

F.M. Greenwood (for Province)
In Chief by Mr. Goldie

1 Vancouver B.C,
2 October 7, 1989.
3

4 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)
5

6 THE REGISTRAR: In the Supreme Court of British Columbia this
7 7th day of October, 1989. In the matter of Delgamuukw
8 versus Her Majesty the Queen at bar, my lord.
9

10 FRANK MURRAY GREENWOOD, resumed:
11

12 THE REGISTRAR: May I remind you, sir, you are still under oath?

13 A Yes.

14 THE REGISTRAR: And would you state your full name?

15 A Frank Murray Greenwood.

16 THE REGISTRAR: Thank you.

17 THE COURT: Mr. Goldie.

18 MR. GOLDIE: My lord, a couple of housekeeping matters. My
19 friend Mr. Rush pointed out that at tab 26, Mr.
20 Pownall's letter to Lord Egremont, there appears to be
21 a missing page. The material under that is as we
22 received it from the public record office. Our agent
23 in London has been asked to look into it, but he
24 advises us that it may be a week to two weeks before
25 the document, if there is one, can be copied and
26 delivered. If that turns out to be the case we'll ask
27 him to send us by FAX, facsimile the text of the
28 missing page.

29 THE COURT: Thank you.

30 MR. GOLDIE: Tab 46, I think my friend's point there was that he
31 didn't have that.

32 THE COURT: I don't have a tab 46.

33 MR. GOLDIE: No. I think it was from the list of documents that
34 we have supplied him.

35 THE COURT: I see.

36 MR. GOLDIE: I shouldn't say tab 46. We do not have that copy
37 readily at hand, but we can obtain a copy from the
38 microfilm collection at U.B.C. Mr. Rush has also
39 pointed out to me that a map which is yet to come, my
40 lord, and is at tab 281 known as the Carver map is a
41 very poor copy and that too is as we received it and
42 it too comes from the public record office. The
43 inscriptions on the map --

44 THE COURT: We haven't reached it yet, have we?

45 MR. GOLDIE: No, we haven't. I am just dealing with these
46 matters and advising my friends of the present
47 situation. That too is from the public record office

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1 and what I have said earlier applies to it, but we
2 have had our agent send us by facsimile the wording of
3 two notations on that and we will supply that to
4 our -- to my friends. There is one other matter which
5 I can deal with without taking up the court's time.
6 Yesterday Mr. Grant informed us that it was as a
7 matter of convenience to counsel for the plaintiffs
8 they would not like to have Mr. Magwood called as we
9 had intended to before Mr. Williams. We have
10 ascertained from Mr. Magwood that he would be
11 available in the week of the 16th of October and we
12 will schedule him for that week. He's not available
13 in the period immediately following that week and it
14 will mean that we may have to ask a witness to stand
15 down in order to call him. But he will be called
16 after Mr. Williams or before the end of the week of
17 October 16. Returning to the witness, my lord.
18

19 EXAMINATION IN CHIEF BY MR. GOLDIE (Continued):

20 Q Dr. Greenwood, yesterday we had dealt with some of the
21 French map material, maps and material which you had
22 examined in determining the knowledge or lack of it of
23 the western limits of Canada or New France and I
24 believe I had asked you to look at tab 181. Do you
25 have that in front of you?
26 A Yes.
27 Q And I had directed your attention to the paragraph
28 numbered four?
29 A Yes.
30 Q And I had asked you to tell his lordship whether you
31 could throw any light on the general location of the
32 rivers which discharge into the St. Lawrence --
33 A Uh-huh.
34 Q -- having regard to the preceding clause which refers
35 from the mouth to the source.
36 A Well, of course I couldn't possibly list them all
37 here.
38 Q No. I just mean a general geographic location.
39 A Well, it's essentially talking about the area I think
40 from the Great Lakes to the mouth of the St. Lawrence.
41 Q Yes. And did you also have occasion to examine the
42 commissions issued to governors and attendants of the
43 French regime in the century prior to the conquests
44 for the purpose of determining whether there was any
45 greater precision --
46 A I made a sampling --
47 Q Excuse me. Let me finish the question.

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- 1 A Oh, sorry.
2 Q Any greater precision in determining the western
3 boundary of Canada?
4 A Well, I made a sampling and we have discussed one of
5 them and together with reliance on the secondary
6 sources I could find no evidence of greater precision.
7 Q And the sources of your information are found in
8 footnote number 178 and the example we referred to
9 under tab 179?
10 A Yes.
11 Q Now, you also, I understand, then looked at the
12 British information?
13 A Yes.
14 Q With respect to the same question, that is to say the
15 knowledge or lack of knowledge of the western limits
16 of Canada or New France, and your material at tabs
17 183, 184, 185, 186, 187, 188, 189, 192, 193 and 194
18 and 195 include the sources that you looked at in your
19 attempt to trace the British knowledge or lack of it?
20 A Yes.
21 MR. RUSH: You said tabs. Did you mean to say footnotes?
22 MR. GOLDIE: No. I mean tabs.
23 MR. RUSH: We don't have --
24 MR. GOLDIE: That, my lord, will take us into the next volume.
25 Q And I am going to before I do that refer to just a
26 couple of notes that I have made reference to. In
27 this volume, doctor, would you look under tab 186?
28 A Yes.
29 Q And this too is from the collection that you
30 identified yesterday?
31 A Yes.
32 Q And what is the section that you wish to refer to?
33 A Well, the very last paragraph on the first page, page
34 55.
35 Q Yes.
36 A
37 "Canada, according to the English accounts, is
38 bounded on the North by the Highlands which
39 separates it from the country about Hudson's
40 Bay, Labrador, or New Britain, and the country
41 of the Eskimeaux, and the Christinaux; on the
42 East, by the River St. Lawrence; and on the
43 South by the Ottawa River,"
44
45 Or Outawai River,
46 "the country of the Six Nations, and
47 Louisiana; its limits towards the West,

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- 1 extending over countries and nations hitherto
2 undiscovered."
3
4 End quote.
- 5 Q Thank you. And that is taken from the source that is
6 described in the asterisked footnote?
7 A Yes.
8 Q Thank you. And I want to refer you to tab 187 and
9 perhaps you'd be good enough to tell his lordship what
10 that document is and refer him to the significant
11 parts?
12 A Yes. 187. That's General Gage's report.
13 Q And who is he, please?
14 A General Gage was then the governor. He would later be
15 the Commander-in-Chief in British North America. At
16 this point he was the Governor of the Government of
17 Montreal. Until the military regime came to an there
18 were three governments: Quebec, Three Rivers and
19 Montreal. He was the Governor of Montreal.
20 Q All right. Thank you. And now would you refer end us
21 to the part that you --
22 A Yes. It's on internal page, I think it's the very
23 last page. 72.
24 Q Yes.
25 A In the middle paragraph beginning "as I."
26 "As I cannot discover that the Limits betwixt
27 Louisiana & Canada were distinctly described,
28 so as to be Publickly known, I can only inform
29 you, what were generally believed here, to have
30 been the Boundaries of Canada & give you my own
31 Opinion, which is drawn from the Trade -- "
32
33 Which means the Canadian Traders,
34
35 "-- that has been Constantly carried on, by the
36 Canadians, under the Authority, and permission
37 of their several Governors. From hence I
38 judge, not only the Lakes, which are
39 Indisputable, but the whole Course of the
40 Mississippi from its Heads to its Junction with
41 the Illinois, to have been comprehended by the
42 French and the Government of Canada."
43
44 End quote.
- 45 Q And from the context, the reference to lakes is to
46 what lakes, please?
47 A Great Lakes.

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- 1 Q And tab 188 you have a reference to Governor Murray's
2 report on the state of the Government of Quebec. He
3 was Gage's equivalent in Quebec, was he?
4 A Yes, he was. And --
5 Q And to what do you wish on refer his lordship in that
6 document?
7 A Just a moment. I am just checking my internal page
8 reference.
9 Q Well, would you look perhaps at --
10 A I think it's at 60. Page 60.
11 Q Yes.
12 A The date, by the way, of this is given by the editors
13 as 5 -- is it 5 June 1762, but your lordship will
14 notice at the very last page, page 61 where the date
15 is either put on by Murray or copied, it is the 6th of
16 June and I have sort of assumed for the purposes of
17 this trial it's the 6th of June.
18 Q And the reference is at page 60, is it, the third to
19 last paragraph?
20 A It's at the very bottom of page 60. And it's:
21
22 "Before this report is closed it will not be
23 improper to observe to Your Lordship how
24 impossible it is to ascertain exactly what part
25 of North America the French stiled Canada, no
26 Chart or Map whatever having fallen into our
27 hands or public record of any kind to show what
28 they understood by it."
29
30 End quote.
31 Q Thank you. Doctor, you have made reference on several
32 occasions to the collection of maps prepared by
33 Ontario for the resolution of the boundary between
34 Ontario and Manitoba?
35 A Yes.
36 Q Can you tell his lordship how many maps were
37 identified and commented upon by Ontario?
38 A A hundred and thirty-five.
39 Q And was there any one of those in which it was found
40 to have -- in which there was found to be an
41 unambiguous indication that Canada or New France
42 extended its territory to the Pacific?
43 A No, there was not. Not in every case was a comment
44 made as to where the printing of Canada or New France
45 began, but no, there were no unambiguous examples
46 indicating that New France stretched to the Pacific
47 coast.

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- 1 Q Under tab 189 you have the beginning of the notes on
2 the maps which is comprehended in that collection and
3 which extended to 135, this all --
4 A Yes.
5 Q Thank you. I am sorry, 135 --
6 A Maps were described.
7 Q Were -- yes.
8 MR. RUSH: Well, I think, my lord, you should be -- we should
9 know who the author of this is and the fact that the
10 maps, of course, aren't anywhere in the material, but
11 simply the notes of the maps. Some of the maps may be
12 in the material, but certainly not the 135.
13 MR. GOLDIE:
14 Q No. I quite agree. The person who supervised the
15 collection of these maps was identified by the witness
16 yesterday as Mr. David Mills?
17 A David Mills.
18 Q And he also stated that the text in each note is
19 generally speaking that of the map maker or the
20 cartographer, is that correct?
21 A The notes in brackets you mean?
22 Q Yes.
23 A Yes.
24 Q Following the --
25 A That would be the note of the compilers of the
26 collection, Mills and undoubtedly other people.
27 Q Yes. With quotations from the --
28 A From the maps themselves.
29 Q Yes.
30 A Yes.
31 MR. RUSH: But the -- there are quotes here but the notes
32 themselves also are the compilers' notes as I
33 understand the witness' evidence.
34 THE COURT: Yes.
35 A That's correct.
36 MR. GOLDIE: That's right.
37 MR. RUSH: Thank you.
38 MR. GOLDIE:
39 Q It was in the interest -- or will you tell his
40 lordship what the interest was of Ontario in making
41 this examination?
42 A Well, it was involved in a boundary dispute that
43 lasted from approximately 17 -- 1873 to 1889. That's,
44 I think, the final legislation with Manitoba,
45 supported by the Federal Government over the area west
46 of Fort William.
47 MR. GOLDIE: Thank you. I'm not going to ask the witness to

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1 identify each of the tabs that I have referred to in
2 respect to this section, my lord, but the volume comes
3 to an end with tab 192B and I tender this volume as
4 Exhibit 1163 with each of the exhibits as described in
5 the index at the front of the volume and numbered
6 according to the tab numbers.

7 THE COURT: Yes. All right. Thank you.

8

9

(EXHIBIT 1163-159: Nicolas Bellin Map)

10

11

(EXHIBIT 1163-161: Robert de Vaugondy Map)

12

13

(EXHIBIT 1163-162: Delisle de Fonte Map of 1752)

14

15

(EXHIBIT 1163-163: Thomas Kitchin - Map of the World)

16

17

(EXHIBIT 1163-165A: John Mitchell Map)

18

19

(EXHIBIT 1163-166: Thomas Jefferys Map)

20

21

(EXHIBIT 1163-167B: A New Map of the N.E. Coast of
22 Asia & N.W. Coast of Am.)

23

24

(EXHIBIT 1163-168: Thomas Jefferys Map)

25

26

(EXHIBIT 1163-169: Thomas Jefferys Map)

27

28

(EXHIBIT 1163-170: Emanuel Bowen Map)

29

30

(EXHIBIT 1163-172: Emanuel Bowen Map)

31

32

(EXHIBIT 1163-177A: Extract: "Bougainville on the
33 French Posts, 1757")

34

35

(EXHIBIT 1163-179: Commission to Vaudreuil)

36

37

(EXHIBIT 1163-180: Extract: Vaisette on Boundaries
38 of Canada, 1755)

39

40

(EXHIBIT 1163-181: Nicolas-Gaspard Boucault's Report)

41

42

(EXHIBIT 1163-182: Bellin Re His 1755 Map)

43

44

(EXHIBIT 1163-183: Moll, Herman on Canada's
45 Boundaries)

46

47

(EXHIBIT 1163-184: Mitchell, John)

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1
2 (EXHIBIT 1163-185: Mitchell, John)
3
4 (EXHIBIT 1163-186: Thomas Jefferys on Canada's
5 Boundaries)
6
7 (EXHIBIT 1163-187: Gage to Amherst)
8
9 (EXHIBIT 1163-188: James Murray Report to Government)
10
11 (EXHIBIT 1163-189: "Notes on Maps")
12
13 (EXHIBIT 1163-191: John Gibson Map)
14
15 (EXHIBIT 1163-192A: Jean Palairret Map)
16
17 (EXHIBIT 1163-192B: Jean Palairret Map)
18
19 MR. GOLDIE: I'd like to hand up, my lord, Volume 4.
20 Q This volume continues the collection that you had to
21 assemble for the purposes of seeking some indication
22 of British knowledge, is that correct?
23 A Yes. And also to demonstrate that the printing of
24 Canada or New France was very seldom west of the
25 source of the Mississippi and never on the Pacific
26 coast.
27 Q All right. And look at tab 195, please, as -- oh,
28 yes, before you do that, I'd ask, my lord, that a
29 number be reserved for this volume.
30 THE COURT: Yes. That will be 1164. Oh, wait a minute, I --
31 THE REGISTRAR: Yes.
32 THE COURT: Have we used that up?
33 THE REGISTRAR: No. That's all right.
34 THE COURT: 1164 is all right.
35 MR. GOLDIE: Thank you.
36
37 (EXHIBIT 1164 Reserved: Document Book Re Greenwood's
38 Report - Volume 4 Tabs 193 - 249)
39
40 MR. GOLDIE:
41 Q Well, first perhaps I would ask you to look at 193.
42 A 193.
43 Q And that is entitled "A New and Accurate Map of North
44 America Including the British Acquisition Gained by
45 the Late War 1763"?
46 A Yes.
47 Q And what is the source of this?

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- 1 A This is in John Entick, his volume the General History
2 of the Late War published in London 1763 and it's
3 Volume 1 page 167.
4 Q And what is the significant feature that you find
5 there?
6 A Well, the most westerly placing of the printing of
7 either New France or Canada is just west, I suppose,
8 or almost exactly parallel with the western part of
9 Lake Superior.
10 Q This, my lord, was put to Dr. Farley in his
11 cross-examination Exhibit 1154-23.
12 THE COURT: All right. Thank you.
13 MR. GOLDIE:
14 Q And then turn to 195.
15 MR. RUSH: Are you proceeding by the footnote or the number, the
16 tabs?
17 MR. GOLDIE: I am sorry, the tab.
18 MR. RUSH: Because --. Oh, I see. You indicated 193.
19 MR. GOLDIE: Yes. We just went to that.
20 MR. RUSH: Thank you.
21 THE COURT: The tabs and the footnotes are the same?
22 MR. GOLDIE: They are, yes.
23 Q Under tab 195 you have a map. Would you tell his
24 lordship what that is?
25 A That's a map by John Gibson which appeared in the
26 Gentleman's Magazine for 1763.
27 Q That's Exhibit 1154-21.
28 THE COURT: I am sorry, the number?
29 MR. GOLDIE: I beg your pardon, my lord?
30 THE COURT: What was number again?
31 MR. GOLDIE: 1154-21.
32 THE COURT: Thank you.
33 MR. GOLDIE: That was put to Dr. Farley.
34 Q And what feature is it that you make reference to
35 there, doctor?
36 A Well, your lordship will notice that there are words
37 printed on the map "lands reserved for the Indians"
38 which run from West Florida to Lake Erie and secondly,
39 that nothing is shown west of the Lake-of-the-Woods on
40 that map.
41 Q Thank you. You next consider in your -- in your
42 report or really you are in the process of considering
43 it in the evidence you have given now, the demarcation
44 of Canada on the -- or New France on these seventeenth
45 and eighteenth century maps?
46 A Yes.
47 Q And the sources of the documents which are placed

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- 1 under the tabs are in the footnotes and I will be
2 supplying your lordship with a copy of those so I
3 won't pause with that. I can only go on now or I wish
4 to go on now to the question of whether the limitation
5 or delimitation of Canada can be ascertained from at
6 least in part the Treaty of Paris and its preparatory
7 works. I am correct from your earlier evidence that
8 the Treaty of Paris underwhich France ceded to Britain
9 Canada with all its dependancies did not provide a
10 definition of the western extent of that colony, is
11 that correct?
- 12 A Yes.
- 13 Q You examined in pursuing this question the peace
14 negotiations which failed between England and France
15 in 1761?
- 16 A Yes, I did. I examined the manuscript sources on that
17 in the State Papers Series in the public record office
18 Chancery Lane, the printed sources found in Thackeray
19 and Pease and the detailed secondary source Savelle,
20 which is found in footnote two of my -- found with
21 full cite in footnote two.
- 22 Q Footnote two. And is it what is referred to in
23 footnote 196?
- 24 A Yes.
- 25 Q Now, am I correct in my understanding, doctor, that in
26 those abortive peace negotiations the question of the
27 boundary between Canada and Louisiana loomed large?
- 28 A That was a major dispute, yes.
- 29 Q And perhaps you would first refer to a document under
30 tab 197.
- 31 A Yes.
- 32 Q And then explain to his lordship the background of
33 that particular document.
- 34 A Well, by June 1761, my lord, the French had agreed to
35 cede all of Canada, but the definition of Canada had
36 not been arrived at at that point and the French were
37 to keep Louisiana. So it was clearly in the interest
38 of France to keep as much of Louisiana as possible.
39 In August 1761, the Duke of Choiseul who was the
40 negotiator, French foreign minister negotiating for
41 France, sent a note to his Ambassador in London,
42 Francois Bussy, B-u-s-s-y, to deliver to Pitt or to
43 the Imperial government which set out the French
44 government's definition of Louisianna as opposed to
45 Canada. And that is tab 197C, which is in French,
46 slightly -- slightly difficult French. Now, I have
47 translated that. If it's of use to the court I can

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1 read my translation into the record.
2 Q Would you do so, please.
3 MR. RUSH: Just before you do, where are you reading from?
4 MR. GOLDIE:
5 Q From 197C. And the author of this document is the
6 Duke of Choiseul?
7 A Duke of Choiseul. And it's actually dated 13 July.
8 No, I am sorry, 16 August 1761.
9 Q Yes.
10 THE COURT: I am sorry, August?
11 A August of 1761.
12 THE COURT: 1761?
13 A And I am translating from the entire tab at internal
14 page 59 there. Quote:
15
16 "To fix the boundaries of Louisiana bordering
17 on the English colonies and Canada -- "
18
19 THE COURT: I am sorry, just a minute. "Bordering on English."
20 A
21 "Pour fixerles limited de la Louisiana."
22
23 THE COURT: I am sorry?
24 MR. GOLDIE:
25 Q Read slow.
26 THE COURT: "Bordering on English colonies."
27 A
28 "on the English colonies and Canada, we will
29 draw a line running from the Rio Perdido,
30 between Mobile and Pensacola Bays, passing by
31 Fort Toulouse in the Alabamas territory,
32 extending to the western end of Lake Erie,"
33
34
35 Q Just pause there.
36 A Yes.
37 Q All right. Proceed.
38 A
39
40 "So as to include the Miami River, and then
41 through the eastern end of Lake Huron it will
42 go to the Hudson Bay's heights of land towards
43 lake Abitibi,"
44
45 Q All right. Just pause there, please. All right.
46 A
47 "from which the line will be continued from

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- 1 east to west up to and including Lake
2 Superior."
3 End quote and end translation.
4 Q Now, preceding that under tab 197 is further or
5 earlier instructions?
6 A Yes.
7 Q Is that correct?
8 A Yes.
9 Q And the French is given at the top of the page and the
10 translation is at the -- is at the lower half of the
11 page?
12 A Yes.
13 Q And in the first paragraph on July 15 the Duc de
14 Choiseul is advising Louisiana, and I quote:
15
16 "In the event that Canada is ceded to the
17 English it is essential to settle the
18 boundaries of Louisiana in such a way as to
19 leave no pretext to the English to confuse them
20 with those of Canada."
21
22 Unquote.
23 A Yes.
24 Q And what you have translated from tab 197C represents
25 the French position on that?
26 A This is the last position taken by the Duc de Choiseul
27 on that question before he yielded to Pitt.
28 Q And I take it from your last comment that it is common
29 ground that Pitt on behalf of England rejected the
30 French position?
31 A Utterly.
32 Q And he -- you make reference at tab 199 to the
33 instructions given by Pitt to his representative.
34 Would you refer to that, please, and indicate to his
35 lordship the significant passages?
36 A Tab 200 is it we are dealing with?
37 Q I am looking at tab 199.
38 A 200 is clearer.
39 Q 200 and 199 are the same document, I believe.
40 THE COURT: Tab 199?
41 MR. GOLDIE: Yes.
42 Q Is your reference the reference you want to refer to
43 under 200?
44 A It's under 200. It makes it clearer.
45 Q All right.
46 MR. RUSH: There are two different documents?
47 A Yes. This is Pitt's instructions to Hans Stanley who

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1 was the Ambassador in Paris doing the, you know,
2 presenting of memorials for Pitt to the court of
3 Versailles and the date is the 27th of August 1761 and
4 it's on internal page 607.

5 Q Under Tab 200. The documents, my lord, I should make
6 it clear under 199 and 200 are taken from the same
7 source.

8 THE COURT: Yes.

9 MR. GOLDIE:

10 Q All right. Please proceed, doctor.

11 A These instructions say this, quote:

12
13 "and, lastly, the claiming, as Louisiana, with
14 an effrontery unparalleled, vast regions which
15 the Marquis de Vaudreuil has surrendered to
16 General Amherst as Canada, and defined himself,
17 with his own hand, as comprehended in the
18 government of that province where he commanded.
19 And, as far as concerns the whole course of the
20 Ohio and the countries in that part, you will
21 see by the enclosed memorial transmitted to you
22 for that purpose, that the Duc de Mirepoix did
23 solemnly declare here, in the name of his
24 Court, that France had constantly regarded the
25 said River Ohio as a dependance of Canada, and,
26 instead of making part of Louisiana, as being
27 essential to the communication of Canada with
28 that first-named province."

29
30 Then later on he goes on, the instructions go on:

31
32 "Having mentioned in the answer to the French
33 ultimatum the line traced by hand of the
34 Marquis de Vaudreuil, defining the limits of
35 the government of Canada, to which I allude in
36 this letter, I send you enclosed, for your
37 information and use, an imperfect, but I trust
38 intelligible, sketch of the same, copied from
39 the original transmitted to me by General
40 Amherst, together with an extract of the
41 General's letter on that subject."

42
43 End quote.

44 Q All right. The reference there to the map traced by
45 the Marquis de Vaudreuil?

46 A Yes.

47 Q You have a copy of that map in your collection of

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1 documents?
2 A Yes.
3 Q And of the correspondence or the letter of Lord
4 Jeffery Amherst. Perhaps you might be good enough
5 before coming to those just to sketch the background
6 of the map --
7 A Yes. I can do this without referring --
8 Q Excuse me. The background of the map referred to by
9 Pitt.
10 A Yes. Well --
11 MR. RUSH: I would like the witness to keep in mind that he
12 should, where he can, direct us to the documents in
13 the background of this.
14 A Well --
15 THE COURT: I understand you thought it would be useful if he
16 sketched it out.
17 A I can go back into the document after. I am just
18 trying to get the general background.
19 MR. RUSH: Thank you.
20 A So am I to proceed?
21 MR. GOLDIE:
22 Q You are.
23 A Shortly after the conquest of Canada which can be
24 dated as the 8th of September 1760, that is the
25 capitulation of Montreal which ceded, subject of
26 course to other negotiations, ceded Canada to Great
27 Britain, shortly after that date Sir Jeffery Amherst,
28 who was the Commander-in-Chief, sent his subordinate
29 Haldimand, who is a colonel at the time, to see
30 Vaudreuil who had been commanding in Montreal
31 District, and to ask him if he had any map showing
32 what Canada amounted to since, you know, one Canada,
33 the British, and he said, "No, no, any maps we have
34 they were destroyed in Quebec when Quebec fell." Then
35 he produced at one stage a very large North American
36 map and on the day that the French army sailed out of
37 Montreal, on parole, just before that Haldimend went
38 to see Vaudreuil and sat down or at least Haldimend
39 sat down and started to draw out what he considered to
40 be the boundaries of Canada as opposed to Louisiana,
41 the boundary between Canada and Louisiana in the west.
42 He took a pencil out of his pocket. He started at
43 Illinois, etc. Vaudreuil was by his shoulder all the
44 time and this map was given, of course, to Amherst and
45 Amherst sent a copy or sent it, rather, excuse me, to
46 Pitt. Pitt sent it to Stanley, and it was used in the
47 negotiations, and after a great deal of objection the

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1 French government, including Versailles, that is King
2 Louis XV, agreed that this would be the definition of
3 Canada and Louisiana where they neighboured or abutted
4 on each other.
5 Q My lord, under tab 206 is the reproduction of the map
6 in question. Dr. Greenwood, I am showing you a
7 document which is similar to what is under tab 206,
8 but it is certified. Can you tell me what its origin
9 is, please?
10 A Yes. This is one that I located in the public record
11 office Kew Gardens under map reference MPG 3, PRO and
12 it had been separated, this map had been separated
13 from Amherst's dispatch to Pitt of 4 October 1760.
14 Now, there are two lines that essentially travel from
15 the junction of the Ohio and the Mississippi to Red
16 Lake or Lac Rouge. One is a sort of dotted line, dark
17 dotted line, and another is a red line. Now, I can
18 phrase how it was traced, if you wish.
19 Q Well, there is a -- there is a document which
20 indicates --
21 A Yes.
22 Q -- how it is done?
23 A Yes.
24 MR. RUSH: Just for a moment I'd like to review this. If you
25 would just pause for a moment, please, if you are
26 going to continue with this further. Yes, my lord,
27 just a point of clarification. I am sure the witness
28 intended to say this, but the red line tracks the
29 dotted line.
30 THE COURT: Yes. Seems to. I take it the red line is what
31 looks more like a pencil line here?
32 A Well --
33 THE COURT: The black line is -- the red line was the solid
34 line?
35 A I wouldn't swear to that, my lord.
36 THE COURT: All right.
37 MR. GOLDIE: I tender that, my lord, as the next exhibit. That
38 would be 1165.
39 THE REGISTRAR: Yes, it would.
40 THE COURT: No. Is that different from 209A?
41 MR. GOLDIE: It is not different from what is under tab 206.
42 206 is simply a photograph.
43 THE COURT: Oh, I am sorry. I am looking at 206. Yes. Sorry.
44 MR. GOLDIE: The only virtue, if it may be put that way, is that
45 the colours are --
46 THE COURT: Yes. All right. Yes, well, then this can be --
47 what's the number?

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1 THE REGISTRAR: 1165, my lord.
2 THE COURT: And there is only the one?
3 MR. GOLDIE: Just the one, yes.
4 THE COURT: All right. We should mark it as the official
5 exhibit.
6 THE REGISTRAR: Thank you.
7 THE COURT: What's the exhibit number?
8 THE REGISTRAR: 1165.
9

10 (EXHIBIT 1165: Vaudreuil-Haldimand Map dated 1760)
11

12 MR. GOLDIE:

13 Q Doctor, under tab 202 you have placed an extract from
14 the collection of the Illinois State Historical
15 Library and at internal page 402 is a letter from
16 Colonel Haldimand to Sir Jeffery Amherst?

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q And is that the source of or information about the
21 manner in which the marks on that map were made?

22 A Well, yes. I used the French original in the War
23 Office Papers, but I also consulted this document
24 before the court.

25 Q And would you refer his lordship to the part which
26 contains the --

27 A Internal page 404, the last paragraph.

28 Q Yes.

29 A It runs down to almost the end of page 405. I don't
30 know whether you --

31 THE COURT: Does it start "upon"?

32 A "Upon that taking a pencil," yes.

33 THE COURT: Yes.

34 A But I could probably explain it much more quickly than
35 quoting.

36 Q Well, if the description is there, that's what we
37 need.

38 A Yes.

39 Q Thank you. And the sources which you used you have
40 identified, but they are also identified in footnote
41 201, is that correct?

42 A Yes. Yes.

43 Q And as you have stated, that was transmitted by
44 Amherst?

45 A Yes.

46 Q And it is a generally accepted conclusion, then,
47 that -- or is it, that that is the map to which Pitt

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1 was referring?
2 A Well, not very many scholars have dealt with the
3 issue, but those I have come across have accepted it,
4 yes.
5 Q Thank you.
6 THE COURT: Well, do I understand at this time Britain and
7 France were arguing about a line well east of the
8 Mississippi?
9 A Yes. Except that on the map which your lordship has
10 Red Lake or Lac Rouge is depicted as the source of the
11 Mississippi, but there are -- their interest stops at
12 that point westwardly, yes.
13 MR. GOLDIE: Your lordship will appreciate that Vaudreuil was
14 carving out some territory for Louisiana or
15 endeavoring to carve out some territory for Louisiana
16 which France was retaining east of the Mississippi,
17 north of the junction of the Ohio and the Mississippi.
18 THE COURT: Yes.
19 MR. GOLDIE: But that's far short of what Choiseul instructed
20 his --
21 THE COURT: Yes.
22 MR. GOLDIE:
23 Q Just so that his lordship has that point, Dr.
24 Greenwood, by reference to the map under 206, can you
25 indicate the direction that Choiseul gave to Bussy?
26 A Yes. It's 197C. This would be --
27 THE COURT: I am sorry, 197?
28 A 197C. I can do it from that map as well. But
29 essentially the line indicated in 197C starts just
30 east of the mouth of the Mississippi in the Bay of
31 Pensacola, the Bay of Mobile, Gulf of Mexico, goes up
32 through Alabama to the West Coast, Lake Erie. So if
33 we look at this Vaudreuil-Haldimand map, we can
34 perhaps start our thinking at the western point of
35 Lake Erie. Then it would go in an -- it appears a
36 straight line through Lake Huron to the heights of
37 land around Lake Abitibi, which is not shown on this
38 map, but that's where it would go. It would go
39 straight up through Lake Huron to Lake Abitibi south
40 of James Bay, and then it would go -- it's not stated
41 by Choiseul whether it would go by heights of land or
42 by straight line, it would go east to west from Lake
43 Abitibi to Lake Superior and include Lake Superior and
44 nothing is mentioned about anything further west. And
45 that would be what Choiseul wanted to retain really
46 for Louisiana. He didn't -- obviously didn't get what
47 he wanted.

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- 1 MR. GOLDIE:
2 Q So Pitt utilized Vaudreuil's map?
3 A Yes.
4 Q And then in later negotiations the French ceded even
5 that, is that correct? When I say "that" I mean the
6 area west east of the Mississippi?
7 A With much reluctance they agreed to the map as
8 defining the differences between Louisiana and Canada.
9 Q Yes. But subsequently it went even further than that,
10 did it not?
11 A Well, the issue of Louisiana/Canada became irrelevant
12 in 1762 when Britain demanded Eastern Louisiana and
13 the French agreed to that.
14 Q Yes. And your sources for that are indicated in the
15 material under tabs -- well, the transmittal to
16 Amherst is under tab 203.
17 THE COURT: Mr. Goldie, I am sorry to interrupt, but it will
18 certainly help me if I can clarify something now.
19 MR. GOLDIE: Yes.
20 THE COURT: Because it might confirm or displace a conception I
21 have. Where on this map would you put the line as
22 settled by the Peace of Paris in 1763.
23 MR. GOLDIE: On Vaudreuil's map.
24 THE COURT: On this tab?
25 A The line of what?
26 MR. GOLDIE: Of the boundary between Canada and Louisiana.
27 A Oh, it would be in the Mississippi River.
28 THE COURT: On this map all the way up to Red Lake?
29 A Yes. In the Treaty of Paris the thinking of the
30 negotiators had changed from 1761 when Pitt was
31 negotiating to 1762. 1761 France was to keep eastern
32 Louisiana. So the sort of manoeuvres were to increase
33 the size of Eastern Louisiana. Now, that's not
34 reflected on that map. It's what Choiseul tried to
35 do. In 1762 when Bute started the negotiations the
36 demands were different. There had been further
37 conquests by the British and they said we want all of
38 Eastern Louisiana and the boundaries to be the
39 Mississippi.
40 THE COURT: All the way to its mouth or to its source?
41 A From its source, which was not known by anyone at the
42 time, to its mouth, yes.
43 THE COURT: All right. Thank you.
44 MR. GOLDIE: Does that --
45 THE COURT: Yes. Thank you.
46 MR. GOLDIE: -- clarify the point? Thank you, my lord.
47 Q Now, just to complete the story with respect to Pitt,

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- 1 and I won't ask you to go through these documents.
2 You have the transmittal of the map under tab 203, do
3 you?
4 A Yes.
5 Q And under tab 204 is the -- is a record of the
6 conference between Choiseul and Stanley?
7 A Yes.
8 Q In which the map is referred to and the bounds of
9 Canada agreed?
10 A Yes. In other words, the maps accepted by Choiseul.
11 Q Yes.
12 MR. RUSH: Can you just direct him to that, please.
13 MR. GOLDIE: Yes.
14 Q Under tab 204 can you indicate to my friend --
15 A Yes, I can. It's the very beginning:
16
17 "Marquis de Vaudreuil's map shown Bounds of
18 Canada as agreed therein stated. Minutes of a
19 conference September 2, 1761."
20
21 It's the first page of the tab at the top.
22 Q And tab 205 is the -- is the --
23 A The map itself.
24 Q No. Under tab 205.
25 A Oh. Sorry.
26 Q The last memorial of France to England?
27 A Yes.
28 Q And that is the last document in the unsuccessful
29 peace negotiations, is it, that you have included?
30 A Yes.
31 THE COURT: That's 206, 205.
32 MR. GOLDIE: 205, yes.
33 Q It contains Bussy's memorial delivered to Mr. Pitt on
34 the 13th of September 1761?
35 A Accepting the line.
36 Q Accepting the line. And as you have explained that
37 changed and the boundary between Canada and Louisiana
38 ceased to be a matter of debate as a result of the
39 further British victories?
40 A Yes. May I point out something that may be of
41 importance to his lordship on the map itself?
42 Q On which map?
43 A On the Vaudreuil-Haldimand.
44 THE COURT: Yes. That's number -- ?
45 A 206.
46 MR. GOLDIE:
47 Q 206.

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1 A Both the dotted line and the red line if we are
2 proceeding east to west, from below Lake Superior
3 proceed to Lac Rouge which is given as the source of
4 the Mississippi.

5 MR. RUSH: Well, I --

6 A Well, depicted it seems to me as the source of the
7 Mississippi. But anyway, the two lines proceed east
8 to west to the eastern bank of Lac Rouge. It does not
9 proceed through Lac Rouge or appear on the other side,
10 that is the western side of Lac Rouge.

11 MR. GOLDIE:

12 Q And there are secondary sources and primary sources
13 for this part of your consideration in footnotes 207,
14 208, and under 209 you have a document which --

15 A Yes.

16 Q -- is Vaudreuil's letter to Bussy?

17 A Yes.

18 Q In which he refers to this particular episode?

19 A Yes.

20 Q All right. And the same footnote contains other
21 references to that?

22 A Yes.

23 Q You next in your endeavor to determine the western
24 limits of Canada considered the views of the framers
25 of the Royal Proclamation and you have referred to at
26 some length. What light can you shed on the views of
27 the framers by reference to the documents which you
28 have already identified, and the first one I refer you
29 to is Pownall's sketch, which is Volume 1 tab 52.

30 A 52. Pownall understood Canada to stretch as far as
31 the Great Lakes.

32 Q And --

33 A Stretch westward, that is to the Great Lakes. When I
34 say Great Lakes I mean the Great Lakes area, general
35 area.

36 Q Right. Is there a reference in that volume that you
37 can direct his lordship to under tab 52? That's all
38 right, I can --

39 A It would be internal page 19 -- sorry, 261 towards the
40 bottom:

41
42 "And it seems by a paper transmitted to us with
43 the Earl of Egremont's letter to have been the
44 idea of some person that it might be advisable
45 to establish two governments upon the river St.
46 Lawrence and its dependent territories, and
47 although we conceive that such an establishment

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- 1 might in some particular cases be attended with
2 local convenience, yet as the proposition is
3 found upon a supposed extension of settlement
4 and jurisdiction as far as the Great Lakes and
5 does not therefore mitigate against the general
6 principle -- "
7
8 Is mercantile items,
9
10 "-- upon which all our system is founded, we
11 cannot take upon us to recommend such a plan."
12
13 End quote.
14 Q Thank you. And you also considered the report of the
15 board itself, which is tab 58, and I won't ask you --
16 A Yes.
17 Q -- to go to that. His lordship is familiar with that.
18 You also had reference to the letter of Egremont to
19 the board itself --
20 A Yes.
21 Q -- on July 14, 1763 which is tab 65?
22 A Yes.
23 Q And to the supplementary report of the Board of Trade
24 of the 5th of August 1763 which is tab 67?
25 A Yes.
26 Q And the -- I -- you next turned your attention to the
27 absence of explicit western boundaries in the
28 Proclamation?
29 A Yes.
30 Q And you have identified or you did identify from the
31 text of the Proclamation the one scholarly viewpoint
32 or one viewpoint have proceeded on the basis that the
33 Proclamation could be interpreted in such a way as to
34 allow expansion westward, is that correct?
35 A I dealt with this in my report. I don't believe I
36 have testified to that.
37 Q No. I say you examined that?
38 A Yes. Yes.
39 Q Yes. And in respect of that you considered the views
40 identified in your footnotes 215, 216. You considered
41 scholars and referred to one source at tab -- footnote
42 217?
43 A Yes.
44 Q And others at tab -- footnote 218?
45 A Yes.
46 Q In that respect did you consider whether there was any
47 change between the Board of Trade's recommendations

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- 1 and the Proclamation?
- 2 A Yes, I did.
- 3 Q And did you find anything which was of assistance to
- 4 you in forming a conclusion with respect to that?
- 5 A Yes. There is a letter from Lord Halifax to Jeffery
- 6 Amherst dated October 11, 1763 in which he says
- 7 essentially that the Proclamation --
- 8 MR. RUSH: Where is this, please?
- 9 MR. GOLDIE: Tab 220.
- 10 Q Is that the document, doctor?
- 11 A Yes. Essentially the Proclamation reproduces the
- 12 Board of Trade's report. I would have myself a couple
- 13 of things to say about that, but that's what Halifax
- 14 says.
- 15 Q Where --
- 16 A It's tab 220.
- 17 Q What is the language under tab 220 that you wish to
- 18 direct his lordship's attention?
- 19 A Well, he's writing to the Commander-in-Chief four days
- 20 after the Royal Proclamation.
- 21 Q Yes.
- 22 A Referring to it and he says this, quote.
- 23 Q At what page?
- 24 A This is tab 220. I believe there is only -- that's at
- 25 internal page 258.
- 26 Q 258?
- 27 A Yes.
- 28 Q All right. Just a second.
- 29 A Towards the top.
- 30 THE COURT: Just a moment.
- 31 A It's the last part of the --
- 32 THE COURT: I can't find page 258.
- 33 MR. GOLDIE: Yes. My lord, there are some page numbers which
- 34 are not the pages of the document itself on the upper
- 35 right-hand corner, but the page that the witness is
- 36 referring to is fourth from the end.
- 37 A Yes.
- 38 THE COURT: Yes. All right. Yes, I have it.
- 39 A This is the Southern Secretary informing the
- 40 Commander-in-chief:
- 41 "By this Proclamation, you will perceive that
- 42 the propositions made by the Board of Trade in
- 43 their report of the 8th of June last, have in
- 44 generally been adopted, with respect to the new
- 45 governments to be erected, and the interior
- 46 country to be reserved for the use of the
- 47 Indians; except only with regard to the first

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1 of those points, that his Majesty has thought
2 proper to give the name of the Province of
3 Quebec to that government which their lordships
4 propose to denominate the Province of Canada,
5 and to extend the northern boundary of East
6 Florida as far as the river St. Mary."

7
8 End quote.

9 Q From your comparison of the board's report and of the
10 Proclamation, is Lord Halifax's enumeration of the
11 changes exhaustive?

12 A No.

13 Q Can you state what other differences there might be
14 which are relevant to the issues here?

15 MR. RUSH: Differences between?

16 MR. GOLDIE:

17 Q The --

18 A The Board of Trade's report and the Proclamation.
19 There are a number of minor differences in boundaries.
20 For example, the northern boundary of East Florida is
21 different, slightly different. It's moved northward
22 in the Proclamation. The boundaries of Quebec are
23 slightly different, that is the boundaries of
24 Canada/Quebec are slightly different. The report
25 talks about western boundaries to the Reserve in terms
26 of the Mississippi and the territory owned by the
27 Hudson's Bay Company, whereas those boundaries are not
28 mentioned in the Proclamation. Those I would consider
29 minor. Major difference, though, is that the report
30 of the Board of Trade on the 8th of June advocated
31 that the New Constitutions for Canada/Quebec and the
32 Floridas should be Governors and Councils and, you
33 know, assemblies should be delayed for considerable
34 length of time. Whereas assemblies are promised by
35 the Proclamation in the context in which individuals
36 would think this would happen very soon. That's, I
37 think, you know, the major defect I would find in his
38 description.

39 Q Halifax didn't make any mention of changes in the
40 limits of the Reserve?

41 A No. He mentioned a boundary change to East Florida
42 but did not mention any boundary change with relation
43 to the Reserve.

44 Q All right. Thank you. And then you have also
45 considered the -- as I suggested a few minutes ago,
46 suggested the -- considered the writings of various
47 scholars with respect to the question of whether the

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- 1 Proclamation contemplated expansion westward or
2 whether it did not?
- 3 A Yes.
- 4 Q And you referred in particular under footnote 221 to
5 Clarence Alvord?
- 6 A Yes.
- 7 Q Can you tell us who he was?
- 8 A Well, he was an American historian interested in the
9 Middle West. He edited a great number of documents
10 relating to Imperial policy, dealing with the Middle
11 West. He wrote articles and a book on the Mississippi
12 Valley in British politics in which goes into
13 tremendous details about the genesis of the
14 Proclamation.
- 15 Q And in the course of -- and you refer to him in your
16 footnote 221 and --
- 17 A Yes.
- 18 Q And also to other writings in footnote 222?
- 19 A Yes.
- 20 Q And in the writings of a Mr. Harlow?
- 21 A Yes.
- 22 Q In footnote 223. Can you tell us who he was?
- 23 A Vincent Harlow wrote two volumes, a two-volume study
24 of the British empire from I believe it was 1763 to
25 1793. It's considered to be the definitive overall
26 work on the British empire in that period.
- 27 Q And can you state what conclusion he reached with
28 respect to the expansion westward of settlement having
29 regard to the Royal Proclamation?
- 30 MR. RUSH: Well, I think we should be directed to Mr. Harlow's,
31 my lord.
- 32 MR. GOLDIE: Well --
- 33 THE COURT: It's not here, is it?
- 34 MR. GOLDIE: It's not here, no.
- 35 Q Well --
- 36 A I can quote from Harlow.
- 37 Q The page number is provided and that's sufficient for
38 us at the present time. Did you find any positive
39 evidence in the documentary material for the
40 Expansionists westward of settlement having regard to
41 the Royal Proclamation?
- 42 A No.
- 43 MR. RUSH: I think that calls for a conclusion, doesn't it?
- 44 THE COURT: Well, I don't know, Mr. Rush. He said did you find
45 any evidence.
- 46 MR. RUSH: No. Did you find any positive evidence of --
- 47 MR. GOLDIE: Well, all right.

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- 1 THE COURT: All right. You are quite right.
2 MR. GOLDIE:
3 Q Any evidence?
4 A You mean any evidence that could be arguable one way
5 or the other or what?
6 MR. GOLDIE: No, I should go back my, lord. Positive means
7 explicit.
8 THE COURT: Does it?
9 MR. GOLDIE: As opposed to lack of it.
10 Q Did you find any explicit evidence, and that's what I
11 meant by the word positive?
12 A And this is in the documents outlined by the
13 Proclamation?
14 Q Yes.
15 A I guess the answer is no, but with a qualification.
16 There is a letter from Amherst to Egremont, I believe,
17 in 1762 suggesting interior colonies and there are one
18 or two other documents of the same nature which were
19 ignored by the Board of Trade. Subject to that caveat
20 the answer is no.
21 Q The date of Amherst's letter?
22 A That's, I think, tab 239, a letter from Sir Jeffery
23 Amherst to the Earl of Egremont.
24 Q Yes.
25 A That's dated New York, 30 November, 1762 and I got
26 that from the Shelburne Papers by correspondence in
27 the WLCL.
28 Q And --
29 A And he had advocated that there should be colonies at
30 Detroit and Niagara, and this was ignored in the Royal
31 Proclamation, but there were people -- there were a
32 few people advocating such things, but in the
33 government correspondence that leads clearly to the
34 Proclamation, the answer is no.
35 Q All right. I am not talking about the pamphleteers.
36 A No.
37 THE COURT: Was Detroit then as it is now?
38 A Yes. Just as bad.
39 THE COURT: That bad?
40 A That's off the record.
41 MR. GOLDIE:
42 Q Everything is on the record.
43 A Oh, I am sorry.
44 THE COURT: But the location was the same?
45 A Yes.
46 MR. GOLDIE: Yes.
47 Q Now, doctor, you have considered the evidence that was

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- 1 available to you with respect to what has been called
2 the Mercantilist position?
- 3 A Yes.
- 4 Q And are there any documents that you wish to refer us
5 to there?
- 6 A Well, I think I have gone over those previously in my
7 testimony and I would refer to my -- drawing the
8 attention of his lordship to Mercantilist's portion of
9 A, the Hints.
- 10 Q Yes.
- 11 A B, the sketch, C the Knox memoranda and D, the Board
12 of Trade's report.
- 13 Q All right. Thank you.
- 14 A Of 8 June.
- 15 Q I am sorry, go ahead.
- 16 A Of 8 June.
- 17 Q And you have earlier referred to Lord Shelburne?
- 18 A Yes.
- 19 Q Do you wish to add anything that you have said in
20 connection to this?
- 21 A Lord Shelburne, although scholars now consider that
22 Lord Shelburne was considered not the most important
23 person behind the Proclamation, but perhaps that
24 scholarship now goes to Lord Egremont and/or John
25 Pownall. But Shelburne was the Board of Trade's
26 president and was responsible for drafting the June 8
27 report, and in particular he was responsible for
28 drafting the section on advantages, which I think I
29 pointed out to his lordship amounts to over two
30 thousand words and does not contain any suggestion of
31 a westward advance. Now, Shelburne had gone on record
32 earlier in late 1762. He gave a speech to the House
33 of Lords on the peace preliminaries. And I haven't
34 got the tab number in my --
- 35 Q 235?
- 36 A Yes.
- 37 Q Are those the notes of his speech?
- 38 A Shelburne notes of a speech that he gave in I believe
39 it was December 1762 to the House of Lords on the
40 peace proposals, supporting them. Scholars have
41 accepted those notes which come from the W. L.
42 Clements Library, the originals of the Shelburne
43 Papers, as accurately reflecting, in as far as notes
44 can do, what he said on that occasion and he went
45 through the advantages of retaining Canada, but did
46 not refer to western expansion. He wished to have
47 population expansion, but in the coastal area. And

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- 1 it's clearly laid out in that document that that's
2 what he was after. So that as of 1762, '63, Lord
3 Shelburne was not an Expansionist.
4 Q All right.
5 MR. RUSH: I object to the conclusion about what --
6 Expansionists, my lord.
7 MR. GOLDIE: I agree my lord. The document is here and we -- my
8 friend can argue from it.
9 Q I next ask you to direct your attention to the events
10 which occurred after the Proclamation and first -- and
11 this is one that has been referred to earlier, the
12 Treaty of Stanwix?
13 A Yes.
14 Q Would you just briefly tell his lordship what that is
15 all about?
16 A It's dated 1768, and Sir William Johnson obtained a
17 surrender from the Six Nations who claimed suzerainty
18 in the area of a vast tract in the Ohio country from
19 the Appalachians almost to the Mississippi River.
20 Q And how was that received?
21 A The Board of Trade claimed that Johnson had exceeded
22 his mandate and that tab is --
23 Q 243?
24 A 243, yes.
25 Q Yes. Thank you. Tab 243. And is there any part of
26 that that you wish to draw his lordship's attention
27 to?
28 A I don't seem to have it marked here. I have to go
29 through this.
30 Q Well, in the first paragraph when the board says in
31 the last sentence in the first paragraph:
32 "....that the Proceedings of your Majesty's
33 Superintendants in this Business do, each,
34 relate to Bodies of Indians, having separate
35 and distinct interests, and that such
36 Proceedings have, as far as they have hitherto
37 gone, been carried on without any
38 inter-Communication or Concurrence."
39
40 THE COURT: Where is that, please?
41 MR. GOLDIE: That's in the first page, page 158 of the Board of
42 Trade to the king, a representation of the Board of
43 Trade to the king upon Sir William Johnson's treaty
44 with the Indians and this is referring to the Treaty
45 of Stanwix.
46 THE COURT: And where is that particular language?
47 MR. GOLDIE: It's the second -- well, it is the last long

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1 clause, begins with the word "and as we humbly
2 conceive."
3 THE COURT: Oh, yes. Thank you.
4 MR. GOLDIE: And then I've read down to the word "concurrence."
5 THE COURT: Yes.
6 A This would be one of the passages. I think I simply
7 refer to the entire document and I haven't specified.
8 THE COURT: Stanwix is S-t-a-n --
9 A w-i-x.
10 MR. GOLDIE:
11 Q That is one aspect that you considered?
12 A Uh-huh.
13 Q And that was from the Board of Trade and at some later
14 point around that time do the board have occasion to
15 reconsider its particular position with respect to
16 expansion in land? And I refer you to tab 249.
17 A Yes.
18 Q And if you wish assistance with respect to the page of
19 your report, page 175.
20 A Yes. This is a report of the Board of Trade to his
21 Majesty dated 7 March 1768 and in that report
22 particularly at pages 27 to 30 it said this.
23 THE COURT: I am sorry, what page?
24 A 27 to 30.
25 THE COURT: Yes. Thank you.
26 A
27
28 "The great object of Colonizing upon the
29 Continent of North America -- "
30
31 MR. RUSH: Where were you reading from?
32 A Page 27 to 30.
33 MR. GOLDIE: It's about three-quarters of the way down the page,
34 my lord. The left-hand margin of the print has cut
35 some of the words in two, but there is a sentence that
36 begins with the words "the Proposition of forming
37 inland Colonies in America."
38 THE COURT: Yes.
39 MR. GOLDIE:
40 Q And then Dr. Greenwood was beginning to read just
41 below that.
42 A
43 "The great object of Colonizing upon the
44 Continent of North America has been to improve
45 and extend the Commerce, Navigation and
46 Manufactures of this Kingdom, upon which its
47 strength and security depend. First, by

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1 promoting the advantageous fishery carried on
2 upo the Northern Coast; secondly, by
3 encouraging the growth and culture of Naval
4 Stores, and of raw materials to be transferred
5 hither in Exchange for perfect Manufacture and
6 other Merchandise. Thirdly, by securing a
7 supply of Lumber, provisions, and other
8 necessaries for the support of our
9 Establishments in the American Islands. In
10 order to answer these Salutary purposes it has
11 been the policy of this Kingdom to confine her
12 Settlements as much as possible to the Sea
13 Coast and not to extend them to places
14 unaccessible to Shipping and consequently more
15 out of the reach of Commerce."

16
17 These -- that's my editorial addition, "these",
18 quote, "same motives," as an addition.

19
20 Q Yes. You are over onto page 28 now?

21 A Yes.

22 Q It's the second complete paragraph, my lord.

23 THE COURT: Yes.

24 A

25
26 "These same Motives..... did as we humbly
27 conceive induce the forming the Colonies of
28 Georgia, East Florida and West Florida to the
29 South and the making of those provisional
30 Arrangements in the Proclamation in 1763, by
31 which the interior Country was left to the
32 Indians."

33
34 MR. GOLDIE:

35 Q "To the possession of the Indians."

36 A "Left to the possession of the Indians." And I go on:

37
38 "We admit as an undeniable principle of true
39 policy -- "

40
41 THE COURT: I haven't found that.

42 MR. GOLDIE: No.

43 A It's at the top of page --

44 MR. GOLDIE:

45 Q 30.

46 A 30. The last page.

47 Q It begins at line one, my lord.

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1 A

2
3 "We admit as an undeniable principle of true
4 policy, that with a view to prevent
5 Manufactures it is necessary and proper to open
6 and extent of territory for Colonization
7 proportioned to the increase of people, as a
8 large number of inhabitants, cooped up in
9 narrow limits without a sufficiency of lands
10 for produce would be compelled to convert their
11 attention and industry to Manufactures; but we
12 submit whether the encouragement given to the
13 Settlement of the Colonies upon the Sea Coast,
14 and the effect which such encouragement has
15 had, has not already effectually provided for
16 in object..... an advantage which in our
17 humble opinion --"
18

19 MR. GOLDIE: You have skipped some words?

20 A Yes.

21
22 "-- would not be promoted by these new colonies
23 which being..."
24

25 Skip.

26
27 " at the distance of above fifteen hundred
28 miles from the Sea, and in places..."
29

30 Skip.

31
32 " utterly inaccessible to shipping will
33 from their inability to find returns wherewith
34 to pay for the Manufactures of Great Britain be
35 probably led to manufacture for Themselves a
36 consequences which..."
37

38 Skip.

39
40 " ought in our humble opinion to be
41 carefully guarded against by encouraging the
42 Settlements of that extensive tract of Sea
43 Coast hitherto unoccupied."
44

45 End quote.

46 Q All right. Now, the board -- was the board addressing
47 any particular proposal at that point?

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1 A I think there was a proposal for interior colonies,
2 one or more interior colonies being put forth by
3 persons interested in western land such as Benjamin
4 Franklin.

5 Q All right. And you have included --

6 A Which was a constant -- constantly going on from 1767
7 to 1773.

8 Q All right. Now, I will come it that in a minute. I
9 want to go back to the documents that you have.

10 THE COURT: Did I get it right that that document was dated
11 March 7, 1786?

12 A 1768.

13 THE COURT: 1768?

14 A 8, yes.

15 THE COURT: I was transposing my letters.

16 MR. GOLDIE: My lord, to follow the sequence I'll be going over
17 to the next volume. But before I do that, I wondered
18 if it would be convenient for your lordship to take a
19 morning break at this point.

20 THE COURT: Yes. Almost halfway to 12:30.

21

22 (PROCEEDINGS ADJOURNED PURSUANT TO MORNING BREAK)

23

24 I hereby certify the foregoing to be
25 a true and accurate transcript of the
26 proceedings herein to the best of my
27 skill and ability.

28

29

30

31 Laara Yardley, Official Reporter,
32 United Reporting Service Ltd.

33

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1 (PROCEEDINGS RESUMED FOLLOWING SHORT RECESS)

2

3 THE COURT: Mr. Goldie.

4 MR. GOLDIE: My lord. Before finishing with this volume, my
5 lord, I might just mention the remaining footnote
6 references that I would wish to have available for me.
7 They are the references in footnotes 211, 215 and 216,
8 219, 228, 230, 231, 232, 236, 237, 240, 241 and 248.

9 Q Now, Dr. Greenwood, with respect to the question of
10 matters which occurred after the Royal Proclamation
11 did you also consider the view points of Lord
12 Barrington, and if so would you tell us who he was and
13 what document it is that you are referring to?

14 A Yes. It's the document in tab 247. Viscount
15 Barrington, whose full name was William Wildman, was a
16 successful placeman in the British government.

17 THE COURT: A successful --

18 A Placeman. A man who held numerous offices.

19 THE COURT: I see. Yes.

20 A And prior to the Proclamation he had been Secretary of
21 War. At the time of Proclamation he held one of the
22 great offices of state, Treasurer of the Navy. But I
23 must point out that he was although a minister of the
24 Crown then it was not of the inner cabinet at the time
25 of the Proclamation. At the time of the document,
26 which is 1766, he was again Secretary of War. The
27 document is endorsed "Lord Barrington's thoughts upon
28 North America". It comes from the Barrington papers
29 in the National Archives of Canada. This is a copy
30 with General Gage's comments in the margin. General
31 Gage was then --

32 MR. RUSH: How do we know?

33 A Thomas Gage was then North America Commander in Chief.
34 The text itself in the right-hand column is that of
35 Barrington either written by him or written for him.
36 Now, he proposed in this plan to bring -- bring back
37 troops from the west to the coastal area. He had been
38 much influenced by the Stamp Act riots and thought
39 there should be a receding eastward of the military
40 troops, the British military troops, and this is what
41 he was arguing for in his plan. It was partly
42 implemented later. I would direct your lordship's
43 attention to the first internal page and the first few
44 lines of that where he refers explicitly to the Royal
45 Proclamation of October, 1763.

46 Next I would refer your lordship to the second
47 paragraph, and I will quote that second paragraph.

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1 MR. RUSH: Is this on the first page?

2 A It's on the first page, but it runs over onto page
3 two. And this is what he had to say about the policy
4 behind the Proclamation.

5
6 "The policy of forbidding British subjects to
7 settle beyond the Heads of those Rivers which
8 run into the Atlantic Ocean."

9
10 That is the Appalachian Ridge.

11
12 "Is founded on this Consideration that as the
13 North American Productions are weighty and of
14 great Bulk, water Carriage is extremely
15 necessary to convey them to the Seaside for
16 Exportation and to reconvey to the Inland
17 Country the Manufactures of Great Britain, a
18 Convenience without which such settlements can
19 have little or no communication with the Mother
20 Country or be of much utility to it."

21
22 MR. GOLDIE:

23 Q Thank you. He then goes on to make his suggestions
24 with respect to the disposition of the troops, and
25 that is the matter in which General Gage was required
26 or did comment?

27 A Yes.

28 MR. GOLDIE: Thank you. Now, we had -- or you had brought to
29 his lordship's attention the comments of the Board of
30 Trade in its statement dated March 7th, 1768 under tab
31 249. And I'm going to follow that up, but before I do
32 so I tender Volume 4 as Exhibit 1164 comprising --
33 comprised of the documents under tab 193 to 249 as
34 identified on the index at the beginning of that
35 volume, my lord.

36 THE COURT: Yes.

37
38 (EXHIBIT 1164-193: John Entick Map)

39
40 (EXHIBIT 1164-194A: London Magazine Map)

41
42 (EXHIBIT 1164-194B: Thomas Kitchen Map)

43
44 (EXHIBIT 1164-195: John Gibson Map)

45
46 (EXHIBIT 1164-197A: Choiseul's Memorial)

47

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1 (EXHIBIT 1164-197C: Choiseul to Bussy)
2
3 (EXHIBIT 1164-198A: Bussy to Choiseul)
4
5 (EXHIBIT 1164-198B: Pitt's Ultimatum)
6
7 (EXHIBIT 1164-198C: Bussy to Choiseul)
8
9 (EXHIBIT 1164-199: Pitt to Bussy)
10
11 (EXHIBIT 1164-200: Pitt to Stanley)
12
13 (EXHIBIT 1164-201A: Amherst to Haldimand)
14
15 (EXHIBIT 1164-201B: Haldimand to Amherst)
16
17 (EXHIBIT 1164-202: Haldimand to Amherst)
18
19 (EXHIBIT 1164-203: Amherst to Pitt)
20
21 (EXHIBIT 1164-204: Minutes of Conference Between
22 Choiseul and Stanley)
23
24 (EXHIBIT 1164-205: Bussi to Pitt)
25
26 (EXHIBIT 1164-206: Vaudreiul - Haldimand Map)
27
28 (EXHIBIT 1164-209A: Vaudreuil to Choiseul)
29
30 (EXHIBIT 1164-209B: Ontario Sessional Papers)
31
32 (EXHIBIT 1164-220: Halifax to Amherst)
33
34 (EXHIBIT 1164-225B: Pownall Drafted Memo for
35 Shelburne)
36
37 (EXHIBIT 1164-235: Shelburne's Notes of Speech)
38
39 (EXHIBIT 1164-239: Amherst to Earl of Egremont)
40
41 (EXHIBIT 1164-243: Representation of Board of Trade)
42
43 (EXHIBIT 1164-247: Barrington's Thoughts Upon North
44 America)
45
46 (EXHIBIT 1164-249: Board of Trade Report)
47

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1 MR. RUSH: Just one observation, my lord. I take it that the
2 document after the divider in tab 247 is a
3 transcription of the remarks which appear to be in
4 handwriting before the tab; is that right?

5 THE COURT: It looks like it.

6 MR. RUSH: It does look like it to me.

7 THE COURT: Is that right, Mr. --

8 MR. GOLDIE:

9 Q Can you identify the origin or the source of the
10 typewritten pages following the blue divider under
11 section -- under tab 247?

12 A Yes. The typewritten copy appears to be identical at
13 least with the Barrington original which I used. It
14 is found -- that is the typed copy is found in the
15 Shelburne -- Shelburne papers in the National Archives
16 of Canada. And it's a copy made by, as all of them
17 are, by an archivist clerk early in the century using
18 the Shelburne originals then housed in Landsdowne
19 House, London, since been purchased by Ann Arbour
20 WLCL.

21 Q WLCL being?

22 A William L. Clements Library, Ann Arbour, Michigan,
23 University of Michigan, U.S.A..

24 Q I want to go to volume five, my lord.

25 THE COURT: Shall we reserve 1165 for this?

26 MR. GOLDIE: I think 1165 has been taken.

27 THE REGISTRAR: 1166.

28 MR. GOLDIE: 1166. And may I reserve that number then, my lord.

29

30 (EXHIBIT 1166: Document Book re Greenwood's Report -
31 Volume 5 tabs 251 - 292B)

32

33 MR. GOLDIE:

34 Q Now, you had occasion to examine the history of a
35 petition of Benjamin Franklin and others for a grant
36 of land on the River Ohio for the purpose of
37 settlement. And is that the project that was
38 sometimes known as Vandalia?

39 A Vandalia came out of it, or emerged out of it
40 afterwards, yes.

41 Q Yes. Thank you. By reference to the document under
42 251 would you tell his lordship what the response of
43 the Board of Trade was to this?

44 A Yes. This is a report of the Board of Trade dated 15
45 April, 1772. The only copy I could come across was
46 found in this document which is a report -- printed
47 report with comments thereon by, among others,

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1 Benjamin Franklin.

2 Q Yes.

3 A And I direct his lordship's attention to pages six and
4 seven, internal pages six and seven. And this is what
5 the Board of Trade had to say in this particular
6 report.

7 MR. GOLDIE: This is page six and seven are the second page in?

8 THE COURT: Yes.

9 MR. GOLDIE: Of the tab.

10 A Yes. And they're Franklin et als production of the
11 report.

12

13 "And first with regard to the policy we take
14 leave to remind your Lordships of that
15 principle which was adopted by this Board, and
16 approved and confirmed by his Majesty,
17 immediately after the Treaty of Paris, viz, the
18 confining the western extent of settlements to
19 such a distance from the sea coast, as that
20 these settlements should lie within the reach
21 of trade and commerce of this kingdom, upon
22 which the strength and riches of it depend, and
23 also of the exercise of that authority and
24 jurisdiction, which was conceived to be
25 necessary for the preservation of the colonies,
26 in a due subordination to and dependance upon
27 the Mother Country; and these we apprehend to
28 have been the two capital objects of his
29 Majesty's Proclamation of the 7th of October
30 1763, by which his Majesty declares it to be
31 his royal will and pleasure to reserve under
32 his sovereignty, protection and dominion, for
33 the use of the Indians, all lands..."

34

35 The report --

36 MR. RUSH: You should finish that.

37 A Okay.

38

39 "Not included within the three new governments,
40 the limits of which are described therein, as
41 also all the lands and territories lying to the
42 westward of the sources of rivers which shall
43 fall into the sea from the west and northwest,
44 and by which all persons are forbid to make any
45 purchases or settlements whatever, or to take
46 possession of any of the lands above reserved
47 without special licence for that purpose."

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1 MR. GOLDIE:

2 Q All right. Thank you. And are there any other
3 documents that you wish to refer to which deal with
4 that proposal?

5 A Well, there of course is the reaction of Walpole and
6 Associates later on in the pamphlet. I don't know if
7 that's what you're referring to.

8 Q Perhaps I -- before following the event itself --

9 A M'hm.

10 Q -- Can you tell his lordship something about the
11 composition of the Board of Trade in 1768 and 1772
12 when the two reports to which you've referred were
13 issued?

14 A Yes.

15 Q Having regard to those which -- the composition of the
16 board in 1763.

17 A Yes. There were three members of the board actively
18 involved in preparing the 1768 document who had helped
19 to frame the Proclamation itself. They were Soame
20 Jenyns, J-E-N-Y-N-S, George Rice and Edward Eliot.
21 They had attended the Board of Trade meeting of 8
22 June, 1763.

23 Q Which resulted in the board report of the same date?

24 A Yes.

25 Q Yes.

26 A Eliot and Rice also participated in the session of 5
27 August, 1763 which resulted in the supplementary
28 report of that date. Rice in addition had been
29 present during some of the drafting sessions from the
30 28th of September to 4th of October, 1763.

31 Q Thank you.

32 A I have the others for 1772. Do you want them?

33 Q Yes. Thank you.

34 A Among those who prepared the 1772 report were Jenyns,
35 Eliot and the longstanding member, the lawyer Bamber
36 Gascoyne.

37 Q All right. Thank you.

38 THE COURT: I'm sorry?

39 A Bamber Gascoyne. The latter Bamber Gascoyne had
40 attended both sessions of 8 June and 5 of August,
41 1763.

42 MR. GOLDIE:

43 Q You have under tab 253 an extract from the journal of
44 the Board of Trade?

45 A Yes.

46 Q And is that the source of your information with
47 respect to the personnel of the board?

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- 1 A Well, the 252 as well as 253, yes.
2 Q Of the two dates we've been talking about?
3 A No. 252 and 253.
4 Q All right. Thank you. Now, you told his lordship
5 earlier something about the Earl of Hillsborough?
6 A Yes.
7 Q He -- have you run across anything which related to
8 his views, and if so what were they by reference to a
9 document?
10 A Yes.
11 Q And would you tell me, please, again who the Earl of
12 Hillsborough was? That is to say the office he held.
13 A Well, at the time of the Proclamation he was the
14 President of the Board of Trade. In April 1772 he was
15 Secretary of State for the American colonies. That
16 had been a third office created in 1768, a third
17 secretaryship for the American colonies. He held that
18 office, and he was also at that time President of the
19 Board of Trade as well.
20 Q Now, and have you discovered anything which reflects
21 his subsequent point of view?
22 A Yes. There's a document -- a letter written by
23 Hillsborough to Sir William Johnson who was still
24 Northern Superintendent, and dated 1st of July, 1772.
25 And I cite that in footnote 255.
26 Q And the document itself is under tab 255, is it?
27 A Yes.
28 Q And the portion to which you refer under that tab is
29 the fourth complete paragraph?
30 A Beginning "Everyday discovers".
31 Q Yes.
32 A And I might note that the verb discoveries or
33 discovered meant in the eighteenth century, among
34 other things, revealed.
35 Q Yes.
36 A
37 "Everyday discovers or reveals more and more
38 the fatal policy of departing from the line
39 prescribed by the Proclamation of 1763 and the
40 extension of it."
41
42 Q Right. Well, yes. All right. Thank you.
43 There were criticisms, were there, of the points
44 of view revealed by some of your last references?
45 A Yes, there were. And there were a number -- at this
46 time when we're speaking of some years after the
47 Proclamation there were a number of people publicly

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- 1 agitating for western expansion and lobbying the
2 imperial government, and indeed there were criticisms
3 of the positions taken by such people as Lord
4 Barrington and the Board of Trade.
- 5 Q And you have gathered some of that under tab 256A?
- 6 A Yes.
- 7 Q Which is Amherst's --
- 8 A Yes.
- 9 Q -- Observations?
- 10 A Yes. This document is entitled "Remarks on Ld.
11 Barrington's Plan No. 1" found in the Shelburne papers
12 of the National Archives of Canada. Authorship has
13 been attributed to Jeffery Amherst by the sources I
14 gave in footnote 256.
- 15 Q Yes. Thank you. And under 2 --
- 16 A Do you wish me to quote that?
- 17 Q No. That's all right. Thanks. Under 256C there is
18 reference to a Mr. Jackson and his opinion on western
19 plans of November, 1766. Perhaps you might tell us
20 who Mr. Jackson was. Well, there's a footnote in the
21 document. This is from the Illinois Historical
22 Collections?
- 23 A Historical Collections, yes, volume ten.
- 24 Q And there's a footnote two on the page 422 which
25 describes Mr. Jackson?
- 26 A Yes.
- 27 Q And he refers to it as a temporary -- the Proclamation
28 as temporary provision. That's at 426.
- 29 MR. RUSH: Where are you reading from, please?
- 30 A 426.
- 31 MR. GOLDIE: Page 426.
- 32 Q And these observations that you have found relate to
33 the -- the merits or the application of the policy at
34 the time of the writing?
- 35 A That's correct. They are not attempting to write
36 history, they're attacking history on the merits of
37 confinement.
- 38 Q All right. Thank you. Now, I want to just note that
39 at 257 there is a document which -- tab 257 is a
40 document which is -- I think we've seen it before in
41 another form, but would you identify this for us,
42 please?
- 43 A Yes. These are minutes submitted to the cabinet in
44 the beginning of the summer of 1767 by Lord Shelburne,
45 and they are found in the Shelburne papers, volume 12.
- 46 Q All right. And --
- 47 A And I would direct your attention -- I don't think we

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1 need quote perhaps, but page 123 verso to 124.
2 Q All right. Thank you.
3 THE COURT: Where are the page numbers?
4 MR. GOLDIE: It's page 123, my lord.
5 THE COURT: Volume number?
6 MR. RUSH: How can you tell?
7 MR. GOLDIE: The upper right-hand corner.
8 MR. RUSH: There aren't any on mine.
9 THE COURT: No numbers.
10 A I can do it.
11 MR. GOLDIE: Perhaps --
12 A Tenth physical page in, my lord.
13 THE COURT: Ten pages in?
14 A Tenth physical page, yeah. The beginning of the text
15 being the first.
16 THE COURT: What's the first word on the top?
17 A On that page "undoubtedly".
18 MR. GOLDIE: My lord, my page has a number and I'm going to
19 suggest that your lordship exchange for mine and I'll
20 find -- try and find a page number for my friend.
21 MR. RUSH: Well, if you can just confirm that the beginning of
22 the page is "if anything can tend to keep up"?
23 A No. It starts "undoubtedly be maturely considered".
24 MR. RUSH: Yes. All right. The page before.
25 THE COURT: I can follow here. I've found the page, and I've
26 made some notes on it.
27 MR. GOLDIE: Thank you, my lord.
28 THE COURT: So the page starting "undoubtedly" is the page?
29 A Is 123. And the next page would be 124. And those
30 are the only ones I have noted.
31 THE COURT: Yes. Thank you.
32 MR. GOLDIE: Thank you.
33 Q And as a secondary reference with respect to that you
34 have made -- you have considered the publication of
35 Sosin, "Whitehall and the Wilderness" to which
36 reference has already been made, and Humphreys, "Lord
37 Shelburne and British Colonial Policy", both referred
38 to in footnote 257?
39 A Yes.
40 Q Now, going back to the -- to the Franklin application,
41 which was -- we have referred to under the Board's
42 report --
43 A M'hm.
44 Q -- Under tab 251. What was the -- was the Board's
45 recommendation accepted?
46 A No, it was not.
47 Q And the -- is there any evidence of the grounds upon

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- 1 which the -- the plantation -- the Plantations
2 Committee of the Privy Council accepted grounds upon
3 which they accepted the petition?
- 4 A Yes, there is. And it would be found cited in
5 footnote 260, Proceedings of the Privy Council.
- 6 Q Yes. And that document is found under tab 260, my
7 lord.
- 8 A Yes. Internal page 209, I believe.
- 9 Q Yes.
- 10 A And essentially what they said is that the lands in
11 question --
- 12 Q This is at page 209?
- 13 A Yes.
- 14 Q The paragraph beginning with the number second.
15 Perhaps I should refer you, Dr. Greenwood, to the
16 preceding two paragraphs.
- 17 A Yes.
- 18 Q Beginning with the words: "The committee having
19 received the Board of Trade report and heard further
20 evidence produced by the petitioners reported". And
21 this is the report of the Plantations Committee of the
22 Privy Council?
- 23 A Yes. Do you want me to read --
- 24 Q I'd like you to read the paragraphs numbered first and
25 second.
- 26 A Yes.
- 27
- 28 "That the lands in question have been for
29 sometime past and are now in actual state of
30 settling numbers of families to a very
31 considerable amount moving thither continually
32 from your Majesty's other colonies.
33 Second. That the lands in question do not lie
34 beyond the reach of advantage (sic) intercourse
35 with this kingdom. It appearing from diverse
36 policies of insurance laid before this
37 committee that sundry commodities, the produce
38 of those lands are exported from vent to a
39 considerable amount. Evidence having been
40 likewise produced of a person being employed to
41 collect a ship from hence a cargo of British
42 merchandise for the use and consumption of the
43 said settlers and natives."
- 44
- 45 Q Thank you. And I next ask you if you considered the
46 Quebec Act and its legislative history in connection
47 with the question of the policy of the Proclamation

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- 1 and whether it was expansionist or contained?
2 A Yes.
3 Q Would you first identify for us the Quebec Act. Is
4 that under tab 206 -- 261?
5 A Yes. 14 George the III, 1774, chapter 83.
6 Q Right. And perhaps you might refer to the -- to the
7 first -- well, the preamble makes reference to the
8 Royal Proclamation, does it?
9 A Yes, it does. Six lines down.
10
11 "And were asked by the arrangements made by the
12 said Royal Proclamation a very large extent of
13 country within which there were several
14 colonies and settlements from France who
15 claimed to remain under the faith of the said
16 treaty was left without any provision being
17 made for the administration of civil government
18 therein."
19
20 Q Right. And then in the substantive parts of the
21 Quebec Act --
22 A Yes.
23 Q -- Is there any reference to the Proclamation?
24 A Well, they don't have paragraph numbers, but at the
25 bottom of page 402, 403: "The Proclamation and all
26 documents dependent upon it are revoked for Quebec
27 entirely".
28 Q Would you read the words to which you have reference?
29 A Yes.
30 "Be it therefore further enacted --"
31
32 THE COURT: Just a moment. Yes. Thank you. Fourth line from
33 the bottom?
34 A Yes.
35
36 "Further enacted by the authority of the
37 aforesaid."
38
39 Which is the Imperial Parliament.
40
41 "That the said Proclamation so far as the same
42 relates to the said Province of Quebec and the
43 commission under the authority whereof the
44 government of the said province is at present
45 administered, and all and every the ordinance
46 and ordinances made by the governor and Council
47 of Quebec for the time being relative to the

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1 civil government and administration of justice
2 in the said province, and all commissions to
3 judges and other officers thereof, be, and the
4 same are hereby revoked and made void from and
5 after the 1st day of May, 1775."

6 MR. GOLDIE:

7 Q Now, the effect -- without going into the specific
8 provisions of the Quebec Act, but the effect was to
9 enlarge substantially the Colony of Quebec; is that
10 correct?
11 A Yes. Towards Labrador and especially towards the Ohio
12 and the Mississippi, yes.
13 Q And was this commented upon by the Earl of
14 Hillsborough?
15 A Yes, it was.
16 Q And did he raise objections, and were those objections
17 answered, and if so can you make reference to a
18 document?
19 A Yes. Hillsborough objected that the extension of the
20 boundaries plus the granting of civil jurisdiction in
21 the area of the northern part of the reserve seemed to
22 imply that settlers would be going there, because
23 there would be civil jurisdiction for the first time.
24 These objections were laid to rest in a letter of --
25 from Dartmouth, Lord Dartmouth --
26 Q Under tab --
27 A -- To Hillsborough.
28 Q 262?
29 A 262.
30 Q Yes.
31 A Dated 1st of May, 1774. I consulted the original and
32 used that, but have filed the shortened copy. Should
33 I read that?
34 Q Yes, please.
35 A

36 "To Lord Hillsborough. My Dear Lord. Mr. Knox
37 has stated to me your lordship's two objections
38 to the Canada Bill which I propose to lay
39 before the House of Lords tomorrow."

40
41 That is the bill, not the objections.

42
43 "And I have communicated them to the Cabinet,
44 who are unanimously of opinion that the
45 extension of the Province to the Ohio and
46 Mississippi, is an essential and very useful
47 part of the Bill, it provides for the

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1 establishment of civil government over many
2 numerous settlements of French subjects but
3 does by no means imply an intention of further
4 settling the Lands included within this
5 extension, and if it is not wished that British
6 Subjects should settle that Country nothing can
7 more effectually tend to discourage such
8 attempts, which in the present state of that
9 Country, your lordship knows very well, is
10 impossible to prevent. Your objection to the
11 clause allowing a change of tenure their
12 lordship's thought proper to come into and was
13 accordingly struck out of the bill."
14

15 Q And subsequent to the passage of the Quebec Act were
16 instructions issued to the Governor of Quebec which
17 contained any relevant observations on this question
18 of settlement?

19 A Yes.

20 THE COURT: I'm sorry. Mr. Greenwood, could you tell me again
21 who was Dartmouth?

22 A Dartmouth is the American Secretary. One of the three
23 at that time secretary's of state. He was responsible
24 for the colonies.

25 THE COURT: Thank you.

26 A And everything -- documents related to Dartmouth I've
27 taken from the originals in the National Archives of
28 Canada.

29 THE COURT: And Hillsborough at that time was Board of Trade --

30 A Hillsborough at that time was out of office, but very
31 close to the ministry so was consulted, but he had no
32 official position.

33 MR. GOLDIE:

34 Q At the time of that correspondence?

35 A At the time of the Quebec Act and the events leading
36 up to it.

37 THE COURT: Thank you.

38 MR. GOLDIE:

39 Q Now, would you turn to tab 263.

40 A Yes.

41 Q And identify for his lordship what the document there
42 is, and direct him to the section that is relevant to
43 the question of settlement.

44 A Yes. It's paragraph 31 on page 428. These were
45 instructions to Governor Carleton, 3rd January, 1775.

46 Q That is to say after the passage of the Quebec Act?

47 A Yes. They're instructions that are redrafted to take

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- 1 account of the Quebec Act.
2 Q Yeah. And the sections to which you refer are
3 paragraphs 31?
4 A Yeah, 31.
5 Q Thank you. Would you, please, look at the document
6 under tab 264 and --
7 A Yes.
8 Q -- Just tell his lordship what that is.
9 THE COURT: 264?
10 MR. GOLDIE: 264. Yes, my lord.
11 THE COURT: Yes.
12 A It's a dispatch from Shelburne, Secretary of State, to
13 Carleton dated 14 November, 1767. And it's taken from
14 the CO42 series in the National Archives of Canada.
15 Those are microfilms of the original CO42 documents
16 which are in PRO. They primarily deal with dispatches
17 and enclosures from Quebec back to London.
18 Occasionally, as in this case, there is correspondence
19 coming the other way. Not normally though.
20 Q You noted it with respect to the question of the
21 knowledge --
22 A Yes.
23 Q -- And instructions to the Quebec Governor as of 1767?
24 A Yes. The area west of Lake Superior I was referring
25 to.
26 Q Yes.
27 A And at pages 209 verso.
28 THE COURT: Sorry. Which document are you referring to?
29 MR. GOLDIE: It's under 264.
30 MR. RUSH: There are two documents.
31 MR. GOLDIE: I think they're the same document, are they not?
32 MR. RUSH: No, there is different --
33 THE COURT: Different handwriting. Blue divider.
34 MR. GOLDIE:
35 Q Can you advise his lordship with respect to that,
36 please?
37 A Yes. It's simply that if you take the second one, the
38 second one is a microfilm copy of the original CO42
39 document. You know, this document in the CO42 in the
40 PRO, and those are originals. Now, the first document
41 is a copy of that original. It's found in the Q
42 Series at the National Archives of Canada. The Q
43 Series was simply a set of copies made of CO42 by
44 numerous archivist clerks in the late nineteenth
45 century and early twentieth century. It's a majestic
46 job, but they're essentially the same.
47 Q If you can make out the handwriting, and I take it you

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1 can, you're referring to the photocopy?
2 A I was referring to the more original one, which is an
3 original, yes.
4 MR. RUSH: I guess my confusion springs from the fact that if
5 they're original the face page appears to date them on
6 different dates. That's --
7 MR. GOLDIE: Well, I think the witness said the first document
8 is an archivist's copy.
9 Q Is that correct?
10 A Just let me check.
11 THE COURT: They have the same date, don't they, Mr. Rush?
12 A Both have 14 November, 1767 as far as I can see.
13 MR. RUSH: That's what appears on the document itself, but as I
14 say, my lord, the face page or the --
15 THE COURT: Oh.
16 MR. RUSH: The listing page, if you will, of the AGBC lists them
17 as 14 and 11 of November.
18 MR. GOLDIE: Well, I think that's a typographical error.
19 MR. RUSH: I see.
20 MR. GOLDIE: What has happened is that the -- well, I won't
21 speculate on that.
22 Q You were going to go to the page that follows 209,
23 number 209 I should say, and what part were you going
24 to direct his lordship's attention to, please?
25 A The first full paragraph, and the concluding words on
26 page 210.
27 Q All right.
28 A Do you wish me to read them or no?
29 THE COURT: I haven't found this numbering yet.
30 A It's in the second document, my lord.
31 THE COURT: Oh, yes. Yes.
32 A 209. Go one more page.
33 THE COURT: I have it?
34 A 209 verso.
35 THE COURT: Yes. All right.
36 A There's a paragraph "as an accurate knowledge of".
37 And he points out that they don't have any accurate
38 knowledge of.
39 THE COURT: I haven't found that yet. I have 209.
40 MR. GOLDIE: The next -- would your lordship --
41 THE COURT: Yes, I have it.
42 MR. GOLDIE: -- Go to the page following the number 209.
43 THE COURT: An accurate --
44 A "An accurate knowledge of the interior parts of North
45 America".
46 MR. GOLDIE:
47 Q Perhaps you might just read that out into the record.

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1 THE COURT: Yeah.

2 A

3 "There appears a great weakness in a late
4 Proclamation, which seems to have little Idea
5 of the high grand Scale on which all national
6 Affairs should be conducted on, talks about the
7 River St. John when it ought to be thinking of
8 the North pole; and of the Lake Nipissin (sic)
9 when it ought to be pushing to the Grand
10 pacific ocean."
11

12 MR. GOLDIE:

13 Q Is that the only contemporary author or individual who
14 appears from what you've just read to have favored
15 indefinite expansion?

16 A Yes, he is.

17 Q Thank you.

18 A Meaning expansion beyond the Mississippi, yes.

19 Q Yes, that's right. Thank you. Now, I want to turn,
20 Dr. Greenwood, to the question of, or the apparent
21 question of the intersection of the Mississippi River
22 and the southern limit of the Hudson's Bay Company
23 territory. And the -- you have already referred to
24 the framers of the Royal Proclamation and to the
25 documents which you have examined with respect to that
26 intersection.

27 THE COURT: I'm sorry. Mr. Goldie, the intersection of
28 Mississippi?

29 MR. GOLDIE: And the boundary -- the southern boundary of
30 Rupert's Land.

31 THE COURT: Right.

32 MR. GOLDIE:

33 Q And you've examined the documents and considered what
34 was available to assist you in that regard?

35 A Documents and maps, yes.

36 Q Yes. And you have already pointed out that there was
37 a dispute arose between the provinces of Manitoba and
38 Ontario in the late nineteenth century in which the
39 southern limit of the Hudson's Bay Company's territory
40 was relevant; is that correct?

41 A Yes, that's true.

42 Q Can you describe what happened with respect to that?

43 A Well, this is the Judicial Committee's ruling in 1884
44 held that the southern limit of Rupert's Land ran
45 through the Albany and English Rivers to a point north
46 of the northwest corner of the Lake of the Woods.
47 West of Lake Superior the line ran between 51 north

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1 latitude and 50 north latitude ending in the west just
2 north of the 50th parallel. So that was the ultimate
3 determination by the Judicial Committee. That was in
4 1884.
5 MR. RUSH: Where is that located, please?
6 MR. GOLDIE:
7 Q The -- was there a formal report, or I should put it
8 this way, what was their decision with -- by the
9 judicial committee?
10 A The judicial committee upheld an arbitration award in
11 favour of Ontario and stated that it would not give
12 reasons for its decision. There is a tab for that
13 decision if one needs the reference.
14 Q There are some extracts from the argument that took
15 place before the boundary, and if we can lay our hands
16 on the actual reference to the committee's decision
17 we'll advise my friends.
18 MR. RUSH: My concern here was that the witness expressed what I
19 thought to be his description of a boundary which was
20 reflected in the Judicial Committee's ruling of 1884.
21 THE COURT: He told me -- I think he told me what that boundary
22 was.
23 MR. RUSH: Yes, I thought so too. I think then we would be able
24 to find that description in some document.
25 THE COURT: I understand that's what I'm looking for now, are
26 we?
27 A It would take me awhile to locate that precise
28 passage.
29 MR. GOLDIE:
30 Q You can do that over the noon hour.
31 There are some -- this matter's been examined by
32 scholars, has it?
33 A The matter of the boundary as of --
34 Q Of Rupert's Land.
35 A Of Rupert's Land, yes, as of the eighteenth century.
36 Q And it's a checkered history?
37 A Yes.
38 Q And do you have an excerpt from, is it Mr. Slaterry's
39 thesis under tab 272A which -- to which you wish to
40 make reference?
41 A Yes.
42 Q Perhaps you can just summarize the -- what is there.
43 This is a quotation from a memorial of the company in
44 1750 which we've already referred to, and it describes
45 what the company claimed to be its boundaries. And
46 the boundary essentially ran -- their version was a
47 straight line from Cape Perdrix in latitude of 59 and

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- 1 a half north latitude on the Labrador coast, drawn
2 southwestward passing through Lake Mistassini,
3 M-I-S-T-A-S-S-I-N-I, and down to the 49th degree north
4 latitude, and then along that 49th parallel. And I
5 quote from the memorial. "By a meridian line of the
6 said latitude 49 westward". So it was going to go
7 along west along the 49th parallel. The line from
8 Cape Perdrix would hit that at about approximately
9 Lake Abitibi.
- 10 Q And there is in footnote 271 a reference to another
11 scholarly --
- 12 MR. RUSH: Just before my friend goes on, the reference in
13 Slattery is to ibid 4094 referring to the memorial.
- 14 MR. GOLDIE: Yes.
- 15 MR. RUSH: And is that -- is that to be found here?
- 16 MR. GOLDIE: The memorial is set out at page 188, and it has
17 been referred to before. I just ask the witness to
18 bring it to his lordship's attention at this time,
19 because I now want to direct the witness' attention to
20 the contemporary views on the boundary, and the
21 memorial is certainly one of them.
- 22 A Yes.
- 23 Q Yes. And that was a viewpoint that was asserted in
24 the -- in the negotiations following the Treaty of
25 Utrecht?
- 26 A Yes, it was.
- 27 Q And the -- was there any agreement as between the
28 British and French negotiators following that treaty
29 on that boundary?
- 30 A There were meetings in 1719, but no agreement
31 whatsoever. The French rejected out of hand this
32 boundary claim.
- 33 Q Was that boundary, however, reflected in contemporary
34 maps?
- 35 A Yes, it was.
- 36 Q British maps, I should say?
- 37 MR. RUSH: You mean the boundary claim?
- 38 MR. GOLDIE: Yes. The boundary claim.
- 39 Q And in what words were those -- was that boundary
40 claim found on a number of the maps that you have
41 examined?
- 42 A Well, a number of the maps state that it was the
43 boundary. When they're referring to the 49th parallel
44 proceeding west they state that this was the boundary
45 agreed to either at the Treaty of Utrecht or by
46 commissaries appointed under the Treaty of Utrecht.
47 From 1749 on it is truly commonplace that the maps

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1 certainly assert this without, of course, any
2 foundation.
3 Q The -- under tab 275 --
4 A Yes.
5 Q -- You have from the Ontario material gathered pages
6 135 to 138 which contain a great many more pages than
7 that would suggest. And at page 136U -- well, I
8 should really start on page 136T.
9 A Yes.
10 Q And map 140 is the Mitchell map, is it not?
11 A It appears so, yes.
12 Q And it contains on it as the annotator notes --
13 A M'hm.
14 Q -- A line which he says: "Untruely marked 'bounds of
15 Hudson's Bay' by the Treaty of Utrecht in one place
16 and another 'bounds of Hudson Bay'."
17 My lord, that's on page 136U? It's about a third
18 of the way down the paragraph, and it is a sentence
19 which begins on the right-hand side, three words in,
20 "this line is untruely marked 'bounds of Hudson's
21 Bay'."
22 THE COURT: That's on page 136U?
23 MR. GOLDIE: Yes, my lord.
24 THE COURT: Two-thirds of the way down?
25 MR. GOLDIE: About one-third of the way down.
26 A One-third.
27 THE COURT: Oh, one-third.
28 MR. GOLDIE: Yeah.
29 THE COURT: Yes, I see. Yes.
30 MR. GOLDIE: Does your lordship see those words?
31 THE COURT: Yes.
32 MR. GOLDIE:
33 Q And that, Doctor, is that kind of annotation whether
34 it -- whether it's true or untrue is immaterial at
35 this point. Is that the kind of annotation that you
36 found on a number of the British maps?
37 A Yes. Several.
38 Q Is there an annotation on the Bowen map which is --
39 A Yes, there is.
40 Q I wonder if you could read that out to his lordship.
41 A Running along the dotted line which is at the 49th
42 parallel it reads: "The southern boundary of Hudson's
43 Bay Company's territories settled by commissaries
44 after the Treaty of Utrecht".
45 MR. GOLDIE: My lord, under -- in the same document under tab
46 275 at page 136P, map number 83, described as having
47 been dated 1749 as a manuscript map on parchment by

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1 William Morris dedicated to His Excellency William
2 Shirley, Captain General and Commander in Chief in and
3 over the Majesty's Province of Massachusetts in
4 England, et cetera. Then there follows a description
5 in the first paragraph of certain features on that,
6 and then the second paragraph reads as follows:
7 "There is also on the map this further
8 inscription. By the Treaty of Utrecht the
9 lines between the English and French were thus
10 adjusted."
11

12 And then follows a description. There is a
13 footnote indicated by the dagger and then follows a
14 discussion by the annotator as to the fact that the
15 line was not settled in the negotiations following the
16 Treaty of Utrecht. Reference to that footnote number
17 83, or the footnote following 83 is found in every map
18 in which those words occur. The annotator makes sure
19 that he picks up each one of them and refers one back
20 to footnote 83.

21 Q That's your recollection, is it not?

22 A Oh, yes.

23 Q Now --

24 MR. RUSH: I'm sorry. I guess I'm not quite sure what that
25 evidence was.

26 MR. GOLDIE: Well, let me try again. Is my friend at page 136?

27 MR. RUSH: I'm with you with the footnote, it's just the
28 reference to the other maps that's -- the other --
29 what's the witness' evidence on that account?

30 MR. GOLDIE: Well, if you'd go back to 136U.

31 MR. RUSH: Yes.

32 MR. GOLDIE: You see that "see note to number 83"?

33 MR. RUSH: Yes.

34 MR. GOLDIE: That's what I'm referring to. Every time there's a
35 map to which reference is made to the Treaty of
36 Utrecht here you will find a reference back to note
37 83, and that was the witness' evidence.

38 THE COURT: Does that mean that -- that the boundaries of the
39 Hudson's Bay Company's land or concession were not
40 fixed by the proceedings following the Treaty of
41 Utrecht?

42 A They definitely were not, and as far as I'm aware
43 there was never any official Imperial Government
44 position with regard to the southern boundary after
45 1719 when the commissioners negotiating the Treaty of
46 Utrecht put that forward -- that claim forward to the
47 French. But it was not settled at Utrecht or after

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- 1 Utrecht.
- 2 THE COURT: And not settled --
- 3 A It was not settled up to the Proclamation. However,
- 4 on the maps from 1749 it's invariable -- almost
- 5 invariable that there will be an assertion that this
- 6 boundary had been set by the Utrecht, or the
- 7 commission after Utrecht.
- 8 MR. GOLDIE:
- 9 Q The Mitchell map had a slight variation on that, did
- 10 it?
- 11 A Yes. Yes, it reads: "Bounds of Hudson's Bay by the
- 12 Treaty of Utrecht".
- 13 Q All right. Now, and that is the evidence that you
- 14 examined when you were determining the perception of
- 15 the southern boundaries of the Hudson's Bay Company's
- 16 territory as it was --
- 17 A Yes.
- 18 Q As perceived in the mid-eighteenth century?
- 19 A Principally the maps -- the memorial and the maps.
- 20 There were two versions of the southern boundary in
- 21 the maps.
- 22 Q Yes. All right. Now, I want to go to the question of
- 23 the -- of the headwaters of the Mississippi. And you
- 24 have given his lordship references to documentary
- 25 material that you examined in terms of knowledge of
- 26 Canada's western boundary, or lack of knowledge. Do
- 27 you refer his lordship to the same sources with
- 28 respect to the headwaters of the Mississippi as they
- 29 were then known or not known in the mid part of the
- 30 eighteenth century?
- 31 A They would be some of the sources, yes.
- 32 Q All right. Are there any others to which you wish to
- 33 refer his lordship, and I refer you to tab 278.
- 34 A Yes.
- 35 Q And would you explain to his lordship what this
- 36 document is?
- 37 A Well, this is compiled by the Ontario government
- 38 again, and it outlines the routes which the French had
- 39 to the Mississippi in New France, and all these routes
- 40 to the Mississippi were well south of the source by
- 41 the Illinois, for example, or the Ohio, St. Croix,
- 42 Wisconsin, but all many miles south of what is
- 43 considered to be the actual source today.
- 44 Q Right. And you have noted in addition to that that a
- 45 number of the maps indicate a lack of knowledge?
- 46 A Yes, I do. Bowen's map particularly.
- 47 MR. RUSH: Well, the map speaks for itself, doesn't it, my lord?

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1 MR. GOLDIE:

2 Q And at tab 279 you have a chart which has, or a map
3 which has been referred to already in evidence. If it
4 isn't can you tell his lordship what this map is?

5 A Well, it's a map by Philippe Buache. 1752, I believe.
6 THE COURT: '52?

7 A Sorry, 1754. And it's based on notes taken from what
8 he calls the Sauvage Ochagach. An Indian by the name
9 of Ochagach. And he has remarks or a remark on the
10 left-hand side. And in the first paragraph he refers
11 to the course of the Mississippi and says this --

12 MR. RUSH: Where are you quoting from?

13 A First paragraph of the remark.

14 MR. RUSH: Yes.

15 A

16 "The course of the Mississippi which is little
17 known above the Falls of St. Anthonys".
18

19 MR. GOLDIE: That was entered as Exhibit 1154-8, my lord, in Dr.
20 Farley's cross-examination.

21 THE COURT: What does it say again? Mississippi which is --

22 A

23 "The course of the Mississippi is little known
24 above the Falls of St. Anthony".
25

26 THE COURT: And it is -- what does the next say? It is west --

27 A Oh.

28

29 "We must recognize that the course of the
30 Mississippi which is little known to us above
31 the Falls of St. Anthony is from the west to
32 the east and not from the northeast as we've
33 supposed up to now".
34

35 MR. GOLDIE:

36 Q Under tab 281, and I don't think this is a document
37 that has been here before, would you describe what
38 the -- what the map itself is?

39 A 281. It appears to be --

40 MR. RUSH: Well, my lord, I can't make out anything on this map.
41 Is there a better -- better version of this?

42 MR. GOLDIE: Yeah.

43 MR. RUSH: This is one I had asked my friend about earlier.

44 MR. GOLDIE: That's correct. And we tried our hand at a variety
45 of reproductions, and I'll give my friend what appears
46 to be about the best.

47 THE COURT: Are we looking at tab 280?

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- 1 MR. GOLDIE: No, my lord. I think it's tab 281.
2 THE COURT: Oh.
3 MR. GOLDIE:
4 Q Now, Doctor, maybe --
5 MR. RUSH: Just let us examine this, please. I've not seen this
6 before.
7 A I don't recall looking at it either.
8 MR. GOLDIE:
9 Q Well, in that case you better put it to one side.
10 Let me ask you this question, Doctor, when you
11 were doing your research work in the British Museum
12 did you examine a map called -- in a Carver's journal?
13 A I examined Carver's journal itself, and I may well
14 have seen this map at the time, but I just cannot
15 swear to that in court. But I have quoted from the
16 journal.
17 Q All right.
18 A And the journal which is identified in footnote 281.
19 Q Yes.
20 A And this is the Additional Manuscripts from the
21 British Library. The journal said this -- this is in
22 a journal of his travels. Johnathan Carver in the
23 North American interior in the years 1766 to '68 and
24 in that journal he said: "Head Branches of the
25 Mississippi are little known".
26 Q Who was Carver?
27 A Carver was a traveller -- travel writer and
28 cartographer travelling in the interior.
29 Q All right. Thank you. Could I just retrieve that,
30 please.
31 A Sorry.
32 MR. RUSH: I think -- I'm not sure if my friend is directing the
33 witness' attention to the inscription which is at tab
34 281. Is that -- is that the inscription that was
35 identified as the source of the information?
36 MR. GOLDIE: No. It's different. My friend asked me if he
37 could -- if we could produce a better map of what is
38 under 281, and we can not do any better than we've
39 done so far without getting assistance from the people
40 in London. And as an interim measure we had the
41 gentleman in London fax us the statement under the tab
42 281. I suspect I will be taking 281 out, my lord, but
43 I'll defer that until after the luncheon break.
44 Q You also examined, did you, statements by a Mr.
45 Pittman?
46 A Yes, I did.
47 Q Can you tell us who he was?

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- 1 A This Pittman was sent up the Mississippi to make a
2 report to the Commander in Chief, Sir Thomas Gage, on
3 the settlements along the Mississippi, and
4 particularly the old French settlements.
5 Q Yes.
6 A And he produced a report and it was published under
7 the title "The Present State of the European
8 Settlements on the Mississippi with a Geographical
9 Description of that River".
10 Q Now, there is --
11 A Published in London, 1772.
12 Q Yes. If you'd look under tab 280, please, Doctor.
13 283. I beg your pardon.
14 A 283.
15 Q Yeah.
16 A Okay. 283.
17 Q Is that a facsimile of the --
18 A Yes.
19 Q -- Of the frontispiece of the -- or title page of the
20 publication you're referring to?
21 A Yes. It originally was printed or published in London
22 1770. This is a reprint of Memphis 1977.
23 THE COURT: What tab are you looking at now?
24 MR. GOLDIE: At 283, my lord.
25 Q And this is dated 1770, and you're quoting from the
26 first complete or the last four lines on the first
27 page over onto the next page?
28 A Yes. Do you wish me to quote them?
29 Q No. Just tell us the extent of the quotation.
30 A The quotation runs from "nothing can", that is the
31 second full paragraph on the first page.
32 Q Yes.
33 A And it runs to the end of the paragraph on the next
34 page "4500 miles".
35 Q All right. Thank you. And from your -- from your
36 investigations can you -- well, perhaps that requires
37 an expression of judgment so I'll defer that.
38 THE COURT: Where are the Falls of St. Anthony?
39 A Yes. I have a reference to that. 44 58 45 north. 44
40 58 45 north latitude and 93 15 30 west. A few miles
41 north of the junction of the Minnesota and Mississippi
42 Rivers. That's the modern placing.
43 MR. GOLDIE:
44 Q The Falls of St. Anthony is an easily identifiable
45 landmark, is it?
46 A Yes.
47 Q I next want to consider with you the material that you

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1 looked at in determining the question of whether the
2 Mississippi had its source in Rupert's Land or outside
3 of Rupert's Land.
4 THE COURT: Can you do that in one minute, Mr. Goldie?
5 MR. GOLDIE: No, my lord.
6 THE COURT: Would a truncated lunch hour be appropriate? Say at
7 1:30?
8 MR. RUSH: Well, my lord, it appears to me as though my friend
9 is going to finish this afternoon; is that right?
10 MR. GOLDIE: I think so.
11 MR. RUSH: I'm not going to be able to complete
12 cross-examination in the time left that we have for
13 today.
14 THE COURT: Oh, I wouldn't think so.
15 MR. RUSH: And that being so if that is understood then, my
16 lord, I don't have a problem with a truncated lunch
17 hour.
18 THE COURT: Yes. All right. Thank you. 1:30.
19 MR. GOLDIE: Yes.
20 THE REGISTRAR: Order in court. Court stands adjourned until
21 1:30.

22
23 (PROCEEDINGS ADJOURNED)

24
25 I hereby certify the foregoing to be
26 a true and accurate transcript of the
27 proceedings herein to the best of my
28 skill and ability.

29
30
31 _____
32 Peri McHale, Official Reporter
33 UNITED REPORTING SERVICE LTD.
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1 (PROCEEDINGS RECONVENED AT 1:30 p.m.)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Goldie.
5 MR. GOLDIE:
6 Q Thank you, my lord. Dr. Greenwood, before I go on to
7 the next section, under tab 287 you have some further
8 extracts from the material gathered by the province of
9 Ontario for the arbitration to which you've referred
10 and under this you have the extracts of the evidence
11 and the judge's charge of a case called de Reinhard's
12 case?
13 A Yes.
14 Q What have you placed this in here for, please?
15 A Well, it's for two purposes, one chronologically here
16 in my brief and another later, but for the moment page
17 210, internal page 210, the words under
18 "Cross-examined by Mr. Valliere de St. Real"?
19 Q Yes.
20 A It's simply an example that in 1818 the source of the
21 Mississippi was then considered by in Canada, or at
22 least there's evidence it was considered as Turtle
23 Lake, in latitude 47, 38 north, longitude 94 or 95
24 west.
25 Q Right.
26 A Turtle Lake's at the upper part where the Mississippi
27 sort of curves around. It's at the top there.
28 Q And Dr. Farley has given evidence of the present
29 co-ordinates of what is considered to be the sources
30 of the Mississippi?
31 A Yes.
32 Q Now, proceeding on to a later quotation from or a
33 reference to a publication by Mitchell?
34 A Yes.
35 Q Called "The Contest in America". That was a book
36 published by him?
37 A Yes, I think it's tab 290 I believe.
38 Q 290. Yes. Would you refer to that, please?
39 A Yes.
40 Q And indicate -- firstly, that's Mitchell, the
41 Mitchell?
42 A John or sometimes called Jonathan Mitchell the
43 cartographer and the person who drafted the famous map
44 of 1765.
45 Q Right. And what reference do you wish his lordship to
46 have regard to?
47 A At page 77.

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1 Q Yes.

2 A I believe.

3 THE COURT: Where are we, please?

4 MR. GOLDIE:

5 Q Tab 290, my lord.

6 A It doesn't seem to be -- this is a republication. I
7 can quote from the original page 77 which I perhaps
8 should. May I?

9 Q Well, just hold on a minute. I want to make sure that
10 I can -- will you be able to identify the source of
11 what you're referring to?

12 A Yes, I will. The source I'm going to be using here is
13 called -- the book called "The Contest In America
14 Between Great Britain and France" written by John
15 Mitchell, published London 1757. And I'm quoting from
16 page 77 of the original.

17 Q I see.

18 A It seems not to be here.

19 Q Well, it's a reprint. I see it's reprinted.

20 A Usually the pagination is the same, but here it's not.
21 It's possible I made a mistake, but I think I checked
22 that, but it is possible. But the quotation
23 indicates -- reads as follows from the book "The
24 Contest In America":

25
26 "As for the Mississippi, it is still more
27 extensive than the River St. Lawrence. It
28 springs in the northern and western parts of
29 North America about the same sources with the
30 waters that fall into the Great Lakes and the
31 River St. Lawrence and runs through that whole
32 continent almost from latitude 50 or 51 to the
33 latitude 29."

34

35 Q All right. Now, subject to checking that with --

36 A Yes.

37 MR. GOLDIE: -- the page number with the source and providing
38 his lordship with the proper page --

39 THE COURT: What's the date of this?

40 MR. GOLDIE:

41 Q 1757, my lord. At tab 291 is -- can you identify that
42 for us, please, this map?

43 A Yes. This is a map prepared by one Louis, o-u-i-s, de
44 Larochette, d-e, small, all one word
45 L-a-r-o-c-h-e-t-t-e, and engraved by Thomas Kitchin.
46 It was drafted between the Royal Proclamation and
47 before the Quebec Act.

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- 1 Q So in the upper right-hand corner, not the corner, but
2 the upper part of the map in the northeast quadrant?
3 A Yes.
4 Q That's the old -- the boundaries of old Quebec; is
5 that correct?
6 A That is the boundaries of old Quebec prior to the
7 Quebec Act. Yes.
8 Q Yes. And the boundaries of the -- and well, I'll ask
9 you this: What other features on this map do you wish
10 his lordship to have regard to?
11 A Well, it reproduces the note which is on the Bowen map
12 in the same place, in the far north-west portion where
13 the most westerly branch of the Mississippi is
14 depicted. The note reads:
15
16 "Mississippi R., its head very uncertain.
17 Situated according to the Indians in a very
18 marshy country about the 50th deg. of
19 latitude."
20
21 "Deg." meaning degree. So that essentially the same
22 note on the Bowen map at the headwaters of the
23 Mississippi in the far west is reproduced in this map
24 by de Larochette between the Proclamation and the
25 Quebec Act.
26 Q All right. Thank you. And the 50th degree is the one
27 immediately above the line marked the southern
28 boundary of Hudson's Bay Company territory?
29 A It's the next parallel line to the north.
30 Q Yes. Thank you. All right. I don't believe that map
31 was referred to in Dr. Farley's evidence, my lord.
32 Now, did you have reference to any maps prepared
33 for the use of the military?
34 A Yes, I did, and they'll be found in tab 292 A and B.
35 Q All right. Suppose we take both of those out, and
36 would you tell his lordship please what the origin is
37 and the purposes for which you are -- what the
38 purposes are of these two maps and what their origin
39 is and the reason why you're referring to them?
40 A Yes. The origin of 292 A is -- the map is found in
41 the additional manuscripts of the British Library.
42 Additional manuscripts is a gigantic series and they
43 have numbers, but I don't think that's necessary to
44 point out. This was dated in 1765, 11 October 1765.
45 It -- further than that I can't say from my own
46 personal experience, but it seems on its face clearly
47 to be a map exhibiting where troops were stationed in

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- 1 1765.
- 2 Q All right.
- 3 A Now, should I point out what I think are the salient
- 4 features?
- 5 Q Yes, please.
- 6 A The Mississippi River is depicted in this map as
- 7 arising at least north of Lake Superior. I mean, it's
- 8 possible that it arose further according to the
- 9 map-makers, but it's certainly above Lake Superior.
- 10 Also I would point out the southern boundary of the
- 11 Hudson's Bay Company territories simply as one more
- 12 example of another version of that southern boundary
- 13 which followed the heights of land. It's found in the
- 14 Mitchell map. There are two basic versions as of
- 15 1763, circa 1763. One runs along the 49th parallel as
- 16 in Bowen, the other follows the supposed heights of
- 17 land. A third point that may be important is that
- 18 there are no cantonments of troops shown on the shores
- 19 of Lake Superior or west of Lake Superior. The ones
- 20 to the far west are in the Illinois country.
- 21 Q That's the 34th regiment afoot?
- 22 A That's right. And I think the small lines are
- 23 companies and there are a couple of companies at
- 24 Michilimackinac, which is not on Lake Superior, okay,
- 25 it's Lake Huron and Lake Michigan. And the second map
- 26 is a very similar one and I -- it's for the same
- 27 purpose. Its source is different. It is taken from
- 28 the original Shelburne papers in W.L. Clements Library
- 29 and in Arbor and it's dated in 1766, as you'll see at
- 30 the top, and the three points I made with reference to
- 31 the earlier map apply to this one as well, although
- 32 there's no writing.
- 33 Q This is -- so this is apparently a year later?
- 34 A Yes. There are no further troops on Lake Superior or
- 35 west of it and, although the words aren't written, one
- 36 assumes that that wavy line at the top of the map is
- 37 the southern boundary of the Hudson's Bay Company
- 38 territories. And again, the Mississippi rises north
- 39 of Lake Superior.
- 40 MR. GOLDIE: All right. Thank you. My lord, that concludes
- 41 the references in that volume. I rely upon secondary
- 42 references in the footnotes relating to the tab
- 43 numbers and, as well, to secondary sources already
- 44 referred to at footnote 254, 258, 265, 271. I think
- 45 I've referred to 273, 276, 277, 282, 285, 286
- 46 containing references that have already been referred
- 47 to, 288. And then I tender, my lord, Volume 5 as 1166

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1 with tabs running from 251 to 292B, as identified in
2 the index at the front of the volume.
3 THE COURT: Mr. Rush?
4 MR. RUSH: Subject I think, my lord, to my friend's decision
5 about the Carver map, which wasn't identified by the
6 witness, and as well the reference that the witness
7 read from the original of the Mitchell book --
8 THE COURT: Yes.
9 MR. RUSH: -- is not contained in the copy that we have. So on
10 the understanding that he will produce that.
11 MR. GOLDIE: Yes.
12 THE COURT: All right.
13 MR. GOLDIE: Thank you, my lord.
14 MR. RUSH: Are we going to remove 281 or --
15 MR. GOLDIE: Yes. Thank you. 281.
16 THE COURT: 28 --
17 MR. GOLDIE: 281, my lord.
18 THE COURT: And the three maps?
19 MR. GOLDIE: Yes.
20 THE REGISTRAR: So the whole tab is coming out, right?
21 MR. GOLDIE: Yes.
22 THE REGISTRAR: I'll put a line through the index.
23 MR. GOLDIE: Yes. Thank you.
24
25 (EXHIBIT 1166-251: Board of Trade Report)
26 (EXHIBIT 1166-252: Board of Trade Report)
27 (EXHIBIT 1166-253: Minutes of Board of Trade)
28 (EXHIBIT 1166-255: Hillsborough to Johnson)
29 (EXHIBIT 1166-256A: Amherst's Remarks on Ld.
30 Barringtons Plan No.1)
31 (EXHIBIT 1166-256C: Jackson, Richard, M.P.)
32 (EXHIBIT 1166-257A: Shelburne's Minutes to Cabinet)
33 (EXHIBIT 1166-259: Franklin & Wharton)
34 (EXHIBIT 1166-260: Plantations Committee)
35 (EXHIBIT 1166-261: Quebec Act)
36 (EXHIBIT 1166-262: Dartmouth to Hillsborough)
37 (EXHIBIT 1166-263: Instructions to Carlton)
38 (EXHIBIT 1166-264: Lord Shelburne dispatch to
39 Carleton)
40 (EXHIBIT 1166-266: Morgann, Maurice)
41 (EXHIBIT 1166-267: Memo to Shelburne, unsigned)
42 (EXHIBIT 1166-268: Annual Register for 1763)
43 (EXHIBIT 1166-269: Bell to Pitt)
44 (EXHIBIT 1166-272A: Slattey, Brian)
45 (EXHIBIT 1166-275: Notes on Maps)
46 (EXHIBIT 1166-278: "Routes...to the Mississippi)
47 (EXHIBIT 1166-279: Philippe Buache - map)

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1 (EXHIBIT 1166-280: Kitchin, Thomas)
2 (EXHIBIT 1166-283: Pittman, Capt. Philipp)
3 (EXHIBIT 1166-287: De Reinhard's case)
4 (EXHIBIT 1166-289: Notes on Maps)
5 (EXHIBIT 1166-290: John Mitchell)
6 (EXHIBIT 1166-291: de Larochette - map)
7 (EXHIBIT 1166-292A: "Cantonment of the Forces in North
8 America 11 Oct. 1765" - Map)
9 (EXHIBIT 1166-292B: "Cantonment of the Forces in N.
10 America 1766" - Map)
11

12 MR. GOLDIE:

13 Q Now, in considering the location of the, or the
14 assumed location of the head of the Mississippi and
15 its relationship to the southern boundary of Rupert's
16 Land, you again re-examined the treaty and the
17 documents relating to the framers of the Proclamation?

18 A Yes, I did.

19 Q Thank you.

20 A Treaty of Paris you're referring to.

21 Q Yes. And, in particular, the article of the Treaty of
22 Paris which gives the international boundary and you
23 had regard in considering that to the instructions or
24 draft instructions given to the Duke of Bedford?

25 A Yes.

26 Q And you refer to that under tab 293, do you?

27 A Yes.

28 MR. GOLDIE: Yes. I should ask for a number to be reserved for
29 the Volume 6, my lord.

30 THE COURT: Yes.

31 THE REGISTRAR: 1167, my lord.

32 THE COURT: Thank you.

33

34 (EXHIBIT 1167: Reserved; Volume 6 binder re-Dr.
35 Greenwood)
36

37 MR. GOLDIE:

38 Q Now, I'd asked you to have regard to tab 293?

39 A Yes.

40 Q And would you tell his lordship what that is?

41 A Yes. 293 is the draft instructions to Bedford who was
42 the Minister Plenipotentiary in Paris, a British
43 Minister. They're dated 4 September 1762, and they're
44 taken from the state papers 78 series Volume 253 in
45 the public record office, and I would like to quote
46 from the page -- seventh page in, seventh physical
47 page in. Sorry about the pagination, but there's --

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1 there's none. It's the one with the picture of a map
2 on the right-hand side.
3 Q Oh, yes.
4 A And Bedford in these draft instructions was instructed
5 that on the international frontier, the article on the
6 international frontier, was to be written in such --
7 and this is about two-thirds of the way down the
8 left-hand column in such -- the quotation begins
9 "clear and" --
10 THE COURT: I'm sorry, I haven't got the page.
11 THE WITNESS: I don't think there's internal pagination, my lord.
12 MR. GOLDIE:
13 Q It's --
14 A It's the seventh physical page in and the one with the
15 map on the right-hand side.
16 THE COURT: Yes.
17 THE WITNESS: And two-thirds down that page.
18 THE COURT: Yes.
19 THE WITNESS: And the word beginning towards the right "clear
20 and".
21 MR. GOLDIE:
22 Q The sentence begins:
23
24 "Our Will and Pleasure is that you do exert Your
25 utmost Attention with regard to this Article
26 which is to be treated..."
27
28 And then go on, please?
29 A
30
31 "...in such clear and explicit Terms, as shall
32 render it incapable of any misconstruction and
33 as shall, for the future, remove even a
34 Pretence, on the part of France, to claim
35 either as part of Louisiana or under any other
36 Denomination, whatsoever any thing in North
37 America, to the East, or on the Left, of the
38 Mississippi, from the source of the said River
39 until the branching of the river Iberville out
40 of the Mississippi."
41
42 Q Now, the river Iberville of course is down near the
43 mouth is it?
44 A Yes.
45 Q All right. Thank you. And the Duke of Bedford was in
46 fact the British Ambassador who was granted full
47 powers to --

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- 1 A -- negotiate the peace preliminary. They had to be
2 ratified of course by the Cabinet.
3 Q Well, he is -- he was given full powers to -- referred
4 to in the Treaty of Paris itself, was he not?
5 A Yes.
6 Q Yes. Now, that -- oh, the other question that I
7 wanted to ask you was to your knowledge are there any
8 other instructions extant of this character, whether
9 final or further draft or otherwise?
10 A I searched for them, but did not do an exhaustive
11 search, and I was not able to find the actual
12 instructions.
13 Q Thank you. And Bedford himself, did he raise any
14 question about his instructions?
15 A Yes, he did. Well, not about his instructions, but on
16 a draft -- he commented on a draft treaty proposal.
17 Q I see.
18 A But not his instructions. Slightly before his
19 instructions were issued.
20 Q And is that -- are you referring under -- in that
21 under tab 294?
22 A Yes. And that will be the first page.
23 Q Yes.
24 A And --
25 Q And this is written by the Duke of Bedford?
26 A Yes, it's written comments by Bedford on a draft
27 treaty and these comments are found in the Egremont
28 papers, and he was a southern secretary responsible
29 for foreign policy with relation to France and Spain.
30 It's found in the Egremont papers. I have a reference
31 in 294 at the public record office.
32 Q Right.
33 A And the comment of the Duke of Bedford on seeing a
34 draft treaty was this:
35 MR. RUSH: What page, please?
36 THE WITNESS: It's on the first page and I think it's number 3.
37 MR. GOLDIE:
38 Q Yes.
39 A And he says: "In the 6th article the source of the
40 Mississippi is mentioned." Full stop. "Is it known?"
41 Q Right. Now, is there any further -- is there a
42 further consideration which you took into account, and
43 that is to say, the membership of the cabinets in
44 England, the one which negotiated the treaty or the
45 one that supervised the negotiation of the Treaty of
46 Paris, and the one that supervised or oversaw the
47 preparation of and the approval of the Proclamation of

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1 1763?
2 A Yes.
3 Q And can you give us an indication please of --
4 A Yes, I can list the important common ministers. First
5 Minister Grenville of the -- at the time of the
6 Proclamation --
7 Q Yes.
8 A -- had been Northern Secretary at the time of the
9 negotiations with France; Halifax.
10 THE COURT: I'm sorry, you're going to give me a list --
11 THE WITNESS: Yes.
12 THE COURT: -- of the important players?
13 THE WITNESS: Important players then and now, or then and
14 slightly after.
15 THE COURT: All right.
16 THE WITNESS: But I started off by citing them as of the
17 Proclamation date. If you wish me to alter that I can
18 do it.
19 MR. GOLDIE: These are people who are common to the two
20 cabinets, my lord.
21 THE COURT: Yes. So it was Grenville?
22 THE WITNESS: Grenville who was First Minister at the time of
23 the Proclamation and had been a secretary, a Northern
24 Secretary, at the time of the Treaty of Paris
25 negotiations; Halifax, who was Southern Secretary at
26 the time the Proclamation issued had been First Lord
27 of the Admiralty and later Northern Secretary during
28 the negotiations of the Treaty of Paris; Southern
29 Secretary Egremont had been Southern Secretary
30 throughout until his death in August 1763; the Duke of
31 Bedford, as Lord Privy Seal, had been involved in the
32 early negotiations and had been British
33 Plenipotentiary in Paris from September '62. As Lord
34 President of the Council, Privy Council that is, he
35 attended the Cabinet meeting held on 16 September,
36 1763, which ratified the Board of Trade's August 5th
37 report recommending a Proclamation. Bute, of course,
38 was an important player in the Treaty of Paris
39 negotiations, a very important player, but he was no
40 longer in office at the time of the formulation of the
41 Proclamation's policies. However, Shelburne was a
42 protege of Bute and he, of course, was president of
43 the Board of Trade.
44 Now, that was not a Cabinet position, my lord, one
45 could call it a quasi-Cabinet position because the
46 presidents were asked to the Cabinet at meetings
47 dealing with the colonies, but only then.

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- 1 Finally, Lord Chancellor Henley, H-e-n-l-e-y,
2 later Lord Northington, attended the Cabinet of 8th of
3 July and he was the one, of course, who affixed the
4 Great Seal to the Royal Proclamation. He had been in
5 office since well before 1762.
- 6 Q And the information that you rely upon, is that what
7 is under tab 295?
- 8 A Partly, but there's a source I haven't cited there.
9 It's "The Oxford History of England" for the period.
10 I think it's Steven Watson, with a "v". It's the
11 reign of George the III, and he has a list of all the
12 Cabinet members in an appendix, but there are other
13 secondary sources as well.
- 14 Q That's a treatises, is it?
- 15 A Yes.
- 16 MR. RUSH: I'm sorry, it was unclear to me whether Shelburne was
17 in the Cabinet during the Treaty of Paris.
- 18 THE WITNESS: No, he was not, and in fact he wasn't in the
19 Cabinet during the Royal Proclamation formulation
20 because he had only quasi-Cabinet status. He was
21 asked only to meetings dealing with the colonies, but
22 he was a protege of Lord Bute so there is a kind of
23 carryover from Lord Bute.
- 24 MR. GOLDIE:
- 25 Q And you had regard to, in this context, to Lord
26 Egremont's documents?
- 27 A Yes.
- 28 Q And the --
- 29 A Tab 63.
- 30 Q 63 in Volume 1?
- 31 A Yes, and then 62.
- 32 Q All right. Well, and finally you had regard to the
33 Board of Trade's report itself?
- 34 A Both reports. Tab 58.
- 35 Q Yes.
- 36 A And the supplementary report which is tab 67, 5 August
37 '63, both reports.
- 38 Q Right. And I think you have pointed out some of the
39 language that you relied upon or had regard to?
- 40 A Yes.
- 41 Q And you also had regard in this context to the maps of
42 Popple and Mitchell, and for what reason do you
43 particularly refer to them in this context?
- 44 A Well, they were what we might call preferred maps of
45 the Board of Trade in the sense that both had been
46 commissioned by the Board of Trade, and Popple's map
47 was their preferred map until Mitchell's map took over

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- 1 after 1755, and both of them showed the Mississippi
2 rising at about 50 degrees north latitude.
- 3 Q The Popple map --
- 4 A Either showed or indicated in a note.
- 5 Q You have under tab 300 I'll call it the concentrated
6 Popple map and you have regard to the language in the
7 lower right-hand corner referring to Mr. Popple
8 undertaking the map with the approbation of the Right
9 Honourable the Lords Commissioners of Trade and
10 Plantations?
- 11 A Yes. This is the summary map we're referring to here?
- 12 Q Yes.
- 13 A Yes. That at the very bottom right indicates that it
14 was commissioned by the Board of Trade. The date of
15 the map, Dr. Farley of course would know more about
16 this map than I, but 1732 or '33.
- 17 MR. RUSH: I think it's 1733, my lord. It's been referred to by
18 Dr. Farley, map number 9.
- 19 MR. GOLDIE:
- 20 Q It's 1149, Exhibit 1149-9. And Dr. Greenwood, under
21 tab 301 you have another extract from the material
22 prepared for -- prepared by Ontario?
- 23 A Yes.
- 24 Q And this particular piece begins at page 135 and you
25 refer there to note 50?
- 26 A 58 I think it is.
- 27 Q Yes.
- 28 A Yes.
- 29 Q And what is referred to there?
- 30 A The Ontario government said that on the Popple map the
31 source of the Mississippi is on the parallel of 50
32 degrees and in about long 105, as I read it, with the
33 inscription "the head of the Mississippi in about the
34 50th degree north latitude and in a very boggy
35 country" so --
- 36 Q My lord -- I'm sorry?
- 37 A That quotation appears in the description of the map
38 by the Ontario government in number 58, and the note
39 itself appears in this segment of the larger map at
40 the left.
- 41 Q This, a slightly scaled -- not scaled down, but a
42 slightly smaller reproduction of that was filed with
43 Dr. Farley's evidence?
- 44 A Yes.
- 45 Q And I'll get your lordship the exhibit number in a
46 minute. It may have been marked as a variation on
47 1149-9. You refer to the dedication of the Mitchell

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- 1 map, which we have seen, and you refer to the printed
2 note which indicates that it was undertaken with the
3 approbation and request of the Lords Commissioners for
4 Trade and Plantations. That's -- and there is a note
5 on that map, is there, that is signed by Mr. Pownall?
6 A Yes. That the map is undertaken with the approbation
7 and that's a request of the Board of Trade.
8 Q Yes. And you have compared the signature that you
9 found on that map with other documents that he signed?
10 A Yes.
11 Q And what conclusion did you reach from that?
12 A That the signature -- the writing on the map is the
13 same as the signature of Pownall in other documents.
14 Q Right. And a reference under footnote 303 indicates
15 that that statement is made elsewhere?
16 A Yes.
17 MR. RUSH: My lord, so there's no mistake, for the record, it's
18 the 1755 Mitchell map that's being referred to here.
19 THE WITNESS: Yes. The statement in the source referred to in
20 303 was not as to the handwriting, it was simply as to
21 the fact that Pownall had signed that map.
22 MR. GOLDIE:
23 Q Yes. That's what I meant. Thank you. And you have
24 determined from another source that the -- it would
25 appear that the Board of Trade opened its map archive
26 to Mitchell and sent him copies -- and sent copies of
27 the finished product to the governors of the North
28 American colonies?
29 A Yes.
30 Q And that's -- the source for that is at your footnote
31 304?
32 A Yes.
33 Q And is a copy of the Mitchell map found in the
34 personal papers of one of the framers?
35 A Yes, it is. It's found in the Egremont papers. This
36 statement is based on a visit by me to the Historical
37 Manuscripts Commission, Quality Court, London, which
38 is the central index or catalogue if you wish for all
39 the papers in the United Kingdom, including the County
40 Archives, and in the Historical Manuscripts Commission
41 materials I discovered the index to the Egremont
42 papers in Petworth House Archives, P-e-t-w-o-r-t-h,
43 House Archives County Record Office, Chichester, and
44 it indicates that there was a Mitchell map of 1755 in
45 those papers. I did not visit Chichester.
46 Q And do you have some indication that the Mitchell map
47 was in the collection of King George the III?

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- 1 A Yes. I found a book, to give it a short title,
2 catalogue of maps, et cetera, attached to the library
3 of his late Majesty King George the III which was
4 published in London in 1829. I found a copy in the
5 British Library, and at page 8 it indicated that there
6 were three copies of Mitchell's 1755 map in that
7 collection. That's nine years of course after George
8 the III died.
- 9 MR. RUSH: Do we have that catalogue?
- 10 MR. GOLDIE:
- 11 Q No. It's just referred to in the -- well, I shouldn't
12 say we don't have it. I'll endeavour to see if we
13 have a copy of the relevant page.
- 14 And is there some evidence that Halifax, who had
15 been President of the Board, was known to Mitchell?
- 16 A Yes, there is. Apparently in 1755 when the map was
17 commissioned and Halifax was President of the Board of
18 Trade, and for some years afterwards Halifax was a
19 close friend of Mitchell's.
- 20 Q That is -- the source of your information on that is
21 the treatise referred to at footnote 306 or if not a
22 treatise what is it?
- 23 A It's a treatise. It's a book on Mitchell. Yes.
- 24 Q Thank you. And you finally note that the book that
25 has been referred to by Mitchell, namely, "The Contest
26 in America" appears from at least one source to have
27 been commissioned by the Board?
- 28 A Yes.
- 29 Q That source is referred to at footnote 309?
- 30 A Yes.
- 31 Q And the -- is there evidence which suggests that the
32 framers of the Royal Proclamation had used more than
33 one map? I suppose that's evident because of the
34 Bowen map which accompanied their report?
- 35 A Yes, there is.
- 36 Q But I'm referring to other evidence.
- 37 A Yes, there is other evidence. Yes.
- 38 Q Thank you. And is that the course of that information
39 set out at 308 or at least a source of that
40 information?
- 41 A Yes.
- 42 Q And then you pay particular attention to the Bowen
43 map?
- 44 A Yes.
- 45 Q And you've already referred to the colours?
- 46 A Yes.
- 47 Q And you've -- you have referred to the statement in

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1 the report which makes reference to the chart?

2 A Yes.

3 Q And in the footnote 311 you refer to those scholars
4 and others who have accepted the Bowen coloured map as
5 being the annexed chart, but you say without offering
6 proof of that?

7 A Yes.

8 Q You, I understand, have come to the conclusion that
9 the Bowen coloured map is in fact the map that was
10 attached to the report and laid before the king?

11 A Yes.

12 Q Would you indicate to his lordship please the basis
13 upon which you reached that conclusion?

14 A Yes. Well, I examined the original and the -- in the
15 public record office in Kew Gardens in the map
16 division. I studied it for things like stitching
17 holes. I found there were holes consistent with
18 stitching. I checked the archival certificate on it,
19 which I asked the photographer to photograph. It's at
20 the top left, and it reads in part as follows "This
21 document was removed from C05/65/f78v". So I went to
22 the Colonial Office 5 Series, which is on the
23 colonies, Volume 65, at pages 59 to 78, and there is
24 found the original of the Board of Trade's report of 8
25 June.

26 And I wanted to make sure it was the original and
27 it's the original because on the first page there is
28 the red seal of the Board of Trade and it has
29 Britannia and the Thames with a lot of great
30 commercial activity going on. And at the last page
31 there are the signatures of Shelburne and the Board
32 members. They're all in different hands so that a
33 clerk, you know, did not do them. So it is an
34 original.

35 And at page 70 of that original, which includes
36 the paragraph referring to the 'annex'd Chart',
37 there's another certificate which informs the
38 researcher that a "Map of North America shewing", with
39 an 'e', "British, Spanish & French possessions, being
40 an enclosure to C05/65/f78v, has been removed to M.R.
41 26." M.R. is map reference, 26 means it's been removed
42 to the map reference room, so that as of 1926 August
43 the 30th the two documents were in physical
44 contiguity, and so that was the starting point.

45 The second way of proving this was to date the
46 actual coloured version, the only one in existence
47 other than copies, and the dating is essentially

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1 between -- or it's based on the cartouche, which
2 refers to the Treaty of Paris which is 10 February,
3 1763, so that's the earliest date it can be. And it
4 is not after the Proclamation because the boundaries
5 are not consistent with the Proclamation's boundaries.

6 For example, the northern line of Quebec in the
7 Proclamation is a straight line sometimes rendered as
8 two straight lines, but a straight line, whereas on
9 this map it's a wavy line following the heights of
10 land. And there are similar aspects of the boundaries
11 that are not consistent with the Proclamation, so it's
12 pre-Proclamation.

13 If you look at the sketch and its boundary
14 recommendations, and we only have those really for
15 Canada because the Florida boundaries are missing by a
16 clerk's error in the 18th century, if you look at
17 those and especially the report of 8th of June, 1763,
18 the boundary provisions are consistent with this
19 particular coloured map, the Bowen coloured map. So
20 my conclusion was that it was being prepared while the
21 sketch was being prepared. It was touched up very
22 slightly, you can see it in orange in the Lake
23 Nipissing area because there's a very slight
24 difference between the sketch and the report of 8 June
25 on the Lake Nipissing area, and it was sent to the
26 king. So the Board of Trade's report remarks that the
27 boundaries are particularly delineated.

28 I conclude that this is the map with the pink
29 lines that was sent to the king. It is theoretically
30 conceivable, and I want to say this for obvious
31 reasons, it is theoretically conceivable that the
32 colours other than the pink boundaries, other than the
33 pink boundaries, were added later. It depends on your
34 interpretation of the word delineated, and so on, but
35 in my professional judgment, it was the map that was
36 physically sent to the king and was placed in his
37 hands and was annexed either by ribbon or thread to
38 the original of the 8 of June report.

39 Q You mentioned thread and earlier you mentioned
40 stitching?

41 A Yes.

42 Q Do those two items have any significance in the
43 conclusion you reached?

44 A Well, I was trying to establish that the two documents
45 had been physically contiguous since June 8 '63, other
46 than sort of taking them apart and looking at them,
47 and I naturally looked for stitching holes and I found

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- 1 holes that were consistent with stitching holes. I
2 didn't find them on the June 8th report, but the last
3 page, which would be the endorsement page, is missing.
4 Q But you found such stitching holes on the Bowen map?
5 A Yes.
6 Q Yes. Thank you.
7 A But it was also common to annex them by ribbon as well
8 so --
9 Q Yes.
10 A And may I add something to that just briefly?
11 Q Yes, please.
12 A That this is the chart -- well, the same chart that
13 was mentioned in the 8 June report is mentioned in the
14 letter of Egremont of the 14th July and in Halifax's
15 letter of the 19th of September, 1763. So that the
16 chart is used, you know, at least down to that point.
17 Q Thank you. Then you also had regard, did you, to the
18 Quebec Act in this context I mean?
19 A Yes.
20 Q And what documents do you wish to refer his lordship
21 to in this context?
22 A Well, there is first of all the anonymous document
23 which is cited I believe in footnote 314.
24 Q Yes.
25 A Which is taken from the Dartmouth papers. These are
26 originals in the National Archives of Canada, circa
27 1774, and it was a paper collected by Dartmouth and it
28 is found in tab 314.
29 Q Is there any particular part of that that you wish to
30 show us?
31 A Yes, I would, page 2205.
32 MR. GOLDIE: The printed numbers, my lord, are --
33 THE COURT: Yes. Thank you.
34 MR. GOLDIE: Some are good and some are bad, but 2205 is in fact
35 the sixth page in.
36 MR. RUSH: What does it start with "seventh line"?
37 MR. GOLDIE:
38 Q Yes, that's correct.
39 A If you would like, my lord, seven lines down,
40 beginning with the word "until", to the end of --
41 well, down about ten lines to "Mississippi", that is a
42 southern boundary being prescribed for the new to be
43 extended province of Quebec, and the only point that
44 need be known now is that it would end, that southern
45 boundary, at the confluence of the Ohio and the
46 Mississippi.
47 Then the author of this paper goes on to describe

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1 a northern boundary for Quebec, and it would start in
2 the Esquimaux River and to be bounded on the north,
3 this is Quebec, "by a line", I'm quoting here at the
4 bottom of the page:

5
6 "...a line drawn due west from the mouth of the
7 said River to the southern limits of the
8 territory granted to the Hudson's Bay Company
9 and to follow the course of the said limits..."

10
11 That's the southern limit of Rupert's Land.

12
13 "...as far as the river Mississippi..."

14
15 So he was saying the northern boundary should go along
16 the southern boundary of Rupert's Land as far as the
17 river Mississippi:

18
19 "...the said River to be the Boundary on the
20 West from the point where it is intersected by
21 the Southern Limits of the territory granted to
22 the Hudson's Bay Company as aforesaid as low
23 down as the Mouth of the River Ohio."

24
25 Now, this was collected by Dartmouth, who was the
26 Colonial Secretary. And Shortt and Doughty states
27 that it had an influence on the third draft of the
28 Quebec Bill.

29 Q And that reference is, the Shortt and Doughty
30 reference, is instanced at what footnote, is it, 315,
31 page 221?

32 A Yes.

33 Q All right. And Shortt and Doughty, who are the
34 authors or compilers of the constitutional or the
35 collection referred to you as constitutional
36 documents?

37 A Yes.

38 Q It was -- they had a view with respect to this and is
39 that found under tab 316?

40 A It should be, yes.

41 Q And this is where they discuss the first, second, and
42 third drafts of the Quebec Bill; is that correct?

43 A Yes. Yes.

44 MR. RUSH: Well, they provide the first, second, and third in
45 that tab, my lord.

46 MR. GOLDIE: Yes.

47 MR. RUSH: 316 contains those documents.

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1 MR. GOLDIE:

2 Q Yes. Thank you. And with respect to the third draft?

3 A Yes.

4 Q Is there any language in there that you wish his
5 lordship to have regard to?

6 A Yes. The third draft annexed to Quebec all
7 territories previously part of Canada:

8
9 "...extending Southward to the banks of the
10 River Ohio, Westward to the banks of the
11 Mississippi and northward to the Southern
12 Boundary of the Territory granted to the
13 Merchants Adventurers of England trading to
14 Hudson's Bay."

15
16 And these boundaries were found in the bill that
17 went into Parliament. The bill was introduced by Lord
18 Dartmouth in the House of Lords on May 2nd, 1774.

19 Q And that is under tab 317A, is it not, the Quebec Bill
20 as returned from the Commons?

21 A Yes.

22 Q And then introduced in the House of Lords?

23 A Yes.

24 Q And the language that you have referred to is found on
25 page 391?

26 A Yes.

27 MR. GOLDIE: About two-thirds of the way down the page, my
28 lord --

29 THE COURT: "Along the western boundary"?

30 MR. GOLDIE:

31 Q -- there is:

32
33 "Westward, to the Banks of the Mississippi and
34 Northward to the Southern Boundary of the
35 Territory granted to the Merchants Adventurers
36 of England trading to Hudson's Bay."

37
38 A Then there's the boundary provision in the Quebec Act
39 itself which we've --

40 Q Yes.

41 A I can quote from that if you wish.

42 Q Yes. Thank you. Well, that's -- well, yes, go ahead,
43 please?

44 A This is a found in the Quebec Act itself. This is the
45 boundary provision for Quebec in part, and the
46 boundaries of the province in the south-west west and
47 north-west appear in the first section and read in

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1 part as follows:

2
3 "and thence along by the Eastern and South
4 Eastern Bank of Lake Erie, following the said
5 Bank, until the same shall be intersected by
6 the Northern Boundary, granted by the Charter
7 of the Province of Pennsylvania, in case the
8 same shall be so intersected; and thence from
9 along the said Northern and Western Boundaries
10 of said Province...", that's Pennsylvania,
11 "...until the said Western Boundary strike the
12 Ohio: But in case the said Bank of the said
13 Lake shall not be found to be so intersected,
14 then following the said Bank, until it shall
15 arrive at that Point of the said Bank which
16 shall be nearest to the North Western Angle of
17 the said Province of Pennsylvania; and thence
18 by a right Line to the said North Western Angle
19 of the said Province;"

20
21 So we're now in Western Pennsylvania.

22
23 "and thence along the Western Boundary of the
24 said Province, until it strikes the River Ohio
25 (and along the Bank of the said River)
26 Westward, to the Banks of Mississippi, and
27 Northward to the Southern Boundary of the
28 Territory granted to the Merchants Adventurers
29 of England trading to Hudson's Bay."

30
31 Q Thank you. And there is a secondary source referred
32 to in tab or footnote 318, and by second resource I
33 mean documents prepared by an editor?
34 A Yes.
35 Q Which provide some indication of the amendments made
36 to the Quebec Act as it passed through Parliament?
37 A Yes.
38 Q Now, that description which you've given --
39 A Yes.
40 Q -- was later the subject matter of some controversy?
41 A Yes, it was. Different opinions and -- differing
42 opinions and serious controversy, yes.
43 Q And what were the two differing opinions with respect
44 to the meaning of the -- well, first point out to his
45 lordship what it is that gives rise to the
46 controversy?
47 A Well, the ambiguity is found in the last few lines of

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1 what I quoted, and here we're again -- I'll go back to
2 Western Pennsylvania and the line is going west.

3
4 "Until it strike the River Ohio, (and along the
5 Bank of the said River) Westward, to the Banks
6 of Mississippi..."

7
8 And here's where the ambiguity comes in:

9
10 "...and Northward to the Southern Boundary of
11 the Territory granted to the Merchants
12 Adventurers of England trading to Hudson's
13 Bay."

14
15 So that the northward to the southern boundary of
16 Rupert's Land northward could be a due north line,
17 even though they've used right line before to express
18 a straight line, but it could mean due north. It also
19 could mean along the banks, eastern banks of the
20 Mississippi, until the Mississippi enters, as you're
21 going north, Rupert's Land.

22 Q So that the issue, to put it another way, is is it a
23 straight line?

24 A Is it a straight line from the confluence up or does
25 it follow the banks of the Mississippi.

26 Q In a northward trend, trending northward?

27 A Trending northward along the banks of the Mississippi
28 or due north in a straight line.

29 Q All right. And you have earlier referred to the
30 evidence in de Reinhard's case?

31 A Yes.

32 Q And that issue was debated there as well?

33 A Yes, it was, and the Chief Justice Jonathan Sewell,
34 S-e-w-e-l-l, and his colleagues on the Court of King's
35 Bench District of Quebec, assumed that due north was
36 the proper meaning. There were many documents which
37 might have been put before them that weren't, but this
38 is what they decided.

39 Q Yes.

40 A And that's at internal page 226, 27, at the end of the
41 case, the asterisk. The asterisk --

42 Q And that extract we've seen earlier?

43 A Yes, we have. It's an earlier tab.

44 Q Yes. Now, you've indicated that where the draftsmen
45 of the Quebec Act had wished to indicate a straight
46 line, the wording chosen was by a right line?

47 A Yes. By a right line, yes.

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- 1 MR. GOLDIE: Is there any other reason that you wish to bring
2 to his lordship's attention that suggests that the due
3 north or straight line would have been inappropriate?
- 4 MR. RUSH: Well, my lord, I think the witness should be directed
5 to the documents, and if the documents suggests this
6 or that then it will emerge from the document. I
7 certainly think that the reference to de Reinhard's
8 case and what might have been in any one of the
9 justice's minds at that time is inappropriate, unless
10 he's referring to the evidence.
- 11 MR. GOLDIE:
- 12 Q Well, that's all that he was referring to, my lord.
13 It's -- the debate over due north and northward is
14 clear from the evidence and the judge's charge, both
15 of which are found in the source document. But I'm
16 now talking about is there anything, as a matter of
17 fact, that you wish to bring to his lordship's
18 attention that bears on the question of the choice of
19 which it is?
- 20 A Well, in the preamble to the Quebec Act there's
21 reference to providing civil jurisdiction for the
22 Canadian or I believe they're called French there, but
23 Canadian settlers in villages in what was the Indian
24 reserve who had of course no civil jurisdiction up to
25 that point. There is also the letter I think we've
26 quoted Dartmouth to Hillsborough saying that it's very
27 important to provide jurisdiction for these people.
28 If you drew a line due north from the confluence, you
29 would exclude any number of villages west of that due
30 north line such as the village of Old Fort Chartres,
31 which is now East St. Louis, Missouri, just to take
32 one example.
- 33 Q Which would have been included if the line followed
34 the banks of the Mississippi?
- 35 A That's correct.
- 36 Q All right. Thank you. And now you make reference to
37 the fact that in the Historical Atlas of Canada that's
38 not the current --
- 39 A No.
- 40 Q -- document of the same name? Both of these versions
41 are given and the reference to that is footnote 319.
- 42 A Yes.
- 43 Q Footnote 319 simply says 319, 32. Is that page 32?
- 44 A Page 32 of D.G.G. Kerr, Kerr's volume called "A
45 Historical Atlas of Canada", circa 1959.
- 46 Q With respect to the exclusion of certain villages or
47 settlements, if the line north of the confluence of

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- 1 the Ohio and the Mississippi had been drawn due north,
2 is there any other indication that those settlements
3 were intended to be covered by the Quebec Act?
4 A Well, as the instructions to Carleton.
5 Q Well, can it -- perhaps I withdraw the word intention.
6 Is there any document to which you wish to draw his
7 lordship's attention which would indicate the
8 jurisdictional intention?
9 A Yes, I'd refer to tab 263 which are the instructions
10 issued in January 1775.
11 MR. GOLDIE: Yes.
12 THE COURT: 263?
13 THE WITNESS: 263. To Governor Carleton. That's January 1775,
14 tab 263, which -- particularly paragraphs numbered 15
15 and especially 31, 15 and 31.
16 MR. GOLDIE:
17 Q Thank you.
18 A These instructions -- do you --
19 Q Well, 15 is a long one, but --
20 A Yes. May I summarize?
21 Q Well, is there language in it that you can just direct
22 our attention to?
23 A I have to -- okay, 263 -- I'll have to have the other
24 volume. At 263 article 15, bottom of page 323, there
25 is an instruction to set up courts criminal and civil
26 and the instructions read, second last line:
27
28 "That besides the foregoing Courts of Criminal
29 and Civil Jurisdiction for the Province at
30 large, there be also an Inferior Court of
31 Criminal and Civil Jurisdiction in each of the
32 Districts of the Illinois, St. Vincenne,
33 Detroit, Missilimakinac, and Gaspee, by the
34 Names of the Court of King's Bench for such
35 district."
36
37 Q Right. Thank you.
38 A And then 31.
39 Q Yes.
40 A 31 refers to, beginning at the beginning of the
41 article:
42
43 "The institution of inferior Judicatures with
44 limited Jurisdiction in Criminal and Civil
45 Matters for the Illinois, Poste St. Vincenne,
46 the Detroit, Missilimakinac, and Gaspee, has
47 been already pointed out, and the Appointment

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1 of a Superintendant at each of these posts is
2 all, that is further necessary for their Civil
3 concerns; But..."

4
5 Obviously they're dealing with that area beyond the
6 straight line as if they -- as if it came within the
7 jurisdiction of Quebec.

8 Q That's particularly comprehended in the word Illinois?

9 A Yes, Illinois country.

10 Q Thank you. And you make reference to, at tab 324, to
11 a map identified as Pownall's map of the British
12 provinces, North America 1775?

13 A Yes.

14 Q And under 324B to the page in the Ontario compilation?

15 A Yes.

16 Q Identified as page 136dd?

17 A Yes.

18 Q What are the references there to?

19 A Well, beginning with the Ontario compilation at page
20 136dd, map number 145, a note by the compilers states
21 that:

22
23 "This map shews the Province of Quebec, as
24 constituted in 1774. It will be observed, that
25 north of the point of confluence of the Ohio
26 and Mississippi, the western boundary is along
27 the latter river. And not by a line drawn due
28 north from that point of confluence."

29
30 That's the compiler's opinion, and there is
31 reference that this map, the original of this map, was
32 held by the U.S. Department of State.

33 Now, I have not seen the original in the time
34 available. I was not able to find it in catalogues to
35 the Library of Congress and other places, but I found
36 the map being referred to by the Ontario government in
37 that note and it's found in -- and it's produced, the
38 map. It's found in David Mills, his book called "A
39 Report on the Boundaries of Ontario, Toronto, 1873",
40 and it's his map 6 in the appendix. This report was
41 prepared for the Ontario government as part of their
42 ongoing case with Manitoba and the Federal. Mills
43 uses the map to make the point in his text that the
44 boundary of Quebec did not go in a due north line, but
45 went along the banks of the Mississippi. And the
46 colouring, you know, would indicate that, but I must
47 introduce two caveats here.

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1 First of all, if you'll notice the title --
2 Q We're looking at the map under tab 324A?
3 A Yes.
4 Q Yes.
5 A The colouring is my rendition of the colouring found
6 on the Mills map in his report. Right. Now, you will
7 notice the title there "Pownall's Map of the British
8 Provinces in North America A.D. 1775". To me that
9 doesn't -- that suggests it's not one produced by
10 Pownall. It could be organized by Mills and, as I
11 say, I haven't been able to see the original. Mills
12 does not mention -- doesn't go into detail about these
13 colours. I've reproduced them as best I can and
14 probably not very well, but they appear essentially
15 the same way in Mills' book. I will add this: That
16 I've written and published on Mills and he was a man
17 of rather amazing integrity, and the chances of him
18 actually lying or trying to mislead the judicial
19 committee or any other court is really remote from
20 reality.
21 MR. GOLDIE: All right.
22 THE COURT: Is it convenient to take an adjournment, Mr. Goldie?
23 MR. GOLDIE: Yes, that will be fine.
24 THE COURT: We're half-way to four o'clock.
25 THE REGISTRAR: Order in court. Court stands adjourned for a
26 short recess.
27
28 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
29
30 (PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)
31
32 THE REGISTRAR: Order in court.
33 THE COURT: Goldie.
34 MR. GOLDIE:
35 Q Thank you, my lord. Dr. Greenwood, you had just
36 finished commenting on the map which may or may not
37 have been entitled by Mr. Mills?
38 A Yes.
39 Q As the Pownall map of 1775?
40 A Yes.
41 MR. GOLDIE: And that's 324?
42 THE COURT: A.
43 MR. GOLDIE:
44 Q 324A. Now, this particular Pownall is who?
45 A Former Governor of Massachusetts, who was the brother
46 of John Pownall, the Secretary of the Board of Trade,
47 and he had written a book called "The Administration

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- 1 of the Colonies", "The Administration of the Colonies
2 in 1764". He was a member of Parliament for Tregony,
3 T-r-e-g-o-n-y, and had participated in the debates in
4 the Commons on the Quebec Bill's boundary provisions.
- 5 Q And your -- the sources of your references or the
6 sources for your statements are found in footnotes 325
7 and 326 on page 226?
- 8 A Yes.
- 9 Q And you also refer to Governor Carleton's commission
10 that we have spoken about earlier?
- 11 A Yes. His commission of December 27th, 1774. His
12 commission as Governor of Quebec now under the Quebec
13 Act.
- 14 Q All right. And there is -- under tab 327 there is an
15 extract from a publication entitled "Acts of the Privy
16 Council of England, Colonial Series"?
- 17 A Yes.
- 18 Q We've seen extracts of that before?
- 19 A Yes.
- 20 Q What -- to what do you refer here?
- 21 A Page 559 --
- 22 Q Yes --
- 23 A -- gives the details of the drafting of the
24 commission.
- 25 Q Yes.
- 26 A To Governor Carleton, and this would be under the date
27 at the left-hand side following the date on the
28 left-hand side:
- 29
- 30 "1774, Guy Carleton, 9 December; 19 December; 19
31 December Commission. On 10 December the draft
32 was referred by the Committee to the Attorney
33 and Solicitor General. Changes in pursuance of
34 the Quebec Act."
- 35
- 36 In other words, it was being drafted to comply
37 with the new Act.
- 38 Q And the identity of the Solicitor-General and the
39 Attorney-General?
- 40 A That is Edward Thurlow was the Attorney-General, later
41 Lord Chancellor, and Alexander Wedderburn, who had
42 helped draft the Quebec Bill, was the
43 Solicitor-General.
- 44 Q And you say Wedderburn had helped draft the bill?
- 45 A Yes.
- 46 Q Did Thurlow have any prior acquaintance, to your
47 knowledge, with the Quebec Act?

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- 1 A Yes. I have no evidence of his partaking in the
2 drafting, but he submitted a report in 1772 or '73, I
3 can't remember which, on the laws to be granted, you
4 know, criminal and civil laws to be granted to the new
5 province of Quebec.
6 Q Right. And the authority for that is referred to
7 under footnote 327? Well, I'm sorry, no, that --
8 A Partly.
9 Q That is the source of the document under tab 327A, and
10 then the Order in Council approving the Board of
11 Trade's draft commission is that 327B -- no, I
12 don't -- yes. Yes, is that what 327B is?
13 A Yes.
14 MR. RUSH: What was the answer?
15 MR. GOLDIE:
16 Q Yes. And the source of your information with respect
17 to Wedderburn and Thurlow, is that the footnote under
18 tab -- footnote 328?
19 A In part. Also I think 340.
20 Q And 329?
21 A Yes.
22 Q Thank you. Now, we've referred to the Carleton's
23 commission on a number of occasions, but is there
24 language that relates to this question of the boundary
25 that you wish to refer to?
26 A Yes, I do. We've been referring mostly I think to the
27 instructions while the commission's been mentioned
28 several times.
29 Q Yes.
30 A But I was unable to locate the original of his 1774
31 commission. I searched with archival assistance in
32 Ottawa and I uncovered a number of different
33 commissions and the one I've chosen to file here,
34 these are listed in footnote 331.
35 Q Yes.
36 A This is the most reliable I could find, and it's in
37 record group 68, Volume 92, and it's titled "Liber B".
38 L-i-b-e-r, "Imperial Commissions". This was a copy
39 that was used for official record. It was made
40 directly from the original by the Provincial
41 Secretary. When the Governor turned up he would give
42 his commission to the Provincial Secretary and a copy
43 would be made. This is the copy. The original
44 probably was destroyed by Carleton's wife who burned
45 his papers at his order after his death.
46 If you would turn to page 2, internal page 2.
47 Q Under tab 331?

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- 1 A Under tab 331.
2 Q Yes.
3 A This is the most reliable commission I could find.
4 This portion of the commission was dealing with the
5 south-western and western boundaries of Quebec and it
6 read in part as follows: You'll see it's seven
7 lines -- eight lines from the bottom beginning in the
8 middle of the line, eight lines from the bottom, page
9 2.
10 Q And the words after "Northwestern Angle of the said
11 Province and thence along..."?
12 A Yes, but starting with the word "and".
13 Q Yes.
14 A
15
16 "...and thence along the western boundary of the
17 said Province..."
18
19 Which is referring to Pennsylvania there.
20
21 "...and thence along the western boundary of the
22 said Province until it strikes the River Ohio
23 and along the Bank of the said River Westward
24 to the Banks of Mississippi (sic) and Northward
25 along the Eastern Bank of the said River to the
26 Southern boundary of the Territory granted to
27 the Merchants Adventurers of England trading to
28 Hudson's Bay..."
29
30 Q Thank you. Now, finally, and again you have made
31 reference to the dispute between Ontario and Manitoba,
32 Manitoba supported by the Dominion?
33 A Yes.
34 Q On the western and northern boundaries of Ontario?
35 A Yes.
36 Q And do I understand it that Manitoba's case was that
37 the -- well, perhaps you should state what Manitoba's
38 case was?
39 A Well, Manitoba's federal case was that the -- in part
40 was that the line from the confluence of the Ohio and
41 Mississippi should be drawn in a due north direction
42 as Judge Sewell had done.
43 Q Yes.
44 A In 1818. That was their contention. Ontario
45 contended that now Mills had written about this at
46 great length in his report, it should be drawn along
47 the eastern bank of the Mississippi northward to the

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- 1 putative junction with the Hudson's Bay Company
2 territory.
3 Q All right. And the sources for your statements there
4 amongst other sources would be found in footnotes 333
5 and 334?
6 A Yes, 332 as well.
7 Q 332, 3 and 4?
8 A Yes.
9 Q Thank you. And you have earlier stated that Ontario
10 won the arbitration award?
11 A Yes.
12 Q Which set the westernmost point of the province of
13 Ontario at the north-west angle of the Lake of the
14 Woods?
15 A Yes.
16 Q Now, you refer there to footnote 335, but we don't
17 have that in the book of documents, and I'll examine
18 that. And that was consistent with the Ontario
19 interpretation?
20 A Yes. And yes, it was not consistent with the Manitoba
21 interpretation, consistent only with the Ontario
22 interpretation.
23 Q Under tab 337 you have part of the submission or
24 argument before the judicial committee --
25 A Yes.
26 Q -- to which the arbitration award was referred?
27 A Yes.
28 Q And the proceedings before the committee runs
29 something over 400 pages?
30 A Yes.
31 Q And you have not included that --
32 A No.
33 Q -- in your volume before his lordship? And you've
34 stated earlier that the Board, without giving reasons,
35 upheld the arbitration award?
36 A That's correct.
37 MR. GOLDIE: And we're going to provide my friend with the
38 reference to that.
39 MR. RUSH: My lord, I have to object to that. Including this
40 portion, it sounds like it was quite a contested
41 argument and one would assume that various points of
42 view were reflected throughout, as in most arguments,
43 and it might have been enlightening to see all of it,
44 but in not being able to see all of it, I don't think
45 we should see any of it.
46 MR. GOLDIE: Well, I was going to get only that portion
47 which -- and the Order in Council which upheld the

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1 arbitration award. There were no reasons for
2 judgment, as we understand them, and if my friend
3 wishes to have the -- a copy of the entire argument,
4 I'm happy to provide him if he hasn't already been
5 provided with it.

6 MR. RUSH: I don't think any of its relevant, my lord.

7 THE COURT: Well, I'm not sure that it is. I certainly think
8 that the award and the upholding of the award are
9 historical facts.

10 MR. RUSH: I agree with that.

11 THE COURT: But I'm not sure that one should be too strict in
12 determining what might be admissible as an underlying
13 historical fact. A position taken by one side or the
14 other might be admissible as a historical fact, even
15 if taken in argument, when it might not be admissible
16 in the sense of debates in Parliament being admissible
17 to explain the statutes. I'm just not sure that I'm
18 able to capture or express the precise terms of
19 admissibility of underlying historical facts, and I
20 think for the moment, subject to objection, I would be
21 disposed to allow Mr. Goldie to refer to those parts
22 of the argument that he -- I'm sorry, not to refer to,
23 but to at this stage put into evidence those parts of
24 the argument that he wants to rely upon in argument
25 which of course entitles you, Mr. Rush, to put in
26 whatever other parts you think are needed for the
27 purpose of balancing or neutralizing or answering
28 those parts, or to support the contrary argument that
29 you might wish to make at a later date.

30 I say this all in the most indefinite way
31 because, as I said before, I haven't defined in my own
32 mind the limits of historical fact, but I certainly
33 have your objection in mind and I'd be glad to hear
34 from you later if Mr. Goldie does advance an argument
35 based upon argument.

36 MR. RUSH: My lord, just succinctly put, is that I cannot see
37 how an argument recorded in a presiding case can
38 itself constitute a historical fact. They're
39 submissions, and they don't stand for the proof of the
40 truth of any statement.

41 THE COURT: That's so, but they might also be some -- they might
42 include some statements of fact.

43 MR. RUSH: They might.

44 THE COURT: Yes.

45 MR. RUSH: But said in argument they're worthless.

46 MR. GOLDIE: Well, I think my friend is a little too dogmatic on
47 this.

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1 THE COURT: Well, he's firm anyway.

2 MR. GOLDIE: Yes. The fact is that argument is often looked at,
3 if for no other reason, than to determine what was
4 before the court, what assertions were made before the
5 court, did the court have the advantage of knowledge.
6 Taken to its extreme, argument has been looked at in
7 determining whether a judgment is per incuriam, but
8 that's not really the -- I don't think that's the
9 point your lordship is directing your mind to.

10 THE COURT: No.

11 MR. GOLDIE: The question of fact which is indicated in the
12 argument is the thoroughness of the examination of the
13 sources of information about the questions that were
14 before the court at that time. I would rely upon the
15 fact that there were a hundred and thirty-five maps.
16 I would rely upon the fact that -- the description of
17 those maps in relation to some of the argument that
18 will be put before your lordship about the issues that
19 have been touched on in the evidence so far. But that
20 is probably open to me on argument without the
21 necessity of putting this in evidence.

22 THE COURT: I'm not going to make any definitive ruling on
23 either the point you just made or the one I mentioned
24 earlier at this time. Mr. Rush can certainly
25 supplement this in any way he thinks is necessary for
26 his purposes.

27 MR. GOLDIE:

28 Q In any event, Dr. Greenwood, is the reference at
29 footnote 338, is that the reference to the Order in
30 Council which confirmed the arbitration award?

31 A That's a statute.

32 THE COURT: Footnote --

33 MR. GOLDIE:

34 Q I'm sorry, yes, 338 is the statute which embodied
35 the -- or definitively settled the boundary?

36 A Yes.

37 Q Yes. All right. And in accordance with what?

38 A In accordance with an Order in Council drafted on 11
39 August 1884, and the terms appear in the statute. And
40 of course the Order in Council was based on the award
41 which is in tab 337, although I'm not sure if I should
42 refer to it.

43 Q Where do you see the award under tab 337?

44 A First page, after the middle, Lord Chancellor, and
45 then the final reference on that page by the Lord
46 Chancellor:

47

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1 A 1777.

2 Q Yes. And can you identify for us the language?

3 A Yes. At the bottom of the first page.

4 Q Yes.

5 A

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"...and from thence along the said Northern and Western Boundaries of the said Province until the said Western Boundary strikes the Ohio, but in case the said Bank of the said Ohio shall not be found to be so intersected, then following the said Banks until it shall arrive at that point of the said Bank which shall be nearest to the North Western Angle of the said Province of Pennsylvania and thence by a right line to the said North Western Angle of the said province..."

And going on to the next page:

"...and thence along the Western Boundary of the said Province until it strikes the River Ohio and along the Bank of the said River Westward to the Banks of the Mississippi and Northward along the Eastern Bank of the said River to the Southern boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay."

Q Yes. All right. And then you make reference to the Treaty of Paris?

A Yes.

Q Of 1783?

A Yes.

Q That is under tab 343?

A Yes.

Q And to what do you refer us to?

A That of course is the treaty that brought an end to the American revolutionary war. And at page 268 --

Q Yes.

A -- eight lines down, the boundary between British and American territory reads in part as follows:

"Thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most

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1 northwestern point thereof."
2
3 So we're at the northwestern point of the Lake of the
4 Woods.
5 Q Yes.
6 A
7
8 "And from thence on a due west course to the
9 river Mississippi;"
10
11 Q Right. About what parallel are we at when the --
12 we're directed to go due west on a due west course to
13 the Mississippi?
14 A Just slightly above the 49th I believe.
15 Q All right. And that was intended to define the
16 boundary between the United States and what was
17 then --
18 A British North America.
19 Q -- British North America? And, in particular, that
20 would be Rupert's Land?
21 A Yes.
22 MR. RUSH: Not misleading --
23 MR. GOLDIE: Well, is there any other -- I'll ask the witness.
24 MR. RUSH: Well, British North America can't be Rupert's Land.
25 MR. GOLDIE:
26 Q Well, I was thinking of a more general appellation of
27 British North America, but to get myself and my friend
28 out of this, perhaps Dr. Greenwood you'd tell us?
29 A What is the question again?
30 Q What is being separated or what is between -- between
31 what political entities are we looking at with respect
32 to that boundary?
33 A Essentially it's Rupert's Land. After the Lake of the
34 Woods it's essentially Rupert's Land and the United
35 States of America. East of the Lake of the Woods it
36 would be Quebec.
37 Q Right. Now, and you have reference to other
38 commissions that were granted subsequently?
39 A Yes.
40 Q Or not subsequently, but two commissions?
41 A Yes, Lord Dorchester's commission of 1786 for Quebec.
42 Q Yes.
43 A And in 1791 as Governor-in-Chief of the two Canadas.
44 Q And the first of those is on page 18 of this
45 particular document?
46 A Yes. Towards the end of the quote in the middle.
47 "Thence through the said lake", towards the end of it,

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1 "thence through the said lake to the most
2 north-western point thereof", that's the Lake of the
3 Woods, "and from thence on a due west course to the
4 River Mississippi."

5 Q Right. Thank you. And the second one of those?

6 A Is on page 21.

7 Q Yes.

8 A Third full paragraph at the bottom simply says that
9 Upper Canada will include the territories in the west
10 of the old province of Quebec, so it's essentially
11 repeating the boundary provision, although of course
12 the old colony's divided into two Canadas at that
13 time.

14 Q And finally you make reference to the Treaty of 1814,
15 and the reference that you give us is to the
16 proceedings before the judicial committee, but --

17 A Yes, it's the -- it's the Jay's Treaty between Great
18 Britain and the United States settling a number of
19 outstanding issues in 1794, and for convenience I've
20 taken it from the judicial committee's hearing, and on
21 page 322 there's article 4 of the Jay's treaty, and it
22 begins with these words:

23
24 "Whereas it is uncertain whether the River
25 Mississippi extends so far to the northward as
26 to be intersected by a line to be drawn due
27 west from the Lake of the Woods in the manner
28 mentioned in the Treaty of Peace between His
29 Majesty and the United States."

30
31 And then there's to be a commission to establish
32 the fact, which never met however.

33 MR. GOLDIE: You proceeded in the right chronological order. I
34 was going to refer you to the Treaty of 1814 which
35 purports to settle a boundary and ask you how it got
36 there, but you've done that.

37 Now I wish to refer to certain footnote references
38 for other authorities that I haven't already done, my
39 lord, and that is footnote 299, 302, 303. You have
40 referred to footnotes 304, 5, 6, and 7, you have
41 referred to footnote 308, 9, 11, and you referred to
42 what is spoken to in footnote 313, 315, the
43 authorities referred to in 316, and in 317. We have
44 referred to 318, we've referred to 319, and 320. And
45 I also refer -- I may wish to refer to the secondary
46 authorities referred to in 321. You've referred to
47 325, to 326, to 328 and 329 and to 330. I wish to

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1 make use of the reference in 340 and 341.

2 My lord, I tender as Exhibit 1167, Volume 6,
3 consisting of footnotes starting with -- consisting of
4 tabs starting with 293 and extending to 345 as
5 indicated on the index at the front of the volume,
6 with some question as to the inclusion of all of them,
7 but at the present time I tender it on that basis.

8 THE COURT: All right. Mr. Rush has made his -- some of his
9 comments known and perhaps there are others.

10 MR. RUSH: I think the ones that I voiced are sufficient.

11 THE COURT: Yes. All right. Thank you.

12

13 (EXHIBIT 1167-293: Draft instructions to Bedford)

14 (EXHIBIT 1167-294: Bedford's comments)

15 (EXHIBIT 1167-295: Tomlinson, John)

16 (EXHIBIT 1167-300: Henry Popple - Map)

17 (EXHIBIT 1167-301: Notes on Maps)

18 (EXHIBIT 1167-311: Bowen coloured map)

19 (EXHIBIT 1167-312: Bowen maps of North America)

20 (EXHIBIT 1167-314: "Paper relative to the extension of
21 the Limits of Quebec")

22 (EXHIBIT 1167-316: Quebec bill - drafts)

23 (EXHIBIT 1167-317A: Quebec Bill returned from
24 Commons)

25 (EXHIBIT 1167-317B: Simmons, R.C. & Thomas, P.D.G.
26 (eds.))

27 (EXHIBIT 1167-322A: Dartmouth to Cramahe)

28 (EXHIBIT 1167-323: Instructions to Carleton)

29 (EXHIBIT 1167-324A,B: Pownall, Sir Thomas)

30 (EXHIBIT 1167-327A: Commission to Carleton - drafting)

31 (EXHIBIT 1167-327B: Order In Council, approving draft
32 commissions)

33 (EXHIBIT 1167-331: Carleton's commission)

34 (EXHIBIT 1167-337: Special Case)

35 (EXHIBIT 1167-339: Special Case)

36 (EXHIBIT 1167-342: Commission to Haldimand)

37 (EXHIBIT 1167-343: Treaty of Paris)

38 (EXHIBIT 1167-344A: Lord Dorchester's Commissions)

39 (EXHIBIT 1167-345: Jay's Treaty, Article 4)

40

41 MR. GOLDIE: My lord, I would ask that the witness not be placed
42 under cross-examination today. If my friend is
43 anxious to utilize the time, I've got some documents I
44 wish to read in. I have two reasons for making that
45 request. Firstly --

46 MR. RUSH: My friend needn't go into that. I'm not opposed to
47 that.

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1 THE COURT: All right. All right. Subject to that you're
2 finished, are you?
3 MR. GOLDIE: Yes, my lord, I have -- one of the things which is
4 open is the manner in which I place before your
5 lordship the footnote references.
6 THE COURT: Yes. All right. Is it your suggestion then that we
7 adjourn until Thursday morning at 9:30?
8 MR. GOLDIE: At 9:30 to do some matters. I would be happy, my
9 lord, to complete reading in Volume 4 of the papers
10 related to the province of British Columbia.
11 THE COURT: You mean now?
12 MR. GOLDIE: Yes.
13 THE COURT: Oh, all right. If that's convenient to the other
14 counsel.
15 MR. RUSH: It's not convenient particularly, my lord. I don't
16 happen to have that volume here -- maybe I do.
17 THE COURT: I hope you don't.
18 MR. RUSH: My lord, it seems to me that there isn't any pressing
19 need to read this in, unless my friend feels that he'd
20 like to.
21 THE COURT: Well, I think --
22 MS. RUSSELL: My lord, I'm on Mr. Rush's side.
23 THE COURT: Well, I think it's convenient to read myself and
24 counsel can follow it and I think we'll forbear the
25 pleasure of hearing you read those today, Mr. Goldie.
26 MR. GOLDIE: Thank you, my lord.
27 THE COURT: I guess we're where, the length of the
28 cross-examination then behind schedule then, are we?
29 I think you had planned to finish this witness?
30 MR. GOLDIE: Yes. In my original time-table I had expected to
31 finish this witness this week, my lord.
32 THE COURT: Yes. Any idea how long you'll be, Mr. Rush?
33 MR. RUSH: It's a hard one to call, my lord, but I'm aiming to
34 complete in a day.
35 THE COURT: Yes. All right. Well, I don't know that we can
36 pursue the matter much further except we were already
37 scheduled to sit next Saturday anyway, were we not,
38 and so by sitting next Saturday won't enhance the
39 catch-up which we might like to be engaged, but we'll
40 pursue that course anyway and maybe somewhere along
41 the way we will catch up. You didn't suggest that we
42 sit any evening this week did you Mr. Goldie?
43 MR. GOLDIE: I had made one suggestion but the -- what has
44 removed some of my concern is Canada's desire to start
45 on the 8th of November which provides me with a bit of
46 a relief valve, and so if there is any problem I think
47 it's going to manifest itself after Saturday the 21st,

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1 and in which case we have some time in the following
2 week, acknowledging that your lordship is sitting in
3 the week of the 30th.

4 THE COURT: I'm in the Court of Appeal for three days that week.

5 MR. GOLDIE: Yes.

6 THE COURT: I think perhaps four, but three days on one case and
7 I can be replaced on the fourth day if necessary. All
8 right. We'll adjourn then until Thursday morning.
9 Have a pleasant week-end. Thank you.

10 THE REGISTRAR: Order in court. Court stands adjourned until 9:30
11 on Thursday.

12
13 (PROCEEDINGS ADJOURNED TO THURSDAY, OCTOBER 12, 1989
14 AT 9:30)

15
16 I hereby certify the foregoing to
17 be a true and accurate transcript
18 of the proceedings herein to the
19 best of my skill and ability.

20
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22 _____
23 Tanita S. French
24 Official Reporter
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