

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

DAY 10 / VOL 10
May 23, 2019



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1 Court File No. 94-CQ-50872CM

2 ONTARIO
3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N:

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

8 - and -

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

18 Court File No. 03-CV-261134CM1

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

20 CHIPPEWAS OF NAWASH UNCEDED FIRST NATION and
21 SAUGEEN FIRST NATION

22 Plaintiffs

23 - and -

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

Defendants

26 --- This is the VOLUME 10/DAY 10 of the trial
27 proceedings in the above-noted matter, being held at
28 the Superior Court of Justice, 330 University Avenue,
29 Courtroom 5-1, Toronto, Ontario, on the 23rd day
30 of May, 2019.

31 B E F O R E:

32 The Honourable Justice Wendy M. Matheson

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

2

3 H. W. Roger Townshend, Esq., for the Plaintiffs,
4 & Benjamin Brookwell, Esq., The Chippewas of
5 Saugeen First Nation,
6 and the Chippewas of
7 Nawash First Nation.

8

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

12

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

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21 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

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I N D E X

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FRANCINE MC CARTHY, PhD; Previously Sworn

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3 NO. DESCRIPTION PAGE

4 3989: 2015 Article co-written by Professor 1076

5 McCarthy.

6 3990: Article by Lewis, Blasco and Gareau 1080

7 dated 2005 entitled "Glacial Isostatic Adjustments

8 of Laurentian Great Lakes Basin: Using the

9 Empirical Record of Strand Line Deformation

10 for a Reconstruction of Early Holocene Paleo Lakes

11 and Discovery of a Hydrologically Closed Phase".

12 3991: Excerpt of, The Physiography of Southern 1083

13 Ontario by L.J. Chapman and D.F. Putnam.

14 3992: Curriculum vitae of Professor Randolph 1097

15 Valentine.

16 3993: Report of Dr. Randolph Valentine dated 1102

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18 3994: PhD thesis of Dr. Randolph Valentine. 1118

19 3995: E-mail from Professor Valentine to 1149

20 Professor Corbiere, dated April 10, 2013.

21 3996: E-mail from Professor Valentine to 1151

22 Professor Corbiere, dated May 5, 2013.

23 3997: E-mail from Professor Valentine 1153

24 explaining terms in e-mail to Professor

25 Corbiere of May 5, 2013.

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C-1:	Tender for Randolph Valentine dated September 2013.	1102

1 -- Upon commencing at 10:00 a.m.

2
3 THE COURT: Counsel, please go ahead.

4 MS. MC RANDALL: Good morning, Your
5 Honour. Thank you.

6 CROSS-EXAMINATION BY MS. MC RANDALL:

7 Q. Good morning, Professor McCarthy.

8 My name is Julia McRandall. I am one of the
9 counsel for Ontario.

10 A. Good morning.

11 Q. I believe you said yesterday that
12 you do not have personal experience with
13 archeological evidence, but you have worked before
14 with archeologists?

15 A. That is correct.

16 Q. And you have not taught a full
17 course on archeology yourself?

18 A. I have given occasional lectures
19 in an archeology course about geoarchaeology, so
20 specifically the component that deals with geology.
21 But I have not taught an entire course.

22 Q. Was that an introductory course on
23 archeology?

24 A. It is a 200 level course, so a
25 second year course, undergraduate.

1 Q. You also discussed some geological
2 terminology yesterday. I believe you said seawater
3 has a 3.5 percent salinity?

4 A. Yes.

5 Q. Is that the equivalent of 35 grams
6 per kilogram?

7 A. Yes, it is.

8 Q. And also the equivalent of 35,000 --

9 A. Parts per thousand.

10 Q. And is it also the equivalent of
11 35,000 milligrams per litre?

12 A. I guess so. You know, my
13 conversion's in my head, yeah, I think so.

14 Q. Thank you. And brackish water, is
15 it in the range of 0.05 percent to 3 percent
16 salinity?

17 A. Yes, it's a very wide range.

18 Q. I take it then that freshwater has
19 a salt content of under 0.05 percent?

20 A. That is correct. That's potable
21 water, water you can drink.

22 Q. You also talked about popups
23 yesterday. And I believe you described them as
24 having a long, tunnel-like feature and rock walls
25 on either side?

10:02:56 1 A. That's right.

10:02:57 2 Q. There's no roof on the top,
10:02:59 3 though?

10:02:59 4 A. No, and there never was. It's not
10:03:02 5 like a roof has caved in. It's the rocks that
10:03:05 6 buckled, so that there never was a roof.

10:03:07 7 Q. Could it be described as
10:03:11 8 channel-like or ditch-like then?

10:03:13 9 A. I'd say canyon-like.

10:03:16 10 Q. Thank you.

10:03:18 11 And for your report, you were asked to
10:03:25 12 look specifically at the Lake Huron basin and the
10:03:28 13 Bruce Peninsula, not all of the Great Lakes or any
10:03:31 14 of the other Great Lakes; is that correct?

10:03:33 15 A. I was asked to write a report
10:03:37 16 about the water level history and geologic history
10:03:44 17 of the Bruce Peninsula and the Lake Huron basin.
10:03:46 18 But, as you would have inferred from my deposition
10:03:49 19 yesterday, they are all part of one system.

10:03:52 20 So, at times, I did have to -- in order
10:03:56 21 to explain the Lake Huron situation, I did have to
10:03:59 22 make reference, say, to Lake Superior at times.

10:04:03 23 Q. Right. The Great Lakes are so
10:04:05 24 interconnected that --

10:04:07 25 A. That is correct.

1 Q. Thank you.

2 And it would be fair to say that you
3 have expertise in the geologic history of the Great
4 Lakes basin?

5 A. I do.

6 Q. I would like to take you to page 6
7 of your report and your report is Exhibit 3986.

8 A. I assume I have access to it
9 somehow.

10 Q. You should be going to page 6 to
11 the bottom of the page. It should appear on your
12 screen?

13 A. Oh, I see it now.

14 Q. To the bottom half. And perhaps
15 we can zoom in slightly?

16 This is an image with a title "Great
17 Lakes System Profile". It depicts the modern
18 hydrology of the Great Lakes; is that correct?

19 A. That is correct.

20 Q. That was taken from the United
21 States Environmental Protection Agency?

22 A. Right.

23 Q. It shows the depth of Lake Huron
24 as 750 feet or 229 meters; that's accurate?

25 A. As far as I know, yes.

1 Q. And what is the depth of Georgian
2 Bay?

3 A. It is -- I'd actually have to look
4 at a map to be sure, but I didn't cram those
5 numbers.

6 But it is, I would say, it's
7 approximately equal, because it's on the other side
8 of the Niagara escarpment, so that -- I would say
9 approximately equal. But, again, I'd have to look
10 at a map to be sure.

11 Q. All right. I would like to take
12 you to a map actually --

13 A. Sure.

14 Q. -- prepared By the Ministry of
15 Natural Resources and Forestry which includes
16 bathymetric information, and that is document I.D.
17 SC0168.

18 MS. MC RANDALL: Your Honour, Ontario
19 seeks to use this as a demonstrative aid. May this
20 be entered as a lettered exhibit?

21 THE COURT: No objection. The next
22 lettered exhibit, Mr. Registrar.

23 THE REGISTRAR: B-2.

24 THE COURT: I thought we had a "B"
25 yesterday.

1 THE REGISTRAR: We had a B-1, this is
2 B-2.

3 MS. MC RANDALL: Thank you. We also
4 have small hard copies if that would be of
5 assistance.

6 THE COURT: Yes, I think it would be,
7 for me at least.

8 EXHIBIT NO. B-2: Map of Lakebed Claim
9 with Bathymetry.

10 BY MS. MC RANDALL:

11 Q. Professor McCarthy, I believe you
12 said something yesterday about bathymetry, but just
13 so the terminology is clear on the record.

14 Would it be fair to describe bathymetry
15 as the study or measurement of the depths of
16 oceans, lakes or other bodies of water?

17 A. Yes.

18 Q. Now, from looking at this map,
19 does it generally accord with your understanding of
20 the bathymetry of the areas of Lake Huron and
21 Georgian Bay which are depicted?

22 A. Yes.

23 Q. You also discussed in your report
24 a dry climate period in the early Holocene and that
25 was around 9,500 to 8,200 calibrated years before

1 present; is that correct?

2 A. The climate was dry from the time
3 of the ice sheet withdrawal, 12,000 years ago to
4 8,200 years ago.

5 The interval that was driest was
6 between 9,000 and 8,200.

7 Q. Thank you. And that dry climate
8 was across the whole Great Lakes region, correct?

9 A. It was across the whole Great
10 Lakes region. There were portions that were
11 somewhat dryer than others, and the area on the
12 eastern shore of Georgian Bay was actually dryer
13 than the rest of the Huron basin.

14 But -- so as one example of the slight
15 regional variation -- but the entire Great Lakes
16 basin was substantially dryer than today over that
17 interval.

18 Q. And that dry climate, and the end
19 of the meltwater input into the Great Lakes, caused
20 the water levels to lower, or was part of the
21 reason?

22 A. That was the entire reason.

23 Q. Thank you.

24 I would like to take you to page 20 of
25 your report, to Figure 18.

1 If we could perhaps go a bit higher on
2 the page and maybe zoom in a little?

3 Now, we discussed this image a bit
4 yesterday, I believe. And this depicts how the
5 Lake Huron and Georgian Bay basins would have been
6 at their lowest periods, as I understand it?

7 A. Yes.

8 Q. So the parts of the Lake Huron
9 basin that are coloured red or orange, they would
10 have been above -- they would have been exposed at
11 the time period that we're discussing?

12 A. Yes, the parts that are outside of
13 the black lines were definitely exposed. And
14 that's why the black lines are there, to show the
15 size of Lake Hough and the different sub-basins of
16 Lake Stanley.

17 Whereas the green and the blue are the
18 deepest parts, and they would not have been, at any
19 point, would they have been exposed.

20 Because the land was tilted to the
21 northeast, if you'll recall, that's why parts of
22 the northeast of Georgian Bay that are colored
23 yellow and orange would have been underwater
24 because it was tilted that way; you know what I
25 mean?

1 So the black lines that show where the
2 water was, 8,000 years ago, 8,200 years ago,
3 include in Georgian Bay some of the yellow and
4 orange coloured parts in the northeast of Georgian
5 Bay where the French River is. So because the land
6 was tilted that way, the water went over that, what
7 is now relatively shallower. If you follow. I can
8 try to explain it better.

9 Q. Thank you.

10 A. Okay.

11 Q. I believe you mentioned yesterday
12 that at times, Lake Stanley, so the Lake Huron
13 basin, was separated into two sub-basins which we
14 can see here. And the northern basin was the
15 Manitoulin basin?

16 A. Yes.

17 Q. And the southern one is the
18 Goderich basin?

19 A. That's right.

20 Q. And they would have been separated --
21 the land ridge that you see, that would have been
22 the Alpena-Amberley Ridge?

23 A. Alpena-Amberley Ridge, the orangey
24 yellow, yeah.

25 Q. I think you may have mentioned

10:12:02 1 yesterday that there were other sub-basins in Lake
10:12:09 2 Stanley? Are those two basins that appear to be
10:12:09 3 shown south of the Goderich basin?

10:12:09 4 A. Yeah, those little, tiny, tiny
10:12:13 5 basins. The Bay City basin, the Sarnia basin,
10:12:18 6 etcetera. They would have been almost entirely dry
10:12:21 7 at that peak aridity.

10:12:24 8 Q. But at a slightly -- at a
10:12:28 9 different time, they might have been submerged, or
10:12:31 10 they were submerged?

10:12:32 11 A. Oh, yes, and they're submerged
10:12:34 12 now. And they would have been submerged after each
10:12:37 13 one of those what we believe are the captured water
10:12:43 14 from Lake Agassiz, those Mattawa highstands, they
10:12:45 15 would have been submerged at each of those times.

10:12:48 16 Q. You said the waters in Late Lake
10:12:59 17 Hough in the Georgian Bay basin were brackish; was
10:13:03 18 that around 9,000 to 8,200 years ago?

10:13:08 19 A. Yes.

10:13:09 20 Q. I'm just going to break this down
10:13:10 21 a bit. In your opinion, it was caused by first the
10:13:13 22 dry climate and Georgian Bay becoming
10:13:16 23 hydrologically closed; is that correct?

10:13:19 24 A. That was essential. In order to
10:13:21 25 have a lake at this latitude to be slightly salty,

10:13:25 1 it is essential that it's a closed basin and there
10:13:28 2 is a negative water budget. So there's more water
10:13:30 3 leaving through evaporation than coming in, so,
10:13:33 4 yes.

10:13:33 5 Q. That was my next question. So the
10:13:35 6 next cause would be the negative water budget, so
10:13:38 7 that means evaporation exceeding --

10:13:40 8 A. Yes, and it is the negative water
10:13:42 9 budget that closed the lake to be closed.

10:13:44 10 Q. And that resulted in the
10:13:46 11 concentration of dissolved solids, including salts?

10:13:49 12 A. Correct.

10:13:50 13 Q. And around the same time period,
10:13:57 14 the water in the Lake Huron basin was also
10:13:59 15 brackish, correct?

10:14:00 16 A. I would have to infer that, but I
10:14:04 17 have not actually studied the microfossils in the
10:14:08 18 Lake Huron main basin to ascertain.

10:14:11 19 My research interests went in another
10:14:14 20 direction. So I had always intended to go back
10:14:17 21 there, but I didn't.

10:14:18 22 Q. I'd like to take you to a document
10:14:29 23 with a doc I.D. S1153. If we can go to the front
10:14:46 24 page, perhaps.

10:14:52 25 Professor McCarthy, this is an article

10:14:54 1 that you co-wrote; that's correct?

10:14:56 2 A. That is correct.

10:14:56 3 Q. And would that have been in --
10:15:09 4 sorry, I'm just going to check the year?

10:15:11 5 A. 2015.

10:15:12 6 Q. Thank you, 2015.

10:15:14 7 MS. MC RANDALL: Your Honour, may this
10:15:16 8 be entered as an exhibit?

10:15:17 9 THE COURT: No objection, so, yes.

10:15:19 10 THE REGISTRAR: Exhibit No. 3989.

10:15:23 11 EXHIBIT NO. 3989: Article co-written
10:15:24 12 by Professor McCarthy in 2015.

10:15:24 13 THE COURT: Thank you.

10:15:27 14 BY MS. MC RANDALL:

10:15:27 15 Q. If I can take you to page 26. And
10:15:38 16 to Figure 3.10, it's further up on the page.

10:15:46 17 A. Uhm-hmm.

10:15:47 18 Q. So it seems that the caption under
10:15:49 19 that figure is:

10:15:50 20 "Schematic of the paleo water
10:15:52 21 budget for the Manitoulin basin A
10:15:55 22 and the Goderich basin B.

10:15:57 23 "For the most arid part of the
10:16:01 24 Holocene, approximately 8,200
10:16:04 25 calibrated years before present, the

1 net water budgets of the Manitoulin
2 basin (negative 1.9 E7 cubed metres
3 per day) and the Goderich basin" --
4 and there's another measurement --
5 "produced estimates of the rates of
6 lake level fall, approximately one
7 millimetre per day for the
8 Manitoulin basin and 0.3 millimetres
9 per day for the Goderich basin,
10 accounting for the rapid drawdown of
11 Lake Huron during the early
12 Holocene. The discharge of saline
13 groundwater that seeps into the main
14 basin of Lake Huron (Ruberg et al.,
15 2005) suggests that water on either
16 side of the Alpena-Amberley Ridge
17 was even more saline than the
18 brackish conditions documented for
19 Late Lake Hough by McCarthy et al.,
20 2012."

21 Would you agree then that the waters in
22 the Lake Huron basin at that point were also
23 brackish?

24 A. I made the inference, as you read
25 in this caption, on the basis of my observations

1 and the observations, say, from Ruberg, et al., the
2 chemical observations by Ruberg et al. of the
3 seepage that's very salty, the brine I referred to
4 in my deposition yesterday. And the fact that the
5 hydrologic model that we produced made for a very
6 rapid lowering of lake level.

7 As I said, I did not get to -- I did
8 not have the opportunity to look at the
9 microfossils to convince myself completely that the
10 waters were brackish.

11 But all of the evidence that I was able
12 to present in this paper suggests not only that if
13 I were to go and take the time to look at
14 microfossils that they would represent brackish
15 conditions, but even more brackish than those in
16 Lake Hough, because the -- particularly for the
17 Goderich basin, which is very small -- the amount
18 of reduction of water, the amount of concentration
19 of ions would be that much more.

20 So, in order to be very clear in this
21 paper, and when I'm speaking to you today, there is
22 every reason to believe that the waters would have
23 been more brackish, as I published.

24 But I would not stake my life on it
25 because I believe in doing the work myself to see.

10:18:39 1 So I have not yet looked at the microfossils.

10:18:43 2 But there is no reason to believe that
10:18:46 3 they would not be brackish, and even more brackish
10:18:49 4 than those in Lake Hough. And because that range
10:18:53 5 is very large, as you said, 0.5 to 3, I couldn't
10:19:00 6 even give you a ballpark of the amount of more that
10:19:04 7 I expect.

10:19:06 8 I would have to do some work to
10:19:08 9 calculate that, if you wanted me to give an
10:19:10 10 estimate. Off the top of my head now, I wouldn't
10:19:12 11 be able to. But that it was more brackish, yes.

10:19:17 12 Q. Thank you.

10:19:19 13 And around that same time period,
10:19:21 14 during the dry conditions in the early Holocene,
10:19:25 15 Lake Michigan was also hydrologically closed?

10:19:28 16 A. That's right. There was a low
10:19:29 17 level lake, a lowstand called Lake Chippewa.

10:19:33 18 Q. Would it also have had a negative
10:19:35 19 water budget?

10:19:36 20 A. Yes, oh yes, that's what made it a
10:19:39 21 low stand. Yes, closed basin.

10:19:44 22 Q. It's possible then that Lake
10:19:47 23 Michigan's waters at the time were also brackish?

10:19:49 24 A. It is likely.

10:19:50 25 Q. I'd like to take you to another

1 document, and it has document I.D. S1034.

2 If we could perhaps go to the front
3 page, this appears to be a 2005 article by Lewis,
4 Blasco and Gareau entitled "Glacial Isostatic
5 Adjustments of Laurentian Great Lakes Basin: Using
6 the Empirical Record of Strand Line Deformation For
7 a Reconstruction of Early Holocene Paleo Lakes and
8 Discovery of a Hydrologically Closed Phase".

9 This is cited as a reference in your
10 report?

11 A. Yes, yes.

12 Q. Then I take it of course you're
13 familiar with it?

14 A. I am, I am.

15 MS. MC RANDALL: Your Honour, may this
16 document be entered as an exhibit?

17 THE COURT: No objection, so, yes.

18 THE REGISTRAR: Exhibit No. 3990.

19 EXHIBIT NO. 3990: Article by Lewis,
20 Blasco and Gareau dated 2005 entitled
21 "Glacial Isostatic Adjustments of
22 Laurentian Great Lakes Basin: Using
23 the Empirical Record of Strand Line
24 Deformation For a Reconstruction of
25 Early Holocene Paleo Lakes and

10:20:38 1 Discovery of a Hydrologically Closed
10:20:40 2 Phase".

10:20:59 3 BY MS. MC RANDALL:

10:21:00 4 Q. And you would consider this
10:21:02 5 article authoritative on the Great Lakes on the
10:21:07 6 early Holocene period?

10:21:08 7 A. Yes.

10:21:09 8 Q. If I can take you to page -- I
10:21:14 9 think it's 203 of the article but 18 on the PDF, to
10:21:21 10 Figure 12.

10:21:22 11 If we can perhaps zoom in a bit. This
10:21:29 12 is a map depicting lowstand basins of Lake Huron,
10:21:33 13 Georgian Bay, Lake Erie and Lake Ontario, correct?

10:21:35 14 A. Correct.

10:21:36 15 Q. That's around 8,600 calibrated
10:21:39 16 years before present?

10:21:41 17 A. Right.

10:21:42 18 Q. So during the arid conditions and
10:21:44 19 the early Holocene period then, Lake Erie was also
10:21:49 20 likely hydrologically closed?

10:21:53 21 A. It definitely was, yes.

10:21:55 22 Q. And it would also would have
10:21:58 23 experienced negative water budget then, I take it?

10:22:01 24 A. Yes, it would.

10:22:09 25 Q. Around that time period it's

10:22:12 1 possible then the waters of Lake Erie were
10:22:15 2 brackish?

10:22:19 3 A. It's less likely than that
10:22:22 4 Michigan, Huron were brackish because the salina
10:22:26 5 formation that is the rock salt layer deposited
10:22:30 6 during the salarium, so around 425 million years
10:22:35 7 ago, that rims the, what's referred to as the
10:22:37 8 Michigan basin, the Michigan rock basin, doesn't
10:22:40 9 outcrop around Erie and Ontario, the Lake Erie and
10:22:45 10 Lake Ontario basins.

10:22:48 11 So the source of the ions is not
10:22:52 12 evident to me. So I would say that certainly,
10:22:56 13 absolutely, Erie and Ontario, Lake Erie and Lake
10:23:01 14 Ontario, were in a hydrologic deficit, a negative
10:23:05 15 water budget, and that's what made the lake levels
10:23:09 16 fall and become isolated, hydrologically closed.

10:23:14 17 I would, from what I know of the
10:23:20 18 subsurface or bedrock geology of those two areas, I
10:23:25 19 would not assume the waters were brackish. But if
10:23:29 20 someone were to do a study and find data, then I
10:23:32 21 would look at their studies.

10:23:35 22 But just from, if you're asking me to
10:23:40 23 -- my learned opinion, I would say it is less
10:23:43 24 likely.

10:23:43 25 Q. I'd like to take you back to your

1 report for a moment to page 5, and Figure 1.

2 Now, that's from Chapman and Putnam's
3 the Physiography of Southern Ontario, correct?

4 A. Correct.

5 Q. And I'd like to take you now to a
6 document with doc I.D. SC0167, which I believe is
7 an excerpt from that.

8 This is an excerpt of the book?

9 A. The book.

10 Q. Correct?

11 A. Yes, it is.

12 MS. MC RANDALL: Your Honour, may this
13 be entered as an exhibit?

14 THE COURT: Yes.

15 THE REGISTRAR: 3991.

16 EXHIBIT NO. 3991: Excerpt of, The
17 Physiography of Southern Ontario by
18 L.J. Chapman and D.F. Putnam.

19 BY MS. MC RANDALL:

20 Q. And, Professor McCarthy, you would
21 consider this book to be authoritative on the
22 geology of southern Ontario?

23 A. Yes.

24 Q. Thank you. I'd like to take you
25 to page 36, to Figure 11N.

1 Now, on the map near Ottawa on the
2 right-hand side it reads "Champlain Sea"?

3 A. Yes, it does.

4 Q. Now that was a temporary inlet of
5 the Atlantic Ocean that existed about 13,000 to
6 10,000 before present?

7 A. That's right.

8 Q. It was caused by the ice sheet
9 retreating and seawater flooding the land that had
10 been depressed by the glacier?

11 A. Yeah, because the land was below
12 sea level, so the Atlantic rushed in.

13 Q. And it stretched from the east
14 coast to around, or I guess further west than
15 Ottawa at one point?

16 A. Yes, that's right. And a very,
17 very recent paper by Dr. Mike Lewis suggests that
18 it actually even penetrated into the Lake Ontario
19 basin. Which is a new perspective, new information
20 relative to this map, which was from the 1980s.

21 Q. Thank you. Yesterday I believe
22 you mentioned meltwater streaming from the ice
23 sheet and forming or adding to lakes.

24 So meltwater also flowed into the
25 Champlain Sea then?

10:26:34 1 A. Yes.

10:26:34 2 Q. And that influx of meltwater into
10:26:36 3 the Champlain Sea made it less salty than typical
10:26:43 4 seawater, correct?

10:26:44 5 A. Yes.

10:26:44 6 Q. More brackish?

10:26:46 7 A. Yes.

10:26:52 8 Q. Turning back briefly to the Late
10:26:56 9 Lake Stanley period, you had mentioned earlier the
10:26:59 10 Alpena-Amberley Ridge that was exposed in the Lake
10:27:03 11 Huron basin?

10:27:03 12 A. Right.

10:27:04 13 Q. You mentioned in your report the
10:27:06 14 discovery of bone of woodland caribou and submerged
10:27:10 15 features interpreted as hunting lines suggested
10:27:13 16 herds of these mammals were hunted as they migrated
10:27:17 17 along the ridge.

10:27:18 18 Those submerged features were stone
10:27:23 19 structures?

10:27:23 20 A. Yes.

10:27:23 21 Q. There were no pottery shards,
10:27:26 22 pottery or carving shards?

10:27:28 23 A. No, not to my knowledge.

10:27:29 24 Q. And no burial structures?

10:27:31 25 A. No, not associated with that

1 Alpena-Amberley Ridge.

2 Q. And as a geologist, it is not
3 within your expertise to provide an opinion about
4 the identity or the culture of any people who may
5 have hunted on that ridge?

6 A. No, when I wrote the paper, the
7 2015 paper that you started with, it was as part of
8 a book that stemmed from a workshop that was led by
9 these archeologists. They presented their data and
10 were looking to have various perspectives on
11 whether it was plausible.

12 So I know the evidence they presented,
13 but I have no opinion about -- I have no expert
14 opinion about their evidence.

15 But my role was to listen to what they
16 had found, the evidence that they presented that
17 suggested to them that the Paleo-Indians were
18 hunting the caribou, and to use my expertise to
19 consider whether that was plausible, would they
20 have been -- what was the paleo and geographic,
21 paleo-environmental context at the time that that
22 would have been happening. So that was my role.

23 Q. Thank you.

24 I'd like to take you no you to page 3
25 of your report. And if you see the third bullet

10:29:08 1 point near the bottom, you state that at this time,
10:29:13 2 "record brackish waters" and then brackets,
10:29:15 3 "(approximately 1.5 percent salt content.)"

10:29:18 4 No reference is cited for that figure?

10:29:22 5 A. The 1.5 percent figure?

10:29:26 6 Q. That's correct?

10:29:28 7 A. No, I basically did an average
10:29:36 8 because the assemblage of the testate amoeba that
10:29:43 9 led me to, led my student and I to infer that the
10:29:46 10 waters were slightly salty, that is approximately
10:29:51 11 the maximum amount of salinity that those
10:29:54 12 freshwater organisms that can tolerate brackish
10:30:00 13 water can tolerate.

10:30:01 14 It could have been less than that. It
10:30:03 15 could have been anywhere between .0.5 and roughly
10:30:07 16 1.5.

10:30:07 17 I don't have a more accurate -- I just
10:30:10 18 did a -- I made an inference over that broad range
10:30:15 19 of salinity and that would be the upper limit that
10:30:21 20 I think that my microfossils would be consistent
10:30:25 21 with.

10:30:25 22 So not marine, but also not freshwater.
10:30:29 23 So somewhere in between, and that would be the
10:30:33 24 upper limit.

10:30:33 25 Q. And water starts tasting salty at

1 a significantly lower salt content than
2 1.5 percent, correct?

3 A. Yes, it does. In fact, slightly
4 above the 0.5, which is why they make that the
5 limit for potable water.

6 Q. Yesterday you also spoke a bit
7 about the giant beaver. It is unknown when they
8 were last seen in the Great Lakes region, correct?

9 A. That is correct.

10 Q. And there is great similarity
11 between the skeletons of a modern beaver and the
12 giant beaver, correct?

13 A. Yes. When you see a skeleton of a
14 giant beaver, if you're familiar with beavers,
15 you'd say that's a big beaver, yes, so certainly
16 the skeletons tell you that they are beaver-like
17 animals that are much bigger than any beaver you've
18 ever seen.

19 Q. Thank you.

20 MS. MC RANDALL: Your Honour, if I may
21 just have a moment to confer with my colleagues.

22 Thank you, Professor McCarthy, those
23 are my questions.

24 THE WITNESS: Okay, thank you.

25 THE COURT: Does Plaintiffs' counsel

10:32:18 1 have any reply questions? Actually, there you are,
10:32:21 2 Mr. Brookwell.

10:32:23 3 RE-EXAMINATION BY MR. BROOKWELL:

10:32:32 4 Q. Good morning, Dr. McCarthy. You
10:32:35 5 were asked today about the structure of the popup.

10:32:43 6 I want to return to an issue that you
10:32:45 7 addressed yesterday. It was the types of
10:32:48 8 vegetation that can grow on the rock of a popup.

10:32:53 9 And could you revisit for us what types of
10:32:56 10 vegetation could grow on top of a popup?

10:32:59 11 A. The limestone layers or strata
10:33:06 12 that are on either side of the popup today are
10:33:09 13 populated by primarily --

10:33:11 14 THE COURT: Excuse me, Professor. Yes,
10:33:14 15 Counsel?

10:33:14 16 MS. MC RANDALL: Your Honour, this is
10:33:15 17 not proper reply.

10:33:16 18 THE COURT: It does mystify me a little
10:33:19 19 bit, I have to say, Mr. Brookwell. Perhaps you
10:33:21 20 could explain how this is reply.

10:33:23 21 MR. BROOKWELL: She was asking about
10:33:24 22 the -- sorry, my friend from Ontario was asking
10:33:27 23 about whether there was a canopy over a popup
10:33:37 24 structure, and yesterday we were discussing the
10:33:43 25 vegetation over the popup. And I was simply going

10:33:43 1 to ask Dr. McCarthy to consider what vegetation was
10:33:50 2 there.

10:33:50 3 THE COURT: How is that a clarification
10:33:52 4 or explanation about some piece of evidence that
10:33:56 5 came up in cross-examination?

10:33:58 6 MR. BROOKWELL: It was simply to
10:34:01 7 revisit that point.

10:34:03 8 But I take your point if it's --
10:34:06 9 doesn't need to be clarified.

10:34:08 10 THE COURT: If you believe there's a
10:34:10 11 clarification there, I'm going to let you try and
10:34:12 12 explore that, sir. But I had -- I was puzzled as
10:34:17 13 well, about what seemed to be --

10:34:20 14 MR. BROOKWELL: The only point of
10:34:21 15 clarification I wanted to re-visit was what would
10:34:25 16 have been visible on the structure of a popup.

10:34:27 17 THE COURT: Would have been visible on
10:34:29 18 the structure of a popup? That's a more focused
10:34:32 19 question.

10:34:32 20 Counsel, do you have an objection to
10:34:35 21 that question?

10:34:35 22 MS. MC RANDALL: Well, Your Honour, my
10:34:37 23 question had been about the if there was a roof on
10:34:40 24 the structure. It wasn't about vegetation.

10:34:43 25 THE COURT: No, it wasn't. But the

10:34:45 1 more focused question that Mr. Brookwell now wishes
10:34:51 2 to ask is different. So do you still object to
10:34:55 3 that question, which is what would have been
10:34:57 4 visible -- what is it again?

10:35:03 5 MS. MC RANDALL: I do still object to
10:35:04 6 it.

10:35:04 7 THE COURT: You still object to it.
10:35:07 8 What would have been visible on the structure of a
10:35:09 9 popup?

10:35:10 10 MS. MC RANDALL: Yes.

10:35:11 11 THE COURT: I'm going to permit that
10:35:13 12 question.

10:35:15 13 If you can please try and stick to the
10:35:17 14 question.

10:35:17 15 THE WITNESS: Okay.

10:35:17 16 THE COURT: Which is, having been asked
10:35:20 17 if there was a cover on the popup, on
10:35:23 18 cross-examination you are now being asked what
10:35:26 19 would have been visible on the top of a popup.

10:35:29 20 THE WITNESS: Okay. So currently, the
10:35:32 21 limestone cliffs of the escarpment, there are --
10:35:36 22 there's a certain species of tree that is very,
10:35:40 23 very adapted to growing with its roots into those
10:35:43 24 little cracks and that's primarily cedar, white
10:35:48 25 cedar.

10:35:49 1 Given the vegetation of the time, it
10:35:51 2 makes sense to me to picture the canyon-like
10:35:59 3 structure with trees growing out of the cracks.

10:36:02 4 So that would have been visible to, if
10:36:05 5 someone were there in the middle of the popup, that
10:36:09 6 on either side there would presumably, plausibly
10:36:13 7 have been trees of cedar, such as there are today.

10:36:17 8 MR. BROOKWELL: Thank you,
10:36:18 9 Dr. McCarthy. Those are my questions.

10:36:20 10 THE COURT: Thank you Dr. McCarthy.
10:36:21 11 Excuse me, Mr. Beggs.

10:36:23 12 MR. BEGGS: Your Honour, can I
10:36:25 13 re-examine after the reply question?

10:36:27 14 THE COURT: Can you re-examine?

10:36:29 15 MR. BEGGS: Sur-reply.

10:36:32 16 THE COURT: On this particular subject
10:36:33 17 we've just gone into?

10:36:37 18 MR. BEGGS: Yes, Your Honour.

10:36:37 19 THE COURT: Why is it that you should
10:36:39 20 be permitted to do that?

10:36:39 21 MR. BEGGS: Well, because the question
10:36:42 22 was one that could have been asked on Chief
10:36:43 23 examination and wasn't. And now it brings us more
10:36:51 24 issue as to the nature of the coverage of the popup
10:36:53 25 that wasn't left after the Chief.

1 THE COURT: Well, I recall Professor
2 McCarthy testifying yesterday about light cedar
3 trees that would grow out of the cracks. It's not
4 that it wasn't part of her chief altogether.

5 MR. BEGGS: I don't believe she said
6 that they were in the canyon of the popup.

7 THE COURT: What is your proposed
8 question, sir?

9 MR. BEGGS: My proposed question would
10 be: Is there any evidence such as the submerged
11 tree stumps that have been found which confirm that
12 there were in fact trees in the popup?

13 THE COURT: Mr. Brookwell, do you have
14 any objection to that question being asked of your
15 expert witness?

16 MR. BROOKWELL: No, Your Honour, that's
17 fine.

18 THE COURT: Okay. I'm going to ask
19 you, again, to repeat your question, Mr. Beggs, and
20 I want all counsel to know we're not going to be
21 doing this very often, right?

22 MR. BEGGS: Understood, Your Honour.

23 THE COURT: Please go ahead.

24 RE-CROSS EXAMINATION BY MR. BEGGS:

25 Q. Professor McCarthy, are you aware

1 of any evidence of tree stumps that have been
2 discovered in the popups, the popup that we're
3 referring to, such as the submerged tree stumps
4 that we saw in the video yesterday?

5 A. Not within the confines of the
6 popup. The question that I answered was about the
7 kinds of -- the kinds of things that you would see
8 if you were in a popup, and it is plausible that
9 there would have been cedar trees growing out of
10 those, the layers.

11 If you recall, the popup has layers of
12 rock on either side. And out of those cracks
13 between the different layers, it is, given the
14 pollen data from the sediments of that age, it is
15 entirely plausible there were cedar trees doing
16 then what they do now, which is grow out of the
17 cracks.

18 But there are not very many -- there
19 are not that many tree stumps that have been
20 identified and I do not believe any of them are
21 within the confines of a popup.

22 MR. BEGGS: Thank you, Professor
23 McCarthy.

24 Thank you, Your Honour.

25 THE COURT: That concludes your

10:39:13 1 evidence. You may step down from the witness box

10:39:16 2 --

10:39:16 3 THE WITNESS: Thank you.

10:39:17 4 THE COURT: -- Professor McCarthy.

10:39:19 5 Plaintiffs' counsel, we'll have your
10:39:21 6 next witness, please.

10:39:23 7 (Professor McCarthy was excused from
10:39:27 8 the witness box).

10:39:30 9 MR. TOWNSHEND: Next witness is
10:39:32 10 Professor Randolph Valentine.

10:39:36 11 THE COURT: Now, just as Professor
10:39:39 12 Valentine comes forward, is he here in the
10:39:41 13 courtroom?

10:39:43 14 Sir, please come forward.

10:39:44 15 Just as he's doing that, I will mention
10:39:47 16 again, as with Professor McCarthy, on consent,
10:39:51 17 Professor Valentine's report of September 2013 is
10:39:56 18 becoming evidence in this trial in its entirety.

10:40:00 19 And also that there is no challenge to
10:40:05 20 this gentleman's credentials. Obviously I'll have
10:40:09 21 to hear the tender that you make, sir.

10:40:13 22 So we'll be marking his report, and as
10:40:16 23 a result, the evidence that Professor Valentine has
10:40:21 24 given need not and indeed will not cover all the
10:40:24 25 very, very detailed matters that are helpfully set

1 out in this lengthy document, which I have
2 reviewed.

3 So with that introduction,
4 Mr. Registrar, could you please take this
5 gentleman's oath or affirmation.

6 THE REGISTRAR: Good morning, sir.

7 Would you like to make an oath on the
8 Holy Book or make a solemn affirmation to tell the
9 truth?

10 THE WITNESS: Certainly.

11 THE REGISTRAR: You need to choose:
12 The Holy Book or solemn affirmation.

13 THE WITNESS: The second.

14 THE REGISTRAR: Affirmation.

15 THE WITNESS: Yes.

16 THE REGISTRAR: Can you state and spell
17 your first and last name for the record.

18 THE WITNESS: My legal first name is
19 Jerry, J-E-R-R-Y. My last name is Valentine,
20 V-A-L-E-N-T-I-N-E.

21 THE REGISTRAR: Thank you.

22 JERRY VALENTINE: AFFIRMED.

23 EXAMINATION IN-CHIEF BY MR. TOWNSHEND:

24 Q. Could I have document SC0160,
25 please.

10:42:12 1 This is your curriculum vitae,

10:42:14 2 Dr. Valentine?

10:42:15 3 A. That is correct.

10:42:16 4 Q. Can we have that added as an
10:42:18 5 exhibit, please?

10:42:22 6 THE COURT: Yes, you may. What Exhibit
10:42:24 7 number?

10:42:24 8 THE REGISTRAR: Exhibit No. 3992.

10:42:24 9 EXHIBIT NO. 3992: Curriculum vitae of
10:39:32 10 Professor Randolph Valentine.

10:39:32 11 BY MR. TOWNSHEND:

10:42:37 12 Q. So to take you through a few
10:42:39 13 highlights of your CV, you're a professor of
10:42:41 14 linguistics at the University of Wisconsin at
10:42:43 15 Madison.

10:42:44 16 A. That is correct.

10:42:47 17 Q. You have a Bachelors, Master's and
10:42:49 18 PhD in linguistics?

10:42:52 19 A. That is correct.

10:42:53 20 Q. The PhD was in 1994?

10:42:55 21 A. Yeah.

10:42:56 22 Q. And that was on Ojibwe dialects
10:43:01 23 also known as Anishinaabemowin?

10:43:03 24 A. That was on Ojibwe dialects, yes.

10:43:05 25 Q. Now, that thesis got on award from

10:43:10 1 the Society for the Study of Indigenous Languages
10:43:13 2 of the Americas. Could you explain the criteria
10:43:16 3 for that, please?

10:43:17 4 A. They annually give a prize to the
10:43:22 5 dissertation that they feel represents the most
10:43:25 6 significant research on an Indigenous language in
10:43:30 7 the Americas, North, Central and South America.

10:43:33 8 Q. Starting on page 3, your CV lists,
10:43:52 9 I counted 28 scholarly publications?

10:43:57 10 A. I didn't count them. But it's
10:44:01 11 certainly very plausible.

10:44:03 12 Q. Just a couple of those I wanted to
10:44:06 13 refer to, the online Anishinaabemowin dictionary.
10:44:12 14 Can you talk about how long you've been working on
10:44:14 15 that, its size and how that relates to your
10:44:18 16 evidence?

10:44:18 17 A. Well, this is a dictionary of the
10:44:24 18 dialects that were covered especially in my report.
10:44:26 19 So that's Odawa and Eastern Ojibwe.

10:44:32 20 I've been working on it for maybe 25 or
10:44:36 21 30 years. And it represents about, as I recall,
10:44:41 22 13,500 distinct lexical entries, covering all the
10:44:49 23 prominent language that we've been able to
10:44:52 24 document.

10:44:52 25 And I've worked on it extensively with

10:44:54 1 my colleague, Mary Anne Corbiere, who is a
10:44:59 2 professor at the University of Sudbury.

10:45:02 3 Q. In 2011 you also published
10:45:06 4 Anishinaabemowin reference grammar?

10:45:07 5 A. 2001.

10:45:09 6 Q. Pardon, yeah, that's right. 2001.

10:45:12 7 A. Yes.

10:45:12 8 Q. Would you explain what that is and
10:45:15 9 its significance?

10:45:16 10 A. It is a reference grammar, again
10:45:18 11 focusing on the very same dialects. It's 1100
10:45:21 12 pages, so a massive tome. I'm trying to,
10:45:26 13 exhaustively as I possibly could, document the
10:45:29 14 language of these specific dialects.

10:45:32 15 Q. You are also editor of the papers
10:45:38 16 of the Algonquian Conference for three years?

10:45:42 17 A. Yes.

10:45:43 18 Q. Can you explain what that
10:45:45 19 conference is?

10:45:45 20 A. That is the annual conference that
10:45:47 21 brings together scholars doing all kinds of work,
10:45:50 22 linguistics, ethnohistory, every field related to
10:45:56 23 Algonquian people.

10:45:57 24 So that would include Ojibwe, Odawa,
10:46:02 25 Delaware, Menominee, on and on, all of those

10:46:07 1 languages. We have a conference and then we
10:46:09 2 publish under peer review many of the papers.

10:46:17 3 Q. On page 6, you have a list of
10:46:21 4 courses taught recently, and I see you've
10:46:24 5 frequently taught courses in the Anishinaabemowin
10:46:27 6 language?

10:46:28 7 A. I teach four semesters of Ojibwe.
10:46:31 8 It's the southwestern dialect, so the dialect of
10:46:35 9 Wisconsin, Minnesota and Montana, at the University
10:46:40 10 of Wisconsin.

10:46:40 11 Q. Down on page 2 of your CV, you
10:46:45 12 mention expert research and testimony for four
10:46:49 13 pieces of litigation in United States.

10:46:52 14 A. That's right. I've been involved
10:46:54 15 in multiple treaty litigation cases.

10:47:02 16 Q. Those all relate to
10:47:04 17 Anishinaabemowin --

10:47:05 18 A. They all relate to understanding
10:47:08 19 Ojibwe, and how the language relates to treaty
10:47:12 20 interpretation.

10:47:13 21 Q. Could I have document SC0160,
10:47:19 22 which is my tender -- 0161; did I say that wrong?

10:47:52 23 MR. TOWNSHEND: Your Honour, I'm
10:47:53 24 tendering this witness as a linguist qualified with
10:47:55 25 expertise in the Anishinaabemowin language and its

10:47:57 1 various dialects spoken in Québec, Ontario,
10:48:00 2 Manitoba, Saskatchewan, Alberta, Michigan,
10:48:04 3 Wisconsin, Minnesota and Montana, and capable of
10:48:07 4 giving opinion evidence about the Anishinaabemowin
10:48:10 5 dialects spoken at the Saugeen First Nation and the
10:48:13 6 Chippewas of Nawash First Nation, their
10:48:16 7 relationship to the dialects of surrounding
10:48:18 8 communities and what conclusions can be drawn from
10:48:20 9 these dialectical variants.

10:48:24 10 THE COURT: I take it there's no
10:48:25 11 objection? That's acceptable. Please go ahead,
10:48:31 12 Mr. Townshend.

10:48:33 13 BY MR. TOWNSHEND:

10:48:34 14 Q. Could I have document SC0162?
10:48:39 15 Actually, that one we're going to try to put on the
10:48:42 16 iPad and give to the witness.

10:48:46 17 THE COURT: Is that this gentleman's
10:48:48 18 report?

10:48:48 19 MR. TOWNSHEND: Yes, it is.

10:48:49 20 THE COURT: It's not yet been marked,
10:48:51 21 sir. Can we take care of that?

10:48:53 22 MR. TOWNSHEND: Certainly. Could we
10:48:54 23 have that up on the screen, first. And then
10:48:57 24 we'll...

25

10:49:06

1

BY MR. TOWNSHEND:

10:49:06

2

Q. Is this your report, Dr. Valentine?

10:49:09

3

A. It looks like it.

10:49:10

4

Q. I'd like that entered as an

10:49:14

5

exhibit, please.

10:49:15

6

THE COURT: Thank you. No objection,

10:49:17

7

please go ahead.

10:49:18

8

THE REGISTRAR: Exhibit No. 3993.

10:49:21

9

EXHIBIT NO. 3993: Report of Dr.

10:49:21

10

Randolph Valentine dated September

10:49:23

11

2013.

10:49:23

12

THE COURT: Thank you.

10:49:24

13

MR. TOWNSHEND: We need one moment to

10:49:26

14

change the cords here.

10:49:28

15

THE COURT: Just while you're doing

10:49:29

16

that, sir, I prefer to mark the document that

10:49:33

17

articulates the tender, since it exists, as a

10:49:36

18

lettered exhibit, as we did yesterday with

10:49:38

19

Professor McCarthy.

10:49:39

20

MR. TOWNSHEND: Oh, certainly.

10:49:40

21

THE COURT: Mr. Registrar, what is the

10:49:43

22

next lettered exhibit?

10:49:44

23

THE REGISTRAR: Lettered exhibit, C-1.

10:49:50

24

THE COURT: Thank you.

10:49:51

25

EXHIBIT NO. C-1: Qualification Tender

1 for Randolph Valentine dated September
2 2013.

3 BY MR. TOWNSHEND:

4 Q. Your iPad should not be showing on
5 the screen. I'd like you to start on map 1 on
6 page 7.

7 Can you comment on that, please?

8 A. This is laying out the dialects of
9 Ojibwe spoken across this vast range from Québec
10 all the way actually to British Columbia.

11 So each of these dialects, we know on
12 the basis of history and linguistic evidence
13 exists, and have particular grammatical features,
14 although they all share very substantial common
15 elements as well.

16 Q. Can you comment about the meaning
17 of the dialects?

18 A. Each represents a distinct
19 linguistic form. So each has its own
20 particularities of grammar, vocabulary,
21 pronunciation.

22 And we've articulated these on the
23 basis of research over the centuries, essentially,
24 but especially in the last 50 years or so.

25 Q. Do the people involved use those

10:51:36 1 names as well?

10:51:37 2 A. They do not, typically. These are
10:51:39 3 English names.

10:51:42 4 Q. How do people involve refer to
10:51:45 5 their language?

10:51:46 6 A. Well, over in the Odawa Eastern
10:51:48 7 area, they call their language Nishnaabemwin.
10:51:52 8 People in Algonquin Nipissing typically refer to it
10:51:58 9 as Anishinaabemowin, which is also what
10:52:01 10 southwestern Ojibwe use, but they also use
10:52:05 11 Ojibwemowin.

10:52:06 12 Northern Ojibwe use Anishinaabemowin.
10:52:09 13 Oji-Cree use the term Anishininiimowin and
10:52:14 14 Saulteaux refer to their language as both
10:52:16 15 Anishinaabemowin and in some cases, they also use
10:52:24 16 Nakwemowin.

10:52:24 17 Q. Can you talk about the transition
10:52:26 18 from one dialect to another as you go from one area
10:52:30 19 to another?

10:52:30 20 A. There is -- most of the dialects
10:52:33 21 have very complex transitional areas. Their core,
10:52:41 22 this is the typical case with dialects, especially
10:52:46 23 dialects spoken by communities that are essentially
10:52:49 24 oral, right?

10:52:51 25 So you typically find a core for each

10:52:53 1 dialect, and then you find transitional zones
10:52:57 2 between the cores, and that's the case that we
10:53:02 3 find, basically in all of these areas.

10:53:04 4 Though we could say from southwestern
10:53:06 5 to northern, the transition is more gradual than it
10:53:10 6 is among the other dialect groupings.

10:53:15 7 Q. How would these dialects relate to
10:53:18 8 Potawatomi language?

10:53:19 9 A. Potawatomi is arguably a dialect
10:53:23 10 of Ojibwe. It depends on how you apply the term
10:53:27 11 "dialect" versus "language". Many people consider
10:53:30 12 it a different language; many consider it a
10:53:33 13 dialect. But it's closely related.

10:53:35 14 It is the most closely related language
10:53:38 15 to Ojibwe. That is the consensus among scholars of
10:53:43 16 all the Algonquian languages.

10:53:46 17 Q. How do linguists distinguish
10:53:49 18 between a language and dialect?

10:53:50 19 A. They use a kind of functional
10:53:53 20 definition that is pretty vague. It essentially is
10:53:58 21 that if the speakers are able to understand each
10:54:01 22 other, even though their language forms are
10:54:04 23 different, they're speaking the same language.

10:54:06 24 So, for example, we here in Canada can
10:54:10 25 understand British English or Australian English.

10:54:13 1 We recognize it as different, but still we are able
10:54:16 2 to understand, and speakers of those dialogues are
10:54:19 3 able to understand us.

10:54:20 4 But in the case of Dutch, even though
10:54:23 5 English is related to Dutch, we cannot understand
10:54:28 6 each other simply by virtue of having learned
10:54:31 7 English and Dutch. So we would consider those
10:54:34 8 different languages.

10:54:35 9 Q. So have you done research into the
10:54:39 10 dialects shown on this map?

10:54:40 11 A. All of them, yes. All of them.

10:54:45 12 Q. Are you also familiar with
10:54:47 13 Potawatomi?

10:54:48 14 A. Less so, but certainly, yes.

10:54:50 15 Q. So as a focus, where do the First
10:54:57 16 Nations in this litigation, the Saugeen Nawash
10:55:01 17 First Nations, fit in, dialectally speaking?

10:55:04 18 A. Based on my research, they very
10:55:11 19 much fit into the transition zone between Eastern
10:55:12 20 Ojibwe and Odawa.

10:55:17 21 Q. At pages 3 and 4 of your report,
10:55:20 22 you give a brief summary of the report. Could you
10:55:23 23 just tell us in a few sentences where the report is
10:55:28 24 going?

10:55:28 25 A. Well, my report sought quite

1 earnestly to directly address the questions asked
2 of me. So the question is:

3 "Is there a distinctive dialect
4 of Anishinaabemowin spoken at the
5 communities at Saugeen and the
6 Chippewas of Nawash. Please explain
7 the basis."

8 So here I say that:

9 "The main distinctiveness of
10 this area, in my assessment, is
11 indeed that it represents a
12 transitional area."

13 This isn't surprising, as I say,
14 because the communities are themselves physically
15 located on the boundary between these dialects, and
16 have longstanding social and trade relations with
17 both groups.

18 So it's this hybridity, I say, of
19 dialect features that makes them unique. And the
20 relationship of these communities to other
21 communities in the area, based on the structure of
22 these relationships, suggests a long period of
23 stable contact and relationship extending over many
24 or several centuries.

25 And then may I just read these? It's

10:56:40 1 easier than to try and recall everything. So, how
10:56:44 2 does the variety or varieties of Anishinaabemowin
10:56:46 3 spoken at the communities relate to geographical
10:56:48 4 neighboring dialects, including but not limited to
10:56:52 5 Walpole, Curve Lake and Wiikwemkong, and how do I
10:56:57 6 situate those dialects in the context of larger
10:57:00 7 dialect categories such as Ojibwe, Odawa and
10:57:06 8 Potawatomi?

10:57:06 9 My answer to that is we know that
10:57:08 10 Wiikwemkong and Walpole are core Odawa or Ottawa
10:57:14 11 communities. Curve Lake and Rama, core
10:57:16 12 Southeastern.

10:57:17 13 And Ottawa as a dialect has its own
10:57:21 14 distinctive grammatical patterns and vocabulary
10:57:25 15 that distinguish it from other dialects.

10:57:27 16 Southeastern, to the extent it's
10:57:30 17 documented shows relatively few grammatical
10:57:32 18 differences from Southwestern, which is the dialect
10:57:35 19 spoken in Wisconsin, where I live and Minnesota.

10:57:40 20 Southeastern vocabulary does, however,
10:57:42 21 shows differences from Southwestern due to regional
10:57:45 22 influences and distinct trade patterns.

10:57:48 23 The grammar and vocabulary of both
10:57:55 24 Odawa and Southeastern are very similar.

10:57:55 25 Grammatical differences are minor and unlikely to

10:58:00 1 affect intelligibility. Remember, that was a
10:58:05 2 criteria for distinguishing dialects from
10:58:07 3 languages.

10:58:07 4 Vocabulary differences are more
10:58:10 5 numerous. But in a report like this it might look
10:58:12 6 as if everything is different, but I really want to
10:58:15 7 make the point that there's a vast amount of
10:58:17 8 overlap and we're looking at vocabulary here that
10:58:21 9 we know on the basis of research represents
10:58:26 10 variation.

10:58:28 11 So, lastly here, it's known that a
10:58:30 12 significant number of Potawatomi migrants moved to
10:58:34 13 Saugeen and Nawash in the 19th century. Does the
10:58:39 14 present day variety or varieties spoken at the
10:58:42 15 communities bear any evidence of this migration?

10:58:47 16 So, as I say and have said, Potawatomi
10:58:50 17 is closely related to Ojibwe. Some would even call
10:58:54 18 it a dialect.

10:58:55 19 Some of its speakers are known to have
10:58:57 20 fled the U.S. in the 19th century, in response to
10:59:00 21 removal treaties which I have worked on extensively
10:59:03 22 in the U.S.

10:59:04 23 And some of the Potawatomi refugees
10:59:08 24 settled on the shores of Lake Huron. And
10:59:13 25 Potawatomi shows many differences from the dialects

1 of Ojibwe, so it's its own dialect or its own
2 language. And its vocabulary is often markedly
3 different from Ojibwe as a group.

4 And my own research shows that while
5 there are many items of vocabulary that resemble
6 those of Potawatomi in the language spoken at
7 Saugeen and Nawash, documented vocabulary is almost
8 always shared by all Odawa communities and so thus
9 should be considered a feature of the whole dialect
10 rather than these particular communities.

11 I found virtually no community-specific
12 evidence of Potawatomi in the language at Saugeen
13 and Nawash. Furthermore, the genetic closeness of
14 Potawatomi and Odawa may be the basis of shared
15 vocabulary rather than Odawa/Ottawa having adopted
16 terms from Potawatomi.

17 Q. Thank you. On page 5 you began a
18 section about the genetic relationship of languages
19 and dialects. Can you explain what genetic
20 relationships mean in this context?

21 A. Genetic relationships, we've --
22 over centuries, especially the 19th century,
23 linguistic researchers developed means of
24 documenting linguistic relationships. And so we
25 discovered that the great discovery of the 19th

1 century was the so-called Indo-European family.

2 And what linguists discovered and
3 developed methods to demonstrate is that two
4 languages may share features of grammar and
5 vocabulary, pronunciation, that clearly indicate
6 they came from the same original language. We
7 refer to that as a genetic relationship.

8 So the common metaphor is daughter
9 languages came from the same mother language.

10 Does that answer your question?

11 Q. Yes, it does.

12 A. Okay.

13 Q. How do linguists determine genetic
14 relationships and languages?

15 A. They determine it on the basis of
16 comparing grammar and vocabulary, according to
17 rigorous methodological rules of doing so, which I
18 won't go into to spare you.

19 Q. So how quickly do these aspects of
20 language change?

21 A. They can change relatively
22 quickly, but for example, the Indo-European family
23 -- which encompasses the many languages of India,
24 Iran, Europe -- this family dates back to maybe
25 8,000 years ago.

11:02:15 1 So over that time we've seen the
11:02:16 2 development of all these languages from that single
11:02:24 3 source. So it can be thousands upon thousands of
11:02:26 4 years, hundreds of years, or more.

11:02:30 5 Think about English. The King James
11:02:34 6 Bible 1607. That is a variety of English; it's
11:02:37 7 changing. Can you read it and understand it? I
11:02:40 8 ask that as a rhetorical question. So that's over
11:02:44 9 400 years ago, right? I hope I'm answering the
11:02:54 10 question.

11:02:54 11 Q. Do aspects of grammar and
11:02:56 12 vocabulary change at the same rate?

11:02:58 13 A. They do not. Because vocabulary
11:03:00 14 represents typically, you know, a single item of
11:03:04 15 vocabulary. It's a single thing.

11:03:06 16 But if you change a verb form, every
11:03:08 17 single verb in the language is then going to
11:03:11 18 reflect this change.

11:03:12 19 And so generally, the closed systems of
11:03:17 20 language, so the pronouns, the inflections, for
11:03:21 21 subject, object, these sorts of things are way less
11:03:25 22 prone to change. And when they do change, but it's
11:03:29 23 typically at a slower rate, and over a longer
11:03:32 24 period of time.

11:03:33 25 Q. So I'd like to ask you about your

1 PhD thesis?

2 A. Sure.

3 Q. That is document number S1764.

4 If you can just scroll down to the
5 title page. So this is your PhD thesis. Can you
6 tell us a bit what it's about?

7 A. It's a study of Ojibwe dialects
8 involving data that I myself collected firsthand,
9 going to communities from Québec to Alberta, and I
10 had a set of items that we knew varied by dialect.

11 Of course, there are ones that we
12 didn't know about, and I went from community to
13 community working with speakers in each community,
14 filling out questionnaires.

15 And then I wrote the software to allow
16 me to map all of this material in a way that would
17 allow us to see the geographical distribution of
18 the various dialects of Ojibwe, especially as
19 spoken in Canada.

20 Q. What features of the language did
21 you examine?

22 A. I looked at phenology, so the
23 sound system. I looked at morphology. All the
24 Algonquian languages have very, very rich systems
25 of prefixes and suffixes that go on nouns and

11:05:30 1 verbs. I looked at that, and then I looked at
11:05:32 2 vocabulary as well.

11:05:33 3 I also collected, which are not in my
11:05:36 4 dissertation, an additional hundred or so texts
11:05:40 5 that they wouldn't let me put in the dissertation
11:05:43 6 because it wouldn't be too long, so.

11:05:46 7 Q. How did you choose the features to
11:05:49 8 examine?

11:05:49 9 A. I base them on work, especially
11:05:51 10 with John Nichols, who had done significant
11:05:58 11 dialectological research in the '80s, working with
11:06:03 12 him and looking at various sources that we had,
11:06:07 13 that provided us with information about dialect
11:06:09 14 variation.

11:06:11 15 So I focused on areas of known or
11:06:15 16 suspected dialect variation. My vocabulary list,
11:06:19 17 for example, is, I think around 380 items. So it
11:06:24 18 is a pretty extensive list.

11:06:28 19 Q. If we could look on page 9 of
11:06:31 20 that.

11:06:49 21 THE COURT: Page 9 of the thesis?

11:06:51 22 MR. TOWNSHEND: Page 9 of the thesis.

11:06:52 23 THE COURT: Just at a glance, the
11:06:54 24 thesis being at least 400 pages long, sir, I see
11:06:59 25 why they might not want you to make it any longer.

11:07:03 1 THE WITNESS: This is the problem with
11:07:04 2 linguistic work.

11:07:06 3 THE COURT: I can imagine.
11:07:06 4 We have the report back up on the
11:07:07 5 screen, Mr. Townshend, which is why I was asking.

11:07:10 6 MR. TOWNSHEND: Yes, that was just to
11:07:11 7 avoid scrolling.

11:07:13 8 THE COURT: We have it now.

11:07:14 9 MR. TOWNSHEND: And there's maps on
11:07:15 10 that page?

11:07:18 11 THE COURT: Maybe not.

11:07:20 12 MR. TOWNSHEND: I'm looking for Maps 2
11:07:22 13 and 3.

11:07:34 14 BY MR. TOWNSHEND:

11:07:34 15 Q. In the meantime I'll ask you a
11:07:35 16 question about that.

11:07:36 17 What were your key conclusions in that
11:07:39 18 thesis?

11:07:39 19 A. Are you looking for the maps on
11:07:42 20 page 2 and 3 of my report, which are --

11:07:46 21 Q. Perhaps that is correct. I may
11:07:52 22 have gotten that wrong?

11:07:53 23 THE COURT: There are no maps on pages
11:07:55 24 2 and 3 of this gentleman's report.

11:07:58 25 MR. TOWNSHEND: On page 9 of the

11:07:59 1 report.

11:07:59 2 THE COURT: Yes, there are two maps.

11:08:00 3 THE WITNESS: That's what we're looking
11:08:02 4 for.

11:08:03 5 MR. TOWNSHEND: My apologies, I had the
11:08:06 6 wrong document.

11:08:10 7 BY MR. TOWNSHEND:

11:08:11 8 Q. Yes, so just with reference to
11:08:13 9 these maps, can you explain your conclusions on
11:08:17 10 this?

11:08:17 11 A. Well, basically, here what I am
11:08:25 12 doing is showing there are quite fascinatingly
11:08:27 13 significant patterns manifesting in both
11:08:30 14 vocabulary, which is the upper map, and features of
11:08:33 15 grammar, which is the lower map. And that's what
11:08:37 16 that's laying out.

11:08:40 17 And you can see the lines kind of give
11:08:42 18 us an indication of the linguistic relationships
11:08:46 19 between the different communities and regions.

11:08:51 20 Q. So what does more lines indicate?

11:08:57 21 A. More lines indicates greater
11:08:59 22 divergence; less lines, less.

11:09:03 23 So you can see, for example, as I say
11:09:05 24 in the report, down in Odawa, Eastern Ojibwe, there
11:09:10 25 is very little, there is no difference. You see

1 for these particular features that are broader
2 features for Ojibwe dialects that I'm showing in
3 these maps.

4 Q. So your thesis was in 1994?

5 A. Uhm-hmm.

6 Q. Have you continued research in
7 these languages, dialects?

8 A. Very much, because I have a
9 practical need because I teach every summer at
10 Lakehead University, and I teach a program that
11 trains Ojibwe and Cree language teachers from all
12 over Ontario.

13 And as a result, I get the opportunity
14 to work with people, and I simply have the need to
15 understand their varieties of language because I'm
16 teaching them spelling and grammar.

17 So, yes, we also have a project ongoing
18 to create a dialect map of Ojibwe and Cree and
19 other Algonquian languages that I continue to work
20 on.

21 Q. So do you still stand by your
22 conclusions of your thesis?

23 A. I do, yes.

24 Q. Did you rely on the data
25 conclusions in your thesis in preparing your report

1 in this litigation?

2 A. I did, very much.

3 MR. TOWNSHEND: I'd like the thesis
4 added as an exhibit, please.

5 THE COURT: Do we have some objection?
6 Yes, please go ahead.

7 THE REGISTRAR: Exhibit No. 3994.

8 THE COURT: 3994?

9 THE REGISTRAR: Yes, Your Honour.

10 EXHIBIT NO. 3994: PhD thesis of
11 Dr. Randolph Valentine.

12 BY MR. TOWNSHEND:

13 Q. If you can go to page 8 of your
14 thesis?

15 A. My thesis?

16 Q. I'm sorry. Page 8 of your report.
17 In the bottom paragraph, you're
18 referring to some work by Ed Rogers. Do your
19 conclusions rely on this work?

20 A. It does not at all.

21 Q. What was your purpose in referring
22 to it here?

23 A. Well, I'm simply trying to show a
24 little bit of the history here as documented. And
25 we know, I mean it's obvious that there were many

11:11:32 1 distinct linguistic groups at the time of contact,
11:11:36 2 and they have undergone various kinds of transition
11:11:40 3 over the centuries.

11:11:41 4 So I was simply going back to a kind of
11:11:45 5 established commentary about early names, named
11:11:49 6 groups of speakers in the Great Lakes area.

11:11:55 7 Q. What I'd like to turn now to the
11:11:58 8 work you did in 2012?

11:11:59 9 A. All right.

11:12:00 10 Q. And maybe you can look at the
11:12:02 11 appendix at page, the very end of your report, and
11:12:06 12 explain what that's about?

11:12:07 13 A. Sorry, I don't know how to change
11:12:15 14 the page here -- sorry.

11:12:28 15 The appendix simply gives a set of
11:12:31 16 items that I collected with Mary Anne Corbiere at
11:12:35 17 the two communities in 2012.

11:12:38 18 Again, we were looking at features that
11:12:40 19 we knew potentially varied and we wanted to see how
11:12:44 20 they played out at these communities, essentially
11:12:47 21 to corroborate what we already knew because I've
11:12:50 22 studied these communities before.

11:12:52 23 Q. Can you explain your methods a
11:12:55 24 bit?

11:12:56 25 A. Well, we gathered together a group

1 of speakers, asking the community to provide them,
2 groups of speakers in each community.

3 We sat and I asked them these various
4 questions. They responded, reached consensus or
5 had variation, and then we and Mary Anne
6 transcribed, I transcribed, then I took them away
7 and put them into some kind of order that became
8 the report.

9 Q. What was the nature of the
10 questions you asked?

11 A. Again, as I said, they are
12 essentially to look at how these dialects relate to
13 both Ojibwe, let's say Eastern Ojibwe, Odawa and
14 Potawatomi.

15 Q. Can you give an example of how you
16 would give a question?

17 A. Yes, I would say, for example,
18 what do you call a horse in your language, or how
19 do you say: Not this book, that book?

20 How do you say: Not this person, that
21 person, right?

22 In one case I'm seeking a particular
23 item in vocabulary. In the other I'm looking at
24 pronouns "this and that", which, as I said, are
25 going to be more central to the grammar than a

1 particular word like "horse".

2 Q. So what linguistic features did
3 you examine?

4 A. I examined various grammatical
5 features. I examined, as I said, pronouns, verbal
6 features that we knew varied. Nominal features, I
7 believe, and vocabulary.

8 Q. And why did you choose those
9 particular items?

10 A. I chose them because, as I said,
11 they were known to vary and pertinent to the
12 essential question of my request that was made to
13 me in producing the report.

14 Q. Okay. Now if I can take you to
15 page 13 of your report. I have a section called
16 "Vowel Syncope". Can you explain what that is and
17 why that is significant?

18 A. Well, vowel syncope is a process
19 that affected, in the 20th century, the
20 Southeastern dialects in which all -- many
21 languages have rules of relative prominence of
22 syllables in words. We call this is the stress
23 system.

24 For example, we use the word
25 "telegraph" in English with stress on the first

1 syllable. You hear the word "TEL_EGRAPH". If we
2 add a "Y" on the end you notice the stress shifts
3 to "TE_LEGRAPHY". So adding that "Y" shifts the
4 stress. So languages have rules of relative
5 prominence, stress rules.

6 What happened in these dialects is that
7 every single unstressed vowel is deleted from
8 pronunciation. So "makizin", the word for "shoe",
9 in all the other dialects is pronounced in these
10 Southeastern dialects "mkizan", M_KIZ_AN.

11 So you notice the first vowel is no
12 longer pronounced, because it's unstressed.

13 So I did that because we need to factor
14 that out when you look at relationships of grammar
15 and vocabulary.

16 If you are not trained in linguistics,
17 you might see the word spelled "mkizan" and think
18 it is a different word from "makizin". So I wanted
19 to discuss that so we could factor that out, okay.

20 Q. Now on page 15, if we go there, in
21 the section on "Demonstrative Pronouns"?

22 A. Right.

23 Q. Can you explain what those are?

24 A. Well, demonstrative pronouns are
25 pronominals found in most languages that we use to

1 index relative proximity to speakers.

2 So, for example, this case, I use the
3 word "this" because it's close to me. You would
4 refer to it as "that" case because it's away from
5 you.

6 So every language that I know of has a
7 system like this of pronouns that allow us to make
8 these distinctions.

9 These are known to differ between Odawa
10 and Southeastern Ojibwe. So I wanted to look at
11 them. Again, it is a pronominal system, so it's
12 more of the core elements of the language than say
13 the word for "horse", a specific item of
14 vocabulary.

15 Q. So how do the demonstrative
16 pronouns that are used at Saugeen and Nawash
17 compare to the Odawa and Southeastern dialects?

18 A. So we can see, if we look on
19 page 16, I have laid out here what the answers
20 were. And we can -- I've colour-coded these so
21 that red is Odawa; green is Eastern; and blue is
22 neither.

23 So they have, for their nearer
24 animate -- so Ojibwe has two genders, animate and
25 inanimate. And animate typically refers to living

11:18:45 1 things; it also includes many non-living things.

11:18:46 2 Inanimate refers to non-living things.

11:18:49 3 And in English we have a single word, "this". We

11:18:51 4 would say "this case", "this person".

11:18:53 5 But in Ojibwe you have a different

11:18:56 6 "this", depending on whether the thing you're

11:18:58 7 referring to is animate or inanimate according to

11:19:02 8 grammar.

11:19:03 9 So their animate word at Nawash is

11:19:09 10 "maaba", this animate. Their inanimate word is

11:19:12 11 "maanda". Both of those are Odawa terms, we know

11:19:16 12 from the distribution all over the various dialects

11:19:20 13 all over.

11:19:21 14 Same with Saugeen, they have

11:19:25 15 "maaba" and "maanda". The plurals at Nawash are

11:19:30 16 Eastern Ojibwe, Southeastern Ojibwe. They don't

11:19:34 17 use the Odawa, they use the Southeastern.

11:19:39 18 At Saugeen, they have a -- the plural

11:19:45 19 of the animate is Southeastern, but the plural of

11:19:50 20 the inanimate is something that isn't found in any

11:19:55 21 dialect presently, "maandan", but it looks similar

11:20:01 22 to the singular if you look.

11:20:03 23 Notice that, guys, "maanda", "maandan"?

11:20:06 24 So it looks like they added a plural suffix onto

11:20:10 25 it. That makes me think this is an innovation in

11:20:12 1 this particular dialect.

11:20:16 2 Forgive me, I don't want to go into too
11:20:18 3 much detail. So they have a term, and then
11:20:21 4 "nandan" looks like a modified version of the Odawa
11:20:25 5 as well.

11:20:26 6 So both of them have a kind of mix
11:20:29 7 here. That's my point.

11:20:34 8 Q. Can you conclude anything about
11:20:35 9 the histories of Saugeen and Nawash from this
11:20:39 10 linguistic mix?

11:20:40 11 A. I can conclude that they have deep
11:20:44 12 interaction with both of these dialect areas and
11:20:47 13 it's showing up in this core element of their
11:20:50 14 language.

11:20:52 15 Q. And for what approximate length of
11:20:54 16 time are we talking?

11:20:55 17 A. I cannot, as a linguist, you know,
11:20:59 18 I don't have a radiocarbon dating system. But a
11:21:03 19 long time. A couple of centuries, three centuries,
11:21:08 20 four centuries. I don't know. Somewhere in that
11:21:11 21 range. A long time.

11:21:15 22 Q. Now over on page 17, you looked at
11:21:18 23 the similar structures in Potawatomi.

11:21:23 24 A. Yes.

11:21:24 25 Q. What is your conclusion about that

1 in relation to Saugeen and Nawash?

2 A. That they, the distinctives of
3 Potawatomi do not match. That's my conclusion.

4 Q. At the bottom of 17 and going over
5 to 18, you're also comparing to historical Michigan
6 forms. Can you tell me why you looked at that and
7 what you concluded from that?

8 A. I was interested in -- one of the
9 valuable tools for linguistics, especially this
10 kind of work that involves time as an element, is
11 to find any documented materials we have that would
12 show us some of the corresponding linguistic
13 communities.

14 So there happens to be this list that
15 Henry Rowe Schoolcraft put together for a
16 compendium he did of American Indian languages, and
17 it happens to have these very same pronouns. So I
18 thought it would be useful to take a look at them,
19 and see how they compare to these communities.

20 And I've -- I can't remember exactly
21 what I said. So if you want me to, I will read
22 this and explain it. It's up to you.

23 Q. Well, let me just ask you if the
24 historical Michigan language showed the same mix of
25 terms --

11:23:12 1 A. It doesn't. It shows different.

11:23:14 2 And we have problems with all historical
11:23:17 3 documentation, that it's often quite clearly
11:23:20 4 inaccurate.

11:23:21 5 But the portions that I can surmise to
11:23:24 6 be accurate show differences and similarities. We
11:23:28 7 kind of expect that, though.

11:23:30 8 Q. And do you conclude anything from
11:23:32 9 that?

11:23:32 10 A. My conclusion is only that I think
11:23:40 11 really you can think of all my dialectological work
11:23:44 12 as articulating a puzzle. Each piece of a puzzle,
11:23:48 13 right, fits in a particular place?

11:23:52 14 I think what I conclude here is that
11:23:54 15 Saugeen and Nawash are the puzzle piece that fits
11:23:59 16 in the Bruce Peninsula piece of the puzzle. That's
11:24:04 17 essentially what my whole report concludes.

11:24:07 18 Q. I'm going to move to some other
11:24:10 19 aspects of your report. And perhaps, having gone
11:24:15 20 through that in some detail, we can be a little
11:24:17 21 more summary about it. And that was very good to
11:24:21 22 do first time.

11:24:22 23 So on page 18 you have a section on
11:24:26 24 pronoun and verb inflectional forms. Can you just
11:24:31 25 please explain what that is?

11:24:33 1 A. Well, Ojibwe is a language -- in
11:24:36 2 English we use separate pronouns to show who is the
11:24:40 3 subject, who is the object, right?

11:24:42 4 So "I see you", the way we know who's
11:24:45 5 seeing is we have a separate pronoun "I". The way
11:24:50 6 we know who is being seen is we have a separate
11:24:52 7 pronoun "you".

11:24:56 8 The way Ojibwe works and all the
11:24:58 9 Algonquian languages is there are these separate
11:25:01 10 pronouns, but they're not used in that way.

11:25:03 11 Prefixes and suffixes are used. So
11:25:06 12 little pieces of words attached to the beginning, a
11:25:09 13 prefix, suffixes attached to the end are used to
11:25:13 14 indicate all of these relationships. It's a very,
11:25:16 15 very, very rich system.

11:25:18 16 And so what I'm doing here is, I'm
11:25:23 17 looking at some of these prefixes and suffixes that
11:25:28 18 we know vary between Odawa and Southeastern and
11:25:33 19 Potawatomi to see how these communities align.

11:25:36 20 So that includes pronouns and verbs.

11:25:40 21 Q. So on page 19, Table 7, you told
11:25:46 22 me there was a typographical error in the
11:25:49 23 Southeastern column?

11:25:50 24 A. That's right. So the first person
11:25:54 25 exclusive, I'm missing the "D" on the end. And the

1 first person inclusive, I'm missing the "D" on the
2 end. So that's how it should be corrected.

3 Q. Okay. Thank you.

4 So what aspects of these inflectional
5 forms were you investigating?

6 A. I was looking at particularly a
7 known feature of Odawa is that it lacks "N" on a
8 whole bunch of these, so again we get also some
9 sense of the subtlety of dialect difference.

10 So in non-Odawa communities the suffix
11 is "MIN" with an "N" on the end. In Odawa
12 communities it's "MI" without the "N".

13 So that we, there's a whole set, this
14 is another kind of interesting aspect about
15 dialectology. Again, I would point out it's not a
16 single piece of a word, but a whole set that show
17 this "N" or non-"N", so we get this kind of
18 structured patterning.

19 So Odawa lacks the "N" and you can see
20 by looking at the Southeastern and comparing it to
21 the Odawa we're missing an "N" there. And so I
22 wanted to look at these communities and see, do
23 they have that "N" or do they not?

24 And what I discovered is that they
25 mostly have the "N". So that makes them align with

1 non-Odawa or Eastern Ojibwe.

2 Q. Your next section is question
3 words on page 19?

4 A. Yes.

5 Q. You give a couple of examples of
6 that?

7 A. So these are words that are used
8 when you ask who, what, when, where, why? And,
9 again, we have distinctions between Odawa and
10 Southeastern Ojibwe, and in the form of these, and
11 what I discovered is that Nawash and Saugeen have
12 all Odawa forms for those.

13 So we saw all Eastern forms for the
14 verb -- for the "N", now we're seeing all Odawa for
15 these pronouns.

16 Q. The next section is called "Plural
17 Form of VII Verb"; can you explain what that is?

18 A. Ojibwe, remember I told you it has
19 a distinction between animate and inanimate. And
20 what a VII verb is, is a verb that has an inanimate
21 subject but no object.

22 So, for example, "be big" is an
23 intransitive verb. That's what the "I", verb
24 inanimate intransitive means. And so, it's just a
25 particular kind of verb.

11:28:51 1 They have their own way of doing
11:28:51 2 things, and another feature that we know varies
11:28:57 3 between Odawa and Eastern Ojibwe, so I wanted to
11:29:01 4 see how this works. And --

11:29:12 5 Do you want me to tell you how it
11:29:14 6 works?

11:29:14 7 Q. Yes, that's the next place to go
11:29:16 8 with that map.

11:29:17 9 A. Let me just read, Nawash and
11:29:26 10 Saugeen have the more conservative form "won" -- I
11:29:30 11 say it's more conservative because it's found
11:29:32 12 widely among all the Ojibwe dialects. But Odawa
11:29:36 13 again has "nun", though Nawash again is showing
11:29:41 14 both of those. Hybridity, right?

11:29:44 15 So we're getting Eastern, but also
11:29:51 16 hybridity with finding both the Eastern and the
11:29:54 17 Odawa at some of the communities, at Nawash.

11:30:12 18 MR. TOWNSHEND: Your Honour, would this
11:30:12 19 be a good time for a morning break?

11:30:14 20 THE COURT: Just for planning purposes,
11:30:15 21 sir, do you have a rough estimate of how much
11:30:19 22 longer you are planning to be? You're making good
11:30:23 23 progress through this complex material.

11:30:24 24 MR. TOWNSHEND: I'll probably finish
11:30:26 25 today, perhaps mid-afternoon. I'm not sure.

1 THE COURT: Think about that because as
2 I said at the outset we are not planning to take
3 the length of time it would take to read this
4 document. So I would be surprised if it went that
5 long, but we'll see.

6 We'll take 20 minutes.

7 -- RECESS TAKEN AT 11:30 --

8 -- UPON RESUMING AT 11:53 --

9 THE COURT: Please go ahead, sir. You.

10 BY MR. TOWNSHEND:

11 Q. So Professor Valentine, the next
12 section is at the bottom of page 20. There's
13 something called "Plural Forms of VTI and
14 VTA Verbs"?

15 A. Yes.

16 Q. Tell us what that is.

17 A. So I told you earlier there are --
18 intransitive verbs are those that only that have a
19 subject; transitive verbs are those that have a
20 subject and an object. So, for example, "I lift
21 this case"; "lift" is transitive because there is
22 an object, "a case".

23 And in Ojibwe, there are two classes of
24 these verbs, depending on whether the thing you're
25 lifting is animate or inanimate. VTI if it's

1 inanimate, and VTA if it's animate.

2 And so we were looking, when you're
3 making a simple statement, such as "I am lifting",
4 or "we are lifting", there are special suffixes
5 that occur.

6 And I was looking -- we know these vary
7 between "min" and "naan" across Ojibwe dialects, so
8 I was looking to see which were found at Saugeen
9 and Nawash.

10 Q. What did you conclude?

11 A. I conclude that Southeast, that
12 Nawash uses the Odawa form and Saugeen uses both.

13 Q. And on that table you also have a
14 Potawatomi column?

15 A. Yes. And so we can see Potawatomi
16 is spelled differently from Ojibwe. And so it uses
17 the same "min" that's found in Southeastern.

18 So, we can -- it's possible that its
19 presence at Saugeen is related to that, but also
20 "min" as we can see, is used elsewhere. So I can't
21 draw any conclusion about the source.

22 Q. Later on page 21 you have "The
23 Form of the 1p 2s Independent Order Suffix."

24 If I can ask you to explain that.

25 A. This means something like, "We see

1 you". We, not including you, see you; you, single
2 person.

3 And Southeastern has a suffix "inimin".
4 And Odawa has a suffix "igoo", as other dialects of
5 Ojibwe do.

6 And Nawash and Saugeen go with the
7 Odawa, which is more general than Odawa, it's
8 everywhere except Southeastern.

9 Q. So the next section is called "VII
10 Verbs without Final N", on page 21.

11 A. Here there is a small set of
12 vocabulary that, in some dialects, if you look at
13 the map on page 22.

14 Are you guys seeing this?

15 Q. Yes.

16 A. Okay. You can see here that there
17 is two ways to say "It is autumn": "Dagwaagin" and
18 "dagwaagi". One has the "N", the other one
19 doesn't.

20 There is a set of vocabulary in the
21 east that extends all the way up to MA, the top
22 yellow hexagon that's Maniwaki, Québec; "GL" is
23 Golden Lake, Ontario. That's a separate dialect
24 that we call either Southern Algonquin or
25 Nipissing.

1 It has this, as well as all the
2 communities on the shores of Lake Huron and the
3 inland Eastern Ojibwe communities of Curve Lake and
4 Rama; they all have this feature. Distinct from
5 the rest, as you can see, the rest of the map.

6 So that aligns Cape Croker and Nawash
7 and Saugeen with the Eastern group.

8 Q. All right. Let's move to
9 vocabulary.

10 A. Okay.

11 Q. And you have a map on page 23, and
12 so can we talk about the vocabulary and the
13 dialectical variations?

14 A. Well, you can see when I ask, for
15 example, on page 23 we have the word for "apple" in
16 various Ojibwe dialects. And so I simply ask
17 people how you say "apple". And you can see, for
18 example, all -- oh, I have to do this, sorry.

19 See here, all of these people share a
20 feature. There's a special symbol, "waabimin",
21 that means literally white berry-like object. And
22 you can see "mishiimin" all through here, right?

23 And then, for example, up here in
24 Oji-Cree country, there's a different word. So
25 it's simply mapping the distribution of these

11:59:23 1 different vocabulary.

11:59:30 2 Is that sufficient?

11:59:32 3 Q. Yes, I think so. If you can go to
11:59:34 4 the table on page 24 to 25, and explain what you
11:59:40 5 talk about that, maybe start with how words were
11:59:43 6 selected?

11:59:44 7 A. Okay. So we know from previous
11:59:47 8 study that these are words that vary in this
11:59:51 9 region, especially between Odawa, Ottawa and
11:59:56 10 Southeastern. And so I wanted to see how Saugeen
11:59:59 11 and Nawash patterned in terms of their forms for
12:00:04 12 these particular words.

12:00:05 13 So, I won't go through them all. But
12:00:08 14 you can see, for example, that the first one is "to
12:00:12 15 feel cold" of a human being, "I feel cold".

12:00:15 16 And so Nawash, which is designated
12:00:19 17 "CC" for Cape Croker, "biingeji" is used, and that
12:00:26 18 is the form found generally in Odawa. We find the
12:00:30 19 same thing at Saugeen and not surprisingly at the
12:00:33 20 two core Odawa communities, WI, Wiikwemkong, and
12:00:37 21 WP, Walpole Island.

12:00:39 22 But when we get over into Eastern
12:00:42 23 Ojibwe, we find a different word, "gikaji", is at
12:00:48 24 Curve Lake North Bay, even North Bay I haven't
12:00:52 25 talked about yet, up north, and even Golden Lake.

1 Remember I just mentioned that as a southern
2 Algonquian or Nipissing different dialect.

3 So Potawatomi has a word that looks
4 like the same as the Odawa form, except it lacks an
5 "N".

6 Q. Can you explain the colour-coding
7 on this chart?

8 A. Colour-coding is intended to show
9 Odawa in red, Eastern in green, and so that helps
10 someone who doesn't -- isn't familiar with all this
11 vocabulary to see.

12 So Cape Croker -- Nawash, for example,
13 red, that shows Odawa. Second term "come here",
14 "maajaan" or "on-daasaan", indicates one Odawa, one
15 Eastern, that's the purpose.

16 Q. Maybe flip to the table that's
17 contained on the next page?

18 A. Sure.

19 Q. Can you explain what conclusions
20 you're drawing from the way the colour-coding is
21 mapped out?

22 A. It looks to me like Nawash and
23 Saugeen, as you can see, just by looking yourself,
24 it is a very, very red.

25 So it has quite a bit of Odawa

12:02:15 1 vocabulary, right? Even though we've seen, for
12:02:17 2 example, it has many Eastern grammatical features,
12:02:21 3 it also has a lot of Odawa vocabulary in these
12:02:25 4 known variant dialect features of vocabulary.

12:02:29 5 Q. And is there a relation to the
12:02:33 6 Potawatomi column?

12:02:34 7 A. In some cases we can see that it's
12:02:38 8 possible that the word is from Potawatomi. But
12:02:46 9 here is an interesting thing. I have a student,
12:02:50 10 well, we had a student at the University of
12:02:52 11 Wisconsin who just completed in 2017 his
12:02:55 12 dissertation on Potawatomi.

12:02:58 13 And what I learned from that
12:03:00 14 dissertation is that -- let's go back to the
12:03:03 15 previous page, "biingeji", right? That until the
12:03:11 16 late 18th century, Potawatomi would have had an "N"
12:03:14 17 in "biingeji".

12:03:24 18 But it fell out, all of those "N"s fell
12:03:25 19 out and I won't go into the linguistic details.

12:03:27 20 But the fact that this word is showing
12:03:29 21 up in Odawa with an "N", if it is indeed from
12:03:33 22 Potawatomi, entirely possible, it had to be before
12:03:36 23 1800, because there was no "N" in the Potawatomi
12:03:39 24 after. And so, that's one of these ways -- you
12:03:43 25 asked earlier how can we date things. We know that

12:03:46 1 this word came into Odawa prior to 1800.

12:03:53 2 Q. Maybe we can look at some of the
12:03:59 3 maps that show this graphically. So the first one
12:04:04 4 here is Map 6. Can you talk about that?

12:04:08 5 A. Here we're simply seeing that the
12:04:10 6 word "biingeji" only shows up on these communities
12:04:17 7 in the southeast. I don't think I need to mark it.

12:04:21 8 Q. And can we look at Map 9?

12:04:26 9 A. Sure.

12:04:27 10 Q. Yes, it's on the next page.

12:04:30 11 A. So this is showing the variation
12:04:34 12 in language for the word for "much", "a lot", or
12:04:38 13 "many", right?

12:04:39 14 And we can see in the yellow that --
12:04:43 15 again, we're having a kind of core set of
12:04:46 16 communities along the shores of Lake Huron, but
12:04:48 17 also Golden Lake, again, has a -- the term
12:04:56 18 "niibina", whereas Rama, or -- well, Curve Lake,
12:04:59 19 Nawash, has both, right?

12:05:02 20 Curve Lake and Rama the Eastern have
12:05:06 21 "niibiwa", but you can see, we don't need to get
12:05:09 22 into it, but that extends way, way across the
12:05:13 23 board. It's showing a distinctive of this
12:05:15 24 particular set of communities that includes Nawash
12:05:18 25 and Saugeen.

12:05:19 1 Q. And the map right below there?

12:05:22 2 A. Here again, we have "fish with a
12:05:25 3 line". And that is another one of those terms that
12:05:30 4 looks like the Potawatomi term, but again, because
12:05:33 5 it has "gondamoojige" is the form, there's an "N"
12:05:41 6 in it, it could have been borrowed from Potawatomi
12:05:43 7 but not before -- not after 1800.

12:05:47 8 Q. Next map is Map 11.

12:05:50 9 A. All right.

12:05:51 10 Q. A few pages in.

12:05:52 11 A. Map 11. All right.

12:05:59 12 Here we have just the words for
12:06:02 13 "pants", right? And we can see that again, we find
12:06:06 14 a grouping here in the Southeast, but also over to
12:06:11 15 Mississauga, Ontario, "Misi-zaagiang" Ontario.

12:06:17 16 So, again, a fairly concentrated
12:06:19 17 grouping of vocabulary there.

12:06:22 18 Q. Next map is Map 12 on the next
12:06:25 19 page?

12:06:25 20 A. So here, we're simply looking at
12:06:30 21 the word for "sock", and we can see here it
12:06:34 22 includes the Southeast, but extends along the whole
12:06:39 23 north of Lakes Huron and Lake Superior. So, again,
12:06:45 24 I'm just looking at patterns of variation to see
12:06:48 25 how these communities fit within that grouping.

12:06:52 1 Q. So what conclusion do you draw
12:06:55 2 from mapping out those word differences in the last
12:07:04 3 five maps we've looked at?

12:07:06 4 A. I conclude that there are
12:07:11 5 distinctives of this region and that Saugeen and
12:07:15 6 Nawash align with them, that there is potentially
12:07:18 7 Potawatomi vocabulary coming in, but it's at a
12:07:23 8 general level of Odawa, not these communities.

12:07:30 9 Q. If we can move on to Table 11 on
12:07:34 10 page 32. So how are these words selected?

12:07:40 11 A. Again, they're words that we knew
12:07:42 12 and know vary by dialect in this region especially.

12:07:47 13 Q. And what does it show here?

12:07:51 14 A. It basically just shows that
12:07:55 15 Nawash and Saugeen align with the east very much.

12:08:02 16 Q. And you're showing a couple of
12:08:05 17 more maps there?

12:08:06 18 A. You can see the yellow, so I don't
12:08:08 19 have to go through it all.

12:08:09 20 Q. Yeah?

12:08:09 21 A. Okay.

12:08:10 22 Q. Just take us to the next page of
12:08:13 23 maps.

12:08:14 24 A. This page?

12:08:16 25 Q. Yeah.

12:08:16 1 A. Okay, so we're looking here, we
12:08:19 2 can see -- I use the yellow coding to help make
12:08:22 3 clear for non-linguists what we're looking at here.
12:08:26 4 It's the pattern that's important.

12:08:27 5 And we see for example, the word for
12:08:30 6 "breathe" on page 33 lower map, found even through
12:08:34 7 all the Algonquin communities, so that's crossing a
12:08:38 8 major linguistic boundary but showing up all in the
12:08:41 9 east, right? And these just show a bunch of
12:08:45 10 Eastern features.

12:08:46 11 Q. Now the words that were used for
12:08:50 12 Table 11, and is illustrating on these maps, what's
12:08:55 13 the age of those words?

12:09:00 14 A. Well these tend to be words,
12:09:05 15 right, that are very ancient, right? We make a
12:09:08 16 distinction in dialectology between pre-contact
12:09:14 17 words, right, vocabulary that existed prior to
12:09:20 18 contact and post-contact.

12:09:20 19 Because post-contact vocabulary often
12:09:24 20 shows different patterns because of the fact that
12:09:27 21 it involves trade relationships, and those are not
12:09:31 22 necessarily following the traditional linguistic
12:09:35 23 boundaries of dialects.

12:09:37 24 So "pepper", of course, is not -- I
12:09:41 25 assume that's something recent. But the others are

12:09:43 1 mostly, they are all -- "my sweetheart" is a
12:09:51 2 pre-contact term, for sure. So, as are the others,
12:09:54 3 except for "pepper". Okay, does that answer you?

12:10:00 4 Q. Yes, it does, thank you.

12:10:02 5 A. Okay.

12:10:04 6 Q. You were right at page 36 there?

12:10:07 7 A. Sorry.

12:10:08 8 Q. And that table, can you explain
12:10:11 9 what that table shows?

12:10:12 10 A. What I did here is, it's from my
12:10:15 11 dissertation, so I told you that I had several
12:10:18 12 hundred items of vocabulary. And what I did is I
12:10:23 13 tallied the match between communities, right?

12:10:27 14 So if the two communities had the same
12:10:33 15 word, then that would count as a match. If they
12:10:36 16 had different words, that would count as not a
12:10:39 17 match.

12:10:39 18 And of course, every community is a
12:10:42 19 perfect match with itself, it has 100 percent of
12:10:45 20 its own words. I was just mapping this out to show
12:10:49 21 the relationship of Saugeen and Nawash to general
12:10:56 22 Ojibwe.

12:10:56 23 So for example, we can see in Saugeen,
12:10:59 24 the first, the highest, closest community is
12:11:02 25 Nawash, 97 percent match in that vocabulary. Then

12:11:06 1 we go to "Wiiki", Wiikwemkong, that's 96; Rama, 93;
12:11:12 2 Walpole, 93; and on.

12:11:15 3 So these are the communities that
12:11:19 4 Saugeen and Nawash have the closest general
12:11:21 5 vocabulary affinity with. And, again, suggests to
12:11:25 6 me, being situated in a particular region of the
12:11:30 7 Ojibwe puzzle map, remember that I mentioned
12:11:32 8 earlier, they go there. That's what I'm trying to
12:11:37 9 show with these.

12:11:38 10 Q. Maybe you can just point out on
12:11:42 11 one of the maps, such as the last map that preceded
12:11:45 12 that, where these communities are that you are
12:11:49 13 saying was the tightest match?

12:11:53 14 A. Okay. So they are -- let's take a
12:11:58 15 look here. So we have Wiikwemkong, Rama, Walpole,
12:12:02 16 Curve Lake, okay? So, here we are, you can see
12:12:07 17 here is -- so here is Wiikwemkong, here is Walpole,
12:12:21 18 here is Rama, here is Curve Lake.

12:12:24 19 So you can see, where do Saugeen and
12:12:26 20 Nawash -- they fit right in there; that's my point,
12:12:31 21 okay? We also get Mississauga, so... okay?

12:12:40 22 Q. And right where you are there?

12:12:42 23 A. All right.

12:12:42 24 Q. Page 37, talking about the
12:12:46 25 relation of Potawatomi and Ojibwe, can you talk

12:12:50 1 about that?

12:12:50 2 A. Well, as I said, this is a bit of
12:12:53 3 a contested question, whether Potawatomi is a
12:12:56 4 dialect of Ojibwe or a separate language. If it
12:12:59 5 is, it is a closely related separate language, so
12:13:02 6 it's kind of a moot issue.

12:13:04 7 It shares many features with Ojibwe,
12:13:07 8 but also has distinctives. The fact that it has
12:13:10 9 these distinctives allows us to compare it to other --
12:13:17 10 to dialects of Ojibwe and see how closely they
12:13:20 11 match.

12:13:22 12 Q. So did you find elements of
12:13:30 13 Potawatomi language at Saugeen and Nawash?

12:13:34 14 A. The only elements that I found, as
12:13:36 15 I said, are those that pretty clearly are general
12:13:39 16 Odawa.

12:13:40 17 So at some point in the past, Odawa and
12:13:43 18 Potawatomi shared some vocabulary, but I did not
12:13:46 19 find -- I found very little evidence that
12:13:52 20 Potawatomi was influencing Nawash or Saugeen in
12:13:58 21 the -- during the period that we know of the
12:14:00 22 removal period of treaties, that sort of thing.

12:14:03 23 So that's what I concluded. There just
12:14:08 24 is very little evidence; it's striking.

12:14:10 25 Q. What does that mean, in relation

12:14:15 1 to ethnic ancestry, if anything?

12:14:18 2 A. Well, you would think if there
12:14:22 3 were a very large population coming in that there
12:14:26 4 would at least be some evidences of the linguistic
12:14:33 5 community of that population, but I just didn't
12:14:35 6 find any. So all I can talk about really is the
12:14:38 7 language. And there just isn't evidence there.

12:14:50 8 Q. We will be having evidence in this
12:14:52 9 case that there are a number of Potawatomi people
12:14:54 10 who did come to these communities in the mid-19th
12:15:02 11 century. So how would you explain the lack of
12:15:06 12 Potawatomi influence in the language?

12:15:09 13 A. Well, I would have to do it on the
12:15:15 14 basis of saying, you know, that there were smaller
12:15:20 15 groups, they were smaller in percentage than the
12:15:24 16 local population. The languages are close enough
12:15:28 17 that over time, the Potawatomi were absorbed.

12:15:34 18 But the key to me here is that there is
12:15:36 19 a clear core community that persists despite the
12:15:42 20 presence of Potawatomi immigrants. And that's why
12:15:46 21 we see such a prominence of Ojibwe in these
12:15:50 22 communities to this day.

12:15:52 23 Q. Are there also issues of the
12:15:57 24 different status of different languages?

12:15:58 25 A. There's been a question -- there's

12:16:01 1 a point made by my colleague Richard Rhodes. We
12:16:05 2 know that in, for example, treaty negotiations,
12:16:08 3 there's a kind of prestige ranking of Chippewa,
12:16:15 4 which is Ojibwe, Odawa and Potawatomi.

12:16:20 5 And the Chippewa is at the highest, the
12:16:24 6 oldest brother, the metaphor is of "brothers". The
12:16:28 7 next are the Odawa, who are younger, and the
12:16:31 8 Potawatomi who are younger.

12:16:33 9 And I've worked on treaties where in
12:16:35 10 the journal the Odawa will say: "We defer to our
12:16:38 11 older brothers the Chippewa".

12:16:42 12 I have not seen in any treaty work I've
12:16:46 13 done mention of the Potawatomis. But Professor
12:16:50 14 Rhodes took the view that this ranking affects
12:16:56 15 linguistic behaviour, too.

12:16:57 16 I don't agree with that necessarily; I
12:17:00 17 think it's a possibility. But I thought I should
12:17:03 18 mention it. It could be, but in my experience,
12:17:07 19 even with the treaty journals, it's more ceremonial
12:17:11 20 and once people have different opinions, forget
12:17:14 21 about the brother ranking.

12:17:16 22 And so, I don't know. I'd be
12:17:21 23 surprised.

12:17:23 24 Q. You'd be surprised at what?

12:17:25 25 A. That if this were the reason that

1 Potawatomi wasn't present at all in the
2 contemporary communities.

3 Q. All right, on page 38, you set out
4 your summary and conclusions. So is there anything
5 else you want to highlight in there that we haven't
6 covered or you want to just summarize that there?

7 A. Basically, I just want to say what
8 I've now said many times, that these communities
9 represent what I see as a transitional area between
10 Odawa and Eastern Ojibwe.

11 That they fit due to that as a
12 particular place in the puzzle of Ojibwe from
13 Québec all the way to British Columbia.

14 They fit where you would expect. Their
15 linguistic forms corroborate that fit, and they do
16 not show any significant evidence of Potawatomi
17 influence.

18 Q. Can I have the document SC0163,
19 please.

20 Now, you mentioned you've worked with
21 Professor Mary Anne Corbiere. Did you receive some
22 questions -- let me back up a bit.

23 You have a database, I understand. Can
24 you talk a bit about the database that you have?

25 A. I have many databases. I'm very

1 interested in documenting Ojibwe, and as a teacher
2 and learner of the language myself, I'm always
3 interested in having better understanding.

4 So I have put together databases of,
5 for example, texts. So I've got about, if I
6 recall, 45,000 sentences that I've gathered from
7 different sources, all in a single database that I
8 can then query when I want to look something up.

9 And Mary Anne was doing some work
10 involving translation and so she asked me to check
11 my database, which I did. And I gave her the
12 output of that database per whatever her requests
13 were.

14 Q. So this e-mail from April 10,
15 2013, is this one of these examples?

16 A. It certainly looks like it, yes.

17 MR. TOWNSHEND: I'd like that marked as
18 an exhibit, please.

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

21 THE REGISTRAR: Exhibit No. 3995.

22 EXHIBIT NO. 3995: E-mail from
23 Professor Valentine to Professor
24 Corbiere, dated April 10, 2013.

25 THE COURT: Thank you.

1 BY MR. TOWNSHEND:

2 Q. The next document is SC0164. This
3 is another e-mail of May 5, 2013. Is this another
4 example?

5 A. It looks like it, yes.

6 Q. And then you scroll down in that a
7 bit?

8 A. Yes, yes.

9 Q. So that gives the sentences and it
10 explains -- well, tell me what the red shows?

11 A. Well, Mary Anne asked for
12 particular words and my thinking, as a
13 lexicographer with her for decades, is that it's
14 very hard for us to remember off the top of our
15 heads what each word's range of meanings is.

16 So what I did is, I simply looked
17 through this, grabbed everything, so that could
18 include any dialect of Ojibwe because I have
19 material from every dialect.

20 She could look at these and see how
21 they jibe with her sensibilities as a native
22 speaker about the language.

23 But I used my own internal codes in my
24 database. Then when she decided she wanted to use
25 something, then I gave her the actual type of

12:22:03 1 reference that you would expect.

12:22:08 2 MR. TOWNSHEND: I'd like this document
12:22:09 3 as an exhibit, as well.

12:22:14 4 THE COURT: Mr. Registrar?

12:22:16 5 THE REGISTRAR: Exhibit No. 3996.

12:20:19 6 EXHIBIT NO. 3996: E-mail from
12:20:19 7 Professor Valentine to Professor
12:20:19 8 Corbiere, dated May 5, 2013.

12:22:19 9 THE COURT: Thank you.

12:22:20 10 BY MR. TOWNSHEND:

12:22:20 11 Q. The next document is SC0165.

12:22:30 12 So from the attachment to the
12:22:32 13 April 10th e-mail, as you mentioned, you've used
12:22:35 14 coded references. So for a number of them I've
12:22:39 15 asked you to expand on those references; is that
12:22:42 16 what this is doing?

12:22:43 17 A. Yes.

12:22:49 18 MR. TOWNSHEND: I'd like this marked as
12:22:51 19 an exhibit too.

12:22:52 20 THE COURT: Just for my clarification,
12:22:54 21 sir, so this is additional information beyond what
12:22:58 22 was shared with Professor Corbiere? Or is this an
12:23:02 23 attachment to the e-mail that was just marked as
12:23:05 24 Exhibit 3996?

12:23:07 25 MR. TOWNSHEND: If we go back to the

12:23:10 1 exhibit.

12:23:12 2 THE COURT: Yes, if we can do that,
12:23:16 3 3996?

12:23:18 4 MR. TOWNSHEND: The April 10th one.

12:23:20 5 THE COURT: All right.

12:23:21 6 MR. TOWNSHEND: And scrolling down,
12:23:24 7 you'll see there is a long list of examples.

12:23:28 8 THE COURT: I do, yes.

12:23:30 9 MR. TOWNSHEND: Professor Corbiere used
12:23:31 10 about five of them.

12:23:33 11 THE COURT: Correct.

12:23:33 12 MR. TOWNSHEND: And you'll also see
12:23:35 13 that the references are coded, like, the first one
12:23:38 14 is MK 16.12. So for the ones that Professor
12:23:42 15 Corbiere used, I asked Professor Valentine to
12:23:47 16 explain what those references meant and where they
12:23:49 17 came from.

12:23:50 18 THE COURT: All right. So that's --
12:23:52 19 can we go back to that document.

12:23:59 20 So the new document is copied from
12:24:03 21 Exhibit 3996 and then expanded on --

12:24:07 22 MR. TOWNSHEND: That is correct.

12:24:08 23 THE COURT: -- by the witness at the
12:24:10 24 request of counsel; is that the gist of it?

12:24:15 25 MR. TOWNSHEND: That is correct.

12:24:16 1 THE COURT: There's no objection, so
12:24:17 2 that would be the next exhibit.

12:24:19 3 THE REGISTRAR: 3997.

12:24:21 4 EXHIBIT NO. 3997: E-mail from
12:24:21 5 Professor Valentine explaining terms in
12:24:21 6 e-mail to Professor Corbiere of May 5,
12:24:22 7 2013.

12:24:22 8 MR. TOWNSHEND: One moment, please.
12:24:30 9 Those are my questions.

12:24:31 10 THE COURT: Thank you, Counsel.

12:24:35 11 Which counsel from Canada will be
12:24:38 12 asking questions of this gentleman?

12:24:40 13 MR. MC CULLOCH: I will. Michael
12:24:48 14 McCulloch.

12:24:48 15 THE COURT: Mr. McCulloch.

12:25:00 16 MR. MC CULLOCH: Your Honour, I'll be
12:25:00 17 asking some questions that don't require documents
12:25:02 18 to take us up to the lunch break, during which time
12:25:06 19 we'll be able to get the appropriate software
12:25:09 20 loaded.

12:25:09 21 So I don't want to have any delay at
12:25:12 22 this point over software problems.

12:25:14 23 THE COURT: Okay.

12:25:18 24 CROSS-EXAMINATION BY MR. MC CULLOCH:

12:25:19 25 Q. Professor Valentine, I am Michael

1 McCulloch. I am asking questions on behalf of the
2 Attorney General of Canada. And yes, I can wish
3 you a happy afternoon.

4 A. Thank you.

5 Q. I'm going to ask you a bunch of
6 questions on some different topics, but I'd like to
7 start off with some quite general questions about
8 linguistics, about the methodology of linguistic
9 research.

10 These are meant to make sure that the
11 Court has a proper understanding of a discipline
12 that is, to many of us, not entirely familiar.

13 I want to make sure that I understand
14 that your first proposition is that linguistic
15 structures, grammar, for example, are remarkably
16 resilient over time?

17 A. Yes.

18 Q. Okay. 2, 3, 400 years?

19 A. Or longer, yes. Of course, yes.

20 Q. Again I'm just trying to make sure
21 that we --

22 A. Yes.

23 Q. -- have a clear understanding of
24 the general propositions.

25 And you've also mentioned, for example,

1 the Indo-European language groups, the romance
2 languages, Germanic languages?

3 A. Yes.

4 Q. They seemed remarkable resilient
5 over space, that is to say people kept them even
6 though the peoples migrate?

7 A. Though they massively changed, as
8 we know. The difference between English and Hindi
9 is pretty substantial.

10 Q. Yes, but people carry their
11 language with them?

12 A. There's a -- yeah, we can think of
13 a language as like DNA. I'm not pressing the
14 metaphor, but it is a code that's very elaborate
15 and articulated, and persists through diffusion.

16 Q. The reason I'm going to ask you
17 some questions about linguistic methodology, and in
18 particular, the methodology of linguistic
19 fieldwork?

20 A. Sure.

21 Q. Is not because I intend to impugn
22 it, but because later on in this proceeding, we
23 will be hearing material based on anthropological
24 fieldwork and we'd like to have some sense of the
25 comparability of the two.

1 I'm going to start with a very, very
2 straightforward question. How long did all this
3 fieldwork take you?

4 A. It took me two years or more, yes.
5 Yes.

6 Q. And it involved quite literally,
7 going to all these different communities?

8 A. It involved literally driving to
9 communities and meeting people and working with
10 them one on one.

11 Q. And you had a checklist?

12 A. Yes, a questionnaire.

13 Q. Did you have a tape recorder?

14 A. I did.

15 Q. And then it would be a question of
16 going home and transcribing all of this stuff?

17 A. That's right.

18 Q. You worked very closely with the
19 communities, because you can't very well go up to a
20 complete stranger and say, how do you say
21 "sweetheart" here?

22 A. Yes, I had community authorization
23 in all cases, yes.

24 Q. Again, just what was community
25 authorization? What did that --

12:28:59 1 A. Well, I would, when I was
12:29:02 2 travelling, I would talk to band offices and call
12:29:05 3 their administration and tell them what my project
12:29:07 4 was, and tell them I would like to work with,
12:29:11 5 preferably an Elder who represented the local
12:29:14 6 speech. And have their permission to do so, yeah.

12:29:18 7 Q. That was usually not a problem?

12:29:20 8 A. It was only not a problem in -- it
12:29:23 9 was only a problem in one case, out of 40 some,
12:29:27 10 yeah.

12:29:28 11 Q. But it's very clear that the
12:29:32 12 research you were doing with these tape recorders
12:29:38 13 and personal interviews was about the languages or
12:29:41 14 the dialects.

12:29:42 15 And you've explained that the
12:29:44 16 difference is a little tricky, that you were
12:29:48 17 talking to people about where the languages and the
12:29:52 18 dialects being spoke didn't, at that particular
12:29:56 19 place in the years between 1990 and I gather you
12:30:02 20 finished your thesis in '94?

12:30:04 21 A. Between 1980 and '90 yes. And I
12:30:11 22 gathered material from many sources, I mean, my
12:30:14 23 firsthand data collection is but one source, right?
12:30:22 24 You'd have to consult my dissertation to see my
12:30:26 25 other sources.

1 Q. I'm not sure that -- I did not
2 take linguistics so I'd probably be pretty lost?

3 A. Yes.

4 Q. And the second more specific issue
5 that I want to address at this point is you talked
6 about the language that is currently spoken on the
7 Bruce Peninsula, I say spoken at present?

8 A. Yes.

9 Q. Being a deep interaction, I think
10 that was the language you used?

11 A. Yes.

12 Q. That you used this morning?

13 A. Yes.

14 Q. Between, and I hope I've got the
15 language right, the Ottawa and the southeast Ojibwe
16 linguistic areas?

17 A. Yes.

18 Q. So what you're looking at in that
19 puzzle you were talking about?

20 A. Yeah.

21 Q. Is the zone where those two
22 interacted?

23 A. That was my focus.

24 Q. That was your focus?

25 A. Of course, we have the perspective

12:31:25 1 also of the other dialects, but it's like shining
12:31:28 2 your flashlight on a particular place on the map,
12:31:31 3 yes.

12:31:32 4 Q. And you did comment, in fact, I
12:31:35 5 think this was just barely into the afternoon, that
12:31:40 6 the Nawash and Saugeen tended towards the east?

12:31:49 7 A. Yes.

12:31:49 8 Q. Sorry, aligned?

12:31:51 9 A. Either word.

12:31:52 10 Q. Aligned with the east?

12:31:54 11 A. Yes.

12:31:54 12 Q. Again as we've already touched
12:31:59 13 upon, this interaction produces the new amalgam, if
12:32:05 14 you want?

12:32:07 15 A. Yes.

12:32:08 16 Q. Over 2, 3, 400 years, if not more?

12:32:11 17 A. Yes.

12:32:12 18 Q. So that the very latest that we
12:32:16 19 would be looking at for the emergence of this
12:32:20 20 fusion of the two groups would be the late 18th
12:32:24 21 century? It could for that matter be the early
12:32:29 22 17th century?

12:32:30 23 A. I can't say. It is a good
12:32:32 24 question. I would have to think about it. But
12:32:35 25 there is such a complex relationship between the

12:32:38 1 communities that I can't say that without thinking
12:32:43 2 -- giving it some good thought. Could be much
12:32:51 3 longer. That's my concern.

12:32:52 4 Q. You're being such a cooperative
12:32:54 5 witness that, in fact, contrary to my expectation,
12:32:57 6 I'm going to ask one of my colleagues to connect
12:33:00 7 the computer to the display screen.

12:33:08 8 Perhaps if I may be excused to assist
12:33:42 9 him it might make things a little faster.

12:33:45 10 This is S1458, if Professor Valentine
12:35:10 11 will confirm that this is the article that he
12:35:13 12 relied upon, I would like to make it an exhibit.

12:35:18 13 THE COURT: Sir, is that the article
12:35:21 14 you referred to this morning?

12:35:22 15 THE WITNESS: That's the article I
12:35:23 16 referred to, yes.

12:35:24 17 THE COURT: There's no objection, so
12:35:27 18 Mr. Registrar?

12:35:28 19 THE REGISTRAR: Exhibit No. 3998.

12:35:28 20 EXHIBIT NO. 3998: Article by Ed Rogers -
12:35:32 21 Southeastern Ojibwe.

12:35:32 22 THE COURT: Thank you, please go ahead.

12:35:35 23 BY MR. MC CULLOCH:

12:35:36 24 Q. Now earlier today, you had
12:35:38 25 indicated this had not been relevant to your

12:35:41 1 linguistic conclusions, correct?

12:35:43 2 A. Well, that's hard to say, I mean
12:35:47 3 not directly, certainly.

12:35:49 4 Q. Okay. But you did say you wanted
12:35:52 5 it in there to show a little history?

12:35:54 6 A. Yeah. Yes, to give some kind of
12:35:57 7 framing of Great Lakes linguistic, cultural
12:36:01 8 linguistic situation. Yeah.

12:36:03 9 Q. And you commented that Rogers is
12:36:07 10 -- and I believe I'm quoting correctly --
12:36:11 11 "established commentary"?

12:36:14 12 A. Did I say that?

12:36:15 13 Q. We can check the transcript.

12:36:22 14 A. Well, I certainly it's a view
12:36:25 15 that's widely held, yes.

12:36:27 16 Q. It's in the North American
12:36:30 17 Handbook of Indians?

12:36:31 18 A. Yes.

12:36:31 19 Q. Published by the Smithsonian?

12:36:34 20 A. Yes, the Handbook of North
12:36:30 21 American Indians published by the Smithsonian, yes.
12:36:38 22 There's a lot of uncertainty about these early
12:36:41 23 groups and dates, of course, so it's -- just
12:36:45 24 because it's established doesn't mean it's truth.

12:36:48 25 Q. I couldn't agree more. I'm simply

1 trying to get a sense of what the standard
2 mainstream scholarship is.

3 Just as a footnote, the editor of this
4 particular volume of the handbook, Professor Bruce
5 Trigger?

6 A. Uhm-hmm.

7 Q. A very major figure, as you
8 probably are aware, in Canadian ethnohistory?

9 A. Yes.

10 Q. And in fact we'll be hearing from
11 two of his graduate students during this trial.

12 It's a small world.

13 A. It is, especially in Algonquian
14 studies.

15 Q. All right. Now what I'd like to
16 do is if you could move it up just a little bit.

17 I'd like to start with the first
18 sentence, which is actually very close to one of
19 your footnotes.

20 So Rogers says, and I'm just going to
21 read out what I consider to be the key point for
22 the purposes of this proceeding. And, again, I
23 agree that all we're doing here is establishing
24 what the dominant scholarship says:

25 "Within the century after

12:38:12 1 European contact, Ojibwe or Ojibwa,
12:38:18 2 began to expand into southern
12:38:20 3 Ontario and Michigan from a
12:38:23 4 'homeland' that is difficult to
12:38:30 5 define with any precision on the
12:38:31 6 basis of cultural or linguistic
12:38:34 7 data. It is reasonably certain that
12:38:37 8 their homeland was somewhere within
12:38:40 9 an area extending from the east
12:38:44 10 shore of Georgian Bay, west along
12:38:47 11 the North Shore of Lake Huron, and a
12:38:50 12 short distance along the northeast
12:38:55 13 shores of Lake Superior and on to
12:38:59 14 the Upper Peninsula of Michigan."

12:39:01 15 That, I think you would agree, falls
12:39:03 16 within the overlap zone?

12:39:06 17 A. Pretty much, yes.

12:39:07 18 Q. Thank you. Now, I'd like to move
12:39:11 19 a little bit further down, but still on the same
12:39:15 20 column:

12:39:17 21 "Here, at the time of European
12:39:19 22 contact, lived a number of named
12:39:24 23 groups of Algonquian speakers, who
12:39:28 24 it can be assumed spoke a common
12:39:31 25 dialect, although no doubt with

12:39:33 1 regional variations. Each group
12:39:36 2 numbered no more than several
12:39:38 3 hundred people, totalling perhaps
12:39:41 4 not more than 3 to 4,000."
12:39:47 5 Again, this is Rogers I'm --
12:39:49 6 THE WITNESS: I completely take that on
12:39:52 7 faith.
12:39:52 8 BY MR. MC CULLOCH:
12:39:53 9 Q. Okay. Perhaps we should move to
12:39:54 10 something that you actually did quote.
12:39:57 11 A. Yes.
12:39:57 12 Q. If you could go to the right-hand
12:40:02 13 column of the same page, right at the bottom, then
12:40:22 14 we'll go on to the next page.
12:40:24 15 "After the Huron had been
12:40:29 16 routed in 1649-1650 --"
12:40:33 17 I think that's the generally accepted
12:40:35 18 date?
12:40:35 19 A. Generally, yes.
12:40:36 20 Q. "-- the Iroquois began putting
12:40:39 21 pressure on Ojibwe to the north.
12:40:42 22 Temporarily some groups withdrew
12:40:45 23 westward, but no mass exodus appears
12:40:48 24 to have taken place."
12:40:54 25 That would be no mass exodus from what

12:40:57 1 Rogers has described as almost certainly their
12:41:00 2 homeland?

12:41:06 3 A. What are you asking me?

12:41:08 4 Q. Rogers, and here I'm just looking
12:41:10 5 at the context of Rogers, talks about no mass
12:41:14 6 exodus. He is not talking, if you can take a look
12:41:18 7 at Exhibit P behind you, he's not talking about the
12:41:26 8 area in green, at the foot of the Bruce Peninsula.

12:41:30 9 He's talking about the homeland which
12:41:33 10 he has described as to the northeast and then along
12:41:38 11 the west to Sault Ste. Marie. That's what he's
12:41:42 12 described as the homeland?

12:41:44 13 A. It seems to me that he describes
12:41:46 14 the homeland as basically the -- all of northern
12:41:51 15 Lake Huron, and extending down into a point. I'm
12:41:55 16 sure he would not be comfortably explicitly
12:42:00 17 delimiting, so it could encompass this area, as far
12:42:04 18 as I understand.

12:42:05 19 But you know I have not thought about
12:42:07 20 it in those terms. That's my understanding.
12:42:12 21 Right? If you want go back and look at the
12:42:16 22 sentence.

12:42:16 23 Q. If we can go back to the sentence
12:42:19 24 where he's defining the homeland.

12:42:23 25 It said it is -- and perhaps if you'd

12:42:28 1 like to, I think perhaps on the Exhibit W, that
12:42:31 2 gives us a broader sweep. If you could identify
12:42:38 3 and indicate to the Court that you're identifying
12:42:40 4 the following points.

12:42:43 5 The east shore of Georgian Bay --
12:42:51 6 sorry, Exhibit W, it's the more detailed map.
12:42:57 7 Professor Valentine?

12:42:58 8 A. Yes, sorry.

12:43:01 9 Q. The other map, the W map.

12:43:03 10 A. This map.

12:43:04 11 THE COURT: Before the gentleman does
12:43:05 12 that perhaps one of you two folks could just bring
12:43:08 13 that exhibit and put it on the -- chart to the
12:43:15 14 witness's right so I can have a better view of what
12:43:18 15 the witness is pointing at.

12:43:20 16 So there is a nice map of the Great
12:43:22 17 Lakes, sir. Exhibit W. Please go ahead with your
12:43:28 18 question.

12:43:28 19 BY MR. MC CULLOCH:

12:43:29 20 Q. Okay. I'm going through the
12:43:30 21 components of the homeland as identified by Dr.
12:43:34 22 Rogers.

12:43:35 23 And the first is with an area extending
12:43:39 24 from the east shore of Georgian Bay, westward along
12:43:47 25 the north shore of Lake Huron, and a short distance

12:43:53 1 along the northeast shore of Lake Superior, and on
12:43:59 2 to the Upper Peninsula of Michigan. That's
12:44:03 3 essentially, that sweep along the top, right?

12:44:06 4 A. Sure.

12:44:07 5 Q. Yeah. So when he says there's no
12:44:10 6 dispersal or mass exodus, he's talking about from
12:44:17 7 there?

12:44:17 8 A. I guess. I mean, I would -- I
12:44:20 9 think, look, here is Manitoulin, here is Bruce
12:44:24 10 Peninsula, to suggest that this is homeland but
12:44:28 11 this isn't? You know, we've got some issues here
12:44:31 12 of geographical proximity.

12:44:33 13 I'm not an anthropologist; I'm not a
12:44:36 14 geologist. I'm a humble linguist. But I would be
12:44:40 15 reluctant to read that into what Rogers is saying
12:44:44 16 there.

12:44:44 17 Also how do we know, you know? So
12:44:50 18 while I accept that as a definitely a proposition,
12:44:54 19 I cannot say I agree with that proposition.

12:44:57 20 Q. I'm simply asking you to accept
12:45:01 21 that it is a proposition that's tenable based on
12:45:04 22 Rogers?

12:45:05 23 A. It's tenable, I agree.

12:45:06 24 Q. I assure you we will be hearing
12:45:09 25 from historians, anthropologists, and

12:45:16 1 ethnohistorians who will be able to tell us about
12:45:19 2 the current status of this view?

12:45:21 3 A. Again, let me think about that for
12:45:24 4 a moment. In a way, I guess I have to disagree
12:45:28 5 because my sense is that there are probably people
12:45:33 6 in here, too.

12:45:36 7 Q. Are you talking about Ojibwe
12:45:38 8 people there?

12:45:38 9 A. Well, certainly related to them,
12:45:40 10 or them, yes.

12:45:41 11 Q. And that's not based on any
12:45:44 12 archeological, historical?

12:45:45 13 A. Linguistic, yes. That's it, yeah.
12:45:48 14 And I've never written about it or anything. But
12:45:51 15 you asked my impression. That's my impression.

12:45:54 16 Q. So it's your impression that the
12:45:56 17 people in the area to the extreme south -- to the
12:46:00 18 south of the peninsula spoke Ojibwe?

12:46:04 19 A. Some could have. There certainly
12:46:06 20 could have been people there.

12:46:07 21 Q. In the 17th century?

12:46:09 22 A. Yeah. Yeah. At the time of
12:46:12 23 Iroquois attack on Huronia. That's what we're
12:46:17 24 talking about, yeah.

12:46:18 25 Q. You have no professional expertise

12:46:20 1 that allows to say that --

12:46:22 2 A. That allows me -- yes, I have
12:46:23 3 none.

12:46:24 4 Certainly, "yes" or "no", right? "Yes"
12:46:27 5 or "no" on that issue.

12:46:29 6 MR. MC CULLOCH: And I believe those
12:46:30 7 are my questions.

12:46:31 8 THE COURT: Thank you, sir.

12:46:33 9 Which counsel from Ontario is asking
12:46:35 10 questions of this gentleman?

12:46:39 11 MR. FELICIAN: I am, Your Honour.

12:46:41 12 THE COURT: Mr. Feliciant, please come
12:46:42 13 forward.

12:46:42 14 MR. FELICIAN: If I can make a
12:46:44 15 proposal based on some of the overlap I've just
12:46:47 16 heard.

12:46:48 17 If we can take an early lunch I'd like
12:46:50 18 to go over my questions and it would result in a
12:46:53 19 reduction. So it would be an efficient use of the
12:46:56 20 time.

12:46:56 21 THE COURT: You're smiling because I've
12:46:58 22 said to this very group of counsel that that sort
12:47:01 23 of rationale doesn't work with me. But we're not
12:47:04 24 talking about anything more than just breaking
12:47:06 25 early for a lunch that we were going to take

12:47:09 1 anyway, so I think we can do that.

12:47:11 2 Now, Professor Valentine --

12:47:15 3 THE WITNESS: Yes.

12:47:15 4 THE COURT: -- I heard you say you had
12:47:18 5 some experience in court proceedings, but even
12:47:21 6 so --

12:47:22 7 THE WITNESS: Yes.

12:47:22 8 THE COURT: -- I wish to remind you
12:47:24 9 that since you're in cross-examination, you cannot
12:47:27 10 discuss this matter over the luncheon with anyone
12:47:32 11 at all.

12:47:32 12 THE WITNESS: Thank you.

12:47:33 13 THE COURT: It doesn't mean you can't
12:47:35 14 have someone take you to where you can get lunch as
12:47:38 15 you're here from out of town, but you'll have to
12:47:41 16 stick to basketball or baseball or one of those
12:47:44 17 subject matters.

12:47:45 18 THE WITNESS: Toronto and Wisconsin
12:47:48 19 share a basketball interest.

12:47:50 20 THE COURT: That could be a lively
12:47:51 21 lunch. Just stay away from anything to do with
12:47:55 22 this matter.

12:47:55 23 THE WITNESS: I shall. Thank you for
12:47:56 24 telling me this.

12:47:56 25 THE COURT: And we will, I think we

12:47:58 1 should come back at 2 o'clock since we're stopping
12:48:00 2 early, all right?

12:48:03 3 MR. FELICIAN: Thank you, Your Honour.

12:48:20 4 -- RECESS TAKEN AT 12:48 --

12:48:22 5 -- UPON RESUMING AT 2:00 --

02:00:31 6 THE COURT: Please go ahead, Mr.

02:00:35 7 Feliciant.

02:00:35 8 CROSS-EXAMINATION BY MR. FELICIAN:

02:00:36 9 Q. Good afternoon, Dr. Valentine.

02:00:38 10 My name is David Feliciant, I'm sorry
02:00:39 11 we haven't had a chance to meet yet. I am counsel
02:00:39 12 for Ontario. I just have a few questions for you.

02:00:42 13 A. All right.

02:00:43 14 Q. If we can bring up your thesis,
02:00:46 15 please, which is now Exhibit 3994. And we'll be
02:00:51 16 looking at page 112 of the thesis, but page 145 of
02:00:57 17 the PDF, or the electronic page 145.

02:01:01 18 And if we can go to the -- that's
02:01:05 19 right. You'll see above 1.6.6.4, the paragraph
02:01:11 20 just above that. You write that:

02:01:13 21 "There is a good representation
02:01:14 22 of Ottawa and Southeastern Ojibwe
02:01:21 23 communities in our study including
02:01:24 24 communities at Manitoulin Island,
02:01:26 25 Mississauga on the North Shore of

02:01:28 1 Lake Huron, Saugeen, Cape Croker and
02:01:31 2 Walpole Island."

02:01:32 3 My understanding from your thesis is
02:01:33 4 that you've treated Saugeen and Cape Croker as part
02:01:35 5 of the Southeastern Ojibwe for the purposes of your
02:01:40 6 thesis?

02:01:41 7 A. My report or my thesis?

02:01:42 8 Q. Your thesis. I'm talking about
02:01:44 9 your thesis.

02:01:45 10 A. I don't even remember, sorry.

02:01:48 11 They're in this area, right, of what I
02:01:51 12 say here. Ottawa and Southeastern, that's exactly
02:01:54 13 what I've been saying. I don't --

02:01:58 14 Q. And you treat Southeastern Ojibwe
02:02:02 15 as a separate linguistic group to Odawa?

02:02:06 16 A. Yes, I do, yes.

02:02:07 17 Q. And just with respect to, you
02:02:15 18 spoke a little bit about Ojibwe genetic
02:02:19 19 relationships between languages. To be absolutely
02:02:21 20 clear, when we speak of genetic relationships in
02:02:25 21 linguistic terms, we're not speaking of human
02:02:28 22 genetics or ancestry? It's strictly between
02:02:31 23 languages?

02:02:32 24 A. It's strictly between languages.

02:02:34 25 Q. Okay. Now, on page 3 of your main

02:02:45 1 report, which is now Exhibit 3993, if you can bring
02:02:51 2 that up. And that's page 3. And if we can go down
02:03:02 3 to the first bullet, and you've seen this paragraph
02:03:07 4 before, you read it out?

02:03:09 5 A. Uhm-hmm.

02:03:10 6 Q. But you write there:

02:03:11 7 "The relationship of these
02:03:13 8 communities to other communities in
02:03:14 9 the area suggest the long period of
02:03:17 10 stable contact and relationship
02:03:19 11 extending over many centuries."

02:03:22 12 So I'm just going to ask you a couple
02:03:24 13 of questions about that particular portion of the
02:03:27 14 paragraph.

02:03:29 15 Now when we speak about contact, in my
02:03:34 16 mind, it can occur in a number of ways and you can
02:03:37 17 correct me if you were thinking of something else,
02:03:40 18 but I was thinking of either face to face
02:03:42 19 interaction, that could be one way. Intermarriage
02:03:48 20 could be another way; trade relations could be
02:03:51 21 another way.

02:03:51 22 A. Indeed, all of those.

02:03:53 23 Q. Political relations?

02:03:55 24 A. (Witness nods.)

02:03:55 25 Q. And just general social

02:03:57 1 interaction?

02:03:57 2 A. All of those.

02:03:58 3 Q. Okay. And was there anything else
02:04:02 4 you can think of that jumps out that I've missed?

02:04:05 5 A. That will cover it fairly well.

02:04:08 6 Q. Thank you.

02:04:09 7 A. Any kind of social interaction, as
02:04:11 8 you say. That's a pretty broad umbrella.

02:04:14 9 Q. So, for the purpose of your
02:04:17 10 report, did you research the genealogies or family
02:04:22 11 relationships in either of Saugeen or Nawash, or in
02:04:33 12 relation to those communities and the comparator
02:04:33 13 communities we've talked about along the east shore
02:04:39 14 of Georgian Bay?

02:04:40 15 A. I did not.

02:04:41 16 Q. And for the purpose of your
02:04:42 17 report, did you research the trade relationships
02:04:45 18 between either Saugeen or Nawash in relation to
02:04:47 19 each other, or in relation to the nearby
02:04:50 20 communities you used as comparatives?

02:04:53 21 A. No.

02:04:53 22 Q. Sorry, we're going to go through a
02:05:00 23 few of these questions.

02:05:00 24 A. That's quite all right.

02:05:00 25 Q. For the purpose of your report,

02:05:00 1 did you research the political relationships
02:05:01 2 between Saugeen and Nawash, or as between the other
02:05:04 3 nearby communities you used as comparatives?

02:05:07 4 A. I did not.

02:05:08 5 Q. For the purpose of your report,
02:05:11 6 did you research the trade relationships between
02:05:14 7 Saugeen and Nawash?

02:05:14 8 A. I did not.

02:05:16 9 Q. For the purpose of your report,
02:05:19 10 did you research the general social interactions
02:05:23 11 between Saugeen and Nawash, or as between those
02:05:26 12 communities you used as comparatives?

02:05:28 13 A. I did not.

02:05:29 14 Q. Okay. Finally, for the purpose of
02:05:32 15 your report, did you collect any oral histories
02:05:35 16 that may exist that may address the nature and
02:05:37 17 extent of interaction between the communities of
02:05:40 18 Saugeen and Nawash, and as between the comparative
02:05:44 19 communities?

02:05:45 20 A. I did not.

02:05:46 21 Q. Can we pull up, please,
02:06:01 22 Exhibit 3994 and go to page 18 of the report,
02:06:05 23 page 51 of the PDF or the electronic page 51.

02:06:17 24 So I'm going to read you a portion of
02:06:20 25 the first paragraph, first full paragraph on that

02:06:24 1 page, and then I'll ask you a question. So in your
02:06:28 2 1994 report, thesis, you write:

02:06:34 3 "Thus, even if we had access to
02:06:35 4 the linguistic situation obtaining
02:06:38 5 at contact with European cultures,
02:06:40 6 we would be faced with daunting
02:06:41 7 problems of linguistic diversity,
02:06:44 8 and the problem has been massively
02:06:45 9 compounded by the immense upheaval
02:06:48 10 of Aboriginal populations engendered
02:06:50 11 by contact. As mentioned above,
02:06:58 12 many current Ojibwe-speaking
02:06:58 13 communities today reflect not only
02:06:58 14 multiple dialect sources, but even
02:07:01 15 multiple language sources, including
02:07:03 16 especially Cree and Potawatomi,
02:07:06 17 which have exerted their influences
02:07:08 18 and sometimes obscured whatever
02:07:11 19 pre-historic relationships may have
02:07:12 20 existed between linguistic groups.
02:07:15 21 The fact that these languages are
02:07:17 22 also Algonquian and thus share
02:07:19 23 analogous structures with Ojibwe and
02:07:21 24 thus allow the rather fluid transfer
02:07:23 25 of linguistic features in both

02:07:25 1 directions, greatly obscures matters
02:07:27 2 as well. Few of these languages and
02:07:30 3 dialects are well-documented
02:07:32 4 themselves, often making it
02:07:33 5 impossible to do anything more than
02:07:35 6 speculate about the nature and
02:07:37 7 extent of contact and influence."

02:07:41 8 So would you agree that that is as true
02:07:43 9 today as it was when you wrote your thesis?

02:07:46 10 A. I would say it's slightly less
02:07:48 11 true, right? I wrote a grammar, for example, that
02:07:55 12 was published in 2001. But it's largely true. But
02:08:00 13 we're talking about historical relationships,
02:08:02 14 things of this sort, right here.

02:08:05 15 Quoting the Edward Rogers, right, he
02:08:09 16 mentions many names. "Marameg", right? Which
02:08:12 17 looks to me like "catfish", but with an "R" so
02:08:17 18 centuries before.

02:08:17 19 So I'm talking about those kind of
02:08:19 20 relationships that might have been both historical
02:08:22 21 and moving forward, yes.

02:08:25 22 Q. So is it fair to say you're not in
02:08:28 23 a position to provide an expert opinion in respect
02:08:31 24 of the nature and extent of any contact between
02:08:38 25 Nawash, Saugeen and the comparator communities?

02:08:41 1 A. I am able to use linguistic data
02:08:48 2 to show that, to show relationships. That's my
02:08:48 3 expertise, right?

02:08:50 4 Q. But if you're going to take it
02:08:52 5 beyond strictly the language comparisons, you can't
02:08:55 6 go further than that?

02:08:56 7 A. It's linguistic, right? Uhm-hmm.

02:08:59 8 Q. Thank you.

02:09:01 9 Now, you discuss in your report the
02:09:10 10 Potawatomi?

02:09:15 11 A. Yeah.

02:09:16 12 Q. And again, just to remind us of
02:09:18 13 the statement, if we can bring up your main report,
02:09:22 14 which is at Exhibit 3993, page 3 -- sorry, page 37.

02:09:41 15 A. Page 37, you said?

02:09:43 16 Q. Yup.

02:09:45 17 A. Okay.

02:09:52 18 THE COURT: That's page 37, Counsel, on
02:09:54 19 the screen there.

02:09:56 20 MR. FELICIAN: Yes I'm looking for the
02:09:58 21 portion -- can you go down, please?

02:10:00 22 BY MR. FELICIAN:

02:10:01 23 Q. There is a paragraph -- "another
02:10:02 24 question". It starts:

02:10:04 25 "Another question that

02:10:05 1 naturally arises is why we find so
02:10:07 2 little Potawatomi influence in
02:10:09 3 communities that are known to have
02:10:10 4 absorbed substantial numbers of
02:10:13 5 Potawatomi-speaking members in the
02:10:15 6 19th century."

02:10:20 7 So we'll just stop there for one
02:10:22 8 moment. You've already said you haven't conducted
02:10:28 9 any genealogical research.

02:10:30 10 A. (Witness nods.)

02:10:30 11 Q. So you've done really no research
02:10:33 12 to determine how many Potawatomi joined these
02:10:37 13 particular communities?

02:10:38 14 A. Only just general reading. I
02:10:40 15 probably should have cited that, you know, there
02:10:43 16 are different historical comments to this effect.
02:10:47 17 I took it as sort of general knowledge at this
02:10:50 18 point, yeah.

02:10:51 19 Q. But you don't deny that the
02:10:54 20 historical fact that there were many Potawatomi
02:10:58 21 that came into Canada in the 1800s?

02:11:01 22 A. I don't deny that, no.

02:11:03 23 Q. Did you conduct any oral history
02:11:05 24 research to determine why those of Potawatomi
02:11:09 25 ancestry speak Ojibwe now?

02:11:12 1 A. I did not.

02:11:13 2 Q. And in the next sentence you say:

02:11:18 3 "The most obvious and natural
02:11:21 4 explanation for this is that the
02:11:22 5 relative numbers of refugee
02:11:25 6 Potawatomi speakers compared to the
02:11:28 7 host Ojibwe-speaking population, was
02:11:30 8 too small to have much of a
02:11:32 9 linguistic impact on the host
02:11:34 10 community."

02:11:36 11 Is it not equally possible that those
02:11:41 12 members of the Potawatomi that came into this
02:11:44 13 region of Canada in the 1800s made a conscious and
02:11:48 14 concerted effort to adopt and learn the existing
02:11:52 15 language?

02:11:52 16 A. It's certainly not equally
02:11:55 17 possible, in my estimation. But it's perhaps a
02:12:01 18 tenable reason. But I don't think it's equally...

02:12:05 19 Q. You testified a bit about the
02:12:07 20 hierarchy of languages, Chippewa being seen as a
02:12:11 21 higher tier of language?

02:12:12 22 A. Yes.

02:12:13 23 Q. Followed by Odawa then Potawatomi?

02:12:16 24 A. Yes.

02:12:16 25 Q. That would have acted as somewhat

02:12:18 1 of an incentive to learn the higher --

02:12:21 2 A. That's a ceremonial distinction,
02:12:24 3 and obviously when you're coming into Ojibwe
02:12:27 4 territory, if you have three-fourths of the people
02:12:30 5 or five-sixths or just a few families are coming,
02:12:33 6 it's going to be overwhelmingly Ojibwe. That's
02:12:36 7 what I'm saying here.

02:12:41 8 Q. What you're not saying is that the
02:12:43 9 people of Potawatomi ancestry aren't integral to
02:12:48 10 the composition of these communities. You're not
02:12:52 11 commenting on their contributions, their
02:12:54 12 importance?

02:12:54 13 A. I'm talking about the language,
02:12:57 14 right? Yes.

02:13:04 15 MR. FELICIAN: Thank you, Your Honour.
02:13:05 16 Thanks to the earlier lunch I was able to cut out
02:13:08 17 some of my questions.

02:13:09 18 Those are all my questions. Thank you,
02:13:11 19 Dr. Valentine.

02:13:12 20 THE COURT: Mr. Townshend, do you have
02:13:14 21 any re-examination for this gentleman?

02:13:18 22 MR. TOWNSHEND: One moment.

02:13:19 23 I have no questions.

02:13:23 24 THE COURT: Thank you.

02:13:24 25 Thank you, sir, for coming to assist us

1 in this matter. You can step down.

2 Counsel, you all received a note from
3 my assistant saying I wanted to get together and
4 talk about some of the aspects of the upcoming
5 schedule. I propose to do so now unless somebody
6 has some objection to doing that. No? All right.

7 You get yourself organized and I think
8 you probably want to say something to this
9 gentleman as he's leaving, but in about five
10 minutes I'll get you together for a timetable
11 discussion. All right.

12
13 -- Court adjourned at 2:14 p.m.

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REPORTER'S CERTIFICATE

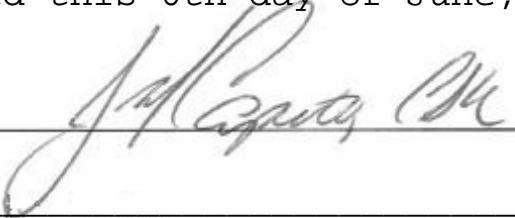
I, JUDITH M. CAPUTO, RPR, CSR, CRR,
Certified Shorthand Reporter, certify;

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

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed at my direction;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 6th day of June, 2019.



NEESON COURT REPORTING INC.

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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