9354:3<br>9355:13 9358:3<br>9361:18<br>9367:23<br>9393:11<br>9399:14,22<br>9400:14 9422:6<br><b>lost</b> 9442:21,24<br><b>lot</b> 9328:18<br>9340:3 9361:16<br>9362:7 9382:14<br>9408:20 9414:9<br><b>loves</b> 9408:19<br><b>low</b> 9379:7<br>9418:23<br><b>lower</b> 9341:4<br>9366:2 9378:15<br>9386:1 9418:23<br><b>lowering</b><br>9379:17<br><b>lunch</b> 9384:11<br><b>luxury</b> 9376:10<br><hr/> <b>M</b> <hr/> <b>made</b> 9314:17<br>9315:7 9316:17 | 9317:14 9322:6,<br>12,25 9323:2<br>9324:16<br>9341:21<br>9354:12 9356:6,<br>21 9363:21<br>9364:10,13<br>9388:11<br>9389:10<br>9390:14<br>9402:23 9403:3<br>9413:25<br>9426:16<br>9429:12 9430:3<br><b>Madeline</b><br>9429:5 9437:25<br>9440:14,18,21<br>9441:1,16<br>9442:1 9444:3,<br>7,22<br><b>main</b> 9329:16<br><b>mainland</b><br>9424:24 9427:1,<br>5,14 9429:18,20<br>9430:1<br><b>majority</b><br>9413:16<br><b>make</b> 9306:8,9<br>9316:23 9338:7<br>9345:18<br>9346:20,25<br>9348:11,13<br>9364:17,21<br>9365:10 9367:4,<br>8 9393:22<br>9394:18 9402:1<br>9403:21<br>9415:17<br>9432:22 9445:4<br><b>makes</b><br>9329:14 9406:4<br>9419:5 9423:5<br>9432:7<br><b>making</b> 9388:7<br>9390:4 9421:6<br><b>mammoths</b><br>9344:21<br>9354:13<br><b>man</b> 9417:2<br><b>man's</b> 9361:6 | <b>manages</b><br>9412:21<br><b>Manitoba</b><br>9362:4 9369:5<br><b>Manitoulin</b><br>9417:9,10,16<br>9418:22,25<br>9419:9 9421:4,<br>8,15 9422:12<br><b>manner</b><br>9341:25 9358:2<br>9432:18<br><b>map</b> 9365:14<br>9418:6,9<br>9434:4,5<br>9440:8,9<br>9441:12 9442:4<br><b>Marie</b> 9366:10,<br>12 9368:19<br>9388:14 9397:7,<br>21<br><b>mark</b> 9306:13<br>9357:5<br><b>marked</b><br>9306:22 9307:8<br>9316:10<br><b>marriage</b><br>9352:19<br><b>married</b><br>9352:17<br>9388:15<br><b>Mary's</b> 9366:2<br><b>massive</b><br>9377:17 9379:8,<br>16 9390:1<br><b>mastodons</b><br>9344:22<br>9354:13<br><b>material</b><br>9318:15 9319:7,<br>19 9327:7<br>9337:4 9360:11<br>9401:13<br><b>materials</b><br>9400:24<br><b>Mattawa</b><br>9369:3 | <b>matter</b> 9325:1<br>9349:14 9359:8,<br>13 9375:15<br>9383:25<br><b>matters</b><br>9422:8<br><b>Mayor</b> 9361:16<br><b>Mccarthy</b><br>9319:5,20<br>9323:19<br>9338:18<br>9356:25 9357:8,<br>15 9358:10<br>9359:3<br><b>Mccarthy's</b><br>9417:21,22<br>9418:4 9419:19<br>9420:2<br><b>Mcghee</b><br>9436:19<br><b>meaning</b><br>9393:23<br>9402:10<br><b>meaningful</b><br>9332:2<br><b>meanings</b><br>9321:25<br><b>means</b><br>9346:25<br>9382:24 9421:2,<br>3 9426:13<br>9443:14<br><b>meant</b> 9352:16<br>9358:13<br>9401:25<br><b>measured</b><br>9321:8<br><b>Mediterranea</b><br><b>n</b> 9385:23<br>9386:1,9,14<br>9387:3,15<br>9391:11<br><b>meets</b> 9417:7<br><b>megafauna</b><br>9334:1 9344:25<br><b>members</b><br>9351:15<br>9352:20 |
|---|--|--|--|---|

|   |   |  |  |   |
|---|---|--|--|---|
| <b>memorandu</b><br><b>m</b> 9356:23<br>9357:22,25<br><b>memories</b><br>9359:22<br><b>memorized</b><br>9372:18<br><b>memory</b><br>9354:9 9428:1<br><b>men</b> 9417:12<br><b>mention</b><br>9315:23<br>9342:11<br>9368:14<br><b>mentioned</b><br>9330:5 9351:5<br>9388:24 9418:3<br>9437:4<br><b>mere</b> 9432:6<br><b>merged</b><br>9353:5<br><b>merits</b> 9433:3<br><b>met</b> 9409:22<br><b>metaphor</b><br>9394:11,15,22<br><b>metaphorical</b><br>9323:3<br><b>method</b><br>9329:17<br>9346:10<br><b>Methodist</b><br>9437:18<br><b>Methodists</b><br>9405:25 9435:5<br>9437:6<br><b>methodologi</b><br><b>cal</b> 9329:19<br><b>methodologi</b><br><b>cally</b> 9329:22<br><b>methodologi</b><br><b>es</b> 9329:10<br><b>methodology</b><br>9329:9 9351:3<br>9375:13 | <b>metres</b> 9365:2<br><b>Mi'kmaq</b><br>9342:18<br>9349:19<br>9351:17<br>9379:20,21<br>9380:19 9381:8<br>9383:15,17,22<br>9393:9 9436:11<br><b>Michael</b><br>9329:7<br><b>Michigan</b><br>9339:1 9397:12,<br>13<br><b>micro</b> 9439:13<br><b>microphone</b><br>9318:19<br><b>middle</b> 9336:1<br><b>Midewiwin</b><br>9439:17<br><b>midsection</b><br>9366:1<br><b>migrants</b><br>9444:2<br><b>migrating</b><br>9432:23 9439:8,<br>9 9444:21<br><b>migration</b><br>9409:6,9 9429:6<br>9432:4,5,7<br>9435:9,12,15<br>9439:19<br>9440:13,21<br>9441:15 9443:5,<br>7,11,15 9444:8,<br>17 9445:1<br><b>migrations</b><br>9430:18,20,23<br>9431:1 9433:1<br>9434:13,20,23,<br>24 9435:18,20,<br>24 9439:13,15<br>9443:17,19<br><b>mildly</b> 9411:9<br><b>military</b><br>9352:12<br>9435:10 | <b>millennia</b><br>9321:9,12<br>9359:24<br>9414:17 9431:7<br>9432:21<br><b>million</b><br>9387:16<br><b>millions</b><br>9328:9<br><b>Minas</b> 9378:13,<br>22,23 9379:2,9,<br>10,12,24<br>9380:4,6 9381:2<br><b>mind</b> 9318:20<br>9322:14,20<br>9339:24 9340:7<br>9350:9 9377:11<br>9392:13 9396:4<br>9409:20<br>9442:16<br><b>mindful</b><br>9363:5<br><b>minds</b> 9435:19<br><b>Minister</b><br>9437:18<br><b>minutes</b><br>9440:15<br><b>Mishomis</b><br>9439:22 9440:6<br><b>misquote</b><br>9415:18<br><b>missing</b><br>9383:13<br><b>mission</b><br>9404:8<br><b>Mississagas</b><br>9373:10,18<br><b>Mississauga</b><br>9434:16<br>9437:11,12,14<br><b>Mississaugas</b><br>9373:19<br>9436:12<br>9437:13<br><b>mistaken</b><br>9405:15 | <b>misundersta</b><br><b>nd</b> 9370:21<br><b>mnemonic</b><br>9442:8,10,21<br><b>modern</b><br>9337:6,10<br>9340:24 9341:1<br>9346:21,23,24<br>9352:3,5 9353:5<br>9363:17<br>9374:25<br>9377:12<br>9378:12<br>9381:21<br>9405:14 9432:8<br>9436:6 9440:11<br>9441:11<br><b>modifies</b><br>9334:8<br><b>modify</b> 9334:4<br><b>moment</b><br>9339:6 9343:6<br>9353:7 9368:5<br>9371:17<br>9385:16<br><b>Monday</b><br>9306:6 9367:7<br><b>money</b> 9403:1<br><b>monsters</b><br>9362:8<br><b>monstrous</b><br>9361:4<br><b>montagnais</b><br>9345:6<br><b>months</b><br>9324:18<br>9326:12<br><b>morning</b><br>9306:2,3<br>9315:14 9356:8<br>9360:12<br><b>most-used</b><br>9373:7<br><b>mother</b><br>9391:25 9397:3<br><b>motif</b> 9347:16<br>9348:16,25 | <b>motion</b> 9315:8<br><b>motions</b><br>9318:15<br><b>mountain</b><br>9386:19<br><b>move</b> 9315:15<br>9351:4 9416:14<br>9420:2 9434:1<br>9437:3<br><b>moved</b><br>9436:11,13<br><b>movement</b><br>9434:13 9436:9<br><b>movements</b><br>9353:3 9434:13<br><b>movie</b> 9395:7<br><b>moving</b><br>9438:21<br><b>murder</b> 9395:8<br><b>museum</b><br>9415:10,12<br><b>muskrat</b><br>9413:12,18<br>9414:3<br><b>myth</b> 9324:10<br>9340:22<br>9379:20<br><b>mythical</b><br>9341:14<br>9347:21<br><b>mythographe</b><br><b>r</b> 9332:24<br><b>mythology</b><br>9328:5 9333:4,5<br>9353:20 9372:9<br><b>myths</b> 9331:7,<br>21 9332:8,25<br>9333:6 9360:9<br><hr/> <b>N</b> <hr/> <b>Nadjiwon</b><br>9400:16<br>9401:19<br><b>Nadaway</b><br>9338:17,19,22 |
|---|---|--|--|---|

|   |   |  |   |  |
|---|---|--|---|--|
| 9339:4 9351:5<br>9364:6,12,25<br>9365:5 9366:7,<br>20,22,24<br>9367:24 9368:1,<br>11,18 9384:18,<br>21 9388:8,20<br>9389:4,17<br>9396:2 9398:9,<br>18 9428:15   | <b>narrowing</b><br>9381:5 9398:13<br><b>narrowings</b><br>9390:14<br><b>narrows</b><br>9386:6<br><b>NASA</b> 9385:22<br><b>Nation</b> 9352:2,<br>9 9398:15<br>9410:7<br><b>National</b><br>9392:12<br><b>Nations</b><br>9351:23 9352:4<br>9353:5<br><b>natural</b><br>9370:17 9384:3<br>9390:21<br><b>naturally</b><br>9391:5<br><b>nature</b> 9331:25<br>9332:8 9369:10,<br>11 9377:3<br>9385:5 9387:12<br><b>Nawash</b><br>9415:6<br><b>necessarily</b><br>9323:1 9344:15<br>9345:17 9376:5<br>9403:6<br><b>neglect</b><br>9331:18<br><b>neglects</b><br>9333:11<br><b>neighbouring</b><br>9350:12<br><b>nephew</b><br>9408:18,19<br><b>Newfoundlan<br/>d</b> 9436:12<br><b>Noachian</b><br>9411:25<br><b>non-<br/>anishinaabe</b><br>9351:17<br>9405:22 | <b>non-<br/>indigenous</b><br>9388:10<br>9414:17<br><b>nonacademic</b><br>9321:20<br><b>nonsense</b><br>9326:3,18<br><b>north</b> 9328:8<br>9335:20,22,24<br>9342:16<br>9344:18<br>9348:17 9349:1,<br>11,14 9351:18,<br>24 9380:23<br>9381:20 9400:7<br>9412:3 9433:24<br>9434:17,18<br>9438:12<br>9439:10<br><b>northeast</b><br>9433:23<br><b>northern</b><br>9418:19<br><b>northwest</b><br>9335:23<br><b>Northwestern</b><br>9369:5<br><b>notably</b><br>9398:3<br><b>noted</b> 9371:3<br><b>notice</b> 9380:2<br><b>noticed</b><br>9371:4<br><b>notion</b> 9395:4<br><b>notwithstandi<br/>ng</b> 9413:24<br><b>Nova</b> 9335:23<br>9378:12 9384:7<br><b>number</b><br>9307:12,13,15,<br>17,19,23<br>9308:1,3,5,7,9,<br>11,13,16,19,22,<br>25 9309:3,6,9,<br>11,12,13,15,17,<br>19,21,24<br>9310:2,4,6,9,12, | 15,18,20,22,24<br>9311:1,3,5,7,9,<br>11,13,15,17,19,<br>21,23,25<br>9312:2,4,6,8,10,<br>12,14,16,18,20,<br>22,24 9313:1,3,<br>5,7,9,11,13,15,<br>17,19,21,23,25<br>9314:2,5,6<br>9317:22<br>9350:18 9356:4<br>9377:10 9389:7<br>9413:9 9421:25<br>9440:19,22<br>9443:7 9444:3,<br>14<br><b>numbers</b><br>9306:23<br>9307:11<br><b>numerous</b><br>9342:8 9374:24<br>9380:23 9418:1 | <b>observer</b><br>9343:14<br>9405:14<br><b>observers</b><br>9341:3 9371:3<br>9377:16<br><b>obstacles</b><br>9347:17<br><b>obstruction</b><br>9380:10,14<br>9385:1<br><b>obstructions</b><br>9380:15<br><b>obtained</b><br>9401:23<br><b>occasions</b><br>9382:9<br><b>occupies</b><br>9418:15,19<br><b>occur</b> 9374:15<br>9383:18<br>9414:20<br>9423:14 9430:9<br><b>occurred</b><br>9327:13<br>9332:16<br>9387:16<br>9408:14<br>9414:21<br><b>occurs</b> 9379:9<br>9382:9 9392:21<br>9434:6<br><b>Ocean</b> 9379:1<br>9385:23,25<br>9387:3,16<br><b>October</b><br>9315:7 9318:10<br><b>offhand</b><br>9391:18<br><b>Ohio</b> 9334:11,<br>13<br><b>ohioensis</b><br>9334:2,9 9335:6<br>9336:13<br>9340:13 9341:6,<br>19 9344:4<br>9355:11<br>9363:13 9364:1, |
| <b>named</b><br>9319:14<br><b>names</b><br>9365:21<br><b>Nanabush</b><br>9319:17,23<br>9348:6,8 9360:4<br>9362:12<br>9367:21 9370:9<br>9371:8 9373:14<br>9379:22<br>9386:12<br>9391:12 9392:6,<br>7,22 9393:14<br>9398:23 9399:4<br>9402:14,18,25<br>9403:1,3,9<br>9408:19 9413:8<br>9428:22 9429:1,<br>9<br><b>Nanabush's</b><br>9397:2 9408:18<br><b>Nanibozhu</b><br>9362:11<br>9373:10,11,12<br><b>narrated</b><br>9374:19<br><b>narrative</b><br>9324:11<br>9375:11 9398:1<br><b>narratives</b><br>9350:23<br>9370:23<br>9371:12 9373:8<br>9385:6 9392:14<br>9441:16<br><b>narrator</b><br>9374:10<br><b>narrow</b><br>9380:25 9386:2,<br>16 9389:17 | <b>named</b><br>9319:14<br><b>names</b><br>9365:21<br><b>Nanabush</b><br>9319:17,23<br>9348:6,8 9360:4<br>9362:12<br>9367:21 9370:9<br>9371:8 9373:14<br>9379:22<br>9386:12<br>9391:12 9392:6,<br>7,22 9393:14<br>9398:23 9399:4<br>9402:14,18,25<br>9403:1,3,9<br>9408:19 9413:8<br>9428:22 9429:1,<br>9<br><b>Nanabush's</b><br>9397:2 9408:18<br><b>Nanibozhu</b><br>9362:11<br>9373:10,11,12<br><b>narrated</b><br>9374:19<br><b>narrative</b><br>9324:11<br>9375:11 9398:1<br><b>narratives</b><br>9350:23<br>9370:23<br>9371:12 9373:8<br>9385:6 9392:14<br>9441:16<br><b>narrator</b><br>9374:10<br><b>narrow</b><br>9380:25 9386:2,<br>16 9389:17   | <b>non-<br/>indigenous</b><br>9388:10<br>9414:17<br><b>nonacademic</b><br>9321:20<br><b>nonsense</b><br>9326:3,18<br><b>north</b> 9328:8<br>9335:20,22,24<br>9342:16<br>9344:18<br>9348:17 9349:1,<br>11,14 9351:18,<br>24 9380:23<br>9381:20 9400:7<br>9412:3 9433:24<br>9434:17,18<br>9438:12<br>9439:10<br><b>northeast</b><br>9433:23<br><b>northern</b><br>9418:19<br><b>northwest</b><br>9335:23<br><b>Northwestern</b><br>9369:5<br><b>notably</b><br>9398:3<br><b>noted</b> 9371:3<br><b>notice</b> 9380:2<br><b>noticed</b><br>9371:4<br><b>notion</b> 9395:4<br><b>notwithstandi<br/>ng</b> 9413:24<br><b>Nova</b> 9335:23<br>9378:12 9384:7<br><b>number</b><br>9307:12,13,15,<br>17,19,23<br>9308:1,3,5,7,9,<br>11,13,16,19,22,<br>25 9309:3,6,9,<br>11,12,13,15,17,<br>19,21,24<br>9310:2,4,6,9,12, | 15,18,20,22,24<br>9311:1,3,5,7,9,<br>11,13,15,17,19,<br>21,23,25<br>9312:2,4,6,8,10,<br>12,14,16,18,20,<br>22,24 9313:1,3,<br>5,7,9,11,13,15,<br>17,19,21,23,25<br>9314:2,5,6<br>9317:22<br>9350:18 9356:4<br>9377:10 9389:7<br>9413:9 9421:25<br>9440:19,22<br>9443:7 9444:3,<br>14<br><b>numbers</b><br>9306:23<br>9307:11<br><b>numerous</b><br>9342:8 9374:24<br>9380:23 9418:1 | <b>observer</b><br>9343:14<br>9405:14<br><b>observers</b><br>9341:3 9371:3<br>9377:16<br><b>obstacles</b><br>9347:17<br><b>obstruction</b><br>9380:10,14<br>9385:1<br><b>obstructions</b><br>9380:15<br><b>obtained</b><br>9401:23<br><b>occasions</b><br>9382:9<br><b>occupies</b><br>9418:15,19<br><b>occur</b> 9374:15<br>9383:18<br>9414:20<br>9423:14 9430:9<br><b>occurred</b><br>9327:13<br>9332:16<br>9387:16<br>9408:14<br>9414:21<br><b>occurs</b> 9379:9<br>9382:9 9392:21<br>9434:6<br><b>Ocean</b> 9379:1<br>9385:23,25<br>9387:3,16<br><b>October</b><br>9315:7 9318:10<br><b>offhand</b><br>9391:18<br><b>Ohio</b> 9334:11,<br>13<br><b>ohioensis</b><br>9334:2,9 9335:6<br>9336:13<br>9340:13 9341:6,<br>19 9344:4<br>9355:11<br>9363:13 9364:1, |
|   |   |  | <b>O</b>  |  |
|   |   |  | <b>oath</b> 9315:17,<br>20<br><b>object</b> 9375:13<br><b>objection</b><br>9316:12 9357:9<br>9367:10,11<br><b>obliged</b><br>9347:17<br><b>obscure</b><br>9376:20<br><b>observation</b><br>9343:22<br>9346:13<br>9347:22 9381:9<br>9387:14 9388:4<br>9411:3 9428:2<br>9430:15<br><b>observations</b><br>9346:2,20<br>9353:22<br>9362:19 9390:8<br><b>observed</b><br>9332:15 9339:8 |  |

|  |   |   |   |   |
|--|---|---|---|---|
| 10,17 9365:4,7   | 9325:2,7,12,21,<br>24 9326:4,23<br>9328:24 9333:8,<br>16 9339:10<br>9340:5 9353:9,<br>13,14 9358:13<br>9359:25 9368:6<br>9382:11<br>9396:15<br>9398:21,24<br>9399:19<br>9411:10<br>9416:14,15,17<br>9417:19 9423:7,<br>14 9424:8,10<br>9430:22 9431:3,<br>14,21,22,23<br>9433:3 9437:4<br>9438:19<br>9442:11,15,20<br>9444:25 | 9363:7 9434:16<br>9440:24   | 9384:13,14<br>9424:17,18<br>9445:16   | <b>partially</b><br>9412:19   |
| <b>oides</b> 9334:3,8  |   | <b>originates</b><br>9351:11  | <b>pages</b> 9400:5   | <b>participants</b><br>9394:21  |
| <b>Ojibwa</b><br>9434:10   |   | <b>origination</b><br>9371:1  | <b>Paleo-<br/>hydrological</b><br>9432:10   | <b>Partridge</b><br>9380:11   |
| <b>Ojibwe</b> 9362:2<br>9373:18,19   |   | <b>origins</b><br>9331:3,21,25<br>9332:9 9369:16<br>9370:5,6 9384:2<br>9392:20 9393:7 | <b>Paleo-<br/>indian</b><br>9337:23 9338:2<br>9354:9  | <b>parts</b> 9335:22<br>9342:14<br>9344:18<br>9351:23 9352:7<br>9371:1 9387:23<br>9388:1  |
| <b>older</b> 9420:18   |   | <b>orthographie</b><br><b>s</b> 9373:13   | <b>Paleo-<br/>indians</b><br>9336:21 9337:9,<br>12 9338:8,18<br>9339:1,3,7  | <b>pass</b> 9443:20   |
| <b>omit</b> 9382:15  |   | <b>ostensible</b><br>9358:15  | <b>paleontologic<br/>al</b> 9328:6<br>9355:10   | <b>passage</b><br>9378:21 9379:2,<br>12,25 9380:6<br>9386:20  |
| <b>omits</b> 9374:11   |   | <b>Otchipwe</b><br>9373:10,17   | <b>paleontologis<br/>t</b> 9343:24  | <b>past</b> 9322:11<br>9323:6 9324:14<br>9325:8,14<br>9333:2 9344:25<br>9345:1,7,9,15,<br>20 9347:5<br>9359:21<br>9361:14<br>9381:11<br>9389:13<br>9390:11,24<br>9391:2 9396:20<br>9424:4 9428:4<br>9432:18 |
| <b>Ontario</b><br>9327:14<br>9335:24 9336:3,<br>4 9339:1<br>9366:24 9369:5<br>9373:21<br>9410:12,23<br>9415:11<br>9427:12<br>9434:11,19<br>9436:13 | <b>orange</b> 9366:8<br>9380:10   | <b>Ottawa</b><br>9349:22<br>9351:25 9369:2<br>9393:18 9397:9,<br>10 9410:6            | <b>paleontologis<br/>ts</b> 9346:24   | <b>pause</b> 9382:20  |
| <b>open</b> 9306:10<br>9354:22   | <b>order</b> 9332:18<br>9370:24<br>9384:21,25<br>9387:6 9388:4<br>9390:14<br>9428:13  | <b>outer</b> 9375:24<br>9378:1,4  | <b>pallet</b> 9410:20   | <b>PDF</b> 9360:7<br>9361:21<br>9363:11,12<br>9434:2  |
| <b>opened</b><br>9387:7  |   | <b>outlet</b> 9373:7  | <b>paper</b> 9441:5   | <b>peculiar</b><br>9405:13  |
| <b>opening</b><br>9386:16  | <b>origin</b> 9393:10<br>9416:1   | <b>outline</b><br>9416:19   | <b>paradigm</b><br>9436:22  | <b>pejorative</b><br>9329:22 9330:2   |
| <b>opinion</b><br>9326:13 9372:3   | <b>original</b><br>9340:20<br>9356:13,17<br>9358:3 9374:5<br>9385:22 9394:4<br>9396:9 9401:3<br>9406:15 9409:6<br>9438:3  | <b>outright</b><br>9326:14  | <b>parallel</b><br>9320:18  | <b>Pelletier</b><br>9314:22 9315:1<br>9317:18<br>9357:10<br>9367:11<br>9419:11,13,16<br>9445:6,11   |
| <b>opinions</b><br>9360:16,18  |   | <b>outsider</b><br>9324:10  | <b>parallels</b><br>9358:14,15<br>9422:13<br>9432:15  | <b>peninsula</b><br>9320:10 9380:3<br>9417:3 9418:22  |
| <b>opportunity</b><br>9318:9 9420:9  |   | <b>outsiders</b><br>9438:15,16  | <b>paraphrasing</b><br>9358:9   |   |
| <b>opposed</b><br>9321:6,9 9333:5<br>9337:10<br>9339:18<br>9340:14 9343:8<br>9349:8 9438:15<br>9442:1  | <b>originally</b><br>9325:23<br>9330:18 9340:1<br>9356:21 9358:5,<br>25 9409:4<br>9417:20 9422:6,<br>18 9423:19   | <b>overcome</b><br>9347:18  | <b>parentheticall<br/>y</b> 9402:13   |   |
| <b>opposite</b><br>9394:25   |   | <b>overlap</b><br>9336:8,9<br>9338:1,14   | <b>Park</b> 9392:12   |   |
| <b>option</b> 9354:22  | <b>originate</b><br>9342:2 9362:15  | <b>overlapped</b><br>9354:25  | <b>part</b> 9315:4<br>9317:16<br>9320:14 9328:5<br>9352:25 9359:5<br>9363:25<br>9370:20<br>9378:24 9388:2<br>9392:12,15,23<br>9402:11<br>9406:14 9421:9<br>9437:13,24 |   |
| <b>oral</b> 9317:10,25<br>9319:11 9321:5,<br>6,7,13,15,18<br>9323:8,11<br>9324:18,20   | <b>originated</b><br>9330:17 9332:3<br>9342:5 9350:19,<br>20 9362:19  | <b>overlaps</b><br>9327:13  |   |   |
|  |   | <b>P</b>  |   |   |
|  |   | <b>p.m.</b> 9355:22   |   |   |

|   |  |  |   |  |
|---|--|--|---|--|
| 9426:6 9427:4<br>9429:2,5   | <b>person</b> 9344:8<br>9410:17  | <b>places</b><br>9369:14<br>9380:23 9381:3,<br>6,23 9385:9<br>9389:24 9396:4<br>9402:17 9430:1,<br>8 9439:15<br>9442:3   | 9441:22,25<br>9442:17,23<br>9444:16   | <b>possibility</b><br>9327:23 9328:2,<br>14 9336:11<br>9337:21 9338:9<br>9340:16<br>9345:22<br>9348:22 9349:3<br>9350:7,9,25<br>9354:23 9383:7<br>9389:16<br>9430:10,12<br>9432:7 9439:3 |
| <b>people</b><br>9330:10 9331:9,<br>10,13 9332:17<br>9341:17<br>9342:18,19<br>9344:1 9351:12<br>9352:16<br>9373:20<br>9387:20 9388:7<br>9390:3 9394:11<br>9396:14<br>9405:21 9408:7<br>9410:5,10<br>9412:25<br>9415:13 9430:6<br>9432:20<br>9434:11<br>9435:17<br>9436:23<br>9437:15,16<br>9438:17,21<br>9441:3 9444:20 | <b>personages</b><br>9333:1  | <b>plagued</b><br>9414:16  | <b>pointing</b><br>9366:11  |  |
| <b>peoples</b><br>9328:3 9341:8<br>9342:22<br>9343:20<br>9346:18<br>9349:17 9352:5,<br>15 9355:16<br>9376:13<br>9386:14 9387:3,<br>11 9388:11<br>9400:3 9429:17<br>9434:14 9436:9<br>9441:8 9442:12   | <b>perspectival</b><br>9395:5  | <b>plaintiffs'</b><br>9314:21<br>9357:25   | <b>points</b> 9351:4<br>9374:12   |  |
| <b>period</b><br>9327:17,19<br>9336:18<br>9338:16<br>9354:10 9373:6<br>9408:24  | <b>perspective</b><br>9321:22,23,24,<br>25 9322:2<br>9397:17   | <b>Planet</b><br>9423:13,24  | <b>polity</b> 9352:2  |  |
| <b>periods</b><br>9414:14   | <b>perspectives</b><br>9395:9,17   | <b>plausible</b><br>9381:13  | <b>pond</b> 9381:17<br>9386:8   |  |
| <b>permanently</b><br>9427:1  | <b>Peter</b> 9437:10   | <b>play</b> 9423:7<br>9435:24  | <b>ponds</b> 9390:13  |  |
| <b>persist</b><br>9413:22   | <b>phenomenon</b><br>9342:13,16  | <b>playing</b><br>9402:25  | <b>poor</b> 9403:2  |  |
| <b>persistence</b><br>9354:8  | <b>philosophical</b><br>9322:1   | <b>plays</b> 9429:5  | <b>pop-up</b><br>9419:7,8   |  |
|   | <b>phrased</b><br>9419:25  | <b>playwright</b><br>9386:17   | <b>pop-ups</b><br>9418:1  |  |
|   | <b>picture</b><br>9378:10<br>9385:17,18,20,<br>21 9392:11  | <b>Pleistocene</b><br>9334:1 9335:14<br>9344:23  | <b>popularized</b><br>9330:18<br>9439:24 9440:3                             | <b>possibly</b><br>9326:3 9336:9<br>9346:11<br>9376:17   |
|   | <b>pictures</b><br>9362:8  | <b>plethora</b><br>9339:17   | <b>popularly</b><br>9373:14   | <b>postulate</b><br>9388:5 9439:14   |
|   | <b>piece</b> 9343:25<br>9344:13  | <b>plot</b> 9372:13  | <b>population</b><br>9353:3 9431:5,<br>18 9434:13<br>9437:19                | <b>postulated</b><br>9389:16   |
|   | <b>pieces</b><br>9343:15<br>9350:10  | <b>point</b> 9328:8<br>9332:12<br>9335:15<br>9366:24 9367:1<br>9368:11<br>9369:24<br>9372:14<br>9374:18,24<br>9380:22 9387:9<br>9388:20 9389:4,<br>17,24 9396:6<br>9405:2 9407:11<br>9409:12<br>9410:25<br>9419:18 9420:3<br>9426:15,21<br>9427:8,11,12,14<br>9428:20 9429:4,<br>7,15,17 9430:17<br>9440:17,20 | <b>populations</b><br>9337:7  | <b>postulates</b><br>9439:19   |
|   | <b>pillars</b><br>9388:21,22<br>9389:2   | <b>portion</b> 9344:9<br>9378:13 9414:4<br>9417:23<br>9418:16,19<br>9425:21,22   | <b>position</b><br>9325:18 9329:3,<br>4,9,20 9436:15                        | <b>potency</b><br>9347:21  |
|   | <b>pinpoints</b><br>9398:5   | <b>positions</b><br>9326:25  | <b>positioned</b><br>9398:8   | <b>potential</b><br>9422:21  |
|   | <b>place</b> 9349:23<br>9365:21 9369:7,<br>21 9374:20<br>9380:25<br>9381:16 9383:8<br>9389:11<br>9392:18 9397:5<br>9412:22<br>9436:18,24 | <b>positive</b><br>9329:25   | <b>possibilities</b><br>9333:12,14<br>9339:19,20,24<br>9340:4,18<br>9433:12 | <b>practice</b><br>9314:16   |
|   |  | <b>pre-influence</b><br>9424:3   |   | <b>practiced</b><br>9352:15  |
|   |  | <b>precedent</b><br>9334:25  |   | <b>precedes</b><br>9326:21   |
|   |  | <b>precisely</b><br>9326:15<br>9354:22<br>9381:17  |   | <b>prefer</b> 9314:23  |
|   |  | <b>premise</b><br>9431:12,20<br>9432:2   |   | <b>premises</b><br>9358:21   |
|   |  | <b>preparation</b><br>9393:24 9394:3   |   |  |



|  |   |   |   |  |
|--|---|---|---|--|
| <b>prepared</b><br>9323:23<br>9354:19<br>9356:15,16<br>9357:23<br>9358:20<br>9365:15 | <b>priori</b> 9325:1,<br>17<br><b>pristine</b><br>9424:3<br><b>probabilities</b><br>9339:18<br><b>probability</b><br>9393:5<br><b>problem</b><br>9307:3 9389:23<br>9410:20<br>9411:13<br><b>problems</b><br>9306:3 9409:14<br><b>proceed</b><br>9306:25<br><b>proceeding</b><br>9351:8<br><b>proceedings</b><br>9322:5 9324:25<br>9333:10 9346:8<br>9355:7 9359:6<br>9394:8 9401:5<br>9445:15<br><b>produced</b><br>9332:6 9370:23,<br>24 9372:22<br>9438:18<br><b>product</b><br>9322:17<br>9396:15,22<br><b>production</b><br>9361:13<br><b>profound</b><br>9405:2<br><b>project</b> 9358:4<br><b>prominent</b><br>9415:9,14<br>9416:8 9437:8<br><b>prominently</b><br>9403:10<br>9427:13<br><b>prompted</b><br>9432:24<br><b>proper</b><br>9433:17 | <b>prophesied</b><br>9443:20<br><b>prophets</b><br>9443:20<br><b>proportion</b><br>9344:24 9361:7<br><b>propose</b><br>9306:21<br><b>proposed</b><br>9360:2<br><b>proposition</b><br>9436:25<br><b>provided</b><br>9356:10<br><b>Province</b><br>9327:22<br><b>psychologica<br/>l</b> 9321:24<br><b>publications</b><br>9376:20,21<br>9377:10,12<br><b>published</b><br>9354:15<br><b>purport</b><br>9331:21<br><b>purportedly</b><br>9386:19<br><b>purpose</b><br>9319:4 9375:23<br>9376:4 9402:19<br>9405:16<br><b>purposes</b><br>9365:19 9402:3,<br>15 9403:5<br>9405:6<br><b>pursue</b><br>9352:11<br><b>pursuing</b><br>9348:12<br><b>put</b> 9315:2,6<br>9316:13,14<br>9346:20 9355:8<br>9369:19<br>9379:19 9386:5<br>9404:10 9411:9<br>9422:2 9423:20<br>9430:11 9441:5 | 9444:11<br><hr/> <b>Q</b> <hr/> <b>quaint</b> 9404:19<br><b>qualification</b><br>9315:24<br><b>qualifying</b><br>9347:19<br><b>question</b><br>9323:16<br>9327:11<br>9338:22<br>9376:15 9383:2<br>9394:17 9401:8<br>9403:18,19<br>9406:19,20<br>9420:23<br>9430:18 9431:1<br>9432:5<br><b>quiet</b> 9402:1<br>9403:22<br><b>quote</b> 9407:16,<br>18 9408:16<br><b>quoted</b> 9374:5<br><b>quotes</b> 9358:9<br><b>quoting</b><br>9357:25<br>9415:24<br><b>Qur'an</b><br>9372:18<br><hr/> <b>R</b> <hr/> <b>rabbit</b> 9348:10<br><b>raconteur</b><br>9324:9 9405:4<br><b>raft</b> 9412:12<br><b>raise</b> 9316:7<br><b>raised</b> 9315:9<br>9320:24<br><b>raises</b> 9393:5<br>9410:19<br><b>range</b> 9335:25<br><b>rapid</b> 9366:19 | <b>rapids</b><br>9366:12,17<br>9370:6,7,16<br>9392:18 9398:4<br>9410:1<br><b>rare</b> 9336:15<br><b>Rashomon</b><br>9395:6,7<br><b>reach</b> 9344:11<br>9366:23<br>9418:25<br><b>reached</b><br>9387:2 9431:13<br>9445:8<br><b>read</b> 9317:8<br>9318:10<br>9372:23 9374:9<br>9394:9 9408:16<br>9417:21,22<br>9420:9,14<br>9422:24<br>9423:11<br>9425:22,24<br>9442:18,22<br><b>reading</b><br>9306:24<br><b>reads</b> 9426:2<br><b>ready</b> 9307:10<br><b>real</b> 9365:9<br>9411:2 9443:17,<br>21 9444:20,21<br><b>realize</b><br>9404:25<br><b>realized</b><br>9404:7,17<br><b>reason</b> 9325:5<br>9327:9,24<br>9341:14<br>9343:10,12,19<br>9350:14<br>9358:11<br>9369:20<br>9379:19 9387:9<br>9392:10<br>9435:17<br><b>reasonable</b><br>9364:21<br><b>reasoned</b><br>9427:20,21 |
|--|---|---|---|--|

|                       |                       |                        |                       |                       |
|-----------------------|-----------------------|------------------------|-----------------------|-----------------------|
| 9428:7                | 7 9328:7              | 9336:20                | 14,17,20,24           | <b>religions</b>      |
| <b>reasoning</b>      | 9337:22               | 9340:10,13             | 9311:3,7,11,15,       | 9439:18               |
| 9390:25               | 9339:25 9341:5        | 9345:5 9352:4          | 19,23 9312:2,6,       | <b>religious</b>      |
| 9431:25               | 9344:23               | 9354:12 9356:7         | 10,14,18,22           | 9321:21               |
| <b>reasons</b>        | 9350:23               | 9365:22 9389:1         | 9313:1,5,9,13,        | 9329:15               |
| 9318:10 9323:8        | 9383:15               | 9396:1 9423:15         | 17,21,25              | <b>relocate</b>       |
| 9348:23               | 9388:10               | 9429:3 9430:19         | 9314:4,8,9            | 9421:25               |
| 9359:17               | 9397:24               | <b>referring</b>       | 9317:21,23            | <b>remained</b>       |
| 9370:22               | 9415:15               | 9354:11                | 9357:11,12            | 9414:6                |
| <b>recall</b> 9363:20 | 9416:12 9425:8        | 9373:23                | 9367:13,14            | <b>remains</b>        |
| 9391:18               | 9434:21               | 9394:11                | <b>regular</b>        | 9335:18 9338:9        |
| 9394:10,16            | <b>recorded</b>       | 9406:16 9416:7         | 9348:12               | 9342:6 9359:11        |
| 9395:7 9417:17,       | 9341:2,8              | 9425:17                | <b>regular-sized</b>  | 9362:21               |
| 23 9428:20            | 9397:21               | 9426:20,21             | 9347:14               | 9379:25               |
| 9440:15               | 9409:17               | 9427:6,11              | <b>reinterpret</b>    | 9436:23               |
| 9442:11,15            | <b>recording</b>      | 9436:3                 | 9443:2                | <b>remarks</b>        |
| <b>recast</b> 9441:11 | 9373:7 9377:16        | <b>refers</b> 9330:25  | <b>reiterate</b>      | 9423:12               |
| <b>received</b>       | <b>records</b>        | 9334:3 9349:6          | 9372:19               | <b>remember</b>       |
| 9400:25               | 9333:17               | 9360:10                | <b>reiterated</b>     | 9426:14               |
| <b>recent</b> 9339:22 | 9337:13               | 9363:25                | 9417:18               | <b>remind</b>         |
| 9341:21 9428:1        | 9342:21               | 9371:14                | <b>reiterates</b>     | 9315:17               |
| 9434:14               | 9377:13               | 9373:17                | 9360:16               | 9318:17               |
| 9435:22               | 9383:17 9442:5        | <b>reflect</b> 9347:20 | <b>relate</b> 9369:14 | <b>reminded</b>       |
| 9439:14               | <b>recourse</b>       | 9323:24                | 9371:21               | 9389:4                |
| <b>recently</b>       | 9419:3                | 9353:21                | <b>related</b>        | <b>reminding</b>      |
| 9321:12 9420:9        | <b>recovered</b>      | <b>reflection</b>      | 9322:15               | 9315:25               |
| <b>recess</b>         | 9336:6 9342:20        | 9323:6                 | 9334:15 9335:4        | <b>remnants</b>       |
| 9384:11               | <b>red</b> 9392:10,16 | <b>reflects</b>        | 9367:22               | 9370:8                |
| <b>RECESSED</b>       | <b>redo</b> 9314:24   | 9337:23                | 9439:17               | <b>remote</b> 9383:8  |
| 9355:21               | <b>refer</b> 9336:17  | <b>regard</b>          | <b>relates</b> 9316:7 | <b>removed</b>        |
| 9384:13               | 9340:24 9351:9        | 9325:15                | 9360:24               | 9356:13,20            |
| 9424:17               | 9352:2 9370:5,        | 9335:10 9416:9         | 9366:10               | 9359:4 9401:4         |
| <b>recognize</b>      | 14 9371:18            | <b>region</b> 9368:24  | <b>relation</b>       | <b>repeat</b> 9315:14 |
| 9329:18               | 9372:21 9396:2        | 9371:6,13              | 9315:9 9322:5         | <b>repertoire</b>     |
| 9385:17               | 9418:18               | 9380:16                | 9324:24 9346:7        | 9403:10               |
| <b>recognized</b>     | <b>reference</b>      | 9393:16 9409:9         | 9363:21 9371:9        | <b>report</b>         |
| 9344:10 9406:8        | 9361:8 9364:16        | 9410:9 9411:22         | 9428:15               | 9316:11,17            |
| <b>recollects</b>     | 9388:23               | 9413:23                | <b>relationship</b>   | 9317:10,24            |
| 9438:25               | 9391:21 9427:8,       | 9428:25                | 9366:5                | 9319:1,5              |
| <b>reconstruct</b>    | 9 9430:24             | <b>regions</b>         | <b>relative</b>       | 9340:21               |
| 9347:7 9363:6         | <b>referenced</b>     | 9352:8                 | 9416:25               | 9341:13               |
| 9385:7 9442:22        | 9374:4                | <b>Registrar</b>       | <b>release</b>        | 9356:13,17,25         |
| <b>reconstructio</b>  | <b>references</b>     | 9306:12,18,23          | 9392:25               | 9358:3,4,10,20        |
| <b>n</b> 9346:14      | 9340:9,11             | 9307:4,6,10,13,        | <b>relevant</b>       | 9359:1,2,3            |
| <b>reconstructio</b>  | 9350:11               | 17,21,25               | 9377:24               | 9360:5,9,15           |
| <b>ns</b> 9432:17     | 9356:14 9357:1        | 9308:3,7,11,15,        | <b>reliability</b>    | 9368:7 9374:5         |
| <b>record</b> 9315:3, | 9418:1                | 18,21,24               | 9325:21               | 9378:9 9385:22        |
|                       | <b>referred</b>       | 9309:2,5,8,11,         |                       | 9394:4,5              |
|                       | 9321:13 9331:1        | 15,19,23               |                       |                       |
|                       | 9332:4,20,22          | 9310:1,4,8,11,         |                       |                       |

|   |   |   |  |   |
|---|---|---|--|---|
| 9401:4,17<br>9409:6 9417:20,<br>22,25 9418:5<br>9419:20<br>9430:21 9438:3 | 23<br><b>resisting</b><br>9419:11<br><b>resolution</b><br>9366:9<br><b>resolved</b><br>9324:1<br><b>respect</b><br>9318:11<br>9360:13 9388:7<br><b>respective</b><br>9417:14<br><b>response</b><br>9343:21 9375:8<br>9394:17<br>9403:19<br><b>rest</b> 9427:5<br><b>result</b> 9382:10<br>9418:13<br><b>resulting</b><br>9353:3<br><b>results</b> 9392:5<br><b>RESUMED</b><br>9355:22<br>9384:14<br>9424:18<br><b>retaining</b><br>9405:7<br><b>retelling</b><br>9423:9<br><b>retells</b> 9421:24<br><b>retracted</b><br>9359:5<br><b>retreat</b><br>9337:19<br><b>retrieve</b><br>9412:21<br><b>return</b> 9333:14<br><b>returned</b><br>9417:13<br><b>returning</b><br>9360:3<br><b>reversed</b><br>9413:16 | <b>review</b> 9319:5,<br>7 9353:12,16<br>9393:25<br><b>reviewed</b><br>9438:20<br><b>reviewing</b><br>9433:2<br><b>right-hand</b><br>9358:7<br><b>rigorously</b><br>9360:1<br><b>ripe</b> 9389:11<br><b>rise</b> 9341:10<br><b>rising</b> 9379:17<br><b>River</b> 9351:25<br>9366:2 9368:22<br>9369:3 9393:18<br>9398:14<br>9411:23<br>9437:12<br><b>rivers</b> 9379:15<br>9429:22<br><b>rock</b> 9392:17<br><b>rocks</b> 9370:7<br>9392:10,12,16<br>9408:21<br><b>Rogers</b> 9434:8<br><b>role</b> 9429:6<br>9435:25<br><b>ROM</b> 9434:9<br><b>Roman</b><br>9386:17<br><b>roots</b> 9437:24<br><b>Rose</b> 9400:16<br>9401:19<br>9403:20 9404:4<br><b>roughly</b><br>9316:11<br><b>row</b> 9315:18<br>9318:21 9395:2<br><b>Royal</b> 9415:11<br><b>Rudyard</b><br>9332:6<br><b>rule</b> 9338:13 | 9350:7,14<br>9383:6,20,23<br><b>ruling</b> 9315:7,<br>13<br><b>Ryerson</b><br>9361:23<br><hr/> <b>S</b> <hr/> <b>S0111</b><br>9307:13,16<br><b>S0174</b><br>9307:21,24<br><b>S0189</b> 9307:25<br>9308:2<br><b>S0190</b> 9308:3,<br>6<br><b>S0274</b> 9308:7,<br>10<br><b>S0340</b><br>9308:11,14<br><b>S0352</b><br>9308:15,17<br><b>S0361</b><br>9308:18,20<br><b>S0362</b><br>9308:21,23<br><b>S0363</b> 9308:24<br>9309:1<br><b>S0397</b> 9309:2,<br>4<br><b>S044</b> 9307:20<br><b>S0444</b> 9309:5,<br>7<br><b>S0548</b> 9309:8,<br>10<br><b>S0565</b><br>9309:11,14<br><b>S0722</b><br>9309:15,18<br><b>S0825</b><br>9309:19,22<br><b>S0831</b><br>9309:23,25 | <b>S0917</b> 9310:1,<br>3<br><b>S0951</b> 9310:4,<br>7<br><b>S0971</b> 9310:8,<br>10<br><b>S0972</b><br>9310:11,13<br><b>S0974</b><br>9310:14,16<br><b>S0995</b><br>9310:17,19<br><b>S1016</b><br>9310:20,23<br><b>S1085</b> 9310:24<br>9311:2<br><b>S1140</b> 9311:3,<br>6<br><b>S1196</b> 9311:7,<br>10<br><b>S1261</b><br>9311:11,14<br><b>S1292</b><br>9311:15,18<br><b>S1308</b><br>9311:19,22<br><b>S1328</b> 9311:23<br>9312:1<br><b>S1348</b> 9312:2,<br>5<br><b>S1373</b> 9312:6,<br>9<br><b>S1517</b><br>9312:10,13<br><b>S1530</b><br>9312:14,17<br><b>S1531</b><br>9312:18,21<br><b>S1575</b><br>9312:22,25<br><b>S1609</b> 9313:1,<br>4<br><b>S1624</b> 9313:5,<br>8 |
|---|---|---|--|---|

|  |  |   |  |   |
|--|--|---|--|---|
| <b>S1626</b> 9313:9,<br>12   | 2  | 9425:20   | <b>separate</b><br>9387:6,21<br>9418:13,17 | <b>shown</b> 9344:5<br>9362:6   |
| <b>S1780</b><br>9313:13,16   | <b>scarcely</b><br>9371:5  | <b>scrolls</b> 9442:7,<br>13,16 9443:1  | <b>separated</b><br>9387:15 9427:1,<br>10  | <b>shows</b><br>9413:20 9440:8  |
| <b>S1834</b><br>9313:17,20   | <b>schedule</b><br>9445:7  | <b>scrutinized</b><br>9360:1  | <b>September</b><br>9421:1                 | <b>sic</b> 9321:23<br>9335:18<br>9377:23 9387:3<br>9427:19  |
| <b>S1847</b><br>9313:21,24   | <b>scholar</b><br>9380:21<br>9415:19   | <b>search</b><br>9399:16<br>9400:13   | <b>series</b> 9319:11<br>9366:17           | <b>side</b> 9358:6,7<br>9388:15 9389:1<br>9390:15<br>9394:23,25<br>9417:8,9<br>9430:11  |
| <b>S1906</b> 9313:25<br>9314:3   | <b>scholarly</b><br>9326:9,20<br>9345:24<br>9353:17 9372:3<br>9374:6                   | <b>searched</b><br>9399:17  | <b>set</b> 9315:12<br>9430:23              | <b>sides</b> 9389:16  |
| <b>S1914</b> 9314:5,<br>7  | <b>scholars</b><br>9326:24<br>9331:14<br>9374:25 9375:2                                | <b>seaway</b><br>9366:14  | <b>sets</b> 9359:7                         | <b>sightings</b><br>9341:7,21   |
| <b>salient</b><br>9396:13  | <b>school</b> 9404:8,<br>9,12 9405:20,23   | <b>secondary</b><br>9425:3,6  | <b>Setting</b> 9368:5                      | <b>sign</b> 9337:25   |
| <b>salinity</b><br>9410:17   | <b>Schoolcraft</b><br>9388:12 9389:3,<br>14,19   | <b>section</b> 9360:8<br>9366:19 9409:6   | <b>settings</b><br>9321:20 9327:1          | <b>significant</b><br>9331:11 9420:3  |
| <b>salt</b> 9408:2   | <b>science</b><br>9329:1,8,11,24<br>9330:1 9335:8,<br>10 9364:23<br>9376:22<br>9382:18 | <b>secured</b><br>9362:12   | <b>severe</b> 9392:5                       | <b>similar</b><br>9350:13<br>9375:21<br>9380:14<br>9383:14<br>9386:22 9397:9<br>9399:10<br>9403:25 9428:7<br>9430:6,7   |
| <b>saltiness</b><br>9409:17  | <b>scientific</b><br>9329:14 9330:3<br>9433:17   | <b>seek</b> 9375:20<br>9376:16  | <b>severed</b><br>9427:4                   | <b>similarities</b><br>9335:3   |
| <b>salty</b> 9400:17<br>9401:9 9407:1,6<br>9408:13,23<br>9410:14,21,24   | <b>scientist</b><br>9359:10  | <b>seeking</b><br>9420:1  | <b>shaped</b><br>9392:17                   | <b>simply</b> 9326:2,<br>17 9327:6<br>9332:13<br>9340:24<br>9347:20<br>9358:12<br>9360:16<br>9364:20<br>9365:18,20<br>9366:25<br>9369:13 9382:3<br>9383:11 9392:7<br>9401:25 9411:8,<br>18 9419:4,18,24<br>9420:1 |
| <b>sand</b> 9380:14<br>9390:20<br>9429:12,13<br>9440:16  | <b>scientists</b><br>9398:9  | <b>sees</b> 9423:21   | <b>sheets</b><br>9337:18                   |   |
| <b>sapiens</b><br>9387:17  | <b>scope</b> 9364:25   | <b>selected</b><br>9317:11 9318:1   | <b>Shermer's</b><br>9329:7                 |   |
| <b>Sault</b> 9366:10,<br>11,18 9368:19<br>9369:20<br>9371:15<br>9388:14<br>9391:22<br>9392:18 9396:1<br>9397:7,21<br>9398:4,11 | <b>Scotland</b> 9335:24<br>9378:13 9384:7  | <b>selection</b><br>9360:14   | <b>shifted</b> 9380:5                      |   |
| <b>Saulteaux</b><br>9362:2   | <b>screen</b> 9366:9   | <b>self-identified</b><br>9438:5  | <b>shocked</b><br>9404:4                   |   |
| <b>SC0172</b><br>9317:5  | <b>scroll</b> 9360:22<br>9373:25 9401:7,<br>12,14,15<br>9403:15<br>9406:18<br>9407:21  | <b>Seneca</b><br>9386:17  | <b>shore</b> 9434:17,<br>18                |   |
| <b>SC109</b> 9365:15   |  | <b>sense</b> 9322:16<br>9323:20 9331:1,<br>4 9336:23<br>9337:5 9348:11<br>9359:20<br>9378:19<br>9401:19 9419:5,<br>10 9431:15 | <b>short</b> 9344:7<br>9348:24 9374:8      |   |
| <b>SC1610</b><br>9356:2  |  | <b>sensed</b><br>9325:25  | <b>short-term</b><br>9321:6 9353:13        |   |
| <b>scale</b> 9386:7<br>9390:13 9391:1,   |  | <b>sentence</b><br>9374:1   | <b>shorter-term</b><br>9321:10             |   |
|  |  | <b>sentences</b><br>9408:16 9411:6  | <b>shortly</b><br>9335:15                  |   |
|  |  |   | <b>show</b> 9431:17                        |   |
|  |  |   | <b>showed</b><br>9343:25<br>9399:21        |   |
|  |  |   | <b>showing</b><br>9361:12                  |   |

|   |                                    |                                      |   |   |
|---|------------------------------------|--------------------------------------|---|---|
| <b>sir</b> 9306:3<br>9318:17                            | <b>soft</b> 9429:9                 | 9402:15                              | <b>start</b> 9333:15                                | 18,20,22  |
| <b>sites</b> 9336:14<br>9338:5                          | <b>solid</b> 9444:18               | 9406:21,22                           | 9363:10   | 9350:2,10,13,   |
| <b>sitting</b> 9395:1                                   | <b>sort</b> 9329:5                 | 9407:15,20                           | 9413:13   | 16,19 9351:4  |
| <b>situ</b> 9431:6<br>9432:19                           | 9372:19 9395:6,<br>12 9399:25      | 9421:13                              | 9444:25   | 9355:8,16   |
| <b>situation</b><br>9433:18                             | 9400:8 9423:6                      | <b>specificity</b><br>9398:7 9409:13 | <b>started</b>                                      | 9356:22   |
| <b>size</b> 9341:4                                      | 9436:21                            | <b>specifics</b><br>9328:20          | 9318:14 9358:4                                      | 9357:21   |
| 9342:21 9343:2  | 9439:13                            | <b>specimen</b>                      | 9362:11   | 9358:15,16  |
| 9345:10   | <b>source</b>                      | 9334:12                              | 9376:19 9377:4,<br>16 9378:5                        | 9359:14   |
| 9347:14   | 9411:24 9425:3,<br>7,16            | 9343:18                              | 9410:12   | 9360:18   |
| 9377:19   | <b>sources</b>                     | <b>specimens</b>                     | 9411:16 9444:8                                      | 9361:13,19  |
| <b>skeletalized</b><br>9335:17                          | 9423:9,17                          | 9336:6,13                            | <b>starting</b>                                     | 9362:15,23  |
| <b>skeptic</b><br>9329:19                               | 9438:12                            | 9342:25                              | 9306:7  | 9363:3,4,6,9,10,<br>21 9368:23,25                               |
| <b>skeptical</b><br>9328:23 9329:2,<br>3 9427:22        | <b>south</b> 9366:11               | <b>speculate</b><br>9428:3           | <b>starts</b> 9425:20                               | 9369:2,4,10,14  |
| <b>skepticism</b><br>9329:3,8,16,21                     | 9378:25                            | <b>speculation</b><br>9428:10        | <b>state</b> 9319:12                                | 9370:5,13,18  |
| <b>skull</b> 9343:15                                    | 9439:11                            | <b>spelling</b><br>9373:22           | <b>stated</b> 9324:18                               | 9371:21 9372:1,<br>5,6,11 9374:7                                |
| <b>small</b> 9343:25                                    | <b>southern</b>                    | <b>spellings</b><br>9373:16          | 9358:24,25  | 9375:7,25   |
| 9345:21 9372:1  | 9336:1 9373:21                     | <b>spent</b> 9326:12                 | 9359:1,3 9421:2                                     | 9376:4,5,11,17  |
| 9387:21   | 9427:11                            | 9328:17                              | <b>statement</b>                                    | 9377:1,3,13,17  |
| 9390:13 9391:1  | 9434:10,11                         | 9382:14                              | 9357:23   | 9378:7,19   |
| <b>small-scale</b><br>9414:22                           | 9436:13                            | <b>spit</b> 9440:16                  | <b>statements</b>                                   | 9383:9 9384:1,2   |
| <b>smashed</b><br>9386:19 9387:7                        | <b>southwestern</b><br>9428:24     | <b>Split</b> 9380:2                  | 9358:8  | 9385:12   |
| <b>Smith</b> 9425:16                                    | <b>Spain</b> 9387:4                | <b>spoke</b> 9336:24                 | <b>States</b> 9336:1                                | 9386:10,11,15,<br>22,25 9387:1,<br>11,20 9393:5,23              |
| 9427:21 9430:3  | <b>spans</b> 9444:15               | 9351:13                              | <b>Ste</b> 9366:10,12                               | 9394:19   |
| <b>snippet</b><br>9399:3,6<br>9401:24<br>9408:25 9411:5 | <b>speak</b> 9351:13<br>9368:13,14 | 9435:11                              | 9368:19   | 9395:15 9396:8,<br>11,25 9399:10,<br>18 9400:2,8,11             |
| <b>snippets</b><br>9399:10                              | <b>speakers</b><br>9351:17         | <b>spots</b> 9374:19                 | 9388:14 9397:7,<br>21                               | 9401:24   |
| <b>so-called</b><br>9422:13                             | <b>species</b>                     | <b>spring</b> 9360:25                | <b>step</b> 9371:17                                 | 9402:14,18,24,<br>25 9403:3,12,<br>13,20 9404:2,<br>10,13,18,24 |
| <b>SO44</b> 9307:17                                     | 9334:10,11,18                      | <b>squash</b> 9370:9                 | 9376:23   | 9405:8 9406:4,6   |
| <b>social</b> 9352:24                                   | 9340:12,23                         | <b>St</b> 9366:2                     | <b>steps</b> 9351:3                                 | 9409:8 9411:13,<br>14,19,24                                     |
| <b>sociopolitical</b><br>9352:12                        | 9342:25                            | 9409:23                              | <b>sticks</b> 9427:12                               | 9412:1,7  |
|   | 9344:20,21                         | <b>stance</b> 9325:1<br>9329:15      | <b>stimulated</b>                                   | 9413:17,25  |
|   | 9345:7,8,18                        | <b>stand</b> 9419:12                 | 9342:6 9343:3                                       | 9414:2,9,11,13,<br>18,23,25                                     |
|   | 9347:23                            | <b>standpoint</b><br>9329:20         | <b>stop</b> 9392:25                                 | 9416:22 9424:1  |
|   | 9348:14 9414:6,<br>16              | <b>stands</b><br>9418:23             | 9410:1  | 9429:6 9432:9,<br>15,20,22                                      |
|   | <b>specific</b>                    | <b>Stanley</b><br>9418:18            | <b>stops</b> 9444:23                                | 9435:11,21  |
|   | 9340:9 9345:18                     |                                      | <b>stories</b>                                      | 9438:8 9439:5,<br>7,8,10 9442:6                                 |
|   | 9358:16,17                         |                                      | 9317:10,25  | 9443:5  |
|   | 9375:14 9393:4                     |                                      | 9320:20   | <b>storm</b> 9426:24,<br>25 9427:4                              |
|   | 9411:18 9412:8                     |                                      | 9322:22   | <b>story</b> 9322:15  |
|   | 9414:13                            |                                      | 9328:10 9331:7                                      | 9324:10   |
|   | <b>specifically</b>                |                                      | 9332:1,7,9,17                                       | 9339:21   |
|   | 9355:15 9370:6                     |                                      | 9340:8 9341:10,<br>22 9342:1,7,8,<br>10,17 9343:1,3 | 9344:16   |
|   | 9388:19                            |                                      | 9345:1 9346:1                                       |   |
|   | 9391:22                            |                                      | 9347:25 9348:7,<br>9 9349:9,13,16,                  |   |

|   |   |   |  |   |
|---|---|---|--|---|
| 9346:11 9348:2,<br>4,19 9349:4<br>9360:3,21<br>9361:22,23<br>9362:12<br>9363:25<br>9364:19<br>9367:20,21<br>9368:3,8<br>9369:8,15,16<br>9370:24 9371:7<br>9374:11<br>9375:15,17,21,<br>22 9380:1,18<br>9381:8,14,23<br>9383:3,10,12,14<br>9384:21 9385:1<br>9387:10 9391:6<br>9392:7,15<br>9393:16 9395:8<br>9396:18,22<br>9397:6,9,15,25<br>9399:2,3,4<br>9400:17 9401:2,<br>9,11,20,23<br>9402:9,12<br>9405:4,15<br>9408:1 9409:3,<br>14 9411:7,17<br>9412:5 9413:3,8<br>9414:4,5<br>9415:16 9416:2,<br>3,6,9,21 9417:2<br>9421:1,11,13,<br>22,24 9422:1,3,<br>6,17,22,24<br>9423:2,10,18,20<br>9424:3,23<br>9425:1 9429:14<br>9431:6 9434:24<br>9440:12,24<br>9441:2,4,8,11,<br>14,20 9442:2<br>9443:9,11,13<br>9444:2 | 9371:18,20<br>9372:4 9395:14<br>9396:11,25<br>9414:1 9432:9<br><b>storytelling</b><br>9405:3<br><b>Strait</b> 9385:24<br>9388:23,25<br><b>straits</b> 9386:2<br><b>strange</b><br>9328:4<br><b>stray</b> 9419:21<br><b>stream</b><br>9381:18 9386:8<br><b>streams</b><br>9390:14<br><b>strengthen</b><br>9363:2<br><b>stress</b> 9328:17<br>9354:18 9435:2<br><b>stressed</b><br>9324:23<br><b>stretch</b> 9382:8<br>9411:2<br><b>strikes</b><br>9405:13<br>9410:15<br>9438:23<br><b>striking</b><br>9331:22<br><b>strong</b> 9411:9<br><b>struck</b> 9419:3<br>9433:6<br><b>structure</b><br>9412:14,23<br>9413:10<br><b>structures</b><br>9413:9<br><b>students</b><br>9436:4<br><b>studied</b><br>9413:17<br><b>studies</b><br>9428:19 | <b>study</b> 9353:10,<br>11<br><b>stuff</b> 9361:16<br>9377:18<br>9433:14<br><b>subject</b><br>9306:20<br>9316:12<br>9355:17<br>9396:17<br>9436:20<br><b>subjectivity</b><br>9410:20<br><b>submissions</b><br>9306:20<br><b>submitted</b><br>9358:5<br><b>subtract</b><br>9421:24<br><b>successful</b><br>9412:19<br>9413:12<br><b>suddenly</b><br>9423:6,21<br><b>sufficient</b><br>9354:21<br><b>suggest</b><br>9330:2 9335:8<br>9375:11 9382:2,<br>5 9390:6<br>9395:23<br>9405:14 9406:5<br><b>suggested</b><br>9436:21 9444:6<br><b>suggesting</b><br>9365:4<br><b>suggestion</b><br>9404:24<br><b>suggests</b><br>9325:16<br>9363:15<br>9432:19<br><b>suit</b> 9372:5,6<br><b>summarize</b><br>9340:1 9400:5<br><b>summary</b><br>9358:8 | <b>superimpose</b><br>d 9365:21<br><b>Superior</b><br>9365:25 9369:1,<br>22,24 9370:3<br>9371:6,13<br>9381:1 9392:11<br>9428:24<br>9429:21<br>9440:22<br>9441:24 9442:1<br><b>support</b><br>9323:21<br><b>supposed</b><br>9356:22<br><b>surface</b><br>9419:4<br><b>surges</b><br>9379:12<br><b>surprised</b><br>9422:1<br><b>surprising</b><br>9369:8 9398:7<br>9414:18<br><b>surprisingly</b><br>9412:3,7 9413:7<br><b>surrounding</b><br>9352:8<br><b>survived</b><br>9414:5<br><b>suspect</b><br>9419:14<br><b>sustain</b> 9431:4<br><b>symbolic</b><br>9323:4 9443:19<br><b>symbols</b><br>9321:25<br>9442:13<br><b>system</b> 9369:3<br>9405:20,24<br>9410:6 9443:3 | <b>takes</b> 9344:17,<br>19<br><b>Taking</b><br>9371:17<br><b>tale</b> 9374:17<br>9399:6<br><b>tales</b> 9342:4<br><b>talk</b> 9428:18<br>9435:20<br><b>talked</b><br>9388:17,19<br>9391:19 9393:8<br>9423:22<br>9428:14<br><b>talking</b><br>9374:22<br>9377:12,13<br>9384:17<br>9395:22 9410:4<br>9411:5 9416:5<br>9420:25 9422:8<br>9428:6<br><b>talks</b> 9424:8<br><b>task</b> 9375:6,8,<br>19 9376:14<br>9377:17<br><b>taught</b> 9436:3<br><b>teachings</b><br>9404:9<br><b>team</b> 9306:7<br><b>tears</b> 9400:17<br>9408:13,21<br><b>technical</b><br>9323:25<br><b>technology</b><br>9306:3,9<br>9346:22<br><b>teeth</b> 9343:15<br>9361:6<br><b>tellers</b> 9404:25<br><b>telling</b> 9359:18<br>9396:11<br>9397:16 9405:5,<br>16 9423:10<br>9424:10 9431:6<br>9441:8 |
| <b>T</b>  |   |   |  |   |
| <b>table</b> 9357:5,13<br>9358:12<br>9399:20  |   |   |  |   |

|   |  |  |  |  |
|---|--|--|--|--|
| <p><b>tells</b> 9340:22<br/>                 9374:10<br/>                 9396:18 9443:9</p> <p><b>temporal</b><br/>                 9321:8 9327:13<br/>                 9336:7 9439:12</p> <p><b>temporarily</b><br/>                 9352:23</p> <p><b>temptation</b><br/>                 9419:11</p> <p><b>tempting</b><br/>                 9380:18</p> <p><b>ten</b> 9346:13<br/>                 9431:9,18</p> <p><b>tenable</b><br/>                 9436:25</p> <p><b>tend</b> 9331:16</p> <p><b>tendency</b><br/>                 9347:20</p> <p><b>tender</b> 9315:12<br/>                 9316:1,2,3</p> <p><b>tendering</b><br/>                 9315:10</p> <p><b>term</b> 9321:1<br/>                 9322:8 9330:5,<br/>                 13 9334:4<br/>                 9337:9 9349:6<br/>                 9351:11 9352:1<br/>                 9366:25 9418:2<br/>                 9429:8</p> <p><b>termination</b><br/>                 9441:21,25</p> <p><b>terminus</b><br/>                 9440:14</p> <p><b>terms</b> 9322:10<br/>                 9369:12 9383:8<br/>                 9409:13<br/>                 9421:10 9427:6</p> <p><b>testified</b><br/>                 9440:16</p> <p><b>testimony</b><br/>                 9315:3 9316:8<br/>                 9317:17 9357:2<br/>                 9393:25 9394:8,<br/>                 11 9395:13<br/>                 9400:24 9401:6,<br/>                 17 9417:19<br/>                 9423:12</p> | <p>9428:21</p> <p><b>thaw</b> 9360:25</p> <p><b>themes</b><br/>                 9372:12 9435:8,<br/>                 13</p> <p><b>theoretical</b><br/>                 9327:23 9328:1,<br/>                 14 9338:9<br/>                 9354:22</p> <p><b>theoretically</b><br/>                 9327:15 9339:7<br/>                 9355:1</p> <p><b>thereof</b><br/>                 9409:13</p> <p><b>thick</b> 9337:18</p> <p><b>thigh</b> 9361:4</p> <p><b>thing</b> 9316:6<br/>                 9324:22<br/>                 9339:16<br/>                 9354:18 9372:8<br/>                 9375:1 9382:4,<br/>                 13 9395:12,17<br/>                 9399:12,25<br/>                 9403:25 9404:6,<br/>                 11 9405:21<br/>                 9409:7 9428:14<br/>                 9433:6 9438:22</p> <p><b>things</b> 9325:22<br/>                 9330:25 9332:3,<br/>                 10,15 9349:11<br/>                 9358:16<br/>                 9359:16<br/>                 9363:19<br/>                 9366:15<br/>                 9371:11<br/>                 9392:14 9396:5<br/>                 9421:25 9424:7<br/>                 9430:8</p> <p><b>thinking</b><br/>                 9404:19 9428:6</p> <p><b>Thirdly</b><br/>                 9341:24</p> <p><b>thought</b><br/>                 9332:24<br/>                 9366:22<br/>                 9398:18 9444:7</p> <p><b>thousand</b><br/>                 9346:13<br/>                 9380:17 9431:9,</p> | <p>18</p> <p><b>thousands</b><br/>                 9321:2 9353:24<br/>                 9372:10 9382:7,<br/>                 10 9390:17,18<br/>                 9400:4 9412:1<br/>                 9436:7,18,24</p> <p><b>Thunder</b><br/>                 9393:16</p> <p><b>tidal</b> 9379:11</p> <p><b>tides</b> 9379:7,8</p> <p><b>Tigris–euphrates</b> 9411:23</p> <p><b>time</b> 9306:10,<br/>                 25 9324:2<br/>                 9327:2,19<br/>                 9328:7,8,11,18<br/>                 9332:15,22<br/>                 9334:17<br/>                 9336:10,18<br/>                 9337:17<br/>                 9338:16 9345:5<br/>                 9353:17 9354:3,<br/>                 5 9355:3,14,19<br/>                 9366:13<br/>                 9372:20 9373:6<br/>                 9376:18<br/>                 9380:13<br/>                 9381:10<br/>                 9382:14 9383:8<br/>                 9387:15<br/>                 9389:24 9394:6<br/>                 9396:4 9397:18<br/>                 9401:22<br/>                 9402:23 9403:4,<br/>                 25 9405:3,9<br/>                 9408:15<br/>                 9411:13<br/>                 9414:14<br/>                 9424:12 9430:2<br/>                 9436:7 9445:2,4</p> <p><b>timeframe</b><br/>                 9327:13</p> <p><b>times</b> 9322:18<br/>                 9339:22<br/>                 9341:21 9351:6<br/>                 9362:9 9390:17,<br/>                 18 9414:22<br/>                 9418:3 9430:19<br/>                 9434:14<br/>                 9439:14,15</p> | <p><b>title</b> 9316:25<br/>                 9320:2 9373:9,<br/>                 17</p> <p><b>titles</b> 9357:20</p> <p><b>Tobermory</b><br/>                 9417:5,10,15<br/>                 9419:1 9421:4,<br/>                 7,14 9422:11</p> <p><b>today</b> 9335:6<br/>                 9337:1 9340:14<br/>                 9347:9 9373:13<br/>                 9392:11<br/>                 9398:15 9410:6<br/>                 9427:2,13,17</p> <p><b>told</b> 9325:10<br/>                 9332:1 9339:21<br/>                 9341:22<br/>                 9342:12,19<br/>                 9343:3 9345:6<br/>                 9349:17,19,21<br/>                 9355:16<br/>                 9358:16<br/>                 9360:19,21<br/>                 9372:5 9376:1,<br/>                 11 9393:16,18<br/>                 9395:8 9396:16,<br/>                 23 9397:6,8,11<br/>                 9400:15,16<br/>                 9402:12,18<br/>                 9403:21<br/>                 9404:11 9411:7<br/>                 9412:1 9422:22,<br/>                 25 9424:1<br/>                 9432:9 9441:2,<br/>                 14,18,20 9442:2<br/>                 9443:13</p> <p><b>tomorrow</b><br/>                 9306:7 9445:13</p> <p><b>top</b> 9412:22</p> <p><b>topic</b> 9384:19</p> <p><b>topics</b> 9357:18</p> <p><b>topography</b><br/>                 9366:16</p> <p><b>tore</b> 9360:25</p> <p><b>Toronto</b><br/>                 9426:15,21,25<br/>                 9427:3,6 9436:4</p> <p><b>totally</b> 9395:10</p> <p><b>touch</b> 9318:13</p> | <p>9328:21</p> <p><b>touching</b><br/>                 9320:23</p> <p><b>traces</b> 9337:14</p> <p><b>tradition</b><br/>                 9320:3,5,8,23<br/>                 9322:25 9323:3<br/>                 9325:2,10<br/>                 9333:17<br/>                 9339:10<br/>                 9382:12<br/>                 9396:15<br/>                 9398:24<br/>                 9411:11<br/>                 9416:15,17,20<br/>                 9423:7 9424:25<br/>                 9425:3,5,7,9<br/>                 9426:3 9430:13<br/>                 9439:25<br/>                 9442:11,20</p> <p><b>traditions</b><br/>                 9317:11 9318:1<br/>                 9319:11 9321:1,<br/>                 5,6,7,10,13,16,<br/>                 18 9322:7,10<br/>                 9323:9,12<br/>                 9324:6,19,21<br/>                 9325:7,12,21,24<br/>                 9326:4,23<br/>                 9328:24 9330:4<br/>                 9333:9 9340:5<br/>                 9353:9,14<br/>                 9354:7,11<br/>                 9357:7,14<br/>                 9358:13 9368:6<br/>                 9391:15<br/>                 9398:21<br/>                 9399:19<br/>                 9413:21<br/>                 9424:11 9430:7,<br/>                 22 9431:14,21,<br/>                 23 9433:4<br/>                 9437:4,15<br/>                 9438:19<br/>                 9442:15 9443:1<br/>                 9444:25</p> <p><b>traditions'</b><br/>                 9359:25 9431:4,<br/>                 24</p> <p><b>trail</b> 9427:15</p> <p><b>trained</b> 9437:5</p> |
|---|--|--|--|--|

|                       |                        |                       |                        |                        |
|-----------------------|------------------------|-----------------------|------------------------|------------------------|
| <b>traits</b> 9358:17 | <b>turn</b> 9325:14    | <b>underlying</b>     | <b>usual</b> 9355:19   | <b>versions</b>        |
| <b>trajectories</b>   | 9363:8 9398:20,        | 9431:3                | 9369:20                | 9367:23                |
| 9372:12               | 22 9411:10             | <b>understand</b>     | <b>utterly</b> 9382:13 | 9368:17                |
| <b>transcribed</b>    | 9424:22                | 9306:12               | _____                  | 9375:21                |
| 9422:18 9425:9        | 9430:18                | 9317:15               | <b>V</b>               | 9393:13                |
| <b>transcript</b>     | <b>turned</b> 9407:1,  | 9356:25               | _____                  | 9439:25                |
| 9394:1,7              | 6                      | 9365:11               | <b>V-1</b> 9315:25     | <b>vestigial</b>       |
| 9400:20,21            | <b>turning</b>         | 9394:14 9403:9        | <b>Valley</b> 9349:22  | 9346:15                |
| 9401:3 9403:16        | 9347:14 9401:9         | 9404:20               | 9397:9,10              | <b>viable</b> 9340:4   |
| 9406:14 9420:7,       | <b>turns</b> 9408:23   | 9411:11 9417:1        | <b>variability</b>     | <b>vicinity</b>        |
| 14,18 9422:19         | <b>Turtle</b> 9412:24  | 9419:8 9422:23        | 9375:24                | 9367:25 9368:4         |
| <b>transcripts</b>    | <b>type</b> 9331:6,18, | 9433:10               | <b>variant</b>         | 9371:15                |
| 9422:24               | 19 9332:19             | <b>understanda</b>    | 9398:16                | 9379:24                |
| <b>translation</b>    | 9334:12                | <b>ble</b> 9440:2     | 9400:14                | 9380:19 9385:2         |
| 9340:10               | 9336:18                | <b>understandin</b>   | <b>variants</b>        | 9398:13 9417:4         |
| <b>transmission</b>   | 9343:18                | <b>g</b> 9323:5,11    | 9368:8,10,12,13        | 9422:9                 |
| 9382:11               | 9344:24                | 9333:5,6              | 9375:17                | <b>view</b> 9369:9     |
| <b>transmitting</b>   | <b>types</b> 9331:6,   | 9339:25               | 9391:14,21,23          | 9381:13 9382:7         |
| 9373:7                | 15 9370:11             | 9367:19 9395:5,       | 9392:4 9393:11         | 9409:5 9415:23         |
| <b>travelers</b>      | 9393:19                | 10,13 9400:19         | 9399:18,22             | 9416:7 9430:5          |
| 9410:8                | 9395:15                | 9418:9 9424:9         | 9400:12                | <b>viewed</b>          |
| <b>travelled</b>      | _____                  | <b>understands</b>    | 9428:21,23             | 9401:20                |
| 9370:1 9389:8         | <b>U</b>               | 9370:2 9411:8         | <b>variation</b>       | <b>views</b> 9354:20   |
| <b>travelling</b>     | <b>U.S.</b> 9367:2     | <b>understood</b>     | 9397:22                | 9405:22 9415:1,        |
| 9388:18               | 9392:12                | 9335:12 9390:2        | <b>variations</b>      | 15                     |
| <b>treasures</b>      | <b>ubiquitous</b>      | 9418:20 9420:1        | 9371:18,25             | <b>virtually</b>       |
| 9404:21               | 9344:22                | 9435:23               | 9375:7 9394:19         | 9412:4                 |
| <b>treating</b>       | 9371:13 9400:2,        | 9443:16               | 9397:16,17,20          | <b>virtue</b> 9441:6   |
| 9406:9                | 9 9414:19              | <b>undifferentiat</b> | 9413:4 9414:6          | <b>visit</b> 9427:18   |
| <b>trial</b> 9314:18  | <b>ubiquity</b>        | <b>ed</b> 9336:22     | 9416:23 9443:8         | <b>visual</b> 9434:12  |
| 9315:5 9357:23        | 9414:11                | <b>unique</b>         | <b>varies</b> 9369:6   | <b>visualize</b>       |
| <b>Tribes</b> 9373:11 | <b>unable</b> 9399:9   | 9416:24               | <b>variety</b> 9372:5  | 9440:11                |
| <b>Trigger</b>        | <b>unanimous</b>       | <b>University</b>     | 9413:3                 | <b>Vitaliano</b>       |
| 9433:25               | 9372:4                 | 9436:3                | <b>variously</b>       | 9330:19,24             |
| <b>true</b> 9324:20   | <b>unchanged</b>       | <b>unscientific</b>   | 9370:8                 | 9331:19                |
| 9342:7 9401:24        | 9414:7 9436:24         | 9329:4                | <b>vary</b> 9375:18    | <b>vitiated</b> 9432:4 |
| <b>truth</b> 9322:10  | <b>uncommon</b>        | <b>unsuccessful</b>   | <b>vast</b> 9413:16    | <b>viva</b> 9394:8     |
| 9359:19 9426:7        | 9348:25                | 9413:15               | <b>verb</b> 9367:6     | <b>voce</b> 9394:8     |
| <b>truths</b> 9329:17 | 9350:21                | <b>unusual</b>        | <b>verbatim</b>        | <b>voir</b> 9314:17    |
| <b>tune</b> 9347:4    | <b>uncovered</b>       | 9402:14,16            | 9358:8 9372:19         | 9315:4,9               |
| <b>tunnel</b> 9320:2  | 9342:8,22              | 9438:12               | 9401:16                | 9324:17                |
| 9416:16 9417:4,       | <b>underground</b>     | <b>upheaval</b>       | <b>version</b>         | <b>volume</b>          |
| 6,10,15 9418:25       | 9421:12                | 9331:11               | 9367:24                | 9433:23                |
| 9419:3,5              | <b>underlies</b>       | <b>upper</b> 9386:1   | 9379:20 9392:1         | <b>voluminous</b>      |
| 9421:3,7,20           | 9431:12,20             | <b>upscaling</b>      | 9393:9 9399:8,         | 9341:25                |
| 9422:9,10,11          | 9432:3                 | 9391:9                | 13 9439:24             | 9376:16 9377:6         |
|                       |                        | <b>upstream</b>       | 9440:3                 |                        |
|                       |                        | 9370:19               |                        |                        |



|  |  |   |   |   |   |
|--|--|---|---|---|---|
| <b>von</b> 9314:19<br>9315:19,24<br>9316:8 9317:2,<br>12 9318:3,9,25<br>9319:15<br>9320:22<br>9356:12<br>9357:17<br>9367:17<br>9384:17<br>9419:18<br>9424:22 | 9407:20<br>9410:11<br>9412:17<br><b>watershed</b><br>9397:10,11<br><b>waterways</b><br>9379:4<br><b>ways</b> 9321:18<br>9322:2 9396:12<br>9397:1<br><b>wealth</b><br>9438:17<br><b>weigh</b> 9433:11,<br>12<br><b>well-known</b><br>9371:23<br>9376:21<br>9434:15<br><b>went...he</b><br>9404:3<br><b>west</b> 9328:3<br>9335:22<br>9349:17 9350:5<br>9351:19 9384:3,<br>8 9410:14<br>9436:11 9439:8<br>9441:24,25<br><b>western</b><br>9397:12,13<br>9437:24<br>9440:22<br><b>whatsoever</b><br>9358:23<br>9363:18<br><b>Whitecloud</b><br>9424:24<br><b>wide</b> 9413:23<br><b>wider</b> 9402:11<br><b>wife</b> 9391:24,25<br>9397:3<br><b>will-say</b><br>9357:22 9394:5<br><b>William</b><br>9437:23 9441:1,<br>4 9443:13,22,25<br><b>Wisconsin</b><br>9428:25 | 9439:24 9440:2<br>9441:18<br><b>witnessed</b><br>9331:8,12<br>9332:22<br>9385:15<br><b>witnesses</b><br>9351:7 9432:10<br><b>witnessing</b><br>9331:10 9396:9<br><b>women</b><br>9352:18,22<br><b>wonderful</b><br>9414:3<br><b>wondering</b><br>9445:1<br><b>wood</b> 9363:16<br><b>word</b> 9429:8<br><b>wording</b><br>9409:3<br><b>words</b> 9322:12<br>9359:1 9402:2<br><b>work</b> 9324:24<br>9374:24<br>9376:22 9402:2<br><b>worked</b><br>9415:11 9434:8<br><b>working</b><br>9306:9<br><b>works</b> 9424:6<br><b>world</b> 9342:3,<br>15 9347:3<br>9366:18 9379:7,<br>16 9385:9,12<br>9387:24 9388:1<br>9400:4 9405:22<br>9411:20 9412:9,<br>11,24 9413:14<br>9416:1,24<br>9443:21<br>9444:21<br><b>wrapping</b><br>9382:23<br><b>write</b> 9319:1<br><b>writer</b> 9427:20<br>9438:24 | <b>writers</b><br>9438:13,14<br>9440:25<br><b>writing</b><br>9361:17<br>9438:14,16<br><b>written</b> 9319:8<br>9400:24<br>9401:17 9409:4<br>9413:5 9426:23<br>9427:16 9434:7<br>9441:7<br><b>wrong</b> 9365:12<br><b>wrote</b> 9326:13<br>9330:20<br>9341:13<br>9415:12 9434:9<br>9435:5 9436:20<br>9437:14 | <hr/> <b>W</b> <hr/> <b>W.W.</b> 9425:16<br><b>walk</b> 9419:4<br>9427:14<br><b>walks</b> 9315:18<br>9417:6<br><b>wampum</b><br>9442:9<br><b>wanted</b><br>9314:15,18<br>9332:12<br>9369:14<br>9377:25<br>9384:19<br><b>war</b> 9435:12<br><b>Warren</b><br>9437:23 9441:1,<br>4 9443:13,22<br>9444:1<br><b>water</b> 9365:24<br>9366:19 9370:2<br>9379:8,13,15,<br>16,17 9380:6,25<br>9381:6 9386:20,<br>21 9387:22<br>9406:25 9407:5<br>9408:2,23<br>9410:23<br>9418:11,14,17<br>9419:6 9426:12<br><b>waterfalls</b><br>9320:19<br><b>waters</b><br>9369:23<br>9390:15<br>9406:22 | <hr/> <b>Y</b> <hr/> <b>years</b> 9321:2<br>9326:5 9327:17,<br>18 9328:9<br>9333:18<br>9335:13<br>9337:24<br>9338:12<br>9346:13<br>9353:25<br>9380:17 9382:7,<br>10 9387:17<br>9411:4 9412:2<br>9414:21<br>9420:11 9431:9,<br>18 9436:8,18,24<br>9444:9<br><b>Young</b><br>9361:23<br><b>Younger</b><br>9386:17<br><b>Yukon</b> 9343:24<br>9344:1 |
|--|--|---|---|---|---|