

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

DAY 21 / VOLUME 21
June 12, 2019



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

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Court File No. 94-CQ-50872CM

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

Plaintiffs

- and -

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

Defendants

Court File No. 03-CV-261134CM1

A N D B E T W E E N:

CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
SAUGEEN FIRST NATION

Plaintiffs

- and -

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

Defendants

--- This is VOLUME 21/DAY 21 of the transcript
of the trial proceedings in the above-noted
matter, being held at the Superior Court of
Justice, 330 University Avenue, Courtroom 5-1,
Toronto, Ontario, on the 12th day of June 2019.

B E F O R E:

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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24 REPORTED BY: Helen Martineau, CSR.

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1 --- Upon commencing at 10:01 a.m.

10:02:17 2 THE COURT: Please go ahead.

10:02:19 3 MR. OGDEN: Good morning, Your Honour.

10:02:20 4 Yesterday I was going to enter two maps as

10:02:23 5 exhibits. This is the first map. This is t;

10:02:45 6 that's a report for the plaintiffs. May I enter

10:02:53 7 this as an exhibit?

10:02:54 8 THE COURT: Yes.

10:03:01 9 THE REGISTRAR: Can you repeat the

10:03:02 10 document number, counsel?

10:03:04 11 MR. OGDEN: SC1933.

10:03:09 12 The second map is an extract from the

10:03:16 13 Francis Parkman, "History of the Conspiracy of

10:03:16 14 Pontiac". This is also a map of the Detroit

10:03:24 15 River --

10:03:26 16 THE COURT: Just before we get to

10:03:27 17 that, do we have an exhibit number for the first

10:03:29 18 map?

10:03:30 19 THE REGISTRAR: Exhibit number 4048,

10:03:32 20 Your Honour.

10:03:38 21 EXHIBIT NO. 4048: Map of the Detroit

10:03:40 22 River, 1763. Document SC1933.

10:03:41 23 THE COURT: So the first map bears the

10:03:43 24 date 1763. Do I take it that that communicates

10:03:45 25 that it's as of that time?

10:03:48 1 MR. OGDEN: Yes.

10:03:48 2 THE COURT: It's not really -- okay.

10:03:51 3 Go ahead.

10:03:51 4 MR. OGDEN: I do not understand the

10:03:53 5 major geographical landmarks to have changed

10:03:57 6 particularly, but the descriptions of the places

10:04:04 7 is the same.

10:04:06 8 THE COURT: That wasn't really my

10:04:06 9 question but okay.

10:04:06 10 So the first map is Exhibit 4048 and

10:04:10 11 the second map is Exhibit 4049.

10:04:13 12 EXHIBIT NO. 4049: Map of the Detroit

10:04:13 13 River extracted from Francis Parkman's

10:04:13 14 "History of the Conspiracy of

10:04:13 15 Pontiac". Document SC1933.

10:04:15 16 MR. OGDEN: And for reference, the

10:04:15 17 document number on the second exhibit is SC --

10:04:18 18 it is an extract from SC0660, page 243, but it

10:04:24 19 is the extract and not the entire document.

10:04:31 20 THE COURT: Seems to be entitled "Fort

10:04:34 21 and Settlements of Detroit".

10:04:37 22 MR. OGDEN: Yes.

10:04:39 23 THE COURT: What's the word under

10:04:40 24 that?

10:04:42 25 MR. OGDEN: 1763.

10:04:43 1 ERIC HINDERAKER: PREVIOUSLY SWORN.
2 CROSS-EXAMINATION BY MR. OGDEN:
10:04:43 3 (continued)
10:05:09 4 Q. Professor Hinderaker, good
10:05:11 5 morning.
10:05:12 6 A. Good morning.
10:05:13 7 Q. Now, you'll see this map in front
10:05:14 8 of you shows Lake St. Clair, and I'm actually
10:05:17 9 going to refer beyond Lake St. Clair to the
10:05:22 10 Huron River that leads to Lake Huron from Lake
10:05:25 11 St. Clair. Are you familiar with that?
10:05:27 12 A. Yes.
10:05:28 13 Q. So I'm going to refer to the
10:05:29 14 attack on Robertson's party which occurred at
10:05:32 15 the start of the siege, and this is referenced
10:05:35 16 on page 24 of your report.
10:05:43 17 When you say that this attack was not
10:05:44 18 instigated not by Pontiac but by a group of
10:05:46 19 St. Clair river Ojibwa Indians, is that correct?
10:05:46 20 Warriors.
10:05:52 21 A. Yes, that's correct.
10:05:53 22 Q. And Pontiac was an Odawa Chief,
10:05:53 23 is that correct?
10:05:53 24 A. Yes, that's correct.
10:05:53 25 Q. So turn to Exhibit 0524, please,

10:05:56 1 which is the Navarre journal, and to page 43
10:06:03 2 please. This refers to news of Mr. Robertson's
10:06:21 3 death coming to the people -- to the fort
10:06:38 4 afterwards. And the bringing of a -- it says:

10:06:45 5 "[...] Mr. Desnoyers [ph] who had
10:06:48 6 gone to the Pine Woods 60 miles above
10:06:51 7 the fort to fell building timber,
10:06:58 8 returned with the Chippewas of Saginaw
10:06:59 9 who escorted him. Through him one
10:07:04 10 learned of the death of two officers,
10:07:04 11 one of whom was Mr. Robertson."

10:07:04 12 So is it possible that it was the
10:07:05 13 Chippewas of Saginaw on their way down to
10:07:08 14 Detroit who committed the attack?

10:07:10 15 A. I understand this passage to be
10:07:12 16 describing the Chippewas of Saginaw escorting
10:07:15 17 the Frenchman being discussed, but I believe I'm
10:07:23 18 correct in saying that this is the St. Clair
10:07:28 19 River Ojibwas that conducted the attack.

10:07:52 20 Q. The date of this journal entry
10:07:53 21 though is May 9th, which is two days after the
10:07:56 22 attack occurs. So it's reasonable to assume
10:08:00 23 that the Chippewas of Saginaw were on their way
10:08:02 24 down -- it would have taken them two days to
10:08:05 25 travel from the place of the attack to Fort

10:08:07 1 Detroit, from May 7th to May 9th. Does that
10:08:13 2 increase the likelihood that it was the
10:08:16 3 Chippewas of Saginaw that conducted the attack?

10:08:23 4 A. No. I mean, not necessarily. I
10:08:26 5 don't think.

10:08:33 6 Q. In your report you say that the
10:08:35 7 attackers were, "Intent on defending this
10:08:37 8 passageway[...]." are the words that you use?

10:08:40 9 A. That's right.

10:08:40 10 Q. And the intent of the attackers
10:08:44 11 is not stated anywhere in the primary documents,
10:08:46 12 is it?

10:08:46 13 A. No.

10:08:47 14 Q. And there's no record of Pontiac
10:08:50 15 or any other First Nation person saying that the
10:08:53 16 intent for the attack on the survey party was to
10:08:56 17 defend the passageway and prevent surveying?

10:08:58 18 A. The intent was inferred by the
10:09:00 19 fact that they were waiting on the river for the
10:09:03 20 surveying party --

10:09:05 21 Q. Sorry, my question was, there's
10:09:07 22 nothing in the record, in the documentary
10:09:11 23 record?

10:09:11 24 A. Correct.

10:09:14 25 Q. And, as you say, you take the

10:09:18 1 intent, you infer it from the facts of the
10:09:21 2 attack. And people were on the water conducting
10:09:23 3 a survey?

10:09:24 4 A. Correct.

10:09:25 5 Q. So the attack was -- I'd ask
10:09:27 6 you -- I put to you that the attack was due to
10:09:30 7 the timing -- to co-ordinate with the siege of
10:09:36 8 the Fort and not the fact that they were
10:09:39 9 mapping. They had been mapping for some days
10:09:44 10 prior to the attack, hadn't they?

10:09:48 11 A. Yes.

10:09:50 12 Q. And in fact it was on May 5th
10:09:52 13 that the final decision was made by Pontiac and
10:09:54 14 his immediate followers to attack the English,
10:09:58 15 is that correct?

10:09:59 16 A. Yes.

10:10:03 17 Q. So I'd like to turn to
10:10:05 18 document -- Exhibit 0514 please. This is the
10:10:16 19 "Rutherford Captivity Narrative". On page --
10:10:28 20 this is an extract of it in fact, paged 22 to 23
10:10:32 21 of that narrative written by Rutherford, who was
10:10:37 22 one of the surveying party and then he was
10:10:39 23 captured?

10:10:41 24 THE COURT: I think this very page was
10:10:44 25 put in front of this gentleman in-chief; doesn't

1 mean you can't describe it again, of course, but
2 I may be wrong.

3 BY MR. OGDEN:

4 Q. No, you're correct, Your Honour.
5 Pages 6 to 7 of the PDF. It gives the dates
6 there:

7 "May 4th, we overtook a canoe
8 with an Indian family in it.

9 May 5th, we passed several Indian
10 villages. But there appeared to be
11 few Indians at them."

12 And then:

13 "May 6th, in the morning we
14 arrived at La Pinière [...]."

15 Which is the Pine River, isn't it?
16 Where there were lots of pine trees?

17 A. That's right.

18 Q. There's a description of it in
19 the document but that's not part of the
20 Journal.

21 "Where there was some Canadians
22 building a sawmill for whom we
23 brought, at the desire of the French
24 gentleman at Detroit, a few barrels of
25 flower. They returned us thanks and

1 told us with all the rhetoric they
2 were masters of that all the Nations
3 of Indians around were in league to
4 take up the hatchet against the
5 English, that they knew of our coming
6 that way, and were waiting six miles
7 up the river to seize and destroy us,
8 and if we proceeded any farther we
9 would certainly be cut to pieces.
10 They begged us with tears in their
11 eyes for God's sake to return, and by
12 means of the wind and the strong
13 current of the river we might gain the
14 fort before they could perceive we had
15 discovered their intentions."

16 So this was advice they received on
17 the morning of May 6th, which I believe is the
18 date of the attack.

19 And the intention, as described in
20 this primary document, the only primary document
21 we have describing the attack by someone who
22 witnessed the attack, describes it as:

23 "[...] to take up the hatchet
24 against the English."

25 Is that correct? And that's to kill

1 all the English was the intent?

2 A. At intent is not stated but to
3 make war on them.

4 Q. And also you describe in your
5 report attacks, contemporaneous attacks that
6 occurred on May 9th on Hogg Island. So perhaps
7 we can bring up Exhibit 4049, please? This is
8 the map from the Parkman, the settlement at
9 Detroit. And then if you can enlarge the top,
10 please?

11 You'll see there's an island there and
12 it says "I. Le Cochon" which is French, isn't
13 it, for Hogg Island? And that's where they
14 attacked?

15 A. Correct.

16 Q. And this was an attack on -- it
17 was an attack on a former sergeant, his wife and
18 children who were looking after some cattle, is
19 that correct?

20 A. I believe that's correct.

21 Q. And they were all killed --
22 that's not correct, sorry. Incorrect.

23 They were all killed except for two,
24 perhaps, of their children, is that correct?

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

10:15:11 1 Q. One of whom was taken captive, a
10:15:13 2 young girl?

10:15:14 3 A. Yes.

10:15:15 4 Q. And she was subsequently murdered
10:15:17 5 but later in the fall, is that correct?

10:15:23 6 A. I believe that's correct.

10:15:25 7 Q. And there were 24 bullocks on
10:15:28 8 this island, is that right?

10:15:30 9 A. Yes, I don't have the count in my
10:15:32 10 head but I trust that you do.

10:15:33 11 Q. I do. And they were all killed,
10:15:34 12 weren't they?

10:15:36 13 A. Yes.

10:15:37 14 Q. And that island was not a water
10:15:40 15 space was it?

10:15:46 16 A. It's land in the midst of water,
10:15:48 17 yes.

10:15:49 18 Q. Land in the midst of water, but
10:15:50 19 the bullocks were on the island?

10:15:53 20 A. Right.

10:15:53 21 Q. Yes. And the intent of those who
10:15:54 22 killed the bullocks and the farmer and his wife
10:15:59 23 and children were not intent on preventing the
10:16:01 24 mapping of the river, were they?

10:16:02 25 A. No, they were intent on

10:16:03 1 diminishing the supply for the fort.

10:16:07 2 Q. Were they concerned that the
10:16:08 3 bullocks might escape from the island and help
10:16:12 4 English forces elsewhere?

10:16:14 5 A. I don't know what their concern
10:16:16 6 was.

10:16:23 7 Q. If I go then to Exhibit 0523,
10:16:25 8 please, which is the Jehu Hay journal, and at
10:16:42 9 page 128 of that document, and also 128 of the
10:16:55 10 journal -- sorry, the document 523. PDF page
10:17:06 11 10, I apologize, page 128 of the journal.

10:17:10 12 And the start of the second paragraph
10:17:11 13 there reads:

10:17:12 14 "After having thus put all the
10:17:14 15 English without the Fort to death
10:17:24 16 [...]."

10:17:24 17 Does that accurately describe what
10:17:26 18 Pontiac and his forces had done by that date?
10:17:29 19 This is May the 9th, after they had murdered all
10:17:32 20 except two children; and also a poor woman and
10:17:36 21 her two sons who lived a half mile from the
10:17:39 22 Fort. They had put all of the English outside
10:17:41 23 of the Fort to death.

10:17:44 24 A. That's correct.

10:17:44 25 Q. So there was a broader intent

10:17:47 1 then to kill all the English in the area?

10:17:55 2 A. Um, certainly -- it certainly
10:17:58 3 seems that that was their intent, yes.

10:18:09 4 Q. You refer in your report to
10:18:11 5 vessels that were moored at Fort Detroit during
10:18:14 6 the siege?

10:18:15 7 A. Uhm-hmm.

10:18:15 8 Q. And you describe events in
10:18:17 9 relation to them. Is it accurate to say that
10:18:19 10 you described things that were done to those
10:18:22 11 vessels by the First Nations but do not describe
10:18:25 12 the things that the vessels themselves did to
10:18:27 13 First Nations or otherwise?

10:18:28 14 A. Yes. I was -- the specific
10:18:31 15 question I was responding to here was the
10:18:33 16 question of whether the attackers intended to
10:18:42 17 control the waterway. So there's nothing in my
10:18:48 18 report that was intended to comment on their
10:18:51 19 successes so unresponsive to that; it was simply
10:18:54 20 to highlight the extent of First Nations'
10:18:59 21 efforts to control traffic.

10:19:07 22 Q. So you're familiar, though, with
10:19:08 23 the things that the ships themselves did?

10:19:10 24 A. Yes. Broadly familiar, yes.

10:19:28 25 Q. Well, you describe or you give

10:19:30 1 the names of four vessels, the Beaver, the
10:19:32 2 Gladwin, the Michigan and the Huron. Since
10:19:38 3 you've read these journals do you agree that
10:19:41 4 they were actually only two large vessels, such
10:19:43 5 vessels moored outside Fort Detroit?

10:19:47 6 A. Two large vessels? Are you
10:19:49 7 referring to the --

10:19:51 8 Q. Well, you've listed four --

10:19:53 9 A. Right.

10:19:54 10 Q. -- the names of four vessels.
10:19:55 11 Which were the large ones, please?

10:19:57 12 A. The large ones were the Gladwin
10:19:59 13 and the Beaver.

10:20:02 14 Q. The Gladwin and the Beaver.

10:20:06 15 A. I believe.

10:20:06 16 Q. Well, let's turn to a new
10:20:09 17 document, please, which is SC0652. You do not
10:20:13 18 have that but you will see it soon.

10:20:13 19 And this is an extract from Robert
10:20:25 20 Malcolmson's "Warships of the Great Lakes
10:20:28 21 1754-1834", which I would like to tender as an
10:20:44 22 exhibit, Your Honour.

10:20:45 23 THE COURT: Seeing no objection; Mr.
10:20:46 24 Registrar, what exhibit will this be?

10:20:53 25 THE REGISTRAR: Exhibit 4050.

1 EXHIBIT NO. 4050: Extract from Robert
2 Malcolmsen's "Warships of the Great
3 Lakes 1754-1834". Document SC0652.

4 BY MR. OGDEN:

5 Q. And you're familiar with
6 Malcomson?

7 A. Yes.

8 Q. And he's a respected authority on
9 that subject?

10 A. Yes.

11 Q. But his conclusions, of course,
12 are dependent on the information he has before
13 him? His conclusions about what vessels and
14 where they were depends on his primary
15 resources, as any historian?

16 A. Yes.

17 Q. Could we turn to page 10 of this
18 book, which is PDF page 5, please?

19 I'm going ask you some general
20 questions about the ships. You've demonstrated
21 some familiarity with it on Monday, I believe.
22 If you're able to answer please do, if you're
23 not please don't or say you're not able.

24 I'd like to look at the caption,
25 please, which is to the left there. And then

10:21:53 1 we'll also look at the -- the caption is small
10:21:55 2 so we'll read it first.

10:21:57 3 "Sloops built by the British on
10:22:01 4 Lake Ontario during the Seven Years'
10:22:03 5 War appear to have been modelled after
10:22:05 6 the Bermudian sloop, popular in the
10:22:10 7 West Indies trade and utilized during
10:22:10 8 this period by the Royal Navy for
10:22:10 9 on-shore operations. This aquatint
10:22:10 10 showing one such vessel from three
10:22:10 11 angles was not published until 1807,
10:22:16 12 but the type had not changed
10:22:18 13 substantially in the previous half
10:22:20 14 century."

10:22:22 15 The aquatint is an illustration, is
10:22:26 16 it? I don't know if people are generally
10:22:28 17 familiar with it. Do you know what an aquatint
10:22:33 18 is, please?

10:22:33 19 A. It's an illustration, yes.

10:22:40 20 Q. Thank you. So this purports to
10:22:41 21 describe a sloop in the Seven Years' War from
10:22:46 22 three different angles. Does this, to your
10:22:49 23 knowledge, demonstrate a sloop in that period?

10:22:55 24 A. Yes, I think this looks like it.
10:22:58 25 It could be a sloop.

10:23:00 1 Q. So do you agree with the
10:23:01 2 statement of the caption there?

10:23:02 3 A. I assume the caption is accurate,
10:23:04 4 yes.

10:23:11 5 Q. So the sloop is a type of rig
10:23:13 6 rather than a type of hull, is that correct?

10:23:15 7 A. Yes.

10:23:16 8 Q. So that refers -- "rig" refers to
10:23:21 9 mast, sails, ropes?

10:23:22 10 A. Spars.

10:23:23 11 Q. Spars are wooden beams that
10:23:28 12 attach to the sails?

10:23:30 13 A. Yes.

10:23:35 14 Q. And you have said, it's not --
10:23:38 15 typically it's a single mast, is that correct?

10:23:40 16 A. Yes.

10:23:42 17 Q. And would have what we can --
10:23:46 18 well -- and so what we might call the head sail
10:23:54 19 which is -- is that the head sail, the sail that
10:23:57 20 goes from the mast to the front of the boat?

10:24:01 21 A. I believe that's accurate
10:24:03 22 terminology, but we are reaching the limits of
10:24:05 23 my confidence in affirming your statements.

10:24:09 24 Q. Okay. The main sail though goes
10:24:14 25 the other way, to the stern?

10:24:15 1 A. Yes. That seems...

10:24:21 2 Q. Okay. Thank you.

10:24:22 3 Page 13 of Malcolmson, please. And
10:24:36 4 then we have another caption which I'll read:

10:24:42 5 "This detail of La Broquerie's
10:24:48 6 map shows the British squadron. Top
10:24:52 7 left to right, Captain Broadley's two
10:24:58 8 schooners, also one of his 1755
10:24:58 9 sloops. Bottom left to right, a snow
10:24:58 10 Halifax brigantine, London Mohawk
10:24:58 11 depicted as a schooner and a second
10:24:58 12 1755 sloop."

10:24:58 13 So according to the caption the two
10:25:09 14 vessels on the left on the top with two masts
10:25:12 15 are schooners, is that correct? Do they look
10:25:16 16 like schooners to you?

10:25:17 17 A. Yeah, because the double masts
10:25:18 18 and the square rigging, the square sails.

10:25:22 19 Q. Okay. And the one on the right
10:25:26 20 at the top is described as a sloop, and that
10:25:29 21 looks -- that's what a sloop looks like, is that
10:25:32 22 right?

10:25:33 23 A. Yes.

10:25:33 24 Q. And that has one mast.

10:25:37 25 And then again on the bottom, the

10:25:39 1 second from the right is a schooner and the one
10:25:42 2 on the right is described as a sloop. Do you
10:25:45 3 accept those as accurate?

10:25:47 4 A. Yes.

10:25:47 5 Q. Next to page 19, please, of the
10:25:54 6 page -- PDF page 14, page 19. There's a table
10:25:59 7 on the left described as:

10:26:00 8 "Table 5. British vessels

10:26:02 9 launched and acquired 1754-1726".

10:26:08 10 If we go down to the bottom of the
10:26:10 11 table there's a "Lake Erie", is the heading.
10:26:12 12 There are two vessels. Lake Erie is -- would be
10:26:17 13 captured separately because it is -- it's not
10:26:23 14 possible to sail from Lake Ontario to Lake Erie.

10:26:27 15 A. It's above the -- it's above
10:26:29 16 Niagara Falls so there's a ship -- a new
10:26:32 17 shipyard created in 1761.

10:26:35 18 Q. And that was called -- at Navy
10:26:36 19 Island?

10:26:37 20 A. Navy Island, yes.

10:26:38 21 Q. These two vessels are the Huron
10:26:41 22 and the Michigan, is that right?

10:26:43 23 A. Yes.

10:26:44 24 Q. And the Huron is described as a
10:26:46 25 schooner?

1 It says :

2 "After 1763 not listed, probably
3 renamed Victory."

4 Which we'll discuss that later. And
5 then the Michigan described as:

6 "[...] a sloop August 1763
7 wrecked at Prescott Yield."

8 And we'll talk about that.

9 Do you understand what the numbers
10 next to the -- well, let me just ask you. The
11 number "4" next to the name "Huron" describes
12 four cannons, doesn't it? In this instance four
13 4-pounders?

14 A. That is -- that's a plausible
15 explanation. I don't see the legend for those
16 but yes.

17 Q. No, that's fair. And Michigan is
18 6. But, in any event, that indicates that the
19 Michigan would be the larger vessel, does it?
20 If it had more cannons?

21 A. I mean, it may or may not
22 indicate that the vessel itself is larger.

23 Q. All right. The next document
24 then is SC0667. SC0667 is a new document. This
25 is a document you have not seen but I have

10:28:13 1 shared with your counsel. I'm going to take you
10:28:19 2 to it.

10:28:19 3 First, are you familiar though with
10:28:28 4 Dunnigan?

10:28:30 5 A. Yes.

10:28:30 6 Q. So the title is "British Naval
10:28:34 7 Vessels on the Upper Great Lakes 1761-1796",
10:28:38 8 extracts.

10:28:40 9 And, Your Honour, I would like to make
10:28:41 10 this an exhibit please.

10:28:44 11 THE COURT: Mr. Registrar?

10:28:46 12 THE REGISTRAR: Exhibit 4051.

10:28:48 13 EXHIBIT NO. 4051: Extracts from
10:28:50 14 "British Naval Vessels on the Upper
10:28:50 15 Great Lakes 1761-1796", authored by
10:28:50 16 Jim Dunnigan et al. Document SC0667.

10:28:51 17 BY MR. OGDEN:

10:28:51 18 Q. Thank you. Can we turn please
10:28:54 19 to -- let's turn to just the first page
10:29:03 20 actually. On the lower left it says:

10:29:09 21 "Detroit was kept from Pontiac
10:29:11 22 largely because of the sloop Michigan
10:29:13 23 and the schooner Huron, which the
10:29:16 24 Indians were unable to prevent from
10:29:17 25 supplying and reinforcing the

1 beleaguered posts."

2 First I'm going to ask you if you
3 agree with that statement?

4 A. Yes.

5 Q. Then page 90 -- the next page
6 then is 93, PDF page 2. Now at the lower left
7 this paragraph. Professor, can you read the
8 text?

9 A. Yes.

10 Q. Okay.

11 "The reason for the predominance
12 of sloops and schooners is fairly
13 obvious. The combined area of the
14 lakes and the small crew available
15 made fore and aft rigs more desirable
16 than square rigs due to their
17 handiness and small crew demands."

18 We may be stretching, as you said, the
19 limits of your knowledge here, but "fore" and
20 "aft" rather than "square" means that the sail
21 did not sit square on the mast in the manner we
22 might think of as a tall ship?

23 A. Right.

24 Q. And that's a square rig. So in a
25 fore and aft rig the sail is attached directly

10:30:28
10:30:30
10:30:31
10:30:32
10:30:41
10:30:44
10:30:46
10:30:48
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10:30:53
10:30:59
10:30:59
10:31:13
10:31:17
10:31:23
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10:31:36
10:31:36
10:31:38
10:31:38
10:31:38

1 to the mast, somewhere in the front and
2 somewhere in back, is that correct?
3 A. That sounds right.
4 Q. Good.
5 Do you agree with the statement that
6 that rigging made schooners and sloops more
7 desirable on the lakes?
8 A. Yes, I think that's right.
9 Smaller more maneuverable vessels worked better
10 in the relatively confined spaces of the lakes.
11 Q. Thank you.
12 The new document then please, SC0641.
13 This is an extract from Amherst's Journal 1761.
14 Have you seen this document before?
15 A. Yes.
16 Q. I'd like to make this an exhibit
17 please, Your Honour.
18 THE COURT: Mr. Registrar.
19 THE REGISTRAR: Exhibit 4052.
20 EXHIBIT NO. 4052: Extract from
21 Amherst's Journal 1761. Document
22 SC0641.
23 BY MR. OGDEN:
24 Q. Thank you.
25 And I'm going to do my best to read

1 the handwriting here :

2 "Sloops for Lake Erie, six."

3 There's one -- two lines and then
4 another line and then another two lines and then
5 another line. So they appear to be separate
6 vessels.

7 Six, 4-pounders; eight swivels. Is
8 that what that looks like to you?

9 A. Yes.

10 Q. Four, 4-pounders, and six
11 swivels. Is that correct?

12 A. Yes.

13 Q. I'll read the text below it.

14 "The first sloop to be a good
15 deal larger than the other. Major
16 Gladwin to go with these vessels to
17 explore Lakes Erie, Huron, Superior
18 and Michigan."

19 Is that what that says?

20 A. Yes.

21 Q. So the purpose of these two boats
22 was to sail up and past the Detroit Strait, is
23 that correct?

24 A. Yes.

25 Q. And Major Gladwin was instructed

1 to do this, he was not asked to try it. Amherst
2 would have instructed him to do it, is that
3 correct?

4 A. Yes.

5 Q. The next document, SC0642, is
6 another extract, but this is extract from
7 Amherst Journal December 1762 Can I make this an
8 exhibit, Your Honour?

9 THE COURT: Yes.

10 THE REGISTRAR: Exhibit 4053.

11 EXHIBIT NO. 4053: Extract from
12 Amherst's Journals 1762. Document
13 SC0642.

14 BY MR. OGDEN:

15 Q. Have you seen this document, sir?

16 A. Yes.

17 Q. It is titled -- the title of the
18 page is "List of vessels on the several lakes in
19 North America". And right at the top it says :

20 "Erie," and within Erie it has:

21 "[...] schooner Huron, four,
22 four-pounders; sloop Michigan ten,
23 six-pounders."

24 Do you have reason to believe that
25 Sir Jeffrey Amherst misdescribed his vessels in

10:33:50 1 this document?

10:33:52 2 A. No.

10:33:57 3 Q. And the sloop Michigan was the
10:33:59 4 larger of the two vessels there?

10:34:01 5 A. It was the more heavily armed.

10:34:03 6 Q. More heavily armed. And these
10:34:30 7 two vessels were, at least for a time, moored
10:34:33 8 outside the fort at Detroit, is that correct?

10:34:35 9 A. Yes.

10:34:36 10 Q. If I could take you to Exhibit
10:34:37 11 525, please, which is the John Porteous diary,
10:34:40 12 PDF page 13. And you quote some of this in your
10:34:56 13 report at page 50. I don't need you to look at
10:35:00 14 it because I'm not going to go over it again. I
10:35:08 15 might need you to assist me with this. I'm
10:35:11 16 going to do my best.

10:35:12 17 Now the date then is Monday -- that is
10:35:14 18 the 9th of May, is that right? At the bottom?

10:35:18 19 A. Yes.

10:35:18 20 Q. So page 16, if you would. If we
10:35:33 21 go two thirds of the way down we're going to
10:35:35 22 see -- so just there. There we go. On the
10:35:48 23 third line down, I think, on the right it says:

10:35:50 24 "From where they fired away the
10:35:54 25 whole afternoon upon the Huron

10:35:56 1 schooner laying off the upper corner
10:35:59 2 of the Fort."

10:36:08 3 Are you familiar with that?

10:36:10 4 A. Yes.

10:36:10 5 Q. And so that indicates the
10:36:11 6 location of the Huron schooner in relation to
10:36:13 7 the Fort?

10:36:13 8 A. Yes.

10:36:14 9 Q. It might be helpful now to
10:36:15 10 return, just briefly, if we can please, to one
10:36:21 11 of the maps, Exhibit 4049 please, or SC0660.

10:37:00 12 And could you zoom in please on Fort
10:37:04 13 Detroit? Right in the middle there it shows
10:37:09 14 where it was in relation to the river, the start
10:37:11 15 of the river. And then the French settlements
10:37:19 16 over the river. It's not a large Fort is it?
10:37:23 17 Well, are you aware of the dimensions of the
10:37:26 18 Fort?

10:37:27 19 A. Not off the top of my head.

10:37:32 20 Q. So that's just an indication of
10:37:39 21 where the Fort was in relation to the river and
10:37:45 22 Lake St. Clair and Lake Erie.

10:37:52 23 Back then to the Porteous diary
10:37:54 24 please -- not the Porteous diary, we're going to
10:38:29 25 go to the Navarre diary of the siege of Detroit.

1 And that's Exhibit 524, page 46, and this says:

2 "While the Indians were making
3 their arrangements to harass the Fort
4 the commandant [...]"

5 That's Gladwin, correct? Gladwin is
6 the commandant in this diary?

7 A. Yes.

8 Q. "[...]ordered the two gates at
9 each ends to be closed, not to be
10 opened again until the end of this
11 war, but the one which faced the
12 southwest was opened, twice more to
13 permit the cows which belonged to the
14 inhabitants of the Fort to enter and
15 then it was also closed. The only one
16 left open was the one facing the river
17 which was opened from time-to-time for
18 the public needs because it was
19 guarded by the sloops which the
20 Indians feared greatly."

21 Do you accept as accurate the
22 statement that the -- that there was a gate
23 facing the river that was opened from
24 time-to-time, guarded by the sloops?

25 A. Yes.

1 Q. Now to PDF page 189 of the same
2 document please. PDF page 189, this is 188 of
3 the journal.

4 "Monday, July the 18th, The gates
5 of the Fort had been continually
6 closed up to this day [...]"

7 And then further down:

8 "[...] in order to settle all the
9 difficulties, knowledge of which had
10 reached him [...]"

11 This is difficulties of the Fort's
12 inhabitants:

13 "[...] the commandant ordered
14 that the gate which faced the river
15 should be opened to the public need
16 from 9 in the morning to 6 in the
17 evening."

18 Do you accept that as an accurate
19 statement?

20 A. Yes.

21 Q. And so by this date, July the
22 18th, the risk of attack from the river side had
23 decreased, is that a fair inference?

24 A. It's a reasonable inference.
25 Presumably it was Gladwin's view that the needs

1 of the inhabitants outweighed the risk.

2 Q. At that time?

3 A. At that time.

4 Q. Page 66 of this document, both
5 the PDF page and the journal page, it describes
6 the initial siege. Perhaps we can go up to the
7 date please. May 12, here we go, and back down
8 again please. Page 66:

9 "During all this time the two
10 sloops did not spare pains or powder,
11 firing suddenly over the Fort as well
12 as across the two ends of it opposite
13 which they were moored."

14 Does that describe the sloops being
15 moored at the ends of the Fort, which I suppose
16 is the northern end and the southern end? Is
17 that what that describes?

18 A. That's my understanding.

19 Q. And the sloops are firing over
20 the stop of the Fort, is that correct?

21 A. Yes.

22 Q. And the next document is 0521,
23 this is the Hay diary. And we are going to PDF
24 page 17, page 14 of the diary. There is an
25 entry for May 24. It's a long entry but it

1 describes a group of individuals, First Nation
2 individuals firing on the sloop. And then it
3 says:

4 "When the people on board
5 observed a great number firing from
6 one place they pointed a six-pounder
7 and fired it after which they (the
8 attackers) did not fire ten shot where
9 they had fired upwards of a thousand
10 before."

11 And this is describing the vessel, the
12 sloop, firing onto the land at the people who
13 were shooting at it, is that correct?

14 A. I believe so, yes.

15 Q. So taking these instances
16 together would you say that the vessels that
17 were moored at the Fort offered substantial
18 direct assistance in the defence of the Fort?

19 A. Yes.

20 Q. Thank you. We're going to go to
21 Exhibit 4043 please, which is part of Dowd's
22 "War Under Heaven", PDF page 19 please, which is
23 page 132 of the document. Down in this
24 paragraph here it says:

25 "One, the sloop Michigan carried

10:45:40 1 six, four-pounders and eight swivels.

10:45:41 2 The other, the schooner Huron, carried

10:45:46 3 four, four-pounders and six swivels.

10:45:48 4 Sailors aboard either vessel protected

10:45:49 5 by the thick timbers from the Indians'

10:45:49 6 small arms could load their larger

10:45:49 7 weapons with grape shot devastating

10:45:54 8 against bark canoes at close range."

10:45:57 9 Does that accurately describe the

10:45:59 10 effect of grape shot from these vessels?

10:46:04 11 A. Yes.

10:46:05 12 Q. Down to PDF page 20, which is the

10:46:11 13 next page of the document, 133, and the seconds

10:46:19 14 paragraph. And this describes an event where

10:46:29 15 captured rangers, they had been captured on Lake

10:46:32 16 Erie, were brought up by their captors through

10:46:36 17 Lake Erie up into the Detroit River and came

10:46:41 18 opposite the Fort. Are you familiar with that

10:46:43 19 event?

10:46:43 20 A. Yes.

10:46:51 21 Q. And soldiers in the first of

10:46:53 22 these boats threw overboard their guards, as it

10:46:58 23 describes, and made for the moored Michigan,

10:46:59 24 which assisted them with a covering barrage. Is

10:47:03 25 that your understanding of what one of the

1 vessels did to assist the escape of this first
2 boat?

3 A. Yes.

4 Q. And does that indicate the
5 ability of that vessel to control the waterway
6 opposite the Fort as well as over the Fort?

7 A. In this instance, yes,
8 definitely.

9 Q. The next page, 134 of this
10 document, which is PDF page 21, the paragraph at
11 the top says:

12 "These small victories might have
13 promised to blockade Detroit but they
14 could not blind the Indians to the
15 sight of the two sailing craft that
16 aggressively cruised Lake Erie and the
17 Detroit River."

18 Do you accept that statement as
19 accurate? Do you agree with that statement, is
20 my question?

21 A. Yes.

22 Q. And then it says -- on June 30
23 there is an event described there, and are you
24 familiar with this event? I'll describe it and
25 then ask my question if you are you familiar

1 with it.

2 "On June 30, as the schooner
3 Huron sailed passed a Wyandot village
4 [...]."

5 And that's a Huron village as well,
6 isn't it?

7 A. Yes, it is.

8 Q. "[...] it sprayed grape shot at
9 people standing with folded arms
10 wrapped in their blankets at the doors
11 of their cabins wounding several. A
12 week later the sloop Michigan
13 bombarded Pontiac's village itself."

14 And this is describing -- firstly are
15 you familiar with these events?

16 A. Yes.

17 Q. So they're describing instances
18 where these vessels sailed the Detroit River and
19 used their cannon to attack the villages of the
20 besiegers, is that accurate?

21 A. Yes.

22 Q. And caused injury to those
23 villagers?

24 A. Yes. Though Dowd stresses that
25 they had limited offensive value in this passage

10:49:20 1 as well.

10:49:29 2 Q. Yes. They had a substantial
10:49:30 3 defensive function though, is that correct?

10:49:33 4 A. They had an important defensive
10:49:35 5 function and they were -- one thing they were
10:49:39 6 defending against was attacks on -- direct
10:49:42 7 attacks on them by First Nations' warriors.

10:49:46 8 Q. Right. And you describe some of
10:49:47 9 those events in your report?

10:49:49 10 A. Yes.

10:49:56 11 Q. Page 23 of the PDF please, which
10:49:59 12 is page 136 of this chapter. This paragraph
10:50:11 13 here describes four gun boats and the Huron
10:50:21 14 threatened from the Detroit River. We'll get to
10:50:24 15 the gun boats but it said, "[...] British naval
10:50:28 16 efforts were not all successful", which is an
10:50:30 17 understatement, if I may.

10:50:31 18 That Michigan broke apart with 80
10:50:33 19 barrels of provisions amid high winds and
10:50:37 20 whitecaps on August 28th at the eastern end of
10:50:40 21 Lake Erie. And you're familiar with this vessel
10:50:44 22 coming aground on Lake Erie?

10:50:48 23 A. Yes.

10:50:48 24 Q. And it was not attacked on the
10:50:50 25 water?

10:50:51 1 A. No, it was lost in a storm.

10:50:53 2 Q. That's the Michigan, correct?

10:51:01 3 The next document is Exhibit 4037,
10:51:03 4 this is the "British Navy on the upper Great
10:51:23 5 Lakes". On the second PDF page, page 68 of the
10:51:29 6 document, in the top, left-hand corner there's
10:51:45 7 reference to the Michigan:

10:51:46 8 "The sloop Michigan which was
10:51:48 9 launched in 1762."

10:51:50 10 So that's this document identifying
10:51:53 11 the sloop Michigan, isn't it?

10:51:55 12 A. Yes.

10:51:59 13 Q. And then the second paragraph,
10:52:01 14 page 69, I apologize, page 2, top left, second
10:52:25 15 paragraph.

10:52:25 16 "[...] the sloop Michigan was not
10:52:30 17 as successful (sic) so finally the
10:52:34 18 British started using her to supply
10:52:38 19 the Fort. She was sent back-and-forth
10:52:39 20 to Niagara self several times."

10:52:42 21 THE COURT: I think you misread that,
10:52:44 22 sir.

10:52:44 23 MR. OGDEN: Okay.

10:52:44 24 THE COURT: If you're going to read
10:52:45 25 all these things aloud I think you should --

1 MR. OGDEN: Well, I'm trying to. If I
2 misread it --

3 THE COURT: You said it was not as
4 "successful" where the passage is it was not as
5 "useful".

6 MR. OGDEN: Thank you, Your Honour.

7 BY MR. OGDEN:

8 Q. The passage says:

9 "The sloop Michigan was not as
10 useful so finally the British started
11 using her to supply the Fort."

12 Was the Michigan used to supply the
13 Fort?

14 A. Yes.

15 Q. And it was sent to Niagara from
16 Detroit to do so, is that correct?

17 A. Right.

18 Q. And the bottom of page 69 of that
19 document, "Late in 1763 [...]". Can you see
20 that?

21 A. Yes.

22 "Late in 1763 the Michigan was
23 wrecked on the southern shore of Lake
24 Erie. This is the second ship wrecked
25 on the upper lakes, the first was the

1 Griffon in 1679. The sloop was driven
2 up on a shoal. She was salvaged and
3 taken to Detroit. Evidently her
4 design was poor for the lakes and the
5 cabins were cut down and she was
6 rerigged and she was renamed the
7 Beaver and lasted until sometime about
8 1771, 1772."

9 Are you familiar with the Griffon?

10 A. Yes.

11 Q. And this indicates, perhaps, that
12 the Michigan once wrecked and salvaged became
13 the Beaver, doesn't it?

14 A. Yes.

15 Q. The next document then please,
16 SC0637, it's a new document. This is from "The
17 Papers of Sir William Johnson" and it is -- page
18 814. Letter from John Stoughton to William
19 Johnson September 16, 1763.

20 "You have undoubtedly heard of
21 the loss of the sloop, schooner. We
22 are now taking her up to save her
23 irons and such other materials as may
24 be useful in constructing another.
25 The schooner arrived yesterday from

10:55:41 1 Detroit."

10:55:42 2 Does that suggest then that the sloop
10:55:43 3 was salvaged and turned into another vessel?

10:55:46 4 A. Yes.

10:55:49 5 Q. Your Honour, I would like to make
10:55:50 6 in the next exhibit please, described as letter
10:55:55 7 from John Stoughton to William Johnson?

10:55:59 8 THE COURT: Mr. Registrar.

10:56:02 9 THE REGISTRAR: Exhibit 4054.

10:56:04 10 EXHIBIT NO. 4054: Letter from John
10:56:05 11 Stoughton to William Johnson dated
10:56:05 12 September 16, 1763, taken from "The
10:56:05 13 Papers of Sir William Johnson", page
10:56:05 14 814. Document SC0637.

10:56:06 15 BY MR. OGDEN:

10:56:06 16 Q. The next document, SC0638. This
10:56:21 17 is also from "The Papers of Sir William
10:56:22 18 Johnson", I'd like to make this an exhibit, Your
10:56:26 19 Honour, it's a letter from Amherst to Johnson,
10:56:33 20 September 30, 1763. May I make this an exhibit
10:56:38 21 please?

10:56:39 22 THE COURT: Mr. Registrar.

10:56:42 23 THE REGISTRAR: Exhibit 4055.

10:56:44 24 EXHIBIT NO. 4055: Letter from Amherst
10:56:44 25 to Johnson, dated September 30, 1763,

1 taken from "The Papers of Sir William
2 Johnson". Document SC0638.

3 BY MR. OGDEN:

4 Q. And this is at page 5, the last
5 paragraph:

6 "I have just received letters
7 from Niagara of the 10th instant, the
8 reinforcements were all gone, the
9 sloop being given up for lost, but
10 they were in hopes of being able to
11 build a new one from her timbers."

12 And that seems to be referring to the
13 sloop Michigan running aground in late August
14 and hopes of constructing a new one from her
15 timbers, is that correct?

16 A. Yes.

17 Q. If we go back to Exhibit 4050
18 please, which is the Malcolmson exhibit,
19 Malcolmson book, 4050; and just to page 8 of the
20 PDF, please, which is -- shows several vessels
21 and it shows a schooner. So the schooner
22 typically has two masts, as you said before, is
23 that right?

24 A. Yes.

25 Q. But, as I believe you said on

10:58:32 1 Monday, perhaps it doesn't necessarily mean that
10:58:36 2 it's a larger vessel because it has two rather
10:58:39 3 than one mast, is that correct?

10:58:41 4 A. Yes.

10:58:41 5 Q. And we can see here the -- well,
10:58:44 6 you might not be comfortable answering this, but
10:58:48 7 the foremast, the mast at the front, may be
10:58:51 8 shorter typically than the mast at the back, do
10:58:53 9 you -- are you able to agree with that or not?
10:59:00 10 Not from the document but from your knowledge?

10:59:03 11 A. I believe that's typically true.
10:59:05 12 I don't know if it's -- I don't know if that's a
10:59:08 13 perfectly -- if it's always the case but yes.

10:59:11 14 Q. And we see that the sails are, on
10:59:17 15 the schooner, four-cornered. The ones with the
10:59:21 16 two mast at the top on the left, the main sails
10:59:25 17 there are four-cornered, is that accurate?

10:59:27 18 A. Uhm-hmm, yes.

10:59:28 19 Q. And that enabled them to sail
10:59:35 20 well upward, if I might say, is that correct?

10:59:38 21 A. Yes.

10:59:40 22 Q. Windward ability, is what we
10:59:42 23 would describe it as?

10:59:58 24 A new document please, SC0650. This
11:00:11 25 is an illustration by Peter Rindlisbacher. Do

11:00:19 1 you know of Mr. Rindlisbacher? Or
11:00:20 2 Dr. Rindlisbacher.
11:00:25 3 A. I do not know him.
11:00:27 4 Q. You have seen this illustration
11:00:29 5 before today?
11:00:29 6 A. Yes.
11:00:34 7 Q. And this purports to depict an
11:00:37 8 attack on a schooner on September 4th, 1763, is
11:00:42 9 that correct?
11:00:44 10 A. The --
11:00:53 11 Q. To your knowledge -- I'll let you
11:00:56 12 answer the question, I can ask the question
11:00:59 13 without the date. Are you aware of an attack on
11:01:01 14 the schooner by a large number of besiegers in
11:01:04 15 canoes during the siege?
11:01:07 16 A. Yes.
11:01:08 17 Q. You describe it in your report?
11:01:09 18 A. Yes.
11:01:10 19 Q. The date -- and the date was
11:01:13 20 around September. You can check? I'll give you
11:01:16 21 a moment.
11:01:28 22 A. Yes, the date I give is early
11:01:29 23 September so I don't give a specific day.
11:01:32 24 Q. Is this, to your knowledge, a
11:01:35 25 good representation of -- well, a reasonable

11:01:38 1 representation of the size and rig of the
11:01:44 2 schooner?

11:01:49 3 A. To my knowledge, yes, I say that
11:01:51 4 without having in any way checked it, but I
11:01:54 5 assume that the artist did.

11:01:56 6 Q. Well, would you expect it to be
11:01:59 7 about this size?

11:02:00 8 A. Yes.

11:02:01 9 Q. In comparison to the individuals
11:02:03 10 depicted?

11:02:04 11 A. Yes.

11:02:09 12 Q. Thank you.

11:02:14 13 Exhibit 0524 please, which is the
11:02:17 14 Navarre journal; page 67, May 12th at the start
11:02:48 15 of the siege. Thank you. Yes? Is that yes?

11:02:52 16 A. May 12 was near the start of the
11:02:54 17 siege, yes.

11:03:15 18 Q. "Towards seven o'clock in the
11:03:17 19 evening the fire of the Indians having
11:03:18 20 subsided a little, the commandant, who
11:03:18 21 had feared that the Indians under
11:03:18 22 cover of night would attempt either to
11:03:18 23 carry the Fort by assault or set it on
11:03:18 24 fire issued two orders. The first
11:03:18 25 [...]"

1 I'll paraphrase, was to fill barrels
2 with water to put out fires; and then to the
3 second.

4 "Second, in view of the fewness
5 of numbers which rendered defence
6 hopeless, and since for all
7 appearances the expected assistance
8 would not arrive on time, since there
9 was a lack of supplies of food and
10 ammunition, the French should retire
11 to their houses and put out their
12 fires [...] and then the troops should
13 go from the Fort to the sloops to
14 unload the goods of the officers for
15 themselves and of the traders, and
16 everybody should hold himself to load
17 [...]."

18 I think it's unload.

19 "[...] to load the goods of the
20 officers and of themselves and of the
21 traders. And everybody should hold
22 themselves in readiness to embark at
23 the first signal in order to fall back
24 upon Niagara."

25 This is the Navarre journal so it's a

1 translation from the French, is that correct?

2 A. Yes.

3 Q. So we see the word "sloop" there
4 but that would likely be a translation from the
5 French, barge, is that a reasonable assumption?

6 A. Yes.

7 Q. Rather than to distinguish
8 between a sloop and a schooner?

9 A. That's plausible.

10 But what we see here is a description
11 of orders to prepare the vessels for departure.
12 This shows that the commandant of those in the
13 Fort thought they would be able to board the
14 vessels even during a major attack and sieges on
15 the Fort, is that correct?

16 If they thought they could board when
17 it appeared that the siege would succeed that
18 would be during an attack, wouldn't it?

19 A. It could be during an attack. It
20 could be during the night. I mean, I
21 wouldn't -- are you asking whether the only --
22 whether it was necessarily the case that Indians
23 would be actively firing on the Fort when they
24 envisioned departing from it?

25 Q. No, I'm not saying that it would

1 necessarily be the case; but orders were given
2 in the event that it would look -- that it would
3 appear that the Fort could not be held, and that
4 was in preparation for an attack during that
5 night, which they expected. And so they were
6 anticipating that they might need to board the
7 vessels during -- well, during the night if the
8 attack was such that it would require them to
9 abandon the Fort.

10 A. Yes, that's my understanding of
11 this passage as well.

12 Q. And my question is, they
13 considered that they would be able to, in those
14 circumstances, board the vessels?

15 A. They presumed or at least hoped.

16 Q. Or at least hoped.

17 And it also shows that the vessels
18 were together. And my proposition is that there
19 were two, together large enough to carry over
20 130 people who were members of the garrison and
21 traders, plus some goods as described. Is that
22 a fair description of the size of the vessels?

23 A. They would be very crowded but
24 presumably that was within their capacity, yes.

25 Q. And then to page 90 of this PDF

11:07:23 1 please. This would be May 20, or at least --

11:07:35 2 "May 20, the Commandant Gladwin

11:07:43 3 ordered that all to the French in the

11:07:45 4 Fort should [...]"

11:07:46 5 I'm reading from the document now.

11:07:48 6 "[...] all the French in the Fort

11:07:49 7 should pick up stones which they might

11:07:52 8 find on the streets and carry them to

11:07:54 9 the edge of the river to ballast the

11:07:55 10 vessel which was about to sail."

11:07:58 11 The vessel would have to be large to

11:08:01 12 require a ballast, is that correct? The

11:08:10 13 requirement for ballast is an indication that

11:08:12 14 the vessel was --

11:08:15 15 A. Empty.

11:08:15 16 Q. Empty but also large. A small

11:08:17 17 boat does not require all the French in the Fort

11:08:22 18 to pick up stones for ballast, is that fair?

11:08:25 19 A. Well, I mean -- yeah, I don't

11:08:27 20 know how small or large a ship needs to be

11:08:32 21 before ballast is a sensible -- I mean, I think

11:08:35 22 basically these are cargo ships and so if

11:08:38 23 they're empty you want something heavy in the

11:08:41 24 bottom of them so that they're more stable.

11:09:09 25 Q. If we go to document SC0629

11:09:12 1 please. This is an extract from "The Papers of
11:09:32 2 Sir William Johnson", but I'll describe it as
11:09:34 3 Amherst's instructions to Gladwin, June 22,
11:09:39 4 1761.

11:09:43 5 And I would like to tender this as an
11:09:45 6 exhibit please, Your Honour.

11:09:48 7 THE COURT: Mr. Registrar.

11:09:50 8 THE REGISTRAR: Exhibit 4056.

11:09:52 9 EXHIBIT NO. 4056: Amherst's
11:10:00 10 instructions to Gladwin, dated June
11:10:00 11 22, 1761, taken from "The Papers of
11:10:00 12 Sir William Johnson". Document
11:10:00 13 SC0629.

11:10:01 14 BY MR. OGDEN:

11:10:06 15 Q. Starting here it says:

11:10:07 16 "As I judge it necessary to
11:10:09 17 explore the upper lakes and the
11:10:10 18 country surrounding them, as well as
11:10:12 19 to assist Captain Campbell commanding
11:10:19 20 at Detroit and calling in all the
11:10:19 21 outposts of the French and fixing
11:10:19 22 proper garrisons for the protection
11:10:21 23 and security of the same, in order to
11:10:23 24 complete the service effectually I
11:10:25 25 have directed two vessels to be built

1 on Lake Erie, one of which is to carry
2 six, four-pounders and eight swivels,
3 and the other four, four-pounders and
4 six swivels."

5 That seems to refer to the Michigan
6 and the Huron, doesn't it? That we've seen
7 earlier?

8 A. Right.

9 Q. To PDF page 3, which is page 294
10 of the document, this is still Amherst to
11 Gladwin:

12 "You will take the command of the
13 said two vessels by giving such
14 directions to Lieutenant Robertson as
15 you shall judge proper and following
16 you one or both to the Detroit in case
17 they should not be ready in time
18 enough to proceed with you. My
19 instructions being that you should
20 explore in the best manner you can
21 Lake Huron and Michigan for which
22 purpose these vessels are built so
23 they may pass to the Detroit."

24 So the purpose of the vessel was to
25 enter into Lake Huron, is that right?

11:11:39 1 A. Yes.

11:11:40 2 Q. They were built for that purpose?

11:11:43 3 A. They were.

11:11:43 4 Q. And the British then already knew

11:11:45 5 that the vessels would be able to go into Lake

11:11:47 6 Huron, is that correct?

11:11:49 7 A. Actually they were not. Those

11:11:51 8 vessels did not accompany Gladwin on this

11:11:54 9 voyage.

11:12:06 10 Q. Well, that is not my question.

11:12:07 11 My question is --

11:12:08 12 A. They presumed.

11:12:10 13 Q. They presumed.

11:12:10 14 A. But that passage was not

11:12:11 15 successful so Gladwin made that trip without

11:12:13 16 them.

11:12:14 17 Q. The trip previous to 1763?

11:12:17 18 A. Yes.

11:12:18 19 Q. But these are the vessels that

11:12:19 20 were with him in 1763 at Detroit?

11:12:22 21 A. Yes.

11:12:29 22 Q. Now, I mentioned the "Griffon"

11:12:32 23 before and you said you're familiar with it. I

11:12:41 24 would like you to take you to another document

11:12:43 25 which notes the Griffon, it is SC0656. This is

11:12:55 1 a part of a -- Your Honour, I appear not have
11:13:09 2 added as an exhibit the Rindlisbacher picture,
11:13:16 3 which I would like to do please. It was SC0650.

11:13:29 4 THE COURT: Ms. Pelletier.

11:13:30 5 MS. PELLETIER: I believe
11:13:31 6 Dr. Hinderaker acknowledged he was not familiar
11:13:35 7 with the painting and did not know the artist.

11:13:38 8 THE COURT: Well, he certainly said
11:13:39 9 things along those lines, sir. What do you have
11:13:42 10 to say about that? I can go back in my notes.
11:13:50 11 It was a while back.

11:13:57 12 MR. OGDEN: Can we mark it as a
11:13:58 13 lettered exhibit for now please, Your Honour?

11:14:03 14 THE COURT: I'm just looking at my
11:14:04 15 notes.

11:14:11 16 MR. OGDEN: The witness did say he was
11:14:12 17 not familiar with the artist.

11:14:13 18 THE COURT: I'm just looking at my
11:14:15 19 notes. Where did it fall in the lineup of the
11:14:20 20 exhibits? Does anyone have a note of that.

11:14:25 21 MR. OGDEN: 4050 perhaps? No, that's
11:14:29 22 not correct.

11:15:11 23 THE COURT: As I recall this
11:15:11 24 gentleman's evidence he was not familiar with
11:15:14 25 the artist but he was familiar with the attack,

11:15:18 1 which he referred to in his report. And he said
11:15:20 2 or he agreed that it was a reasonable
11:15:30 3 representation of the size and rig. I think
11:15:32 4 that is the gist of it.

11:15:33 5 Does anyone disagree with that
11:15:35 6 characterization of the evidence. So I think
11:15:39 7 for that limited purpose it can be a trial
11:15:41 8 exhibit. I note the plaintiffs' counsel
11:15:45 9 objection that it should not be taken for any
11:15:48 10 other aspect of its depiction of the incident.

11:15:53 11 Is that satisfactory to you, counsel?

11:15:56 12 MS. PELLETTIER: Thank you, Your
11:15:56 13 Honour, it is.

11:15:58 14 THE COURT: So that document will need
11:15:59 15 to be redescribed for Mr. Registrar before it
11:16:02 16 can be marked as an exhibit. Do you have the
11:16:06 17 production number, sir?

11:16:14 18 MR. OGDEN: SC0650 and the description
11:16:17 19 would be painting by Peter Rindlisbacher of
11:16:25 20 attack on schooner Huron, or attack on schooner
11:16:30 21 might be more accurate.

11:16:32 22 THE COURT: What is the next exhibit?

11:16:35 23 THE REGISTRAR: Exhibit 4057.

11:16:36 24 EXHIBIT NO. 4057: Painting by Peter
11:16:37 25 Rindlisbacher of an attack on a

11:16:37
11:16:59
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schooner. Document SC0650.

BY MR. OGDEN:

Q. Back then to Ericson, this is Bernard Ericson "The Evolution of Great Lake Ships".

THE COURT: What's the number.

MR. OGDEN: SC0656. It is not an exhibit, I would like to make it an exhibit.

THE COURT: Please go ahead. Did you say you want to make it an exhibit?

MR. OGDEN: I do.

THE COURT: Is it an excerpt from a textbook?

MR. OGDEN: Yes, from a book called "Inland Seas".

THE COURT: Mr. Registrar?

THE REGISTRAR: Exhibit 4058.

EXHIBIT NO. 4058: Extract entitled "The Evolution of Great Lake Ships", taken from the book "Inland Seas" by Bernard Ericson. Document SC0656.

BY MR. OGDEN:

Q. Are you familiar with Ericson, sir?

A. No.

1 Q. But you're familiar with the
2 Griffon?

3 A. Yes.

4 Q. Could we go to page 2 of this
5 PDF, which is page 92 of the extract? And
6 second paragraph from the bottom:

7 "The material and equipment moved
8 across Lake Ontario by the small
9 fleet. Lasalle built a larger craft
10 above the Fort at Niagara in Lake Erie
11 in the year 1679, christened the
12 Griffon and launched with great
13 ceremony, including the firing of
14 cannons, the singing of hymns, and
15 probably some drinking of good French
16 Brandy."

17 I'll leave that there and move on to
18 the next paragraph:

19 "According to Father Hennepin,
20 who gave a detailed journey of
21 Lasalle's ventures, the Griffon was a
22 ton ship, 60 to 70 feet long with a
23 sixteen foot beam and eight foot
24 depth."

25 The beam is the width of a ship, is

11:19:24 1 that correct?

11:19:24 2 A. Yes.

11:19:25 3 Q. And 8-foot depth, that refers to
11:19:26 4 the depth of the vessel below the watermark, is
11:19:32 5 that correct?

11:19:33 6 A. Correct.

11:19:33 7 Q. And to your knowledge does this
11:19:35 8 description of the vessel as being a 60-ton
11:19:38 9 ship, 60- to 70-feet long with a 16-foot beam
11:19:43 10 and 8-foot depth, constructed in 1679, is this
11:19:49 11 accurate?

11:19:49 12 A. To my knowledge. I obviously
11:19:51 13 have not independently verified this in the
11:19:57 14 context of these proceedings but that sounds
11:20:00 15 about right to me.

11:20:03 16 Q. The next page, PDF page 3 at the
11:20:05 17 top of page 93:

11:20:10 18 "Seven small cannon were mounted
11:20:12 19 on the ship for defence against the
11:20:13 20 Indians. Although the ship was lost
11:20:19 21 returning from a trip to Lake
11:20:21 22 Michigan, taking with it a valuable
11:20:24 23 cargo of furs and most of LaSalle's
11:20:28 24 fortune, the Griffon opened the lakes
11:20:28 25 to navigation and commerce and showed

11:20:30 1 that one day despite difficulties and
11:20:33 2 hazards other ships would sail across
11:20:37 3 the land locked seas."

11:20:38 4 To your knowledge is it accurate to
11:20:40 5 say the vessel had a cannon?

11:20:45 6 A. Again, I believe that's accurate.

11:20:48 7 Q. And is it accurate to say that
11:20:50 8 this voyage, even though the ship was lost on
11:20:54 9 the return:

11:20:56 10 "[...] opened the lakes to
11:20:58 11 navigation and commerce and showed
11:21:00 12 that one day despite difficulties and
11:21:01 13 hazards other ships would sail across
11:21:01 14 the land locked seas."

11:21:09 15 A. Yes. I mean, this was a long
11:21:10 16 time before any other vessel of its size did
11:21:13 17 that but, yes.

11:21:15 18 Q. Do you --

11:21:16 19 A. For the most part French
11:21:18 20 activities in the Great Lakes from that point
11:21:21 21 forward were conducted with canoes, batteaux,
11:21:24 22 shallow or draft vessels.

11:21:33 23 Q. And to your knowledge were
11:21:35 24 British officials aware of this voyage? That
11:21:37 25 this voyage had taken place?

11:21:43 1 A. Do you mean were they aware in
11:21:45 2 1763?

11:21:47 3 Q. I guess --

11:21:48 4 A. Or do you mean in 1673? Or 1675?

11:21:53 5 Q. Well, prior to 1760.

11:21:57 6 A. So, for example, would Amherst
11:21:59 7 have been aware of the Griffon?

11:22:02 8 Q. Not Amherst in particular but any
11:22:04 9 British official in a colonial --

11:22:10 10 A. To the best of my knowledge I
11:22:12 11 can't say that -- and I don't remember any
11:22:15 12 references to the Griffon on the part of, you
11:22:19 13 know, British officials, officers who were
11:22:24 14 engaged in the post Seven Years' War period.

11:22:31 15 Q. Engaged in the
11:22:32 16 post-Seven-Years'-War period?

11:22:33 17 A. Or during. I can't think of any
11:22:35 18 account -- I emphasize this doesn't mean that
11:22:40 19 they weren't aware of it, but I can't think of
11:22:43 20 any account, off the top of my head, where the
11:22:45 21 Griffon came up the era that we are discussing.

11:22:48 22 Q. Well, to be precise, you're not
11:22:51 23 aware of any in the era past 1760?

11:22:56 24 A. Right.

11:22:58 25 Q. Or say past 1754?

11:23:01 1 A. Off the top of my head, no, I
11:23:03 2 can't think of a reference to the Griffon in
11:23:06 3 British materials. I mean --

11:23:09 4 Q. Okay.

11:23:10 5 A. I haven't been looking for it
11:23:12 6 either.

11:24:04 7 MR. OGDEN: Your Honour, there are
11:24:05 8 four short documents that I would like to add as
11:24:07 9 exhibits. I suppose my friend would prefer they
11:24:12 10 be put to the witness for identification and so
11:24:15 11 I'm happy to do that before or after the break.
11:24:21 12 I would suggest a break now, Your Honour.

11:24:23 13 THE COURT: Well, it's a bit early for
11:24:25 14 the break. Is this some isolated group of
11:24:27 15 documents?

11:24:28 16 MR. OGDEN: Yes, it is, Your Honour.

11:24:29 17 THE COURT: And why is it that you
11:24:31 18 can't proceed? Do they have to be done together
11:24:34 19 for some reason?

11:24:36 20 MR. OGDEN: No.

11:24:38 21 THE COURT: Then please go ahead.

11:24:39 22 BY MR. OGDEN:

11:24:40 23 Q. Document SC0630. This is Lloyd's
11:24:54 24 Evening Post, August 17, 1763. Are you familiar
11:25:05 25 with the Lloyd's Evening Post?

11:25:07 1 A. Yes.

11:25:08 2 Q. And does this appear to be a copy
11:25:12 3 of the Post from that day?

11:25:15 4 A. Yes.

11:25:23 5 Q. Could I make this as an exhibit,
11:25:25 6 Your Honour?

11:25:28 7 THE COURT: Mr. Registrar.

11:25:29 8 THE REGISTRAR: Exhibit 4059

11:25:33 9 EXHIBIT NO. 4059: Copy of Lloyd's
11:25:33 10 Evening Post, August 17, 1763.
11:25:33 11 Document SC0630.

11:25:34 12 BY MR. OGDEN:

11:25:36 13 Q. The next document is SC0634. The
11:25:50 14 Royal Magazine September 1763. Are you familiar
11:25:54 15 with this publication?

11:26:00 16 A. Yes.

11:26:00 17 Q. And this is -- I would like to
11:26:03 18 tender it with that description, Your Honour,
11:26:05 19 the Royal Magazine September 1763.

11:26:10 20 THE COURT: Mr. Registrar.

11:26:12 21 THE REGISTRAR: Exhibit 4060.

11:26:15 22 EXHIBIT NO. 4060: Copy of The Royal
11:26:16 23 Magazine, September 1763. Document
11:26:16 24 SC0634.
25

1 BY MR. OGDEN:

2 Q. The next document SC0635. This
3 is the -- a copy of the Pennsylvania Gazette,
4 August 11, 1763. Are you familiar with the
5 Pennsylvania Gazette please?

6 A. Yes.

7 Q. And this appears to be a
8 photograph of that publication?

9 A. Yes.

10 Q. I tender this as an exhibit, Your
11 Honour.

12 THE COURT: Mr. Registrar.

13 THE REGISTRAR: 4061.

14 EXHIBIT NO. 4061: Copy of the
15 Pennsylvania Gazette, August 11, 1763.
16 Document SC0635.

17 BY MR. OGDEN:

18 Q. And the last in this bunch is
19 document SC0632, the Pennsylvania Gazette,
20 August 18, 1763. I would like to tender this as
21 an exhibit, Your Honour.

22 THE COURT: Mr. Registrar.

23 THE REGISTRAR: Exhibit number 4062.

24 EXHIBIT NO. 4062: Copy of the
25 Pennsylvania Gazette, August 18, 1763.

1 Document SC0632.

2 BY MR. OGDEN:

3 Q. While we're here actually, the
4 next document I'm going to take the witness to
5 is also a Pennsylvania Gazette document, so
6 that's SC0636. Could I tender this as an
7 exhibit?

8 THE COURT: Yes.

9 THE REGISTRAR: 4063.

10 EXHIBIT NO. 4063: Copy of a
11 Pennsylvania Gazette article,
12 September 9, 1763. Document SC0636.

13 MR. OGDEN: At this point, Your
14 Honour, perhaps a break might be appropriate.

15 THE COURT: Twenty minutes.

16 -- RECESSED AT 11:29 A.M. --

17 -- RESUMED AT 11:56 A.M. --

18 THE COURT: Please go ahead.

19 MR. OGDEN: Thank you, Your Honour.

20 BY MR. OGDEN:

21 Q. This document is Exhibit 4063,
22 the Pennsylvania Gazzette. I would like to go
23 to the second page of the PDF, which is the
24 second side of the document, in the middle of
25 the left-hand column, we need to make it large,

11:57:23 1 please.

11:57:23 2 We have the dates there, Detroit
11:57:33 3 September 9, 1763. And we see -- we see some
11:57:44 4 prose in quotation marks. Why is this prose in
11:57:52 5 quotation marks? Do you know why it would be in
11:57:56 6 quotation marks in a document like this?

11:57:59 7 A. This is a section of the
11:58:01 8 newspaper that is providing -- that is
11:58:05 9 presumably reprinting correspondence. In this
11:58:09 10 case, at least as far as we can see so far, from
11:58:12 11 an unnamed correspondent I guess.

11:58:17 12 Q. The fourth line there, the fourth
11:58:19 13 instant, and the document is not in excellent --
11:58:25 14 the document from which the exhibit has been
11:58:29 15 copied was not in excellent condition and some
11:58:32 16 of the wording is not clear so I will read it
11:58:35 17 and ask you if I am getting it right, please.

11:58:41 18 The fourth line, it says:

11:58:47 19 "The fourth instant about half
11:58:50 20 after eight o'clock in the evening,
11:58:52 21 three or four hundred Indians in
11:58:55 22 canoes went off to attack our schooner
11:58:57 23 that was coming up the river from
11:58:58 24 Niagara with provisions. They met
11:58:58 25 [...] about nine miles from the Fort

11:59:03 1 with only twelve hands on board who
11:59:08 2 defended themselves bravely [...]"
11:59:13 3 A. "So bravely" I believe.
11:59:15 4 Q. "[...] so bravely that the
11:59:16 5 Indians, after attacking with great
11:59:19 6 resolution on all sides were obliged
11:59:20 7 to retire with the loss of many killed
11:59:20 8 and wounded, seven of which are since
11:59:23 9 dead of their wounds."
11:59:25 10 Was I, other than with your
11:59:28 11 assistance, accurately reading the document?
11:59:30 12 A. Yes.
11:59:32 13 Q. Thank you. And this refers to
11:59:35 14 the early September attack noted in your report,
11:59:37 15 is that correct?
11:59:38 16 A. Yes.
11:59:42 17 Q. I wonder if we could go to
11:59:44 18 exhibit -- one of the maps, please, which was
11:59:51 19 Exhibit 4049, SC0660?
11:59:58 20 THE COURT: If it's an exhibit, sir,
12:00:00 21 it's not helpful to also put the other number on
12:00:05 22 there.
12:00:07 23 MR. OGDEN: Sorry, Your Honour, it's
12:00:08 24 for the benefit of my assistant. I will not put
12:00:10 25 it on the record.

1 THE COURT: Oh, she's not aware of
2 where you're going?

3 MR. OGDEN: She is, but there was some
4 catch-up, Your Honour, involving the technology.

5 THE COURT: Well, blaming it on the
6 technology always works, sir. Please go ahead.

7 MR. OGDEN: Thank you.

8 BY MR. OGDEN:

9 Q. This map, Professor, shows the
10 Detroit Rivers. And could you indicate -- are
11 you aware where nine miles below the Fort might
12 be?

13 A. There is a scale. There a scale
14 of miles on the map, counsellor, though I
15 can't --

16 Q. It's difficult to make out.

17 A. -- quite read it.

18 Q. But from your knowledge where
19 would nine miles below the Fort be,
20 approximately? Do you have independent
21 knowledge other than this map?

22 A. No.

23 Q. Let's go back to -- let me ask
24 you about this attack in early September. Are
25 you aware of two accounts of why the attackers

12:02:22 1 took the opportunity at this time to make the
12:02:24 2 attack?

12:02:27 3 Let me offer them to you and ask you
12:02:29 4 whether you're aware of both. One is that the
12:02:33 5 vessel was carrying -- the schooner was carrying
12:02:38 6 six Iroquois individuals, Mohawks I think
12:02:41 7 perhaps, that were let off, at their request,
12:02:44 8 early into the river and that they informed
12:02:47 9 Pontiac.

12:02:47 10 Another one is that French traders
12:02:52 11 sought to sell vegetables to the ship's crew and
12:02:55 12 when they saw that it was undermanned and went
12:03:01 13 to inform Pontiac. Are you aware of either of
12:03:04 14 those or both of those?

12:03:06 15 A. Both sound familiar, yes.

12:03:12 16 Q. And the point of each of those is
12:03:13 17 that it was on receipt of this information as to
12:03:18 18 the size of the crew that Pontiac, we assume,
12:03:24 19 made the decision to attack it?

12:03:27 20 A. Yes.

12:03:34 21 Q. Can we infer from the fact that
12:03:36 22 the crew was only about 10, 12 hands on board,
12:03:40 23 it says, that the British considered that they
12:03:43 24 did not need more than that in order to deliver
12:03:47 25 the vessel to Detroit?

12:03:52 1 A. Yes.

12:03:53 2 Q. And also that they felt

12:03:57 3 comfortable mooring in the river overnight where

12:04:00 4 they did?

12:04:01 5 A. Yes. I can't really speak to

12:04:06 6 their comfort level but they chose to do so.

12:04:08 7 Q. Well, can we infer from that that

12:04:11 8 they considered it safe to do so? Say, a risk

12:04:16 9 that they were prepared to take?

12:04:18 10 A. Presumably.

12:04:32 11 Q. Could we go to document SC0639,

12:04:33 12 please? This is a document I would like to make

12:04:49 13 an exhibit, please, Your Honour. The next

12:04:53 14 exhibit number I believe is 4064?

12:04:57 15 THE COURT: That's Mr. Registrar's

12:04:59 16 job, sir, but you could describe the document.

12:05:03 17 We have many excerpts now from "The Papers of

12:05:06 18 Sir William Johnson" so you'll have to add a

12:05:08 19 little something to the description.

12:05:10 20 MR. OGDEN: Yes, thank you. It's a

12:05:11 21 letter from Alexander Duncan to Johnson, October

12:05:17 22 1, 1763.

12:05:24 23 THE COURT: Seeing no objection,

12:05:25 24 Mr. Registrar, what is the next exhibit?

12:05:28 25 THE REGISTRAR: 4064.

12:06:50 1 EXHIBIT NO. 4064: Letter from
12:05:32 2 Alexander Duncan to Johnson, October
12:05:32 3 1, 1763, excerpted from "The Papers of
12:05:32 4 Sir William Johnson". Document
12:05:32 5 SC0639.

12:05:33 6 THE COURT: Thank you.

12:05:34 7 BY MR. OGDEN:

12:05:34 8 Q. Page 3 of this document, page 4
12:05:36 9 of the collection, the paragraph reads:

12:05:39 10 "You will no doubt have heard
12:05:43 11 that the savages," as it says,
12:05:44 12 "attacked the schooner going up the
12:05:47 13 river to Detroit on the third ultimo
12:05:48 14 master of the vessel and one seaman
12:05:52 15 were killed and three others wounded."

12:05:59 16 Do you consider that accurately, apart
12:06:01 17 from the description of the attackers, records
12:06:03 18 the event?

12:06:06 19 A. Yes.

12:06:12 20 Q. Next document SC0646. This is a
12:06:22 21 letter from Amherst to Lord Egremont, a copy of
12:06:29 22 a letter from Amherst to Lord Egremont, October
12:06:39 23 13th, 1763. I would like to make it an exhibit?

12:06:45 24 THE COURT: Mr. Registrar.

12:06:47 25 THE REGISTRAR: Exhibit 4065.

1 EXHIBIT NO. 4065: Copy of a letter
2 from Amherst to Lord Egremont, October
3 13th, 1763. Document SC0646

4 BY MR. OGDEN:

5 Q. Page 4, about midway down we
6 see -- and I'm going to try again try and read
7 the handwriting:

8 "Another affair has happened on
9 Lake Erie in which the crew of the
10 schooner had behaved remarkably well,
11 they having been attacked by 354 (sic)
12 savages in canoes as the vessel lay at
13 anchor in the river nine miles below
14 the Detroit."

15 Is that what it says?

16 A. Yes. I think -- did you say 354?
17 I believe that's 350 but otherwise that's
18 correct.

19 Q. 350, thank you. And so the
20 September 4 attack was on the schooner, is that
21 correct?

22 A. Yes.

23 Q. The next document SC0640. This
24 is Gladwin manuscripts, with introduction by
25 Charles Moore. And I would like to tender this

1 as an exhibit please, Your Honour.

2 THE COURT: Mr. Registrar.

3 THE REGISTRAR: Number 4066.

4 EXHIBIT NO. 4066: Gladwin

5 manuscripts, with introduction by

6 Charles Moore. Document SC0640.

7 BY MR. OGDEN:

8 Q. Page 21 of the PDF please. And
9 this is the introduction by Charles Moore that
10 we were reading at, page 620.

11 THE COURT: Did you say introduction
12 at page 620?

13 BY MR. OGDEN:

14 Q. Correct. This is the collection
15 of manuscripts, and the manuscripts had with
16 them an introduction by Charles Moore. And page
17 620 of the collection here, page 21 of the PDF.

18 You see a reference there to one of
19 the schooners bound for Michilimackinac. We'll
20 move on, sorry, to page 26 of the PDF, page 625
21 of the document. The 30th -- go down to the
22 reference to the 30th of June.

23 "On the 30th of June the Gladwin,
24 returning from Niagara, plowed a white
25 capped river and landed a force of 50

1 men together with provisions and some
2 much needed ammunition."

3 And then down to page 627, page 28 of
4 the PDF at the bottom, "September began [...],
5 and then there's a description of the vessels
6 making occasional trips to Fort Niagara for
7 supplies and ammunition and it continues:

8 "[...] from one of these latter
9 voyages the schooner Gladwin was
10 returning on the night of September 4
11 when the wind failing she was anchored
12 nine miles below the Fort having on
13 board Commander Horst, her mate Jacobs
14 and a crew of ten men [...]."

15 So this is describing the attack we
16 are talking about isn't it?

17 A. Yes.

18 Q. And it describes the vessel as
19 the schooner Gladwin?

20 A. Yes, it does.

21 Q. With the mate Jacobs, is that
22 right?

23 A. I'm sorry the last question?

24 Q. Mate Jacobs?

25 A. Yes, I believe that is what it

12:11:39 1 said.

12:11:49 2 Q. Could we go back to Exhibit 4038
12:11:52 3 please, to page 318 of the document. This is
12:12:15 4 the Parkman history. Page 318, the left of the
12:12:28 5 page:

12:12:28 6 "The schooner Gladwin, the
12:12:45 7 smaller of the two vessels, had been
12:12:47 8 sent down to Niagara with letters and
12:12:49 9 dispatches. She was now returning
12:12:51 10 having on board Horst her master,
12:12:55 11 Jacobs her mate, and a crew of ten
12:12:56 12 men, all of whom were provincials."

12:13:07 13 So this describes, again, if you care
12:13:09 14 to take a moment to read the attack in early
12:13:12 15 September, is that correct?

12:13:18 16 A. Yes.

12:13:18 17 Q. And described the master Jacobs,
12:13:21 18 is that correct?

12:13:25 19 A. Yes.

12:13:47 20 Q. Could we go to page 288 of the
12:13:49 21 PDF please? And to the bottom of page 288. And
12:14:14 22 if you take a moment to look at the left-hand
12:14:16 23 side and the paragraph starting :

12:14:20 24 "The schooner began to move
12:14:22 25 slowly upward [...]"

12:14:31 1 It says:

12:14:33 2 "[...] there were 60 men crowding
12:14:35 3 on board of whom only 10 or 12 were
12:14:38 4 visible on deck."

12:14:39 5 Are you familiar with the event where
12:14:41 6 the vessel sailed up the river and was attacked
12:14:44 7 and then on the sound of a hammer on the mast
12:14:48 8 the crew of -- the 60 men crowded on board came
12:14:54 9 to the deck and fought off the attack? Are you
12:15:02 10 familiar with that event?

12:15:03 11 A. Yes, I think I described it in my
12:15:05 12 report.

12:15:05 13 Q. Thank you. The next document,
12:15:20 14 SC0649, is Mansfield's "History of the Great
12:15:30 15 Lakes". I would like to tender this as an
12:15:36 16 exhibit, Your Honour.

12:15:37 17 THE COURT: Is it the entirety of that
12:15:38 18 history?

12:15:41 19 MR. OGDEN: It is an extract.

12:15:43 20 THE COURT: All right. Mr. Registrar,
12:15:46 21 an extract from that document. That will be the
12:15:50 22 next exhibit.

12:15:52 23 THE REGISTRAR: 4067.

12:15:54 24 EXHIBIT NO. 4067: Extract from John
12:15:55 25 Mansfield's "History of the Great

1 Lakes". Document SC0649.

2 BY MR. OGDEN:

3 Q. Do you recognize this as a useful
4 source of facts?

5 A. I recognize the publication. I
6 can't speak to the accuracy of all the factual
7 contents, but I'm willing to entertain the
8 plausibility of the proposition.

9 Q. I'll take you to a fact and you
10 can let me know. Page 7 of the PDF, which is
11 pages 111 and 113 of the underlying document.
12 The bottom left it says:

13 "[...] two small armed schooners,
14 the Beaver and the Gladwin, lay
15 anchored in the stream."

16 It's referring to two smaller
17 schooners there, the Beaver and the Gladwin.

18 And then we go to next PDF page,
19 please, which is 112. On the left-hand side we
20 see a reference to the schooner Gladwin going on
21 to Niagara.

22 And then on the right-hand side at the
23 top of that page we see reference to attacks by
24 the vessels on the besiegers. I'll ask you
25 specifically about that.

1 Are you familiar and accept that there
2 were attacks by these vessels on the -- on the
3 villagers, as we've discussed before?

4 A. Yes.

5 Q. And then down to PDF page 9,
6 which is page 113, on the left-hand side there
7 is:

8 "The schooner Gladwin was again
9 dispatched to Niagara. On her return
10 her crew consisted of Horst her
11 master, mate Jacobs, and ten men
12 [...]"

13 And this describes, again, the attack
14 on September 3rd. This says the night of
15 September 3rd that we've mentioned before, is
16 that correct?

17 A. Yes.

18 Q. So Mansfield in this document and
19 Parkman in the document before called the
20 schooner the Gladwin, don't they?

21 A. Yes.

22 Q. The next document then SC0657 is
23 an extract from J. Carver's "Travels Through the
24 Interior Parts of North America". Are you
25 familiar with this document?

12:19:27 1 A. Yes.

12:19:33 2 Q. It is a publication with Roman
12:19:35 3 numerals. Can you give us the publication date?
12:19:38 4 Are you able to give us the publication date?

12:19:40 5 A. It looks like 1781.

12:19:49 6 Q. Thank you. If we go to the
12:19:54 7 second page of the PDF, page 164 of this
12:20:01 8 document:

12:20:01 9 "The Gladwin schooner, that in
12:20:09 10 which I afterwards took my passage
12:20:11 11 from Michilimackinac to Detroit, and
12:20:14 12 which I have since learned was lost
12:20:15 13 with all her crew on Lake Erie through
12:20:19 14 the obstinacy of the commander who
12:20:22 15 could not be prevailed upon to take on
12:20:25 16 sufficient ballast arrived about this
12:20:25 17 time near the town for reinforcement
12:20:28 18 and necessary supplies, but before
12:20:30 19 this vessel could reach the place of
12:20:32 20 its destination, it was most
12:20:34 21 vigorously attacked by a detachment
12:20:36 22 from Pontiac's army. The Indians
12:20:38 23 surrounded it in their canoes and made
12:20:40 24 great havoc among the crew. At length
12:20:42 25 the Captain of the schooner, with a

12:20:44 1 considerable number of his men being
12:20:46 2 killed, and the savages beginning to
12:20:48 3 climb up its sides from every quarter,
12:20:49 4 the lieutenant (Mr. Jacobs) who
12:20:53 5 afterwards commanded and was lost in
12:20:56 6 it, being determined that the stores
12:20:56 7 should not fall into the enemies'
12:20:58 8 hands, and seeing no other alternative
12:21:00 9 ordered the gunmen, the gunner to set
12:21:02 10 fire to the powder room and to blow
12:21:07 11 the ship up."

12:21:09 12 This is referring to the September 3rd
12:21:13 13 or 4th attack on the schooner, as it describes
12:21:17 14 here, the Gladwin, is that correct?

12:21:18 15 A. Yes.

12:21:19 16 Q. And with Jacobs, the --
12:21:21 17 Lieutenant Jacobs, mate Jacobs otherwise
12:21:26 18 described?

12:21:27 19 A. Yes.

12:21:27 20 Q. And this is the schooner present
12:21:30 21 at the Fort during the siege, is that correct?
12:21:34 22 It would be in the description?

12:21:36 23 A. Right.

12:21:48 24 Q. And so it's your understanding
12:21:48 25 the Gladwin, and you say this in your report so

1 I'm just going to ask you to confirm it. So the
2 Gladwin -- well, you mention the Gladwin in your
3 report, and you mention the Beaver and Huron and
4 Michigan.

5 Do you accept that there were two
6 vessels, a schooner and a sloop, and the
7 schooner was called the Huron, also called the
8 Gladwin, and the sloop was called the Michigan,
9 later the Beaver? Would you like me to ask that
10 in smaller bites?

11 A. Yes, ask that in smaller parts.

12 Q. There were two vessels outside
13 the Fort during the siege, is that correct?
14 According to the documents that we've reviewed?

15 A. Yes.

16 Q. And is that your understanding?

17 A. That were there --

18 Q. During this --

19 A. Yes.

20 Q. During the time of the siege?

21 A. That's right.

22 Q. And one was a schooner and one
23 was a sloop?

24 A. Yes.

25 Q. And the schooner was called the

12:22:44 1 Huron and also called the Gladwin, at some
12:22:48 2 point, the same vessel?
12:22:53 3 A. Plausible.
12:22:56 4 Q. Do you have a view on --
12:23:01 5 A. I think that's correct.
12:23:02 6 Q. The other, the sloop was called
12:23:04 7 the Michigan and at a later time called the
12:23:08 8 Beaver?
12:23:08 9 A. Yes.
12:23:08 10 Q. Is that correct?
12:23:20 11 And the schooner, the Huron, took many
12:23:22 12 trips to Niagara and back during the siege,
12:23:25 13 didn't it?
12:23:27 14 A. It took some trips.
12:23:29 15 Q. Some trips. Are you aware of how
12:23:31 16 many trips, return trips it made during the
12:23:35 17 period of the siege?
12:23:35 18 A. I'm not.
12:23:37 19 Q. Would you like to know?
12:23:38 20 A. Certainly.
12:23:41 21 Q. Shall we go to document --
12:23:42 22 THE COURT: I hope that's not the test
12:23:43 23 for your cross-examination, sir.
12:23:46 24 MR. OGDEN: Sorry.
12:23:48 25 THE COURT: Please go ahead.

1 BY MR. OGDEN:

2 Q. Thank you, 0521. This is the
3 Jehu Hay diary, is that correct?

4 A. This appears to be -- yes, yes,
5 yes.

6 Q. PDF page 14. We're going to run
7 through some dates corresponding to the
8 different trips made by the schooner. I'm going
9 to ask you if you accept that this was one trip
10 and then two trips, and so on.

11 A. Okay.

12 Q. Thank you. PDF page 14. The
13 21st -- May the 21st:

14 "[...] eleven o'clock the
15 schooner sailed for the mouth of the
16 river."

17 And then June 30, PDF page 40. June
18 30:

19 "[...] at twelve o'clock the wind
20 sprung up favourable for the schooner
21 and she weighed anchor and reached
22 this about 3."

23 And it's referring to reaching the
24 Fort, is that right?

25 A. Yes.

12:25:44 1 Q. So that's one trip.

12:25:45 2 Page 50 of the PDF, the date is July
12:25:58 3 12th here. July 12th and we go down, third
12:26:05 4 paragraph:

12:26:05 5 "The schooner set sail for
12:26:08 6 Niagara on July 12th."

12:26:10 7 And then on PDF page 61, page 58 of
12:26:15 8 the journal :

12:26:17 9 "August 5th, the schooner
12:26:26 10 appeared in sight."

12:26:28 11 "August 6th, the schooner
12:26:29 12 anchored before the Fort."

12:26:34 13 That is the second trip, correct?

12:26:34 14 A. Yes.

12:26:34 15 Q. Third trip, page 63 of the PDF.
12:26:41 16 And this is August -- well, August 13, the
12:26:50 17 vessels weighed anchor. This is -- at least one
12:26:55 18 of them is the Huron, is that correct? They're
12:26:59 19 referring to both vessels, or "the vessels" it
12:27:01 20 says?

12:27:02 21 A. Yes.

12:27:02 22 Q. And then page 70 of the PDF, page
12:27:09 23 67 of the journal. September 3:

12:27:12 24 "This morning we were informed
12:27:13 25 that the schooner was in the river

12:27:15 1 near the lower most inhabitants."

12:27:19 2 That is a third trip completed, isn't
12:27:21 3 it?

12:27:21 4 A. Yes.

12:27:22 5 Q. Page 72 of the PDF, page 69 of
12:27:26 6 the journal. September 8:

12:27:38 7 "[...] the commandant ordered the
12:27:40 8 schooner to make ready to sail."

12:27:42 9 And then down at the bottom of that
12:27:46 10 paragraph:

12:27:46 11 "[...] the winds northwest when
12:27:47 12 the schooner sailed at half past 1."

12:27:50 13 So that is the start of the fourth
12:27:53 14 trip.

12:27:55 15 PDF page 77, page 74 of the journal.
12:28:04 16 October 3rd:

12:28:04 17 "The wind being almost south
12:28:10 18 heard firing of cannon and small arms
12:28:12 19 down the river and at one or half past
12:28:14 20 the schooner came in sight. About
12:28:19 21 half past three she arrived at the
12:28:22 22 Fort in which came Captain Montresor,
12:28:28 23 who informed us that the sloop was
12:28:32 24 lost 28th of August at Presque Isle.
12:28:38 25 The provision and guns were all lost

12:28:38 1 except 185 barrels which they carried
12:28:38 2 in the schooner and the rigging was
12:28:38 3 carried to Niagara."

12:28:38 4 And we've seen that before. So that's
12:28:43 5 the conclusion of the fourth trip, isn't it?

12:28:47 6 A. Yes.

12:28:48 7 Q. And then we see that carrying the
12:28:49 8 rigging back to Niagara and that was -- that's
12:28:55 9 probably for the vessel that was named the
12:28:59 10 Beaver?

12:28:59 11 A. Yes.

12:29:00 12 Q. So PDF page 79, document page 76
12:29:11 13 of the journal, October 7th:

12:29:12 14 "The wind east and northeast the
12:29:16 15 schooner sailed at 12:00 o'clock."

12:29:20 16 And then page 83 of the PDF and page
12:29:33 17 80 of the journal:

12:29:35 18 "November 11 at three o'clock the
12:29:37 19 schooner arrived."

12:29:38 20 And, sir, this is the completion of
12:29:41 21 the fifth trip, is that correct, on November
12:29:43 22 11th?

12:29:45 23 A. Yes.

12:29:45 24 Q. And then we go to page 91,
12:29:57 25 please, for completeness. 1764, PDF page 91,

12:29:58 1 page 88 of the document, down to the bottom,
12:30:05 2 April 12:

12:30:05 3 "This morning at 10 o'clock the
12:30:09 4 schooner sailed for Niagara."

12:30:12 5 To your knowledge, this diary contains
12:30:15 6 no other reference of the schooner sailing
12:30:18 7 between November 11 and April 12, is that
12:30:20 8 correct?

12:30:20 9 A. Yes.

12:30:21 10 Q. So the schooner stayed at the
12:30:22 11 Fort throughout the winter?

12:30:26 12 A. Yes, as far as we can tell from
12:30:28 13 this document.

12:30:30 14 Q. So this journal, the Jehu Hay
12:30:34 15 journal, is full of reference to boats sailing
12:30:36 16 in wind conditions, isn't it?

12:30:40 17 A. Yes.

12:30:41 18 Q. And that was because those were
12:30:43 19 of great concern to Mr. Hay, is that correct?

12:30:49 20 A. Yes.

12:30:49 21 Q. And so he's unlikely to mistake
12:30:53 22 the schooner and the sloop, for instance?

12:30:56 23 A. That's correct.

12:30:56 24 Q. And he's unlikely to get it wrong
12:30:59 25 when the schooner left and returned?

12:31:00 1 A. That's correct.

12:31:01 2 Q. And he's unlikely to get wrong

12:31:02 3 the name of the vessel?

12:31:04 4 A. That's correct.

12:31:07 5 Q. So page 113, please, of the PDF.

12:31:14 6 Page 110, the date is September 11, 1764:

12:31:21 7 "This morning the schooner

12:31:23 8 Gladwin sailed for Michilimackinac."

12:31:31 9 And then October 16, which is on PDF

12:31:32 10 page 114, page 111 of the document.

12:31:32 11 "This day we were informed by a

12:31:39 12 man who came from Lake St. Clair that

12:31:43 13 Mr. St. Clair entered Lake Huron the

12:31:47 14 13th with the schooner Gladwin and was

12:31:50 15 soon out of sight, the wind being very

12:31:52 16 good."

12:31:54 17 This continued description of the

12:31:59 18 Gladwin departing. And then page 116 of the

12:32:07 19 PDF, page 113 of the journal, is November 3,

12:32:12 20 this day the schooner Boston arrives. Oh, next

12:32:23 21 paragraph then please.

12:32:25 22 "This morning Captain St. Clair

12:32:26 23 arrived here from Michilimackinac

12:32:32 24 after laying up the schooner Gladwin

12:32:34 25 in a small river near the head of the

1 river Huron."

2 We've also seen the extract from

3 Carver's travels. And so -- so that the Gladwin
4 schooner made it up to Michilimackinac and back
5 in the spring of 1764, is that correct?

6 A. That's correct.

7 Q. At Fort Detroit there were other
8 boats that -- with guns on them, weren't there?
9 Other than these two vessels?

10 A. Yes.

11 Q. And you don't discuss them in
12 your report though, do you?

13 A. No.

14 Q. And the British used these boats
15 in their efforts to control the Detroit River,
16 didn't they?

17 A. Yes.

18 Q. Are you aware of how many such
19 vessels there were? I'll call them boats rather
20 than vessels.

21 A. No.

22 Q. So we have Exhibit 0524, please,
23 the Navarre journal. Page 133 please, PDF page
24 133, page 132. And this is June the 11th and we
25 see a mention of "an officer":

12:34:21 1 "[...] when he returned from this
12:34:24 2 excursion, the same officer had his
12:34:24 3 men empty and clean off the boats and
12:34:26 4 barges, which were beached in front of
12:34:28 5 the Fort, and put them into condition
12:34:30 6 for service in case the sloop, which
12:34:32 7 had left for Niagara, did not return."
12:34:35 8 To remind us, the sloop is translated
12:34:39 9 from the French in this instance so not
12:34:42 10 necessarily referring to the Michigan, is that
12:34:44 11 correct?

12:34:46 12 A. That's reasonable.

12:34:47 13 Q. So next to page -- PDF page 191,
12:34:57 14 which is page 190 of the -- July 20, and we have
12:35:19 15 here the commandant, who is Gladwin, hearing
12:35:23 16 news that the attackers were going to try and
12:35:25 17 burn one of the vessels. And you mentioned that
12:35:28 18 and you covered that in your report.

12:35:30 19 It says here:

12:35:31 20 "At this report the commandant
12:35:33 21 was reminded to profit by the delay in
12:35:36 22 order to save the sloop from the
12:35:38 23 destruction which threatened it. He
12:35:38 24 ordered that two boats be sheathed
12:35:40 25 inside with oak planking five inches

12:35:42 1 thick and that the gunnels be
12:35:42 2 increased to the height of unknown
12:35:42 3 (sic) feet and of * (sic) feet * (sic)
12:35:42 4 and sheathed like the inside so that a
12:35:42 5 man standing upright in the boats
12:35:42 6 would be protected from the bullets.
12:35:42 7 In the prow of each boat a swivel gun
12:36:04 8 was mounted so as to rake in three
12:36:08 9 directions."

12:36:12 10 So the date July 21 you may not
12:36:16 11 recall, but the second trip that the schooner
12:36:19 12 took for Niagara was commenced on July 12 and
12:36:25 13 returned on August 5th. So at this point the
12:36:30 14 schooner was not at Detroit on July 21, is that
12:36:34 15 right?

12:36:35 16 A. Right.

12:36:35 17 Q. So at least when he's talking
12:36:43 18 about boats he can't be talking about the
12:36:46 19 schooner, the Huron?

12:36:47 20 A. Right.

12:36:47 21 Q. And if we go then -- well, these
12:36:58 22 would have to be -- these are not small
12:37:02 23 dinghies, are they? These boats that he's
12:37:06 24 referring to?

12:37:07 25 A. No.

1 Q. In order to be carrying an extra
2 five inches of oak planking on the hull and to
3 have gunnels that someone could stand up behind,
4 they are not small dinghies? They're not...and
5 this is not the Michigan either, is it, that was
6 being sheathed?

7 A. No, it's not.

8 Q. And fitted with a swivel gun?
9 No. And being fitted with a swivel, no?

10 A. No.

11 Q. PDF page 194 please, page 193 of
12 the document. And this is July 24th, referring
13 to an instance in which soldiers went to inspect
14 work by the Indians to build fire barges, which
15 you refer to in your report. And it says:

16 "Toward ten o'clock three
17 officers with 60 men, well armed,
18 embarked into the two boats and a
19 barge and went up the river to
20 discover the place where they were
21 working."

22 So the Huron gone, these boats that
23 they're referring to and the barge are not the
24 Huron at least are they?

25 A. Correct.

12:38:30 1 Q. And the -- this gives an
12:38:33 2 indication of the size of the boats that they,
12:38:35 3 together with the barge, could carry three
12:38:37 4 officers and 60 men?

12:38:39 5 A. Correct.

12:38:43 6 Q. The next document, back to
12:38:44 7 Exhibit 0521 please. This is the Jehu Hay
12:38:56 8 journal, July 20. So PDF page 52 and page 49 of
12:39:04 9 the journal. July 20:

12:39:05 10 "This day we fitted a batteaux
12:39:23 11 with a pattararoe that carried a three
12:39:23 12 pound ball."

12:39:25 13 Do you know what a pattararoe was
12:39:26 14 referring to?

12:39:26 15 A. It is not a term that's familiar
12:39:29 16 to me but...

12:39:34 17 Q. Are you familiar with the term
12:39:36 18 "pettarero"?

12:39:40 19 A. Yes, that is more familiar.

12:39:42 20 Q. What is that?

12:39:42 21 A. It's a gun that can shoot a
12:39:43 22 three-pound ball. A small cannon.

12:39:47 23 Q. A small cannon.

12:39:49 24 Next page 53 of the PDF, and 50. July
12:39:52 25 21, this day fitted up a second batteaux as the

1 one mentioned previously. That would be with a
2 pettarero, isn't it?

3 A. Yes.

4 Q. Back then to Exhibit 524, please,
5 the Navarre journal. PDF page 200 please,
6 Navarre journal, page 199 of the journal. July
7 29, this is describing in the arrival of Captain
8 Dalyell from Niagara.

9 And it describes that a flotilla
10 firing cannon shots ...

11 "[...] for these barges had four
12 little cannons mounted on swivels in
13 the bough and they were in addition to
14 two small mortar six pounders."

15 Are you aware of how many barges
16 Dalyell came in?

17 A. Not off the top of my head.

18 Q. Sorry, the boats spoken of
19 before:

20 "[...] I went out to meet the
21 barges and see what they were. There
22 were 22 of them."

23 So we have the swivels in the bough,
24 in addition two small mortar six-pounders. That
25 is not a barge presumably, that would be spread

12:41:41 1 out across six boats maybe, I take it. Is that
12:41:47 2 your interpretation?

12:41:47 3 A. That's a reasonable inference.

12:41:51 4 Q. So 22 barges. And then with 280
12:41:57 5 troops and six cannons, so they would be the two
12:42:01 6 and the four. And you're aware at this point in
12:42:06 7 late July the Fort receives 280 troops?

12:42:10 8 A. Yes.

12:42:18 9 Q. Exhibit 4038, please, which is
12:42:20 10 the Parkman journal, PDF page 309. Mention of
12:42:36 11 Captain -- it says "Dalzyell" but you understand
12:42:41 12 that it was "Dalyell", spelled "Dalyell"?

12:42:48 13 A. Yeah.

12:42:48 14 Q. And he, perhaps inadvisedly, set
12:42:52 15 out one night to attack Pontiac's camp. Is that
12:42:54 16 an accurate description?

12:42:55 17 A. Yes.

12:42:56 18 Q. And was ambushed and repulsed by
12:43:01 19 Pontiac and his forces?

12:43:03 20 A. Yes.

12:43:08 21 Q. And forced to retreat back to
12:43:10 22 Fort, is that correct?

12:43:11 23 A. Yes.

12:43:12 24 Q. With the loss of many men?

12:43:15 25 A. Yes.

12:43:17 1 Q. And there were a large number of
12:43:19 2 Pontiac's forces that were -- that ambushed
12:43:22 3 them -- do you know how many or approximately
12:43:27 4 200 perhaps?

12:43:28 5 A. I don't know off the top of my
12:43:29 6 head.

12:43:30 7 Q. More than a dozen? More than --

12:43:32 8 A. Yes.

12:43:33 9 Q. And more than 50?

12:43:36 10 A. Yes, I think that's correct.

12:43:39 11 Q. And they beat the British force,
12:43:46 12 back but there was -- the retreat was delayed
12:43:51 13 somewhat by a pause in which some of the British
12:43:58 14 forces waited and protected themselves in a
12:44:01 15 house. Are you aware of that occurrence?

12:44:07 16 A. Yes.

12:44:08 17 Q. So could we go down then to page
12:44:11 18 309, please? And then it describes the British
12:44:25 19 force heading out up to attack Pontiac's
12:44:28 20 village:

12:44:29 21 "They filed two deep along the
12:44:31 22 road while two large batteaux, each
12:44:35 23 bearing a swivel on the bow, rode up
12:44:35 24 the river abreast of them."

12:44:38 25 That would be the batteaux that were

1 fitted out previously before Dalyell arrived?

2 A. Presumably.

3 Q. And the next page then, page 316,
4 on the left-hand side we have the description of
5 the retreat.

6 "The two armed batteaux had gone
7 to the Fort laden with the dead and
8 wounded."

9 They now returned up the river and it
10 says:

11 "[...] proceeded up the river to
12 a point opposite Campo's house."

13 And to your knowledge Campo's house is
14 where the retreaters were encamped trying to
15 prevent being overrun?

16 A. Correct.

17 Q. And then it continues:

18 "[...] where they opened a fire
19 of swivels which swept the ground
20 above and below it and completely
21 scattered the assailants. Rogers and
22 his party now came out and marched
23 down the road to unite themselves with
24 Grant. The two batteaux accompanied
25 them closely and by a constant fire

1 restrained the Indians from making an
2 attack."

3 Do you consider that an accurate
4 description and not contradicted by other
5 documents of which you are aware?

6 A. Yes.

7 Q. We saw earlier two vessels and at
8 one point both vessels had sailed to Niagara. I
9 assume that -- was it -- is it accurate to say
10 that Gladwin would not have done that unless he
11 considered that the other boats that he had,
12 with the three- and four-pounders and pattareros
13 would be able to assist adequately in the
14 defence of the Fort?

15 A. You're asking me to speculate on
16 Gladwin's state of mind or --

17 Q. Not his state of mind, but in
18 your opinion would the remaining boats, that
19 batteaux fitted out, have provided adequate
20 defence to the Fort to account for the absence
21 of the two larger vessels?

22 A. They certainly could go some way
23 to compensate for the absence of the larger
24 vessels.

25 Q. Back to the Jehu Hay diary,

12:47:21 1 please, which is Exhibit 0521, PDF page 60,
12:47:34 2 August 3rd, page 57 of the journal. No, PDF
12:48:00 3 page 63 -- no again, sorry, PDF page 60, and
12:48:23 4 August 3rd, page 57 of the journal.

12:48:24 5 "Winds northeasterly and pretty
12:48:27 6 fresh this day we began to fit up
12:48:27 7 another batteaux for a four-pounder."
12:48:30 8 That's the third we've noted I think
12:48:32 9 in this diary?

12:48:34 10 A. Yes.

12:48:34 11 Q. And then PDF page 65, page 62 of
12:48:38 12 the journal, August 19:

12:48:46 13 "Wind easterly but not much of
12:48:49 14 it. This day finished another
12:48:51 15 batteaux for a four pounder."

12:48:52 16 That's the fourth, correct?

12:48:55 17 A. Yes.

12:48:55 18 Q. And then page 66, which is next
12:48:57 19 PDF page, page 63 of the journal, August 20
12:49:07 20 describes Captain Hopkins and others:

12:49:09 21 " [...] travelling up the river
12:49:22 22 to favour which the commandant sent up
12:49:25 23 four batteaux, two with four pounder
12:49:28 24 in each and two with pattareros that
12:49:29 25 went up as far as the upper end of the

12:49:30 1 Isle au Cochon."

12:49:37 2 So there were four batteaux at that
12:49:39 3 point armed with cannon, is that right?

12:49:41 4 A. Yes.

12:49:42 5 Q. And page 76 of the PDF, page 73
12:49:49 6 of the document October 2nd:

12:49:57 7 "This morning at ten o'clock
12:50:01 8 Lieutenant Brehm, Lieutenant Abbot,
12:50:06 9 ensign Riggell and myself were sent up
12:50:10 10 the river with four armed batteaux to
12:50:10 11 Rigamota. And I went to the mouth of
12:50:10 12 the Lake St. Clair to see if it was
12:50:10 13 possible to bring wood for the
12:50:14 14 garrison and to try and bring off the
12:50:17 15 ships...that the Indians took from
12:50:18 16 Captain Robinson."

12:50:19 17 And then on the next page please. It
12:50:26 18 describes an attack on them as they attempted to
12:50:29 19 get that wood. Are you familiar with this
12:50:31 20 attack?

12:50:31 21 A. Yes.

12:50:39 22 Q. And it says there:

12:50:41 23 "[...] we saw them push off with
12:50:43 24 19 canoes and batteaux."

12:50:47 25 Do you have an estimate of how many

1 warriors there would be on those 19 canoes and
2 batteauxes? More than 19 I presume?

3 A. More than 19, yes.

4 Q. Would it be reasonable to say 5?

5 A. 50 to 75 I think would be a
6 reasonable estimate.

7 Q. 50 to 75. And the British
8 batteaux was attacked by them and repulsed them
9 with the use of the cannon that they had on the
10 boat, is that correct?

11 A. Yes.

12 Q. And in the middle of this page it
13 says:

14 "At length Lieutenant Bremh got a
15 good shot at some of them with a four
16 pounder charged with grape at about 40
17 or 50 yards distance, which he so
18 disabled that out of about 15 or 16
19 that were in it we could not see but
20 two that paddled."

21 And he says "were in it", he's talking
22 about a single canoe there is he, that was shot
23 with the grape shot?

24 A. Yes.

25 Q. So those these four batteaux were

12:52:01 1 effective in repelling a substantial attack by
12:52:03 2 first nation warriors, is that correct?

12:52:07 3 A. Yes.

12:52:14 4 Q. Exhibit 4045 please. This is the
12:52:21 5 Montresor journal, to PDF page 12. And the top
12:52:35 6 right the date is October 11th. We saw this
12:52:40 7 previously when we were talking about
12:52:41 8 Wabbicomicot, after October 20th when the four
12:52:41 9 batteaux were finished.

12:52:50 10 "Worked on the armoured boat and
12:52:53 11 completed her this day. Mounted a
12:52:55 12 swivel in her, barricaded the boat
12:52:58 13 with oak plank two inches thick."

12:53:01 14 So, again, not a small boat if it can
12:53:04 15 be -- have a swivel mounted on it and barricaded
12:53:08 16 with two inches of oak plank, is it?

12:53:11 17 A. Correct.

12:53:13 18 Q. So is it accurate to say that
12:53:15 19 these boats, additional to the two large sailing
12:53:19 20 vessels, provided the British with control of
12:53:21 21 the Detroit River outside of the Fort?

12:53:28 22 A. Yes, I think the British were
12:53:32 23 successful in maintaining control of the Detroit
12:53:35 24 River outside the Fort.

12:53:41 25 Q. Certainly the First Nations did

12:53:43 1 not have control of that water space?

12:53:46 2 A. Correct. My report says that
12:53:52 3 they contested control of that space but it does
12:53:55 4 not argue that they gained it.

12:53:56 5 Q. Or had it. Or had control of
12:54:00 6 that contested space. Your report does not
12:54:03 7 argue that they had control of that contested
12:54:05 8 space?

12:54:06 9 A. No, not in the summer of 1763.

12:54:22 10 Q. Do we have Exhibit 0521 please?
12:54:28 11 I'd like you to agree to some key dates in the
12:54:31 12 conclusion of the -- the siege. These dates
12:54:37 13 concern the communication at Detroit of the
12:54:42 14 Anglo-French peace at the end of the Seven
12:54:45 15 Years' War.

12:54:45 16 The first one, so we have page -- the
12:54:50 17 first one was June 2nd actually. We won't
12:54:54 18 tender these but ask you to confirm the dates.
12:54:57 19 June 2nd, a Frenchman brought a letter from
12:55:00 20 Niagara saying that the Treaty had been signed
12:55:02 21 February the 20th, is that correct?

12:55:04 22 A. Yes.

12:55:04 23 Q. July the 3rd, there was receipt
12:55:09 24 in the Fort of a copy of the articles of peace,
12:55:12 25 is that correct? Early July.

12:55:15 1 A. I can't confirm that off the top
12:55:17 2 of my head but I presume they do have -- that
12:55:23 3 you're stating that accurately.

12:55:25 4 Q. We can go to page 42 of this PDF
12:55:27 5 and it will give us a reference for it. July
12:55:31 6 3rd. There we go. Down at the bottom:

12:55:40 7 "[...] this day the commandant
12:55:41 8 collected the inhabitants of the fort
12:55:42 9 and read the articles of peace to them
12:55:42 10 and sent a copy of it over to the
12:55:45 11 priest on the other side of the
12:55:47 12 river."

12:55:47 13 So at least by that date, according to
12:55:49 14 this, according to this record.

12:55:52 15 We have also the date October 12th,
12:55:58 16 which is a letter noted from yesterday, which I
12:56:02 17 will return to. October 12th was the
12:56:15 18 commencement of communication at least between
12:56:17 19 Pontiac and Gladwin about the truce?

12:56:19 20 A. Yes.

12:56:20 21 Q. And then October 30th a French
12:56:23 22 officer arrived from Illinois and spoke with
12:56:29 23 Pontiac and his Chiefs and said that they should
12:56:34 24 cease the war with the English, is that correct?

12:56:36 25 A. Yes.

12:56:37 1 Q. And Pontiac then sent word to
12:56:41 2 Gladwin that the hatchet is buried, is that
12:56:45 3 correct?

12:56:45 4 A. Yes.

12:56:46 5 Q. And sought confirmation of that
12:56:47 6 from Gladwin in writing, is that correct?

12:56:50 7 A. Yes.

12:56:52 8 Q. On October 30th.

12:56:53 9 A. Yes.

12:56:53 10 Q. Might be helpful at this point to
12:56:55 11 turn up Exhibit 4025 just briefly I think, Your
12:56:58 12 Honour. I have a couple of questions about
12:57:02 13 this. We saw this on Monday, 4025.

12:57:15 14 I don't believe I have a record of you
12:57:32 15 confirming or denying that on July 3rd, or in
12:57:37 16 early July that -- by early July Gladwin had
12:57:42 17 received the Articles of Peace at the Fort. So
12:57:45 18 your understanding is by that date, around that
12:57:48 19 date Gladwin had received them?

12:57:50 20 A. Yes.

12:57:51 21 Q. This is a letter from Gladwin to
12:58:06 22 Amherst, Detroit November 1st. And we saw
12:58:09 23 this -- this is a reference to the enemy suing
12:58:11 24 for peace in a very submissive manner. That
12:58:16 25 would be Pontiac being in a submissive manner,

12:58:19 1 would it?

12:58:19 2 A. Correct.

12:58:20 3 Q. And Gladwin is explaining to
12:58:22 4 Amherst why Gladwin made a truce, is that right?

12:58:25 5 A. Yes.

12:58:25 6 Q. And Amherst did not want a truce,
12:58:27 7 is that correct?

12:58:31 8 A. It's not clear whether Amherst
12:58:32 9 wants a truce or not.

12:58:34 10 Q. But he wanted to punish the First
12:58:36 11 Nations, is that correct?

12:58:40 12 A. You mean as a general principle?

12:58:42 13 Q. No, as a response to the
12:58:45 14 conflict?

12:58:50 15 A. I mean, I think that that is a
12:58:52 16 reasonable statement.

12:59:03 17 Q. Your Honour, would this be a good
12:59:05 18 time to take the lunch break?

12:59:07 19 THE COURT: We have a couple more
12:59:07 20 minutes, sir. Is this a new point you're about
12:59:07 21 to start? Let me ask you this question, about
12:59:09 22 how much longer do you plan to be?

12:59:13 23 MR. OGDEN: I believe my estimate
12:59:14 24 earlier of two days is accurate so I'm trying to
12:59:21 25 conclude by the end of today, but it may be

12:59:24 1 stretched into the morning. I'm not aware of
12:59:27 2 the possibility of re-examination but this
12:59:30 3 afternoon. To the end of the day, Your Honour.

12:59:35 4 THE COURT: Thank you, sir. Break
12:59:35 5 until 2:15.

12:59:35 6 -- RECESSED AT 1:00 P.M. --

12:59:35 7 -- RESUMED AT 2:16 P.M. --

02:16:42 8 THE COURT: Please go ahead.

02:16:43 9 MR. OGDEN: Thank you, Your Honour.

02:16:44 10 BY QUESTIONER:

02:16:44 11 Q. Good afternoon. Professor
02:16:46 12 Hinderaker, I'm going to ask you some
02:16:48 13 statements, some of them were contained in
02:16:51 14 exhibits and I'm going to ask you if you agree
02:16:54 15 with them.

02:16:54 16 The first statement is not contained
02:16:56 17 in an exhibit but I want to know if you agree in
02:17:00 18 early July Pontiac sought to force the French
02:17:05 19 settlers to take up arms against the Fort?

02:17:08 20 A. Yes.

02:17:11 21 Q. And to Exhibit 4043, please.

02:17:21 22 One moment, Your Honour.

02:17:44 23 This is an extract Dowd, "War Under
02:17:46 24 Heaven", if we go to PDF page 22, please, third
02:17:56 25 paragraph down.

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THE COURT: What exhibit is this?
4043?
BY MR. OGDEN:
Q. Yes.
Third paragraph.
"Pontiac was having little
success in forcing the surrender of
Detroit. At the end of July he
intimated to the garrison that he
would consider negotiating a peace to
put an end to what was becoming a
pointless war."
Do you agree with that statement?
A. I agree that -- I agree to the
factual part of the statement. I mean, I think
the point about the description of the war as
pointless is debatable. But, yes, otherwise I
do.
Q. Thank you. To PDF page 26 of the
same exhibit, 4043, page 139.
"Without French help Pontiac
could not maintain the siege. The
Indians let 'every necessary
particularly ammunition'. Between
October 12 and November 1 the Ottawas

02:19:16 1 and Gladwin negotiated what was
02:19:19 2 essentially a truce."

02:19:21 3 Do you agree that without French
02:19:24 4 help Pontiac could not maintain the siege?

02:19:27 5 A. Yes.

02:19:27 6 Q. Do you agree that the Indians
02:19:29 7 lacked every necessary particularly ammunition?

02:19:32 8 A. Yes.

02:19:33 9 Q. And we've already established
02:19:35 10 earlier, I think, that between those dates,
02:19:38 11 October 12 and November 1, a truce was
02:19:41 12 negotiated, is that correct?

02:19:42 13 A. Yes.

02:19:50 14 Q. Same exhibit, 4043, PDF page 26.
02:19:56 15 Page 139, it is the same page. It notes there:

02:20:05 16 "[...] retreat after the truce by
02:20:10 17 Pontiac to Illinois."

02:20:12 18 Is that what he did after the truce?

02:20:14 19 A. Yes.

02:20:16 20 Q. And then on the right-hand side
02:20:17 21 the word "Since", and I'll read this to you as
02:20:26 22 well. And my question is going to be, is this
02:20:28 23 an accurate description of how the siege ended?

02:20:31 24 "Since he could not expect the
02:20:34 25 British to reinforce Detroit, and to

02:20:36 1 attempt further retaliations in the
02:20:36 2 spring, his new location would force
02:20:36 3 them to fight him on his terms without
02:20:46 4 water-borne guns. Although he was
02:20:50 5 surrendering Detroit to the British at
02:20:51 6 least until he could persuade the
02:20:54 7 French to reengage, without Indians
02:20:56 8 Detroit was but a remote French
02:20:59 9 hamlet. The British could dominate
02:20:59 10 the straits but they could not
02:21:00 11 dominate the warriors who simply
02:21:03 12 withdrew from reach."

02:21:06 13 So do you agree that that is an
02:21:07 14 accurate description of how the siege ended?
02:21:11 15 And if there are parts of it that you do not
02:21:14 16 agree with tell us please.

02:21:15 17 First question, do you agree that that
02:21:17 18 is an accurate description of how and why the
02:21:19 19 siege ended?

02:21:26 20 A. How and why the siege ended?
02:21:27 21 This passage seems to describe a period after
02:21:33 22 the siege has ended. But, yes, I do agree that
02:21:41 23 this is an exceptionally accurate passage.

02:21:43 24 Q. Thank you.

02:21:49 25 And to the top of this document same

02:21:52 1 Exhibit 4043, page 107 of the chapter, page 4 of
02:21:59 2 the PDF. On the second paragraph on the right
02:22:12 3 it says:

02:22:13 4 "Warriors understood that the
02:22:15 5 British advantage lay less in absolute
02:22:17 6 numbers than in the capacity to supply
02:22:18 7 and reinforce troops."

02:22:20 8 So the first question, was there a
02:22:23 9 British advantage? Militarily I should add.
02:22:27 10 Was there a British military advantage?

02:22:29 11 A. Well, this was the -- what was
02:22:32 12 being contested in the summer of 1763. But, as
02:22:36 13 we discussed this morning, yes, the British had
02:22:40 14 key military advantages that helped them hold
02:22:45 15 out and not abandon the post, though they
02:22:48 16 weren't sufficient advantages to defeat the
02:22:52 17 besieging parties.

02:23:01 18 Q. But they were sufficient to cause
02:23:02 19 the besieging parties to end the siege and
02:23:05 20 retreat to the north?

02:23:06 21 A. Correct. There was sufficiently
02:23:10 22 stalemated military situation at Detroit by the
02:23:13 23 end of the summer of 1763 that both parties were
02:23:18 24 willing to agree to a negotiated peace.

02:23:26 25 Q. Pontiac's forces did not remain

02:23:29 1 in the villages though, did they?

02:23:31 2 A. No.

02:23:31 3 Q. Do you agree with the proposition
02:23:33 4 that the warriors understood this British
02:23:36 5 advantage, as it says here?

02:23:37 6 "[...] less in absolute numbers
02:23:39 7 than in the capacity to supply and
02:23:41 8 reinforce troops."

02:23:44 9 A. I interpret this passage to mean
02:23:47 10 that the process of supplying and reinforcing
02:23:54 11 troops was crucial to British interests in the
02:24:01 12 Great Lakes. And it's true that at Detroit they
02:24:06 13 maintained the ability to do those things
02:24:07 14 throughout the summer of 1763.

02:24:10 15 Q. So did the warriors understand,
02:24:11 16 that -- they appreciated this military
02:24:14 17 advantage?

02:24:22 18 A. Um... I think that, you know,
02:24:26 19 whether that was an advantage, whether the
02:24:29 20 British had that capacity or not was the
02:24:31 21 proposition that warriors were testing during
02:24:34 22 the summer of 1763. We talked about that
02:24:37 23 process this morning; and we talked about, you
02:24:42 24 know, repeated failed attempts by the First
02:24:45 25 Nations to challenge Britain's capacity on the

02:24:54 1 Detroit River.

02:24:55 2 So when -- the way this is phrased, I
02:25:02 3 would say that the question of whether Britain
02:25:07 4 had this advantage or not was precisely what was
02:25:10 5 being contested in those military engagements.

02:25:15 6 Q. The bottom of this page there's
02:25:17 7 another quote:

02:25:26 8 "If Pontiac and his allies had
02:25:27 9 reason to doubt the immediate
02:25:30 10 numerical advantage of the British
02:25:32 11 soldiers, they knew from personal
02:25:33 12 experience that the British army had
02:25:35 13 vast supplies and a steely
02:25:36 14 technological edge particularly in
02:25:39 15 defensive fortifications, gunnery and
02:25:42 16 sailing craft."

02:25:44 17 Do you accept that the warriors
02:25:50 18 perceived or -- let me start again.

02:25:54 19 Was it the perception of the warriors
02:25:56 20 that these were British military advantages?

02:25:58 21 A. Yes.

02:26:05 22 Q. The next document I would like to
02:26:06 23 take you to is SC0501.

02:26:22 24 This is not an exhibit, Your Honour.
02:26:29 25 I would like to make it an exhibit. This is

02:26:32 1 Chapter 5 of Dowd, "War Under Heaven."
02:26:35 2 THE COURT: Not yet already?
02:26:37 3 MR. OGDEN: My understanding is it was
02:26:39 4 not.
02:26:43 5 THE COURT: Next exhibit.
02:26:45 6 THE REGISTRAR: Next Exhibit 4068.
02:26:48 7 EXHIBIT NO. 4068: Extract from
02:26:49 8 chapter 5 of Greg Dowd's "War Under
02:26:49 9 Heaven". Document SC0501.
02:26:50 10 THE COURT: I'm beginning to wonder
02:26:51 11 why the Dowd book wasn't just put in. Anyway,
02:26:54 12 that would go for a number of the books that
02:26:56 13 have come up in the last several days.
02:27:04 14 MR. OGDEN: This is how they were
02:27:05 15 produced to us, Your Honour, but we will take
02:27:10 16 that in mind when we offer future exhibits.
02:27:16 17 BY MR. OGDEN:
02:27:16 18 Q. PDF page 21 of this, page 168 of
02:27:23 19 the chapter. Here we have the struggle of
02:27:27 20 Illinois. This is after the siege.
02:27:31 21 "Pontiac and his allies
02:27:31 22 understood by the end of 1763 that
02:27:33 23 they could not dislodge the British
02:27:36 24 from Forts Detroit and Pitt."
02:27:40 25 Is it your evidence that Pontiac and

02:27:43 1 his allies understood by the end of 1763 that
02:27:48 2 they could not dislodge the British from Forts
02:27:51 3 Detroit and Pitt?

02:27:55 4 A. It's difficult to assess
02:27:56 5 Pontiac's precise state of mind with respect to
02:28:01 6 this at this time.

02:28:02 7 What I would emphasize at this stage,
02:28:05 8 at the end of 1763, is that Pontiac's allies
02:28:08 9 were significantly diminished after the truce at
02:28:13 10 Detroit. He -- his support was significantly
02:28:18 11 smaller than it had been previously.

02:28:22 12 Q. And did he have French support at
02:28:23 13 that time?

02:28:24 14 A. He had some sympathetic -- yes,
02:28:29 15 there was some sympathetic French -- not
02:28:33 16 official government support but he had some
02:28:36 17 support from French traders in Illinois country.

02:28:41 18 Q. So the French government to
02:28:43 19 which -- French officials, to which they existed
02:28:46 20 in Illinois, were not providing him with
02:28:51 21 military support in the form of guns and
02:28:54 22 ammunition?

02:28:55 23 A. I believe that that's correct at
02:28:57 24 this stage.

02:28:58 25 Q. And had they said that they would

02:28:59 1 not at this stage?

02:29:02 2 A. That was the import of the
02:29:03 3 message received at the end of the October of
02:29:07 4 1763.

02:29:14 5 Q. You gave evidence on Monday about
02:29:28 6 First Nation leaders returning from the -- the
02:29:32 7 siege to their families for the winter hunt I
02:29:34 8 believe, is that correct?

02:29:38 9 A. Yes, I did.

02:29:39 10 Q. And that was in order to support
02:29:44 11 their families over the winter, is that correct?

02:29:47 12 A. That would be my assumption, yes.

02:29:49 13 Q. Now, Pontiac and his allies did
02:29:57 14 have some provisions, guns and ammunition,
02:29:59 15 powder and shot during the siege, but they were
02:30:05 16 not able to acquire more, is that correct?

02:30:07 17 Well, sorry, they were not able to
02:30:12 18 acquire more from the outposts that they had
02:30:15 19 captured, is that correct?

02:30:17 20 A. Yes.

02:30:22 21 Q. And during the siege Britain
02:30:25 22 controlled the supply to Pontiac and his allies
02:30:30 23 of trade goods, is that correct?

02:30:35 24 A. Yes, except to the extent that
02:30:37 25 they could be supplied through the Illinois

02:30:39 1 country.

02:31:06 2 Q. To the Royal Proclamation.

02:31:11 3 Before I go there, Your Honour, there
02:31:12 4 was a document I took the witness to earlier,
02:31:14 5 SC0657, which was the extract from Carver's
02:31:19 6 travels and I did not make that an exhibit but
02:31:22 7 would like to now.

02:31:29 8 This document here, Your Honour. May
02:31:32 9 I tender that, please?

02:31:35 10 THE COURT: Yes.

02:31:36 11 MR. OGDEN: Thank you.

02:31:38 12 THE REGISTRAR: Exhibit number 4069.

02:31:41 13 EXHIBIT NO. 4069: Extract from
02:31:42 14 Jonathan Carver's "Travels Through the
02:31:42 15 Interior Parts of North America".
02:31:42 16 Document SC0657.

02:31:50 17 BY MR. OGDEN:

02:31:50 18 Q. There are two maps I would like
02:31:51 19 to introduce as exhibits, SC0674 and SC0673.
02:32:30 20 These are each maps -- we'll give them
02:32:33 21 individual descriptions but they are each maps
02:32:35 22 of -- showing the boundary of the Royal
02:32:38 23 Proclamation.

02:32:40 24 And this one, 0673, is a page taken
02:32:43 25 from the report of J.P. Chartrand, who is a

02:32:53 1 witness that Ontario will tender as an expert;
02:32:55 2 and rather than put in his report as a lettered
02:32:58 3 exhibit we have an extract that we would like to
02:33:01 4 put in as a separate exhibit.

02:33:04 5 THE COURT: Well, you've completely
02:33:06 6 lost me, sir.

02:33:08 7 MR. OGDEN: Sorry, Your Honour.

02:33:10 8 THE COURT: You put up a map of which
02:33:12 9 we did nothing, and then you put up another map.
02:33:15 10 So what did you wish to do with the first map?

02:33:16 11 MR. OGDEN: The first map I will deal
02:33:16 12 with after I've done this, Your Honour.

02:33:20 13 THE COURT: You're going to do this
02:33:20 14 one first?

02:33:20 15 MR. OGDEN: Yes, Your Honour.

02:33:20 16 THE COURT: And is this the one that
02:33:22 17 is an extract from the expert report.

02:33:25 18 MR. OGDEN: Of J.P. Chartrand, yes.

02:33:27 19 THE COURT: All right. Be the next
02:33:28 20 exhibit, Mr. Registrar.

02:33:32 21 THE REGISTRAR: 4070.

02:33:34 22 EXHIBIT NO. 4070: Map extracted from
02:33:35 23 J.P. Chartrand's report. Document
02:33:35 24 0673.

02:33:38 25 MR. OGDEN: And the document 0674 is a

02:33:44
02:34:05
02:34:11
02:34:14
02:34:19
02:34:29
02:34:31
02:34:38
02:34:42
02:34:43
02:34:45
02:34:46
02:34:49
02:34:54
02:34:56
02:34:59
02:35:01
02:35:01
02:35:04
02:35:07
02:35:12
02:35:13
02:35:15
02:35:15
02:35:15

1 map of Royal Proclamation outline?
2 THE COURT: From?
3 MR. OGDEN: From Eccles' "France and
4 North America". For reference, this also
5 appears in volume 1 of Gwen Rymer's report that
6 Ontario is going to tender. The map does, but
7 this is not -- I apologize. As I see it now,
8 this is a page taken -- may I start again.
9 Sorry, Your Honour.
10 THE COURT: You don't need to, but you
11 should think about these things. This map is
12 not created by that expert. It is an excerpt
13 from a text. It's stated right on it where it
14 comes from and it can be the next exhibit,
15 Mr. Registrar.
16 THE REGISTRAR: 4071.
17 MR. OGDEN: Your Honour, the
18 highlighting was entered by the expert and
19 perhaps it would be more appropriate to describe
20 it as the page 147 taken from her report?
21 THE COURT: Please go ahead.
22 EXHIBIT NO. 4071: Royal proclamation
23 outline taken from William Eccles'
24 "France and North America". Document
25 0674.

02:35:18 1 BY MR. OGDEN:

02:35:18 2 Q. Page 31 of your report, sir, you
02:35:30 3 talk about the formulation of the report and you
02:35:34 4 say that it was clearly influenced by the events
02:35:39 5 in Pontiac's War, but you don't say how much of
02:35:43 6 the final version was influenced by those
02:35:46 7 events.

02:35:46 8 I would like to ask you to consider
02:35:53 9 some descriptions of those and of this drafting.

02:35:56 10 In footnote 41 on that page you refer
02:35:59 11 to Jack Sosin, who we went to yesterday, and you
02:36:04 12 describe it as a detailed account of the
02:36:06 13 drafting process. Is that -- that's your view
02:36:09 14 of Sosin?

02:36:11 15 A. I would describe it as a detailed
02:36:13 16 account of the politics surrounding drafting.

02:36:16 17 Q. Okay. Your Honour, we referred
02:36:18 18 to this but we did not -- or I did not ask that
02:36:21 19 it be exhibited so I would like to make it into
02:36:25 20 an exhibit.

02:36:26 21 THE COURT: What is it that you now
02:36:27 22 want to exhibit?

02:36:31 23 MR. OGDEN: Document SC0162.

02:36:32 24 THE COURT: No, no. We just marked
02:36:34 25 two maps. Do you have another map?

02:36:36 1 MR. OGDEN: No, Your Honour.

02:36:36 2 THE COURT: So what is it that you're

02:36:36 3 now --

02:36:36 4 MR. OGDEN: I'm taking the witness to

02:36:38 5 document SC1620.

02:36:41 6 THE COURT: So this is a new document?

02:36:43 7 MR. OGDEN: This is a new document.

02:37:01 8 THE COURT: And, again, is this a

02:37:02 9 different excerpt from the Sosin book?

02:37:05 10 MR. OGDEN: It is the excerpt I showed

02:37:06 11 the witness yesterday but did not tender as an

02:37:09 12 exhibit.

02:37:11 13 THE COURT: Well, I hope as we go

02:37:12 14 forward these exhibits are more carefully worked

02:37:16 15 with than that. It is an excerpt,

02:37:23 16 Mr. Registrar. What is the next exhibit?

02:37:27 17 THE REGISTRAR: 4072, Your Honour.

02:37:29 18 EXHIBIT NO. 4072: Extract from Jack

02:37:31 19 Sosin's "Whitehall and the

02:37:31 20 Wilderness". Document SC0162.

02:37:32 21 THE COURT: Please go ahead.

02:37:33 22 BY MR. OGDEN:

02:37:34 23 Q. Thank you. Page 31 of this PDF,

02:37:36 24 page 39 of the book. So that is on the

02:37:42 25 right-hand side.

02:37:56 1 And if you see half way down:

02:37:58 2 "It is important to recognize

02:38:04 3 that, contrary to usual

02:38:07 4 interpretation, the British Ministry

02:38:09 5 began considering the program later,

02:38:10 6 issued in the Proclamation, some

02:38:13 7 months before that consulted simply as

02:38:15 8 a matter of procedure the Earl of

02:38:17 9 Shelburne, thought to be the author of

02:38:19 10 the Proclamation and the other

02:38:21 11 Commissioners of Trade."

02:38:22 12 Do you accept that as accurate."

02:38:25 13 A. Yes.

02:38:25 14 Q. And then page 37 of the PDF, page

02:38:31 15 37 of the PDF, page 51 of the document:

02:38:45 16 "This letter written in January

02:38:51 17 1763 proves that the British Ministry

02:38:51 18 was forming the basic elements of the

02:38:53 19 Proclamation of 1763 some months

02:38:56 20 before the Earl of Shelburne, the man

02:39:00 21 traditionally thought responsible for

02:39:00 22 that document, came to office. From

02:39:02 23 the evidence noted, it is also clear

02:39:05 24 that the basic elements of the

02:39:06 25 Proclamation stem from the experiences

02:39:06 1 of Royal officers in America during
02:39:09 2 the war in their efforts to win and
02:39:11 3 hold the Indian alliances and to
02:39:13 4 maintain peace on the frontier."

02:39:16 5 The war that he is referring to is the
02:39:20 6 French and Indian war, is that correct? Not
02:39:25 7 Pontiac's War?

02:39:26 8 A. That's correct.

02:39:27 9 Q. And do you agree with -- do you
02:39:29 10 accept the statement as accurate?

02:39:33 11 A. Yes.

02:39:33 12 Q. And so the British Ministry
02:39:36 13 responsible for drafting the Royal Proclamation
02:39:38 14 was forming the basic elements of it months
02:39:42 15 before Pontiac's War?

02:39:43 16 A. Yes.

02:39:46 17 Q. PDF page 38, page 33 of the
02:39:57 18 document:

02:39:57 19 "The various components of the
02:40:06 20 program incorporated into the
02:40:07 21 Proclamation, at least those relating
02:40:09 22 to the North American interior, were
02:40:11 23 already in operation. But when the
02:40:13 24 definite Treaty of Paris confirmed
02:40:14 25 their attention by Great Britain of

02:40:17 1 Canada, Florida, the Ohio Valley, the
02:40:19 2 Ministers had to give legal sanction
02:40:21 3 to the ad hoc measures of the war."
02:40:23 4 Do you accept that as accurate?

02:40:26 5 A. Yes.

02:40:32 6 Q. And they are referring to the
02:40:33 7 issuance of the Proclamation? Is that correct?
02:40:36 8 In the giving ad hoc -- giving legal sanctions
02:40:44 9 to the ad hoc measures of the war refers to the
02:40:46 10 issuance of the sanctions?

02:40:48 11 A. Correct.

02:40:48 12 Q. The PDF page 66, page 107 of the
02:40:55 13 book.

02:40:55 14 "Covert and illegal violations of
02:41:06 15 the boundary by land speculators
02:41:06 16 created further difficulties. George
02:41:09 17 Washington and Thomas Walker of
02:41:12 18 Virginia and William Crawford of
02:41:13 19 Pennsylvania, among others, secretly
02:41:15 20 marked out lands on the Monongehela,
02:41:17 21 Green Briar and New Rivers in
02:41:21 22 violation of the Proclamation of 1763,
02:41:23 23 which Washington dismissed as 'merely
02:41:25 24 a temporary expedient to quiet the
02:41:30 25 minds of the Indians'."

02:41:32 1 And that's George Washington, the
02:41:35 2 first president of the United States, is that
02:41:37 3 correct?

02:41:38 4 A. Subsequently.

02:41:38 5 Q. Subsequently, not at that time.
02:41:40 6 And he had fought in the Ohio Valley against
02:41:40 7 Indian tribes in the French and Indian War, is
02:41:43 8 that correct?

02:41:44 9 A. Yes.

02:41:45 10 Q. And his view of the Proclamation
02:41:47 11 is -- we have no reason to doubt that that was
02:41:50 12 his view of the Proclamation?

02:41:53 13 A. No, that phrase comes from a
02:41:54 14 letter that he wrote.

02:41:55 15 Q. And was that the view of the
02:41:56 16 Proclamation commonly held among British
02:42:00 17 colonists at the time?

02:42:01 18 A. There were many British colonists
02:42:04 19 with an interest in western lands who hoped it
02:42:07 20 was true that the Proclamation line was a
02:42:11 21 temporary expedient.

02:42:21 22 Q. And who viewed it as a temporary
02:42:23 23 expedient, is that correct? Not just hoped but
02:42:26 24 also viewed it as a temporary expedient?

02:42:29 25 A. That's difficult for me to say.

02:42:32 1 Q. The Royal Proclamation was not
02:42:35 2 negotiated with First Nations, correct?

02:42:37 3 A. That's correct.

02:42:37 4 Q. And it was drafted under the
02:42:39 5 control and in preference of Britain?

02:42:42 6 A. That's correct.

02:42:48 7 Q. In your report, page 38, I'm
02:42:52 8 going to turn to it, please. This is Exhibit
02:43:02 9 4017, page 38, we start off:

02:43:08 10 "Scholars have vigorously debated
02:43:11 11 the meaning of the Proclamation of
02:43:13 12 1763."

02:43:14 13 And you refer to Robert A. Williams
02:43:16 14 and cite his book, "The American Indian in
02:43:18 15 Western Legal Thought: The Discourses of
02:43:22 16 Conquest". And I ask you, is this a well
02:43:25 17 respected and major work in the field?

02:43:29 18 A. It's --

02:43:32 19 Q. I'm sorry. In the field
02:43:34 20 described by the words "The American Indian in
02:43:37 21 Western Legal Thought"?

02:43:39 22 A. It's an older work but I think
02:43:41 23 it's fair to call it well respected.

02:43:45 24 Q. On Monday you were asked -- well,
02:43:47 25 you've been careful in your choice of words,

02:43:51 1 haven't you, when you've been responding to
02:43:52 2 questions?
02:43:54 3 A. I try to be.
02:43:55 4 Q. Very careful?
02:43:58 5 A. As much as possible.
02:43:59 6 Q. As much as possible. And you
02:44:00 7 were asked by plaintiff's counsel, Is there a
02:44:05 8 scholarly consensus that there was a treaty of
02:44:08 9 Niagara? And you were careful in choosing your
02:44:11 10 reply to that, I take it?

02:44:13 11 A. Yes.

02:44:22 12 Q. And you said it was a scholarly
02:44:24 13 consensus on the subject that there was a Treaty
02:44:26 14 at Niagara rather than a Treaty of Niagara, are
02:44:29 15 the words that you used.

02:44:31 16 So I ask you, did you say this because
02:44:33 17 there was no scholarly consensus that there is
02:44:36 18 something called a "Treaty of Niagara"?

02:44:39 19 A. That was not in my mind when I
02:44:42 20 chose those words.

02:44:52 21 Q. Page 38 of your report, again the
02:44:55 22 paragraph at the bottom of the page says:

02:44:59 23 "In general these readings share
02:45:04 24 in common the tendency to read the
02:45:06 25 language of the Proclamation in a

02:45:07 1 vacuum. "

02:45:07 2 And for context you're referring to
02:45:10 3 the readings above, saying that the Proclamation
02:45:14 4 is limited in its effect to colonists. Is that
02:45:22 5 a fair description?

02:45:23 6 A. I'm sorry, how did you describe
02:45:24 7 it?

02:45:25 8 Q. Limited in its effect to
02:45:25 9 colonists. We could say limited in its legal
02:45:32 10 effects to colonists, is the view ascribed to it
02:45:36 11 by the scholars, at least set out above on page
02:45:39 12 38?

02:45:48 13 A. I don't think that's how I would
02:45:50 14 characterize the Dowd quote that I've included
02:45:52 15 here.

02:45:55 16 Q. Well, in any event, the readings
02:45:58 17 you're talking about are the readings that are
02:46:00 18 set out in the page above?

02:46:03 19 A. Yes.

02:46:04 20 Q. "In general these readings share
02:46:07 21 in common the tendency to read the
02:46:07 22 language of the Proclamation in a
02:46:09 23 vacuum without reference to the events
02:46:11 24 that made it necessary to establish
02:46:11 25 this context.

02:46:14 1 Other scholars, paying more
02:46:15 2 attention to that context, have
02:46:18 3 suggested that the Proclamation
02:46:20 4 represents a kind of Bill of Rights
02:46:22 5 for Indian Nations and for other
02:46:23 6 scholars."

02:46:29 7 On the next page you cite, in the
02:46:31 8 footnote on one page one scholar and three
02:46:36 9 articles, and that is Professor John Borrows,
02:46:37 10 isn't it?

02:46:39 11 A. Yes.

02:46:40 12 Q. And to your knowledge he is a
02:46:43 13 jurist, highly respected in this field, is that
02:46:46 14 correct? To your knowledge?

02:46:48 15 A. Yes.

02:46:49 16 Q. And he is not known widely as an
02:46:51 17 historian in your field, in the history of
02:46:54 18 colonial diplomatic relations?

02:46:57 19 A. That's true.

02:47:02 20 Q. And then on to page 39 onto the
02:47:05 21 top please:

02:47:14 22 "The Royal Proclamation of 1763,
02:47:17 23 in other words, can only be properly
02:47:19 24 understood when it is read in
02:47:20 25 conjunction with the proceedings and

02:47:22 1 agreements at Niagara in the following
02:47:24 2 year, and its intention was enacted by
02:47:28 3 William Johnson acting in his capacity
02:47:30 4 as an agent for the Crown."

02:47:32 5 And here you're describing John
02:47:34 6 Borrows' view of the Royal Proclamation, is that
02:47:37 7 right?

02:47:38 8 A. That's correct.

02:47:38 9 Q. And you were asked on Monday
02:47:41 10 whether you have a view about the Royal
02:47:41 11 Proclamation and whether it was read at Niagara,
02:47:45 12 and you said you do not have a view?

02:47:47 13 A. Correct.

02:47:48 14 Q. But to your knowledge there's no
02:47:50 15 documentary evidence from the minutes of the
02:47:52 16 Congress, or in correspondence immediately after
02:47:55 17 the Congress that the Royal Proclamation was
02:47:58 18 read, is that correct?

02:47:59 19 A. Correct.

02:48:08 20 Q. And then you say in your report:
02:48:09 21 "The great virtue of this
02:48:11 22 approach is to place [...]" this is
02:48:13 23 Borrows' approach, "[...] is to place
02:48:15 24 the Proclamation in its historical
02:48:18 25 context rather than reading its

02:48:19 1 language in a vacuum."

02:48:21 2 So you mention the great virtue of it.

02:48:24 3 Are there down sides to this approach?

02:48:28 4 A. I find it a more persuasive
02:48:32 5 approach than decontextualizing the document and
02:48:35 6 reading it without reference to events.

02:48:39 7 Q. Are there down sides to the
02:48:41 8 approach?

02:48:50 9 A. That's an interesting question.
02:48:51 10 None that come to mind for me at the moment.

02:49:01 11 Q. Now, I asked you a question
02:49:03 12 yesterday about direct financial and other
02:49:05 13 interests of an historian in history. And my
02:49:08 14 question was general and I apologize if I was
02:49:12 15 being obtuse, but I'll try and be direct now and
02:49:15 16 specific.

02:49:15 17 When you wrote this report you were
02:49:18 18 aware, weren't you, that Professor Borrows was a
02:49:22 19 member of the Chippewas of Nawash unceded First
02:49:25 20 Nation, which is one of the plaintiffs in this
02:49:27 21 litigation?

02:49:28 22 A. Yes.

02:49:28 23 Q. So you were aware, therefore,
02:49:29 24 that he stood to benefit directly in terms of
02:49:34 25 both the Aboriginal title right claimed and

02:49:36 1 money compensation if this litigation is
02:49:38 2 successful, wouldn't he?

02:49:42 3 A. To be entirely honest that
02:49:44 4 consideration did not occur to me.

02:49:47 5 Q. It did not occur to you that this
02:49:49 6 was something the Court should be aware of when
02:49:52 7 it considers the alternative approach to the
02:49:56 8 Royal Proclamation, which is advanced by,
02:50:00 9 according to your citations, Professor Borrows?

02:50:11 10 A. It's not for me to say, you know,
02:50:13 11 whether that's a consideration that the Court
02:50:15 12 should take under advisement or not.

02:50:17 13 Q. Well, you prepared a report
02:50:18 14 that's information for the Court but you chose
02:50:20 15 not to put that information in, is that correct?

02:50:23 16 A. That's correct.

02:50:30 17 Q. The Niagara conference, you
02:50:32 18 mentioned yesterday that Pontiac did not attend
02:50:36 19 and Wabbicommicot did not attend either? Is
02:50:39 20 that correct?

02:50:40 21 A. That's correct.

02:50:41 22 Q. And he represented the Toronto
02:50:43 23 Mississaugas, is that correct?

02:50:45 24 A. Yes.

02:50:45 25 Q. And Pottawatomies from Detroit

02:50:48 1 who participated in the siege did not attend
02:50:50 2 either, is that correct?

02:50:52 3 A. That is correct.

02:50:59 4 Q. Page 35 now of your report,
02:51:00 5 please, and you have a quote there. And could I
02:51:29 6 also ask that Exhibit 0623 be brought up,
02:51:32 7 please?

02:51:33 8 This is a document from the pages of
02:51:47 9 William Johnson. And if we go to page 33 of the
02:51:56 10 PDF please, page 309 of the papers. And if you
02:52:05 11 go down, please. You have included in your
02:52:19 12 report the quote, the second paragraph:

02:52:22 13 "I now therefore present to you
02:52:24 14 the great belt."

02:52:30 15 Is that correct?

02:52:30 16 A. Yes.

02:52:32 17 Q. So the words above that, which
02:52:33 18 you did not include, I will read:

02:52:34 19 "You have now been here for
02:52:36 20 several days during which time we have
02:52:38 21 frequently met to renew and strengthen
02:52:40 22 our engagements, and you have made so
02:52:43 23 many promises of your friendship and
02:52:44 24 attachment to the English that there
02:52:45 25 now only remains for us to exchange

02:52:48 1 the great belt of the covenant chain
02:52:50 2 that we may not forget our mutual
02:52:53 3 engagements."

02:52:55 4 So there Johnson is talking about an
02:52:57 5 existing alliance, isn't he?

02:52:59 6 A. Well, we talked about this
02:53:01 7 previously I think; I can't remember if it was
02:53:05 8 yesterday or Monday. But what occurred during
02:53:10 9 the course of the meetings at Niagara is that
02:53:11 10 all of the First Nations spokespeople disclaimed
02:53:17 11 any knowledge or responsibility for the attacks.

02:53:20 12 It was not Johnson's view, going into
02:53:23 13 the Niagara meeting, that nobody would be there
02:53:25 14 that had any involvement in the attacks; but
02:53:29 15 because he could not -- he could not solicit any
02:53:38 16 information about the attacks from anybody who
02:53:40 17 was there, at this stage in the conference
02:53:45 18 proceedings he stepped back from that stated
02:53:50 19 wish to identify and punish those First Nations
02:53:55 20 that had participated in the attacks and he
02:53:58 21 talks about renewing the covenant chain.

02:54:01 22 The question of whether it had been
02:54:03 23 broken is, you know, I think is a complicated
02:54:08 24 one.

02:54:09 25 There were also First Nations present

02:54:10 1 at Niagara who had never before treated with
02:54:13 2 William Johnson.

02:54:14 3 Q. And so the belt that he's
02:54:16 4 referring to there, rhetorically at least, he's
02:54:19 5 referring that the belt commemorates and
02:54:24 6 enforces the existing alliance? The belt is
02:54:30 7 related to the existing alliance, is that
02:54:31 8 correct?

02:54:33 9 A. I think the belt is an extension
02:54:34 10 of the existing alliance.

02:54:37 11 The belt is a gesture that has never
02:54:40 12 before been made by Johnson.

02:54:51 13 Q. Could I take you to Exhibit 640,
02:54:54 14 apologies, which you also rely on in your -- on
02:55:02 15 this page of your report.

02:55:03 16 This is also from "The Papers of Sir
02:55:08 17 William Johnson". And go -- this is a letter to
02:55:22 18 Thomas Gage, who was the military commander of
02:55:25 19 the British in North America, to him from
02:55:29 20 William Johnson, August 22nd, 1764, after the
02:55:33 21 Niagara congress.

02:56:02 22 And on page 36 of your report you
02:56:04 23 include an extract from here. And that extract
02:56:07 24 starts with the words:

02:56:11 25 "[...] from the representation

02:56:12 1 made to me."

02:56:14 2 Is that correct?

02:56:15 3 A. Yes.

02:56:15 4 Q. And so what I'd like to do is

02:56:18 5 read the entire section of this letter please.

02:56:23 6 It starts, in fact, with:

02:56:25 7 "I herewith enclose you copies of

02:56:28 8 the Treaties of Peace with the Hurons

02:56:30 9 of Detroit and the Chenussios [...]"

02:56:33 10 Who were Senecas, is that right?

02:56:35 11 A. That's right.

02:56:35 12 Q. "[...] the rest of the Indians

02:56:37 13 who attended from the representation

02:56:38 14 made to me not having been concerned

02:56:40 15 in the war."

02:56:53 16 So Johnson is not describing whatever

02:56:56 17 arrangement he made with those communities who

02:56:58 18 represented that they were not involved in the

02:56:59 19 war, he's not describing that as a Peace Treaty,

02:57:01 20 is he?

02:57:02 21 A. He's not.

02:57:11 22 Q. And Johnson at Niagara did not

02:57:14 23 consider himself to be speaking from a position

02:57:17 24 of military weakness, did he?

02:57:26 25 A. Well, that's an interesting

02:57:28 1 question. I mean, I think if you read his
02:57:30 2 correspondence with Gage and others in this
02:57:34 3 period one of the things that he's at pains to
02:57:36 4 express is precisely the fact that it would be
02:57:40 5 an enormous and undesirable military undertaking
02:57:42 6 to try to impose on the First Nations of the
02:57:47 7 Great Lakes by force. That's a repeated theme
02:57:50 8 in his correspondence.

02:57:56 9 MS. PELLETIER: Your Honour, these
02:57:58 10 matters were covered in cross-examination by
02:58:01 11 Canada yesterday so we seem to be going over the
02:58:05 12 same material.

02:58:08 13 THE COURT: Your response to that,
02:58:09 14 counsel?

02:58:10 15 MR. OGDEN: Well, I don't know that
02:58:11 16 the question of Johnson's view as to his
02:58:15 17 military position was covered, but I can ask a
02:58:21 18 different question because the witness is not
02:58:23 19 sure he's able to provide an answer in any
02:58:26 20 event.

02:58:26 21 THE COURT: Well, he answered the
02:58:27 22 question. And I -- if I missed you standing up,
02:58:32 23 counsel, I apologize for that.

02:58:34 24 I'm sure you're taking care not to
02:58:36 25 repeat any cross-examination.

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MR. OGDEN: I am, Your Honour.

THE COURT: And if you could bear that in mind as you go forward.

MR. OGDEN: Yes, Your Honour.

BY MR. OGDEN:

Q. At Niagara Johnson had with him Colonel Bradstreet and several hundred regular soldiers, is that correct?

A. Yes.

Q. And he also had with him, in support of him, several hundred Six Nations warriors, is that correct?

A. Yes.

Q. And they were there to impress upon the other First Nations the military capacity of the British and their allies, is that correct?

A. It's a reasonable inference.

Q. So at the Treaty of Niagara, and you describe that at the Treaty of Niagara, page 29 of your report, this is how you describe it:

"[...] most were happy to agree to the terms offered by Johnson at Fort Niagara."

Page 29. So these were terms offered

02:59:44 1 by Johnson not terms offered by the First
02:59:46 2 Nations, is that correct?

02:59:47 3 A. That's correct.

02:59:48 4 Q. And it is not accurate to say
02:59:49 5 that the First Nations set the terms?

02:59:54 6 A. I would say that the First
02:59:54 7 Nations influenced the terms. If you read the
02:59:57 8 correspondence between Johnson and Gage, prior
02:59:59 9 to this event, they are both agreeing that the
03:00:05 10 strategy Johnson should pursue at Niagara is to
03:00:09 11 essentially divide the First Nations who are
03:00:13 12 assembled as much as possible, deal with them
03:00:17 13 individually and avoid one comprehensive Treaty.

03:00:20 14 But in the outcome of the conference,
03:00:24 15 as we've discussed, what ends up resulting is
03:00:27 16 one comprehensive Treaty with all of the western
03:00:31 17 nations, except the Chenussio Senecas and the
03:00:38 18 Hurons of Detroit.

03:00:40 19 So in that sense I think that First
03:00:41 20 Nations' spokespeople, representatives at
03:00:44 21 Niagara significantly influenced the outcome.

03:00:52 22 Q. Exhibit 0623 now, please. This
03:01:09 23 is PDF page 3. This is an additional extract
03:01:15 24 from the Johnson papers. To the bottom of the
03:01:19 25 page, please.

03:01:24 1 This is Johnson -- this is dated --
03:01:33 2 well, 17 July to August 4, 1764, so it's a
03:01:38 3 record of some of what was said at the Niagara
03:01:42 4 Congress, is that correct?

03:01:43 5 A. Yes.

03:01:43 6 MR. OGDEN: And, Your Honour, I do not
03:01:50 7 recall this being covered in cross-examination
03:01:52 8 previously.

03:01:53 9 THE COURT: You don't have to make
03:01:54 10 that disclaimer, sir. Just do your best and I'm
03:01:57 11 sure counsel for the plaintiff will stand up if
03:02:00 12 she thinks you've crossed the line.

03:02:02 13 MR. OGDEN: Thank you.

03:02:03 14 BY MR. OGDEN:

03:02:03 15 Q. Johnson is speaking here:

03:02:06 16 "Brethren, how blind must these
03:02:08 17 people have been if they imagined that
03:02:08 18 a few troublesome drunken people could
03:02:10 19 shake so strong a nation as the
03:02:13 20 English, conquer the French and all
03:02:15 21 their allies who could support or give
03:02:18 22 them succor? Have not we every door
03:02:22 23 in this country?"

03:02:23 24 And when he is referring to "every
03:02:26 25 door in this country" he is making -- he is

03:02:31 1 stating that the English control the access
03:02:32 2 points to the country, is that right?

03:02:35 3 A. That's my understanding of the
03:02:36 4 metaphor.

03:02:37 5 Q. The next exhibit is Exhibit 0612,
03:02:46 6 again from "The Papers of Sir William Johnson",
03:02:48 7 and again at Niagara, page 11 of the PDF, page
03:02:56 8 474 of the Johnson papers.

03:03:30 9 This is, again, a record of the
03:03:31 10 congress at Niagara, is that your understanding?
03:03:35 11 Do you recognize this?

03:03:36 12 A. I accept your representation of
03:03:39 13 it in that manner.

03:03:41 14 THE COURT: Can you go to the bottom
03:03:42 15 of that page for a moment, please? There was a
03:03:47 16 number there. Is that a Bates number there at
03:03:51 17 the bottom?

03:03:52 18 MR. OGDEN: Yes.

03:03:56 19 THE COURT: A six-digit number. And
03:03:56 20 then at the top we have what? The publication?

03:04:01 21 MR. OGDEN: Correct.

03:04:01 22 THE COURT: All right. Thank you.

03:04:08 23 BY MR. OGDEN:

03:04:08 24 Q. Again Johnson is speaking to the
03:04:10 25 assembled First Nations brethren. And then half

03:04:17 1 way down in this quote:

03:04:20 2 "[...] what you suffer by this
03:04:22 3 prohibition should convince you of the
03:04:22 4 old consequences of quarreling with
03:04:22 5 the English who command all the doors
03:04:26 6 into your country and without whose
03:04:28 7 consent you can receive no supplies as
03:04:31 8 we shall never suffer any goods to be
03:04:31 9 transported into the country."

03:04:37 10 Again, he's talking about commanding
03:04:39 11 all the doors, and that is also a statement from
03:04:40 12 him that the English control the access points,
03:04:43 13 is that correct?

03:04:46 14 A. Yes, I think so. Although I'm
03:04:47 15 struggling with the context of this particular
03:04:50 16 quote.

03:04:54 17 Q. So there was present there, there
03:04:57 18 was a meeting.

03:05:02 19 A. Yes, I think the reference to the
03:05:03 20 doors is the same reference that we saw in the
03:05:04 21 previous document.

03:05:06 22 Q. Okay.

03:05:13 23 Now, you said yesterday, I believe --
03:05:15 24 and perhaps on Monday in-chief, that First
03:05:19 25 Nations changed their goal during the siege

03:05:23 1 from -- or some at least changed the goal from
03:05:28 2 exclusion of British to controlling the terms of
03:05:32 3 British re-entry to the posts, is that correct?

03:05:36 4 A. That's my view, yes.

03:05:38 5 Q. And when did they -- when did
03:05:42 6 this change occur?

03:05:43 7 A. Well, I think it occurred over
03:05:46 8 the course of the summer as it became
03:05:52 9 increasingly clear that a French restoration was
03:05:56 10 unlikely and then impossible.

03:06:00 11 Q. In July say?

03:06:02 12 A. You know, I'm sure that there
03:06:03 13 were people beginning to think about this in
03:06:08 14 July, but I don't have any direct evidence other
03:06:11 15 than the, you know, the initial contact that
03:06:15 16 Pontiac made with Gladwin in July.

03:06:18 17 Q. And this change in goal from
03:06:20 18 exclusion to controlling the terms of re-entry
03:06:25 19 occurred because the First Nations believed, or
03:06:30 20 knew at that time, that they could not exclude
03:06:34 21 the British, is that correct?

03:06:38 22 A. I think that's a fair statement,
03:06:39 23 yes. I think both First Nations and British,
03:06:44 24 both parties to the war of -- to Pontiac's War,
03:06:46 25 to the various engagements described under that

03:06:50 1 term, came to the conclusion during the course
03:06:53 2 of the summer of 1763 that their conflict was
03:06:57 3 ruinous and neither wanted to maintain it.

03:07:09 4 Q. This morning we talked about the
03:07:11 5 schooner Gladwin and noted, with your
03:07:14 6 acceptance, that it did go to Michilimackinac in
03:07:16 7 1764, and that this was the vessel at the Fort
03:07:18 8 in 1763. Do you know when it arrived at the
03:07:22 9 Fort first? When the Gladwin schooner first
03:07:25 10 arrived at --

03:07:27 11 A. At Detroit.

03:07:27 12 Q. -- at Detroit?

03:07:29 13 A. No, I don't.

03:07:30 14 Q. Do you accept that it was
03:07:31 15 there -- or at the start of 1763?

03:07:37 16 A. Yes.

03:07:47 17 Q. Your evidence, at least in your
03:07:48 18 report, and I'll give you the pages for it, it's
03:07:52 19 48. There's a quote:

03:08:05 20 "In 1763 Anishinaabe peoples
03:08:08 21 controlled all the access points to
03:08:09 22 Lake Huron and Georgian Bay."

03:08:21 23 Do you have that?

03:08:21 24 A. Yes.

03:08:22 25 Q. So you say in general terms in

03:08:23 1 1763, but given the evidence you've given today
03:08:27 2 and otherwise, you don't mean for all of 1763
03:08:32 3 Anishinaabe peoples controlled all the access
03:08:33 4 points to Lake Huron, do you?

03:08:36 5 A. Yes, but I should say what I
03:08:40 6 intend by the passage, the reference to the St.
03:08:43 7 Clair River, is talking about the point in the
03:08:45 8 river north of Detroit where British naval power
03:08:49 9 had not yet penetrated.

03:08:59 10 Q. Well, what about the date
03:09:01 11 question of my --

03:09:01 12 A. You're referring --

03:09:01 13 Q. You're not referring to the whole
03:09:03 14 of 1763 are you? That the control was for the
03:09:06 15 whole of 1763? In 1763 Anishinaabe peoples
03:09:14 16 controlled all the access points?

03:09:16 17 A. Yeah. I did not mean December
03:09:18 18 31st, 1763. Although the British had not yet
03:09:24 19 breached the -- had not yet sailed the schooner,
03:09:29 20 that schooner into Lake Huron in 1763.

03:09:33 21 But, yes, by the terms of the
03:09:39 22 surrender at Fort -- at the Fort of Detroit
03:09:41 23 effectively the British regained access to that
03:09:50 24 waterway at that point, regained uncontested
03:09:55 25 access.

03:09:56 1 Q. Which they held until the siege
03:10:02 2 in 1763?

03:10:03 3 A. Which they held until the siege?

03:10:06 4 Q. Yes. That's my question to you.
03:10:07 5 You said that the British regained uncontested
03:10:10 6 access.

03:10:11 7 A. I mean at the end of the siege.

03:10:13 8 Q. Oh, at the end of the siege?

03:10:14 9 A. The contestation of that access
03:10:16 10 was once again lifted, the contestation of that.

03:10:28 11 So in this sentence, in 1763, I meant
03:10:30 12 to be describing the period in 1763 when Detroit
03:10:36 13 was under siege.

03:10:37 14 Q. And it was the siege then that
03:10:38 15 prevented the British access?

03:10:44 16 A. I do not -- I would not make that
03:10:47 17 claim.

03:10:48 18 Q. Does that not follow from what
03:10:50 19 you're saying about the British obtaining access
03:10:52 20 late in 1763 that, as we've just said, that they
03:10:55 21 didn't have it earlier because of the siege? So
03:10:58 22 was it not the siege that prevented them from
03:11:00 23 having access?

03:11:01 24 A. Yes.

03:11:02 25 Q. So before the siege they had

03:11:03 1 access, didn't they?

03:11:04 2 A. Yes. Oh yes, they had.

03:11:06 3 Q. And they had --

03:11:07 4 A. At Forts throughout the Great
03:11:10 5 Lakes region.

03:11:18 6 Q. And they could not be excluded at
03:11:20 7 that point prior to the siege?

03:11:27 8 A. I believe it's fair to say there
03:11:29 9 was no effort to exclude them before that point.

03:12:03 10 Q. If the effort had been made prior
03:12:07 11 to May 1763 would the result have been different
03:12:16 12 in terms of the siege and the British having
03:12:20 13 access to the Great Lakes at the end of the
03:12:22 14 siege?

03:12:25 15 A. I cannot say.

03:12:40 16 Q. Your Honour, those are my
03:12:41 17 questions.

03:12:42 18 THE COURT: Thank you, counsel.

03:12:48 19 Re-examination?

03:13:13 20 MR. EVANS: It will take me a minute
03:13:14 21 or two to line up the documents and I'm happy to
03:13:16 22 do that, but I also see that we're almost 15
03:13:20 23 minutes away from the usual time we take the
03:13:22 24 break, so either works for me.

03:13:25 25 THE COURT: We'll take a 15-minute

03:13:26 1 break now.

03:13:27 2 -- RECESSED AT 3:13 P.M. --

03:13:27 3 -- RESUMED AT 3:31 P.M. --

03:32:09 4 THE COURT: Please go ahead,

03:32:11 5 Mr. Evans.

03:32:12 6 MR. EVANS: Thank you, Your Honour.

03:32:12 7 RE-EXAMINATION BY MR. EVANS:

03:32:14 8 Q. Dr. Hinderaker, there were four

03:32:15 9 questions put to you by Mr. Ogden that I would

03:32:18 10 like to follow up with you.

03:32:20 11 The first was put to you yesterday so

03:32:22 12 I have the excerpt from the transcript that we

03:32:25 13 can go to. Can we go to PDF 2?

03:32:30 14 And I've highlighted all the exhibits

03:32:40 15 that we're going to see, so that's my work and

03:32:43 16 not reflected in the original source.

03:32:46 17 THE COURT: You mean the passage in

03:32:47 18 this document?

03:32:49 19 MR. EVANS: Yes.

03:33:05 20 THE COURT: You have completely lost

03:33:06 21 me. Are you going to different passages?

03:33:12 22 MR. EVANS: I have an excerpt from the

03:33:13 23 transcript where --

03:33:15 24 THE COURT: But it's gone.

03:33:16 25 MR. EVANS: It's not on your screen?

03:33:18 1 THE COURT: Well, it's rolling around.
03:33:32 2 Our people here do the very best they can, this
03:33:34 3 is a rough transcript, it has not been checked
03:33:38 4 so bear that in mind.

03:33:41 5 MR. EVANS: Thank you, Your Honour.

03:33:42 6 THE COURT: Please go ahead.

03:33:44 7 BY MR. EVANS:

03:33:44 8 Q. Mr. Ogden brought up Exhibit No.
03:33:46 9 472, which is George Croghan's journal from I
03:33:50 10 think April 3rd to 30th, 1760. And if you could
03:34:04 11 go to PDF page 4 of the transcript? And now
03:34:08 12 here is the question that Mr. Ogden put to you:

03:34:13 13 "QUESTION: Down then to PDF page 79,
03:34:16 14 page 388 of the journal. PDF page 79.
03:34:20 15 I'm sorry. And this is a continuation
03:34:23 16 after October 20th, after the
03:34:25 17 paragraph that I just read, and this
03:34:27 18 describes, as far as you're, aware
03:34:30 19 Croghan and Rogers travelling west
03:34:32 20 along the south shore of Lake Erie
03:34:33 21 towards Detroit, is that correct?

03:34:36 22 You can take a moment to [...]"

03:34:38 23 And then there's an exchange with Her
03:34:41 24 Honour. Carry on to the next page.

03:34:47 25 Dr. Hinderaker said:

03:34:49 1 "ANSWER: Yes, that appears to be the
03:34:50 2 point in the journal where we're at.

03:34:55 3 "QUESTION: On the left-hand side you
03:34:56 4 see the words, 'We reembarked', I'm
03:34:58 5 going to read that to you."

03:35:00 6 And then the passage from the journal
03:35:03 7 is as followed:

03:35:04 8 "We re-embarked and sailed
03:35:06 9 several leagues further and after we
03:35:08 10 had encamped I called a council of all
03:35:11 11 the Indians and acquainted them of the
03:35:13 12 reduction of Montreal that we were
03:35:14 13 going to take possession of, Fort
03:35:18 14 Detroit, Michilimackinac and Fort St.
03:35:20 15 Joseph and take defence garrisons away
03:35:23 16 and garrison them with forts with
03:35:25 17 English troops."

03:35:27 18 And now the question is:

03:35:29 19 "QUESTION: And in this description
03:35:30 20 that Croghan gives of what he said, he
03:35:35 21 doesn't give permission [...]"

03:35:36 22 I think he means to say he doesn't ask
03:35:41 23 permission.

03:35:41 24 "[...] of the assembled First
03:35:43 25 Nation individuals to take possession

03:35:45 1 of the Fort, does he?"

03:35:49 2 "ANSWER: No, he doesn't.

03:35:52 3 "QUESTION: He is just informing them

03:35:54 4 of what was going on to happen

03:35:56 5 according to him?

03:35:58 6 "ANSWER: Correct."

03:35:59 7 So if we could go to Exhibit 472,

03:36:01 8 page -- PDF page 79, please? So,

03:36:14 9 Dr. Hinderaker, you were saying you had some

03:36:17 10 difficulty yesterday because you were being

03:36:20 11 brought to passages without understanding the

03:36:21 12 context of where they were coming from and that

03:36:23 13 was causing you difficulty of giving accurate

03:36:27 14 answers.

03:36:28 15 So are you aware of the moment that

03:36:32 16 we're up right now in Croghan's journal?

03:36:36 17 A. I can see more clearly what --

03:36:39 18 where we are now than I could yesterday, yes.

03:36:41 19 THE COURT: What page are we on?

03:36:44 20 MR. EVANS: We are on PDF image --

03:36:46 21 THE COURT: No. What page are we on?

03:36:48 22 MR. EVANS: We are on page 388 of

03:36:51 23 Exhibit 472.

03:36:54 24 BY MR. EVANS:

03:36:54 25 Q. So the excerpt highlighted in

03:36:56 1 yellow is the one I just read to you and
03:36:58 2 Mr. Ogden put to you. And then later in the
03:37:11 3 sentence there's a passage that Mr. Ogden didn't
03:37:11 4 put to you, and there's a number of things that
03:37:11 5 follow that I'd also like you to see.

03:37:11 6 So later in the sentence Croghan says:

03:37:14 7 "[...] and assured them by a belt
03:37:16 8 of wampum that all Nations of Indians
03:37:19 9 should enjoy a free trade with their
03:37:22 10 brethren the English and be protected
03:37:24 11 in peaceable possession of their
03:37:26 12 hunting country as long as they would
03:37:28 13 adhere to his Majesty's interest. In
03:37:31 14 the evening the Indians came to my
03:37:33 15 fire in a body and made several
03:37:35 16 speeches in all which they expressed
03:37:38 17 their satisfaction in exchanging their
03:37:41 18 fathers the French for their brethren
03:37:43 19 the English as they were well assured
03:37:45 20 the English were better able to supply
03:37:48 21 them with all manner of necessities
03:37:50 22 than the French."

03:37:52 23 And then there is a reference to the
03:37:58 24 French which we can skip. Then the paragraph
03:38:00 25 ends:

03:38:01 1 "[...] all of which they
03:38:02 2 confirmed by several belts and strings
03:38:04 3 of wampum. Then their principal man
03:38:10 4 took a large belt of wampum and said
03:38:12 5 that he had not long to live and
03:38:15 6 pointing at two men added, 'Those I
03:38:18 7 have chosen to transact the business
03:38:20 8 of my tribe. With them you confirm
03:38:21 9 the peace last year at Pittsburg. I
03:38:21 10 know recommend them to you and beg you
03:38:23 11 may take notice of them.'"

03:38:24 12 And if we can go to the next page.

03:38:31 13 "The speaker then took hold of
03:38:33 14 the pipe of peace belonging to the
03:38:35 15 Nation and spoke as follows:
03:38:36 16 'Brother, to confirm the truth of all
03:38:39 17 we have said, I give you this pipe of
03:38:40 18 peace which is known to all Nations
03:38:42 19 living in this country that you may
03:38:45 20 smoke in peace with them and then
03:38:48 21 delivered it. Their principal men
03:38:48 22 requested that a little powder, lead
03:38:48 23 and flour might be allowed their young
03:38:48 24 men that stayed there to enable them
03:38:48 25 to hunt for the support of their

03:38:57 1 families as their Chiefs had agreed to
03:38:59 2 accompany us to Detroit, for which I
03:39:01 3 applied to Major Rogers, who
03:39:03 4 cheerfully ordered it to me as I had
03:39:06 5 informed him it was necessary for the
03:39:08 6 good of His Majesty's Indian
03:39:10 7 interests."

03:39:10 8 Now, the question Mr. Ogden put to you
03:39:12 9 was, after reading the excerpt highlighted in
03:39:16 10 yellow, whether Croghan was telling the Indians
03:39:20 11 that he was taking possession of the Forts
03:39:22 12 without their permission.

03:39:24 13 Having read the passages in green
03:39:26 14 would you like to revisit the answer you gave?

03:39:29 15 THE COURT: Well, that is not a
03:39:30 16 proper -- Mr. Ogden is properly on his feet.

03:39:33 17 MR. EVANS: All right.

03:39:34 18 THE COURT: It is not the right
03:39:35 19 formulation of a question. I'm not saying that
03:39:38 20 there is not a proper question available to you.

03:39:40 21 MR. EVANS: All right. I apologize
03:39:42 22 Your Honour. If we could back up to the
03:39:43 23 previous --

03:39:44 24 THE COURT: Mr. Ogden is sitting down
03:39:46 25 without speaking.

03:39:48 1 MR. OGDEN: Well, in addition, Your
03:39:49 2 Honour, the question I put to the witness was
03:39:51 3 whether the passage that I put to him contained
03:40:00 4 Croghan asking for permission. The question is
03:40:02 5 directed to that passage.

03:40:02 6 THE COURT: Yes it was. I would still
03:40:04 7 permit a proper reply question.

03:40:06 8 MR. OGDEN: Thank you, Your Honour.

03:40:07 9 THE COURT: But that wasn't one.

03:40:11 10 BY MR. EVANS:

03:40:11 11 Q. All right. If we could go to the
03:40:12 12 previous page.

03:40:15 13 THE COURT: If you want to have a
03:40:16 14 quick word with your co-council about how these
03:40:19 15 questions have to be formulated I would permit
03:40:22 16 that.

03:40:22 17 MR. EVANS: I'll take a shot at it,
03:40:24 18 subject to your direction.

03:40:26 19 BY MR. EVANS:

03:40:26 20 Q. So after the passage in which he
03:40:31 21 says he is taking possession of the Forts,
03:40:33 22 there's a passage in green where he gives them a
03:40:37 23 belt of wampum and says that they should enjoy
03:40:41 24 free trade and be protected in peaceful
03:40:44 25 possession of their hunting country as long as

03:40:53 1 they would adhere to His Majesty's interests.

03:40:53 2 And then the Indians go on to say:

03:40:56 3 "[...] their satisfaction in
03:40:58 4 exchanging their fathers the French
03:41:00 5 for their brethren the English as they
03:41:01 6 were well assured the English were
03:41:04 7 better able to supply them with all
03:41:06 8 manner of necessaries (sic) than the
03:41:09 9 French."

03:41:10 10 So would the First Nation people that
03:41:19 11 Croghan was speaking to have understood him to
03:41:21 12 be saying --

03:41:24 13 THE COURT: Sir, and I don't want this
03:41:25 14 trial to be impaired by formalities, it's not a
03:41:30 15 formality. It's just that I have said this at
03:41:33 16 least once in this trial, I will say it again,
03:41:35 17 which is that reply is about explanation or
03:41:38 18 clarification, that's it. All right? So think
03:41:41 19 of those the types of questions and we'll see if
03:41:46 20 we can get through it.

03:41:47 21 MR. EVANS: All right.

03:41:47 22 BY MR. EVANS:

03:41:47 23 Q. Returning back to the first
03:41:47 24 passage.

03:41:52 25 THE COURT: And please don't feel you

03:41:53 1 need to read them again, just reformulate, if
03:41:56 2 you can, the question.

03:41:58 3 BY MR. EVANS:

03:41:58 4 Q. What was the significance of
03:42:00 5 Croghan giving a belt of wampum --am I still not
03:42:03 6 doing it?

03:42:06 7 THE COURT: Again, I appreciate your
03:42:07 8 effort and maybe you could just have a -- an
03:42:11 9 off-the-record quiet word with your co-counsel
03:42:13 10 who, I'm sure, she can assist you in what I
03:42:19 11 believe is available to you, which is a proper
03:42:27 12 question.

03:42:27 13 Let's just take a minute and you go
03:42:29 14 and do that now.

03:42:30 15 MR. EVANS: Thank you, Your Honour.
03:42:30 16 Thank you for your indulgence, Your Honour.
03:42:57 17 Ms. Pelletier has given me some guidance so
03:43:01 18 let's see if I can make it through the next
03:43:03 19 question.

03:43:04 20 BY MR. EVANS:

03:43:04 21 Q. So the question that Mr. Ogden --

03:43:07 22 THE COURT: Again, don't feel you have
03:43:08 23 to re-read the question. I'm confident that the
03:43:12 24 witness is aware of what the question was.

25

03:43:14 1 BY MR. EVANS:

03:43:14 2 Q. So your answer to the question
03:43:15 3 is, "Yes, that's what that passage says." Is
03:43:18 4 there any clarification that you would like to
03:43:21 5 make to your answer?

03:43:23 6 A. Yes. Given the larger context
03:43:24 7 that you have provided I would still say that
03:43:28 8 it's -- that Croghan starts with a positive
03:43:33 9 statement of intent, but that he also is
03:43:36 10 concerned to engage in appropriate diplomatic --
03:43:42 11 an appropriate diplomatic exchange, which
03:43:45 12 includes passing of wampum belts, smoking a pipe
03:43:51 13 of peace and it also -- it also includes a
03:43:57 14 statement by the First Nations involved that
03:44:00 15 they were confident that the English could
03:44:04 16 supply their needs.

03:44:06 17 Q. All right. Thank you. Now if we
03:44:09 18 could bring up Exhibit SC0676?

03:44:17 19 THE COURT: This is not an exhibit,
03:44:18 20 sir.

03:44:20 21 BY MR. EVANS:

03:44:20 22 Q. Sorry, I mean document number.
03:44:23 23 Yes, first page.

03:44:28 24 So Mr. Ogden took you to an excerpt of
03:44:31 25 this source earlier today. It was only a

03:44:35 1 three-page excerpt and I wanted to direct your
03:44:39 2 attention to something that wasn't in that
03:44:42 3 original excerpt that preceded the text that he
03:44:45 4 put to you.

03:44:48 5 So now if we could go to page 2? So
03:45:00 6 this is something you didn't see before you
03:45:03 7 answered the last question. Carter says:

03:45:07 8 "In June 1768 I left
03:45:10 9 Michilimackinac and returned in the
03:45:13 10 Gladwin schooner, a vessel of about 80
03:45:16 11 tons burthen over Lake Huron to Lake
03:45:19 12 St. Clair where we left the ship and
03:45:22 13 proceeded in boats to Detroit."

03:45:34 14 And I think 12 is the next page. So
03:46:44 15 this is the passage that Mr. Ogden put to you.
03:46:48 16 I'll read it quickly:

03:46:50 17 "The Gladwin schooner, that in
03:46:53 18 which I afterwards took my passage
03:46:55 19 from Michilimackinac to Detroit, and
03:46:57 20 which I since learned was lost with
03:46:59 21 all her crew on Lake Erie through the
03:47:01 22 obstinacy of the commander who could
03:47:03 23 not be prevailed upon to take in
03:47:07 24 sufficient ballast arrived about this
03:47:09 25 time near the town with a

03:47:11 1 reinforcement and necessary supplies
03:47:12 2 [...]"
03:47:22 3 The bit Mr. Ogden put to you actually
03:47:22 4 carries on.

03:47:22 5 "Before this vessel could reach
03:47:26 6 the place of its destination, it was
03:47:29 7 most vigorously attacked by a
03:47:29 8 detachment from Pontiac's army."

03:47:30 9 Now, Mr. Ogden asked you if that
03:47:33 10 statement was correct, to your knowledge. And
03:47:36 11 in light of what I showed you before would you
03:47:39 12 like to clarify your answer?

03:47:43 13 MR. OGDEN: Your Honour, I would like
03:47:44 14 to object. The question that I asked is sort of
03:47:49 15 a yes or no answer, the only clarification
03:47:52 16 perhaps would be change it from one to the
03:47:55 17 other. It's not proper re-examination, Your
03:48:00 18 Honour. It's not clarification.

03:48:04 19 THE COURT: Well, I can take that into
03:48:06 20 account, sir, but I think the gist of what I'm
03:48:10 21 hearing is that there was an additional passage
03:48:12 22 in the same area of this description that was
03:48:16 23 not in front of the witness at the time; and he
03:48:19 24 is being asked if that has -- to indicate
03:48:24 25 whether that would cause him to clarify his

03:48:27 1 answer, and I would permit that question.

03:48:31 2 Sir, do you have an answer?

03:48:33 3 THE WITNESS: Yeah. Well, it's a
03:48:35 4 confusing passage because, as we've seen, the
03:48:38 5 present tense in this document for Mr. Carver is
03:48:42 6 in the later 1760s. And in this portion of the
03:48:46 7 document he's relating an earlier encounter.

03:48:51 8 So when he says in parentheses:

03:48:54 9 "[...] that in which I afterwards
03:48:56 10 took my passage from Michilimackinac
03:49:04 11 to Detroit [...]"

03:49:04 12 That refers to events several years
03:49:06 13 after the siege of Detroit.

03:49:13 14 MR. EVANS: Your Honour, I ask that
03:49:14 15 this be made the next exhibit.

03:49:18 16 THE COURT: This is already an
03:49:18 17 exhibit. Oh, is this is the extend excerpt?

03:49:20 18 MR. EVANS: That's correct. This page
03:49:21 19 is in the excerpt that Mr. Ogden had made as an
03:49:24 20 exhibit, but it didn't include the previous
03:49:26 21 pages, one of which I took Dr. Hinderaker to.

03:49:32 22 THE COURT: So this is a longer
03:49:34 23 excerpt, is that what it is?

03:49:36 24 MR. EVANS: Yes.

03:49:37 25 THE COURT: Any objection? No.

03:49:40 1 THE REGISTRAR: Exhibit No. 4037.

03:49:48 2 EXHIBIT NO. 4073: Longer extract from
03:49:48 3 Jonathan Carver's "Travels Through the
03:49:48 4 Interior Parts of North America".
03:49:48 5 Document SC0657.

03:49:52 6 BY MR. EVANS:

03:49:54 7 Q. Dr. Hinderaker, I'm bringing up
03:49:56 8 document SC0211, it comes from "The Papers of
03:50:00 9 Sir William Johnson". If we could go to the
03:50:04 10 next page it is a letter, just scroll up. It is
03:50:14 11 a letter from Henry Gladwin to William Johnson
03:50:18 12 dated October 7, 1763. And I'd like to read you
03:50:27 13 the first paragraph:

03:50:28 14 "With what business, vexation and
03:50:32 15 disappointment, I scarce have time to
03:50:35 16 think of any friend much less to write
03:50:38 17 them. Therefore, I hope you will
03:50:39 18 excuse my silence. I came hither much
03:50:42 19 against my will foreseeing what would
03:50:44 20 happen. I am brought into a scrape
03:50:47 21 and left in it. Things are expected
03:50:50 22 of me that can't be performed. I
03:50:51 23 could wish I had quitted the service
03:50:55 24 seven years ago and that somebody else
03:50:56 25 could manage here. I shall say

03:50:56 1 nothing in regard to our affairs, as
03:50:58 2 you will hear enough of it below, but
03:51:00 3 I enclose to you some papers
03:51:02 4 concerning the scoundrel inhabitants
03:51:05 5 of Detroit and the destruction of the
03:51:07 6 outposts which perhaps may amuse you
03:51:09 7 for half an hour."

03:51:11 8 Now, Mr. Ogden put to you a series of
03:51:14 9 questions regarding the vastness of the supplies
03:51:21 10 that Britain had access to in defending Fort
03:51:24 11 Detroit. And you -- for example, that came from
03:51:30 12 an excerpt from Gregory Dowd, and you agreed
03:51:34 13 that that was -- with the statement he put to
03:51:39 14 you about the vastness of supplies.

03:51:41 15 And in light of this passage I would
03:51:43 16 ask if you wanted to clarify that answer?

03:51:47 17 A. Well, I think there was certainly
03:51:50 18 not a vast supply of goods available to Gladwin
03:51:54 19 at Detroit in the summer of 1763. I think there
03:52:00 20 are numerous indications of that and this letter
03:52:03 21 provides a good sense of his state of mind in
03:52:07 22 the late stages of the siege.

03:52:11 23 Q. Thank you. If we could bring up
03:52:21 24 Exhibit 463? Now, this is another document from
03:52:42 25 the William Johnson papers. This is Johnson's

03:52:45 1 letter to the Board of Trade of August 22nd,
03:52:47 2 1764, which Mr. Ogden took you to.

03:52:52 3 And Mr. Ogden referenced statements
03:53:04 4 that Johnson made at the Niagara congress
03:53:11 5 Describing how the English have all the doorways
03:53:14 6 in the land and referring to the British ability
03:53:18 7 to destroy the First Nations if they did not
03:53:20 8 agree to peace.

03:53:21 9 So I'd like to take you to a passage
03:53:26 10 from his letter to the Board of Trade, which
03:53:29 11 is -- which comes after the Treaty. And this is
03:53:37 12 what he says explaining why he agreed to peace
03:53:40 13 with the western Nations on the terms that he
03:53:44 14 did.

03:53:48 15 "To render this peace lasting, I
03:53:51 16 know no methods better than those I've
03:53:51 17 had the honour in my last letters to
03:53:53 18 lay before your Lordships. If we
03:53:55 19 conquer their prejudices by our
03:53:58 20 generosity, they will lay aside their
03:54:00 21 jealousies and may rest in security.
03:54:03 22 This is much cheaper than any other
03:54:05 23 plan and more certain a success.
03:54:21 24 Our extensive frontiers renders it
03:54:24 25 necessary if we will provide for their

03:54:26 1 security for our outposts, convoys,
03:54:29 2 traders and frontiers, inhabitants are
03:54:33 3 at all times in the power of the enemy
03:54:35 4 and from some one of them they can
03:54:38 5 always draw recourses for annoying the
03:54:41 6 rest. The operations of last campaign
03:54:44 7 demonstrated their own power to the
03:54:45 8 Indians beyond any other they ever
03:54:48 9 knew. They saw themselves able to
03:54:51 10 affect what was looked upon by many of
03:54:53 11 our prejudiced politicians here as
03:54:55 12 utterly impossible, notwithstanding
03:54:57 13 all my remonstrances founded on many
03:55:06 14 years experience. The Indians all
03:55:07 15 know we cannot be a match for them in
03:55:07 16 the midst of an extensive woody
03:55:08 17 country where, though we may at a
03:55:11 18 large expense convey an army, we
03:55:14 19 cannot continue it there but must
03:55:17 20 leave our small posts at the end of
03:55:18 21 the campaign liable either to be
03:55:21 22 blockaded, surprised or taken by
03:55:24 23 treachery, view all our attempts made
03:55:26 24 to possess the interior country, and
03:55:28 25 your Lordships will find we have met

03:55:31 1 with the same spirit of opposition
03:55:33 2 from the Indians from whence I infer
03:55:36 3 that if we are determined to possess
03:55:38 4 our outpost, trade, et cetera,
03:55:40 5 securely, it cannot be done for a
03:55:42 6 century by any other means than that
03:55:44 7 of purchasing the favour of the
03:55:46 8 numerous Indian inhabitants. To limit
03:55:50 9 the outposts."

03:55:51 10 And the quote that I'm going to put
03:55:56 11 to you ends there.

03:55:58 12 So Mr. Ogden put you the question,
03:56:00 13 after making the statements before that I
03:56:01 14 referred to. Johnson at Niagara did not
03:56:05 15 consider himself to be speaking of a position --
03:56:09 16 speaking out of a position of weakness.

03:56:12 17 And I was wondering if you wanted to
03:56:17 18 revisit or clarify the answer you gave in
03:56:19 19 response to that question?

03:56:20 20 A. I think I -- I think my response
03:56:23 21 was to say that -- was to emphasize the
03:56:26 22 limitations of Johnson's course of power at that
03:56:31 23 point. But I think this passage very aptly
03:56:34 24 illustrates his view of the limits of British
03:56:38 25 power in the interior of North American.

03:56:41 1 Q. Thank you, Dr. Hinderaker, those
03:56:43 2 are my questions.

03:56:45 3 EXAMINATION BY HER HONOUR:

03:56:45 4 Q. Dr. Hinderaker, I am able to, if
03:56:52 5 I'm so inclined, ask you questions and I have
03:56:53 6 two things I want to ask you about.

03:56:55 7 After I do that, sorry to report, that
03:56:56 8 these gentlemen will have a very narrow
03:57:02 9 opportunity to ask any follow-up questions that
03:57:04 10 may arise from my questions.

03:57:05 11 Now, whoever has control over the
03:57:08 12 screens could you please put up Exhibit 479,
03:57:20 13 which is the Articles of Capitulation of
03:57:23 14 Montreal, and particularly turn to article 40,
03:57:26 15 about which Professor Hinderaker testified on
03:57:29 16 Monday, so that he can have that in front of him
03:57:35 17 for my question. It's page 27 of the document
03:57:39 18 itself, the PDF.

03:57:57 19 Now, sir, you confirmed in your
03:57:59 20 testimony that the quoted phrase at the end of
03:58:01 21 the article was Amherst speaking in response to
03:58:09 22 the text of the article. And you were asked
03:58:12 23 what that last phrase referred to, where it
03:58:14 24 says:

03:58:14 25 "[...] granted except the last

03:58:14 1 article, which has already been
03:58:14 2 refused."
03:58:14 3 And your answer was along the lines of
03:58:20 4 indicating that Amherst was agreeing to the
03:58:23 5 proposition that appears in the first sentence
03:58:25 6 of the article. Do you recall giving that
03:58:28 7 testimony, sir?

03:58:29 8 A. Yes.

03:58:32 9 Q. My question, sir, is what is it
03:58:33 10 that is excepted? It says :

03:58:37 11 "[...] except the last article,
03:58:37 12 which has already been refused."

03:58:40 13 A. Yes.

03:58:41 14 Q. In other words, what was Amherst
03:58:42 15 not agreeing to?

03:58:43 16 A. The provision of new missionaries
03:58:46 17 when it shall be judged necessary.

03:58:49 18 Q. All right. Now, my second
03:58:49 19 question relates, if someone could put up
03:59:05 20 Exhibit 612? Now if you scroll down to see what
03:59:27 21 this comprises after the first page?

03:59:35 22 Now this is a series of letters. If
03:59:37 23 you could go to page 474 of this excerpt from
03:59:42 24 the Johnson Papers? Stop there.

03:59:51 25 Sir, we have seen a number of

03:59:53 1 documents over the last few days which, like
03:59:55 2 this document, have blanks in them. Some of the
03:59:59 3 documents we've seen have footnotes that give
04:00:03 4 information about why it's a blank. For
04:00:05 5 example, we saw one today with a footnote that
04:00:07 6 said that the material there had been erased in
04:00:15 7 the original manuscript; but there are also
04:00:17 8 numerous pages like this one where there is no
04:00:20 9 indication of why there's indicated on this
04:00:23 10 blanks and square brackets.

04:00:26 11 My question is, is there an accepted
04:00:29 12 view of historians with the appropriate
04:00:31 13 expertise about what these blanks do or don't
04:00:34 14 signify? Or is it sort of document specific?

04:00:39 15 A. Your Honour, it is document
04:00:41 16 specific. What they represent is damage to the
04:00:45 17 documents. And in some cases there are
04:00:50 18 alternate copies of the documents that allow the
04:00:53 19 editors to supply words and phrases, but in most
04:00:57 20 cases the blanks just remain blank, as they do
04:00:59 21 in this particular example.

04:01:03 22 Q. So for the most part are you
04:01:05 23 saying that where, as shown here, it's indicated
04:01:09 24 blanks in square brackets that the transcriber
04:01:14 25 believed that there was text but it simply could

04:01:16 1 not be read?

04:01:18 2 A. Right. There are holes in the

04:01:19 3 paper or damage to the ink, that kind of thing.

04:01:27 4 Q. Thank you. Those are my

04:01:27 5 questions.

04:01:27 6 THE COURT: Beginning with the

04:01:27 7 plaintiff's counsel, are there any questions

04:01:28 8 arising from my questions?

04:01:30 9 MS. PELLETIER: No, Your Honour.

04:01:32 10 MR. McCULLOCH: No, Your Honour.

04:01:33 11 MR. OGDEN: No, Your Honour.

04:01:34 12 THE COURT: Thank you very much, sir.

04:01:36 13 That does conclude your testimony, so you can

04:01:38 14 take yourself out of the witness box.

04:01:41 15 THE WITNESS: Thank you, Your Honour.

04:01:44 16 THE COURT: Okay. Ms. Pelletier.

04:01:49 17 MS. PELLETIER: Yes, Your Honour.

04:01:52 18 THE COURT: So leaving aside tomorrow,

04:01:53 19 because I think that would be on fairly short

04:01:55 20 notice for everyone, we have two more days set

04:01:57 21 aside, Friday and a week from next Thursday, for

04:02:04 22 the completion of this testimony.

04:02:05 23 And I don't want to put you on the

04:02:10 24 spot right here, but what I would like for

04:02:13 25 plaintiff's counsel to do is to look into

04:02:15 1 whether ideally both of those days, but if not
04:02:18 2 at least one of them could be occupied by one of
04:02:21 3 your one-day witnesses. You have at least two
04:02:26 4 or three, one-day witnesses; and to communicate
04:02:29 5 to all concerned about that as soon as possible.

04:02:32 6 MS. PELLETIER: Yes, Your Honour.

04:02:32 7 THE COURT: Especially because
04:02:32 8 obviously if you can produce someone on Friday,
04:02:36 9 and I hope you could, defendants' counsel would
04:02:38 10 need an opportunity to get their
04:02:40 11 cross-examinations ramped up and an opportunity
04:02:42 12 to say they can't. That would surprise me but I
04:02:45 13 would still hear from them if that was the case
04:02:47 14 because there's always the possibility of
04:02:49 15 extenuating circumstances.

04:02:53 16 MS. PELLETIER: Understood.

04:02:55 17 THE COURT: So if you could make that
04:02:55 18 a priority to get an e-mail out to all
04:02:58 19 concerned, and they will speak for themselves if
04:03:00 20 they have a problem.

04:03:01 21 If you have a problem, defendants'
04:03:03 22 counsel, speak up. I wouldn't have thought two
04:03:06 23 weeks from tomorrow could conceivably be a
04:03:09 24 problem but I can understand how there might be
04:03:12 25 one for the day after tomorrow.

04:03:14 1 Ideally, counsel, both of those two
04:03:16 2 days but if not at least the one that's two
04:03:19 3 weeks from tomorrow.

04:03:22 4 MS. PELLETIER: Understood. Thank
04:03:22 5 you.

04:03:23 6 THE COURT: Is there anything anyone
04:03:25 7 wishes to raise? Because we are not getting
04:03:27 8 back together, subject to Friday, for a little
04:03:29 9 while. Yes, Mr. Beggs?

04:03:32 10 MR. BEGGS: Oh, it was just the
04:03:34 11 mechanics on how we would resume on Friday.
04:03:37 12 Ms. Pelletier would let the Court know and
04:03:40 13 then --

04:03:41 14 THE COURT: Well, I think an e-mail to
04:03:42 15 all concerned, including my assistant, saying we
04:03:45 16 can or cannot produce the following person on
04:03:49 17 Friday; and an opportunity for you to consider
04:03:51 18 that and similarly e-mail my assistant if it
04:04:01 19 presents a problem or not.

04:04:01 20 MR. BEGGS: Thank you, Your Honour.

04:04:01 21 THE COURT: And similarly for two
04:04:02 22 weeks from tomorrow. I hope it won't be a
04:04:05 23 problem. It would be good to use those two
04:04:08 24 days.

04:04:09 25 I went through the new schedule and

04:04:10 1 the other thing I want to say is that there are
04:04:13 2 some things on the new schedule that I would
04:04:15 3 like a conference call over. I don't think we
04:04:17 4 have to get together. But I would like to,
04:04:19 5 first of all, see if we can get some witnesses
04:04:21 6 and then we'll deal with the conference call.
04:04:23 7 All right?

8 Is there anything else that anyone
9 wants to raise? Any concerns about these
10 possibilities? All right. Okay. So I'll wait
11 to hear from you.

12 --- Whereupon the proceedings were
13 adjourned at 4:05 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 25th day of June, 2019.



PER: HELEN MARTINEAU
CERTIFIED SHORTHAND REPORTER

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