

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

DAY 20 / VOLUME 20
June 11, 2019



77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

1 Court File No. 94-CQ-50872CM

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N:

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

6 - and -

7 THE ATTORNEY GENERAL OF CANADA,
7 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, THE
8 CORPORATION OF THE COUNTY OF GREY, THE
8 CORPORATION OF THE COUNTY OF BRUCE, THE
9 CORPORATION OF THE MUNICIPALITY OF NORTHERN
9 BRUCE PENINSULA, THE CORPORATION OF THE TOWN OF
10 SOUTH BRUCE PENINSULA, THE CORPORATION OF THE
10 TOWN OF SAUGEEN SHORES, and THE CORPORATION OF
11 THE TOWNSHIP OF GEORGIAN BLUFFS
11 Defendants
12

13 Court File No. 03-CV-261134CM1

14 A N D B E T W E E N:

15 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
15 SAUGEEN FIRST NATION
16 Plaintiffs

16 - and -

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

19

20 -----

21 --- This is VOLUME 20/DAY 20 of transcript of
21 the trial proceedings in the above-noted matter,
22 being held at the Superior Court of Justice, 330
22 University Avenue, Courtroom 5-1, Toronto,
23 Ontario, on the 11th day of June 2019.

23 -----

24 B E F O R E:

25 The Honourable Justice Wendy M. Matheson

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

2 Renee Pelletier, Esq., for the Plaintiffs,
3 & Chris Evans, Esq., The Chippewas of
4 Saugeen First
5 Nation, and the
6 Chippewas of Nawash
7 First Nation.

8
9 Michael Beggs, Esq., for the Defendant,
10 & Michael McCulloch, Esq., Attorney General
11 & Barry Ennis, Esq., of Canada.

12
13
14 David Feliciant, Esq., for the Defendant,
15 & Jennifer Le Pan, Esq., Her Majesty the
16 & Richard Ogden, Esq., Queen in Right of
17 & Julia McRandall, Esq., Ontario.

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1 --- Upon commencing at is 10:03 a.m.

10:03:03 2 THE COURT: Morning, counsel. If the
10:03:05 3 witness could come forward, sir. Thank you.

10:03:11 4 ERIC HINDERAKER: PREVIOUSLY SWORN.

5 CROSS-EXAMINATION BY MR. McCULLOCH:

10:03:27 6 (Continued)

10:03:37 7 Q. Professor Hinderaker, without
10:03:40 8 necessarily taking you to the transcript,
10:03:43 9 although I found it very useful, I'd like to
10:03:46 10 summarize where I think we left off and explain
10:03:53 11 where I hope to go onwards.

10:03:56 12 A. Good, thank you.

10:03:58 13 Q. Leaving aside the debate about
10:04:00 14 what is a treaty, I think we explored that about
10:04:03 15 as far as we're going to get. I started to ask
10:04:09 16 you about the 18th century colonial policy of at
10:04:15 17 least trying to interpose itself between private
10:04:23 18 purchasers and First Nations, and that was an
10:04:24 19 ongoing if not always successful policy?

10:04:29 20 A. Yes.

10:04:33 21 Q. And we talked about how much the
10:04:36 22 same spirit about land claims, lawful claims,
10:04:42 23 whatever that meant, was articulated in the
10:04:47 24 exchanges between Johnson and a range of First
10:04:52 25 Nations, including Anishinaabe, at Detroit in

1 1761, right?

2 A. Yes.

3 Q. And that brings us,
4 chronologically at least, to the first topic I
5 want to talk about, still within the context of
6 what happened at Niagara, of the Royal
7 Proclamation. Now, we're going to hear a great
8 deal about the Royal Proclamation over the next
9 month. I'd like to focus in on some of your
10 comments about the -- in order to put the issues
11 clearly into play. If I could ask my colleague
12 to take me to page 31 and 32. There we are.

13 And the issue that I'd like to ask you
14 about is the novelty of the Royal Proclamation.
15 They talk about it being a first attempt to
16 articulate a comprehensive policy regarding the
17 vast new western domains that had been granted
18 to Britain by France and Spain in the Treaty of
19 Paris in 1763.

20 Now, the reorganization of the
21 colonial government, we can leave aside whether
22 there was anything particularly novel in that.
23 Yes, I will avoid being sidetracked into a
24 debate about the novelty of the application to
25 the now Province of Quebec.

10:06:40 1 But I think you would agree, I hope,
10:06:41 2 that its principles about the recognition of
10:06:49 3 lawful claims to land and the reservation to the
10:06:52 4 Crown of dealings with surrenders is not
10:07:00 5 entirely novel?

10:07:03 6 A. Yeah, I would agree that it's not
10:07:05 7 entirely novel. I guess when I describe this as
10:07:08 8 a first attempt at a comprehensive policy, it is
10:07:12 9 the first time that there is a proclamation
10:07:15 10 directly from the King articulating these
10:07:18 11 principles and putting all this stuff together.

10:07:20 12 But, yes, there is certainly some
10:07:22 13 precedent for a stated desire to protect First
10:07:26 14 Nations' interests under the auspices of the
10:07:29 15 Crown.

10:07:32 16 Q. And that actually brings me very
10:07:34 17 directly to my next question. You have
10:07:38 18 emphasized in discussing the debate over the
10:07:42 19 interpretation of the Royal Proclamation of
10:07:47 20 context.

10:07:48 21 A. Right.

10:07:50 22 Q. And that is, I take for granted,
10:07:53 23 and I'll ask anyway, in accord with your
10:07:57 24 understanding of how a historian operates?

10:08:00 25 A. Yes.

10:08:04 1 Q. And part of that context, you
10:08:06 2 will agree, is that the initial drafting, if not
10:08:10 3 the complete drafting, was completed before word
10:08:16 4 of Pontiac's uprising reached London?

10:08:21 5 A. Yes.

10:08:23 6 Q. Now, you comment in particular on
10:08:27 7 the use of words such as "protection",
10:08:32 8 "possession", "dominion", "reserved by us". And
10:08:47 9 you insist they have to be understood in the
10:08:49 10 full context, correct?

10:08:52 11 A. Yes. I think I agree with that
10:08:54 12 statement, yes.

10:09:02 13 Q. And you would agree that part of
10:09:03 14 the context for understanding those words is the
10:09:11 15 18th century law of prerogative, what words like
10:09:19 16 "proclamation", "dominion", "possession",
10:09:21 17 "protection" meant in the legal context of the
10:09:24 18 18th century?

10:09:27 19 A. Yes.

10:09:32 20 Q. And you would agree that a proper
10:09:36 21 understanding of those words in the context of
10:09:39 22 their time goes beyond a simple dictionary
10:09:43 23 definition?

10:09:47 24 A. Yes, I --

10:09:49 25 Q. That's all I wanted to make

10:09:52 1 clear.

10:09:52 2 A. Okay.

10:09:54 3 Q. I'd like now to go to pages 43
10:09:58 4 and 44 of your report. You adduce four points
10:10:22 5 to demonstrate the purpose of the Proclamation.
10:10:27 6 I'm not sure that we're really at that much of a
10:10:30 7 disagreement about the Proclamation yet, but as,
10:10:33 8 again, a question of methodology, and I've made
10:10:37 9 it clear I'm always interested in methodology,
10:10:41 10 I'm interested in the second of your points
10:10:45 11 because I know it's going to be the subject of
10:10:47 12 comment by future experts. You talk about the
10:10:58 13 Board of Trade contemplating:

10:11:01 14 "[...] a reorganization of the
10:11:02 15 offices of the Superintendents for
10:11:03 16 Indian Affairs, which would have
10:11:07 17 granted them an independent revenue to
10:11:08 18 fund their operations and make them
10:11:10 19 responsible directly to Whitehall."

10:11:13 20 A. Yes.

10:11:15 21 Q. When you say "contemplated", you
10:11:18 22 mean drafted a bill?

10:11:20 23 A. I don't know if the bill was ever
10:11:34 24 drafted, the plan was articulated.

10:11:37 25 Q. Again, I guess we'll have to get

10:11:39 1 future opinion on that. It was my understanding
10:11:41 2 that it was drafted, but we'll leave it at that.

10:11:51 3 And I'm just wondering, how persuasive
10:11:54 4 does a proposal from the Board of Trade, which
10:11:56 5 you have described as simply an advisory body --

10:12:03 6 A. Right.

10:12:04 7 Q. -- that was never placed before
10:12:06 8 Parliament, was simply a draft proposal,
10:12:10 9 proposition, why you think that's significant
10:12:15 10 proof of the intention of the Crown in issuing
10:12:20 11 the Royal Proclamation?

10:12:23 12 A. Well, I think that it goes to
10:12:28 13 illustrating -- you know, one of the problems
10:12:30 14 with talking about Crown policy and the
10:12:33 15 evolution of Imperial governance in these years
10:12:36 16 is that Imperial authority was collapsing on the
10:12:41 17 seaboard in these same years.

10:12:43 18 And so the rebellion in the 13
10:12:51 19 colonies that led to American independence had
10:12:54 20 the effect of interrupting the processes of
10:13:03 21 Imperial reform that were being contemplated.

10:13:06 22 I mean, I certainly do not mean to
10:13:08 23 claim that this was a consensus view and that
10:13:11 24 Parliament was certainly -- would certainly have
10:13:20 25 adopted this plan; but I included it in this

1 report to highlight the fact that for those
2 administrative officers engaged with the
3 governance of the colonies the issue of Indian
4 Affairs, which had come to the fore in the war,
5 was now continued, that is to say in the War, in
6 the Seven Years' War when the offices of the
7 Superintendents were created.

8 In the post-war period administrators
9 in London, members of the Board of Trade,
10 believed that it was important to sustain a
11 peacetime version of this administrative
12 structure and, as I say, give it an independent
13 revenue so that the Crown governance of First
14 Nations affairs remained independent of the
15 actions of individual colonies.

16 Q. Could I just disentangle the
17 chronology?

18 A. Sure.

19 Q. Because I'm not quite sure I
20 follow.

21 You talked about the collapse on the
22 seaboard of Imperial governance, you're talking
23 about the advent of the American Revolution?

24 A. Well, I'm talking about a
25 succession of failed efforts to raise a colonial

10:14:37 1 revenue in the colonies. So that really -- it
10:14:44 2 begins with the Sugar Act of 1764, but
10:14:49 3 especially the Stamp Act, the Townshend duties.
10:14:53 4 So I'm talking about events that really
10:14:54 5 accelerated beginning in the middle of the
10:14:57 6 1760s.

10:14:59 7 Q. Which actually brings me to my
10:15:00 8 next question. You've mentioned at least one of
10:15:08 9 the intolerable Acts I believe, the Stamp Act.
10:15:11 10 Was that one of the Intolerable Acts?

10:15:14 11 A. No.

10:15:15 12 Q. Can I ask you what the
10:15:16 13 intolerable Acts were?

10:15:18 14 A. The "intolerable Acts" was a term
10:15:21 15 applied in the colonies to what Parliament
10:15:21 16 referred to as the "coercive Acts". Those were
10:15:23 17 a series of reforms that followed the so-called
10:15:27 18 "Boston Tea Party" in 1773. So the series of
10:15:32 19 reorganizing Massachusetts administration,
10:15:35 20 closing the Port of Boston, the series of
10:15:44 21 legislative enactments in 1774 that were called
10:15:47 22 by Parliament the "coercive Acts" and called in
10:15:48 23 the colonies the "intolerable Acts".

10:15:52 24 Q. And I believe one of them was the
10:15:55 25 Quebec Act?

10:15:56 1 A. Yes. Well, the Quebec Act was
10:15:59 2 not a coercive Act but it merely coincided with
10:16:04 3 the -- it closely followed the coercive Acts,
10:16:08 4 and so it was part of the intolerable package
10:16:12 5 from the perspective of the colonists.

10:16:14 6 Q. But you are familiar with the
10:16:15 7 Quebec Act?

10:16:19 8 A. I am.

10:16:21 9 Q. So I can ask you a question about
10:16:23 10 it without actually bringing the text up in
10:16:27 11 front of you?

10:16:29 12 A. If it's not too technical a
10:16:30 13 question. If it sounds too technical I'll ask
10:16:34 14 for the text.

10:16:35 15 Q. It's not technical at all.

10:16:38 16 A. Okay.

10:16:39 17 Q. You would agree that the Quebec
10:16:40 18 Act repealed the Royal Proclamation?

10:16:47 19 A. No, I would not agree with that.

10:16:48 20 Q. Okay. Then I guess we're going
10:16:49 21 to have to pull the Act up.

10:16:55 22 MS. PELLETIER: Your Honour, we had an
10:16:56 23 objection yesterday to this line of questioning
10:16:58 24 as being legal in nature, so I'd make an
10:17:01 25 objection as well.

1 THE COURT: I'm going to permit the
2 question because it's cross-examination.

3 Obviously the import of the answer to the
4 question will be considered based on this
5 gentleman's expertise. I'm not sure what the
6 question is going to be once we have the Act,
7 but we've had lots of other similar areas
8 explored with this witness.

9 MS. PELLETTIER: Thank you.

10 MR. McCULLOCH: And just to be clear,
11 Your Honour, I'm not asking about how the Act
12 would be understood today.

13 THE COURT: Well, let's wait. We
14 don't have a question yet.

15 MR. McCULLOCH: If we can pull up the
16 section?

17 THE COURT: And what document are we
18 looking at here?

19 MR. McCULLOCH: This is SC0666.

20 THE COURT: Not an exhibit yet.

21 MR. McCULLOCH: Not an exhibit yet, I
22 believe not.

23 BY MR. MCCULLOCH:

24 Q. And it is generally known as the
25 Quebec Act of 1774. And if you go down to I

1 believe it's section 5. we have to go a little
2 further. I thought it was fairly early on in
3 the Act.

4 THE COURT: Where are you?

5 MR. McCULLOCH: I am in section 4.

6 BY MR. MCCULLOCH:

7 Q. "And whereas provisions, made by
8 said proclamation in respect to the
9 then civil government of the said
10 Province of Quebec and the powers and
11 authorities given to the governor and
12 other civil officers of the said
13 province by the grants and commissions
14 issued in consequence thereof, have
15 been found upon experience to be
16 inapplicable to the state and
17 circumstances of this said province,
18 the inhabitants whereof amounted, at
19 the conquest to above 55,000 persons
20 possessing the religion of the Church
21 of Rome, and enjoying an established
22 form of constitution and system of
23 laws by which their persons and
24 property have been protected, governed
25 and ordered for a long series of

1 years, from the first establishment of
2 the said Province of Canada. Be it
3 therefore further enacted by the
4 authority aforesaid that the said
5 proclamation, so far as the same
6 relates to the said Province of
7 Quebec, and the commissions under the
8 authority whereof the government of
9 the said province is presently
10 administered, and all and every
11 ordinance and ordinance made by the
12 Governor and Council of Quebec at the
13 time being, relative to the civil
14 government and administration of
15 justice in the said province and all
16 commissions to judges and other
17 officers thereof and the same are
18 hereby revoked, annulled and made void
19 from and after the first day of May
20 one thousand and seventy-five."

21 A. Yes.

22 Q. So you admit that, at least
23 insofar as that provision goes, there's an
24 expression in the document of an attempt to
25 annul at least portions of the Proclamation?

10:22:20 1 A. Well, yes. I mean, that's a very
10:22:22 2 different restatement of your original question.
10:22:25 3 As it related to the governance of the Province
10:22:26 4 of Quebec the Quebec Act significantly revised
10:22:31 5 the Proclamation, which did nothing to recognize
10:22:33 6 the place of either the Catholic Church or
10:22:36 7 French law in the colony of Quebec.

10:22:41 8 Q. Which brings me to my next
10:22:43 9 question. But you would agree that regardless
10:22:45 10 of what is in the Quebec Act, and, as I said
10:22:48 11 there are modern-day legal arguments that are of
10:22:52 12 no interest to you about what happened, the
10:23:02 13 policy of the Crown about interposing itself
10:23:04 14 between private purchasers and First Nations
10:23:08 15 continued?

10:23:14 16 A. The policy of the Crown -- yes,
10:23:16 17 yes.

10:23:19 18 Q. I just wanted to get the Quebec
10:23:21 19 Act properly in perspective.

10:23:24 20 A. Okay. And -- yeah. Okay.

10:23:30 21 Q. Now, I think that's all we really
10:23:33 22 need to talk about, except I guess I have one
10:23:38 23 final question. Leaving aside the
10:23:42 24 characterization of what Johnson said at Niagara
10:23:49 25 in 1764, what he said was consistent with this

10:23:54 1 policy going back to the 17th century of the
10:24:00 2 Crown acknowledging lawful property rights on
10:24:04 3 the parts of First Nations?

10:24:12 4 A. Well, I think I would argue that
10:24:15 5 there's pretty significant evolution in Crown
10:24:19 6 attention to these issues between the 17th
10:24:24 7 century and Niagara. Are you asking me to
10:24:29 8 affirm that nothing had changed --

10:24:39 9 Q. Oh, no, no, no, just simply that
10:24:39 10 they were consistent.

10:24:42 11 A. Consistent with what? What 17th
10:24:44 12 century Royal Act are you thinking of, or
10:24:47 13 Royal --

10:24:48 14 Q. The policy we talked about of the
10:24:50 15 colonies initially, and then the Imperial
10:24:54 16 government with the appointment of the
10:24:55 17 Superintendents and then the Royal Proclamation.

10:25:00 18 A. So 18th century. We're talking
10:25:04 19 about whether Niagara is consistent with its
10:25:06 20 immediate antecedents?

10:25:09 21 Q. Going perhaps as far back as the
10:25:12 22 Mohican issue that you refer to in your report.

10:25:15 23 A. Right. Well, I mean, the Mohican
10:25:19 24 land case has, I would say, a fundamentally
10:25:23 25 different status. It was never really resolved.

1 It was also a little bit of an outlier in the
2 period of time when it occurred.

3 I mean, part of the argument that I
4 seek to make in my report, and that I would
5 stand by, is that in fact the Crown did not
6 consistently take an active role in intervening
7 in relations between colonies and First Nations
8 through most of the first half of the 18th
9 century. And it's really a product of the Seven
10 Years' War that it becomes more engaged, more
11 consistently engaged in wanting to do that.

12 Q. So you would agree that there's a
13 very direct connection then between what Johnson
14 said at Detroit, what the Royal Proclamation
15 articulated and what Johnson said at Niagara?

16 A. Yes.

17 Q. That's -- just suggesting that
18 what happened at Niagara, however it ends up
19 being characterized, was not something
20 completely new?

21 A. I think that's a fair statement.
22 It is not something completely new.

23 Q. Now I am hoping that this last
24 component, what I characterized in my road map
25 as the balance of power issue, the -- I am going

1 to quote from the transcript, whether or not the
2 quotation -- the events of 1763 to 1766 showed
3 that the Anishinaabe had the ability to keep the
4 British out of the Great Lakes. That's the way
5 I describe the happily last of my areas of
6 questioning.

7 I hope you remember it that way?

8 A. Yes. I remember you describing
9 it that way.

10 Q. And I have no interest in taking
11 you through the incredibly dense military and
12 political history of Pontiac's War, rebellion,
13 whatever. I would like to zoom in on just two
14 aspects of it.

15 If I could go to pages 53 and 54 of
16 your report? And I would start with partway
17 through the first paragraph:

18 "With very few exceptions the
19 Great Lakes Anishinaabeg were united
20 in their opposition to British power
21 in the region in 1763. Warriors and
22 war leaders from many Anishinaabeg
23 communities travelled to Detroit to
24 aid Pontiac directly, while Ojibwe and
25 Michilimackinac participated in large

10:28:48 1 numbers in the attack on the post.

10:28:51 2 These engagements offer clear and

10:28:55 3 direct evidence of support for

10:28:57 4 Pontiac's goals. Even communities

10:29:00 5 that chose not to participate in these

10:29:03 6 attacks often supported their goals."

10:29:06 7 And you go on to say:

10:29:13 8 "In some cases tensions or

10:29:16 9 hostilities amongst First Nation

10:29:19 10 groups prevented them from cooperating

10:29:20 11 in the attacks and led them to

10:29:23 12 disagree about the best way to assert

10:29:25 13 control over the process by which

10:29:27 14 Britain claimed the formerly French

10:29:29 15 posts in the Great Lakes, but whether

10:29:31 16 they took up arms against the British

10:29:34 17 in the summer of 1763 or they pursued

10:29:38 18 other stratagems to control the terms

10:29:43 19 of Britain's occupation of the west,

10:29:45 20 the Great Lakes Anishinaabeg were

10:29:48 21 nearly unanimous in supporting the

10:29:50 22 larger goals that were being pursued

10:29:54 23 by Pontiac and his followers outside

10:29:56 24 of the walls of Detroit in the summer

10:29:58 25 of 1763."

10:29:59 1 There's no footnote there.

10:30:05 2 A. I intended that introductory
10:30:05 3 paragraph to summarize the material that -- or
10:30:11 4 gloss the material that follows.

10:30:14 5 Q. Well, let's take a look at the
10:30:18 6 material that follows. In fact, I'm going to
10:30:32 7 take you back in time, your time, and take you
10:30:33 8 to the article that we cited before from the
10:30:35 9 handbook.

10:30:49 10 THE COURT: Which exhibit number is
10:30:51 11 it, counsel?

10:30:52 12 MR. McCULLOCH: This is the separate
10:30:58 13 document we made an exhibit yesterday. There we
10:30:59 14 are.

10:31:07 15 THE COURT: Back to my question, what
10:31:09 16 is the exhibit number?

10:31:37 17 MR. McCULLOCH: 4029. That is my
10:31:39 18 annotated version. We might as well just scroll
10:31:42 19 down on it. Keep on going.

10:32:01 20 BY MR. MCCULLOCH:

10:32:01 21 Q. And you write:

10:32:02 22 "These attacks, which have come
10:32:04 23 to be known collectively as Pontiac's
10:32:09 24 Rebellion, were not part of the
10:32:11 25 coordinated offensive effort but they

10:32:14 1 illustrate the depth of hostility to
10:32:15 2 British power that prevailed amongst
10:32:15 3 western Amerindians in the wake of the
10:32:20 4 Seven Years' War."

10:32:23 5 THE COURT: What page are you on?

10:32:24 6 MR. McCULLOCH: It's the third page of
10:32:24 7 the extract, that's page 96, first column.

10:32:36 8 THE COURT: And what's the question?

10:32:37 9 BY MR. MCCULLOCH:

10:32:37 10 Q. The first question is whether or
10:32:38 11 not I have correctly quoted the document.

10:32:40 12 A. Yes.

10:32:41 13 Q. And you still admit that you
10:32:42 14 wrote that?

10:32:43 15 A. Yes.

10:32:52 16 Q. Was Pontiac's War, rebellion,
10:32:53 17 whatever a coordinated and organized attempt of
10:32:56 18 all of the Great Lakes Anishinaabe?

10:33:01 19 A. The -- you know, the -- what I
10:33:03 20 had in mind when I wrote the passage that you
10:33:06 21 have highlighted here is the fact that earlier
10:33:12 22 scholarship, and I'm thinking of people like
10:33:15 23 Francis Parkman and Howard Peckham, had given --
10:33:19 24 had made Pontiac out to be a kind of, you know,
10:33:23 25 supreme leader of the Great Lakes peoples.

1 And more recent scholarship has
2 emphasized that there was much more -- there was
3 a much more decentralized movement. It was
4 coordinated in the sense -- I mean, you can tell
5 by the timing of the Attacks and the number of
6 attacks on many different forts,
7 approximately -- in a very short period of time
8 that there was a -- that there was a kind of
9 coordination of a kind, but not in the sense of
10 a kind of command-and-control style
11 coordination.

12 And it was that older idea about
13 Pontiac's War that that particular phrase was
14 intended to push back against.

15 Q. So you would agree that modern
16 scholarship does not view the Great Lakes
17 Amerindians, we'll say the Anishinaabe, although
18 we've already agreed that includes some
19 nonAnishinaabe, were not a monolithic, single
20 polity with a single leader?

21 A. Yes.

22 Q. That in fact different
23 Anishinaabe groups pursuing the same objective
24 employed different strategies?

25 A. That's correct.

1 Q. And I don't know if I have to
2 take you, but it's pages 56 to 58 of your
3 report, there you discuss the differences in
4 strategy between the Anishinaabe at
5 Michilimackinac and the Anishinaabe at Detroit?

6 A. Yes.

7 Q. And I'm going to try summarizing
8 the pages and you can tell me whether the
9 summary does your report justice.

10 That while Pontiac, for reasons that
11 you explained, Pontiac and his immediate
12 followers in the Detroit region did not see
13 anyone as capable of fulfilling the French role
14 except the French?

15 A. Yeah, I don't know if I would
16 state it that way. They certainly had a strong
17 preference, let's say, for the French fulfilling
18 the French role at the beginning of the war.

19 Q. And, again, I'm just trying to
20 paraphrase for the purposes of brevity. At
21 Michilimackinac they were open to the idea that
22 the British could perhaps step into the French
23 shoes?

24 A. Yes, particularly the Odawas, the
25 L'Arbre Croche, the Odawas. And that is the

10:36:24 1 kind of tension that I described at
10:36:26 2 Michilimackinac.

10:36:28 3 Q. So in fact the difference in
10:36:29 4 strategy could come down to a different question
10:36:32 5 of what do you do about the British?

10:36:40 6 A. Yes.

10:36:44 7 Q. This should be my second-to-last
10:36:46 8 question. And, again, I don't want to go
10:36:50 9 through all the details of the wars and
10:36:55 10 rebellions, but the forts that fell or were
10:37:07 11 abandoned in the first phase of the war, the one
10:37:09 12 in early 1763, with the exception of
10:37:13 13 Michilimackinac I believe you pointed out that
10:37:18 14 these were under-garrisoned, dilapidated
10:37:20 15 outposts?

10:37:23 16 A. Many of them were. I mean,
10:37:24 17 Sandusky is an exception to that.

10:37:28 18 Q. And in fact Niagara, Fort Niagara
10:37:32 19 was never even besieged?

10:37:35 20 A. That's true.

10:37:41 21 Q. And the siege of Detroit
10:37:42 22 ultimately did not succeed?

10:37:47 23 A. In the fall of the Fort, yes,
10:37:49 24 that's true.

10:37:52 25 Q. And Pontiac's supporters at

10:37:56 1 Detroit never succeeded in capturing the three
10:38:05 2 schooners and the sloop that were at the fort?

10:38:08 3 A. That's true.

10:38:11 4 Q. And just as a footnote, partly,
10:38:17 5 how would you define a schooner and how would
10:38:21 6 you define a sloop? I read all sorts of Nelson
10:38:26 7 novels but I never could get that part
10:38:28 8 straightened out. But just for reference?

10:38:29 9 A. I mean, I am no historian of
10:38:32 10 naval technology. My understanding is that the
10:38:33 11 basic difference between a schooner and a sloop
10:38:36 12 is that a schooner has two masts and a sloop has
10:38:39 13 one, which implies, you know, without a very --
10:38:44 14 which suggests to the unlettered layman of these
10:38:48 15 matters that sloops are smaller than schooners.
10:38:52 16 That's not really necessarily true. These terms
10:38:55 17 refer to particularities of ship design and sail
10:38:59 18 rigging and so on.

10:39:05 19 Q. As a general rule were either
10:39:08 20 schooners or sloops equipped with cannons?

10:39:13 21 A. Yes.

10:39:14 22 Q. Now, I believe this is my last
10:39:17 23 question. Yesterday, and here I am quoting from
10:39:23 24 the transcript, but rather than putting it up
10:39:31 25 because it is not a final transcript I'm going

1 to read it to you so that you can agree that
2 this is what you said.

3 "QUESTION: At page 17 of your report
4 you say that at the beginning of
5 Pontiac's War the goal was 'to prepare
6 the ground for the possibility of a
7 French reoccupation of those forts.'
8 As the likelihood of that possibility
9 decreased over the course of the war,
10 how did the First Nations' goals
11 change?"

12 That was the question put to you.
13 Does that sound familiar?

14 A. Yes.

15 Q. And your answer was:

16 "It's a good question. And
17 really, this is something we can only
18 infer."

19 Reasonable inferences from the
20 historical record are part of the historical
21 method we discussed?

22 A. Yes, they are.

23 Q. "But it appears that during the
24 course of the war that at the outset
25 the intention of warriors, attackers

10:40:45 1 in Pontiac's War was to expel the
10:40:48 2 British from the posts that they
10:40:50 3 attacked."

10:40:54 4 Did they succeed?

10:40:57 5 A. Yes, in many cases they did.

10:40:59 6 Q. And ultimately did they succeed
10:41:02 7 in expelling the British from the Great Lakes?

10:41:06 8 A. Well, no, ultimately --

10:41:09 9 Q. Thank you.

10:41:09 10 A. -- the British --

10:41:12 11 Q. Stayed?

10:41:13 12 A. -- pick up their presence.

10:41:15 13 Q. Thank you. Those are my
10:41:16 14 questions.

10:41:31 15 THE COURT: It's going to be Mr. Ogden
10:41:32 16 for Ontario?

10:41:34 17 MR. OGDEN: Yes.

10:41:37 18 THE COURT: Please go ahead.

19 CROSS-EXAMINATION BY MR. OGDEN:

10:41:37 20 Q. Thank you, Your Honour.

10:41:41 21 Professor Hinderaker, a couple of
10:41:42 22 preliminaries. You're being compensated for
10:41:45 23 your time in preparing and presenting your
10:41:48 24 evidence, aren't you?

10:41:49 25 A. Yes.

10:41:49 1 Q. And may I -- it's relevant to the
10:41:53 2 assessment of a history if the person writing
10:41:55 3 the history is directly interested financially
10:41:59 4 or otherwise in the acceptance of that history.

10:42:05 5 A. I'm sorry, was that a question?

10:42:06 6 Q. Yes, it is, sorry. I'll repeat
10:42:09 7 myself.

10:42:10 8 It's relevant to the assessment of a
10:42:12 9 history that the person writing the history is
10:42:15 10 directly interested, financially or otherwise,
10:42:19 11 in the acceptance of that history. My question
10:42:23 12 is, do you agree with that?

10:42:29 13 A. Well, no, not necessarily.

10:42:33 14 Q. Not necessarily because it
10:42:35 15 depends on the interest of the person writing
10:42:37 16 the history?

10:42:40 17 A. Historians are compensated in
10:42:42 18 various ways for the various kinds of work they
10:42:44 19 do. Most of what they write they're paid for.
10:42:48 20 That's how we put bread on our tables. But that
10:42:55 21 doesn't -- I do not think --

10:42:57 22 Q. Well, you're not being
10:42:59 23 compensated in that way. You have no direct
10:43:02 24 financial or other interest in the acceptance of
10:43:06 25 your history?

10:43:09 1 A. Are you asking if --

10:43:11 2 Q. That's a question, sorry.

10:43:12 3 A. -- I do?

10:43:13 4 THE COURT: Sorry, counsel, can you

10:43:15 5 just repeat your question? Because I'm also

10:43:17 6 having trouble hearing you.

10:43:19 7 MR. OGDEN: I apologize.

10:43:23 8 THE COURT: That might be part of the

10:43:24 9 witness' difficulty as well.

10:43:25 10 MR. OGDEN: Well, I'm not --

10:43:28 11 THE COURT: Just repeat your question.

10:43:29 12 MR. OGDEN: It might help if I had a

10:43:34 13 realtime transcript, Your Honour. If you could

10:43:36 14 give me a moment?

10:43:50 15 BY MR. OGDEN:

10:43:51 16 Q. Professor Hinderaker, you are not

10:43:52 17 being compensated in a way where the

10:43:54 18 compensation directly depends on the acceptance

10:43:58 19 of your evidence, are you?

10:44:05 20 A. I'm sorry, I just don't

10:44:07 21 understand. Do you mean in situations other

10:44:10 22 than this one?

10:44:11 23 Q. No, in this situation.

10:44:13 24 A. In this situation I am not being

10:44:14 25 compensated, excuse me?

1 Q. Your compensation does not depend
2 on whether or not -- on the outcome of this
3 litigation?

4 A. That's correct.

5 Q. I'll go back to my previous
6 question then, which is, is it relevant to the
7 assessment of a history if the person writing
8 the history will benefit directly, financially
9 or otherwise, from the acceptance of that
10 history? I'm not saying that you are, I'm
11 asking whether you agree with that statement?

12 A. And I go back -- I think I go
13 back to what I just said. Historians are paid
14 for their work all the time. And --

15 Q. And their payment depends on
16 whether or not the history is accepted?

17 A. Accepted? What do you mean by
18 "accepted"?

19 Q. Whether the history is accepted
20 as --

21 A. I mean, there are various kinds
22 of acceptance that are a routine part of
23 historical publication and compensation.
24 There's peer review, there's sales records,
25 there's textbook adoptions. All of those things

10:45:25 1 are forms of acceptance.

10:45:28 2 So there is a very meaningful way in
10:45:30 3 which, yes, historians are compensated for their
10:45:33 4 work, and in part based on whether that work is
10:45:40 5 considered acceptable.

10:45:42 6 Q. That's not a direct compensation
10:45:44 7 or a direct benefit resulting from the outcome
10:45:48 8 of the assessment of that history, is it?
10:45:51 9 That's -- they would receive that compensation
10:45:53 10 whether or not the history were accepted?

10:46:03 11 A. No. Accepted -- history that's
10:46:05 12 not accepted, you know, will not be published,
10:46:08 13 if we're talking about the acceptance of peer
10:46:11 14 review; will not be purchased if we're talking
10:46:15 15 about the acceptance of a larger community
10:46:17 16 interested in exploring -- in reading that
10:46:24 17 history. I'm not -- I don't know if I'm
10:46:33 18 being -- I don't mean to be unresponsive but --

10:46:39 19 Q. No, no, it's my question. I need
10:46:42 20 to rephrase my question.

10:46:47 21 You've talked about compensation for
10:46:50 22 professional historians that they would receive
10:46:55 23 regardless of whether or not the history were
10:46:59 24 accepted by their peers.

10:47:02 25 And I'm asking perhaps a broader

10:47:04 1 question, maybe a different question. If the
10:47:06 2 historian stands to benefit, other than through
10:47:16 3 their regular salary, for instance, or through
10:47:18 4 their acceptance of -- by their peers of their
10:47:24 5 standings of a professional historian, that
10:47:29 6 would be a different type of interest? A
10:47:33 7 different type of interest to the one that you
10:47:35 8 have and the acceptance of histories that you
10:47:38 9 write? Would that be relevant to an assessment
10:47:42 10 of the history?

10:47:46 11 A. I'm sorry. I'm not following. I
10:47:48 12 don't know how to respond to that question
10:47:50 13 because I don't think I understand it.

10:47:58 14 Q. I may return to it later, thank
10:48:00 15 you.

10:48:00 16 But to follow on from that, you
10:48:02 17 haven't prepared this historical report in a
10:48:05 18 different manner than you would other histories
10:48:08 19 that you write?

10:48:16 20 A. Well, in a different manner?
10:48:18 21 Yes, I mean, I was engaged to address certain
10:48:25 22 specific questions in my report, so the scope of
10:48:31 23 my report is different than it would have been
10:48:33 24 if it had been written -- if I were writing
10:48:37 25 about these matters for another purpose, yes.

1 Q. Could we bring up your report,
2 please? It's Exhibit 4017. And I'd like to ask
3 you about -- I'd like to ask you about some of
4 the statements you've made in it. I'll be doing
5 that at different times throughout the
6 examination.

7 Firstly to page 6, which is the same
8 number on the PDF. If you go down to the middle
9 of the page on the right-hand side, you're
10 talking about the colonial relations of the
11 First Nations and the sentence:

12 "These relations presumed that
13 the First Nations owned the lands they
14 occupied."

15 And this conclusion is based on, I
16 believe in your report, the Mohican Indians
17 case, is that correct?

18 A. This is not a discussion of the
19 Mohican case. This is talking more generally
20 about diplomatic relations between British
21 colonies and First Nations peoples on their
22 western borders.

23 Q. Correct. These other relations,
24 is it your understanding that Crown relations
25 relied on the Mohican Indians case?

10:50:43 1 A. No, no. The Mohican Indian case
10:50:47 2 I raised as an example -- as an illustration of
10:50:49 3 the fact that there were people in the British
10:50:56 4 government who had been engaged with the
10:50:58 5 question of how to understand Indigenous land
10:51:01 6 rights for a long time -- dating back into the
10:51:03 7 17th century -- and that the Crown had in that
10:51:05 8 one case accepted an appeal from the Mohican
10:51:11 9 Indians against the colony of Connecticut.

10:51:14 10 It's a kind of a -- it's a funny case
10:51:16 11 and goes on for a long time. It's reheard a
10:51:19 12 couple of times and its outcomes are
10:51:22 13 inconclusive.

10:51:24 14 So it's not any kind of a foundation
10:51:31 15 for the ordinary business of Indian relations in
10:51:38 16 the 18th century. In this section I was talking
10:51:40 17 a bit about the Covenant Chain diplomacy and the
10:51:43 18 way in which British colonies kind of jumped on
10:51:55 19 the Covenant Chain bandwagon.

10:51:58 20 Once New York had established this
10:52:01 21 Covenant Chain relationship other colonies began
10:52:02 22 both travelling to Albany to meet with the
10:52:06 23 Iroquois to help them solve problems of their
10:52:12 24 own. Representatives of Pennsylvania and
10:52:12 25 Virginia and Maryland, Massachusetts all did

10:52:16 1 that at one time or another; and also used the
10:52:18 2 Covenant Chain model as ways to forge their own
10:52:22 3 kinds of relationships with neighbouring First
10:52:24 4 Nations peoples.

10:52:25 5 So if you look at Pennsylvania's
10:52:25 6 relations with --

10:52:34 7 Q. I'm going to stop you there.
10:52:34 8 We'll move on.

10:52:35 9 When you say those relations presumed
10:52:38 10 that you're not saying that there was a
10:52:39 11 presumption of ownership held by all colonial
10:52:45 12 officials, are you? You're talking generally
10:52:52 13 the Crown?

10:52:53 14 A. I'm talking generally. I meant
10:52:54 15 to say in this phrase that the -- one of the
10:52:56 16 premises was that the First Nations had
10:53:00 17 legitimate claim to the lands they occupied. In
10:53:03 18 other words, it wasn't satisfactory simply to
10:53:06 19 just unilaterally displace them or --

10:53:09 20 Q. So when you say ownership you're
10:53:10 21 talking about a legitimate claim and not
10:53:13 22 ownership in a common-law, fee-simple sense,
10:53:13 23 perhaps?

10:53:13 24 A. Um --

10:53:13 25 Q. In terms of the presumption of

10:53:18 1 the colonial entity?

10:53:23 2 A. Yeah. I mean, not ownership in a
10:53:27 3 fee-simple sense, no; ownership in a kind of --
10:53:31 4 in the sense of an independent polity that has
10:53:35 5 its own independent claims to the territory that
10:53:39 6 it occupies.

10:53:39 7 Q. So the colonial officials didn't
10:53:42 8 treat land outside of the colony, and you make
10:53:43 9 the point in your report that the Mohican Indian
10:53:48 10 case, which said that First Nations owned land
10:53:51 11 related to lands within the colony.

10:53:53 12 So if I step back then, the colonial
10:53:56 13 officials did not treat lands outside of the
10:53:58 14 colony as if they were owned in a fee-simple
10:54:04 15 sense?

10:54:06 16 A. Well, you know, the bounds of
10:54:09 17 these colonies were pretty open-ended. And so,
10:54:16 18 in fact, I mean, for example, in the Mohawk
10:54:20 19 Valley, you know, the claims of the -- the
10:54:24 20 chartered territory of the colony of New York
10:54:27 21 includes the lands of the Haudenosaunee peoples,
10:54:32 22 the Iroquois Confederacy.

10:54:36 23 Similarly, in Pennsylvania the
10:54:37 24 chartered boundaries of the colonies includes
10:54:37 25 territory of Iroquois, Shawnee, Delaware,

1 Susquehanna Indians.

2 Q. I'm talking though outside the --
3 the question was with respect to land outside
4 the colonies. They didn't -- the colonial
5 officials did not treat land --

6 A. But what I'm suggesting is that
7 the distinction between inside and outside is
8 not --

9 Q. Colonial officials did not make
10 the distinction, is that what you're saying?
11 They did not distinguish between Indian lands
12 held within and without the colony?

13 A. There may be particular cases in
14 which they did make that distinction, but in
15 most cases the notional bounds of the colonies
16 that they were operating in extended, you
17 know -- included the lands that were claimed by
18 and that were occupied by First Nations peoples.

19 Q. So outside of the notional bounds
20 of the colony, the treatment of First Nations
21 was to have a process for acquiring lands
22 outside of the colony, which involved treating
23 with the First Nations for their lands, is that
24 correct?

25 A. That process of treating for

10:56:05 1 lands occurred in -- and we're talking about the
10:56:11 2 first half of the 18th century right before the
10:56:14 3 Seven Years' War in kind of the period during
10:56:15 4 which these diplomatic systems were articulated.

10:56:20 5 Q. Yes.

10:56:21 6 A. Most of the engagements for the
10:56:27 7 purpose of transferring land, that I can think
10:56:29 8 of off the top of my head, involved lands that
10:56:31 9 were within the bounds of a colony.

10:56:37 10 I'm trying to think of an example
10:56:39 11 of -- like, say, a Covenant Chain -- you know, a
10:56:48 12 diplomatic process that transferred land where
10:56:51 13 the land was outside of a colony. And I can't
10:56:53 14 think of one quickly.

10:56:56 15 Q. So when you said these relations
10:56:58 16 presume that the First Nations owned the lands
10:57:00 17 they occupied you're talking about presumed
10:57:03 18 within the colonies?

10:57:07 19 A. Yes, that they were legitimate
10:57:09 20 occupiers of those lands.

10:57:18 21 Q. Sticking with the period before
10:57:19 22 the French and Indian War, that's the Indian War
10:57:20 23 in North America, the French built a fort at
10:57:24 24 Detroit. And is it your understanding that they
10:57:25 25 did so without asking in advance for permission

1 to build the fort from the First Nations?

2 A. They certainly did so. That's a
3 good question. And I'm sure the historical --
4 there are -- the historical record would allow
5 me to make a better answer than the kind of --
6 than the one I'm going to offer at the moment
7 off the top of my head.

8 But the post at Detroit was built in
9 cooperation with First Nations' allies of the
10 French. The French extended an invitation to
11 First Nations peoples to move there and support
12 the post.

13 Whether they asked permission or not
14 I'm not sure off the top of my head.

15 Q. I don't know, is your answer
16 then?

17 A. Yes.

18 Q. You don't know then whether it
19 was done over their objections?

20 A. I'm confident in saying that it
21 was not done over their objections. What I'm
22 not -- what I said "I don't know" to is the
23 specific question of whether there was some
24 formal permission requested.

25 But --

10:59:02 1 Q. Well, then -- no, I apologize,
10:59:05 2 continue.

10:59:07 3 A. But it was a -- an outpost that
10:59:14 4 was -- that did have the support of First
10:59:17 5 Nations peoples.

10:59:19 6 Q. At least after it had been -- its
10:59:25 7 construction had been commenced?

10:59:30 8 A. Right.

10:59:32 9 Q. Can I turn to your report again,
10:59:34 10 please at page 46? Before I get there I'll ask
10:59:43 11 you a question about your testimony yesterday.

10:59:46 12 You said, we spoke about SON's
10:59:48 13 territory. And I'll ask you, your information
10:59:53 14 about what that territory might be comes from
11:00:00 15 the lawyers who engaged you to write your
11:00:02 16 report, is that right?

11:00:03 17 A. Well, my information about SON's
11:00:04 18 territory is based on, you know, present --
11:00:11 19 where they presently exist, where they presently
11:00:15 20 are.

11:00:16 21 Q. Well, yesterday you were asked
11:00:19 22 questions in respect of SON's territory at, for
11:00:24 23 instance, the time of New France and then the
11:00:28 24 French and Indian War. And so your answer then
11:00:31 25 is, your information in respect of SON's

11:00:36 1 territory at that time is based on what their
11:00:39 2 territory is today?

11:00:42 3 A. Right. Yes. The Saugeen Ojibwe
11:00:52 4 do not appear in record. They are not named in
11:00:55 5 records that I've -- that I was working with.
11:00:57 6 So that -- I think that's clear throughout my
11:01:00 7 report.

11:01:04 8 Q. So page 46. There is a reference
11:01:11 9 there to Helen Hornbeck Tanner. We've seen part
11:01:15 10 of her report yesterday. And you say:

11:01:16 11 "As Helen Hornbeck Tanner has
11:01:22 12 written, 'Knowledge of Ojibwa could
11:01:24 13 carry a traveler across more than a
11:01:26 14 thousand miles of land from east to
11:01:29 15 west in the Great Lakes.' The vast
11:01:32 16 geographic reach of Anishinaabe
11:01:32 17 influence resulted from their control
11:01:32 18 of these enormously important
11:01:33 19 waterways."

11:01:34 20 And there's a footnote there to Helen
11:01:39 21 Hornbeck Tanner, which I'll ask to be brought
11:01:41 22 up, which is document S1685. It's a short
11:01:41 23 document and you've cited, I believe, page 3 of
11:02:16 24 her book. But if you can take -- sorry, let's
11:02:21 25 go to the top of the page, the top of the

11:02:23 1 document, please.

11:02:26 2 And you said this is -- it says this
11:02:28 3 is the "Atlas of Great Lakes Indian History" by
11:02:32 4 Helen Hornbeck Tanner. And so you agree that is
11:02:35 5 what it appears to be? It is what it appears to
11:02:39 6 be?

11:02:41 7 A. Yes.

11:02:42 8 MR. OGDEN: Your Honour, I'd like to
11:02:46 9 make this the next exhibit. It is different
11:02:48 10 than the one that was exhibited yesterday.

11:02:50 11 THE COURT: In what way?

11:02:51 12 MR. OGDEN: This is an extract which
11:02:52 13 was produced by the plaintiffs. It's 14 pages
11:02:55 14 long and does not contain the map that was
11:02:57 15 referred to yesterday and exhibited.

11:02:59 16 THE COURT: Which pages are included?

11:03:02 17 MR. OGDEN: Of the Atlas?

11:03:04 18 THE COURT: Well, you're proposing to
11:03:05 19 mark something which is less than the Atlas.
11:03:07 20 What is it you're proposing to mark?

11:03:11 21 MR. OGDEN: All of this document. The
11:03:12 22 Atlas is longer than 14 pages.

11:03:14 23 THE COURT: You have to describe it,
11:03:15 24 sir. It's not good enough to say, "all of this
11:03:19 25 document." It is an excerpt from the Atlas.

11:03:21 1 What does it include? Which pages does it
11:03:24 2 include, if that's the way you want to do it?

11:03:27 3 MR. OGDEN: First 12 pages and cover
11:03:57 4 of Atlas of the Great Lakes.

11:03:59 5 THE COURT: All right. There is no
11:04:00 6 objection. Mr. Registrar, what is the next
11:04:02 7 exhibit number?

11:04:04 8 THE REGISTRAR: Exhibit number 4032.

11:04:06 9 EXHIBIT NO. 4032: First 12 pages and
11:04:08 10 cover of the "Atlas of Great Lakes
11:04:08 11 Indian History" by Helen Hornbeck
11:04:08 12 Tanner. document SC1685.

11:04:09 13 THE COURT: Thank you, please go
11:04:10 14 ahead.

11:04:10 15 BY MR. OGDEN:

11:04:10 16 Q. And, sir, this footnote, this
11:04:13 17 reference to Helen Hornbeck Tanner is after the
11:04:16 18 sentence:

11:04:16 19 "The vast geographic reach of
11:04:19 20 Anishinaabe influence resulted from
11:04:21 21 the control of these enormously
11:04:23 22 important waterways."

11:04:23 23 And my question is that Helen Hornbeck
11:04:27 24 Tanner doesn't, certainly in the page to which
11:04:29 25 you've cited, talk about control, does she? Go

1 to page 3, please.

2 A. Right. No, I mean, and for the
3 purposes of -- yeah, the footnote was intended
4 to identify the source of the quote about the --
5 about knowledge of --

6 Q. Should we move the footnote back
7 then?

8 THE COURT: Counsel, it's not just the
9 court reporter who has trouble when the two of
10 you talk at the same time, which has been going
11 on for a little while. So if you could please
12 try, both of you, not to talk at the same time.
13 I can't follow it.

14 MR. OGDEN: Sorry.

15 THE COURT: The witness started to say
16 that the footnote was intended to show the
17 source of the quote, and I didn't hear anything
18 after that.

19 MR. OGDEN: Sorry, Your Honour.

20 THE COURT: Please go ahead, sir. I
21 don't know what you were going on to say.
22 Something about the knowledge of something,
23 anyway.

24 THE WITNESS: I think I was -- to the
25 best of my recollection --

1 THE COURT: It was along the lines of
2 asking you to agree that the footnote did not
3 talk about control, and you began to answer by
4 saying that the footnote was intended to show
5 the source of the quote. And you were going on
6 to say something and I missed it.

7 THE WITNESS: I'll leave it at that.

8 THE COURT: You'll leave it at that.
9 All right.

10 BY MR. OGDEN:

11 Q. My question then is, should we
12 move the footnote back to after the quote?

13 A. That would -- yes, that would be
14 fine.

15 Q. In your report you say that:

16 "[...] a new emphasis on Indian
17 relations [...] helped Britain win the
18 war in North America."

19 This new emphasis was one factor in
20 winning the war, wasn't it?

21 A. Yes.

22 Q. Not the major factor, not "the"
23 major factor?

24 A. Not the only factor.

25 Q. Not the dominant factor?

11:06:57 1 A. A significant factor. It's very
11:06:59 2 difficult for me to know how to weigh the
11:07:02 3 various factors involved. It was an important
11:07:04 4 factor.

11:07:05 5 Q. It did not cause the victory in
11:07:07 6 the sense that otherwise Britain would not have
11:07:13 7 won the war?

11:07:15 8 A. I don't know if Britain would
11:07:17 9 have won the war otherwise or not.

11:07:21 10 Q. Is it accurate to say that many
11:07:23 11 First Nations changed allegiance when it became
11:07:27 12 apparent that the British would defeat the
11:07:29 13 French?

11:07:30 14 A. It's accurate to say that British
11:07:34 15 diplomacy brought the Shawnees and Delawares
11:07:38 16 back into a British alliance, and also persuaded
11:07:39 17 the heretofore neutral Iroquois to assist the
11:07:50 18 British military campaign in the last year of
11:07:52 19 the war.

11:07:53 20 Q. Is it not accurate then to say
11:07:54 21 that many First Nations changed allegiance when
11:07:57 22 it became apparent that the British would win
11:08:00 23 the war?

11:08:01 24 A. Well, a few key ones did.

11:08:13 25 Q. Back to page 9 of your report,

11:08:14 1 sir, one third of the way down, starting "Fred
11:08:32 2 Anderson" there. It says:

11:08:37 3 "Fred Anderson writes that the
11:08:44 4 French empire in North America 'had
11:08:48 5 Generally sponsored cordial relations
11:08:49 6 with the Indian peoples of the
11:08:51 7 interior' in the seventeenth and
11:08:54 8 eighteenth centuries, but during the
11:08:58 9 Seven Years' War their alliances with
11:08:59 10 native peoples -- especially those of
11:09:01 11 the Great Lakes -- began to fail as
11:09:03 12 trade goods grew scarce and the French
11:09:05 13 commander in-chief, the marquis de
11:09:06 14 Montcalm, tried 'to command the Indian
11:09:12 15 as auxiliaries rather than to
11:09:16 16 negotiate for their cooperation as
11:09:18 17 allies'."

11:09:21 18 I'd like to go please to Exhibit 4026,
11:09:33 19 which you were shown yesterday, which is a map
11:09:36 20 taken from "Crucible of War" and appended to
11:09:40 21 your report. And it is a map of the Pays d'en
11:09:43 22 Haut, according to Fred Anderson. That is the
11:09:50 23 descriptive that he uses in his book, and we'll
11:09:56 24 come to the relevant part of his book.

11:09:56 25 And this shows here in the middle --

1 perhaps if you can enlarge the middle of the
2 map, please, below Lake Erie? It shows the Ohio
3 Indians and the Iroquois within the Pays d'en
4 Haut.

5 And yesterday when you referred to it
6 you said you thought perhaps the Pays d'en Haut
7 in the map went too far south, is that correct?

8 A. Yes.

9 Q. But Anderson uses the expression,
10 "Pays d'en Haut" as including the Ohio Indians
11 and the Iroquois?

12 A. This map certainly illustrates it
13 that way.

14 Q. So if we can go then to this
15 chapter, 46, which is document S0116? It is not
16 an exhibit but I would like to make it an
17 exhibit, Your Honour. It's Chapter 46 of
18 Anderson, "Crucible of War", please

19 THE COURT: Any objection? No?
20 Mr. Registrar.

21 THE REGISTRAR: Exhibit Number 4033.

22 EXHIBIT NO. 4033: Chapter 46 of Fred
23 Anderson, "Crucible of War". Document
24 SC0116.

25

1 BY MR. OGDEN:

2 Q. This is a short chapter, it's a
3 summary chapter of his views on the Seven Years'
4 War. And so if we go down, please --

5 THE COURT: Where are we going?

6 MR. OGDEN: One moment, Your Honour.
7 Sorry. Go down to the paragraph starting
8 "France". I'll start there with "France".

9 BY MR. OGDEN:

10 Q. Well, if you take a moment to
11 look at --

12 THE COURT: What page are we on?

13 MR. OGDEN: This is page 2 of the PDF.

14 THE COURT: What page are we on of the
15 document?

16 MR. OGDEN: Page 454, Your Honour.

17 BY MR. OGDEN:

18 Q. And in this chapter, from which
19 you've quoted, Anderson doesn't talk about the
20 Great Lakes Indians, he doesn't use the
21 expression "Great Lakes Indians", does he? He
22 uses the expression referring to the nations of
23 the Pays d'en Haut?

24 A. Right, right. That's correct.

25 Q. And the examples that he gives in

11:13:07 1 this chapter of Motcalm trying to command the
11:13:15 2 Indians as auxiliaries is of the Ohio and the
11:13:20 3 Iroquois, isn't it? We can go down further as
11:13:23 4 well to the next page, page 455.

11:13:39 5 THE COURT: What's your question,
11:13:40 6 counsel?

11:13:41 7 MR. OGDEN: Sorry, the witness is
11:13:42 8 reading this...

11:13:50 9 THE WITNESS: And so is the question
11:13:51 10 whether the use of the phrase "Pays D'en Haut"
11:13:55 11 here refers to --

11:13:59 12 BY MR. OGDEN:

11:13:59 13 Q. No, no, sorry. My question is,
11:14:01 14 when he -- when Anderson describes Montcalm
11:14:05 15 trying to command the Indians as auxiliaries, he
11:14:08 16 is referring to the Ohio and Iroquois Indians in
11:14:13 17 this chapter from which you've quoted?

11:14:15 18 A. I understand him to be referring
11:14:17 19 to the Great Lakes Indians actually. Although,
11:14:22 20 it is true that the French alliance, you know,
11:14:30 21 with the Ohio Indians was deteriorating as well.
11:14:38 22 And so --

11:14:39 23 Q. He doesn't give an example of
11:14:40 24 changing allegiances by Great Lakes Indians,
11:14:43 25 does he? The examples he gives are of the Ohio

1 Indians?

2 A. Not here, but what he talks about
3 in the text is the fact that the campaign of
4 Fort William Henry was the high water mark of
5 France's ability to create a First Nations'
6 coalition, and that the Great Lakes warriors
7 that participated in that campaign were very
8 unhappy with the outcome; and increasingly after
9 that campaign chose not to participate in
10 further military efforts to defend New France.

11 Q. You mentioned it though yesterday
12 -- it's not mentioned in your report is it? The
13 battle of Fort William Henry?

14 A. No.

15 Q. And I believe you said -- was it
16 the likelihood of the members of the SON
17 attended. Is there any documentary support for
18 that that you're aware?

19 A. No, there is no documentary
20 support for that. But the only reason I said
21 that it's reasonably likely is that it is a
22 well -- this campaign is well known for the
23 broad coalition of Anishinaabe warriors that
24 participated. But whether SON warriors
25 participated specifically I have no specific

11:16:09 1 knowledge.

11:16:11 2 Q. Can we go back to the bottom of
11:16:12 3 the page 453, please? I'd like to read you this
11:16:22 4 quote starting "Great Britain" and then ask you
11:16:27 5 whether you agree with the statement. This is a
11:16:30 6 statement by Fred Anderson, and yesterday you
11:16:33 7 said that he had recently written the definitive
11:16:45 8 history of the Seven Years' War:

11:16:47 9 "Great Britain triumphed in North
11:16:53 10 America for two related reasons. One
11:16:55 11 was military and well understood at
11:16:58 12 the time, the other was, in the
11:16:58 13 broadest sense, cultural and
11:16:58 14 understood not at all. The military
11:16:59 15 factor, as we have seen, centred on
11:17:01 16 supplies and supply lines. Once the
11:17:04 17 British Navy had swept the French
11:17:06 18 fleet from the seas, as it had by the
11:17:09 19 end of 1759, there was no safe passage
11:17:12 20 for men or munitions or provisions
11:17:14 21 from France to its colonies. In the
11:17:17 22 absence of these the soldiers and
11:17:19 23 militiamen charged with defending New
11:17:23 24 France soon lost the ability to resist
11:17:25 25 the well-supplied, vastly more

11:17:25 1 numerous Anglo-American invaders."

11:17:27 2 Do you agree with that statement?

11:17:30 3 A. Yes.

11:17:41 4 Q. The surrender of the French upper
11:17:44 5 lakes posts to the British after the fall of
11:17:46 6 Quebec city and then Montreal in 1760 occurred
11:17:50 7 because outposts were cut off from their supply
11:17:54 8 sources, is that correct?

11:17:57 9 A. Yes.

11:17:57 10 Q. That cutoff of supply was the
11:18:02 11 main factor in the surrender of those posts?

11:18:07 12 A. Sorry, of which posts?

11:18:09 13 Q. The French posts in the upper
11:18:12 14 Great Lakes being off from their supplies. You
11:18:16 15 said supply was the main factor in the
11:18:20 16 surrender?

11:18:20 17 A. The post were surrender as a
11:18:22 18 result of the capitulation of Montreal. They
11:18:26 19 were suffering from significant lack of supply
11:18:31 20 prior to that point, but they weren't
11:18:36 21 surrendered officially until the capitulation.

11:18:40 22 Q. And they did not receive support
11:18:42 23 from the French settlers out in the upper lake
11:18:46 24 posts in order to enable them to continue?

11:18:56 25 A. Well, the French settlers could

11:18:58 1 help feed soldiers, but the supplies here that
11:19:02 2 Anderson is discussing include special military
11:19:07 3 supplies, so the ability, in particular, to
11:19:10 4 supply First Nations' allies with arms and
11:19:14 5 ammunition, and also with the other trade goods
11:19:16 6 that were associated with the relationship that
11:19:21 7 was maintained with them at the posts.

11:19:29 8 Q. So I'd like to show you another
11:19:31 9 document with a quote. This is a new document
11:19:34 10 that has been provided to counsel, it's SC0651.
11:19:54 11 I am going to take a quote from this and likely
11:19:57 12 not exhibit the document, but for the record the
11:20:00 13 quote is taken from an article entitled
11:20:03 14 "Presents to Indians Along the French Frontiers
11:20:07 15 in the Old Northwest, 1748-1763, Wilbur R.
11:20:11 16 Jacobs, source is the Indiana Magazine of
11:20:20 17 History, Volume 44, No. 3, September 1948, pages
11:20:20 18 245 to 256.

11:20:22 19 And the quote is on page 251 of this
11:20:24 20 document, PDF pages 8 to 9. Starting middle at
11:20:29 21 the bottom. And I'm going to ask you about
11:20:35 22 these items. The quote is:

11:20:40 23 "Metal to brass kettles of
11:20:43 24 assorted sizes, iron, wire, axes,
11:20:46 25 scissors, combs, paints of different

1 colour, especially vermilion, thread,
2 needles, steels for striking fire, and
3 looking glasses and a hundred other
4 articles were constantly doled out to
5 the natives. Some were aimed to
6 please the vanity of the warrior,
7 others were mere toys to attract the
8 primitive mind. Still items such as
9 needles, thread and axes soon became
10 necessities as the manner of Stone Age
11 acquired a thin coating of Western
12 civilization."

13 Now, I will say, I'm not asking you
14 whether you agree with the description of the
15 indigenous recipients of these gifts. What I'm
16 asking you is whether you agree that these items
17 as listed were given to First Nations.

18 A. Um, yeah, I, you know, I will say
19 I would not go to Wilbur Jacobs on this subject
20 at this late date. Though he did -- he was the
21 first scholar several generations ago to draw
22 specific attention to the Indian gifts, I
23 would -- I mean, I think all of those -- all of
24 those items that he mentioned can be found in
25 records of conference meetings.

1 I think it is a strange -- a strangely
2 undifferentiated list. I also think that the
3 phrase -- I can't remember -- if you scroll up,
4 the phrase that something about doling out to
5 the natives, constantly doled out a hundred
6 other articles were constantly doled out to the
7 natives. Personally I think that's a
8 mischaracterization.

9 Q. Fair enough. I'm not asking you
10 about the characterization. I'm asking you
11 about the items themselves, whether they were
12 given --

13 A. Yes, definitely. All of those
14 items at one time or another appeared in
15 diplomatic and trade contexts.

16 Q. And that was because they could
17 not produce these items themselves, is that
18 right?

19 A. Yes, or most of them anyway, or
20 they did not.

21 Q. Did not. Perhaps is that more
22 accurate?

23 A. Well, did not is more accurate.
24 Could not is certainly true of many of them.
25 They could probably produce thread, for example,

1 if they were...

2 Q. Okay. Another quote in respect
3 of supply lines is from the document S1620. And
4 this is from a book which we will likely exhibit
5 later, so we may as well exhibit now, by Jack
6 Sosin, "Whitehall and the Wilderness."

7 And Jack Sosin is a respected scholar
8 in the field of colonial era British First
9 Nation relations, as far as you're aware?

10 A. Yes, nothing has been written on
11 the subject of this book that supercedes it.

12 Q. And you cite to this book, I
13 believe, in your report?

14 A. I do.

15 Q. So page 28 of the book, which is
16 page 26 of the PDF, if you could make it larger,
17 please? And move to the right, please.

18 Your Honour, I will put this aside and
19 return to it later. And, in fact, we could take
20 a break if it might assist, or we could move to
21 the next quote which I would like to put to the
22 witness.

23 THE COURT: Well, given the time I
24 think we can take the break now and you can get
25 your documents sorted out.

11:26:05 1 MR. OGDEN: Thank you.

11:37:05 2 -- RECESSED AT 11:26 A.M. --

11:37:05 3 -- RESUMED AT 11:47 A.M. --

11:49:01 4 THE COURT: Please go ahead, counsel.

11:49:03 5 MR. OGDEN: Thank you, Your Honour.

11:49:04 6 BY MR. OGDEN:

11:49:04 7 Q. Mr. Hinderaker, we were looking

11:49:06 8 for the quote from Jack Sosin. The quote is on

11:49:11 9 page 28 of the document.

11:49:14 10 THE COURT: What document are we

11:49:15 11 looking at, counsel?

11:49:16 12 MR. OGDEN: This is document S1620.

11:49:22 13 THE COURT: But what is it?

11:49:23 14 BY MR. OGDEN:

11:49:23 15 Q. Your Honour, this is -- sorry,

11:49:25 16 "Whitehall and the Wilderness". The quote

11:49:34 17 starts on the left-hand side, five lines down,

11:49:38 18 "Since":

11:49:40 19 "Since the Indians could only

11:49:42 20 attain utensils, weapons and goods by

11:49:45 21 trade, the tribes must go either to

11:49:47 22 the French or to the British. The

11:49:50 23 natives realized this and a Wyandot

11:49:53 24 told George Croghan, the Pennsylvania

11:49:53 25 trader and Indian Agent, that no

1 Indian tribe could exist without the
2 support of either of the white
3 Nations."

4 And professor, do you have reason to
5 doubt that a Huron trader, so a Wyandot, made
6 that statement to Croghan?

7 A. No.

8 Q. And do you agree with the
9 statement by Sosin about tribes having to go to
10 either the French or the British?

11 A. I mean, there were lots of native
12 Nations in North America in this period who did
13 not have relations with the French, British or
14 any other European power. So, I mean, I think
15 the point is overstated, but we've talked
16 already in this trial, and I've said already in
17 my testimony, that I think that European trade
18 was really important to the First Nations of the
19 Great Lakes.

20 Those people who had long contact with
21 European trade goods wanted to continue to --
22 that contact.

23 Q. So ultimately if a First Nation
24 traded with another First Nation for utensils,
25 weapons and goods, the goods would come from

1 either the French or the British?

2 A. Yeah. Or -- or some other
3 European power potentially, but yes.

4 Q. I'd like to go to another extract
5 from a different document. This is the document
6 S01 -- S0535, which is -- this is an extract
7 from "The Canadian Frontier", Chapter 6, "The
8 Fur Trade Frontier 1663 to 1700", and this is by
9 Eccles, who you have cited in your report.

10 If we can go to page 110 of the
11 document, which is page 5 of the PDF, in the
12 middle in the right-hand side there starting
13 with the word "In", and I will read that to you
14 and I'll ask you about it:

15 "In North America in the late
16 17th century the French merely voyaged
17 through the lands to trade with the
18 Indians, attain a cargo of furs and
19 then transport it back to Montreal.
20 The Indians were the important factor.
21 It was they who provided the desired
22 commodity in a semi-manufactured
23 state, thus their interests and
24 traditional way life, their
25 semi-nomadic hunting economy has to be

1 preserved. Yet the Indians' way of
2 life was radically altered. Tribes
3 ever more remote became enmeshed in
4 this European economic empire and
5 became dependent on European goods.
6 They achieved a somewhat high standard
7 of living but ultimately paid a very
8 heavy price for it."

9 Do you agree with that statement?

10 A. Yes, I guess I do. I think,
11 again, I would temper -- if I were making the
12 statement myself I would formulate it
13 differently and temper the emphasis on
14 "dependency", but I think there is no question
15 that the trade system did significantly alter
16 Native American communities.

17 Q. I'll go back to your report --
18 well, not to your report, sorry, I'm going to go
19 to another document, which is S0115. This is
20 from Anderson, "Crucible of War", which in your
21 report you describe as "the best account of the
22 Seven Years' War in North America", that's
23 correct?

24 A. Yes, that's how I describe it.

25 Q. And on this document, this is

11:54:50 1 chapter 27 of Anderson, "Bradstreet at Fort
11:54:55 2 Frontenac".

11:54:56 3 Your Honour, I would like to make this
11:54:58 4 an exhibit. Anderson, Chapter 27, "Bradstreet
11:55:05 5 at Fort Frontenac".

11:55:07 6 THE COURT: No objection? Please, go
11:55:08 7 ahead, Mr. Registrar.

11:55:13 8 THE REGISTRAR: Exhibit 4034.

11:55:15 9 EXHIBIT NO. 4034: Chapter 27,
11:55:16 10 entitled "Bradstreet at Fort
11:55:16 11 Frontenac", from the book "Crucible of
11:55:16 12 War", authored by Fred Anderson.

11:55:16 13 Document SC0115

11:55:16 14 BY MR. OGDEN:

11:55:16 15 Q. And this is Colonel Bradstreet,
11:55:19 16 is that right? He was a British military
11:55:22 17 officer?

11:55:23 18 A. Yes, that's right.

11:55:24 19 Q. And Fort Frontenac is the French
11:55:27 20 Fort of what is now Kingston?

11:55:30 21 A. Yes, that's right.

11:55:31 22 Q. And Bradstreet took the Fort in
11:55:34 23 1758, is that correct?

11:55:36 24 A. Correct.

11:55:36 25 Q. So to page 263 of the chapter,

1 PDF page 5., and to the third from the bottom,
2 third line from the bottom. There is a
3 reference to the "Catarauqui anchors", that's the
4 anchorage at Fort Frontenac, is that correct?

5 A. Yes, I believe that's correct.

6 Q. And the quote is:

7 "The nine sloops that lay in the
8 Catarauqui anchorage comprised the
9 whole of French shipping and naval
10 strength from Lake Ontario because
11 Fort Frontenac served as the basis for
12 which all of Canada's western trading
13 posts were supplied, the combined loss
14 of goods and vessels would have a
15 catastrophic impact on the Indian
16 trade of the Pays D'en Haut as well as
17 on the ability of the installations of
18 the Ohio country to defend
19 themselves."

20 And do you agree with that statement?

21 A. Yes.

22 Q. The next document, please, is
23 SC0654. This is an extract of documents
24 relative to the colonial history of New York.
25 And yesterday you recognized that this was an

1 authoritative source of information in the
2 period?

3 A. Yes, widely used by scholars.

4 Q. Your Honour, I'd like to make
5 this an exhibit, but before I do perhaps we can
6 go down one page?

7 THE COURT: Well, we still haven't --
8 I mean, I've heard that it's call "a history of
9 New York", that's not enough. What is it? Is
10 it an extract?

11 MR. OGDEN: I'm going to go down to
12 pages, Your Honour, page 831 to 832, volume 10.

13 THE COURT: The next exhibit,
14 Mr. Registrar.

15 THE REGISTRAR: The next exhibit is
16 4035.

17 EXHIBIT NO. 4035: Translation of a
18 letter from Monsieur de Montcalm to
19 Marshal de Belle-Isle, dated September
20 9th, 1758. Document SC0654.

21 BY MR. OGDEN:

22 Q. So this is a letter, a
23 translation of a letter, isn't it?

24 A. Yes, that's correct.

25 Q. From Monsieur de Montcalm to

1 Marshal de Belle-Isle. And can you tell us who
2 they were, please?

3 A. Montcalm was the commanding
4 officer in New France. Marshal de Belle-Isle
5 was his superior in the department of war in
6 Paris, I believe.

7 Q. And the date of the letter is
8 dated, Montreal, September the 9th, 1758. And
9 they're talking about the capture of Fort
10 Frontenac, is that correct?

11 A. Yes.

12 Q. If you go down to the -- in the
13 5th line of this copy, it says, "[...] and
14 destroyed the navy." They're talking about the
15 British destroying the navy. And the next line,
16 "[...] burning five of our sloops and carrying
17 two of them away." You see that.

18 And then nine lines down in the
19 middle, there is a quote:

20 "[...] that navy assured to us
21 the superiority on Lake Ontario which
22 we now lose."

23 Do you have any reason to doubt the
24 assessment of the French military commander in
25 New France that I've just read to you?

12:00:04 1 A. No.

12:00:04 2 Q. And the next document then,

12:00:05 3 SC0653, this is the journal --

12:00:21 4 THE COURT: What was the number again?

12:00:25 5 MR. OGDEN: SC0653. I would like to

12:00:28 6 make this as an exhibit, Your Honour. It's

12:00:30 7 described as the "Journal du marquis de

12:00:31 8 Montcalm", extract.

12:00:46 9 THE REGISTRAR: Exhibit 4036, Your

12:00:46 10 Honour.

10:11:34 11 EXHIBIT NO. 4036: Extract from the

10:11:34 12 "Journal du marquis de Montcalm".

10:11:34 13 Document SC0653.

12:00:46 14 BY MR. OGDEN:

12:00:46 15 Q. Do you recognize this as an

12:00:50 16 authoritative source of information on Montcalm?

12:00:53 17 A. Yes.

12:00:54 18 Q. And can we go down please to PDF

12:00:59 19 page 4, there is page 450 of the journal. At

12:01:10 20 the top there, this is Montcalm speaking in this

12:01:19 21 journal, isn't it?

12:01:20 22 A. Yes.

12:01:21 23 Q. And it reads.

12:01:28 24 [Counsel reading in French).

12:01:36 25 And you said yesterday you can make

12:01:42 1 your way through documents from New France. Are
12:01:45 2 you able to understand that?

12:01:50 3 A. Yeah, more or less. He's talking
12:01:52 4 about the loss of cannons and armaments in -- I
12:01:58 5 assume the same engagement on Lake Ontario, is
12:02:01 6 that right?

12:02:04 7 Q. Yes, that's my understanding.

12:02:06 8 And can you translate the sentence
12:02:09 9 [counsel reading in French]? I can put a
12:02:20 10 translation and ask if you --

12:02:22 11 A. I would say that it translates
12:02:24 12 something like, this makes them masters of Lake
12:02:26 13 Ontario.

12:02:27 14 Q. Again, it includes the word
12:02:28 15 "again", "encore". This makes them again?

12:02:34 16 A. Oui.

12:02:35 17 Q. Merci.

12:02:37 18 The next document, Your Honour,
12:02:38 19 SC0655. This is an article, Daniel Reibel, "The
12:02:57 20 British Navy on the Upper Great Lakes,
12:02:59 21 1760-1789." And I would like to tender this as
12:03:03 22 an exhibit, Your Honour.

12:03:04 23 THE COURT: Mr. Registrar?

12:03:04 24 THE REGISTRAR: Exhibit No. 4037.

12:03:19 25 EXHIBIT NO. 4037: "The British Navy

1 on the Upper Great Lakes, 1760-1789",
2 Daniel Reibel. Document SC0655.

3 BY MR. OGDEN:

4 Q. For the record, it is from the
5 "Journal of Niagara Frontier", Volume 20, in
6 1973. On page 66 of the journal, which is the
7 left page -- left side of the PDF page 1. On
8 the right side looking for the words, "Speaking
9 in military terms [...]" I'll read it:

10 "Speaking in military terms,
11 control of Montreal, Quebec and
12 Niagara, gave the British absolute
13 control of the whole St. Lawrence,
14 Great Lakes basin."

15 Do you agree with that assessment?

16 A. No.

17 Q. And you are not a military
18 historian? You do not purport to be a military
19 historian?

20 A. Not primarily, no. I mean, I
21 think the way I would interpret this passage is
22 that his intention is to say that France no
23 longer maintained control of that territory, but
24 I wouldn't say that that means that Britain had
25 absolute control of the entire St. Lawrence,

12:04:31 1 Great Lakes basin. That strikes me as an
12:04:33 2 overstatement.

12:04:33 3 Q. In military terms? You say it's
12:04:36 4 an overstatement in military terms?

12:04:38 5 A. Right.

12:04:38 6 Q. So next document. Let's talk
12:04:47 7 about 1761 and -- 1760 to 1761 and matters
12:04:53 8 concerning Detroit and Croghan. I've been
12:04:58 9 saying "Croghan"...

12:05:00 10 A. We say Croghan, the G is silent.

12:05:07 11 Q. Okay. Thank you.

12:05:07 12 And Robert Rogers, the captain of the
12:05:09 13 Rangers, is that correct?

12:05:21 14 A. Yes.

12:05:21 15 Q. Now, as a general proposition in
12:05:23 16 the materials that you cite, the primary
12:05:25 17 materials relating to Croghan and Rogers,
12:05:30 18 there's no statement in them in respect of
12:05:34 19 claims to waterways or land covered by water
12:05:38 20 specifically, is there, of which you are aware?

12:05:42 21 A. You're referring to a portion of
12:05:44 22 my report?

12:05:45 23 Q. I'm referring to primary
12:05:46 24 documents on which you rely.

12:05:50 25 A. The question is whether there is

12:05:52 1 any statement about waterways in those primary
12:05:54 2 sources anywhere?

12:05:56 3 Q. Claims to waterways and lands
12:05:58 4 under the water.

12:06:02 5 A. I don't know of any off the top
12:06:04 6 of my head.

12:06:15 7 Q. I would like to take you to an
12:06:17 8 exhibit in the primary collection, 0480, and
12:06:20 9 this is one of the documents that you rely on;
12:06:20 10 it's part of the journal on Robert Roger the
12:06:37 11 Ranger. Is there an assertion of ownership of
12:06:42 12 waterways in this? This is one of the primary
12:06:45 13 documents.

12:06:49 14 To save time, I'll withdraw the
12:06:51 15 question. I'm going to move on because you
12:06:54 16 already answered it in a manner.

12:06:56 17 The next document, primary document
12:07:07 18 0472.

12:07:12 19 THE COURT: When you say "primary
12:07:13 20 document" what do you mean by that?

12:07:15 21 MR. OGDEN: Your Honour, it's in the
12:07:16 22 primary collection.

12:07:18 23 THE COURT: Well, then you can give an
12:07:19 24 Exhibit number.

25

1 BY MR. OGDEN:

2 Q. Exhibit number 472. And this is
3 the Croghan journal on which you rely?

4 A. Yes.

5 Q. Could we turn to page 386 of this
6 journal, which is the PDF page 77? Down to the
7 reference October 1st, 1760. I'll read it:

8 "Received the agreeable news of
9 the reduction of Canada and this day a
10 feu de joie was ordered on the
11 occasion. From the 1st to the 20th
12 (October, 1760) not anything happened
13 remarkable till Major Rogers arrived
14 who brought me orders to join His
15 Majesty's troops under his command to
16 go to Detroit and assist in taking
17 possession of that place it being
18 included in the capitulation of
19 Montreal."

20 Firstly, can you tell us what
21 "reduction" means? It's not a cooking
22 reference, is it?

23 A. No, conquest, capture.

24 Q. And a "feu de joie"?

25 A. Celebration.

12:08:37 1 Q. And in this extract that I read
12:08:39 2 to you there's no apparent consideration for the
12:08:43 3 wishes of the First Nations at Detroit, is
12:08:44 4 there? In this extract?

12:08:53 5 A. There is no mention of First
12:08:54 6 Nations in this extract.

12:08:58 7 Q. There's no apparent consideration
12:09:00 8 for their wishes is there, in this extract?

12:09:04 9 A. No. They're not mentioned so
12:09:05 10 there's no consideration of them in any regard.

12:09:09 11 Q. Down then to PDF page 79, page
12:09:12 12 388 of the journal. PDF page 79, I'm sorry.

12:09:33 13 And this is a continuation after
12:09:36 14 October 20th, after the paragraph that I just
12:09:37 15 read. And this describes, as far as you're
12:09:40 16 aware, Croghan and Rogers travelling west along
12:09:44 17 the south shore of Lake Erie towards Detroit, is
12:09:47 18 that correct? You can take a moment to --

12:09:52 19 THE COURT: Where are you referring
12:09:52 20 to, counsel?

12:09:53 21 BY MR. OGDEN:

12:09:53 22 Q. In general. We can take a
12:09:55 23 moment --

12:09:56 24 THE COURT: No, it's okay. I just
12:09:56 25 didn't hear you. Please go ahead.

1 THE WITNESS: Yes, that appears to be
2 the point in the journal that we're at.

3 BY MR. OGDEN:

4 Q. On the left-hand side you see the
5 words, "We re-embarked[...]". I'm going to read
6 that to you:

7 "We reembarked and sailed several
8 leagues further and after we had
9 encamped, I called a council of all of
10 the Indians and acquainted them of the
11 reduction of Montreal that we were
12 going to take possession of Fort
13 Detroit, Michilimackinac and Fort St.
14 Joseph and take the fenced garrisons
15 away prisoners of war and garrison
16 them with forts with English troop."

17 And in this description that Croghen
18 gives of what he said he doesn't ask permission
19 of the assembled First Nation individuals to
20 take possession of the Fort does he?

21 A. No, he doesn't.

22 Q. He's just informing them of what
23 was going to happen, according to him?

24 A. Correct.

25 Q. Down further to PDF page 85 to

1 86, which is page 394 of the journal to 395.

2 And if you look in the middle there just for
3 context:

4 "The 29th, November 1760, we set
5 out at 12 o'clock, arrived at the
6 place where we landed and relieved the
7 garrison."

8 And this is in Detroit, yes?

9 A. If you say so. I mean, I trust
10 that that's the case.

11 Q. I believe -- well, you do you
12 refer in your report to a meeting at Detroit in
13 early December with Croghan and Rogers?

14 A. Yes.

15 Q. So this is leading into that, we
16 have a reference to December there.

17 And the 3rd December it says:

18 "[...] in the morning the
19 principal Indians of the different
20 Nations came to my lodgings and spoke
21 by a belt of wampum in the following
22 manner [...]"

23 And I'll read you the quote and we'll
24 continue to the next page.

25 "You have now taking possession

1 of this country. While the French
2 lived here they employed a smith to
3 mend our guns and hatchets and a
4 Doctor to attend our people when sick.
5 We expect you will do the same."

6 This is an address by someone on
7 behalf of the First Nations assembled at
8 Detroit, is that right?

9 A. It is, yes.

10 Q. And it appears from this quote
11 that they accepted British possession as a fact
12 over which, at that time at least, they had no
13 control. Is that correct?

14 A. They had no -- they seemed to
15 have no wish to challenge the British
16 possession. They are accepting the idea that
17 the Forts are passing into British hands. They
18 are articulating their expectations for British
19 support from the support that they received from
20 the French.

21 They begin the address by calling
22 Croghan and Rogers "Brethren".

23 Q. Yes. And this is not an example
24 of the First Nation preventing the British from
25 travelling upstream from Detroit?

12:13:39 1 A. No it's not.

12:13:44 2 Q. We'll go to your report now, if
12:13:46 3 we may, please, to page 11. And towards the
12:14:08 4 bottom you say, I'll read it:

12:14:08 5 "Moreover, by calling them
12:14:09 6 brethren rather and children, Croghan
12:14:16 7 and Rogers made it clear that they
12:14:19 8 considered the western Nations to be
12:14:21 9 allies and not the subjects of the
12:14:22 10 Crown."

12:14:40 11 You've said before there was a
12:14:42 12 standard British practice, diplomatic practice
12:14:46 13 to say "brethren" rather than "children" at the
12:14:48 14 time?

12:14:48 15 A. Yes.

12:14:49 16 Q. So Croghan and Rogers were not
12:14:52 17 making a change in policy by saying "brethren"?

12:14:55 18 A. No, they're just extending this
12:14:57 19 principle of alliance into a territory where it
12:15:02 20 had not previously extended.

12:15:03 21 Q. And there's no example of Croghan
12:15:06 22 and Rogers calling the First Nations "children"
12:15:10 23 to that point is there?

12:15:13 24 A. No, not that I'm aware of.

12:15:20 25 Q. And in your report, for

12:15:22 1 reference, at page 25 you talk about Colonel
12:15:25 2 Bradstreet making this agreement and referring
12:15:28 3 to children. Putting that aside, because that's
12:15:28 4 later, that's not the question that I wanted to
12:15:28 5 ask you.

12:15:31 6 There's nothing in the supporting
12:15:37 7 documents that directly showed Croghan and
12:15:41 8 Rogers intended to make a point by referring to
12:15:49 9 "brethren" rather than children? That was a
12:15:54 10 long question, sorry. I can repeat it if you
12:15:56 11 like?

12:15:56 12 A. Yes, please.

12:16:02 13 Q. There's nothing in the supporting
12:16:04 14 documents that directly showed Croghan and
12:16:07 15 Rogers intended to make a point by referring to
12:16:10 16 "brethren" rather than "children"?

12:16:15 17 A. Well, I'm not sure what you mean
12:16:17 18 by "intended to make a point", but I would say
12:16:19 19 that it was an intentional word choice.

12:17:00 20 Q. Exhibit 49, please. And this was
12:17:02 21 referred to yesterday, Your Honour, from "The
12:17:08 22 Papers of Sir William Johnson", if you can go
12:17:12 23 down please.

12:17:13 24 These are minutes of the Detroit
12:17:24 25 Congress, 1761. Page 52 of the PDF, page 478.

1 It says -- I'm going to read it again. This is
2 Johnson talking I believe.

3 "Brethren, I can with confidence
4 assure you that it is not at present,
5 neither hath it been his Majesty's
6 intentions to deprive any Nation of
7 the means to their just property by
8 taking possession of any lands to
9 which they have a lawful claim, other
10 than for the benefit or promoting of
11 an extensive commerce, for the
12 security and protection of which for
13 the occupying of such posts as have
14 been surrendered to us by the
15 capitulation of Canada troops are now
16 on their way."

17 And Johnson is describing British
18 intention at the time, isn't he?

19 A. Yes.

20 Q. His words are "[...] not at
21 present, neither hath it been [...]", so he's
22 describing British intention of the present and
23 the past, isn't he?

24 A. Yes. I think the reference to
25 the past is an indication that he is saying that

12:19:18 1 it's not -- it was not one of the goals of the
12:19:21 2 British in the Seven Years' War to capture First
12:19:28 3 Nation's lands, and at the present it is not
12:19:31 4 their intention to deprive First Nations of
12:19:33 5 their just property. I think that's what he
12:19:36 6 intends by the past tense and then the present
12:19:40 7 tense.

12:19:41 8 Q. And he does not say, Will not in
12:19:43 9 the future, does he?

12:19:52 10 A. No.

12:19:54 11 Q. He does not say that Britain will
12:19:57 12 not or would not deprive any Nation of their
12:20:00 13 just property?

12:20:01 14 A. I think that's true.

12:20:01 15 Q. He's not asking for permission to
12:20:03 16 occupy the First Nations' lands at this point?

12:20:06 17 A. Well, in the -- by entering into
12:20:09 18 a diplomatic conference with the First Nations
12:20:17 19 it is in effect a request for permission, as I
12:20:21 20 read it.

12:20:23 21 It's -- you know, what he's hoping for
12:20:25 22 is a mutually-agreeable arrangement whereby the
12:20:29 23 British -- you know, it says we don't have any
12:20:32 24 intention to impinge on your lands other than to
12:20:34 25 just take up the posts, communicate among them,

12:20:38 1 promote an extensive commerce.

12:20:48 2 I read this as both a statement of
12:20:50 3 intention and also a -- a promise, an assurance
12:20:55 4 of an intention not to impinge further than
12:21:03 5 First Nations' territories have already been
12:21:05 6 impinged upon.

12:21:08 7 Q. Well, if we go down to page 485,
12:21:10 8 please, and to the response; this is PDF page
12:21:16 9 59, it's the next page. To the word there,
12:21:37 10 "Brother". This is a response by the First
12:21:39 11 Nations.

12:21:40 12 "Brother, it gives us great
12:21:43 13 satisfaction to hear that the King has
12:21:44 14 no intentions to deprive us of our
12:21:46 15 land."

12:21:46 16 So the First Nation leader here is
12:21:52 17 saying that what they heard, this is the
12:21:54 18 translation of it, was that the King has no
12:21:59 19 intention to deprive us of their lands. And
12:22:03 20 that is an understanding there of present
12:22:06 21 intention isn't it? As stated here?

12:22:08 22 A. Intention implies future tense,
12:22:10 23 doesn't it? If you don't intend to do something
12:22:13 24 that's a statement about the future as well as
12:22:14 25 the present.

12:22:21 1 Q. It's not a promise though is it?

12:22:23 2 You know the difference between a statement of
12:22:25 3 what you intend to do and what you promise to do
12:22:28 4 in the future? Don't you?

12:22:30 5 A. Yes, I think there is a
12:22:32 6 distinction between the term "intention" and the
12:22:34 7 term "promise". Okay, it's a statement of
12:22:44 8 intent for I would say the present and
12:22:47 9 foreseeable future.

12:22:48 10 Q. And that's how the First Nation
12:22:49 11 leader understood it, according to this record?

12:22:55 12 A. According to this record.

12:23:00 13 Q. If we go to your report please,
12:23:03 14 to page -- well, actually let's not turn it up.
12:23:10 15 I can refer to it. Well, page 19, let's go
12:23:16 16 there please, of your report. Page 19.

12:23:20 17 You're referring to the statement
12:23:23 18 about Minavavana to Alexander Henry in 1761.

12:23:34 19 And there's an extract there and the next
12:23:36 20 paragraph starts:

12:23:37 21 "Henry soon met a spokesman from
12:23:39 22 the Odawas at L'Arbre Croche who
12:23:50 23 delivered a similar message."

12:23:50 24 That similar message delivered by the
12:23:52 25 Odawas at L'Arbre Croche does not mention waters

12:23:55 1 does it? As far as you're aware?

12:24:05 2 A. I don't recall that it says

12:24:07 3 anything about water.

12:24:08 4 Q. And Minavavana was Odawa?

12:24:14 5 A. Yes.

12:24:14 6 Q. At Michilimackinac?

12:24:16 7 A. Ojibwa.

12:24:17 8 Q. He was Ojibwa at Michilimackinac.

12:24:20 9 And he had, according to the records,

12:24:22 10 approximately a hundred warriors, is what they

12:24:25 11 describe. Is that right?

12:24:26 12 A. That sounds -- that sounds right.

12:24:28 13 Q. And then the Odawas at L'Arbre

12:24:30 14 Croche were nearby. Very close, weren't they?

12:24:36 15 A. Yes.

12:24:37 16 Q. And they had approximately 250

12:24:39 17 warriors? Is that your understanding?

12:24:43 18 A. I presume that you're correct in

12:24:45 19 saying that. I don't know off the top of my

12:24:46 20 head but it sounds approximately correct to me.

12:24:52 21 Q. We'll work with that. Assuming

12:24:56 22 that is the case, Minavavana, Ojibwa, with a

12:25:02 23 hundred warriors was not speaking for most of

12:25:08 24 the warriors there, was he? When he made this

12:25:19 25 statement to Henry?

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12:26:44

1 A. Do you mean to say that he's
2 speaking for --
3 Q. The 100 warriors.
4 A. -- the Ojibwas but not the
5 Odawas?
6 Q. Well, yes; and a result he was
7 speaking for 150 of the 350 in the area and not
8 speak for most of the warriors in the area?
9 A. Well, you know, this is not any
10 kind of an official exchange. I've always read
11 this more as a conversation between Minavavana
12 and Henry. But to the extent that he's speaking
13 for people it makes sense to limit that to his
14 own community.
15 Q. So he's not speaking for, in
16 practical terms the people who controlled the
17 territory? So let me step back.
18 In the Ojibwas had 100 warriors and
19 the Odawas had 250 the Ojibwas, in practical
20 terms, did not control the territory. Would
21 that be a fair statement?
22 A. I guess. I'm not sure how to
23 respond to that. It's true that in this
24 particular locale the L'Arbre Croche Odawas
25 outnumbered the Minavavana's Ojibwas. I don't

12:26:55 1 know if that speaks to control or not.

12:26:57 2 Q. I'll show you another document.

12:26:58 3 SC0660, Your Honour, which I would like to make

12:27:04 4 an exhibit. And this can be described as

12:27:07 5 Frances Parkman "Conspiracy of Pontiac and the

12:27:13 6 Indian War". And you're familiar --

12:27:17 7 THE COURT: Can you flip to the cover
12:27:18 8 page?

12:27:27 9 THE WITNESS: I'm familiar with this,
12:27:28 10 this is the 1870 edition I think, and the
12:27:32 11 original text is from about the 1850s.

12:27:36 12 BY MR. OGDEN:

12:27:36 13 Q. Can we turn to page 325 please?

12:27:41 14 And to the right side if you could enlarge the

12:27:52 15 right page side please? Which is page 325 of

12:27:55 16 the text as well. And there you see a reference
12:27:56 17 two thirds of the way down:

12:27:56 18 "The principle limit of the

12:27:56 19 Ojibwas contained about 100 warriors,

12:27:56 20 there was another small village near

12:27:56 21 the head of Thunder Bay, the Ottawas,

12:27:56 22 to the number of 250 warriors lived at

12:28:16 23 the...of L'Arbre Croche."

12:28:16 24 Do you have any reason, based on this,
12:28:22 25 to doubt this?

12:28:23 1 A. No, I think he is drawing on the
12:28:28 2 same primary source materials that we've been
12:28:30 3 talking about.

12:28:41 4 Q. Thank you. We went through
12:28:43 5 earlier lists of trade items that First Nations
12:28:46 6 received or had supplied through France or
12:28:49 7 Britain or other Europeans.

12:28:54 8 Those trade items were limited in the
12:28:59 9 build up to Pontiac's War, is that correct? The
12:29:02 10 supply into First Nations was limited in the
12:29:05 11 build-up to Pontiac's War?

12:29:08 12 A. Yes. Jeffrey Amherst had imposed
12:29:14 13 regulations on both -- related to trading and
12:29:18 14 diplomatic gifts that had reduced supplies.

12:29:23 15 Q. So based on the way we've
12:29:26 16 described their importance before, at that time,
12:29:27 17 in the build-up to Pontiac's War First Nations
12:29:34 18 could not survive without these trade items,
12:29:37 19 could they? Not necessarily like a needle, for
12:29:40 20 instance?

12:29:42 21 A. Survive? I mean, I think people
12:29:43 22 could have survived but it certainly put
12:29:48 23 significant pressures on them.

12:29:57 24 Q. I'd like to go to Exhibit 0612
12:30:03 25 please.

12:30:11 1 THE REGISTRAR: Court's indulgence.

12:30:12 2 The last exhibit number is 4038.

12:30:16 3 THE COURT: We had not marked it. Do
12:30:18 4 you wish to do so?

12:30:20 5 MR. OGDEN: Yes, Your Honour.

12:30:22 6 THE COURT: 4038.

12:30:24 7 EXHIBIT NO. 4038: Frances Parkman's
12:30:24 8 "Conspiracy of Pontiac and the Indian
12:30:24 9 War". Document SC0660.

12:30:28 10 THE COURT: And the new document is
12:30:29 11 what, sir?

12:30:30 12 BY MR. OGDEN:

12:30:30 13 Q. The new document, which is 0612
12:30:31 14 is from the -- an extract from "The Papers of
12:30:37 15 Sir William Johnson". And to page 6 of the PDF,
12:30:49 16 page 469 of the volume. And this is from the
12:30:57 17 Niagara Congress, 1764. This is after Pontiac's
12:31:00 18 War.

12:31:02 19 And perhaps we can go up to the
12:31:04 20 previous page please? And then we had the Chief
12:31:10 21 of the Ottawas rose and said -- there's some
12:31:18 22 missing text but it reads:

12:31:19 23 "The great want of ammunition
12:31:22 24 without which we cannot subsist having
12:31:25 25 expended all which was formerly -- we

1 are also without knives, axes or
2 necessarily articles therefore are
3 come to see hoping you will consider
4 our distresses."

5 Is that, as far as you are aware, an
6 accurate description of the state of the First
7 Nations generally, the Great Lake First Nations
8 in the period after Pontiac's War?

9 A. This kind of a statement is made
10 by all of the main spokespeople at the Niagara
11 Conference and they're all going to make the
12 same plea. We're suffering without trade goods.
13 We want trade restored. They're also hoping for
14 a significant diplomatic gift.

15 Q. Next page please. Page 7 of the
16 PDF, page 470. William Johnson -- there are
17 some bracketed words describing the Chief of the
18 Chippewas speaking. It says "Brother" in
19 brackets but that seems to end the description
20 of what the Chief of the Chippewas is saying and
21 then it continues, is that correct?

22 A. Yes.

23 Q. So the next quote there is
24 "Brethren", and that's William Johnson speaking?

25 A. Yes.

12:33:28 1 Q. And he says:

12:33:29 2 "You let me know the other day
12:33:31 3 that you were in great want of
12:33:33 4 ammunition and every other article
12:33:35 5 necessary for your hunting or
12:33:37 6 subsistence."

12:33:37 7 And, as far as you understand it, that
12:33:42 8 is an accurate description of what was said to
12:33:44 9 Johnson at the Niagara Congress about supply?

12:33:49 10 A. Yes.

12:33:58 11 Q. Could we go to Exhibit 4030
12:34:02 12 please? This is Dowd, which was entered
12:34:05 13 yesterday, "A Spirited Resistance" page 26 of
12:34:13 14 the extract, which is page 5 of the PDF. The
12:34:25 15 paragraph at the front there reads:

12:34:27 16 "The departure of France from
12:34:29 17 North America left the Indians more
12:34:31 18 dependent than ever on the British for
12:34:33 19 goods."

12:34:33 20 Is that an accurate statement?

12:34:37 21 A. Yes.

12:34:45 22 Q. And the new document, S0496,
12:34:50 23 which I would like to make an exhibit please.
12:34:55 24 This is an extract from Dowd, "War Under
12:35:01 25 Heaven". And could you go forward please?

12:35:18 1 Containing all pages to end of chapter 1. Your
12:35:35 2 Honour, may I tender this as an exhibit please.

12:35:39 3 THE COURT: Yes.

12:35:43 4 THE REGISTRAR: Exhibit 4039.

12:35:45 5 EXHIBIT NO. 4039: Extract from
12:35:48 6 Chapter 1 of Greg Dowd's "War Under
12:35:48 7 Heaven". Document SC0496.

12:35:48 8 BY MR. OGDEN:

12:35:48 9 Q. Page 23 of the PDF, page 29,
12:35:52 10 which is the right-hand side. If you can
12:35:58 11 enlarge the right-hand side please? You see the
12:36:11 12 bottom of that paragraph there on page 29 it
12:36:14 13 says:

12:36:14 14 "By Pontiac's day the dependence
12:36:16 15 on access to goods was very real."

12:36:19 16 Is that an accurate statement?

12:36:23 17 A. Yeah, I mean, we've talked about
12:36:25 18 my feeling about the word "dependence" but yes.

12:36:29 19 Q. And I'll read the next paragraph
12:36:30 20 and ask you about that.

12:36:32 21 "One good was particularly
12:36:35 22 important, gun powder. Hunting and
12:36:37 23 defence made it absolutely essential
12:36:39 24 that Ottawa's obtain guns and
12:36:42 25 ammunition, though firearms might last

1 many years powder was easily spent of
2 spoiled. The Indians quickly learned
3 to repair firearms, manufacture ball
4 and shot and shape fine flints for the
5 flint box, but none mastered the fine
6 art of milling gun powder. Even
7 French colonists never erected a power
8 to mill during the colonial period.
9 Although English colonists had opened
10 such works in 1675 they continued to
11 import much black powder throughout
12 the colonial period. Everywhere in
13 eastern North American when men looked
14 for gun powder they looked to the
15 Atlantic. For the Ottawas in the
16 Detroit River the Atlantic was
17 French."

18 Do you agree with the statements made
19 in that paragraph?

20 A. Yes.

21 Q. The next document is S0497. This
22 is Dowd, "War Under Heaven". This is a
23 different extract. If we go down chapter 2,
24 Dowd, "War Under Heaven", chapter 2. Your
25 Honour, may with exhibit this please?

12:37:59 1 THE COURT: I see no objection. Yes.

12:38:00 2 Mr. Registrar.

12:38:05 3 THE REGISTRAR: Exhibit number 4040.

12:38:07 4 EXHIBIT NO. 4040: Chapter 2 or Greg

12:38:09 5 Dowd's "War Under Heaven". Document

12:38:09 6 SC0497.

12:38:10 7 BY MR. OGDEN:

12:38:10 8 Q. Pages 25 to 26 of the PDF please,

12:38:13 9 pages 76 to 77 of the book. The last line there

12:38:34 10 I'm going to read:

12:38:44 11 "And while rum might be seen as a

12:38:47 12 luxury, ammunition was essential both

12:38:47 13 to hunting as to the Northern Indians'

12:38:49 14 defence against such invaders as the

12:38:49 15 Cherokees whom the British had

12:38:52 16 encouraged them to fight."

12:38:56 17 Do you agree that ammunition was

12:38:58 18 essential to both hunting and it was not a

12:39:00 19 luxury?

12:39:01 20 A. Yes.

12:39:08 21 Q. The next document, Your Honour,

12:39:11 22 SC0659. I'm not going to tender this document

12:39:28 23 as an exhibit, Your Honour, but for reference.

12:39:30 24 The extract that I'm going to put to the witness

12:39:33 25 is from "Memoirs on the Late War in North

12:39:35 1 America between France and England" by Pierre
12:39:39 2 Pouchot. Are you aware of this individual?
12:39:43 3 A. Yes, in general.
12:39:45 4 Q. In general?
12:39:47 5 A. I'm aware of his text.
12:39:49 6 Q. And his text -- Monsieur Pouchot
12:39:53 7 was a French military engineer, a French officer
12:39:56 8 in the army?
12:39:57 9 A. Yes.
12:39:58 10 Q. So pages 2 and 3 there is a list
12:40:07 11 of goods for trade. I'm going to ask you
12:40:10 12 whether this is an accurate description of
12:40:12 13 goods. Or representative description of the
12:40:14 14 goods that Europeans traded with First Nations?
12:40:17 15 THE COURT: What page is that on?
12:40:19 16 MR. OGDEN: This is page 2 to 3 of the
12:40:20 17 PDF, Your Honour, and pages 323 to 324 of the
12:40:26 18 document. By I'm not going to ask that we
12:40:33 19 document the exhibit, Your Honour.
12:40:35 20 BY MR. OGDEN:
12:40:36 21 Q. "The goods for trade with the
12:40:38 22 Indians are hunting muskets; shots;
12:40:41 23 bullets; powder; tinder boxes; gun
12:40:42 24 flints; water extractors; knives;
12:40:42 25 axes; copper pots; porcelain,

12:40:46 1 tumblers; men's shirts, and material
12:40:48 2 trimmed with blue and red; cloth for
12:40:51 3 blankets and covers; Vermilion and
12:40:52 4 verdigris, green and blue ribbons;
12:40:58 5 English lace; needles; thread;
12:41:01 6 bradaws; blue, white and red ratteen
12:41:07 7 for gaiters; woolen blankets; 3, one
12:41:13 8 half, 3, two and 1, one half point
12:41:17 9 needle work; Leon cloth; wooden framed
12:41:22 10 mirrors; flat hats with embroidered
12:41:25 11 and false brims; plumed headdresses in
12:41:28 12 yellow and red; yellow, blue and green
12:41:35 13 quilted greatcoats for men and
12:41:35 14 children; crimped rateen; both cheap
12:41:35 15 and finely worked braids; brandy;
12:41:35 16 tobacco; razors for shaving heads;
12:41:35 17 porcelain; glassware; combs, et
12:41:38 18 cetera".

12:41:40 19 Is this a representative list of the
12:41:41 20 goods that Europeans traded to First Nations?

12:41:45 21 A. That's quite a list. I don't --
12:41:48 22 my only quibble would be with the word
12:41:51 23 "representative" because I think this is a full
12:41:53 24 array. Most commercial relations traded a much
12:42:02 25 narrower range of goods. But I take it as

12:42:05 1 accurate that in fact all of those items were
12:42:07 2 items of trade between French traders and the
12:42:11 3 First Nations.

12:42:29 4 Q. In early 1763 First Nation war
12:42:32 5 belts had been circulating for approximately two
12:42:35 6 years, is that accurate?

12:42:36 7 A. Yes.

12:42:36 8 Q. And these were war belts
12:42:39 9 intending to communicate a desire for war with
12:42:46 10 the British?

12:42:46 11 A. Yes.

12:42:48 12 Q. The immediate trigger in the
12:42:51 13 spring of 1763 was news of the peace between
12:42:54 14 France and Britain, is that correct?

12:42:59 15 A. Yes.

12:43:13 16 Q. So I'll take you now to a new
12:43:16 17 document, SC117. And this is another document I
12:43:26 18 will tender as an exhibit. This is from
12:43:29 19 Anderson "Crucible of War", chapter 56.
12:43:32 20 "Amherst's Reforms and Pontiac's War". May we
12:43:42 21 exhibit this please, Your Honour?

12:43:43 22 THE COURT: I see no objection. Yes.

12:43:47 23 THE REGISTRAR: Exhibit number 4041.

12:43:49 24 EXHIBIT NO. 4041: Chapter 56,

12:43:50 25 "Amherst's Reforms and Pontiac's War",

1 of Fred Anderson's "Crucible of War".
2 Document SC0117.

3 BY MR. OGDEN:

4 Q. This page of the PDF, which is
5 page 545 -- I apologize, it is page 11 of the
6 PDF. And the words -- I'm going to read it.

7 "Indeed to an extent that even
8 Johnson and Croghan only dimly
9 understood, the precipitating cause of
10 the Indian attacks on British posts
11 throughout the west had been the
12 arrival of news that Britain and
13 France had at long last made peace."

14 Do you agree with that statement?

15 A. Yes.

16 Q. The next document, Your Honour,
17 S0498. This is back to Dowd. We'll tender it
18 as an exhibit, please, Your Honour. Dowd, "War
19 Under Heaven", chapter 3, "An Otherworldly War".

20 THE COURT: Mr. Registrar?

21 THE REGISTRAR: Exhibit number 4042.

22 EXHIBIT NO. 4042: Chapter 3, "An
23 Otherworldly War", of Greg Dowd's,
24 "War Under Heaven".

25

12:45:29 1 BY MR. OGDEN:

12:45:30 2 Q. Apologize, Your Honour, I don't
12:45:32 3 have a page number to the extract that I'm going
12:45:34 4 to take the witness to, but I'll take him to it
12:45:37 5 and then give you the page extract later. I'm
12:45:39 6 going to read a quote, sir, it's this:

12:45:43 7 "Pontiac and his Indian allies
12:45:46 8 nonetheless decided --"

12:45:47 9 THE COURT: Just a moment. You said
12:45:48 10 you were going to take him to it.

12:45:51 11 MR. OGDEN: I will read it from my own
12:45:53 12 notes, Your Honour, and then after the break
12:45:55 13 give you the page reference.

12:45:57 14 THE COURT: It's not me I'm concerned
12:45:58 15 about. You're not planning to show it to the
12:46:01 16 witness?

12:46:03 17 MR. OGDEN: It's short.

12:46:04 18 THE COURT: All right. Well, the
12:46:05 19 witness will speak for himself. Please go
12:46:07 20 ahead.

12:46:08 21 BY MR. OGDEN:

12:46:08 22 Q. "Pontiac and his Indian allies
12:46:11 23 nonetheless desired to restore the
12:46:13 24 French King as a counterweight to
12:46:14 25 Anglo-American expansion."

1 Is that accurate?

2 A. Yes. I mean -- without context
3 it's the same -- it's essentially the same
4 argument I made yesterday. So, yes, I would say
5 accurate.

6 Q. You talked yesterday about the
7 intents of those with who allied with Pontiac,
8 or those who rose up against the British. And
9 you talked about -- and you talk in your report
10 that they sought to demonstrate the
11 vulnerability of the posts, the western posts,
12 and to impress upon Britain's military and
13 administrative leaders the essential facts that
14 they occupied those posts only with the
15 permission of First Nations that occupied the
16 surrounding territory. The goal there was not
17 to exclude the British, was it, but to have
18 their respect?

19 A. Well, as I said yesterday, I
20 think that the -- that the goals of the war
21 evolved a bit through the course of the summer.
22 But, yes, ultimately I would say that the goal
23 was to restore the British to the posts under
24 terms that First Nations, at least partially,
25 dictated or influenced.

1 Q. Not all of the First Nations who
2 joined in the conflict sought, at any point --
3 sorry. I'll rephrase my question.

4 Some Nations who participated in the
5 conflict did not intend to expel the British at
6 any point during the conflict?

7 A. Are you referring to the L'Arbre
8 Croche community?

9 Q. It's a general point. There were
10 the First Nations who participated in the
11 conflict who never had the desire to exclude the
12 British, is that correct?

13 A. It's -- what I would say about
14 that is it's plausible. Likely -- and in the
15 case of L'Arbre Croche I think we can say in
16 that particular instance --

17 Q. It's likely?

18 A. Yeah, kind of clearly true
19 actually.

20 Q. Page 29 of your report, I don't
21 need to take you to it. I'll read it to you.

22 "[...] but most participating
23 leaders and warriors recognized the
24 importance of -- "

25 Since you have a paper copy I'll wait.

12:50:09 1 Let's allow everyone to see it then in that
12:50:11 2 instance. Page 29 of the report please.

12:50:15 3 "[...] but most participating
12:50:33 4 leaders and warriors recognized the
12:50:36 5 importance of a robust trade to their
12:50:38 6 economies. As a result they hoped to
12:50:40 7 fight long enough to make their point
12:50:42 8 and then settle a peace [...]".

12:50:53 9 So this is -- you're referring to
12:50:54 10 "most participating leaders and warriors", hopes
12:50:57 11 to fight long enough to make their point about
12:51:01 12 trade. Is that what you're saying there?

12:51:05 13 A. Yes.

12:51:05 14 Q. So for most First Nations this
12:51:08 15 was a trade war?

12:51:09 16 A. Trade was at issue but there was
12:51:25 17 a more general concern with the way British
12:51:30 18 officers were taking up posts, and there were
12:51:34 19 fears about British entrenchments for
12:51:39 20 territorial encroachment.

12:52:03 21 Q. Can we go to page 23 please?

12:52:09 22 THE COURT: Sometime in the next
12:52:11 23 little bit if you can find a logical place for
12:52:14 24 the break.

12:52:16 25 MR. OGDEN: Yes. That will be in

12:52:18 1 about a minute, Your Honour.

12:52:33 2 BY MR. OGDEN:

12:52:33 3 Q. There is a large footnote that I
12:52:35 4 would like to see, and you reference lots of
12:52:38 5 primary sources here, which we mentioned
12:52:40 6 yesterday was Navarre, who was a French scrivener
12:52:50 7 at Detroit?

12:52:51 8 A. Yes.

12:52:52 9 Q. What's a scrivener.

12:52:54 10 A. A clerk.

12:52:57 11 Q. Whose primary task was to write?

12:52:59 12 A. Yes.

12:53:00 13 Q. Jehu Hay, is another diary. Who
12:53:00 14 is Jehu Hay and what was his position?

12:53:20 15 A. He was a British soldier who had
12:53:30 16 taken residence in Detroit in 1763.

12:53:42 17 Q. There were a number of other
12:53:44 18 primary sources. John Porteous?

12:53:46 19 A. Yes.

12:53:47 20 Q. And who is Porteous?

12:53:48 21 A. Porteous was another guy who was
12:53:49 22 there that summer, as was Rogers, arriving a
12:53:53 23 little bit later.

12:54:03 24 Q. And there is one shared with my
12:54:05 25 colleagues, the plaintiffs, Montresor?

12:54:09 1 A. A British military engineer who
12:54:10 2 also spent some time in Detroit that summer.

12:54:16 3 Q. You call these "primary sources".
12:54:18 4 Have you read them all?

12:54:20 5 A. Yes.

12:54:24 6 Q. Thank you, Your Honour.

12:54:25 7 THE COURT: Are you suggesting now?

12:54:27 8 MR. OGDEN: Yes, now.

12:54:32 9 THE COURT: Just for planning
12:54:33 10 purposes, roughly how much longer do you expect
12:54:35 11 to be?

12:54:41 12 MR. OGDEN: Into tomorrow, Your
12:54:42 13 Honour.

12:54:43 14 THE COURT: All right.

12:54:43 15 -- RECESSED AT 12:54 P.M. --

02:11:26 16 -- RESUMED AT 2:16 P.M. --

02:16:21 17 THE COURT: Please go ahead.

02:18:46 18 MR. OGDEN: Good afternoon, Your
02:18:48 19 Honour. Thank you. We are going to go to page
02:19:02 20 109 of that chapter, Exhibit 4042, page 20 of
02:19:05 21 the PDF. This is a chapter from Dowd, "War
02:19:05 22 Under Heaven", Chapter 3.

02:19:14 23 BY MR. OGDEN:

02:19:15 24 Q. We're going to go to page 109 of
02:19:18 25 this chapter. So the middle chapter, the middle

02:19:30 1 paragraph there, I'm going to read to you:

02:19:33 2 "Pontiac and his allies got
02:19:35 3 little but trouble from Roman Catholic
02:19:38 4 Indians. The vast majority of the
02:19:41 5 Native Americans living in missions
02:19:42 6 from the St. Lawrence River's reserve
02:19:45 7 westward to the shores of Lake
02:19:45 8 Michigan either remains neutral or
02:19:45 9 supported Great Britain."

02:19:50 10 Is that an accurate statement, please?

02:19:53 11 A. Yes.

02:19:59 12 Q. We could break -- okay.

02:20:02 13 And as far as any European observer at
02:20:07 14 1764 was aware, not all Great Lakes Nations
02:20:13 15 participated in the conflict, is that correct?

02:20:16 16 A. Yes, that's correct.

02:20:16 17 Q. And, in fact, not all Great Lakes
02:20:19 18 First Nations did participate in the conflict,
02:20:22 19 is that correct?

02:20:24 20 A. Yes.

02:20:24 21 Q. And if we used the descriptor
02:20:26 22 "western Nations", that's correct for that, not
02:20:29 23 all western Nations were combatants?

02:20:32 24 A. Yes.

02:20:39 25 Q. Your Honour, the next document I

02:20:40 1 would like to take the witness to is S0499. And
02:20:54 2 this is more of Dowd, "War Under Heaven". I
02:20:57 3 would like to exhibit this as Chapter 4 of Dowd,
02:21:02 4 "War Under Heaven" called "Besieging Britons -
02:21:09 5 1763". Can I mark that as an exhibit?

02:21:14 6 THE COURT: Yes, next exhibit,
02:21:16 7 Mr. Registrar.

02:21:17 8 THE REGISTRAR: The next exhibit is
02:21:19 9 4043.

02:21:21 10 EXHIBIT NO. 4043: Chapter 4,
02:21:22 11 "Besieging Britons - 1763", of Greg
02:21:22 12 Dowd's "War Under Heaven". Document
02:21:22 13 SC0499.

02:21:23 14 BY MR. OGDEN:

02:21:23 15 Q. And could we go to page 15 of the
02:21:26 16 PDF, please, page 128 of the chapter. Down to
02:21:36 17 the paragraph starting, "The rapidity [...]" If
02:21:40 18 you can bear with me please, Professor. You can
02:21:42 19 sit back if you like while I read this
02:21:44 20 paragraph:

02:21:46 21 "The rapidity and success of
02:21:48 22 these assaults should not obscure the
02:21:49 23 fact that they divided Indians; that
02:21:52 24 Gladwin had received warning of the
02:21:54 25 plan against Detroit is but one piece

02:21:56 1 of evidence. At Michilimackinac,
02:22:00 2 Ottawas from L'Arbre Croche on Lake
02:22:03 3 Michigan arrived from condemn the
02:22:03 4 Ojibwe action. They redeemed most of
02:22:03 5 the English captives and eventually
02:22:05 6 escorted them to Montreal. Charles
02:22:07 7 Langlade, perhaps the most prominent
02:22:11 8 Métis in the region, cooperated in
02:22:14 9 their recuse at Presque Isle, Wyandots
02:22:20 10 pleaded with the very troops they were
02:22:20 11 successfully attacking that they had
02:22:20 12 been forced into action by the Detroit
02:22:20 13 Ottawas. They too managed to deliver
02:22:23 14 some English soldiers to safety. At
02:22:26 15 Sandusky St. Joseph and Ouiatenon
02:22:35 16 Indians worked to spare the lives of
02:22:37 17 captured men. The easternmost
02:22:37 18 Mississauga villages refused to strike
02:22:37 19 the British. As early as June Pontiac
02:22:41 20 was reported to have been alarmed by
02:22:42 21 their insistence that they would
02:22:42 22 remain neutral as would the Six
02:22:45 23 Nations. Far to the west soldiers at
02:22:47 24 Fort Augustus or La Baye (Green Bay,
02:22:53 25 Wisconsin), secured the protection and

02:22:53 1 escort of Menominee and Ottawas at
02:22:56 2 odds with Pontiac and made their way
02:22:58 3 to Montreal with the Michilimackinac
02:23:02 4 captives during the months of June and
02:23:04 5 July."

02:23:05 6 Do you accept that as accurate?

02:23:07 7 A. Yes.

02:23:15 8 Q. In your report you say that among
02:23:17 9 the Great Lakes Nations who were present at
02:23:19 10 Niagara in 1764 none admitted any role in the
02:23:24 11 war? That's page 34, for reference.

02:23:28 12 A. Yes.

02:23:29 13 Q. So I'm going to take you to some
02:23:32 14 of these statements. Exhibit 0613, please.
02:23:39 15 This is an extract from the William Johnson
02:23:49 16 papers of the Congress at Niagara. And page 9
02:23:53 17 of the PDF please, page 270. There we go. The
02:24:35 18 confusion there. A belt -- it says at the top
02:24:38 19 right of the page, "A belt [...]" and the line
02:24:40 20 is split but it reads:

02:24:44 21 "[...]to which (an unknown name)

02:24:47 22 the Chief of the Chippewas answered:

02:24:53 23 Brother, hearken to what I have
02:24:55 24 now to say. I have been away at some
02:24:58 25 areas where I have resisted all the

02:25:02 1 solicitations of your enemies who sent
02:25:05 2 me three belts of wampum, which I
02:25:07 3 disregarded."

02:25:09 4 And it continues on to the
02:25:11 5 third-to-bottom line the paragraph:

02:25:12 6 "I know nothing of the war nor
02:25:14 7 can I fix it with certainty on any
02:25:16 8 nation."

02:25:17 9 I'm going to ask you a question in
02:25:18 10 relation to all of this. Down to the bottom of
02:25:27 11 the page, please:

02:25:28 12 "Brother, I live over the north
02:25:35 13 side of this lake and am a stranger to
02:25:38 14 what passed, but I have always loved
02:25:40 15 peace and am now very poor."

02:25:44 16 The north side of this lake, is this
02:25:45 17 Lake Huron or Lake Erie, do you know?

02:25:48 18 A. I think it's open to
02:25:50 19 interpretation but I would guess Huron. Or
02:25:51 20 sorry, not Huron, Erie. My mistake.

02:26:04 21 Q. And then the chief of the
02:26:05 22 Ottawas, Obwandiyag spoke:

02:26:10 23 "Brother, you must not imagine I
02:26:12 24 am acquainted with the cause of the
02:26:13 25 war, I only heard a little bird

02:26:17 1 whistle on account of it and upon
02:26:18 2 going to Michilimackinac I found these
02:26:18 3 people killed, upon which I sent out
02:26:18 4 priests to inquire into the cause of
02:26:22 5 it, the matter. On the priest's
02:26:25 6 return he brought me no favourable
02:26:27 7 account but a war hatchet from
02:26:29 8 Pontiac, which I scarcely looked on
02:26:32 9 and immediately threw away."

02:26:34 10 For reference, I'm not going to take
02:26:34 11 you to it, the same quote does appears at
02:26:44 12 Exhibit 612, page 476 of the exhibit, page 13 of
02:26:54 13 the PDF of the exhibit. It's also from the
02:26:57 14 Johnson papers.

02:27:01 15 Page 271 then, which is the next page,
02:27:03 16 the Chippewa Chief spoke as follows:

02:27:09 17 "Brother, hearken to what I have
02:27:12 18 to say, we are a poor ignorant people
02:27:14 19 and know nothing of what you asked us
02:27:16 20 yesterday."

02:27:43 21 Next quote:

02:27:44 22 "Brother, all our young people on
02:27:46 23 hearing of the renewal of hostilities
02:27:47 24 were determined on peace and rejected
02:27:47 25 the wampum sent by your enemies, after

02:27:50 1 which we took all the prisoners from
02:27:52 2 amongst them. Perhaps you may doubt
02:27:54 3 the truth of what I said but be
02:27:56 4 assured it is from the heart and that
02:27:57 5 the great spirit will discover our
02:27:59 6 falsehood if we used any. We have
02:28:01 7 lived by ourselves two days' journey
02:28:02 8 from Toronto."

02:28:04 9 What is Toronto, to your
02:28:05 10 understanding, in this speech?

02:28:09 11 A. Probably like Simcoe or that
02:28:11 12 area.

02:28:16 13 Q. The next document, Your Honour,
02:28:19 14 is Exhibit 623, again from "The Papers of
02:28:29 15 William Johnson". And if we're looking at page
02:28:34 16 4 of this PDF, page 280 of the papers. And
02:28:49 17 there is -- this is from -- this is a quote from
02:29:01 18 Johnson speaking to the First Nations where he
02:29:05 19 says "Brethren [...]", 'it's saying, "[...] if
02:29:12 20 you [...]", and I'm looking at the bit where it
02:29:13 21 says, "[...] shut your ears". It's the third
02:29:15 22 line down in the paragraph:

02:29:17 23 "[...] if you shut your ears
02:29:18 24 against all bad birds."

02:29:21 25 And then he says:

02:29:22 1 "[...] if you take care of the
02:29:24 2 posts and provide restitution for
02:29:27 3 traders."
02:29:30 4 Now, the expression "shut your ears
02:29:32 5 against all bad birds" is a way of saying, do
02:29:36 6 not engage in an alliance against the British.
02:29:40 7 Is that a fair description? Or how would you --
02:29:49 8 A. I think shutting your ears
02:29:51 9 against all bad birds means not hearkening to
02:29:54 10 calls to war. One of the earlier passages that
02:30:00 11 you quoted --
02:30:01 12 Q. Well, I'll read it to you:
02:30:08 13 "I only heard a little bird
02:30:11 14 whistle an account of it."
02:30:12 15 That's a description of what?
02:30:13 16 A. I think that's a description of
02:30:15 17 the call to war, Pontiac's War. That's how I
02:30:19 18 interpret that passage.
02:30:20 19 Q. Thank you. And the same
02:30:21 20 document, down to page 283 of the papers, PDF
02:30:25 21 pages 7 to 8. This is one of the -- one of the
02:30:43 22 Chiefs addresses to Sir Williams as follows:
02:30:46 23 "Brother, your brothers from
02:30:48 24 Michilimackinac who are very poor
02:30:50 25 [...]"

02:30:52 1 And it goes down to the next page.

02:31:18 2 The third line down:

02:31:19 3 "[...] on the receipt of the
02:31:21 4 first news of Michilimackinac we were
02:31:22 5 astonished and covered our heads with
02:31:24 6 our blankets [...]"

02:31:29 7 That's an expression meaning we did
02:31:32 8 not -- this is a question to you, sir, that's an
02:31:34 9 expression meaning, we did not accept the
02:31:38 10 request to join Pontiac's uprising, is that
02:31:41 11 right?

02:31:42 12 A. That's a plausible
02:31:43 13 interpretation, yeah.

02:31:50 14 Q. Further down where it says, "At
02:31:52 15 Montreal [...]" there is a:

02:31:56 16 "[...] at Montreal when we
02:31:57 17 escorted the garrisons there."

02:32:00 18 That's just a reference to the
02:32:02 19 Michilimackinac Indians taking the English
02:32:05 20 soldiers through to safety?

02:32:08 21 A. Correct.

02:32:15 22 Q. Now down to page 285, please, of
02:32:18 23 the same Exhibit, 623, page 9 of the PDF:

02:32:26 24 "Brother, I speak now for the
02:32:27 25 Chippewas near Toronto to assure you

02:32:29 1 that they're all well disposed and of
02:32:32 2 one mind with us and you. They're now
02:32:33 3 reduced to great polity through the
02:32:35 4 means of those Indians who became
02:32:38 5 drunk."

02:32:38 6 Now, again, Toronto is present-day
02:32:42 7 Lake Simcoe, is that correct?

02:32:44 8 A. Yes.

02:32:45 9 Q. And then those Indians who became
02:32:47 10 drunk means those Indians who joined the
02:32:49 11 uprising against the British?

02:32:52 12 A. Yes.

02:32:54 13 Q. And then he says, "[...] reduced
02:32:56 14 to great poverty." And that's because of the
02:32:59 15 restriction in trade?

02:33:00 16 A. Yes.

02:33:00 17 Q. And these Chippewas near
02:33:03 18 present-day Lake Simcoe, there is no indication
02:33:05 19 that they fought the British in 1763 or 1764?

02:33:12 20 A. There's no specific indication
02:33:14 21 here of that, no.

02:33:20 22 Q. Down to page 302, please, of the
02:33:22 23 same document of the papers, page 26 of the PDF.

02:33:41 24 Down there it says, this is another
02:33:44 25 Chief speaking in the third line of this

1 paragraph at the top:

2 "You will believe that where we
3 live and about St. Marys all is quiet
4 and the sky is clear but can't say so
5 as to this side of [...]" and there's
6 no description there. "[...] you may
7 depend upon it that our Nations the
8 Outagamies, Tawas, Menominees, Puoans,
9 Sakis, Aijarecy, Notoweega or Sioux,
10 et cetera, are all your friends. Last
11 summer when your people were all
12 treated by the drunken Indians, we and
13 the before-mentioned nations did all
14 in our power to save them and sent
15 belts to the towers not to take out
16 the hatchet, but lie still as they
17 were, which they listened to."

18 And this is a statement there that
19 those Nations of the Great Lakes Nations did not
20 participate in the uprising against the British
21 in 1763?

22 A. Yeah -- and just, excuse me, just
23 for clarification, these are groups that were on
24 the far western margins of the Great Lakes. And
25 this particular group does not include any

02:35:00 1 Anishinaabe people.

02:35:08 2 Q. Do you know off the top of your
02:35:09 3 head any of the present-day names for these
02:35:12 4 communities, the names they have given
02:35:15 5 themselves today?

02:35:16 6 A. Well, some of them don't exist
02:35:17 7 any more. Some of them are the same. The
02:35:30 8 Menominees, the Saux, the Sioux. We're talking
02:35:33 9 about communities whose trade mostly flowed
02:35:37 10 through Green Bay, so the far western margin of
02:35:41 11 the Great Lakes.

02:35:43 12 Q. Next document, Exhibit 635. It
02:35:50 13 says the letter from -- again, "The Papers of
02:35:55 14 William Johnson", page 325 of this document, and
02:36:01 15 that is page 3 of the PDF.

02:36:12 16 This is a letter from William Johnson
02:36:18 17 to Thomas Gage, who we've identified as the
02:36:18 18 military head in North America, on August the
02:36:20 19 5th, 1764 from Niagara, so that is just after
02:36:23 20 the conclusion of the Congress at Niagara?

02:36:27 21 A. Yes.

02:36:27 22 Q. And if you go down to the fifth
02:36:43 23 line from the top on the right, this is page
02:36:53 24 325, page 3 of the PDF:

02:37:05 25 "There were in that number

02:37:10 1 deputies from Ottawas, Chippewas,
02:37:14 2 Hurons, Sakis, Reynards, Saux[...]

02:37:18 3 Is that right?

02:37:18 4 A. Yes.

02:37:18 5 Q. "[...]Puans Christinos, and in
02:37:21 6 short all the western Indians. Most
02:37:21 7 of their chiefs had certificates of
02:37:21 8 their good behaviour last year from
02:37:21 9 the officers then at the outposts and
02:37:23 10 also from Major Gladwin."

02:37:27 11 So, firstly, what is a certificate of
02:37:28 12 good behaviour?

02:37:30 13 A. A letter from, as it says,
02:37:33 14 officers at the posts indicating that those
02:37:40 15 individuals had been supportive of the British.

02:37:44 16 Q. Indeed, these are from the
02:37:46 17 outposts and not from the main Forts at Detroit
02:37:51 18 and Niagara?

02:37:52 19 A. Correct.

02:37:53 20 Q. And it says that most of the
02:37:55 21 Chiefs of the western Nations had certificates,
02:37:57 22 and then that means that most of those Chiefs,
02:38:01 23 or the people they represented, had been
02:38:04 24 considered to have behaved well towards the
02:38:08 25 British during the uprising in order to get a

02:38:11 1 certificate?

02:38:16 2 A. Right. You know, the -- if I can
02:38:20 3 comment on this? Is it okay if I comment on it
02:38:24 4 more generally?

02:38:25 5 Q. Sure.

02:38:25 6 A. The way that historians have
02:38:27 7 traditionally interpreted events at Niagara is
02:38:31 8 to say that -- well, there undoubtedly were
02:38:34 9 spokespeople whose communities did not
02:38:36 10 participate in the uprisings, there were also
02:38:41 11 communities represented whose warriors did
02:38:44 12 participate but that they simply did not admit
02:38:51 13 to it.

02:38:52 14 And so there's a kind of rhetorical
02:38:55 15 consistency to the way the First Nations at
02:39:00 16 Niagara represented themselves to Johnson; and
02:39:05 17 it was a form of representation that prevented
02:39:08 18 Johnson from doing the things that -- one of
02:39:11 19 things that he really wanted to do at the
02:39:14 20 conference was to identify and punish
02:39:17 21 responsible nations.

02:39:18 22 So one of the outcomes of this
02:39:20 23 strategy is the fact that no bad actors, no
02:39:25 24 attackers were identified to him.

02:39:29 25 It's possible that nobody at Niagara

02:39:35 1 had any -- I mean, people either say they didn't
02:39:37 2 know anything about it or they had scant
02:39:39 3 knowledge.

02:39:40 4 It's possible that nobody there knew
02:39:42 5 much about it, and it's possible that nobody
02:39:43 6 there participated. But most scholars, myself
02:39:46 7 included, would say it's not very plausible
02:39:49 8 given the number of people who assembled at
02:39:51 9 Niagara, the range of communities that were
02:39:54 10 represented.

02:39:55 11 Q. So in terms of the certificates
02:39:56 12 though, the certificates were given by the
02:39:59 13 people in charge of the outposts who were close
02:40:07 14 to and involved in the action?

02:40:11 15 A. To my knowledge only a few
02:40:12 16 certificates were issued. For example, from
02:40:20 17 Michilimackinac. And so when Johnson writes:

02:40:24 18 "[...] most of their Chiefs had
02:40:25 19 certificates of their good behaviour
02:40:28 20 last year from the officers then at
02:40:29 21 the outposts or from major Gladwin."

02:40:34 22 That -- I judge that to be an
02:40:36 23 overstatement that Johnson is making to his
02:40:40 24 superior officer.

02:40:47 25 Q. And Pontiac did not attend at the

02:40:50 1 Niagara Congress, did he?

02:40:51 2 A. No.

02:40:56 3 Q. This morning you said that the
02:40:57 4 attacks in 1763 were coordinated in the sense
02:41:01 5 that they occurred at the same time, but they
02:41:06 6 were not subject to a command-and-control type
02:41:08 7 of coordination?

02:41:10 8 A. I did say that, yes.

02:41:16 9 Q. So the conflict was not
02:41:18 10 coordinated prior to the attack at Detroit was,
02:41:20 11 it? In this -- well, answer the question.

02:41:25 12 A. There was communication about
02:41:26 13 attacks prior to the attack at Detroit.

02:41:31 14 Q. But no plan of attack?

02:41:33 15 A. No coordinated plan of attack.

02:41:39 16 Q. The next document I'd like to
02:41:40 17 turn to is S0499, which is another -- sorry,
02:41:55 18 Your Honour, it is 4043, it is already an
02:41:58 19 exhibit.

02:42:00 20 Since it is already an exhibit, I
02:42:02 21 won't take you through it. The point here is
02:42:07 22 that Dowd in this document says, there was no
02:42:12 23 mastermind or master plan. Do you agree with
02:42:16 24 that assessment?

02:42:17 25 A. Yes. I think that is the -- he

02:42:20 1 is making the same point in that passage that I
02:42:23 2 was making in saying that there was no
02:42:25 3 command-and-control style coordination.

02:42:33 4 Q. You made this point in a book
02:42:35 5 chapter that you wrote, which is a footnote in
02:42:38 6 your report, and the footnote is page 8 and page
02:42:44 7 7 in the document, and it's S0814, which I will
02:42:54 8 ask at the appropriate time to make an exhibit.

02:43:23 9 MR. OGDEN: Your Honour, I'll call
02:43:24 10 this, extract from "Britain's Oceanic Empire",
02:43:27 11 if I may.

02:43:39 12 THE COURT: Yes.

02:43:59 13 BY MR. OGDEN:

02:43:59 14 Q. Thank you.
02:43:59 15 Chapter 9, "Diplomacy Between Britons
02:43:59 16 and Native Americans circa 1600 to 1830". That
02:43:59 17 is your chapter, isn't it?

02:44:01 18 A. Yes, it is.

02:44:02 19 Q. If we go to page 244 of this
02:44:06 20 book, page 20 of the PDF, second paragraph, just
02:44:10 21 to repeat the point:

02:44:11 22 "Beginning at Detroit in the
02:44:13 23 spring of 1763 a series of uprisings
02:44:21 24 against British power in the west
02:44:21 25 devastated the empire's interest. By

02:44:22 1 summer's end every British post in the
02:44:24 2 west had been attacked or besieged.
02:44:26 3 Only Detroit and Fort Pitt held out.
02:44:29 4 While these attacks were not
02:44:31 5 coordinated, they reflected the
02:44:32 6 growing sense of collective interest
02:44:34 7 and shared grievance among Amerindians
02:44:38 8 occupying the western border lands of
02:44:40 9 British North America."

02:44:43 10 What I'm interested in actually as
02:44:44 11 well, on reviewing this, if we turn to the first
02:44:48 12 page of the PDF, please, this is a chapter in a
02:44:55 13 book published by Cambridge University Press,
02:44:59 14 which is a reputable press, isn't it?

02:45:01 15 A. I hope it is.

02:45:06 16 Q. I that a vain hope or?

02:45:15 17 And so this press publishes scholars
02:45:18 18 whose work is known to be supportable and
02:45:20 19 reasonable, is that fair?

02:45:25 20 A. Yes. It employs, you know, a
02:45:28 21 refereeing process which is intended to ensure
02:45:34 22 some degree of reliability.

02:45:36 23 Q. And if we go to the next page of
02:45:38 24 the PDF, there is part -- this was the document
02:45:42 25 produced as a whole, I believe, by the

02:45:44 1 plaintiffs as cited by you.

02:45:46 2 There's a part of a chapter by Wayne
02:45:53 3 E. Lee, who is -- do you know who he is?

02:45:56 4 A. Yes.

02:45:56 5 Q. He is a distinguished professor
02:45:59 6 of military history at the University of
02:46:01 7 Northern Carolina, is that correct?

02:46:03 8 A. North Carolina, yes.

02:46:05 9 Q. And at page 210 there, we have
02:46:05 10 the left-hand side there, page 2 of the PDF, he
02:46:09 11 is talking about the Seven Years' War in North
02:46:11 12 America. And he says on the right side, six
02:46:15 13 lines down:

02:46:20 14 "Successes came as the British
02:46:21 15 committed more and more regular troops
02:46:23 16 to the continent and engaged in more
02:46:25 17 conventional operations, including
02:46:27 18 sieges and even a traditional linear
02:46:30 19 battle on the Plains of Abraham
02:46:31 20 outside Quebec. What may have
02:46:33 21 remained hidden from British vision
02:46:33 22 however was the impacts that the naval
02:46:36 23 blockade had on the ability of the
02:46:40 24 French both to supply their troops and
02:46:41 25 to provide the necessary trade goods

02:46:44 1 and gunpowder to their Amerindian
02:46:46 2 allies. As French trade dried up so
02:46:50 3 did Native allies."
02:46:53 4 Do you agree with that statement?
02:46:55 5 A. Yeah, and I agree with what comes
02:46:57 6 after it as well.
02:47:10 7 Q. Okay --
02:47:10 8 A. The next passage talks about
02:47:12 9 bringing Amerindians into the British alliance,
02:47:14 10 major diplomatic initiatives with Mohawks and
02:47:22 11 Cherokees.
02:47:23 12 Q. Do you wish to continue reading?
02:47:25 13 A. Sure. And I note he doesn't
02:47:28 14 mention in this context the Shawnees and
02:47:29 15 Delawares, who were especially decisive in
02:47:35 16 military outcomes at the headwaters of the Ohio.
02:47:40 17 What he says is:
02:47:40 18 "[...] both groups formed allied
02:47:48 19 contingents within British forces
02:47:50 20 although British officers remained
02:47:53 21 suspicious of their value."
02:47:55 22 Q. Okay. Let's turn -- well, your
02:47:56 23 chapter in this book is about diplomacy, right?
02:47:59 24 A. Yes.
02:47:59 25 Q. Is this a survey book on the

02:48:01 1 subject in the title of the book, "Britain's
02:48:05 2 Oceanic Empire"?

02:48:08 3 A. The project of the conference and
02:48:10 4 the volume was to initiate a conversation among
02:48:16 5 scholars who worked on the British empire in the
02:48:19 6 Atlantic world and in the Indian Ocean world and
02:48:29 7 attempt a kind of comparative dialogue; because
02:48:31 8 the two contexts for Imperial activity are
02:48:34 9 similar in some ways but quite different in
02:48:37 10 others.

02:48:38 11 So my essay was an attempt to kind of
02:48:42 12 synthesize information about Britain's
02:48:46 13 diplomatic efforts about England, England's
02:48:49 14 colonies, Great Britain, diplomatic efforts with
02:48:54 15 native peoples across a pretty broad span of
02:48:57 16 time.

02:48:57 17 So in that sense, yes, it has a survey
02:49:00 18 quality. It involved, on my part, assessing and
02:49:08 19 synthesizing, condensing a very large body of
02:49:11 20 material.

02:49:12 21 Q. Your chapter doesn't refer to a
02:49:13 22 Treaty of Niagara, does it?

02:49:19 23 A. I take your word for it that it
02:49:21 24 doesn't. I don't think it does.

02:49:39 25 Q. I would like to turn back to

02:49:40 1 Michilimackinac, please, to Exhibit 0633, this
02:49:47 2 is the Johnson papers. Page --

02:50:04 3 MR. OGDEN: Sorry, did we exhibit that
02:50:05 4 last document, Your Honour? Could we exhibit
02:50:07 5 that last document? The chapter from "Britain's
02:50:12 6 Oceanic Empire".

02:50:20 7 THE COURT: Any objection? No?
02:50:22 8 Mr. Registrar.

02:50:24 9 THE REGISTRAR: Exhibit 4044

02:50:27 10 EXHIBIT NO. 4044: Chapter 9,
02:50:27 11 "Diplomacy Between Britons and Native
02:50:27 12 Americans circa 1600 to 1830", from
02:50:27 13 the book "Britain's Oceanic Empire".
02:50:27 14 Document SC0814.

02:50:29 15 BY MR. OGDEN:

02:50:30 16 Q. So Exhibit 0633, the Johnson
02:50:35 17 Papers again, and page 277, this is a
02:50:36 18 certificate to an Ottawa by the Honourable Sir
02:50:41 19 William Johnson dated August 1st, 1764. To the
02:50:53 20 Chief of the Ottawa Nation, Akowawbomye. Take a
02:51:03 21 moment to read it and I'll ask you a question.

02:51:05 22 A. (Witness reading the document.)

02:51:05 23 Okay.

02:51:12 24 Q. This is a certificate for
02:51:13 25 protecting the soldiers in the attack at the

02:51:19 1 Fort at Michilimackinac, isn't it?

02:51:21 2 A. Right. Yes, it is.

02:51:22 3 Q. And we noted earlier that the

02:51:23 4 attack -- well, at Michilimackinac there was --

02:51:28 5 there were Ojibwe numbering perhaps 100

02:51:31 6 warriors. And nearby at L'Arbre Croche there

02:51:35 7 were Odawa numbering perhaps 250 warriors, is

02:51:39 8 that right?

02:51:42 9 A. And we know those numbers are

02:51:44 10 correct for the time when Henry was there. I

02:51:51 11 don't know -- yes, that's roughly correct.

02:51:55 12 Q. Roughly correct, within the two

02:51:58 13 years.

02:52:05 14 Now, Pontiac was an Odawa, is that

02:52:07 15 correct?

02:52:08 16 A. Yes.

02:52:09 17 Q. And the Odawas at L'Arbre Croche

02:52:13 18 acted independently of Pontiac at Detroit, is

02:52:18 19 that correct?

02:52:19 20 A. Yes.

02:52:20 21 Q. And they didn't acknowledge the

02:52:22 22 authority of Pontiac over them?

02:52:29 23 A. Yes.

02:52:35 24 Q. Exhibit 0613 now. This is also

02:52:50 25 from the Johnson papers. Page 2 of the PDF is

02:52:58 1 page 263:

02:52:59 2 "It's 3:00 p.m., July 10th, the
02:52:59 3 Nippissins in Ottawa are waiting on
02:52:59 4 Sir William."

02:53:36 5 Next paragraph:

02:53:36 6 "Sir William answered them that
02:53:38 7 he was glad to see all those who had
02:53:41 8 been instrumental in saving the lives
02:53:43 9 of the garrison at Michilimackinac."

02:53:46 10 To your knowledge, sir, the Nippissins
02:53:47 11 helped to deliver the soldiers from
02:53:53 12 Michilimackinac to Montreal?

02:53:54 13 A. Yes, that's correct.

02:53:59 14 Q. The Michilimackinac was an
02:54:01 15 important place for Ojibwe and Odawa, is that
02:54:04 16 correct?

02:54:05 17 A. Yes.

02:54:05 18 Q. And you referred in your report
02:54:07 19 to a statement by one of the Chiefs at Niagara,
02:54:12 20 the Congress of Niagara, that the belt presented
02:54:16 21 by Johnson should be kept at Michilimackinac
02:54:18 22 because of Michilimackinac being the centre, is
02:54:21 23 that correct?

02:54:22 24 A. Yes.

02:54:23 25 Q. So what happened at

02:54:24 1 Michilimackinac had greater importance, greater
02:54:35 2 relative importance than what might happen
02:54:37 3 elsewhere because it was the centre, as far as
02:54:41 4 Anishinaabe were concerned?

02:54:49 5 A. What happened there was more --
02:54:51 6 say it again.

02:54:52 7 Q. What did happen, what might
02:54:54 8 happen, an event of note, any event of note that
02:54:57 9 happened at Michilimackinac would have greater
02:55:02 10 importance for the Anishinaabe people than if
02:55:05 11 that same event had happened at a different
02:55:08 12 settlement?

02:55:13 13 A. I mean, I see the inference
02:55:16 14 you're making, I'm not sure I would endorse it
02:55:19 15 but it's a plausible inference to make.

02:55:26 16 Q. Exhibit 0524 is that Navarre
02:55:31 17 journal, turn to that, please. Page -- this is
02:55:45 18 page 141 to 142 in the PDF. And this is page
02:55:57 19 140 of the journal. And the date there is June
02:56:01 20 18, and it says:

02:56:02 21 "At noon on the same day Father
02:56:10 22 du Jaunay, the Jesuit missionary of
02:56:15 23 the Ottawas from Michilimackinac
02:56:15 24 arrived with seven Indians of this
02:56:15 25 nation and eight Ojibwes of the same

02:56:16 1 place and command of Kinonchamek, son
02:56:23 2 of the great Chief to the Nation."

02:56:26 3 The great Chief of the Nation was
02:56:27 4 Minavavana, is that correct?

02:56:30 5 A. I believe that's correct.

02:56:35 6 Q. And then page -- it's in the
02:57:11 7 middle of the page, there you'll see -- smack
02:57:16 8 dab in the middle, "We desired", this is
02:57:19 9 Kinonchamek speaking:

02:57:24 10 "We desired to come to thou
02:57:25 11 assistance but shall not do so because
02:57:29 12 thou wouldst say that the harm which
02:57:31 13 thou and thou followers have caused
02:57:32 14 our brothers the French was caused by
02:57:32 15 us. For this reason we do not desire
02:57:36 16 to put ourselves in a bad light with
02:57:38 17 our Great Father."

02:57:40 18 And that's Kinonchamek speaking to
02:57:44 19 Pontiac, correct?

02:57:45 20 A. I don't know. I'm
02:57:46 21 decontextualized. I'm not following this
02:57:49 22 document.

02:57:50 23 Q. I apologize. We'll go up to
02:57:53 24 wherever it becomes clear. I apologize, this
02:58:14 25 appears to have been a different Chief speaking.

02:58:17 1 Sorry. I will not ask you to answer that
02:58:22 2 question.

02:58:22 3 A. Okay.

02:58:24 4 Q. Could I go to page 150 please of
02:58:29 5 the journal, and page 151? In the middle there
02:58:47 6 it has Kinonchamek departing for
02:58:53 7 Michilimackinac. That's accurate as far as
02:58:55 8 you're aware, is that correct?

02:58:56 9 A. Yes.

02:59:06 10 Q. Next exhibit please, 0532, again
02:59:09 11 from the Johnson papers, to page 2 of the PDF.
02:59:23 12 It is page 777 of this volume of the Johnson
02:59:27 13 papers, and it's a letter -- an extract of a
02:59:30 14 letter from Daniel Claus, dated Montreal 6th of
02:59:35 15 August 1763. Are you familiar with this letter?

02:59:50 16 A. Not yet. I'm familiar with
02:59:52 17 Daniel Claus.

03:00:02 18 Q. Down at the bottom there starting
03:00:03 19 with the words, "In the meantime [...]", above
03:00:07 20 that, though, he's referring to an attack on
03:00:12 21 Michilimackinac, the attack on the English
03:00:17 22 garrison, and he says:

03:00:19 23 "In the meantime the news reached
03:00:20 24 the Ottawa town 30 miles from
03:00:22 25 Michilimackinac who without any delay

03:00:25 1 set off arms to Michilimackinac and
03:00:28 2 inquired into the reason of the
03:00:33 3 Chippewa's behaviour. The letter had
03:00:36 4 nothing to say but that a few days
03:00:37 5 before the blow they received belted
03:00:41 6 wampum from Pontiac, the Ottawa's
03:00:43 7 Chief at Detroit, in conjunction with
03:00:45 8 the Chiefs of the then Nation living
03:00:47 9 there informing them of the rupture
03:00:49 10 with the English and desiring them to
03:00:51 11 cut off Michilimackinac. The Ottawas
03:00:51 12 were surprised and chagrined and
03:00:54 13 insisted upon the Chippewas delivering
03:00:57 14 up the prisoners et cetera."

03:01:03 15 And you're aware of Daniel Claus and
03:01:07 16 this letter now, and you have no reason to
03:01:10 17 believe that he was misinformed or biased in his
03:01:17 18 description of events?

03:01:19 19 A. I don't see any variation in this
03:01:21 20 description from the other ones that we have had
03:01:23 21 and the description in my report. Am I missing
03:01:25 22 something in that statement? Is there something
03:01:28 23 about this account that stands out to you as
03:01:32 24 distinctive from the other ones we've talked
03:01:34 25 about?

03:01:34 1 Q. Well, I'm asking you whether -- I
03:01:37 2 can't ask you whether -- I'm not going to ask
03:01:40 3 you whether you accept that these facts occurred
03:01:43 4 because you don't have knowledge, direct
03:01:47 5 knowledge of it. I'm asking you whether there
03:01:49 6 is a reason to question the account given in
03:01:53 7 this document?

03:01:53 8 A. No, I'm sure that Claus is
03:01:55 9 reporting what he's heard.

03:01:57 10 And I think, this method of jumping
03:02:01 11 around quickly from document to document is -- I
03:02:03 12 have to say it's just hard for me to keep up a
03:02:06 13 track. I know that this is well mapped out for
03:02:12 14 you but, you know, my methodology in reading
03:02:15 15 these things would be to read them carefully and
03:02:18 16 be sure as to how I'm aligning things.

03:02:21 17 So, yes, I endorse this letter from
03:02:24 18 Daniel Claus as a legitimate historical source,
03:02:27 19 if that's the question.

03:02:32 20 Q. Well, the question is also
03:02:33 21 whether you have a reason to believe him or is
03:02:38 22 he misinformed or biased in his statement?

03:02:41 23 A. No.

03:02:41 24 Q. So if you feel you need more time
03:02:43 25 to review a document, please ask.

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A. Okay.

Q. This is one of the peculiarities of the process in which we are engaged.

A. Right.

Q. We will move on to another quote then where he says:

"By what I can find [...]"

And it's been identified there on the page:

"By what I can find none but the Chippewas of Michilimackinac, and those are the same Nation of Ottawas at Detroit, are concerned in the present breach. All the rest of the western Nations and even some Chippewas living at the Falls of St. Mary would not engage or receive the belts sent by Pontiac and on the contrary are very well inclined to our interests, in particular the Nations living at La Baye and the Sioux, who are always at war with the Chippewas. And that the Indians now here and among whom there are some other Nations as come here on behalf of

03:03:37 1 eight Nations to the westward to
03:03:39 2 assure us of their friendship leave
03:03:43 3 thus satisfied."

03:03:44 4 This is further evidence that
03:03:46 5 Pontiac's uprising did not have universal
03:03:50 6 support among the Anishinaabe?

03:03:52 7 A. Remind me of the date of this
03:03:54 8 letter.

03:03:54 9 Q. Yes, 6 of August of 1763?

03:04:06 10 A. And so I just note that the
03:04:06 11 Nations that he refers to in particular in that
03:04:15 12 passage are the Nations that we were talking
03:04:16 13 about a few minutes ago on the far western edge
03:04:19 14 of the Great Lakes. Though, I mean, he also
03:04:22 15 does talk about Anishinaabe in this passage but
03:04:23 16 --

03:04:25 17 Q. The Nations at La Baye?

03:04:28 18 A. Yes.

03:04:29 19 Q. And then the Chippewas at the
03:04:31 20 Falls of St. Mary are the Anishinaabe?

03:04:34 21 A. Yes.

03:04:49 22 Q. At Detroit there were the --
03:04:51 23 there were Ojibwes, is that correct?

03:04:55 24 A. Yes.

03:04:55 25 Q. Odawas?

03:04:56 1 A. Yes.

03:04:57 2 Q. Pottawatomis?

03:04:59 3 A. Yes.

03:04:59 4 Q. Hurons?

03:05:00 5 A. Yes.

03:05:00 6 Q. There were also what is called

03:05:02 7 Wyandots?

03:05:03 8 A. Yes.

03:05:04 9 Q. And there were two Huron

03:05:05 10 villages, is that right?

03:05:06 11 A. Yes.

03:05:07 12 Q. One of whom was -- one of which

03:05:09 13 was led by Chief Watywa, is that correct?

03:05:14 14 A. Yes.

03:05:15 15 Q. And he was reluctant to bring his

03:05:18 16 community into the conflict, is that right?

03:05:21 17 A. That's right.

03:05:22 18 Q. But he eventually agreed to

03:05:23 19 participate?

03:05:32 20 A. Yes.

03:05:32 21 Q. And we, are going to look at the

03:05:33 22 Navarre journal, which is Exhibit 0524.

03:05:36 23 Before I get to that, the Pottawatomi,

03:05:40 24 you've said this in your report, were also

03:05:43 25 reluctant to participate in the conflict, is

03:05:48 1 that correct?

03:05:50 2 A. Yes.

03:06:02 3 Q. So, again, getting back to the
03:06:04 4 peculiarity of the litigation and trial process
03:06:07 5 that we're in, I'm going to state fact from the
03:06:10 6 journal and ask you whether you have a reason to
03:06:13 7 doubt that the fact as stated accurately
03:06:19 8 describes what occurred. So this is asking you
03:06:21 9 to use your historical opinion to determine
03:06:25 10 whether or not there's a reason to question the
03:06:29 11 description of the event by the individual who
03:06:32 12 wrote it.

03:06:33 13 A. And remind me what is the
03:06:36 14 document?

03:06:36 15 Q. This is the Navarre journal.
03:06:39 16 Robert Navarre is the scrivener. This is
03:06:46 17 translated from the French. Page 62, May 11th.
03:06:55 18 There was a lot covered in the early days:

03:07:02 19 "Pontiac crossed the river in the
03:07:04 20 afternoon with four Chiefs, and went
03:07:06 21 to hold a council with the Hurons in
03:07:07 22 order to induce the good Band to
03:07:09 23 combine with them, saying that if they
03:07:13 24 did not they would be attacked."

03:07:15 25 Do you have a reason to doubt the fact

03:07:17 1 accurately states or describes what occurred?

03:07:22 2 A. No.

03:07:22 3 Q. We can do this -- I'll ask --
03:07:27 4 I'll go through some facts and at the end you
03:07:29 5 can let me know if there were any -- or perhaps
03:07:32 6 because they're all stated by the same person we
03:07:35 7 could ask whether you have any reason to
03:07:43 8 consider that Robert Navarre, if he were the
03:07:46 9 author, accurately or inaccurately described a
03:07:55 10 fact set out in his journal?

03:07:57 11 THE COURT: Are you asking about the
03:07:58 12 entire book? Because what I'm hearing isn't
03:08:03 13 helping, as far as following along is concerned.
03:08:06 14 Because, like the witness, I have to follow
03:08:08 15 along and I'm not as knowledgeable as he is.

03:08:12 16 MR. OGDEN: I would prefer to go
03:08:13 17 through them fact by fact, Your Honour.

03:08:15 18 THE COURT: I don't know what you mean
03:08:17 19 by that, sir. In any one of these quotes you've
03:08:19 20 read there are dozens of facts. I hope that
03:08:23 21 doesn't mean you're not going to break it down
03:08:25 22 into words and phrases. I suppose if you wanted
03:08:27 23 to do that I would let you, so it's not me
03:08:30 24 saying you can't. I just don't know that
03:08:32 25 that's -- if you're trying to develop an

03:08:35 1 efficiency I'm not sure that's the efficiency.

03:08:39 2 MR. OGDEN: No, I'm going to go
03:08:40 3 through several, perhaps eight or nine dates on
03:08:45 4 which events occurred, and they are described
03:08:49 5 within a sentence or two not containing too many
03:08:56 6 facts.

03:08:57 7 THE COURT: That's what you've been
03:08:59 8 doing up until now.

03:09:00 9 MR. OGDEN: Yes, because they're all
03:09:03 10 drawn from the same source.

03:09:04 11 THE COURT: Well, I think given the
03:09:05 12 witnesses comment, and he can speak for himself,
03:09:08 13 but if he is already finding this process
03:09:11 14 challenging I think consolidating it might not
03:09:14 15 be the best idea. By I'm confident that this
03:09:18 16 gentleman will speak up if he has any
03:09:21 17 difficulties.

03:09:22 18 MR. OGDEN: Bearing that in mind, Your
03:09:23 19 Honour, I think I will prefer to stick with my
03:09:26 20 original plan, which was to go through the diary
03:09:29 21 entries one by one. There are not many on this
03:09:38 22 particular point.

03:09:40 23 BY MR. OGDEN:

03:09:41 24 Q. Now, May 11th is soon after the
03:09:43 25 seige started isn't it?

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A. Yes.

Q. It started on the 7th or 8th, depending on how you wish to measure it?

A. Yes.

Q. So same page down to May 12, page 63, same page as 63 of the PDF and 63 of the document. It says in the middle there:

"For fear that the Hurons would not keep their word he sent one of his Chiefs with several young man to their camp to tell them not to fail."

Do you have reason to consider that -- you have no reason to doubt that that fact, as stated, accurately describes what occurred?

A. No.

Q. The next exhibit I will move on to actually, there are more for this, is 0521. This is the 0521, the diary of the siege of Detroit, this is the Jehu Hay diary. And we'll go to page 27 of the PDF, page 24 of the journal. Third line there:

"Three of the Pottawatomis came and spoke with the two we had in custody, who declared to us that they knew nothing of this affair until they

03:11:50 1 arrived at the village below the fort
03:11:53 2 when much to their surprise they heard
03:11:55 3 a great firing."

03:11:58 4 And is that a -- an assertion that
03:12:01 5 these individuals did not know in advance of
03:12:04 6 the -- that the conflict would commence?

03:12:08 7 A. It seems to be that kind of an
03:12:10 8 assertion. And one of the things that I would
03:12:12 9 say about both of these documents that we're
03:12:13 10 looking at is that it's important to know that
03:12:15 11 the information that, in this case Hay and in
03:12:19 12 the previous case Navarre, were reported -- both
03:12:24 13 of them were reporting information that was
03:12:26 14 being provided to them by Indians they had
03:12:31 15 direct contact with.

03:12:33 16 So I think that -- in general my
03:12:37 17 reading of these texts is to say that we're
03:12:40 18 getting straightforward descriptions of what
03:12:43 19 they're being told.

03:12:45 20 It's a separate question whether what
03:12:47 21 they're being told is accurate or is the whole
03:12:49 22 truth.

03:12:59 23 Q. Page 43 please, 43 of the
03:13:04 24 journal, 46 of PDF. This is an entry for July
03:13:11 25 7.

03:13:17 1 "The Hurons came at the same time
03:13:18 2 and told the Commandant that neither
03:13:20 3 they nor the Pottawatomis knew
03:13:23 4 anything of this affair at the
03:13:24 5 commencement. Pontiac never consulted
03:13:26 6 them about it until he had got such a
03:13:29 7 number of men together that overpower
03:13:32 8 them both. And then he told them his
03:13:35 9 design and threatened them that if
03:13:36 10 they would not join with him then he
03:13:39 11 would cut them to pieces."

03:13:42 12 There's no reason to, subject to the
03:13:47 13 statement you previously made about the source
03:13:49 14 of this information, there is no reason to doubt
03:13:52 15 that this accurately describes what occurred?

03:13:57 16 A. I think it accurately describes
03:13:59 17 what these Hurons told the commander in the
03:14:04 18 Fort.

03:14:09 19 Q. On page 47 please of the PDF,
03:14:14 20 page 44 of the document. July 9th is the date
03:14:25 21 on the left. The second paragraph under that
03:14:32 22 entry, this refers to the Huron Chiefs who came
03:14:37 23 in:

03:14:38 24 "They intended to go and join the
03:14:39 25 Pottawatomis and build a kind of

03:14:42 1 stockade upon the river Huron to
03:14:44 2 defend themselves against the Ottawas
03:14:46 3 in case they should declare war
03:14:48 4 against them."

03:14:50 5 And that is referring to the risk to
03:14:51 6 the Hurons and Pottawatomis that the Ottawas
03:14:57 7 would declare war against the Hurons and
03:15:00 8 Pottawatomis, is that correct?

03:15:02 9 A. That's the way I read it.

03:15:09 10 Q. And this is two months into the
03:15:10 11 siege, early July.

03:15:21 12 Page 73 of the PDF, this is page 70 of
03:15:25 13 the document. September 18 to 19, if we go
03:15:31 14 down. The first part of it there is that:

03:15:41 15 "We were informed that the
03:15:43 16 Ottawas, Pottawatomi and Wyandots were
03:15:46 17 to go off tomorrow."

03:15:49 18 And if we continue down in the entry,
03:15:50 19 on September 19:

03:16:06 20 "This day we were informed that
03:16:06 21 the Pottawatomis were all gone and
03:16:06 22 that the Ottawas were angry at Pontiac
03:16:06 23 for proposing to go."

03:16:06 24 As far as you're aware is it accurate
03:16:08 25 to say on September 19, or by September 19

1 Pontiac had proposed to leave the siege?

2 A. I mean, as -- according to this
3 document yes. As far as I know it's accurate.

4 Q. Page 31 of this PDF, of this
5 document as well please, page 28 of the journal.
6 You see the paragraph starting with, "The
7 Saggina Indians"? Is that the Saginaw?

8 A. That's my pronunciation.

9 Q. "The Saggina Indians further said
10 that the Michilimackinac Indians would
11 not strike, and if Pontiac attempted
12 to go towards their post they would
13 prevent him."

14 Can we get the date? This is on June
15 16th:

16 "The Saggina Indians said that
17 the Michilimackinac Indians would not
18 strike, and if Pontiac attempted to go
19 toward that post they would strike or
20 they would prevent him."

21 There's no reason to doubt that this
22 is an accurate statement of facts that occurred?
23 Other than that it was --

24 A. I presume it's an accurate
25 statement of what Navarre heard.

03:17:47 1 Q. This is barely one month after
03:17:49 2 the commencement of the conflict, isn't it?
03:17:53 3 June 16?

03:17:54 4 A. Yeah.

03:17:59 5 Q. Page 86 of the PDF, which is page
03:18:08 6 83 of the journal, and this is November 12th:

03:18:19 7 "This day Mindoghquay, a Chief of
03:18:23 8 the Saginaws, who was in the Fort 16th
03:18:27 9 June, asked the commandants friendship
03:18:29 10 as he had not entered into the war,
03:18:32 11 arrived."

03:18:35 12 To your understanding then this states
03:18:37 13 that Mindoghquay asked for the commandants
03:18:43 14 friendship on the basis that Mindoghquay had not
03:18:49 15 entered the war? That is what it purports to
03:18:51 16 say?

03:18:52 17 A. Yes.

03:18:52 18 Q. And do you have any reason to
03:18:53 19 understand whether that is accurate or not
03:18:55 20 accurate? Do you have a reason to consider that
03:18:58 21 inaccurate?

03:18:59 22 A. No.

03:19:07 23 Q. In your report you referred to
03:19:09 24 the Mississauga Chief Wabbicomicot?

03:19:15 25 A. Yes.

03:19:15 1 Q. And you noted that he met Johnson
03:19:15 2 in 1761. That -- this is page 59 of your report
03:19:17 3 if you'd like to turn to it, we don't need to
03:19:24 4 but you say that he met Johnson in 1761 and then
03:19:28 5 also in Niagara in 1764. Is that what you say
03:19:32 6 in your report?

03:19:32 7 A. Yes.

03:19:33 8 Q. And he also met Gladwin and
03:19:38 9 Pontiac in Detroit in 1763, or at least -- let
03:19:44 10 me ask this again.

03:19:45 11 In Detroit in 1763 he met Gladwin,
03:19:48 12 didn't he?

03:19:49 13 A. Yes, I believe he did.

03:19:56 14 Q. If we turn to Exhibit 623, which
03:20:02 15 is from the Johnson Papers, pages 30 to 31 of
03:20:14 16 the PDF. And page 306 to 307 of the Johnson
03:20:24 17 Papers. "EOD" does that mean "end of day"? End
03:20:33 18 of day die?

03:20:36 19 A. I don't know what it means.

03:20:38 20 Q. Maybe it's Latin.

03:20:40 21 A. It's an abbreviation for
03:20:41 22 something. I don't think it means end of day
03:20:43 23 but I'd have to think about it.

03:20:47 24 Q. Wabbicomicot, the Chief of the
03:20:51 25 Chippewas living near Toronto?

03:20:54 1 A. May can I interject and ask you
03:20:56 2 where are we? When are we?

03:20:59 3 Q. Sorry, I mentioned Detroit in
03:21:01 4 1763 but this is from the meeting in Niagara.
03:21:05 5 July 29th meeting, William Johnson.

03:21:14 6 A. In Niagara.

03:21:15 7 Q. Yes, in Niagara in 1764?

03:21:18 8 A. Thank you.

03:21:21 9 Q. And it refers to a pass that
03:21:27 10 Major Gladwin gave to Wabbicomicot. And it's
03:21:32 11 your understanding that that pass came from
03:21:35 12 Major Gladwin?

03:21:36 13 A. Yes.

03:21:38 14 Q. The next page please. He
03:21:47 15 describes the efforts he took:

03:21:48 16 "To convince the bad Indians at
03:21:50 17 and about Detroit of their error.
03:21:53 18 That several Nations with whom he
03:21:54 19 spoke had declared their
03:21:55 20 disapprobation of a war with the
03:21:56 21 English. For his part he was
03:22:00 22 determined to hold the English fast by
03:22:03 23 the hand and not forget what he heard
03:22:05 24 Sir William say to him."
03:22:07 25 So this is a description of him saying

03:22:08 1 that he had told the Indians at Detroit that
03:22:19 2 what they had done was wrong, is that accurate?

03:22:22 3 A. Yes, that's correct.

03:22:27 4 Q. And then page 308, please, of the
03:22:30 5 Johnson Papers. In the middle it says:

03:22:41 6 "Brother, On my hearing of the
03:22:43 7 disturbance at Detroit I went there
03:22:44 8 and found the Indians in that quarter
03:22:47 9 drunk; whereupon I used all my
03:22:51 10 influence to disperse them which I
03:22:53 11 affected."

03:22:54 12 So he's saying there he did everything
03:22:57 13 he could to cause the conflicts to end. Is that
03:23:01 14 a fair description of what he's saying?

03:23:04 15 A. I think so. This is still
03:23:05 16 Wabbicomicot talking?

03:23:07 17 Q. Yes.

03:23:07 18 A. Thank you.

03:23:07 19 MR. OGDEN: Your Honour, I'll go
03:23:07 20 through one or two more documents before I
03:45:52 21 suggest a break.

03:45:54 22 THE COURT: You can suggest a break.

03:45:57 23 MR. OGDEN: I will.

03:45:57 24 -- RECESSED AT 3:23 P.M. --

03:45:57 25 -- RESUMED AT 3:46 P.M. --

03:47:06 1 THE COURT: Please go ahead.

03:47:08 2 BY MR. OGDEN:

03:47:08 3 Q. Document SC0645. Is the diary of
03:47:29 4 John Montresor, who we mentioned previously is
03:47:29 5 an engineer in the British army?

03:47:36 6 A. Yes.

03:47:38 7 Q. Can I make this an exhibit, Your
03:47:41 8 Honour, the diary of John Montresor?

03:47:44 9 THE COURT: Yes.

03:47:48 10 THE REGISTRAR: Exhibit Number 4045.
03:47:51 11 EXHIBIT NO. 4045: Diary of John
03:47:51 12 Montresor. Document SC0645.

03:47:54 13 BY MR. OGDEN:

03:47:55 14 Q. Page 23 of the diary, October the
03:47:56 15 11th, page 12 of the PDF. The first page
03:48:12 16 indicates one of the purposes of the diary. It
03:48:16 17 says:

03:48:18 18 "To Sir Jeffrey Amherst[...]"

03:48:20 19 And the date is 1763. It's a diary of
03:48:24 20 his travel to Detroit and in Detroit, is that
03:48:28 21 accurate?

03:48:29 22 A. Yes.

03:48:35 23 Q. So page 12 of the PDF, please,
03:48:38 24 October 11. And the right side, page 23 of the
03:48:51 25 diary, October 11. I'm going to read the whole

03:49:06 1 thing because the first thing is relevant as
03:49:09 2 well:
03:49:10 3 "Worked on the armoured boat and
03:49:13 4 completed her this day. Mounted a
03:49:15 5 swivel in her. Barricaded the boat
03:49:18 6 with oak plank two inches thick."
03:49:22 7 Now, a swivel is what, do you know?
03:49:24 8 A. A cannon mount.
03:49:25 9 Q. A large cannon, a small cannon, a
03:49:28 10 small three pounder?
03:49:31 11 A. They can vary, I believe. The
03:49:33 12 size of the cannon mounted on the swivel can
03:49:37 13 vary.
03:49:38 14 Q. So it's not a typical cannon that
03:49:40 15 fires backwards and forwards? Perhaps what we
03:49:41 16 might consider to be a cannon would roll
03:49:43 17 backwards and forwards. This is a cannon
03:49:46 18 mounted on a post, perhaps would be one example?
03:49:49 19 A. Yes.
03:49:50 20 Q. So it had a range of fire around
03:49:52 21 the horizon?
03:49:55 22 A. Right.
03:49:59 23 Q. "This day Wabbicomicot, Chief of
03:50:01 24 the Mississaugas, sent word to the
03:50:03 25 Fort that they would come in to speak,

03:50:04 1 which he did, attended by another
03:50:07 2 Mississauga Indian, to explain as not
03:50:10 3 having assisted in this affair and to
03:50:13 4 disarm the Ojibwes and Ottawas [...]
03:50:18 5 I think that is "intercede":

03:50:20 6 "[...]and intercede for them by
03:50:22 7 desire of the commanding officer."

03:50:23 8 So here this is Wabbicomicot saying,
03:50:26 9 isn't he, that he made efforts to disarm the
03:50:30 10 Ojibwes and Ottawas at Detroit and to stop the
03:50:39 11 conflicts there, is that correct?

03:50:50 12 A. This passage says that he came in
03:50:52 13 to explain his not having assisted in this
03:50:55 14 affair. Oh, not having assisted in the attack
03:50:58 15 on the Fort. Yes.

03:51:04 16 Q. And the next document, Exhibit
03:51:07 17 0521, there is another reference to
03:51:11 18 Wabbicomicot, this is the Jehu Hay diary,
03:51:14 19 Exhibit 0521, page 79 of the PDF. October 7,
03:51:32 20 page 76 of the journal:

03:51:37 21 "This day Mr. Campo came to the
03:51:42 22 commandant in the name of
03:51:44 23 Wabbicomicot, a Toronto Chief, to know
03:51:47 24 his sentiments about a peace, to which
03:51:48 25 the Major gave no direct answer but

03:51:48 1 told Mr. Campo that he might bring him
03:51:48 2 to the Fort and he would speak to him.
03:51:49 3 He arrived here last Sunday with 24
03:51:52 4 men he says not to make war but to try
03:51:54 5 and accommodate the affairs."

03:51:57 6 Is that another example of
03:51:58 7 Wabbicomicot acting to stop the conflict?

03:52:03 8 A. Yes.

03:52:11 9 Q. And then to page -- the next page
03:52:13 10 down to October 11th:

03:52:20 11 "Yesterday was held a council
03:52:20 12 with the Mississaugas."

03:52:28 13 And another way to say that's
03:52:29 14 Wabbicomicot, correct?

03:52:30 15 A. Presumably.

03:52:30 16 Q. So down to page 90 of the PDF,
03:52:33 17 please. February 1, 1764, page 87 of the
03:52:49 18 journal:

03:52:49 19 "This day Wabagommigot [...]"

03:52:55 20 It says:

03:52:56 21 "[...] a Chief of the Toronto
03:52:57 22 Indians who came in last fall returned
03:52:58 23 and asked a certificate, which the
03:52:58 24 commandant at that time promised him
03:52:58 25 of his behaviour, which he gave him."

03:53:02 1 There is another example of
03:53:04 2 Wabbicomicot -- that is an example of
03:53:07 3 Wabbicomicot seeking recognition of his not
03:53:10 4 engaging in the conflict, is that correct?

03:53:12 5 A. Yes.

03:53:23 6 Q. After all of the examples we have
03:53:25 7 gone through of documents describing which
03:53:29 8 communities did and did not participate in the
03:53:31 9 conflict, would it be an overstatement to say
03:53:35 10 that there was a broad Anishinaabe uprising?

03:53:43 11 A. I would not say that it's an
03:53:44 12 overstatement to say there's a broad uprising.
03:53:47 13 I would also say that it's clearly true that
03:53:50 14 participation was not universal.

03:53:53 15 We've talked a fair amount at the end
03:53:59 16 about one particular individual and one
03:54:01 17 particular community.

03:54:02 18 The point that I tried to make in
03:54:04 19 generalizing about these patterns in my report
03:54:06 20 is that there were -- that there were hostiles.
03:54:09 21 There were communities that chose not to
03:54:12 22 participate in attacks or, in the case of
03:54:15 23 L'Arbre Croche Odawas, tried to mitigate the
03:54:18 24 effects of an attack, which I would argue, you
03:54:25 25 know, could be read as a debate over means to an

03:54:28 1 end as much as it could be read over -- as a
03:54:31 2 debate over ends.

03:54:32 3 And there are communities that
03:54:34 4 participated in it at the far end of the
03:54:36 5 spectrum -- sorry. That there were communities
03:54:39 6 that opposed the attacks altogether and the far
03:54:44 7 end of that spectrum was Wabbicomicot and his
03:54:46 8 Mississauga followers.

03:54:49 9 So I think, you know, you've done a
03:54:57 10 fine job of picking through these documents to
03:54:58 11 highlight emphases on arguments about whether to
03:55:08 12 participate in the attacks, and identifying
03:55:10 13 individuals who presented themselves as not
03:55:13 14 having participated, or in the case of
03:55:16 15 Wabbicomicot, in particular, really maintained
03:55:20 16 an alliance relationship through the course of
03:55:22 17 the conflict.

03:55:24 18 I still think that the sum of the
03:55:28 19 documentary records suggests that there was a
03:55:30 20 widespread uprising among Anishinaabe peoples
03:55:34 21 against British posts in the summer of 1763.

03:55:45 22 Q. But not a coordinated uprising?

03:55:47 23 A. No, certainly not in the
03:55:49 24 command-and-control sense. Coordinated by belts
03:55:52 25 that were circulating and by messages that

03:55:54 1 passed back-and-forth. So there was sharing of
03:55:56 2 information but there was no command-and-control
03:55:59 3 coordination.

03:56:02 4 Q. And no common goal of the
03:56:04 5 participants?

03:56:13 6 A. I think we can talk about common
03:56:15 7 goals without -- as long as it's understood that
03:56:20 8 there are a whole lot of individuals and a whole
03:56:23 9 lot of communities acting on their own. And so,
03:56:28 10 you know, probably it doesn't make sense to
03:56:31 11 think of a perfect accord in goals and motives.

03:56:34 12 Q. That'd be shared rather than
03:56:36 13 common goals, wouldn't it? Several communities
03:56:43 14 acting along the same lines is shared rather
03:56:46 15 than common?

03:56:47 16 A. I'm not sure I understand the
03:56:48 17 distinction.

03:56:49 18 Q. Those communities did not
03:57:08 19 understand each other to be working together
03:57:09 20 towards that goal?

03:57:11 21 A. I think some communities
03:57:12 22 understood themselves to be working together
03:57:14 23 toward a common goal or a shared goal, I think.

03:57:22 24 Q. Not all Anishinaabe communities?

03:57:25 25 A. No.

03:57:38 1 Q. Can you turn please to page 54 of
03:57:40 2 your report? There is a mention on page 48
03:57:42 3 actually, that you can flip to, but briefly the
03:57:45 4 references that you say:

03:57:47 5 "[...] warriors came from as far
03:57:48 6 north at Georgian Bay [...]."

03:57:50 7 Page 48, there's no -- I believe -- is
03:57:54 8 your support for that statement contained on
03:57:57 9 page 4 where you talk about Showanakapawy? Page
03:58:07 10 48?

03:58:08 11 THE COURT: You're on page 48. Are
03:58:10 12 you now going to page 4?

03:58:14 13 MR. OGDEN: If you would like to see
03:58:15 14 the quote.

03:58:16 15 THE COURT: No, I just -- what you
03:58:16 16 just said --

03:58:21 17 MR. OGDEN: 48 and 54, your Honour.

03:58:22 18 THE COURT: Well, no, you were
03:58:23 19 speaking about 48, and you said you believe that
03:58:25 20 the support for that statement is contained on
03:58:27 21 page 4. Now, that may have been a
03:58:30 22 mistranscription but that is what I heard. Is
03:58:32 23 that not what you want to do?

03:58:39 24 MR. OGDEN: No, I'm sorry, Your
03:58:39 25 Honour.

03:58:39 1 THE COURT: Starting at?

03:58:39 2 MR. OGDEN: Yes.

03:58:39 3 BY MR. OGDEN:

03:58:39 4 Q. You make a statement on page 48.

03:58:40 5 So if we bring up the report please?

03:58:58 6 THE COURT: Which page of the report?

03:59:00 7 MR. OGDEN: This is 48.

03:59:02 8 THE COURT: Now it is.

03:59:24 9 BY MR. OGDEN:

03:59:25 10 Q. Three lines from the bottom:

03:59:26 11 "[...] warriors came from as far

03:59:28 12 north as Georgian Bay [...]"

03:59:31 13 And then page 54 of the report there

03:59:50 14 starting, "[...] at a conference in Niagara

03:59:55 15 [...]." And you have a reference for that fact.

03:59:59 16 And is this fact concerning Shawanaxcapowee, is

04:00:09 17 that your support for your statement on page 48?

04:00:13 18 A. Yes.

04:00:13 19 Q. Let's read this part of your

04:00:15 20 report please on page 54:

04:00:22 21 "At a conference at Niagara in

04:00:25 22 May 1764, Lieutenant Colonel William

04:00:29 23 Browning met with a group of Ojibwas

04:00:31 24 whose spokesman was Shawanaxcapowee.

04:00:37 25 'I speak for four villages and tell

04:00:39 1 you that we are employed by seven
04:00:41 2 others of the same Nations to treat
04:00:43 3 for peace for them. And that they
04:00:45 4 propose coming soon to Niagara to
04:00:47 5 speak for themselves,' Shawanaxcapowee
04:00:53 6 told Browning, 'The Nations are
04:00:57 7 situated at the back of Toronto on the
04:00:59 8 north and east sides of Lake Huron'."

04:01:03 9 And you explained that "Toronto" in
04:01:05 10 that context meant modern day Lake Simcoe, and
04:01:09 11 the Severn River was sometimes labelled the
04:01:12 12 Toronto River.

04:01:13 13 If you turn the page please?

04:01:25 14 "In the conversation that
04:01:26 15 followed it was clear that the
04:01:31 16 villages represented by
04:01:31 17 Shawanaxcapowee had participated in
04:01:31 18 the war the previous summer and they
04:01:31 19 were now coming to agree to peace.
04:01:34 20 Here we have direct evidence of
04:01:36 21 participation by Ojibwes from Georgian
04:01:39 22 Bay in Pontiac's War."

04:01:46 23 I'd like to turn up two documents.
04:01:54 24 There's a footnote at page 74, let's see what
04:01:58 25 you refer to for this proposition. "PSWJ",

04:02:00 1 that's William Johnson papers?

04:02:04 2 A. Correct.

04:02:05 3 Q. So let's turn up Exhibit 0591 and
04:02:23 4 go to page 3 of the PDF please, which is page
04:02:28 5 203. You see it starts there, "Brethren [...]",
04:02:48 6 and that is the entirety of the communication of
04:02:51 7 the parties that you refer to, isn't it?

04:03:01 8 A. That is the -- that's the passage
04:03:02 9 that I quote in the early part of that
04:03:05 10 paragraph.

04:03:08 11 Q. But then you say, "[...]and the
04:03:10 12 conversation that followed"?

04:03:11 13 A. Right.

04:03:12 14 Q. Does that contain a conversation
04:03:13 15 that followed?

04:03:19 16 A. You would have to scroll down
04:03:22 17 farther for the conversation that followed.

04:03:28 18 Q. That is as far as the document
04:03:30 19 goes that was produced. It goes to the bottom
04:03:34 20 of that page; and I'm going to show you the
04:03:39 21 original that it was based on. As far as I'm
04:03:45 22 aware page 204 of the Johnson Papers does not
04:03:50 23 continue with this conversation.

04:04:42 24 MR. OGDEN: Your Honour, we are going
04:04:43 25 to take a minute -- in a minute we will have

04:04:46 1 found the original handwritten version of this
04:04:48 2 which will demonstrate that that is the entirety
04:04:53 3 of the conversation in which the Johnson Papers'
04:05:02 4 record is based.

04:05:03 5 BY MR. OGDEN:

04:05:03 6 Q. But to demonstrate it, at the
04:05:05 7 start it says that, Niagara May 26, 1764:

04:05:17 8 "At a meeting with the Chipewas
04:05:18 9 held at Niagara 26th May 1964, present
04:05:29 10 Colonel William Browning[...]"

04:05:33 11 Is that William Browning? W.

04:05:33 12 Browning?

04:05:33 13 "[...] Commandant with several of
04:05:33 14 the Six Nations and others.

04:05:33 15 Shawanaxcapowee speaker, addressed the
04:05:39 16 commandant [...]."

04:05:41 17 Have I accurately transcribed the
04:05:43 18 document?

04:05:44 19 A. Yes.

04:05:48 20 Q. And it starts, "Brethren", there
04:05:50 21 is an introductory comment. He says, this is
04:05:59 22 the full paragraph:

04:06:00 23 "Brethren, we have always shut
04:06:02 24 our ears when belts were brought to us
04:06:05 25 contrary to the interest of the

04:06:06 1 English [...]."

04:06:07 2 And the part that you contain on page
04:06:10 3 54 of your report omits that first sentence,
04:06:14 4 doesn't it?

04:06:15 5 A. Yes.

04:06:15 6 Q. And from the extracts that we saw
04:06:17 7 before, the Johnson Papers, the statement:

04:06:22 8 "[...] we have always shut our
04:06:24 9 ears when belts were brought to
04:06:25 10 us[...]."

04:06:26 11 Is a statement that the speaker did
04:06:34 12 not fight the English, isn't it?

04:06:43 13 A. That's claim, yes. That's the
04:06:48 14 meaning of that phrase.

04:06:52 15 Q. He says:

04:06:53 16 "[...] I speak for four is
04:06:54 17 villages and tell you that we are
04:06:56 18 employed by seven others [...]."

04:06:58 19 So he's speaking for four in which, is
04:07:05 20 it correct, he is a member of one of those four
04:07:08 21 villages?

04:07:09 22 A. That is my interpretation, yes.

04:07:12 23 Q. "[...] and tell you that we are
04:07:12 24 employed by seven others of the same
04:07:15 25 Nations [...]."

04:07:17 1 So he's speaking for 11 all together
04:07:21 2 in this paragraph, is that correct?

04:07:24 3 A. Yes.

04:07:28 4 Q. Eleven villages. And when he
04:07:30 5 says "we" he is referring then to those 11
04:07:34 6 villages, isn't he? "[...] we have always shut
04:07:37 7 our ears[...]" He is speaking for those 11
04:07:40 8 villages?

04:07:41 9 A. Right.

04:07:46 10 Q. "[...] and their Nations are
04:07:47 11 situated at the back of Toronto on the
04:07:51 12 north and east sides of Lake Huron."

04:07:54 13 And that is Lake Simcoe, Severn River
04:07:55 14 and then the north and east side of Lake Simcoe,
04:07:59 15 is that right?

04:08:00 16 A. Yes.

04:08:04 17 Q. And then it continues:

04:08:05 18 "The Six Nations made answer to
04:08:08 19 the above speech as follows, there's
04:08:11 20 present as before."

04:08:13 21 Now, what we don't see here is a note
04:08:15 22 that Browning spoke. And we would expect a note
04:08:18 23 that Browning spoke if Browning was the person
04:08:21 24 that made the statement starting, "Brethren", is
04:08:26 25 that correct? "Six Nations made answer as

04:08:30 1 follows [...]"

04:08:31 2 A. Correct.

04:08:32 3 Q. So this statement beginning
04:08:33 4 "Brethren [...]" I'm going to read it into the
04:08:44 5 record.

04:08:46 6 "Brethren, we have given
04:08:48 7 attention to what you have said and
04:08:49 8 thank you for it, but at the same time
04:08:52 9 acquaint you, that though we came here
04:08:57 10 on another purpose, than peace (having
04:09:00 11 found our constant and many endeavours
04:09:03 12 to preserve it, prove ineffectual) we
04:09:07 13 will however, on your dispositions and
04:09:11 14 inclinations for it, treat with you
04:09:14 15 there on, and earnestly recommend it
04:09:17 16 to you whilst the present opportunity
04:09:17 17 offers to embrace it. As by
04:09:17 18 neglecting so to do you will feel the
04:09:17 19 consequences. Therefore please advise
04:09:17 20 you to replace the dwellings of your
04:09:17 21 brethren the English from which you
04:09:17 22 will see a smoke arise and the dark
04:09:17 23 shades of night vanish and the morning
04:09:21 24 light appear. And further, brethren,
04:09:25 25 we must assure you that such as will

04:09:27 1 not now accept the terms of peace
04:09:28 2 offered them, shall not meet with
04:09:30 3 either favour or affection but on the
04:09:33 4 contrary will be treated with the
04:09:34 5 utmost severity by the English for
04:09:36 6 their obstinacy and ill behaviour."

04:09:40 7 And it appears, doesn't it, that that
04:09:41 8 is the Six Nations making the answer in that
04:09:44 9 statement, is that correct?

04:09:45 10 A. That's right.

04:10:17 11 Q. This is a document that was
04:10:19 12 produced by the plaintiffs. And this appears to
04:10:25 13 be, and I would like you to confirm please, it
04:10:29 14 appears to be the original, or at least a
04:10:32 15 handwritten copy of the typed William Johnson
04:10:38 16 paper.

04:10:40 17 "1764 at a meeting with the
04:10:42 18 Chippewas held at Niagara 26 May 1764.
04:11:01 19 Present Colonel W. Browning [and
04:11:10 20 something, something] of the Six
04:11:13 21 Nations."

04:11:14 22 Is that correct?

04:11:17 23 "Shawanaxcapowee speaker
04:11:21 24 addressed the commandant as follows
04:11:27 25 [...]"

04:11:29 1 Would you like to take a moment to
04:11:30 2 read this to confirm this is a handwritten copy
04:11:32 3 of the original?

04:11:34 4 A. This does appear to be a
04:11:35 5 handwritten copy that tracks the printed version
04:11:38 6 that we were just looking at.

04:11:48 7 Q. This document produced by the
04:11:49 8 plaintiffs appears to -- it ends with the word:

04:11:52 9 "[...] by the English for their
04:11:55 10 obstinacy and ill behaviour."

04:11:58 11 And the same with the words:

04:12:08 12 "[...] by the English for their
04:12:09 13 obstinacy and ill behaviour. A belt."

04:12:17 14 So it appears from comparison of the
04:12:19 15 two documents that they contain the same text,
04:12:21 16 that the typed document, Exhibit 0591, is based
04:12:26 17 on the other handwritten document, and that
04:12:30 18 there was no further text to either document.

04:12:32 19 Is that, correct?

04:12:34 20 A. Right.

04:12:35 21 Q. Your Honour, can I make the
04:12:36 22 second document an exhibit please?

04:12:43 23 Your Honour we are going to add that
04:12:45 24 document to the ready database later but can we
04:12:49 25 mark it now please?

04:12:50 1 THE COURT: Well, we can give it a
04:12:52 2 number now.

04:12:54 3 THE REGISTRAR: Exhibit 4046.

10:11:34 4 EXHIBIT NO. 4046: Handwritten
10:11:34 5 original of Exhibit 0591.

04:12:56 6 MR. OGDEN: And we call it handwritten
04:12:58 7 original of Exhibit 0591, is that accurate?
04:13:02 8 Acceptable, Your Honour?

04:13:04 9 THE COURT: Well, the evidence is a
04:13:06 10 handwritten version. You allowed that it was
04:13:10 11 either an original or a handwritten copy. I
04:13:13 12 don't suppose it matters very much but that's
04:13:19 13 what you said.

04:13:22 14 BY MR. OGDEN:

04:13:23 15 Q. Yes. Can I ask the witness
04:13:23 16 another question?

04:13:23 17 When I'm referring to "copy" I'm
04:13:23 18 referring to a copy of the original handwritten
04:13:25 19 rather than a copy of the typewritten. Is that
04:13:29 20 what you understood a "copy" to mean?

04:13:32 21 A. Um ...

04:13:33 22 Q. Well, you don't need to tell me
04:13:35 23 what you understood what I meant, but copies
04:13:37 24 were made of original handwritten documents,
04:13:39 25 also handwritten weren't they?

04:13:43 1 A. Yes, this is a manuscript copy, I
04:13:44 2 think it's fair to say.

04:14:03 3 Q. So part of the document here is
04:14:04 4 the Six Nations answering the speech rather than
04:14:08 5 the Crown. It says on the second line:

04:14:17 6 "[...] though we came here on
04:14:19 7 another purpose than peace, having
04:14:21 8 found our constant and many endeavours
04:14:24 9 to preserve it prove ineffectual
04:14:27 10 [...]."

04:14:28 11 So, firstly, coming here on another
04:14:31 12 purpose than peace, they came here for war? Is
04:14:33 13 that correct?

04:14:35 14 A. The way I interpret this passage,
04:14:37 15 and I should explain my interpretation of this
04:14:40 16 entire document, but this particular passage I
04:14:45 17 interpret to refer to the fact that the Six
04:14:49 18 Nations who accompanied Johnson and the other
04:14:55 19 folks they were travelling with, the original
04:14:57 20 purpose was to identify and punish participants
04:15:02 21 in the war. That's the other purpose than
04:15:08 22 peace.

04:15:10 23 And they found their constant and many
04:15:12 24 endeavours -- well, having found their constant
04:15:15 25 and many endeavours to preserve peace prove

04:15:17 1 ineffectual. So then they say:

04:15:20 2 "We will however under
04:15:21 3 dispositions and inclinations for
04:15:21 4 treat with you on peace."

04:15:26 5 So the way I interpret this document
04:15:28 6 is to say that these -- that this spokesperson
04:15:34 7 presented himself as not having participated.
04:15:39 8 He does the same thing that every other
04:15:40 9 spokesperson at Niagara does. He says, We
04:15:43 10 closed our ears to anti-English messages.

04:15:56 11 And I interpret this statement by the
04:16:00 12 Six Nations spokesperson who answered them as,
04:16:03 13 in effect, arguing that -- threatening that if
04:16:13 14 they do not accede to the terms of peace now
04:16:21 15 they will be treated with the utmost severity.

04:16:24 16 So I interpret this document to be
04:16:27 17 treating the spokesperson and the group he is
04:16:38 18 speaking for as former combatants, as people
04:16:42 19 with whom Britain needs to make a peace.

04:16:47 20 Q. Well, the Six Nations
04:16:49 21 spokesperson was talking about the potential for
04:16:52 22 war, is that correct?

04:16:53 23 A. Yes, and also the potential for
04:17:07 24 peace.

04:17:07 25 Q. It's not necessarily about

04:17:09 1 stopping a war that has started, at least in
04:17:12 2 respect of what the speaker is saying, is that
04:17:14 3 correct?

04:17:14 4 A. The passage above refers to the
04:17:21 5 intent of these Nations to treat for peace with
04:17:24 6 the British. And in the response by the -- by
04:17:27 7 the Six Nations spokesperson the spokesperson
04:17:35 8 says, we really wanted to identify and punish
04:17:39 9 guilty parties, but since we have been unable to
04:17:41 10 do that, and:

04:17:42 11 "[...] on your dispositions and
04:17:44 12 inclinations for it, we will treat
04:17:47 13 with you thereon and earnestly
04:17:48 14 recommend it to you while the present
04:17:51 15 opportunity offers to embrace it. As
04:17:57 16 by neglecting to do so you will feel
04:18:00 17 the old consequences."

04:18:02 18 Q. It doesn't say, because we have
04:18:03 19 been unable to do that, does it? It doesn't
04:18:08 20 say, we have been unable to identify those who
04:18:11 21 were at war with the British?

04:18:13 22 A. No, sorry, it does not.

04:18:18 23 Q. So Shawanaxcapowee is speaking
04:18:23 24 for Nations who are purporting to have been at
04:18:27 25 peace with the British, saying they were at

04:18:29 1 peace with the British:

04:18:30 2 "[...] and the Six Nations told
04:18:34 3 me about a potential for war."

04:18:39 4 That's what you just said.

04:18:41 5 And then it's possible to treat for
04:18:44 6 peace even when you're not at war isn't it? You
04:18:50 7 can treat -- people arrange, make agreements for
04:18:53 8 peace when war is pending? That's what
04:19:08 9 Shawanaxcapowee is saying, we're going to treat
04:19:10 10 for peace even though we're not at war; war is
04:19:13 11 pending.

04:19:14 12 A. I would say, yeah, okay. That's
04:19:16 13 a reasonable -- that's a reasonable statement.
04:19:18 14 I don't think that's what's going on here but --
04:19:21 15 to treat for peace implies some prior breach of
04:19:34 16 the peace, in my mind.

04:20:03 17 MR. OGDEN: Your Honour, I'm going to
04:20:05 18 introduce two exhibits next which are maps of
04:20:09 19 Detroit at the time of the siege and it is
04:20:16 20 brief, might as well start it in the morning.

04:20:18 21 And there's a next section on part of
04:20:20 22 the siege which will take longer than ten
04:20:25 23 minutes, but if you like I can introduce the
04:20:28 24 exhibits in the remaining 10 minutes.

04:20:33 25 The first document, S0453, this is a

04:20:39 1 page from the report of Dr. Driben, which is
04:20:45 2 going to be introduced. This is map 9. So map
04:20:53 3 9 in Dr. Driben report.

04:21:04 4 THE COURT: No objection?
04:21:06 5 Mr. Registrar, what Exhibit number are we up to?

04:21:11 6 THE REGISTRAR: Exhibit number 4047.

04:21:13 7 EXHIBIT NO. 4047: Map 9 from the
04:21:14 8 report of Dr. Driben. Document
04:21:14 9 SC0453.

04:21:34 10 MR. OGDEN: This is an opportune
04:21:36 11 moment to say that this is not the map.

04:21:39 12 THE COURT: I was going to say that if
04:21:40 13 you thought this was a map of Detroit that
04:21:43 14 surprises, me. But I figured you would get
04:21:47 15 around to that. You still want this marked?
04:21:50 16 Because it has been.

04:21:52 17 MR. OGDEN: I don't think it's
04:21:53 18 necessary at this point.

04:22:07 19 THE COURT: Well, it's been done.
04:22:08 20 Moving forward.

04:22:10 21 MR. OGDEN: The next -- let me try the
04:22:10 22 next one and I'll be more careful before we mark
04:22:10 23 it. This is S0660. And part of the --
04:22:27 24 actually, Your Honour, this is already marked as
04:22:29 25 part of Exhibit 4038 but we'll get a copy of

04:22:33 1 this page separately and we'll mark that
04:22:35 2 tomorrow.
04:22:44 3 THE COURT: Do you have another map or
04:22:45 4 is this it?
04:22:46 5 MR. OGDEN: This is it.
04:22:47 6 THE COURT: Well, you're starting a
04:22:49 7 new area tomorrow so it will have to wait until
04:22:52 8 tomorrow so you can get your maps sorted out.
04:22:55 9 MR. OGDEN: Thank you.
10 THE COURT: Resume at 10:00 o'clock
11 tomorrow.
12 --- Whereupon the examination was
13 adjourned at 4:23 p.m.

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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, the witness having been previously
placed under oath;

That the testimony of the witness and
all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
accurate transcript of my shorthand notes so
taken. Dated this 24th day of June, 2019.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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