

STATE OF MICHIGAN
IN THE COURT OF APPEALS

THE PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff-Appellant,

v

WALTER JOSEPH CASWELL,

Defendant-Appellee.

Court of Appeals No. 368232

Mackinac Circuit Court No. 23-4360-
AR

92nd District Court No.
18D657689A/B-SM

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BRIEF OF APPELLANT PEOPLE OF THE STATE OF MICHIGAN

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EXHIBIT A

Mackinac Circuit Court opinion and order

9/27/23

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACKINAC

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The People of the
State of Michigan,
Appellant/Plaintiff,

SEP 28 2023

CIRCUIT COURT
COUNTY OF MACKINAC

v.

CC File No. 23-4360-AR
DC File No. 18D657689A/B-SM
Hon. Brian D. Rahilly

Walter Joseph Caswell,
Appellee/Defendant.

Opinion and Order

I. Background

The parties are aware of the road this case has traversed. This is the second time it has been to Circuit Court on appeal from the District Court. For the second time, the District Court ruled in favor of Appellee Caswell and dismissed fishing violations against him based on treaty rights. This time the District Court had to apply the legal framework that was handed down by the Court of Appeals in this very case. *People v Caswell*, 336 Mich App 59 (2021). Appellant appealed that decision and argues the District Court misapplied the legal test handed down by the Court of Appeals.

II. Standard of Review

A lower court's findings of fact are reviewed for clear error. MCR 2.613(C). See also *Walters v Snyder*, 239 Mich App 453, 456 (2000). "In the application of this

principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Lanzo Constr Co*, 272 Mich App 470, 473 (2006).

“At its core, an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.” *People v Babcock*, 469 Mich 247, 269 (2003). “An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside this principled range of outcomes.” *Id.* See also *Maldonado v Ford Motor Co*, 476 Mich 372, 388 (2006), which adopted the *Babcock* Court’s articulation of the abuse of discretion standard as the “default standard.” However, “by characterizing the ‘principled outcomes’ standard as the default standard, *Maldonado* recognized that another formulation could exist. Accordingly, a default abuse of discretion standard of review is an assumed or assigned standard of review unless the law instructs otherwise.” *Shulick v Richards*, 273 Mich App 320, 324-325 (2006).

Questions of law are reviewed de novo. *Brackett v Focus Hope, Inc*, 482 Mich 269, 275 (2008); *People v Sierb*, 456 Mich 519, 522 (1998). Questions of law include the interpretation of statutes, court rules, and constitutional provisions. *Estes v Titus*, 481 Mich 573, 578-579 (2008); *In re Carey*, 241 Mich App 222, 226 (2000).

III. Discussion

The defendant must establish his treaty rights by showing by a “preponderance of the evidence that his tribe is a political successor in interest to a signatory tribe of the 1836 treaty. This is established when a group of citizens of Indian ancestry is descended from a treaty signatory and has maintained an organized tribal structure such that some defining characteristic of the original tribe persists in an evolving tribal community.” *People v Caswell*, 336 Mich App 59, 78 (2021). So, the defendant must prove that he is (1) part of a group of people of Indian ancestry, (2) that is descended from a treaty signatory tribe, and (3) that the tribe has maintained an organized tribal structure.

1. Is the Mackinac Tribe part of a group of Indian Ancestry?

Barry Adams at the January, 2022, evidentiary hearing testified he started the Mackinac Tribe with Darryl Brown. Adams explained the process he went through to enroll members in the Mackinac Tribe. He went to powwows and other events and met with people. Those people would provide their names and the names of their ancestors. Adams would take those names and go through the genealogical records and federal registers.

The Appellant argues that these steps are not sufficient to prove that the Mackinac Tribe is a group of Indian Ancestry. However, Appellant failed to contradict any of the evidence presented by Appellee. Appellant urges this Court to apply a standard consistent with the standard for federal recognition. That is not the standard. The testimony of Adams describing how he confirmed all members of the

Mackinac Tribe are of Indian ancestry were sufficient for the District Court to rely on. It was not clear error or an abuse of discretion to rely on that testimony to conclude that the Appellee had met his burden of proof on this prong.

2. Is the Mackinac Tribe descended from a treaty signatory?

The Appellant concedes that there was testimony that showed Appellee is descended from a signatory of the 1836 Treaty. The Appellant concedes that the testimony shows that members of the Mackinac Tribe that are related to Adams are descended from a signatory of the 1836 Treaty. The Appellant wants more, but again provided no contradictory evidence. The District Court relied on that testimony, and that was not clear error or an abuse of discretion.

3. Has the Mackinac Tribe maintained an organized tribal structure?

As stated by the Court of Appeals, the dispositive issue in this case is whether the Mackinac Tribe is the political successor in interest to the signatory tribe it descends from. The Appellee must show that some defining characteristic of the original tribe persists in an evolving tribal community. It is important to understand what the test is not. It is not a comparative analysis of tribal government versus state government. The Appellant urges the Court to apply standards of state government to tribal government. That is not the test.

Dr. McClurken was qualified as an expert in ethnohistory and treaty rights. Dr. McClurken testified that in 1836 the Ottawa and Chippewas were loosely confederated and called tribes. Their highest political unit was the band. A band is defined as a group of extended family, usually three to 25 related families that live in

a given area. Bands would group together through a clan system and would confederate during times of duress. Government structure was egalitarian, meaning there was no hierarchy of leadership. Decisions were made in council by consensus.

This government structure was in place when the 1836 and 1855 treaties were signed. Federal government policy has shifted throughout history. During the Eisenhower administration all of the bands who were signatories to the 1836 treaty formed a new constitution. That organization was called the Northern Michigan Ottawa Association (NMOA), which the Mackinac Band was part of. NMOA served as the government for all 36 signatory bands up until 1981.

Through its involvement in NMOA, the Mackinac Tribe maintained an organized tribal structure. NMOA began to break up in 1981 when individual groups started seeking federal recognition by the federal acknowledgement process and by legislation. After 1994, the Mackinac Band reached out to Dr. McClurken seeking help in gaining federal recognition. He attended at least two community meetings and noted that factional disputes within the community were significant. He was never contracted to assist the Mackinac Band in gaining federal recognition.

The Mackinac Tribe was appointing representatives to the Michigan Commission on Indian Affairs up until the Commission closed 15 years ago. That is evidence of a functioning government up until 2007. In 2008 or 2009 the Mackinac Tribe adopted a constitution and a declaration of independence. In 2011 the Mackinac Tribe sought federal recognition under the Indian Reorganization Act. The case ended up in litigation, see *Mackinac Tribe v Jewell*, 829 F3d 754 (2016). The

Mackinac Tribe did not gain federal recognition. The federal courts dismissed the case because the Mackinac Tribe had not exhausted its administrative remedies. After that happened the Tribe essentially ran out of money to seek federal recognition. Evidence shows the process costs millions of dollars to go through.

The Mackinac Tribe has natural resource rules and regulations, and issues fishing licenses, as it did in this case. It does not have a tribal court or conservation officers. The Tribe did appoint individuals to enforce the regulations and would issue \$500.00 fines to individuals who violated the regulation. According to the testimony of Barry Adams, if a fine was issued, the individual paid it. It appears the members regulated themselves without need for law enforcement or courts.

The Mackinac Tribe have held powwows and other gatherings. It has a cultural center, maintains property interests, and advocates through members by intervening in lawsuits. It is clear from those facts that the Tribe has had cultural influence on its members. The tribal structure has evolved by necessity over time. However, the evidence is clear that an organized tribal structure has existed since treaty time.

Based on the record evidence, the Court finds the District Court did not commit clear error or abuse its discretion. Many of the Appellant's arguments ask the Court to review the evidence with a modern view of government. The argument discounts the history of policy failures of the federal and state governments. The District Court noted many of those policy failures in its opinion. Further, as stated previously, the Appellant failed to rebut or contradict the evidence submitted by the Appellee.

IV. Conclusion

For the reasons stated above, the Court AFFIRMS the District Court.

It Is Ordered.

Date: September 27, 2023



Hon. Brian D. Rahilly
11th Circuit Court Judge

EXHIBIT B

92nd District Court opinion and order

4/18/23

STATE OF MICHIGAN
IN THE 92ND DISTRICT COURT FOR THE COUNTY OF MACKINAC

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v

Case No. 18D657689A-SM

Case No. 18D657689B-SM

WALTER JOSEPH CASWELL,

Defendant.

OPINION AND ORDER

Defendant in this matter is a member of the Mackinac Tribe of Odawa and Ojibwa Indians, otherwise known as Mackinac Tribe. In 2018 he received a citation from a DNR officer for spear fishing in a closed stream, contrary to MCL 324.48715 and MCL 324.48711.

Defendant moved to dismiss the charges on the grounds that he is a member of an Indian tribe or band that was granted hunting and fishing rights by the 1836 and 1855 Treaties with the United States federal government. This Court dismissed the matter, and the case was appealed and reversed by the Circuit Court, and subsequently appealed wherein the Court of Appeals reversed the Circuit Court and remanded the matter back to this Court for additional proceedings. Specifically, the Court of Appeals directed this Court to hold an evidentiary hearing to allow the Defendant an opportunity to establish by a preponderance of the evidence that his tribe is a political successor in interest to the signatory Tribe of the 1836 Treaty.

I. Background

In the Treaty of 1836, a group of Indian tribes collectively referred to as the Odawa or Ottawa and Chippewa Nations ceded to the federal government 14 million acres in the eastern Upper Peninsula of Michigan and northern Lower Michigan. In that treaty the tribes preserved rights to hunt and fish on the ceded lands. Then in 1855 a treaty was entered into by the tribes with the federal government which dissolved the concept of the Odawa or Ottawa and Chippewa Nation and addressed reservation boundaries regarding these

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MACKINAC COUNTY PROSECUTOR

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tribes. That treaty did not affect the fishing rights that were retained in the 1836 treaty. See *LeBlanc*, 399 Mich 55-58.

Over the next 150 years various disputes have arisen concerning hunting and fishing rights under the treaties. The Michigan Department of Natural Resources coordinated with five federally recognized tribes in the State of Michigan in 2007 to attempt to resolve those disputes. The consent decree defined inland hunting, fishing, and gathering rights for the tribal members, and the decree allowed the tribes to regulate hunting and fishing of the tribal members, including methods of hunting and fishing, i.e., spear fishing.

In this matter the Defendant was spearing fish in Mackinac County on streams within the ceded lands which were also subject to the 2007 inland consent decree. The Defendant possessed a valid State of Michigan license as well as a tribal fishing license issued by the Mackinac Tribe. Mackinac Tribe had no seasonal limitations on spearing fish for members holding a valid tribal fishing license. However, on that date spearing fish violated the State of Michigan regulations, and the Defendant was issued two citations for fishing in a closed stream, contrary to MCL 324.48715 and MCL 324.48711.

Defendant appeared before the District Court for the matter, and a hearing was held on a motion to dismiss. At that hearing the DNR officer issuing the citation testified that the State of Michigan did not acknowledge the Mackinac Tribe's assertion of treaty rights because it was not a signatory to the 2007 inland consent decree. The officer further testified that only members of the signatory five tribes of the consent decree were permitted to exercise Treaty Rights on land that was ceded to the State of Michigan in the 1836 treaty, and to his knowledge the Mackinac Tribe was not associated with any of those five tribes.

Chairman of the Mackinac Tribe of Odawa Indians, Barry Wallace Adams, testified on behalf of the Defendant. Chairman Adams testified that the Defendant was a member of the Tribe and that Tribe descended from Ainsse Band 15 and 16, Point of St. Ignace and Band 16 is Point of Aux Chenes, and that those bands were signatories to the 1836 and 1855 treaties. Chairman Adams further testified that the modern day "Mackinac Tribe" consists of Ojibwa that were excluded from the Sault Tribe after it closed its enrollment.

The Defendant submitted as part of his motion his tribal subsistence harvesting license, and that license includes information confirming that the Durant census records identify him as a member of Band 16. Additionally, the Defendant submitted for consideration during the hearing a certificate of decree of Indian blood that was prepared by the United States Department of Bureau of Indian Affairs which certifies the Defendant as 1/64th Mackinac Tribe Chippewa Indian. It also confirms that his great great great grandmother, Mrs. Antoine Paquin, is listed as Number 342 on the 1836 census register of the Ottawa and

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Chippewa Nations. Finally, the Defendant submitted for consideration his tribal membership card identifying him as a member of "The Mackinac Tribe Odawa and Ojibwa Indians Bands 11-17 and Cheboygan Bands."

II. Testimony After Remand

The testimony taken after remand consisted of two individuals. The Chairman of the Mackinac Tribe of Odawa Indians, Barry Wallace Adams, gave additional testimony, and Dr. James McClurken, an ethnohistorian, testified.

Dr. McClurken testified extensively about the history, development, and modern politics of the Ottawa and Chippewa in Michigan (Ottawa, Chippewa, Michilimackinac, Mackinaw Band, and Mackinac Tribe are used interchangeably throughout his testimony). Dr. McClurken explained that in 1836 the Ottawa and Chippewas lived in kinship-based societies that were loosely confederated into tribes. Groups 3 - 25 consisted of interrelated families living in areas that made up bands. Bands were the highest political unit within this form of government. The societal structure was egalitarian which was devoid of hierarchical leadership. A band's decisions were made in council by consensus, and those decisions were conveyed outside a band by a person chosen for that singular task.

Historically, a man called Ainsse signed the Treaty of Washington on behalf of the band then known as Michilimackinac. That band was centered on Mackinac Island, which included fisheries along the north and south shores of the Straits, and included kinship connections throughout the Michilimackinac region.

After the Treaty of Washington was signed, the band represented by Ainsse continued to occupy the regions around the Straits of Mackinac. These individuals were noted in record of the annuities paid under the treaty until 1870. The 1890 census, which was offered as Defendant's Exhibit A, reported hundreds of Indians living in and along the shores of the Straits.

The Ottawa and Chippewa of the Michilimackinac area were accounted for in the 1907 Durant Roll. This document was prepared to identify the descendants of the 1836 and 1855 treaties. Current members of the Mackinac Tribe claim their genealogical and political descent from those individuals named on the Durant Roll. While the Durant Roll was being prepared, those ancestors continued to live throughout the Straits region and continued to pick their leadership in traditional ways of kinship-based ancestral governments.

The former federal policy of the first three decades of the 20th Century was to effectuate an assimilation of the Ottawa and Chippewa Indians. As a result of this effort, additional systems within the tribal structure began to break down

causing members to migrate to areas for work and removal of children to distant boarding schools. However, the kinship-based governance was not destroyed. Federal government denied any responsibility toward the signatories, specifically in this matter to the Tribes located in the Straits of Mackinac area or Michilimackinac.

Dr. McClurken testified that the Northern Michigan Ottawa Association that was formed during the Eisenhower Administration established a constitution by all bands who were original signatories to the 1836 Treaty of Washington. In doing so, the Ottawas formed grouped bands into units and selected and designated representatives to speak on their behalf with other units and with other political bodies. The Northern Michigan Ottawa Association operated as a governing structure until the late 1970s, at which time certain units began to pursue the recognition process separately from the association.

The criteria required for recognition at that time included being treated as having a collective right in tribal lands or funds and exercising political authority over its members with its individual form of government. All of the Northern Michigan Ottawa Association units, including the Mackinac Tribe, participated on the Michigan Commission on Indian Affairs which was established in the 1950s by then Governor G. Mennen Williams. That commission was created to fill the gaps left by federal termination policies. As of today, all but two of the Northern Michigan Ottawa Association bands or units have received federal recognition.

The Sault Ste. Marie Tribe of Chippewa Indians received federal recognition. During its enrollment period a dispute arose between Chippewas who resided near Sault Ste. Marie and the Chippewa and Ottawas who grew up near the Mackinac Straits. Two members, Barry Adams and Darryl Browning, began working to identify the Chippewa and Ottawa of Mackinac. Barry Adams testified that he and others researched and identified individuals who descended from those who resided in the Mackinac region in 1936. In those efforts, he and others used the word Tribe as a plural and Band referred to their tribe as Mackinac Odawa and Ojibwa Indians.

During this time, Adams and Browning consulted with others, including Dr. McClurken, to assist in the process, sought approval from the Indian Affairs, and brought a lawsuit as the Mackinac Tribe. The Mackinac Tribe adopted a Declaration of Independence and Constitution in 2009 as well as appointed members to govern the natural resources.

III. Burden of proof, Findings, and Conclusions

In this matter the Defendant must establish by a preponderance of evidence that his tribe is a political successor in interest to a signatory tribe of the 1836

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Treaty. To do so, the Defendant must demonstrate that, (A) the Defendant is a part of a group of people of Indian ancestry, (B) that the Defendant descended from a treaty signatory tribe, and (C) that that tribe has maintained an organized tribal structure.

A. Defendant is a part of a group of people of Indian ancestry

The testimony in this matter showed that the individuals comprising the Mackinac Tribe descended directly from a treaty signatory, specifically Ainsse, who signed the 1836 Treaty of Washington on behalf of the bands of the Michilimackinac, or a part of the Ottawa and Chippewa Nation.

In the first hearing, Defendant Caswell provided direct evidence that he descended from Antoine Paquin whose name appears in the 1836 census of the Ottawa and Chippewa Nation. The constituents of the current day Mackinac Tribe are clearly descendants of Ainsse as their signatory to the 1836 Treaty of Washington. Additionally, Defendant Caswell provided documentation of his membership with the Mackinac Tribe in ancestry connecting him to a descendent of the Durant Roll. This document was from the United States Bureau of Indian Affairs.

Prosecution argues that 1/64th ancestry is insufficient to be recognized as a descendent of the original tribe of Ottawa and Chippewa Nation. However, blood quantum is not a requirement with the Mackinac Tribe according to their Constitution, nor is it required as recognition by the United States government. Indian tribes have the exclusive and inherent authority to determine their own membership rules. *Santa Clara Pueblo versus Martinez*, 436 U.S. 49, 55, 98 S.Ct. 1670, 1675, 56 L.Ed.2d 106 (1978).

The Prosecution further argues that the Mackinac Tribe as a group of people is not a group of people with Indian ancestry. However, the testimony of Dr. McClurken and Mr. Adams directly contradict that assertion. Mr. Adams testified that he is, in fact, a descendent of Ainsse, the signatory to the 1836 Treaty of Washington. He and his relatives, as well as others who descended from that tribe, constitute the Mackinac Tribe. The efforts that Mr. Adams and others made to identify those relatives and descendants cannot be ignored.

Therefore, the Court will find that the Defendant has established by a preponderance of evidence that he is a part of a group of people of Indian ancestry connected to the signatory of a tribe of the 1836 Treaty.

B) Defendant descended from a treaty signatory tribe

Testimony showed that in 1836 the Ottawa and Chippewa Nation lived in the Michilimackinac area or the Straits of Mackinac, and in 1836 the bands of the

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Ottawa and Chippewa Nation or Michilimackinac Band/Tribe delegated the authority to Ainsse to sign the treaty of the 1836 Treaty of Washington. In an effort to identify the descendants of the signatories of the 1836 Treaty, the federal government commissioned a census. That census is commonly referred to as the Durant Roll, and that document identified the ancestors of the bands/tribes of the Ottawa and Chippewa of the Michilimackinac.

Testimony from Mr. Adams demonstrated clearly that Mr. Adams himself and his relatives were direct descendants of Ainsse. While there's no evidence of any other members having directly descended from those identified in the Durant Roll other than the Defendant, that does not lead to the logical conclusion that all members of the Mackinac Tribe are not somehow descendants of the Defendant's members identified on the Durant Roll.

Mr. Adams testified that in an effort to identify potential members of the tribe, he first turned to his own relatives. This leads to the conclusion that the tribal members of the Mackinac Tribe that are directly related to Mr. Adams trace directly to the Durant Roll, their own lineage.

The Prosecution argues that the testimony from Mr. Adams implies that he sought out members without any proof of actual tribal lineage, implying that he created membership out of thin air. However, this is directly contradicted by the testimony and exhibits showing that the Defendant Caswell can directly trace his lineage to a member of the Durant Roll, Antoine Paquin.

Further, the Prosecution argues that Mr. Adams' testimony using the words "re-establish the tribe" indicate that at some point the tribe ceased to exist. The Court is not persuaded by that argument. The use of the word "re-establish" the Court believes was used in reference to efforts made after the Northern Michigan Ottawa Association became defunct. The Northern Michigan Ottawa Association was a viable group of bands of the Ottawa and Chippewa or Michilimackinac area, which included the present members of the Mackinac Band's predecessors. Dr. McClurken testified that as that organization began to fail, all but two of the tribes were able to obtain federal recognition. The Mackinac Tribe has sought recognition, according to the testimony of Mr. Adams in the first hearing. However, that recognition is still pending. The use of the term "re-establish" does not demonstrate that tribal organization of the Mackinac Tribe ceased to exist at any point in time. To the contrary, it continued to exist through a number of evolutions from the point in time of the signing of the 1836 treaty to today's date.

It must be noted that the Sault Tribe of Chippewa Indians formation and closure of roles resulted in the remaining ancestors of the Mackinac Band effort to ensure federal recognition. The fact they could have been Sault Tribe members but for the closure of the roles does not obviate the lineal functioning

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of the Mackinac Band ancestors acting and participating as a group that had historically acted in its kinship-based government in a continuous manner dating back to the Treaty of 1836.

The re-establishment referred to in Barry Adams' testimony simply refers to the effort that was redirected after the foreclosure to become members of the federally recognized Sault Tribe of Chippewa Indians, which their members would have been eligible for, to establishing their own federally recognized Tribe.

Therefore, the Court will find that the Defendant has met its burden of proof as to the second prong to establish that the Mackinac Tribe is a successor of interest to the signatory 1836 Treaty of Washington.

C. Tribe has maintained an organized tribal structure

The final prong requires that the Defendant show there has been an organizational structure that has continued roughly 190 years. The Court incorporates the findings and conclusions set forth in Section A.

Further, Dr. McClurken testified very clearly that throughout the years there has been an existing tribal structure not in the way that our state or federal government recognized as a tribal government structure but rather a kinship-based structure. Dr. McClurken testified to the timeline applicable in this matter, testified that Ainsse, through Barry Adams, has a direct lineal descension, was selected by the band then known as Michilimackinac to be the signatory on their behalf. The band included the eastern Upper Peninsula and northern part of the Lower Peninsula in an area commonly called the Straits of Mackinac.

The federal government, in an effort to identify those peoples, commissioned the Durant Roll to be completed, which identified those individuals who descended from the Michilimackinac Band. These descendants continued to live and work in the area for the first three decades of the 20th Century. Dr. McClurken testified to some of the members migrating from the Straits area elsewhere to find work, as well as children being removed and being placed in boarding schools. Some of these members continued to receive some services from the Bureau of Indian Affairs. However, that entity eventually became defunct, and all its records were destroyed.

The peoples of the Michilimackinac Band continued to maintain kinship-based structures in spite of a federal attempt to assimilate and eliminate the tribes. In spite of this, the Michilimackinac Band continued to remain and form groups of bands and units selecting representatives and designating those

representatives to speak on their own behalf within their tribal units and with other government entities.


Under the Roosevelt Administration the federal government acknowledged its failure to assimilate the native population and introduced the Indian Reorganization Act as a mechanism for Indian tribes to re-establish government-to-government relationships by adopting constitutions subject to the approval of the Secretary of the Interior. Dr. McClurken testified that all Michigan bands came forward to submit petitions for organization. Congress failed to fund the reorganization efforts and concluded that the native population were too assimilated and disinterested in forming separate constitutional governments in spite of having received multiple petitions; specifically, petitions from the Michilimackinac region.

An effort was made to organize all of the bands into an entity that could advocate for the tribes. This was named the Northern Michigan Ottawa Association. During that time, bands and tribes sent elected members to speak on their behalf to other tribal entities as well as the federal government. The Northern Michigan Ottawa Association eventually became defunct in the 1970s. However, all but two of the tribes were able to get federal recognition, leaving the Mackinac Tribe unrecognized.

Prosecution argues that the Mackinac Tribe has not been a continuous entity. However, this is not supported by the evidence on the record. To the contrary, the record shows a lineal continuation of tribal governance from the inception of the Treaty of 1836. The iteration varied over time but continued in full strength in spite of the federal government's effort to assimilate the Odawa or Ottawa Nations. Therefore, the Defendant has met its burden of proof to show that the entity now known as the Mackinac Tribe in various forms and existed continuously since the signing of the 1836 Treaty of Washington.

For the reasons stated above, the Court finds the Defendant has met his burden of proof establishing he is part of a group of people of Indian ancestry, he descended from a treaty signatory tribe, and that tribe has maintained an organized tribal structure.

April 18, 2023



Hon. Beth Ann Gibson (P-45659)
92nd District Court Judge

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EXHIBIT C

92nd District Court hearing transcript

2/12/19

STATE OF MICHIGAN

IN THE 92ND DISTRICT COURT FOR THE COUNTY OF MACKINAC

THE PEOPLE OF THE
STATE OF MICHIGAN,

Certified Copy

Plaintiff,

v

Case No. 18D657689A-SM
Case No. 18D657689B-SM

WALTER JOSEPH CASWELL,

Defendant.

PRETRIAL and MOTION HEARING

BEFORE THE HON. BETH ANN GIBSON, DISTRICT JUDGE

St. Ignace, Michigan - February 12, 2019

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St. Ignace, Michigan

Tuesday, February 12, 2019 - 10:15 a.m.

THE COURT: This is File 16D657689A (sic) and B,
People versus Caswell.

Mr. Caswell is here today with Mr. MacArthur,
and Mr. Sylvain is here as well.

And Mr. MacArthur has filed a motion.

Mr. MacArthur?

MR. MACARTHUR: Your Honor, I received a
response from the Prosecutor yesterday, and in light of
that response it -- I believe it's necessary for me to
take some brief testimony.

THE COURT: Um-hum.

MR. MACARTHUR: Testimony will only be five or
10 minutes at the most.

THE COURT: Um-hum.

MR. MACARTHUR: Okay. I would call Barry Adams
to the stand.

Mr. Adams?

THE COURT: Was there anything else we needed to
do before we did that? I should ask Mr. Sylvain.

MR. SYLVAIN: Not on the People's behalf.

THE COURT: Okay.

Mr. Adams?

MR. MACARTHUR: Please step right up there to

1 that chair.

2 THE COURT: If you could raise your right hand,
3 please, sir?

4 Do you swear that the testimony you're about to
5 give will be the truth, the whole truth, and nothing but
6 the truth, so help you, God?

7 MR. ADAMS: Yes, I do.

8 THE COURT: Go ahead and have a seat, sir.

9 BARRY ADAMS

10 having been called at 10:16 a.m. by the Defendant and
11 sworn by the Court, testified:

12 DIRECT EXAMINATION

13 BY MR. MACARTHUR:

14 Q Mr. Adams, would you state your full name for the record?

15 A Barry Wallace Adams.

16 Q And do you hold any -- do you -- where do you reside?

17 What county do you reside in?

18 A Naubinway. Out there in -- I live in Naubinway.

19 Q Okay. In Mackinac County?

20 A Yes.

21 Q All right. Do you hold any position with Indian -- with
22 any Indian tribe or band?

23 A Yes. I'm the Chairman of the Mackinac Tribe of Odawa.

24 Q Okay. And pursuant to your duties as Chairman of the
25 Mackinac Tribe of Odawa, do you have knowledge of the

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1 membership roll of that tribe?

2 A Yes, I do.

3 Q Okay. Do you know a gentleman by the name of Walter
4 Caswell?

5 A Yes, I do.

6 Q Do you refer to him as Joe?

7 A Yes.

8 Q All right. Is Walter Caswell a member of the Mackinac
9 Tribe or Band of Odawa Indians?

10 A Yes, he is.

11 Q All right. And you refer to it as the Mackinac Tribe?

12 A Tribe.

13 Q Okay.

14 A Really, it's a -- it's the Mackinac Tribe of Odawa and
15 Ojibwa Indians, a/k/a the Ainese Band. Band 15 and 16,
16 Point of St. Ignace, and the Band 16 is Pointe Aux Chenes

17 Q Okay.

18 A Okay. And the other band -- the other reservation would
19 be Naubinway, which was sold and to this day.

20 Q All right. And that is an existing tribe of American
21 Indians?

22 A Right. We have a treaty signatories to the 1836 treaty,
23 the 1855 treaty.

24 Q All right. And do you have personal knowledge of those
25 treaties?

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1 A Yes, I do.

2 Q Pursuant to those treaties, were the Native Americans
3 given the right to hunt and fish and gather?

4 A Yes. If you look at all federal records, the Constitution
5 of the United States, Article VI, a tribe -- a treaty made
6 with a tribe, with a government, is a free mill. It
7 supersedes any state law.

8 But there was no state in 1836. It wasn't 'til 1837 that
9 the state let all rights to hunt, fish, gather was given
10 to the Native American people --

11 Q Okay.

12 A -- forever. Okay. You got Judge Fox's ruling. You've
13 got all these other court cases that tells, you know --

14 Q Okay. Now, with regard to Mr. Caswell specifically, does
15 your tribe issue any type of hunting, fishing, and
16 gathering licenses?

17 A Yes. Yes, I do.

18 Q And did you, pursuant to your duties as Chairman of the
19 Tribe, issue a hunting, fishing, and gathering license to
20 Mr. Caswell?

21 A Right. The hunting and fishing and gathering license that
22 was issued was issued from the Mackinac Genealogy Native
23 and Ethno History Association, a nonprofit 501(c)(3),
24 because at the time we were doing the license, no other
25 bands like the Mackinac Band -- there was no records. So

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1 the Mackinac Genealogy researched. We went to Canada,
2 archives of Canada. That's where our records are today,
3 our old records, if we are native and that.

4 Q All right. And did such a license get issued to Mr.
5 Caswell?

6 A Yes.

7 Q And is that license in -- is that license in effect
8 through March of two thousand nine --

9 A Right.

10 Q -- Nineteen?

11 A Right.

12 Q Okay. And then there would be new licenses issued to him?

13 A Right. Joe can remain -- the reason we do it only for a
14 year is to make sure that the membership, which there is
15 600 people members of the Mackinac Tribe of Odawa that was
16 turned into the Secretary of Interior has our enrollment.

17 Q All right.

18 A And how the enrollment was done.

19 So once a year at least we know where they're at, where
20 they live, et cetera.

21 Q Okay. So in October of 2018, Mr. Caswell would have had
22 valid license to hunt, fish, and gather from the Mackinac
23 Band -- or Mackinac Tribe?

24 A Mackinac Tribe. Right.

25 MR. MACARTHUR: All right. Thank you, sir. I

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1 don't have any further questions. The Prosecutor may have
2 questions for you.

3 THE WITNESS: Right.

4 MR. SYLVAIN: Thank you. One second.

5 CROSS-EXAMINATION

6 BY MR. SYLVAIN:

7 Q You testified regarding two treaties. You said 1836 and
8 what was the other one?

9 A 1855. My grandfather, Peter Ainse, and (inaudible), my
10 uncle, signed that treaty.

11 Q Okay. In either of those treaties does it specifically
12 allow for any means of fishing?

13 A What? Those treaties?

14 Q Yes.

15 A Yes. It says it right in the treaty.

16 Q Oh. I'm --

17 A It's right in the treaty. It verifies exactly what that
18 treaty says.

19 Q Yes. All right. What I'm asking is can they hunt -- I'm
20 sorry.

21 Can they fish in any way that they want to with any type
22 of fishing implement?

23 A Oh, it -- well, it's based on the tribal's judicial, you
24 know, conservation, our rules and regulations.

25 I don't have the rules and regulations in front of me, yo

1 know.

2 Q Well, I get that it allows for Native Americans to be able
3 to fish, but dynamite fishing, all that kind of stuff, a
4 person could do that?

5 A According to the law, federal law.

6 Q Okay.

7 A According to our laws, according to the treaty, we have
8 that right to hunt, fish, gather.

9 Q Now, the name of the tribe is the --

10 A Mackinac Tribe of Odawa and Ojibwa Indians, a/k/a the
11 nanse -- Ainse Band.

12 Q Okay.

13 A Ainse Band is 15, 16. The treaty's signatories to the
14 treaties that was made with the United States.

15 Q You said Odawa?

16 A Yes, sir.

17 THE COURT: I think the question you wanted to
18 ask is whether or not the band is a -- the tribe is a
19 federally recognized tribe.

20 MR. SYLVAIN: That's what I'm getting to, yes.

21 THE COURT: Why don't you just ask that
22 question.

23 BY MR. SYLVAIN:

24 Q Is the band federally recognized?

25 A No.

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1 Q Okay.

2 A But there is questions to -- what I'm saying is if you
3 take -- when the Sault Tribe became federally recognized,
4 okay, it wasn't the Sault Tribe. It was the Bahweting
5 Ojibwa Mackinac Tribe. Okay?

6 Q Um-hum.

7 A They are the ones that got them -- the Sault Tribe changed
8 the name of the corporation twice to a third name. Okay.
9 The Bahweting Ojibwa got threw aside. Okay. In 1998 the
10 land's going away. Okay.
11 The Mackinac Tribe of Odawa got 14.7 million.
12 The Sault Tribe got 5.2 million, and this is all fully
13 rec -- I mean, documented. You know.

14 Q Now --

15 A And so what the Sault Tribe did is they closed the rolls
16 after so many Mackinac people was in there, and the people
17 that I have as enrollment with the Mackinac Tribe is the
18 Mackinac people that the Sault Tribe closed the rolls and
19 wouldn't let those people in. That's -- that is us.
20 That is us. We are federally recognized. If we weren't
21 fed -- basically federally recognized, how could we sign
22 treaty?

23 Q In regards to the Mackinac Band Tribe, you indicated that
24 they issue fishing licenses?

25 A Yes.

1 Q Is there any terms to them? Amounts that people can take,
2 seasons?

3 A Right.

4 Q Things like that?

5 A Other than by the conservation department of the Mackinac
6 Tribe of Odawa, there are rules and regulations based on
7 that fishing license. They have to follow those rules and
8 regulations.

9 Those people that does get the license do get the rules
10 and regulations from the Mackinac Tribe.

11 Q Okay. Do you know what any of those are?

12 A I beg your pardon?

13 Q Do you know what any of those rules and regulations are?

14 A Not right off the top of my head I can't.

15 MR. SYLVAIN: Okay. No further questions.

16 MR. MACARTHUR: I have no further questions.

17 THE COURT: Mr. Adams, who -- who is in charge
18 of the conservation -- you called it the conservation --
19 I'm -- read my own writing here.

20 THE WITNESS: Conservation Department?

21 THE COURT: Conservation Department of the
22 Mackinac Tribe of Odawa Ojibwa.

23 THE WITNESS: Joe. Joe Caswell. He's the
24 Chairman of the Mack -- yeah, plus there's four other
25 people that file --

1 THE COURT: Do you know who issues the licenses?
2 Is it Joe?

3 THE WITNESS: No. I -- Mackinac Genealogy
4 Association, you know, is the one that releases the
5 license of 501(c)(3). They call --

6 THE COURT: And so Joe would tell the Mackinac
7 Genealogy Association to issue the license, or do you tell
8 them that?

9 THE WITNESS: I do.

10 THE COURT: You do? Okay. And Joe tells you
11 who to have them issues to?

12 THE WITNESS: Well, there's an application
13 that's done out of Canada that we use. Our cards that go
14 back, all of that.

15 THE COURT: Um-hum.

16 THE WITNESS: If it says that they are Native
17 and they are accepted as a membership -- as a member, then
18 we will issue a card.

19 THE COURT: Okay. So that the -- that
20 information is funneled from you once the -- once it has
21 been approved to the Mackinac Genealogy Association to
22 actually create the license?

23 THE WITNESS: Right. Once they approve it,
24 accept it, then they notify us. We accept it, and then we
25 issue the card.

1 THE COURT: You or the Genealogy people?

2 THE WITNESS: Genealogy people.

3 THE COURT: Okay. Yep. Okay.

4 Anything as a result of my questions, Mr.
5 MacArthur?

6 MR. MACARTHUR: No, your Honor.

7 THE COURT: Mr. Sylvain?

8 MR. SYLVAIN: No, your Honor.

9 THE COURT: Go ahead and step down, Mr. Adams.
10 I'm sorry.

11 (At 10:28 a.m., Witness excused)

12 THE COURT: Well, I could have just let you stay
13 there until we were done so you didn't have to get up
14 again.

15 Any other proofs?

16 MR. MACARTHUR: I do want my client to confirm
17 his membership, your Honor.

18 THE COURT: Okay.

19 MR. MACARTHUR: If the Court believes that's
20 necessary but --

21 THE COURT: I think Mr. Adams is sufficient for
22 confirmation.

23 Did you have any witnesses at this time?

24 And I say that because what I would like to do
25 is I need to actually -- if there's a license issued, I

1 assume it's in writing. So it's got to be somewhere. I
2 think that that should be provided as an exhibit.

3 MR. MACARTHUR: Your Honor, I can have copies
4 made of this. This is my client's membership card in the
5 tribe, and this is the license that is issued by the -- or
6 through the auspices of the tribe.

7 This is his membership card.

8 MR. SYLVAIN: Okay. Yeah. We can take copies.

9 MR. MACARTHUR: I will have copies made, but if
10 I may present them to the Court at this point.

11 This is the license that's actually issued, and
12 this is the membership card.

13 And there are terms to the license on the back
14 that cite those treaties that were --

15 UNIDENTIFIED SPEAKER: (Inaudible)

16 THE COURT: When these are copied and marked,
17 are there any objection to me receiving these?

18 MR. SYLVAIN: No, your Honor.

19 THE COURT: The Court will receive that exhibit
20 when -- when we get through the copying phase.

21 MR. MACARTHUR: We also, your Honor, have a
22 document that I would have presented through testimony
23 from the Department of the Interior Bureau of Indian
24 Affairs that verifies the Native American heritage of my
25 client and his membership in the Mackinac Band, and I

1 would copy this also. I don't necessarily want to let
2 this go, but are you --

3 THE COURT: Any objection --

4 MR. SYLVAIN: No objection.

5 THE COURT: -- to me receiving that?

6 Okay. The Court will receive that as well then.

7 (At 10:31 a.m., discussion at defense table -
8 off the record)

9 THE COURT: Anything else, Mr. MacArthur?

10 MR. MACARTHUR: I have no further proofs, your
11 Honor.

12 THE COURT: Mr. Sylvain, you wanted Officer
13 Busken to testify?

14 MR. SYLVAIN: Yes, your Honor.

15 THE COURT: All right. Come on up, sir.

16 If you could raise your right hand, please.

17 Do you swear that the testimony you're about to
18 give will be the truth, the whole truth, and nothing but
19 the truth, so help you, God?

20 MR. BUSKEN: I do.

21 THE COURT: Go ahead and have a seat.

22 MR. BUSKEN: Thank you, your Honor.

23 JON BUSKEN

24 having been called by the People at 10:32 a.m., sworn by
25 the Court, testified:

DIRECT EXAMINATION

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BY MR. SYLVAIN:

Q Could you please state and spell your name for the record?

A My name is Jon Busken, Conservation Officer with the Michigan DNR.

It's J-O-N. The last name is Busken, B-U-S-K-E-N.

Q And where is it that you work?

A I'm based out of the Newberry office, but my area of coverage is the Upper Peninsula.

Q Okay. And what's your position?

A I am an investigator with our Great Lakes Enforcement Unit.

Q Okay. Are you familiar with the Mackinac Band?

A I am. Yes.

Q Okay. And how are you familiar with it?

A Through trainings, through my employer, the Michigan Department of Natural Resources, and then interactions with Mackinac Band members.

Q Have you had the opportunity to be able to look into some of the issues when it comes to the licensing for the Mackinac Band?

A Yes, I have.

Q And what have you been able to find?

A I've been able to find that they have a website where you can apply for a membership in addition to a -- I'm not

1 sure of the exact term, but essentially a hunting and
2 fishing license.

3 Q Okay. Do you know if these hunting and fishing licenses
4 are recognized as valid in the state of Michigan?

5 A They would not be.

6 Q And why is that?

7 A They are not a member of our consent decree, 2000 consent
8 decree, which gives five tribes the ability to hunt, fish,
9 and gather in Michigan.

10 Q Okay.

11 THE COURT: Can you say that again for me,
12 Officer?

13 THE WITNESS: Yes. They are not a member of our
14 2000 consent decree and are -- they're not a recognized
15 tribe in Michigan, essentially.

16 THE COURT: Okay. I thought you said there were
17 five.

18 THE WITNESS: There are five signatory tribes.

19 THE COURT: There's 12 federally recognized
20 tribes in the state of Michigan.

21 THE WITNESS: Five signatory tribes. I was --
22 I'm speaking to our 2007 consent decree. I apologize.
23 Inland Consent Decree.

24 BY MR. SYLVAIN:

25 Q And what are those five tribes?

1 A That would be the Sault Ste. Marie Tribe, Bay Mills Tribe,
2 Little River Tribe, Grand Traverse Tribe, Little Traverse
3 Tribe.

4 Q And is the Mackinac Band associated with any of those five
5 tribes?

6 A Not that I know of. No.

7 Q And in regards to this case involving the Defendant,
8 Walter Joseph Caswell, did the Defendant also have in his
9 possession a Michigan fishing license?

10 A Yes, he did.

11 Q And was it valid at the time?

12 A Yes, it was.

13 Q And in regards to the charge itself, it indicates fish
14 closed stream?

15 A That is correct.

16 Q And what is that in regards to?

17 A That stream is not open to fishing at the time of the year
18 Mr. Caswell was fishing on its banks.

19 Q Okay. Do you know whether or not -- well, he had a valid
20 license at the time through the State of Michigan?

21 A Correct.

22 Q Would any license, even with any of the five signatory
23 tribes, have allowed for fishing from that stream?

24 A I'm not sure on that, sir.

25 Q Okay. And in regards to the illegal means, what was that

1 specifically?

2 A That was a spear.

3 Q Okay. And I'm assuming that that's not permitted?

4 A That's correct. Any time of the year that would not be
5 commit -- permitted.

6 Q Do you know if it's permitted under any of the licenses
7 that could be issued by the five signatory tribes?

8 A I do not, no.

9 MR. SYLVAIN: Okay. No further questions.

10 THE COURT: You can't. I'm sorry.

11 Go ahead, Mr. MacArthur.

12 CROSS-EXAMINATION

13 BY MR. MACARTHUR:

14 Q You indicated the five signatory tribes that are granted
15 fishing rights?

16 A They are the ones who we recognize in the 1836 area, yes

17 Q Okay. And they signed a -- some type of a consent decree
18 with the state of Michigan --

19 A Correct.

20 Q -- in -- did you say 2007?

21 A 2007, yes.

22 Q What about the other federally recognized tribes or bands
23 that are recognized in the state of Michigan, that are
24 recognized federally? They are not granted any hunting
25 fishing rights?

1 A Not in the 1836 consent decree area, no.

2 Q Okay.

3 THE COURT: The 1836 or the 2007?

4 THE WITNESS: The treaty between the federal
5 government was in 1836. In 2007 we entered a consent
6 decree with those five signatory tribes.

7 BY MR. MACARTHUR:

8 Q And you don't disagree with Mr. Adams that the Mackinac
9 band was a signatory to that 1836 tribe?

10 A I have no knowledge.

11 Q Or treaty. Excuse me.

12 A I have no knowledge of that.

13 MR. MACARTHUR: Okay. All right. Thank you.

14 (At 10:36 a.m., discussion at defense table -
15 off the record)

16 THE COURT: Mr. Sylvain?

17 MR. SYLVAIN: Just real quick.

18 REDIRECT EXAMINATION

19 BY MR. SYLVAIN:

20 Q As to the 2007 consent decree with the five tribes in the
21 state of Michigan, did that have any specific regulations
22 or agreements regarding hunting, fishing, that kind of
23 stuff, when they would issue the license?

24 A It did have some guidelines in it, and many of those are
25 also set by the individual signatory tribes.

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1 MR. SYLVAIN: Okay. No further questions.

2 MR. MACARTHUR: Nothing further, your Honor.

3 THE COURT: All right. You may step down, sir.

4 Thank you.

5 THE WITNESS: Thank you, ma'am.

6 (At 10:37 a.m., Witness excused)

7 THE COURT: Mr. Sylvain?

8 MR. SYLVAIN: No further witnesses.

9 THE COURT: Any rebuttal?

10 MR. MACARTHUR: I have no rebuttal witnesses,
11 your Honor.

12 THE COURT: I would entertain you fellows
13 submitting some written closings. I will -- with regard
14 to the treaty issue, I would like to do my own research as
15 well to make sure that they are virtual rights.

16 Caselaw that exists, it can also be incorporated
17 into whatever determination I make here today because I
18 know that there is a body of that out there, and I really
19 -- I saw references to statutes but not to caselaw.

20 And I know there's some good stuff out there
21 because I read it a long time ago, and I just don't
22 remember it that well right now. So I'd like to brush up
23 on that.

24 MR. MACARTHUR: Okay.

25 THE COURT: So a week for summary, if you want

1 and that will give me time to do my research.

2 MR. SYLVAIN: Both of us submit in the same week
3 or like --

4 THE COURT: Whatever you'd guys like. I'm open
5 to suggestions from you.

6 MR. MACARTHUR: A week is fine for me, your
7 Honor.

8 THE COURT: So a week, and then do you want a
9 week yourself or --

10 MR. SYLVAIN: Yes, please.

11 THE COURT: Okay. So that makes -- today is 12
12 -- 19, and then 26 for the Prosecutor.

13 So I'll let you make copies of that --

14 MR. MACARTHUR: All right.

15 THE COURT: -- so that if somehow they tear,
16 it's not my fault. Because I would be the person who
17 would do that so --

18 (At 10:39 a.m., proceedings concluded)

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1 STATE OF MICHIGAN)

2)

3 COUNTY OF MACKINAC)

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I certify that this transcript, consisting of 23 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on Tuesday, February 12, 2019.

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June 3, 2019

Kelly A. Moran

14

Kelly A. Moran, CSR, CER 4380

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P.O. Box 27

16

St. Ignace, MI 49781

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(906) 643-7338

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EXHIBIT D

Appellee Caswell's Mackinac Tribe
membership card

PENGAD 800-631-6889
**DEFENDANT'S
EXHIBIT**
C
2-12-19

 This Card Certifies That
Walter Joseph Caswell
Is A Member of
The Mackinac Tribe of Odawa and Ojibwa Indians
Bands 11 thur 17 and Cheboygan Bands

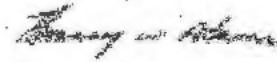
Birthdate:		Enroll No.:
		61/16
Expiration Date:		File No.:
Lifetime		C-3-01

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This Card is the Property of The Mackinac Tribe
Tribe of Odawa and Ojibwa Indians
If found please return to the Mackinac Tribe Enrollment
Department-P.O.Box 467 Naubinway MI 49762
1-906-477-6619

Tribal Chairman

Enrollment Director



Barry W Adams

Victor Visnaw

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EXHIBIT E

Appellee Caswell's Mackinac Tribe
subsistence harvesting license

DEFENDANT'S
EXHIBIT
A
2-12-19

800-631-6869
PENGAD



2018: Tribal Subsistence Harvesting License

File # 106

Walter Joseph Caswell

P.O. Box 385

City...Newberry State.... MI Zip.... 49868

DOB: [REDACTED]

Durant Census Records # 61/16

This License Expires March, 31 2019

Mackinac Tribe of Odawa and Ojibwa Indians

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Article 6th of the United States Constitution

This Constitution, and the laws of the United States which be made in pursuance thereof, and all Treaties made, or shall be made under the authority of the United States, shall be the Supreme law of the Land, and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding"

Article 13 of the Treaty of 1836, Signed by Mackinac states
The Indians Stipulate for the rights of Hunting on lands
Ceded

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EXHIBIT F

Appellee Caswell's certificate of degree
of Indian blood



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Michigan Agency

2901.5 I-75 Business Spur

Sault Ste. Marie, Michigan 49783-3519

(906) 632-6809 Phone (906) 632-0689 Fax

877-659-5028 TOLL FREE

IN REPLY REFER TO:

3732a-P5 Individual Case File

Caswell, Walter J.

April 22, 2009

CERTIFICATE OF DEGREE OF INDIAN BLOOD

This is to certify, based on available Agency records and submitted supportive documents, that Walter Joseph Caswell, DOB: [REDACTED], child of Margaret E. (Blakely) Caswell, is 1/64 Mackinac Band Chippewa Indian.

His maternal great-great-great-grandmother, Mrs. Antoine Paquin, is listed as number No. 342 on the 1836 Census Register of the Ottawa and Chippewa Nations.

This letter of certification verifies Indian descent, it does not verify, nor entitle you to, tribal membership.

Sincerely,

Jenevieve M. Gillett
Jenevieve M. Gillett
Acting Superintendent



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EXHIBIT G

92nd District Court opinion and order

6/14/19

STATE OF MICHIGAN
IN THE 92ND DISTRICT COURT FOR THE COUNTY OF MACKINAC

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v

Case No. 18D657689A-SM
Case No. 18D657689B-SM

WALTER JOSEPH CASWELL,

Defendant.

_____ /

OPINION AND ORDER

At a session of said Court held on
Tuesday, February 12, 2019, at the
Mackinac County Courthouse in
St. Ignace, Michigan

PRESENT: Hon. Beth Ann Gibson
92nd District Court Judge

In this matter a motion to dismiss the case was filed by Defendant Caswell. Mr. Caswell received a citation from Conservation Officer Busken for fishing in a closed stream and illegal means of fishing (spearing).

By way of background, exhibits were admitted and testimony was taken which established that Defendant Caswell is a member of the Mackinac Tribe of Odawa and Ojibwa Indians (Exhibits B and C). In addition to his membership with the Tribe, he received a tribal fishing license (Exhibit A) which was in his possession at the time of receipt of the citation.

Presently, the Mackinac Tribe of Odawa and Ojibwa Indians are not federally recognized. However, their petition for recognition is pending with the Department of Interior.

Conservation Officer Busken testified that he issued a citation to Mr. Caswell because he was not a member nor had a tribal hunting, fishing, gathering license from one of the five participating federally recognized tribes in the state

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of Michigan that signed the consent decree in 2007 with the Department of Natural Resources.

The question becomes whether or not members of a tribe federally recognized or otherwise can be divested of their hunting, fishing, gathering rights afforded to them in the 1836 and 1855 treaties with the United States. Of note, the Mackinac Tribe was a signatory to those treaties. The fact that the Mackinac Tribe of Odawa and Ojibwa Indians was not a signatory was not disputed either through testimony or through written briefs that were submitted to the Court.

Of note, the delay in preparing this opinion has occurred to afford Prosecution the opportunity to file written supplemental briefs and memorandum of law. The Court granted four months' time to the Prosecutor to prepare and submit those, and none have been received.

To begin to address the issue, it is important to understand The Canons for interpretation and application of treaties between the United States and the different tribes then living in the country. The Supreme Court consistently applies well-established principles of interpretation to treaties between the United States and Indian tribes. Those interpretive standards protect important aspects of both the United States' constitutional structure and tribal identity.

Treaties are the supreme law of the land, U.S. Const. art. VI, §1, cl. 2, and they remain valid unless and until Congress clearly expresses its intent to abrogate them.

Additional longstanding principles of treaty interpretation developed and applied by the Court require that treaties, along with any ambiguous language therein, be construed as the Indians would have understood them and be liberally interpreted in favor of the Indians. *Cty. of Oneida v Oneida Indian Nation*, 470 U.S. 226, 247 (1985).

The Court's tradition of applying these interpretive standards ensures that government power is based on the consent of the governed and protects important structural aspects of federal Indian law and jurisprudence. Following that tradition provides clear and straightforward answers to questions presented in this case.

Treaties made by and between the United States and Indian tribes form the foundation of the unique tribal relationship and have defined that relationship since the Court's earliest decisions. Under the Constitution those treaties are the supreme law of the land and remain enforceable unless Congress has abrogated them by subsequent treaty or statute. Through their treaty relationships with the United States, Indian tribes have been recognized as

distinct nations. Furthermore, although Indian nations are subject to federal authority, their exclusive treaty relationship with the United States generally insulates them from state authority in the absence of express federal legislation to the contrary.

It is well established that treaties are a central component of the federal relationship with Indian tribes; and even outside of their territory, Indian tribes and their individual members exercising federally guaranteed treaty rights are generally free from regulation by the states. The *United States v Winans*, 198 U.S. 371 (1905).

In light of the importance of treaties to the federal-tribal relationship, the Court has fashioned specific rules of construction for interpreting treaties that give proper respect to the solemnity and purpose of those contracts. These rules are referred to as "canons of construction." *City of Oneida*, 470 U.S. at 247 (1985). Interpretation of treaties are not simply an effort to address a perceived inequality in bargaining power; instead, the rules are rooted in the unique trust relationship between the United States and the Indians.

The Court employs three basic interpretive principles when analyzing treaties. First, the language must be interpreted to give effect to the terms of the treaties as the Indians themselves would have understood them. *Jones v Meehan*, 175 U.S. 1, 11 (1899). Second, the Court must liberally interpret the language of the treaties in favor of the Indians. *McClanahan v Arizona Tax Comm'n*, 411 U.S. 164, 174 (1973); *Washington v Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 690 (1979). Finally, the rights reserved by treaties remain intact unless Congress has expressed clear and unambiguous contrary intent. *Mille Lacs*, 526 U.S. at 202; *City of Oneida*, 470 U.S. at 257; *Menominee Tribe of Indians*, 391 U.S. at 412-13, 417.

State Court decisions cannot ignore the Supreme Court's interpretive rules. Standards for interpreting Indian treaties were developed by the Supreme Court to protect the quasi-constitutional status of treaties and preserve the benefit of the bargains that those documents memorialize. Failing to apply those rules when engaging in treaty interpretation endangers the very foundation of the Supreme Court's Indian law and constitutional jurisprudence.

The exercise by an individual Indian of a treaty-reserved right to hunt or fish can lead to conflict. Supreme Court has consistently resolved those conflicts by applying the above well-established standards for interpreting Indian treaties to insulate the exercise of tribal treaty rights from state regulation. The Supreme Court's approach to enforcing tribes' off-reservation treaty rights begins with *Winans*, (198 U.S. 371). The Supreme Court interpreted treaty language to require tribes' access to their traditional sites. The Supreme Court recognized in

Winans that the right to use traditional fishing locations was "part of larger rights possessed by Indians," and that the "form of the [treaty] and its language was adapted" to preserve the exercise of those rights.

Understanding the concepts of treaty and interpretation and applying them to the instant case, it is clear from the record that Defendant Caswell was a member of the Mackinac Tribe of Odawa and Ojibwa Indians and possessed a valid tribal fishing license at the time of the citation. It is also clear from the record that the Mackinac Tribe of Odawa and Ojibwa Indians were signatories to the 1836 and 1855 treaties with the United States.

The reason the officer stated he issued the citations to Defendant Caswell was because the Mackinac Band of Odawa and Ojibwa Indians were not signatories to the 2007 compact between the State of Michigan and five of the federally recognized tribes in the state. The Court is at a loss as to how the state has authority to divest members of the tribes that were not signatories to the 2007 compact, understanding that tribal hunting, fishing, gathering rights are given in the 1836 and 1855 treaty.

A similar argument was made to restrict treaty hunting, fishing, gathering rights of tribal members in *Herrera v Wyoming*, 587 U.S. ____ (2019). In that case tribal hunting, fishing, gathering rights were given from the United States to tribal members prior to Wyoming's statehood. The state took the position that hunting, fishing, gathering rights in the state of Wyoming as granted under the 1836 treaty were extinguished upon statehood. The Supreme Court in *Herrera v Wyoming* disagreed, concluding that hunting, fishing, gathering rights as conferred to tribal members cannot be extinguished by gaining statehood. The implication of *Herrera* in this case is that once tribal members receive hunting, fishing, gathering rights under treaty, they continue regardless of further state regulation.

Therefore, the Court will concur with the Defendant and dismiss the matter, as the restriction of hunting, fishing, gathering rights in this case to tribal members who were not signatories to the 2007 compact violates the essence of the intent of the signatories in the 1836 and 1855 treaties.

Dated: June 14, 2019



Beth Ann Gibson (P-45659)
92nd District Court Judge

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EXHIBIT H

Mackinac Circuit Court opinion and order

11/21/19

NOV 25 2019

CIRCUIT COURT
COUNTY OF MACKINAC

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACKINAC

PEOPLE OF THE STATE OF MICHIGAN,

Appellant,

Lower Court File No.:

18D 657689A-SM and

18D 657689R-SM

v

Circuit Court File No.

19-8346-AR and 19-8347-AR

WALTER JOSEPH CASWELL,

Appellee.

ZACKARY A. SYLVAIN (P78228)
Mackinac Co. Assistant Prosecutor
100 S. Marley Street
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TIMOTHY P. MACARTHUR (P30673)
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9911 N Straits Hwy.
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(231) 627-3163

MEMORANDUM AND DECISION AND ORDER

At a session of said Court on November 21, 2019, Mackinac County, State of Michigan, and the Court being fully advised;

PRESENT: HON. WILLIAM W. CARMODY
Chief Judge

Background

The facts in this matter are not in dispute. The Defendant was issued citations for fishing in a closed stream, classified as Type 1, and for fishing by an illegal means, again a Type 1 offense, both of which are misdemeanor offenses punishable by up to 90 days in jail. The arguments of the parties boil down to

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treaty interpretations, equal protection, and jurisdictional questions raised by the People.

Issue

Did the Lower Court abuse its discretion or commit clear legal error/mistake in its findings of fact and its consequential Order?

Standard of Review

The determination that a trial court abused its discretion "involves far more than a difference in judicial opinion," *Gilbert v Daimler Chrysler Corp.*, 470 Mich 749, (2004). Rather, an abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Maldonado v Ford Motor Co.*, 476 Mich 372, (2006).

"A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. Id. at 388-389, 590 N.W.2d 69. On appellate review, questions of law are examined under a de novo standard." *People v Lanzo Construction Co.* 127 Mich App 470, (2006).

Findings of Fact and Law

The common thread in these matters, as in most appeals, is that depending on which side of the fence you're on, the argument for upholding a Trial Court's ruling is that this Court cannot and should not substitute its judgment for that of the Trial Court. The Court agrees with this argument.

The Trial Court, in its Order of June 14, 2019, on the page 4 states in relevant parts, as follows:

"The Court is at a loss as to how the state has authority to divest members of the tribes that were not signatories to the 2007 compact, understanding that tribal hunting, fishing, gathering rights are given in the 1836 and 1855 treaty."

Further, in the Trial Court's conclusion, the Court stated as follows:

"Therefore, the Court will concur with the Defendant and dismiss the matter, as the restriction of hunting, fishing, gathering rights in this a case to tribal members who were not signatories to the 2007 compact violates the essence of the intent of the signatories in the 1836 and 1855 treaties."

Citing the cases of *Herrera v Wyoming*, 587, U.S. ___ (2019), in part, for its reasoning in their decision along with cases of construction, interpretation and language, *United States v Winans*, 198 U.S. 371 (1905), *City of Oneida v Oneida Indian Nation*, 470, U.S. 247 (1985), *McClanahan v Arizona Tax Comm'n*, 411 U.S. 164, (1973). In these instances it was determined that Congress, as opposed to the States, is the final arbiter of the various treaties that may be called into play. Whether, in this instance, the Mackinac Tribe is a "splinter group" by definition, and therefore restricted in its treaty rights, is not for this Court to determine or that its rights have been curtailed by some State ruling. This Court's role is simply to decide, if in its opinion, an abuse of discretion or clear error of law or mistake has occurred given the Trial Court's ruling. The Court is also mindful of the fact that there appears to be a

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question as to whether or not this matter is ripe for review, if indeed, as suggested, the Mackinac Tribe has an application pending with the federal courts seeking acknowledgement as a federally recognized tribe.

Testimony in this matter was taken by the Appellee as to the original signatories to the 1836 and 1855 treaties. Mr. Adams, a member of the Mackinac Tribe, confirmed that relatives of his as members of a distinct tribe, the Mackinac Tribe of Odawa and Ojibwa Indians, were in fact signatories to those treaties. This fact was not rebutted though some combination in the record exists on this point. The Defendant argued, and the Trial Court cited, in support of its findings, the ruling in *The Menominee Tribe of Indians v. United States*, 88 S.Ct. (1968), Justice William O. Douglas authoring the same, upholding certain fishing and hunting rights of the Menominee Tribe of Indians. However, the Court finds that it need not look further than the most recent case involving the Mackinac Tribe in *Mackinac Tribe v Jewell*, 829 F.3d 754 (2016) for direction in resolving the matter before the Court. In said matter, The Mackinac Tribe, as a currently and most recently constituted 501(c)(3) Nonprofit sought recognition from the U.S. Government. In *Jewell*, supra the Court of Appeals stated in part as follows:

"In *Muwekma Ohlone Tribe v. Salazar*, we followed *James* and made clear that a tribe seeking to be acknowledged by the Secretary must pursue the Part 83 process even if the

tribe claims, as the Mackinac Tribe does here, that it has previously been recognized by the federal government. 708 F.3d 209, 218-19 (D.C. Cir. 2013).

The Mackinac Tribe seeks relief different from what the tribes in *James* and *Muwekma Ohlone* sought – a secretarial election under the IRA rather than inclusion on the Secretary's list of federally acknowledged tribes – but the rationale of those cases has persuasive force here as well. The Mackinac Tribe contends that, because it is a recognized tribe, it is eligible for a secretarial election. But no branch of government has determined whether the plaintiff Mackinac Tribe currently qualifies as a recognized tribe or as the tribe that was recognized in 1855.

Our decisions in *James* and *Muwekma Ohlone* teach that, when a court is asked to decide whether a group claiming to be a currently recognized tribe is entitled to be treated as such, the court should for prudential reasons refrain from deciding that question until the Department has received and evaluated a petition under Part 83. *James* gave good reasons for that restraint. Congress delegated to the Secretary the regulation of Indian relations and affairs, see generally 25 U.S.C. § 2, including authority to decide in the first instance whether groups have been federally recognized in the past or whether other circumstances support current recognition. *James*, 824 F.2d at 1137.”


The issue before the Court has all the makings of a text book constitutional question entangled with the Trial Court's consideration of matters of equity in its final decision. This fact opens the door for a more thorough review, but nonetheless, does not give greater weight to this Court's ability to reverse, unless it finds that the ruling of the Trial Court was a mistake, given the facts as presented.

This Court understands that it must be shown that the Trial Court's ruling was against all logic of the circumstances and so

unreasonable and arbitrary as to shock the conscience of one's sense of justice. On these facts, the Court cannot find the same. However, equity cannot supplant the law, and as such, the Court must find that the entire question can be answered with the ruling in *Jewell*, supra, controlling.

As such, this Court finds that the Trial Court made an error of law/mistake, and therefore, the Court REVERSES the Trial Court's Order and remands the matter back for further hearings consistent with this Order. The Court does not retain jurisdiction.

Dated: November 21, 2019




Hon. William W. Carmody
Chief Judge

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CERTIFICATE OF SERVICE/MAILING

I certify that on this date copies of the above were served upon the parties or their attorneys indicated below by email and regular mail, addressed to the address shown, unless otherwise indicated.



Jodi Tiglas, Court Administrator

November 21, 2019

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EXHIBIT I

92nd District Court hearing transcript
(excerpt)

1/25/22

STATE OF MICHIGAN

IN THE 92ND DISTRICT COURT FOR THE COUNTY OF MACKINAC

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v

WALTER JOSEPH CASWELL

Defendant.

Certified Copy

File No. 18D657689A-SM

File No. 18D657689B-SM

EVIDENTIARY HEARING

BEFORE THE HON. BETH ANN GIBSON, DISTRICT JUDGE

St. Ignace, Michigan - January 25, 2022

APPEARANCES:

For the People:

MR. ZACKARY A. SYLVAIN (P-78228)
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For the Defendant:

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1 instead of having to go downstairs. Is that okay? Okay.
2 So go ahead.

3 MS. BOSTIC: Thank you.

4 (At 9:07 a.m., proceedings recessed)

5 (At 9:17 a.m., proceedings reconvened)

6 (At 9:17 a.m., telephone connection established)

7 THE COURT: Hello?

8 DR. MCCLURKEN: Hi. This is Jim McClurken.

9 THE COURT: Okay. So we're going to proceed
10 with the phone?

11 MS. BOSTIC: Yes, ma'am.

12 THE COURT: Okay. So are we back on the record?

13 THE REPORTER: Yes. We are.

14 THE COURT: Okay. We are back on the record in
15 People versus Caswell. We now have the witness available
16 by telephone. The People had previously indicated they
17 weren't objecting to a remote appearance.

18 And if you wanted to begin, Ms. Bostic.

19 MS. BOSTIC: Thank you, ma'am.

20 Dr. McClurken?

21 THE COURT: Oh, wait. We got to swear him
22 first.

23 MS. BOSTIC: Oh, I'm sorry. I'm sorry.

24 THE COURT: So if you could officially call him.

25 MS. BOSTIC: I'm sorry. I'd like to call Dr.

1 Q How many books have you published?

2 A Three.

3 Q And what are the subjects of those books?

4 A Treaty rights.

5 Q Now, as a cultural anthropologist studying in this area,
6 do you -- are there -- is there a particular set of
7 principles or methods that you use to study this topic?

8 A Yeah. Pretty much standard anthropological techniques of
9 interview, but I'm also trained in history, and I use
10 standard historical method.

11 Q And could you briefly describe what a standard historical
12 method looks like?

13 A The difference between most cultural anthropology and
14 history is history relies on documents to reconstruct a
15 past. Most cultural anthropologists rely on modern
16 populations, interviews, observation.

17 And the field that I practice in, ethnohistory, is a
18 combination of the two. And so I use historical documents
19 to penetrate the historical record to see what society
20 culture looked like at the time of the (inaudible).

21 Q Okay. And those are the principles and methods that you
22 have applied to your study of treaty rights among
23 indigenous tribes in Michigan, correct?

24 A Correct.

25 MS. BOSTIC: Okay. Your Honor, I would like to

1 Q Okay. Are you familiar with some of the leadership of the
2 different Mackinac Bands?

3 A Not currently. No.

4 Q Okay. So you're not familiar with a Barry Adams or a Lisa
5 Powers?

6 A Well, I know both of their names, and I've spoken to one
7 of them. But I -- that has been nearly a decade ago.

8 Q Okay. So it's been a decade since you've looked into
9 these specific Mackinac Bands?

10 A Well, I'm constantly reading, so I'm constantly seeing
11 stuff about the Mackinac Bands. I just don't work for the
12 Mackinac Band.

13 Q Okay. What are some of the things that you have done to
14 prepare for today's testimony?

15 A Almost nothing. I had one 20-minute phone call with Ms.
16 Bostic.

17 Q Okay. So are you able to tell us what some of the
18 research or documents that you're going to be relying on
19 today consist of?

20 A Almost all federal record, some American Fur Company
21 records, some Mission records from the American Board of
22 Commissioners for foreign missions. But almost
23 exclusively the letters received by the Mackinac
24 Superintendency, the letters sent by the Mackinac
25 Superintendency, and the Michigan agency records of the

1 central (inaudible) files of the United States.

2 Q Roughly, what are the -- do you know what the age of these
3 records are?

4 A American governmental records at Mackinac go back roughly
5 to 1820. There might be a few earlier ones, but mostly
6 the record starts in 1820.

7 I'd also reviewed the French records, the British records,
8 and those records go back to about 1650.

9 Q Do any of the records show from the 1820s to current
10 history?

11 A No one document does that, but over the course of the last
12 30 years I've pretty much read everything there is to read
13 on that.

14 Q Okay. But there is no specific American government record
15 going from the 1820s that would be able to be admitted and
16 show a historical tie?

17 A There are thousands of records that would go into building
18 that.

19 Q Okay. But no specific one?

20 A And it would -- and it would take me a good year to put
21 those records together into a form that would, A, meet a
22 federal criteria, and, B, satisfy a lawyer's penetrating
23 vision of the historical record.

24 Q So do you have any background or expertise in genealogy?

25 A I do genealogy as part of my work because this is a kin-

1 based society, and so in order to understand how it works,
2 you have to know who is related to who.

3 Q Okay. And do you have any training or degrees in
4 genealogy?

5 A There are no degrees in genealogy, and training is
6 sporadic at best. What I have is 40 years of experience
7 in it.

8 MR. SYLVAIN: Okay. All right. Thank you. No
9 further questions.

10 THE COURT: Mr. Sylvain?

11 MR. SYLVAIN: No objection.

12 THE COURT: Okay. The Court will qualify Doctor
13 as an expert in the field of ethnohistory and treaty
14 rights.

15 MS. BOSTIC: Thank you.

16 THE COURT: Ms. Bostic?

17 DIRECT EXAMINATION (Continued)

18 BY MS. BOSTIC:

19 Q Hello again, Dr. McClurken.

20 A Hello.

21 Q So are you familiar with the 1836 Treaty of Washington?

22 A Yes.

23 Q Can you describe what the Treaty of Washington -- what it
24 was, for the Court?

25 Who was involved? Who was involved in making the treaty,

1 Q Thank you. And when you say the treaty was with the
2 Ottawa and Chippewa Bands, what -- what do you mean by
3 bands?

4 A Technically, they're the Ottawas and Chippewas. While
5 they're loosely confederated and called tribes, their
6 highest political unit was the band.

7 A band is a group of -- is an extended family, usually
8 three to where 25 related families who live in a given
9 area. And the -- they group together with other related
10 bands, mostly who are linked through a clan system to one
11 another, and they come together and march or confederate
12 at times of duress.

13 By 1836 the last time all of the bands came together to
14 defend themselves was during the War of 1812.

15 Q So what was the governmental structure like insofar as you
16 can describe it in modern terms?

17 A In modern terms, they are egalitarian. That means that
18 there is no hierarchy of leadership. Leadership in -- or
19 decision making in the group is done in council.
20 Decisions are made by consensus. They are voiced by an
21 individual person who is chosen to represent the interests
22 of the group. But it's a cooperative unit of families.

23 Q Okay. So there wasn't -- at the time this treaty was
24 entered into in 1836, the bands didn't have anything that
25 approximated the U.S. federal government.

1 A Yes.

2 Q And do you know, or if -- if you could say, who was -- who
3 was Ainsse?

4 A In the 1830s a lot of the leaders of the bands were people
5 called Métis. They were people who were both Indian and
6 European heritage. They could often read and write, and
7 they served as liaison between the band and the United
8 States government.

9 Ainsse was in -- was a person of Dutch and Chippewa
10 heritage, Chippewa and Ottawa heritage. His European name
11 would be Hanse, and he signed for the Mackinac Band.

12 Q So earlier when you describe the way that the bands
13 delegated people to represent them, is it after that they
14 selected a person who was part European and part
15 indigenous to undertake that role?

16 A No. The way that the people who -- it was very much in
17 keeping with the way that Henry Schoolcraft selected the
18 people who were brought to Washington to negotiate the
19 treaty. Henry Schoolcraft and his superior, who was
20 Secretary of War, Lewis Cass, wanted to be sure that the
21 people who came to Washington were actually selected as
22 delegates by the entire band and that they came to
23 Washington with the band's authority to negotiate.
24 Henry Schoolcraft's brother, James Schoolcraft, was -- was
25 put in charge of collecting the delegates for the

1 (inaudible). He selected several people who were Métis.
2 For the Little Traverse Ottawas he selected Agustin
3 Hamelin, Jr., who are Kanapima, and there were multiple
4 Métis people there. But they were only allowed to
5 negotiate the treaty on behalf of the bands on the
6 condition that that treaty was brought back to Michigan
7 and read in full council, which it was.

8 Q And Ainsse was that person on behalf of the bands in the
9 Mackinac Straits area?

10 A The Mackinac Band was pretty much centered at -- on
11 Mackinac Island. Of course, they couldn't stay on the
12 Island. They used fisheries along the -- the south shore
13 of the Upper Peninsula and along the north shore of the
14 Lower Peninsula as well, and they hunted all over the
15 place and had kin ties spread throughout the entire
16 region, but they were centered at Mackinac Island.

17 Q Okay. And after the treaty was signed in 1836, did this
18 group of people who were in this area continue to interact
19 with the federal government?

20 A They did. They were -- they received annuities under the
21 1836 treaty, which continued until 1870. So the United
22 States compiled annuity payrolls of -- and listed the
23 individual heads of family who received payment.
24 And the Mackinac Band is always clearly identified until
25 1870.

1 Q Okay. And is there a distinction historically between the
2 Michilimackinac Bands and what you have been referring to
3 throughout the end of the 19th Century as the Mackinac
4 Bands?

5 A No. The first name you used is simply the old French name
6 for the place.

7 Q Okay. So it is in essence the Michilimackinac Bands have
8 been shortened to Mackinac Bands.

9 A Correct.

10 Q Okay. Thank you.

11 So you said that these bands spent 20 years suing the
12 government for their money.

13 How did that work out for them?

14 A They received permission from the United States to bring
15 their court -- to bring their case before the United
16 States Court of Claims. I believe they won that claim in
17 1905 or 1907. It must have been 1905.

18 Between 1905 and 1907, the United States then had to
19 figure out how they were going to pay all of these
20 individual holders of -- who should have been paid money
21 from the trust funds.

22 So they sent two agents, Charles McNichols and a guy named
23 Durant to Michigan and --

24 Q I'm sorry. Dr. McClurken --

25 A -- all they -- yeah.

1 Q Could you repeat the second name, please?

2 A Durant. Horace Durant.

3 Q Okay. Thank you.

4 A They came to Michigan. They brought their last annuity
5 payment roll which was created in 1870, and then they had
6 to track the names of the people on the 1870 payroll and
7 see who their modern families were.

8 At that time they came to Michigan thinking that it was
9 going to take only a tiny little bit of time because there
10 weren't any Indians here. And they got here, and they
11 found out that not only were there a lot of Indians here,
12 that the bands were still identifiable and that they still
13 had leaders in all of these bands.

14 The last full census that was created for all the Michigan
15 Indians specifically was the 1870 Durant roll, and every
16 person who is a descendent of someone on the 1870 roll
17 received a payment, I believe, in 1911.

18 Q And when you say last full census, are you familiar with
19 the United States 1890 census and its report on Indians
20 Taxed and Not Taxed?

21 A I am. But they did not -- there is no completed census
22 for 1890 for Michigan.

23 The Michigan Indian Agency at that point was being closed,
24 and the Indian agent at the time was a single person
25 working in one office. And he did not have the resources

1 the Ottawa and the Chippewa Bands.

2 The doctor has testified prior to the request
3 for admission, motion to admit Defendant's A, that the
4 Mackinac Band, which was centered in -- on Mackinac Island
5 was, in fact, part of the Ottawa Tribe as a greater group.

6 (At 10:07 a.m., DX A admitted)

7 THE WITNESS: And the census actually --

8 THE COURT: You have to -- you have to wait for
9 a question now, sir.

10 THE WITNESS: Oh, I'm sorry.

11 THE COURT: That was my turn. Now it's the
12 attorney's turn to ask you a question again.

13 MS. BOSTIC: Thank you.

14 THE WITNESS: Okay.

15 MS. BOSTIC: Thank you.

16 DIRECT EXAMINATION (Continued)

17 BY MS. BOSTIC:

18 Q And, Dr. McClurken, I believe we were discussing a time
19 period around the end of the 19th Century. So in say
20 1890, were there -- were there still bands in the Straits
21 area interacting with the government as Indian entities?

22 A There were, and the census that I have -- I pulled up the
23 1890 census. It's in front of me. And it says this
24 actually counted 227 people in Mackinac County. This
25 document doesn't refer to the -- any of the groups by

1 their individual bands. It's a sort of slapdash attempt
2 to count Indians in places because the Mackinac -- or
3 agency which should have been able to contribute
4 information about individual bands was being closed.
5 So this is the best compendium that the federal census
6 could put together all the years, and it shows a clear --
7 it clearly shows that there is a continuing presence of
8 the band in Mackinac County.

9 Q And the -- the skipping 1900 perhaps, but in 1907, the
10 Durant Roll, was that a special census of the Ottawa
11 people in the Straits area?

12 A It was a census of all of the descendants of all of the
13 bands who made the treaties of 1836 and 1855.

14 Q Okay. And did -- did anything about the Durant Roll
15 indicate a person's particular band or clan?

16 A Band, but not clan.

17 Q Okay.

18 A And the Mackinac Band is identified because starting --
19 they started from the 1870 roll, and the Mackinac Band
20 received payment. And so McNichols and Durant then
21 tracked down the descendants of that band.

22 I'd like to add one of the things that they were most --
23 most amazed by is that there were, A, so many Indians in
24 Michigan, and that each of the bands still continued to
25 pick their leaders and they had a traditionally

1 functioning government.

2 Q Now, when it comes to -- when it comes to a person's
3 assignment to a particular band, might a person be -- come
4 to be in a different band than one of their ancestors?

5 A Might they be in a different band?

6 The band system was, was breaking down in the 20th
7 Century. Traditionally you got your band identification
8 from your father -- not your mother. The more marriages
9 that were between tribes, and there were marriages that
10 were between Indians and non-Indians, the less that rule
11 was observed. And it was a time of transition.

12 So people lived all over the place. Plus, the people in
13 Mackinac who were starting to work as wage laborers, they
14 worked on ships that went all over the world. They
15 traveled extensively.

16 So, you know, they were a modern people.

17 Q Okay. So after -- after the Durant Roll was taken, and
18 the interest payment was paid out, moving into the -- the
19 teen years of the 20th Century, can you describe what was
20 going on with the Ottawas living around the Straits in
21 Michigan?

22 A The Mackinac Agency moved to Keweenaw Bay, and it was
23 partially staffed. That is, that the United States paid
24 for a doctor to meet the needs for all of the people
25 throughout the 1836 session, and he couldn't do that.

1 Obviously, there was just a -- a physician.

2 So the rec -- federal record is really, really slim for
3 the Mackinac Agency. And the Mackinac Agency continued to
4 function, I believe, up until 1930, 1931, and jurisdiction
5 over the band was transferred to the Tomah agency in Green
6 Bay. And the Tomah agency kept a subagency in Lansing,
7 Michigan, and continued to deal with medical needs, social
8 service needs, and on rare occasion actually provided food
9 and a few other services to the Mackinac Band.

10 But other than that, there is not a lot. Keep in mind it
11 was a -- the year of a termination. The boarding schools
12 were put in place. There was a time when very
13 particularly the United States and the state of Michigan
14 took kids away from their parents, put them in boarding
15 schools to teach them how not to be Indians.

16 Q Now --

17 A And it was effective. So this was going on. But between
18 1907 and the reversal of federal policy in 1934 and the
19 creation of the Indian Reservation Act, the band was a
20 kin-based band. Everyone was related no matter how much
21 dysfunction, and they continued to identify --

22 Q Now --

23 A -- with the band.

24 Q Sorry. So, Dr. McClurken, I have two questions from --
25 from that testimony. The first is, do you have any of the

1 records that were produced or maintained by the subagency
2 in Lansing?

3 A Very few of those records exist.

4 Q Why is that?

5 A The -- during the Eisenhower Administration, which was the
6 second termination period, the United States looked for
7 ways to withdraw all services from the Michigan Indians.
8 And in 1948 they simply closed the agency. They had one
9 employee there. His name -- an honorable guy named Terry
10 Turbo (phonetic), who was left with no funds. He simply
11 brought all of the agency papers home with him. And when
12 he died, his wife burned them.

13 Q His wife burned all of the subagency papers?

14 A Yes.

15 Q So something you said there leads me to my second
16 question.
17 When you say a policy of termination, what do you mean?

18 A Termination was a very specific policy in -- during the
19 1890s, but again, during the Eisenhower Administration of
20 simply ending the federal government's responsibility for
21 Indians.

22 Q And --

23 A It was a national policy.

24 Q And that termination policy was directed at the
25 relationship between Indian bands and the federal

1 government, is that fair to say?

2 A Yes. That was a general across the United States policy,
3 but it was aimed particularly at people in Michigan
4 because their reservations had been taken away from them.
5 And they lived among the general population and --

6 Q Did the policy --

7 A -- the places where their villages were had become cities.
8 They usually lived on the edges of those cities. And
9 people wanted them gone.

10 Q Did the -- did the policy destroy this clan-based -- I'm
11 sorry.

12 Did the policy destroy this kinship-based internal
13 structure that you have been describing?

14 A No.

15 Q Okay.

16 A No. Like the cockroaches, you got to step on every one of
17 them before its gone.

18 Q Now, you said that the termination policy ended in 1934.
19 What happened in 1934 relative to federal Indian
20 relationships?

21 A In 1934 Franklin Roosevelt appointed the new commissioner
22 of Indian Affairs named John Collier, and John Collier's
23 idea was to make Indian tribes self-sufficient. The
24 federal gov -- during the termination years the United
25 States had purposely sold as much land as they could

1 within the boundaries of Indian reservations or completely
2 disestablished Indian reservations. John Collier wanted
3 to reverse that.

4 Q And how did --

5 A And --

6 Q And how did he go about trying to help the tribes become
7 more self-sufficient?

8 A Yeah. I think the Roosevelt Administration crafted and
9 passed the Indian Reorganization Act, which was an act
10 that allowed Indian tribes for the first time to form
11 constitutional government that were a secretary -- from
12 other constitutions that were secretarially approved.
13 Secretarially meaning unsupervised by the Secretary of the
14 Interior.

15 And all of the Michigan bands petitioned to restore their
16 band governments under the IRA.

17 Q Did -- was there a petition filed in the name of or on
18 behalf of the Mackinac Band?

19 A I believe there is.

20 Q And do you know what -- what happened after they filed
21 those petitions?

22 A Yeah. The Congress of the United States in its normal
23 degree of functionality passed the Indian Reorganization
24 Act, but they never passed the appropriation to implement
25 the act.

1 Q I'm sorry. What was the -- what excuse did the United
2 States government give for not accepting the petitions?

3 A That the Indians in Michigan were too assimilated, that
4 they lived among the population like -- like everybody
5 else, and that they really didn't want to form
6 constitutional governments, which belied the number of
7 petitions that were received from Michigan, obviously.
8 And that --

9 Q Now -- sorry to cut you off.

10 A And that the State of Michigan already provided better
11 services to the bands than the federal government could.
12 So they chose not to extend federal acknowledgement to the
13 tribes.

14 Q Dr. McClurken?

15 A And that was issued in the form of a memorandum from John
16 Collier in 1940.

17 Q Dr. McClurken, would you say it's accurate that the
18 Indians in Michigan were fully assimilated into the
19 broader culture?

20 A Well, assimilated is a pretty relative term, and the fact
21 that they objected to specifically is that Indians worked
22 in wage labor jobs. They went to schools. Some of them
23 were college educated, which by the way they had to be
24 college educated since the 1820s.

25 The guy who actually negotiated the 1836 treaty for the

1 petitions was specifically in the name of the Mackinac
2 Band?

3 A Yeah.

4 Q Okay. Now, after the petitions were denied or ignored,
5 what -- what happened to the bands who -- whose petitions
6 were not accepted?

7 A Nothing. World War II happened, and World War II changed
8 the entire world. Many of the leaders from the Indian
9 communities in Michigan enlisted in the Army and the Navy.
10 They came back to Michigan. Some of them lived down
11 state. Some of them remained up north and sort of held
12 things together.

13 But during the new termination era of the Eisenhower
14 Administration, all of the bands who were signatories to
15 the 1836 treaty formed a new constitution that governed
16 all of the historic bands. That organization was called
17 the Northern Michigan Ottawa Association, and the Mackinac
18 Band formed one of the traditional units of the Northern
19 Michigan Ottawa Association. And the Northern Michigan
20 Ottawa Association served as the government for all of the
21 36 bands roughly up until 1981.

22 Q Now --

23 A And they --

24 Q -- when you say government, what do you mean?

25 A Well, it was the first time that they actually had an

1 elected government that I found anywhere. Their
2 constitution called for annual elections, and the
3 population -- the bands were divided by numbered units,
4 and the Mackinac Band had its own unit, and they would
5 elect four representatives to form to -- who would travel
6 once a year to join in a council. It was usually held at
7 the fairgrounds in Petoskey.

8 And then the president of each unit would serve as an
9 executive council. The executive council would then
10 pursue claims against the United States, would seek
11 educational opportunities for its members, and remain
12 politically active throughout the state.

13 Q So --

14 A Did that answer your question?

15 Q Oh, yes, sir. It does.

16 Do you happen to know which -- so you said there were 36
17 bands.

18 Were there 36 units then making up the NMOA?

19 A No. Because the confederacies, like the Grand River
20 Ottawas didn't divide into their individual bands. They
21 were just a (inaudible) the Ottawas, the Little Traverse
22 Ottawas, and the Little Traverse Ottawas of Grand
23 Traverse. There's Grand Traverse.

24 So, no. But they were the unit from the Straits of
25 Mackinac.

1 was the Mackinac Band, which they listed as being Ottawas
2 and Chippewas of Mackinac, Schoolcraft, and I forget the
3 other county.

4 Q Was it Charlevoix County?

5 A So when that happened -- and then as a result of that
6 commission, the fed -- the Congress -- the Executive
7 Branch created what was called the branch of
8 acknowledgement and research and created the normal or the
9 -- excuse me -- the modern federal acknowledgement
10 process.

11 The first tribe to go through that process was the Grand
12 Traverse Band of Michigan. They went through that in
13 1979.

14 And shortly afterwards the Northern Michigan Ottawa
15 Association decided that they would seek federal
16 recognition through the federal acknowledgement process,
17 and -- excuse me -- in 1980. And then in 1981 the leader
18 of the Northern Michigan Ottawa Association who
19 (inaudible) of the -- of the organization. Her name was
20 Waunetta Dominic. Waunetta died all of a sudden. And the
21 Little Traverse Ottawas were deeply involved in this
22 process, and they decided they would not go through the
23 federal acknowledgement process because they didn't need
24 to prove who they were. They had treaties with the United
25 States. They were descendants of the bands of the '36 and

1 '55 treaties, and they wanted Congress to recognize its
2 failure and what it had done to them to block their
3 exercise of treaty rights. And so they went to Congress,
4 and they went to Congress not for federal acknowledgement
5 but to reaffirm their treaty rights. And that ended up
6 with the -- the reaffirmation act that restored the
7 governments of Little Traverse at Little River and the
8 Pokagon Potawatomis.

9 Q Now, Doctor --

10 A The Mackinac Bands were sort of active at that time but in
11 political turmoil. That political turmoil sort of lasted
12 for the last 40 years.

13 Q Dr. McClurken, I'd like to go back to the Grand Traverse
14 Bands quickly.

15 A Um-hum.

16 Q When you -- so were the Grand Traverse -- is there one
17 Grand Traverse Band or were there multiple Grand Traverse
18 Bands, plural?

19 A Well, there were multiple Grand Traverse Bands. It was a
20 confederacy of bands which scattered along the Leelanau
21 Peninsula or the Michigan Peninsula and the Lake Michigan
22 shoreline.

23 Q And were they part of the Northern Michigan Ottawa
24 Association?

25 A They were.

1 And the details of that still were not clearly
2 established.

3 Q Okay. So I guess what I'm trying to get at is, under the
4 NMOA there was the Mackinac Band, right?

5 A Yes.

6 Q And there was the Grand Traverse Band?

7 A Correct.

8 Q And the Grand Traverse Band went out and obtained federal
9 recognition, is that correct?

10 A Yes, they did.

11 Q Okay. And what were some of the other bands with the
12 NMOA?

13 A The Pokagon Band of the Potawatomis, the Burt Lake Band,
14 the Grand River Bands, the Little River Band, and there
15 was the Swan Creek Black River Band, the -- and the people
16 in the Upper Peninsula.

17 Q Okay. Now, as part of the -- this recognition process,
18 does that take into account treaty rights or treaty
19 status?

20 A Yeah, it does. Certainly.

21 Q And is a band or a tribe at that point asserting their
22 treaty rights when they're seeking recognition?

23 A Most often.

24 Q Okay. And at the time in 1980, do you know if the
25 Mackinac Band had been asserting its treaty rights?

1 A I don't know what the Mackinac Band was doing in 1980
2 because that's a level of documentation I've never
3 collected for them. I have seen a few newspaper articles,
4 but you have to remember what the issue was in 1980. And
5 the issue was the Great Lakes fishery.

6 Q Okay.

7 A The tribes had been claiming ownership of a right to fish
8 throughout the waters of Michigan for, at that point, 70
9 years. The state of Michigan had been denying that they
10 had those rights.

11 And in the 1970s the Michigan tribes, recognized or not,
12 brought suit in Federal District Court, and in 1979 Judge
13 Noel Fox issued an opinion saying that that treaty right
14 still existed. That was groundbreaking. The issue was
15 who got to exercise that right.

16 Q Okay.

17 A And the United States argued that only tribes that were
18 federally recognized could assert that right.

19 Q Okay.

20 A And that is what created a scramble. The Northern
21 Michigan Ottawa Association then claimed we are federally
22 recognized. We were created and the secretarial lease
23 provides election, which is a criteria of the Indian
24 Reorganization Act, and we are going to exercise that
25 right.

1 Association. They elected their own officers to serve on
2 an overarching board that met once a year in Petoskey.

3 BY MR. SYLVAIN:

4 Q Okay. But these bands were free to disassociate from the
5 NMOA?

6 A No one had ever done that until 1980 when Grand Traverse
7 did it, and then that created a political crisis for the
8 NMOA, one that they didn't weather because Waunetta
9 Dominic died in 1981. And Little Traverse then took a
10 legislative approach to reaf -- reaffirming all of the
11 treaty rights. Their legislation faced a one in 5,000
12 chance of getting through Congress. Congress approved
13 that act in 1994, reaffirming the bands and the right.
14 The Mackinac Band was not ready to seek legislative
15 recognition at the time, and so they're not included on
16 (inaudible).

17 Q And I guess that's kind of what I'm getting to.
18 Are you able to testify today regarding the political
19 structure or government of the Mackinac Band at the time
20 of March 25th, 1980?

21 A No.

22 Q Can't say if it was actually a formed or functioning
23 government at the time?

24 A No. I -- those are internal documents for the band
25 itself, and I do not have access to those. The United

1 States did not keep them, so they're not part of the
2 federal record.

3 MR. SYLVAIN: Okay. No further questions.
4 Thank you.

5 THE COURT: As to the motion for admission, Mr.
6 Sylvain?

7 MR. SYLVAIN: I would object to admission.

8 This does show that there was the Grand Traverse
9 Band of Ottawa and Chippewa Indians that was federally
10 recognized back in 1980. As the expert has testified here
11 today, they were at one point a part of the NMOA
12 Association, which they had broke away from and obtained
13 federal recognition.

14 The expert cannot provide any kind of testimony
15 as to the status, form, or function of the Mackinac Band
16 government itself at the time that this federal
17 recognition occurred. Arguably, whether they even
18 existed.

19 So the People would object to admission of the
20 -- was it?

21 THE COURT: B.

22 MR. SYLVAIN: B? -- to Defense's B. Thank you.

23 MS. BOSTIC: Thank you, your Honor.

24 In response, again, the question that we are
25 here to answer is if the Mackinac Band is a treaty

1 Q Okay. And how is that?

2 A That they are also treaty signatories. They also have an
3 evolving government structure. It was the same story that
4 Little Traverse and Little River had. They continued to
5 have a 20th Century government through the Northern
6 Michigan Ottawa Association, even into the termination
7 era, and they remained part of the Northern Michigan
8 Ottawa Association until tribes began seeking federal
9 recognition by the federal acknowledgment process and by
10 legislation.

11 Q Okay. Are you able to provide any information regarding
12 the form, function, or cohesiveness regarding any of the
13 Mackinac Bands or Tribes in 1994?

14 A Would you say that again? I missed something.

15 Q Are you able to provide any testimony or information for
16 the Court regarding the -- not the status, the structure,
17 function, or even existence of the Mackinac Band as a
18 government or political unit in 1994?

19 A Well, I can tell you that after 1994 the Mackinac Band
20 reached out to me to help them go through the same process
21 as the Little Traverse and Little River Ottawas went
22 through. They invited me up to their community meetings
23 on at least two occasions where we discussed that, and the
24 factional disputes within that community were significant.
25 And I never contracted with them to do the same kind of

1 detailed work that I have done for other tribes.

2 Q Okay. This is actually quite important.

3 So they reached, or at least someone saying that they were
4 part of the Mackinac Band, reached out to you in 1994?

5 A After 1994.

6 Q After. Okay.

7 Do you recall who that was?

8 MS. BOSTIC: Your Honor, I --

9 THE WITNESS: No, I --

10 MS. BOSTIC: Objection.

11 THE WITNESS: I don't remember any of the
12 specifics other than driving up to Sault Ste. -- or up to
13 Mackinac and being in a community hall with a couple
14 hundred people sitting there twice.

15 THE COURT: Okay. So the objection?

16 MS. BOSTIC: Yeah. I'm sorry. The objection
17 was the scope of the questioning. This is Voir Dire as to
18 Senate Bill 1357.

19 MR. SYLVAIN: The issue that we're running into
20 is that the Defendants and the expert witness are
21 apparently presuming that the Mackinac Band was as a
22 political governmental unit in existence in 1994.

23 We have testimony from the expert witness here
24 today that they were from his description highly
25 fractional. He does not recall who he specifically spoke

1 treaty?

2 A Yes.

3 Q Okay. And I want to -- you know, some of this information
4 was elicited on by the Prosecutor's most recent questions,
5 but in modern times, meaning the end of the 20th Century,
6 so 1970 forward, does the state of Michigan itself
7 acknowledge the Mackinac Band?

8 A There are mem -- Governor G. Mennen Williams in the 1950s
9 recognized the effective termination on Michigan tribes.
10 He created what was called the Michigan Commission on
11 Indian Affairs.

12 The Michigan Commission on Indian Affairs asked each
13 community through the state to choose and send a
14 representative to statewide meetings, and they compiled
15 several reports on several different subjects. They would
16 hold regional meetings throughout the state of Michigan to
17 discuss the individual needs of any community.

18 And the Mackinac Band was represented on that commission.
19 The state of Michigan did recognize the Mackinac Band at
20 these, but I have, again, never compiled the information
21 for that.

22 Q Okay. And do you know what the process was for the
23 creation of the Michigan Commission on Indian Affairs?

24 A You know, I've read their minutes, but I read their
25 minutes a very long time ago. And the issue was driven by

1 a guy named Shoney Shawinassi (phonetic). Shoney
2 Shawinassi was part of the Burt Lake community. In 1901
3 lumbermen burned their community to the ground and sent
4 everybody scurrying, many of them to Little Traverse, some
5 of them up to Mackinac.

6 And the Burt Lake Band then from 1901 for the next 50
7 years attempted to win cash reimbursement and the return
8 of their land title for their reservation.

9 And Shoney had a personal relationship with Governor
10 Williams, and Governor Williams took him seriously and
11 formed a commission to look at all of the problems that
12 were created in Michigan during the tenures after the
13 federal government closed its subagency office here in
14 Lansing and what was going on (inaudible) the termination
15 years.

16 Q Now --

17 A And Mackinac always sent representatives to that.

18 Well, always I should not say because I've not examined
19 the records, but I know that they sent representatives,
20 and I know that they held commission meetings there.

21 Q Okay. Now, when -- when we're talking about bands and
22 tribes and confederations, have you in your research -- in
23 your research come across instances of internal political
24 division?

25 A Yeah. Actually, that's one of the things that the staff

1 at the Office of Federal Acknowledgement actually looks
2 for. If there are factional disputes within a band or a
3 tribe, they take that as evidence of a functioning
4 community with issues so important that they're willing to
5 fight for them. If there was no community, if there was
6 no tribe, if there was nothing at stake, nobody would
7 care.

8 Q So --

9 A And Mackinac certainly has had its share of factional
10 disputes.

11 Q So the existence of a factual dispute actually indicates a
12 -- that an entity is alive politically. Is that fair to
13 say?

14 A I -- yeah. And as an example of that, I'd ask you to look
15 at the United States Senate today.

16 Q And -- and is it -- does a factual dispute dilute the
17 inherent political power of an organization?

18 A No. The treaty stands, you know.

19 Q And --

20 A Until -- until Congress ends that treaty, that treaty is
21 law.

22 Q Oh, that's a foundational question I should have asked.
23 Dr. McClurken, has Congress of the United States ever
24 abrogated the 1836 Treaty of Washington?

25 A No. They've ignored it. They've acted contrary to its

1 body of the whole?

2 A I try to avoid them.

3 Q Okay. Are you able to state whether or not all of the
4 current bands that claim to be Mackinac are, in fact,
5 historically Mackinac?

6 A I would have to do a detailed study of that, and I have
7 not.

8 Q Have you done a detailed look into this Mackinac Band
9 involving Mr. Joseph Caswell, the Defendant, and Barry
10 Adams, the proclaimed chairman, as being a treaty
11 signatory political successor in interest to the treaties?

12 A He's a descendent from the successors in interest, but I
13 don't know his status with the modern band.

14 Q Do you know if he's currently or has been a member of the
15 Sault Ste. Marie Tribe?

16 A Yeah. Well, almost everybody who forms the Mackinac Band
17 was allowed to enroll in the Sault Ste. Marie Tribe
18 because of the weird way that the Sault Ste. Marie Tribe
19 was federally recognized and the politics in 1972 -- or
20 excuse me -- yeah. 1972.

21 Q Okay. I'm going to go back to my question.

22 Do you make any distinction between an actual splinter
23 group that separates from the body and internal factional
24 disputes?

25 A No.

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that.

I didn't consider the fact that they participated as a band in the Michigan Commission on Indian Affairs, but I did actually testify about that.

The Michigan Commission on Indian Affairs closed roughly 15 years ago, I believe. So that carries you up until the 21st Century. They're appointing representatives to their commission.

So I know that there is a government structure. If somebody wanted to pay me \$200,000, I would write you a detailed report. I would track down the internal documents. I would produce it and answer all of your questions.

But so far I've testified from memory except for one document that I knew that I could look up quickly because I was just using it. And all of this is a general recitation of what I've found over 35 years.

So when you come to ask me specifics, I just can't do that for you right now.

Q Okay. Well, and, you know, this is pretty important because you're associating almost treaty rights with blood rights.

And I guess my follow-up question is, the treaty of 1836, that's between the United States and the Ottawa and Chippewa nations.

1 nation but by bands.

2 Q Okay. And on the language of the treaty itself, does it
3 make any specific mention to Mackinac Tribe or Band?

4 A No, but there's huge documentation around it that makes a
5 great deal of discussion of the Mackinac Band.

6 Q So it's by inference?

7 A It's not on the face of the treaty, and it's not inferred.
8 It's a huge part of the federal record.

9 Q Okay. But is there a specific document that you can point
10 to that says that this band is our current modern-day
11 Mackinac Tribe or Band that was a signatory to the 1836
12 treaty?

13 A I don't have any of their modern internal records.

14 Q Okay.

15 A I have not contracted with the Mackinac Band --

16 Q And that's --

17 A -- ever for anything so far as I can recall.

18 Q You said that in regards to the Ottawa and Chippewa
19 nations, that those are made up and pretend?

20 A The Ottawa and Chippewa nation is made up and pretend.

21 Q Okay.

22 A Henry Schoolcraft argued that they -- that all of these
23 bands were selling or married; that they formed a single
24 nation. And he wanted all of the land that -- for all of
25 the bands. And the Ottawas refused.

1 A I'm relying on general recollection that they formed a
2 petition, just like all the other bands in Michigan.

3 Q Okay. Would you be able to provide that to us or cite to
4 it?

5 A Yeah, if you want to pay me to find it and if you wanted
6 to get the National Archives opened. It's now been closed
7 for two years.

8 Q Okay. And during that timeframe had the tribe operated as
9 a separate tribal government?

10 A You know, they can't not act as a government because they
11 are who they are. Who they are are biological descendants
12 of the people who signed the treaty.

13 They're a kin-based society. Just pure and simple.
14 They're -- they exist whether there's a constitution or
15 whether there's not a constitution. So long as they say
16 that we are the Mackinac Band, they exist.

17 Q Okay. So most of this can be summarized as, as long as
18 they make self-declarations, they can exist or not exist;
19 splinter, not splinter.

20 Is that accurate?

21 A Yes.

22 Q Okay.

23 A Yes.

24 Q And I guess are you aware of any current formal government
25 organization or documents for the Mackinac Band?

1 A I haven't talked to anyone from the Mackinac Band in 15
2 years.

3 Q Okay. Now, you spoke about this a little earlier. You
4 indicated that at least for the past 40 years they're in
5 political turmoil.

6 A Well, I'm not an insider. So I only -- I only hear rumors
7 of it.

8 Q Ah. Well, you also indicated that you came up and I guess
9 did a Q and A with them or something? I'm not quite
10 certain.

11 A I did, about the federal acknowledgement process.

12 Q Okay. And you did that in front of a group of over a
13 hundred?

14 A Yes.

15 Q Okay. And did they identify as to which Mackinac Band or
16 group that they were?

17 A No. No.

18 Q Do you recall if that one was headed by Barry Adams?

19 A I -- I don't even remember, but I think that was before
20 Barry Adams' time.

21 Q Okay. And do you recall seeing a Joseph Walter Caswell at
22 that meeting?

23 A I don't know Joseph Walter Caswell.

24 Q Okay. I think we talked about a little bit earlier, you
25 mentioned that some of the Mackinac Band members are

1 the other group?

2 A That's a factional dispute inside the group.

3 Q How can it be a factional dispute inside the group if one
4 is taking the stan -- or both of them are taking the
5 stance and saying the other one is not?

6 A That's a pretty big battle. That's the Republicans saying
7 the Liberals are -- are idiots and really aren't patriots.

8 Q Well, there's a -- there's a distinction between that.

9 A Well, not necessarily.

10 Q The United States hasn't split apart --

11 A (Laughter)

12 Q -- and reformed into Democrats and Republicans, is that
13 correct?

14 A I'm sorry. I didn't hear that.

15 Q The United States hasn't split apart and reformed into two
16 separate nations of Republicans and Democrats. Is that
17 accurate?

18 A And the Mackinac Band can't either.

19 Q Based off of blood, correct?

20 A They're just there. They are the treaty group. And who's
21 a member of that group and who's not a member of that
22 group is based on kinship and recognition to the members
23 of their membership in the group.

24 Q Have you done any geneal -- genealogical research into
25 this group, the Mackinac Band?

1 A Not for the Mackinac Band. No.

2 Q How are you able to state that the Mackinac Band,
3 particularly this Mackinac Band in this case is, in fact,
4 the treaty signatory and political successor in interest
5 to the treaty rights?

6 A All I can do is tell you that over history the United
7 States has kept record of the existence of the -- of the
8 band's identity. The last full census of the band was
9 done in 1907, and that's the last -- the last record that
10 I have examined about who comprises the band.

11 Q So, I guess, really what we need is to get genealogists or
12 somebody in here to go through the records and say whether
13 or not Mr. Adams, Mr. Caswell, are, in fact, truly members
14 of the Mackinac Band.

15 And I -- is that correct?

16 A I -- I don't know.

17 Q We're here trying to discern whether or not this Defendant
18 is an actual member of Mackinac Band.

19 And you're indicating that it is based off of heredity,
20 blood relation. And we (inaudible) to be com -- to
21 compromise the Mackinac Band, particularly in this case,
22 again if it's heredity based, but we don't have any
23 information regarding this specific defendant or this
24 specific band and their genealogic or heredity wise.

25 THE COURT: Okay. Before you answer that,

1 with I believe it is *U.S. v Michigan* involving the consent
2 decree?

3 A I don't know with one. There are lots of *U.S. v*
4 *Michigans*.

5 Q Specifically the one dealing with the consent decree
6 between Michigan and the recognized tribes.

7 A Since 1983?

8 Q Yep.

9 A Yes. I'm familiar with that.

10 Q Are you aware of whether or not the Mackinac Band or any
11 of the Mackinac Bands have filed to protect treaty rights
12 in that?

13 A No. I -- I don't know. I have not worked for them.

14 Q Okay. Did you provide any assistance on the *Mackinac*
15 *Tribe v Jewell* federal case?

16 A I did not.

17 Q Okay. And has -- to your knowledge, has Congress
18 acknowledged or recognized the Mackinac Band Tribe or any
19 Mackinac Bands or Tribes?

20 A Not since the treaties. Or not since 1907.

21 Q And the Little Traverse and Little River Bands, those were
22 recognized by Congress and legislation?

23 A They were.

24 Q Are you able to say today whether or not this current
25 Mackinac Band or Tribe is an actual descendent or if it's

1 a newly formed entity?

2 A Yeah. I know nothing about who they characterize
3 themselves to be or who -- who are their members.

4 Yeah. I've had no contact with them in 15 years.

5 Q Okay. Are you aware of their status or at least this
6 one's status as being a 501(c)(3)?

7 A No, but that's really common.

8 Q Okay. Do you know if the Mackinac Band or any of the
9 bands have acted to exercise political or governmental
10 authority over any of its members?

11 A I don't.

12 Q Are you able to provide any information to the extent of
13 this Mackinac Band group's members being persons of Indian
14 ancestry who live or were brought into the Indian society
15 or community?

16 A Nope.

17 Q Are you able to provide any information to the extent of
18 this Mackinac Band, bands, tribes, Indian governmental
19 control over the lives and activities of their members?

20 A No.

21 Q Are you able to provide any information regarding this
22 Mackinac Band's ability and extent, nature of -- the
23 extent and nature of member's participation within tribal
24 affairs?

25 A No.

1 Q Are you able to provide any information to the extent of
2 which this Mackinac Band or Tribe is able to exercise
3 political -- political control over a specific territory?

4 A No.

5 Q And we've -- again, we talked a lot about Mackinac Band in
6 general, but this specific Mackinac Band, are you able to
7 provide any historical continuity?

8 A I've never studied -- I haven't studied the Mackinac Band.

9 Q Okay. So this one, in general -- so most of the testimony
10 has been in general.

11 A All of the testimony is in general.

12 Q But not specific to this Mackinac Band.

13 A I don't even know who this Mackinac Band is.

14 Q And are you able to provide any information about this
15 Mackinac Band and the extent of it expressing
16 acknowledgement of such political status by any federal
17 authority?

18 A I'm sorry. Would you repeat that question?

19 Q Are you able to provide any information or testimony
20 regarding in relation to this specific Mackinac Band to
21 the extent of it expressing -- have expressed
22 acknowledgment of a political status by a federal
23 authority?

24 A It depends when you're talking about. I don't know
25 anything about the modern group.

1 their band?

2 A Not unless they have a constitutional government with
3 written ordinances about who is who and whether there are
4 criteria for membership.

5 Q Okay.

6 A Otherwise, they can ostracize them, which is the old-
7 fashioned way of disenrolling someone.

8 Q And how is it that purely without there being any kind of
9 -- we keep referring to a constitutional government
10 structure, right?

11 A Yeah.

12 Q You keep saying constitutional government structure, but
13 you testified earlier that the bands utilize a kin-based,
14 which has a very different structure to it.

15 Is that correct?

16 A They do. Most constitutional governments don't maintain
17 that kin base, and members of almost every tribe have to
18 meet a certain blood quantum requirement, which means they
19 have to have a relative, a -- a rel -- they have to be
20 lineal descendants of someone who came -- was listed on a
21 historical document someplace, identified as the
22 membership of that band.

23 Q Okay. How is the -- is there an organized -- an organized
24 tribal structure within these bands?

25 A I -- I don't know.

1 Q You don't know?

2 A I've never seen a constitution for the Mackinac Band, so I
3 can't say.

4 Q Okay. And how are -- again, could you just refresh my
5 memory.

6 How is it that in these kin-based bands they generally are
7 organized?

8 A They have rules and norms that are associated with people
9 by age, sex, and status and achievement within the tribe
10 or within the band.

11 Q Do they maintain a leadership?

12 A It's a decentralized leadership. Leadership decisions are
13 made by a consensus within the group, and that consensus
14 determination is presented to others through the office of
15 the speaker.

16 Q You said through consensus. Is -- are you saying --

17 A Through consensus. Correct.

18 Q -- through democratic?

19 A Well, it's more than democratic because consensus means
20 way more than 50 percent.

21 Q Yes. But supermajority or absolutely unanimous?

22 A Never having been there, I wouldn't know. But my
23 assumption is pretty darn close to unanimous, and you can
24 -- if people didn't like the decision, they were free to
25 leave.

1 THE WITNESS: Okay. Can I say something first?
2 THE COURT: Hum?
3 THE WITNESS: I lost my sight. Okay. I almost
4 bled to death. And then six months ago I lost my memory
5 completely. You know --
6 THE COURT: Oh.
7 THE WITNESS: And everything, and so I'm having
8 trouble remembering things.
9 THE COURT: Okay. Well --
10 THE WITNESS: Dates and stuff but --
11 THE COURT: Okay.
12 THE WITNESS: -- I'm close, you know.
13 THE COURT: If you can't remember, let us know.
14 THE WITNESS: Yep. Just a minute. I'm talking,
15 not hearing through my ear. But I sent you a letter. I
16 filed a complaint with you six months ago.
17 THE COURT: Okay.
18 THE WITNESS: Eight months ago I filed a court
19 case.
20 THE COURT: Okay.
21 THE WITNESS: And in the appeal court and
22 everything.
23 THE COURT: Okay. Yep.
24 THE WITNESS: I was upset.
25 THE COURT: Yeah. Don't worry about that.

1 We're going to -- Ms. Bostic is going to ask you some
2 questions. Okay?

3 THE WITNESS: Sure. Sure.

4 THE COURT: All right. Thank you.

5 DIRECT EXAMINATION

6 BY MS. BOSTIC:

7 Q Mr. Adams?

8 A Yes.

9 Q Will you please state your name once again and spell it
10 for the record.

11 A Barry W. Adams, Wallace Adams. B-A-R-R-Y W-A-L-L-A-C-E
12 A-D-A-M-S.

13 Q And Mr. -- Mr. Adams, how old are you?

14 A Eighty-two.

15 Q Eighty-two. And what is your -- what is your memory like
16 today?

17 A From one -- one to 10, probably six.

18 Q Okay.

19 A At least, if it is that much.

20 Q And you mentioned that you had an injury a while back that
21 affected your memory, is that true?

22 A Yes. I hurt my back in the Army in 1960, and then I had a
23 -- within the last year I almost bled to death twice. Is
24 -- that's what caused the loss of the memory.

25 Q Okay. And --

1 A But it's coming back.

2 Q Okay. Excellent. I'm glad to hear that, Mr. Adams.

3 Now, are you affiliated at all with the Mackinac Tribe?

4 A Yes.

5 Q How are you affiliated with the Mackinac Tribe?

6 A Darryl Brown and I started it.

7 Q Okay. Now --

8 A Well, it --

9 Q Who -- so when you say you started it --

10 A You got to go back and what -- you know, the tribe had

11 come by sev -- what it was, was on the land claim money

12 that the Sault Tribe got, 14.7 million was the Mackinac's

13 money; 5.2 was the Sault Tribe's money.

14 So what I did and Darryl did is we just started, said,

15 okay, let's find out. And when the Sault Tribe would not,

16 you know, enroll anybody else -- they closed their

17 enrollment -- Darryl and I said let's go find the Mackinac

18 people, and that's what we did.

19 So we call it the Mackinac Tribe of Odawa and Ojibwe

20 Indians.

21 Q And --

22 A That's all that was.

23 Q And when you and Mr. Brown did that, are you descended

24 from Ojibway or Odawa people in this area?

25 A I am an Odawa.

1 Q Okay.

2 A And my grandfather is Chief Ainsse that signed the '36
3 treaty. His son, Peter Hanse, signed the '55 treaty, and
4 my Uncle Pe-ane is also on the '55 treaty. Okay.
5 Mellon Farm down the road, you might even know it, you
6 know, down in Epoufette, is my Grandma Mellon. Okay. My
7 great grandmother, she is the -- the daughter of Peter
8 Hanse who signed the '55 treaty. Peter Hanse Pe-ane is
9 her brother. Okay. And Amable Ainsse, the last Chief up
10 here, is also her brother.
11 You know, that's --

12 Q So the man who signed the 1855 treaty was the son of --
13 A Peter.
14 Q -- the man who signed the 1836 treaty?
15 A Yes.
16 Q And you are the great grandson of that man's daughter?
17 A Yes.
18 Q Okay. I got it. All right.
19 So, you are directly descended from the man who actually
20 signed the 1836 treaty?
21 A Right.
22 Q Okay. Thank you.
23 And when you say that you and Mr. Brown started the
24 Mackinac Tribe, do you mean that the Mackinac -- did the
25 Mackinac Tribe exist previously?

1 A Well, what I -- when Darryl and I talked, what I did,
2 okay, we went out to find the other Mackinac people.
3 Okay. I did that with Victor Visnaw, okay, a good friend
4 of mine, another genealogist that did genealogy. And we
5 went and looked for -- somehow, rather than trying to find
6 bands, bands, all that kind of stuff, what we threw in
7 there the Mackinac Band, we threw in the word tribe.
8 Tribe means to me plural. It wasn't calling somebody it,
9 calling it a name or anything. We just used the word
10 tribe as the word plural. That's for the Mackinac.

11 Q And --

12 A Does that make any sense?

13 Q Yes, it does. No. It does.

14 And when -- when there -- when you went to look for other
15 Mackinac people, did you encounter anybody who had been
16 part of the Northern Michigan Ottawa Association?

17 A I know a lot of people from Grand Traverse, Little
18 Traverse, all over the place.

19 Q Okay. Were you involved at all with -- with the Mackinac
20 units in the Northern Michigan Ottawa Association?

21 A That was before my time. That was 1934.

22 Q Okay. So before your time.

23 When did your time start, would you say?

24 A I've been an Indian all my life. My dad moved down state.
25 He became an engineer on Grand Trunk Railroad. The people

1 But the document is what the document purports
2 to be based on the testimony of the witness.

3 (At 1:07 p.m., DX E admitted)

4 MS. BOSTIC: Thank you. I guess I'll give this
5 to you.

6 THE COURT: Oh, for me?

7 MS. BOSTIC: Thank you.

8 THE COURT: Sure thing. Thank you.

9 I'm going to put a paperclip on this, though.

10 BY MS. BOSTIC:

11 Q Now, Mr. Adams, do you remember when you were discussing
12 and writing out this constitution that I showed you?

13 A Yeah.

14 Q Do you -- do you remember when?

15 A 2008 or better.

16 Q Okay. Was that --

17 A Maybe. Maybe.

18 Q Was that the first time that you had discussed a
19 constitution with other people --

20 A No.

21 Q -- for Mackinac?

22 A No. Being friends with all -- normally most of the
23 natives up here, I know all -- all of the groups that were
24 people that deal with this. They all thought, okay,
25 (inaudible) White's group -- Mackinac Bands, they didn't

1 Q And now the descendants of these bands, do some of them
2 overlap with other tribes or other bands?

3 A Okay. In the 1870 roll -- okay, you got the 1907, 1908
4 roll, census records.

5 Then you got, okay, in the 1907, 1908 census records, you
6 have a number in there.

7 For example, my number, card number is 4015. I got it on
8 me if you wanted to see it. You know.

9 The reference number, if you're reading that going down
10 the census record, my number comes up, you know, 4015
11 underneath my grandmother's number.

12 Q Okay.

13 A You have a reference number in there. My number, 2415,
14 you know. So if you go to look, I think over in that case
15 over there I have that book, that 1870 roll. It just
16 shows you the numbers. You know, exactly the -- but my
17 number is 4015. My reference number is 2415. And that is
18 my grandmother's number.

19 Q Okay.

20 A Okay. To do how I did to find these people that belonged
21 to the Mackinac is like I just give you their number to
22 prove that my grandmother was my grandmother. I got a
23 copy of her birth certificate. That's how I did the
24 enrollment that you got a copy of on all people that I did
25 -- I think it was four hundred and some people that I did.

1 under the treaties with any other groups?
2 Do you have any competing groups that say they're the
3 Mackinac group?
4 A No. There's Mackinac Bands out there. They tried to
5 claim everything, and we try to claim everything. There's
6 a dispute among us or been a dispute all -- all these
7 years so --
8 Q And has there ever been any, if you know, like blood
9 relationships between leadership in the Mackinac Tribe --
10 or I should say membership in the Mackinac Tribe and
11 membership in the Mackinac Bands?
12 Are -- is there blood relation?
13 A No.
14 Q Does Darryl --
15 A I did -- all I did was the membership that people belong
16 to the word Mackinac -- not Mackinac Bands. That's
17 different. Different groups. Different people.
18 Q Now, you're not related to anybody in the Mackinac Bands?
19 A No.
20 Q But is anybody in the Mackinac Tribe related to the
21 Mackinac Bands?
22 A Well, when I did the enrollment, I did a lot of my first
23 cousins, you know, called them, talked to them. You can
24 belong to as many tribes as you want, but only one
25 federally recognized tribe.

1 Q Does the Mackinac Tribe have or attend like pow wows?
2 A We have pow wows. We have fall gatherings. We have
3 everything that Grand Traverse has or Petoskey or Sault
4 Tribe or anything. We have all of that.
5 Q And are those kinds of things like culturally distinct to
6 Ottawa people?
7 A Yes.
8 Q Okay. And do you know if your -- if your parents and
9 grandparents did things like go to a pow wow or have
10 seasonal celebrations?
11 A That I can't answer you.
12 Q Okay. So you probably couldn't answer about your
13 grandparents either.
14 A No.
15 Q But to your knowledge, has the people who are now the
16 Mackinac Tribe, have they always felt themselves to be
17 distinct?
18 A Absolutely. They're Indians.
19 Q Okay.
20 A No.
21 MS. BOSTIC: Those are all of the questions that
22 I have for you.
23 THE COURT: You need to follow up with --
24 MS. BOSTIC: Oh, I'm sorry. Yes.
25 THE COURT: -- foundation admission.

1 move to admit this as Defendant's D, Exhibit D. It's the
2 -- it's an affidavit of Mr. Barry Wallace Adams.

3 MR. SYLVAIN: No objection.

4 THE COURT: The Court will receive D.

5 (At 1:27 p.m., DX D admitted)

6 MS. BOSTIC: Thank you.

7 Okay. Those are all the questions I have for
8 you on Direct, Mr. Adams.

9 THE WITNESS: Am I done?

10 THE COURT: Nope.

11 MR. SYLVAIN: No.

12 MS. BOSTIC: No. Not yet. He'll ask questions
13 first.

14 THE WITNESS: Oh, okay.

15 CROSS-EXAMINATION

16 BY MR. SYLVAIN:

17 Q So the declaration of independence and constitution, when
18 was that put into effect? When was that made valid?

19 A I don't remember the date we filed with the Secretary of
20 Interior. After we got it done, we did file that with the
21 Secretary of Interior.

22 Q Okay. Was it around 2008?

23 A I -- I think it -- I think that's about the time. Well,
24 it would have to be close because once we got it done, we
25 filed it.

1 Q Okay. Now, have you ever been a member of the Sault
2 Tribe?
3 A Yes. I am a member of Sault Tribe.
4 Q Okay. You currently are?
5 A I beg your pardon?
6 Q You currently are a member?
7 A Yes.
8 Q Okay. And you mention that you and Darryl Brown put
9 together the Mackinac Tribe here due to a dispute with the
10 funds from the Sault Tribe?
11 A No. When the -- when the tribes got their money --
12 Q Um-hum.
13 A Okay. Handed out the land claim money.
14 Q Yeah.
15 A Okay. There was a breakdown of the money. I have a copy
16 of it. But, okay. The Sault -- the Sault Tribe got \$5.2
17 million for the Sault Tribe.
18 Q Um-hum.
19 A Okay. Since the Sault Tribe took in the Mackinac, they
20 got the Mackinac money, which was 14.7 million.
21 Q Okay.
22 A Okay.
23 Q Now, at the time you were a member of the Sault Tribe when
24 that occurred, is that correct?
25 A I'm also deaf, so you have to --

1 Q Could you describe how you guys went out and enrolled
2 people?

3 Well, do you recall what year it was?

4 A Well, during the holidays we would go up to Garden. There
5 was always something going on. You know, they had their
6 -- the -- over here we got the, you know -- my mind went
7 blank. Just a minute.

8 At the pow pow.

9 Q Okay.

10 A Okay. You know, they got them all over the place. We go
11 to the pow wows or anything that's going on, meet the
12 people, meet people.

13 Q Um-hum.

14 A You know, see where they're from. They're from Traverse
15 or Little Traverse or, you know.

16 Q Did you guys like set up a booth or something?

17 A Yeah.

18 Q Okay.

19 A And I had the genealogy records with me to prove -- go
20 through them, the numbers, all of the federal register
21 numbers.

22 Q Okay.

23 A You know.

24 Q And these people that you would sign up at the pow wows,
25 they weren't necessarily family members of yours or

1 distant relatives?

2 A No. No. Anybody.

3 Q Anybody? Okay.

4 And do you recall, roughly, when you first started this

5 endeavor?

6 A When the Sault Tribe closed their rolls --

7 Q Okay.

8 A -- that's when I started.

9 Q You said that was like the '80s, '90s? I thought I would

10 be specific. Just the decade.

11 A I can't remember the date. You know, I don't -- offhand I

12 can't remember the date.

13 Q Okay. Before today, though?

14 A I beg your pardon?

15 Q Before today when the rolls were closed?

16 A I don't know exactly when they closed the rolls.

17 Q Okay.

18 A For example, okay, they made -- they passed their

19 resolution, the Sault Tribe, that they would not interfere

20 with the Mackinac. That's what they just did last year.

21 They put it on the board, okay, when they got theirselves

22 involved in Joe's case. They got their -- they put --

23 they had another resolution and rescinded helping the

24 Mackinac. That's based on the Sault Tribe don't own this

25 land. We do. The Mackinac owns this land, ceded area.

1 Q Okay.

2 A Whatever is left. You know.

3 Q Do know if Joe's a member of the -- if the Defendant is a
4 member of the Sault Tribe?

5 A As far as I know, he's not.

6 Q Okay. And do you know -- you mentioned earlier you had
7 about 400 Mackinac Tribe members. Is that an accurate
8 number?

9 A Pretty close. Four sixty-eight maybe. That's the number
10 I have on the computer.

11 Q Okay.

12 A I got the -- I got the -- whoever I, you know, enrolled.

13 Q Do you know if any of those other roughly 400 people are
14 members of Sault Tribe, Brimley, Odawa, or anything like
15 that?

16 A What I tried to do -- well, okay. When I did this sheet
17 on the enrollment --

18 Q Um-hum.

19 A Okay. If they -- if they wanted to be a member, is I put
20 Sault Tribe, Mackinac. I identified who they were.

21 Q Okay. So you, through the enrollment process that you
22 made, you would have them identify the tribe that they're
23 currently with?

24 A I mean, I found out who they were. You know, once I found
25 out who they were, you know, if they're Sault Tribe

1 Q Okay.

2 A That's -- that's when it started. Where is our people?

3 Q When did you start issuing hunting and fishing licenses?

4 A I don't know. Since you say it, I don't know if you know

5 Richard Sterk, okay, from St. Ignace here. Okay. His

6 son, Ricky Sterk, okay --

7 Q Um-hum.

8 A They own a big -- they're building erectors down below.

9 You know, I talked to Richard Sterk, and I talked to his

10 son, and told them that we ought to, you know, do our own

11 cards. So Ricky bought the little side card printer.

12 Q Okay. Now, at some point did you also work with a David

13 Hanson regarding --

14 A Yes. David -- Bobby Hanson was the chairman of the

15 conservation department. That's his brother.

16 Q Okay. And when you say chairman of the conservation

17 department --

18 A Chairman of the conservation. Okay. I appointed, when I

19 was chairman, Joe Caswell to -- chairman of the

20 conservation. Bobby passed on. Okay. David, his

21 brother, Bobby's brother, and I, we are the ones that did

22 the fishing case out there on Green Island out there.

23 You know, so what the Sault Tribe did, okay. Everybody

24 was there. You know, the sheriff departments and all of

25 that stuff was there, is that when we put the boat out --

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MR. SYLVAIN: People's 1. Yes.

THE COURT: Thank you. I'm so sorry.

(At 1:44 p.m., PX#1 admitted)

BY MR. SYLVAIN:

Q Now, back in '78 when there was the money issue, the \$14 million with the Sault Tribe, and you, Darryl, and Mr. Victor Visnaw went out, were you chairman at that time?

A Not really. I was there early is what you're saying is --

Q Like initially when you guys were --

A Darryl was the first chairman.

Q Okay.

A You know, then I was the vice chairman.

Q So you were vice chairman starting off?

A Yeah. Darryl left. I became the chairman. And then I appointed Terry Ranguette from Garden vice chairman.

Q And currently you are chairman?

A No.

Q No? Okay.

A What happened -- do you want to know what happened there?

Q I believe --

A Mike Lowery came to me. He said, Barry, at your age, would you step down? I said, "If that's what you want." I did.

Q Hum.

A Okay. After Mike was done with Jewells and all of that,

1 it was Darryl. He sent me -- he resigned as chairman.

2 (Inaudible) worse things.

3 Q So you currently stepped down as chairman?

4 A Yeah. I stepped down. We appointed Terry Ranguette, Mike
5 Lowery, you know, as chairmen. Terry Ranguette was
6 chairman. I mean, vice chairman, and his nephew was
7 chairman.

8 So when we got done with the Court, Jewells, the Court
9 case there and everything, they didn't want nothing to do
10 with it. They didn't want to deal with Lisa Powers was
11 one thing. And he sent me a letter, and he resigned.

12 Q Okay.

13 A So that's all I know.

14 Q Okay. So the decisions of chairman is based off of
15 appointment or --

16 A I beg your pardon?

17 Q When somebody is being put into the seat of chairman, is
18 that based off of appointment to the position, or do
19 people vote on it?

20 A Appointment.

21 Q By appointment? Okay.

22 And who are the ones that do the appointment?

23 A I beg your pardon?

24 Q Who are the ones that do the appointment?

25 A Where are they?

1 A No. Who are they?
2 Like what positions or people make the appointment?
3 A Well, they call for a meeting, any type of a meeting, you
4 know.
5 One of the things with Lowery's stuff, we filed for the --
6 that 1934 reorganization act to have the whole membership
7 vote on it, vote on stuff. You know, and we lost that one
8 in, you know --
9 Q Now, are --
10 A It wasn't that we didn't try.
11 Q Now, were you related to Mr. Darryl Brown or Victor
12 Visnaw?
13 A Not Victor. Darryl Brown, yes. He would be a cousin.
14 Q He would be your cousin?
15 Now, it looks like there's an affidavit by yourself, Barry
16 Adams, that was put together.
17 Is that accurate?
18 A Is that the one we just read, or you just read?
19 Q I think the Judge is --
20 A Okay. The Judge. Yes. Yes.
21 Q All right.
22 A Yes.
23 THE COURT: Would you like to look at it?
24 THE WITNESS: I'd like to have a copy of it.
25 THE COURT: He might have some questions. Okay?

1 Q No. I apologize. I probably didn't say it.
2 Does the Mackinac Tribe have a tribal court?
3 A No.
4 Q No? Okay.
5 A We tried to go there. This has not been simple for us.
6 Q Now, you mentioned --
7 A It has not been simple.
8 Q Yep. You mentioned that you guys also have natural
9 resource regulations.
10 A Yes.
11 Q Okay. And --
12 A Rules and regulations. Yes.
13 Q Do you recall when the regulations -- when the Mackinac
14 Tribe made those natural resource regulations?
15 A It's about -- about the time we started it about the time
16 that we did that fishing case, Bobby Hanson and I.
17 Q Okay. The one with the BIA?
18 A No.
19 Q The one with the Bureau of Indian Affairs?
20 A Where we had the constitution and --
21 Q Um-hum.
22 A -- the independence, we did that. And then we did the
23 fishing and hunting and regulations, you know, Department
24 of Natural Resources, you know.
25 We also had people that we put together, would answer the

1 phone if somebody got a ticket or something.

2 THE DEFENDANT: It's 2009.

3 MS. BOSTIC: Okay.

4 THE DEFENDANT: Then it was reviewed in 2014.

5 MS. BOSTIC: Okay. Thank you.

6 BY MR. SYLVAIN:

7 Q And I think you mentioned that there was also a -- do you
8 -- does the Mackinac Tribe have a conservation officer or
9 officers?

10 A Not -- I don't know now because I haven't talked to
11 anybody in about -- when I see people, you know, I haven't
12 done anything in about three years. What happens, so, you
13 know.

14 Q Okay. That's understandable.

15 When you were active, did you guys have hunting and
16 fishing conservation officers with the Mackinac Tribe?

17 A We had people assigned, you know. Didn't have a badge or
18 nothing. But we assigned them.

19 Q Okay. And what were some of the things that the tribe
20 would do if somebody violated the regulations?

21 A Same thing they would do to me.

22 Q Okay. What's that?

23 A Hit me with about a \$500 fine.

24 Q Okay. So there would be a --

25 A And that got their attention.

1 Q -- \$500 fine?

2 I'm sorry.

3 A That got their attention.

4 Q Okay. And that was issued by -- do you recall who the
5 conservation officers were for the Mackinac Tribe?

6 A Not right off hand.

7 Q Okay. Were they members of the Mackinac Tribe?

8 A Yes.

9 Q Okay. Do you know if they were also members of other
10 tribes?

11 A Not that I know of. They weren't Sault Tribe members or
12 anything. They were, as far as I remember, they were
13 Mackinac.

14 Q Okay. Now, what would happen if somebody didn't bother to
15 pay that \$500 fine?

16 A Well, couldn't put them in jail so you'd beat their ass on
17 that.

18 Q Okay. I appreciate your honesty.

19 A I mean, that's the only thing they could do if you wanted
20 to collect your fine.

21 I sound kind of crude. I understand that.

22 Q Nope. I appreciate your honesty.

23 Now, were you a member on the *Mackinac Tribe v Sally*
24 *Jewell, U.S. Secretary of the Interior*?

25 A Yes.

1 hard?

2 Was it hard to find Mackinac people?

3 A Yes.

4 Q What did you do to --

5 A Well, for example, okay, you take your census record.

6 They'll come and talk to you and say, "This is my
7 grandmother."

8 Well, prove it to me. Who's -- you know, that's all I
9 asked. You know. That's what I did. It took me years
10 going places all over the state of Michigan, all over the
11 place to prove that is his grandmother.

12 Q Did you know -- did you find people who didn't even know
13 that they were Mackinac?

14 A Yes.

15 Q Do you know -- how did they forget such a thing?

16 A Well, they got so many of the same names out there, you
17 don't know if you're getting the right person or not.

18 Q Did you find people who had been adopted out by non-Indian
19 families?

20 A I -- before I received letters from New York to me to
21 answer some of those questions, but that's been quite a
22 long time ago.

23 Q And what about people who had gone -- been taken to
24 boarding schools? Did you find those people?

25 A Well, I have a complete list of all people that was in the

1 Q Um-hum.

2 A Okay. The other tribes, you know, it belongs to CORA.

3 Q Um-hum.

4 A Okay. How many times have I sent and got letters to the
5 Attorney General's Office, all of those people, even
6 Little Traverse, Grand Traverse. They don't want you part
7 of it because you're going to lose their federal money.
8 That's exactly what that's about.

9 Q Yeah.

10 A It's today. It's the same thing today.

11 Q Now, throughout -- so let me ask you, and if you know, if
12 you can answer this, before the other tribes in Michigan
13 were federally recognized, did Indian people hunt and
14 fish?

15 A Yes. Yes.

16 Q Did they hunt and fish like the treaty described?
17 If you know. I know it's pretty hard.

18 A I don't know how they do, you know, what -- look at the
19 people that came here. Okay. What I'm talking about is
20 the French, the Germans, and all of those people that was
21 here a long time before what we got today. You know, that
22 really helped the Indians also. You know, they don't talk
23 about those people. So good people, you know. All we got
24 is what we got today. You know.

25 Q So on the issued tickets, do you know if -- did -- did the

1 Mackinac Tribe conservation officers issue tickets? Did
2 they have to issue their amended tickets?

3 A No. We never issued any.

4 Q Okay. So nobody ever refused to pay one?

5 A No.

6 Q Okay. And those are all the questions I --

7 A I thought --

8 Q -- have for you.

9 A I thought you was asking something different.

10 Q Oh. So --

11 A I mean, we wouldn't have sent somebody out to beat them
12 up, no. But --

13 Q We won't hold you to it, Mr. Adams.

14 A Okay.

15 MS. BOSTIC: Here is this back.

16 THE COURT: Thank you.

17 MS. BOSTIC: So those are all of the questions I
18 have for you on Redirect.

19 RE-CROSS-EXAMINATION

20 BY MR. SYLVAIN:

21 Q Mr. Adams, have you ever hunt or fished under a Sault
22 Tribe hunting and fishing license?

23 A Yes.

24 Q Okay. And I believe you indicated earlier that the
25 *Mackinac Tribe versus Sally Jewell* case, that's your

1 A I'm based out of the Newberry office.

2 Q What areas -- I don't know if I'd use the word patrol or
3 monitor.

4 A I primary focus on the Upper Peninsula.

5 Q Okay. The entire Upper Peninsula or just like eastern
6 half or --

7 A My -- my work area is the Upper Peninsula. Most of my
8 patrols take part in the eastern Upper Peninsula, though.

9 Q Okay. And how many -- how long have you been a
10 conservation officer?

11 A Eight years.

12 Q Are you familiar with the -- with a, or multiple, Mackinac
13 Tribes?

14 A I am.

15 Q How many are you familiar with?

16 A I know of at least one. I believe there are multiple,
17 though.

18 Q Okay. In your field of work, have you encountered any
19 conservation officers from any Mackinac Tribe?

20 A I have not.

21 Q Have you encountered any vehicles indicating that they are
22 members of or law enforcement related to the Mackinac
23 Tribe?

24 A I have not.

25 Q Have you encountered anybody who has been cited by the

1 Mackinac Tribe for violating any of their hunting or
2 fishing regulations?

3 A I have not.

4 Q Are you aware of any courts or anything like that
5 regarding the Mackinac Tribe?

6 A I am not.

7 MR. SYLVAIN: Nothing further. Thank you.

8 MS. BOSTIC: Thank you.

9 CROSS-EXAMINATION

10 BY MS. BOSTIC:

11 Q Officer Busken?

12 A Yes, ma'am.

13 Q So you said that you were familiar with multiple Mackinac
14 groups.

15 Is that right?

16 A I've -- I've heard of -- that there was more than one.
17 Yes.

18 Q But you're actually familiar with one?

19 A I'd say so. Yes.

20 Q Which one?

21 A I've heard them called the Mackinac Band, Mackinac Tribe.

22 Q Okay.

23 A It's referred to a -- this same group, essentially.

24 Q Is -- is that the group that Mr. Caswell belongs to, to
25 your knowledge?

1 A To my knowledge that is the group he claims to belong to.
2 Yes.

3 Q Okay. Now, do you know anything about Mr. Caswell's
4 Indian ancestry?

5 A I do not. No.

6 Q Do you know anything about the Indian ancestry of the
7 other people who are within the Mackinac Tribe?

8 A I do not.

9 Q Okay. You don't know anything about tribal organization
10 or structures, do you?

11 A I'm familiar with some of the other tribal governments
12 but --

13 Q Okay.

14 A -- not in depth.

15 Q And some of those other governments, they -- do they have
16 conservation officers?

17 A They do.

18 Q Do they have conservation departments?

19 A They do.

20 Q Do they have conservation regulations?

21 A They do.

22 Q Do they have casinos?

23 A I believe most of them do. Yes.

24 Q Now, this might be speculation.
25 Do they have money coming in from the casino?

1 A I -- I don't know. I couldn't comment on their
2 profitability.

3 Q But it -- well, and I'm not asking how much, but would
4 that be income?

5 Do you think a tribe has income if they have a casino?

6 MR. SYLVAIN: Objection. Speculation.

7 THE COURT: Sustained.

8 MS. BOSTIC: Okay.

9 BY MS. BOSTIC:

10 Q So do you know whether or not having conservation officers
11 is a defining characteristic of a -- of historic tribes?

12 A I do not know if that's a defining characteristic.

13 MS. BOSTIC: Okay. Thank you. That's all.

14 MR. SYLVAIN: Very briefly.

15 REDIRECT EXAMINATION

16 BY MR. SYLVAIN:

17 Q You mention that you've encountered other tribal
18 governments and conservation officers?

19 A That's correct.

20 Q What other tribal governments have you encountered with
21 conservation officers?

22 A Sault Ste. Marie --

23 Q Okay.

24 A -- Chippewa Indians, Bay Mills based out of Brimley.

25 Down state there's Grand Traverse Band, Little Traverse

1 Band, and Little River Band. I've encountered law
2 enforcement officers for all of those tribes.

3 Q Okay. And I might be asking a question that goes outside
4 the scope of your knowledge.

5 Do you know of those tribes, how they consist of their
6 members, if they're members of Mackinac Tribe ancestrally
7 or anything like that?

8 A Could -- could you repeat that question for me?

9 Q In regards to like the Sault Tribe, Brimley, or any of the
10 other tribes that you just mentioned, do you know if they
11 consist of other members of Mackinac Tribe ancestrally?

12 A I believe -- if I understand your question correctly, I
13 believe they're only members of the tribe that they are
14 in.

15 MR. SYLVAIN: Okay. No further questions.

16 MS. BOSTIC: Nothing further.

17 THE COURT: Thank you, sir. You can step down.

18 (At 2:23 p.m., Witness excused)

19 MR. SYLVAIN: No further witnesses.

20 THE COURT: So for closing, I propose we do that
21 in written form.

22 As the Defendant is the moving party, how long
23 will you need to prepare your closing argument?

24 MS. BOSTIC: I'm thinking of my schedule, and I
25 had 45 days?

EXHIBIT J

Affidavit of Barry Adams

3/8/21

STATE OF MICHIGAN COURT OF APPEALS

In Re: **PEOPLE OF THE STATE OF MICHIGAN**
Plaintiff- Appellee

v.

WALTER JOSEPH CASWELL
Defendant-Appellant

No. 353537

AFFIDAVIT OF BARRY WALLACE ADAMS



To the honorable Court and the People of Michigan, my name is Barry Wallace Adams and I wish to enter this letter into the record of the above-referenced action as my name and my person is involved in this case. There are several points which I wish to discuss in an effort to clarify what I see as misdirection by the prosecutors and the intervening parties. All statements herein are based on my personal knowledge.

1. I am the Chair of the Mackinac Tribe of the Odawa and Ojibway
2. I have decades of effort in our work to re-establish the Tribe as a collective body for the indigenous bands recognized historically (1870 Field Notes) as Bands 11-17 in the Upper Peninsula
3. The enrollment of the so-called "Modern Tribe" is described in the attachment (Attachment A) which I submitted to the Interior Secretary in response to a request in Mackinac Tribe V Jewell, 829 F3rd 754, 755 (2016);
4. The Tribal record of the Mackinac becomes especially cloudy in the 1990s when the Indian Claims Commission established a settlement for the Mackinac People. This is because the State of Michigan arbitrarily allowed the comingling of settlement funds earmarked for the Mackinaw Tribal Members with the Sault St-Marie Tribe. Instead of acting as fiduciary trustees of the Mackinac Tribe, the Sault St-Marie Tribe arbitrarily enrolled members of the original bands, enrolling some but not others, and spent the money designated for Mackinac Tribal members on money-losing investments.
5. The corporate veil that obscured the deceptive practices of the Sault St. Marie Tribal Principals has been revealed in a separate criminal case involving the Sault Tribe subsidiaries and partnerships, Buchwald Capital Advisors, LLC v Papas (Greektown Holdings).
6. In consequence of the forgoing, (Parts 4,5) I subscribe to the rebuttal of the Stephen Cooley, J.,D., PLLC, Attorney for the Defendant, who argues that "...[Defendant] and the prosecution are the only necessary parties and that the Sault Tribe has no standing to participate in a state criminal prosecution and their interest in this case is purely financial.
7. A substantial record has already been presented at the circuit court level. Tribal principals have spent thousands of hours and have spent about a hundred thousand dollars in legal and research costs building the historic and genealogical record. The Mackinac Genealogical and Historic Society have boxes of information that could resolve any of the District Court's questions about the clear bright line between the current Mackinac Tribe and the Treaty signatories of 1836 and 1855.
8. I would like written interrogatories asking specific questions that will satisfy the Court's questions regarding the historical, cultural and genealogical ties between the current Mackinac Tribe and the Treaty signatories of 1836 and 1855. Having questions posed in writing helps to focus our research through the large archive in our possession. And, with all due respect, written questions will help the Court and the prosecutors to "sharpen their minds" and clarify what, exactly, they do not understand about our status.

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9. The Court presents an arbitrary prima facie argument for “proving” that the Mackinac Tribe is not a “signatory” to the relevant treaties. The court: “signatory tribe”...is...reserved for the historical tribe whose representatives actually signed a treaty.” Then “A modern-day tribe that has established its rights to exercise the treaty rights of a signatory tribe is often referred to as a “Treaty Tribe”. ...In accordance with this usage, the Mackinac Tribe is not a signatory to 1836 and 1855 treaties, even though some of its members appear to be the descendants of a signatory tribe.” Is the court saying that because the Mackinac cannot produce a 200 year-old Indian who actually signed a treaty that they are not “treaty Indians”?
10. The issue of Mackinac being a **successor in treaty interest** is raised by the Court. The court claims that merely being direct descendants of treaty signatories does not convey tribal rights, that the tribe has to be a “political successor” be demonstrating “some defining characteristic of the original tribe”. If the court is saying that the Mackinac has not exercised its treaty responsibilities in a long and traditional manner, I can only point to this present case. The Tribe exercised its treaty rights by issuing a spear-fishing license to a tribal member. Yet now we have the State of Michigan arbitrarily supervening the sovereign exercise of the tribe and its courts are saying “see...this proves that the tribe has no authority”. Also, the current Tribe operates cultural center, advocates for members by intervening in lawsuits that affect the embezzlement of funds, and maintains property interests on behalf of the tribe. And until the Sault St Marie Tribe assumed service interests under the auspices of the State and without the support of the Tribe, the Mackinac provided services to its members.
11. **Treaty Rights and Tribal Recognition.** It appears that both the Defendant and the Prosecutors agree on the following principle. Both parties assert that federal recognition has no bearing on treaty rights of a tribe and its tribal members. Nevertheless, in a federalist sense, the recognition of a tribe arises from the “consent of the governed”. In this case, while the treaty rights of the defendant may be an organic right held apart from the authority of the Tribe, without the defendant’s identity as a member of the Tribe no treaty rights could inhere to him. A 1/64th Blood Quantum is hardly qualifying of any indigenous rights without the official inclusion of the defendant in a tribe that claims in genera an historic treaty right.
12. **The Consent of the Governed.** The attitude of the Court is anti-federalist in a manner that reveals a cultural bias on the part of the Court. The People of the Ains Bands who are traditionally Mackinac people (see the Mackinac Tribal enrollment, attachment B) choose to be recognized as the Mackinac Tribe. It is a foundational principle of both U.S. textual and English common law that the power and authority of all government is derived from the consent of the governed. In a federalist context, the court cannot distinguish the individual rights obtained by treaty from the authority derived from those treaty-vested persons who willingly assign authority to a Tribe with whom they culturally and historically identify. While I appreciate the courts position that “federal recognition” has no bearing on treaty rights, I disagree that treaty rights do not have a bearing on federal recognition—especially when the individual tribal member vest his treaty rights in the authority of the Tribe to issue licenses and regulate his use of resources.
13. **Who Controls the Tribe?** The Following is from Mackinac V. Jewell: “Between 1785 and 1855, the United States entered into numerous treaties with a group of Native Americans known as the Ottawa and the Chippewa Nation. These people were located in Michigan and comprised several autonomous tribes linked by similar culture and shared language—of which the Mackinac were one. For ease of administrability, the government referred to and negotiated with these tribes collectively as the “Ottawa and Chippewa Nation of Indians” An 1836 Treaty, however, singled out the Mackinac Tribe (or Michilimackinac) to create a temporary 5 year reservation for its bands...Two decades later, the federal government

encountered resistance when it tried to negotiate with this group of bands. The various bands insisted on negotiating independently and further demand that the government dissolve the Ottawa and Chippewa Nation. As part of the 1855 Treaty, the government agreed to dissolve the Nation." Twenty years after that the Secretary of the Interior terminated all federal services to the Mackinac. In 2011 when the Mackinac groups under the Ainese Band sought to consolidate and hold elections resistance to the tribe arose and commonly cited the dissolution of the Nation in the mid 1800s. Yet, the "Nation" was a bureaucratic convenience, and its dissolution came from the assertion of self-determination by the Bands who comprised it. So who controls the Tribe and its identity? The original bands who are heirs to the historic Treaties are asserting THEIR right to that identity.

Barry W Adams

BARRY W ADAMS
N6427 BLACK RIVER RD
NAUBINWAY MI 49762
PH (906)477-6619

FUTHER YOUR AFFIANT SAYETH NAUGHT.

STATE OF MICHIGAN)
) ss.
COUNTY OF MACKINAC)

SUBSCRIBED and SWORN this 8TH day of MARCH 2021.

Diane M. Albright

Notary public in and for the State of Michigan
My Commission Expires: MARCH 3, 2026

DIANE M. ALBRIGHT
NOTARY PUBLIC - STATE OF MICHIGAN
MACKINAC COUNTY
My commission expires March 3, 2026
Acting in the County of Mackinac



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**Prepared by Mackinac Genealogy Native and
Ethno History Association
Enrollment of the Mackinac Band. Bands 15&16**

**AKA
Ainse Band**

FILED
MAR 10 2021
92nd District Court
ST. IGNACE, MI 49781

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5 Attachment



**Mackinac Genealogy
Native and Ethno Historical Association**

6427 Black River Rd.
Naubinway, MI 49762
1-906-477-6619

12-28-2011

Nonprofit Corporation Information Update

(1) Describe the purpose and activities of the corporation during the years 2007 2008 2009 2010 2011 thru 2016 covered by this report

Preserve the Histories, Culture and Sacred Traditions of the Native Indigenous Odawa and Ojibwa people and the Ethno American Immigrants that migrated within the Mackinac Straights area Upper and Lower Peninsula and to assist those researching their Native and personal ancestral backgrounds. Create a Library of Written and Oral Histories of the Mackinac Odawa and Ojibwa Indians and Ethno people. By helping the Mackinac Tribe of Odawa and Ojibwa Indians Compiling their History and Historical Documents.

Establish a cooperative working relationship between the Mackinac Tribe of Odawa and Ojibwa Indians and all other Indigenous Tribes and organizations within the Mackinac Straits Upper and Lower Peninsula and the United States Governmental Authorities.

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TREATY LAND REGARDING MACKINAC

MACKINAC

1795 * 1807 * 1820 * 1821 * 1836 * 1855

Prepared 2013 For

Michael Walleri

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Description of Files

Included on this CD are the following files:

INTRO. THIS FILE.

Durant 1908.PDF, a transcription of the Durant 1908 census roll.

Durant SP, PDF, a transcription of the Durant supplemental roll.

Durant10 PDF a transcription of the final payment roll.

Reports.PDF, Miscellaneous reports from Durant and commissioner of Indian Affairs relating To the creation of these rolls and payment of the award including the lists of mixed-blood Members on the 1870 roll whose descendants should not be paid.

Otchip70.PDF, a transcription of the 1870 Ottawa and Chippewa Annuity payment roll.

I've also included my previous censuses and documents

1836MD.,1836 Michigan Ottawa and Chippewa mixed- blood census.

1910 Chip.PDF, 1910 Chippewa of Lake Superior census.

Cadman.PDF,1895 Potawatomi census (Cadman Roll)

Saginaw.PDF,1864 Chippewa of Saginaw Annuity payment Roll.

OTCHIP57.pdf,1857 Michigan Ottawa and Chippewa Annuity payment Roll.

Taggart.PDF,1904 Potawatomi census (Taggart Roll)

Mt.Pleas1.PDF Mt. Pleasant Indian school List (1920-23, 1925)

Mt. Pleas2 PDF, Mt. Pleasant Indian school Master List

Otchip1961, PDF, 1861 Michigan Ottawa and Chippewa Annuity Payment Roll.

Otchip1965PDF, 1865 Michigan Ottawa and Chippewa Annuity Payment Roll.

A copy of Adobe Reader (Microsoft Windows version) witch is needed to view, search, and

Print these documents is also included:

RP500ENU, the latest version of Adobe Acrobat reader (Version 5)

A Note about this Transcriptions

The Durant 1908 census roll and supplemental roll were transcribed from

Attachment (4)

I Barry W Adams as being a Native American Indian Genealogist 40 years of Experience and with the help of Genealogist Victor Visnaw also an Native American Indian with also 40 years of Experience. This is a complete list of all sources used in verifying enrollment applications for the Mackinac Tribe of Odawa and Ojibwa Indians (1) United States of America and (2) the country of Canada

Doing Genealogy in United States Genealogist fine out and understands that the United States is so young there first census records were taken in the USA was 1790, Records show late 1500's early 1600's the State of Michigan was the fur trading capital of the world St. Ignace Michigan straits of Mackinac. Mackinac Tribe of Odawa and Ojibwa Indians requested of the Mackinac Genealogy Association to verify the genealogy and applications for enrollment for their Tribe. We researched all archives of the State of Michigan and all counties of Michigan Birth, Marriages, and All Indian censuses Records that was available for our research. Most all Genealogy and Ancestral Records of Michigan stops only records available at that time period early 1800's were letters sent received from the Indian agents to the War Department (Secretary of Interior) these Records are available at the National Archives and Records Administration. Microfilm Publication Record Group 75 Michigan Indians. This was the country of Canada until the end of the war of 1812 which became the country of the United States. We also found out that most of all Genealogy and Ancestral Records could be researched and provided by the Country of Canada Archives.

Canada

For the past 20 years I've used the resources of Canada (1) Archives of Quebec (2) French translator David Agar of the Archives of Quebec and Generalist Pam Tessier 204 Ivanhoe Drive North Bay, ON B1A 3B8 Phone# 705 478 7436. I have worked personally with MS Tessier and her genealogy group Penetanguishene Genealogy and History Group she has provided intensive verification and documentation from there data base verifying the history and genealogy of the person we requested. (3) I have also used OMFRA Ontario Metis Family Records Center Data Base of Metis and First Nations which goes back to the Fur Traders. This data base I have researched numerous times with the help of Lynn Haines Administrator OMFRC RR5 1314 Hybla Rd. Bancroft, Ontario K0L 1C0.

See other supporting documents.

Other supporting Genealogy documents and Historical document used
Verifying Enrollment Applications and are the possession of the Mackinac
Genealogy Association

1. Collection of The State Historical Society of Wisconsin Birth and Marriages records 1695 thru 1821 (6 Books)
2. Mackinac County, Michigan Land Patents Database 1807 thru 1907
3. The Wisconsin Crooles, Birth and marriages records 1695 thru 1907
4. The identity of 19th century Ottawa emigrants to Manitoulin Island 18th century
5. St. Joseph Birth and Marriages records 1835 thru 1880
6. St. Ann's Church Records of Detroit
7. St. Ann's Church Records of Mackinac Island
8. Index Records St. Ann's Detroit Birth and Marriages, Church Records by the Traveling Priest's (Michigan and Wisconsin)
9. St Joseph Mission and Holy family Catholic Church records LaPoint Wisconsin Birth and Marriages records
10. Indian Census records Manitoulin Island 1842 thru 1852
11. Lyons records (University of Michigan) Index List claimants and Maps of area ceded in the Treaty of 1837. Alphabetical arrangement of claims by Family
12. National Archives and Records Administration. MGA has a copy of 54 microfilms, Record group 75 Letter sent letters received 1828 thru 1880
13. National Archives and Records Administration. Microfilm M-2039 1 thru 4 Field Notes census records Family Index Bands 11 thru 17 listed as Mackinac
14. History of the Diocese of Sault Ste. Marie and Marquette Vol 1 thru 3 by Rev. Antoine Ivan Rezer
15. History of the beginning of Michigan Names and Family Names History of the Mackinac Straits area Fur Trading Capital of the World. 9 Volumes called Rendezvous of the Straits by Timothy J Kent

Exclamatory, numbering system that was used to provide and assign enrollment number for the Mackinac Tribe of Odawa and Ojibwa Indians enrollment list.

The numbering system I used was the Horace Durant census Records, I used the reference number of the 1870 Indian census roll record called 1870 Durant Field Notes. Example my Federal enrollment Number referring to the Durant 1907- 1908 Census Record states my number is #4015 listed

under my Grandmother Grace Mellon. Also to the left of that number is a reference number and that number is listed as 24/15 this is the number that was used from the 1870 roll called the Field Notes. The 1870 Field Notes roll list all the family's (1) Head of House Hold (2) Who they married or marriages of head of house hold also a list of all children who they married and children not married, it also provides the roll number of there spouses and the enrollment numbers they were assigned. As there are 63 bands in the State of Michigan this is very important the United States. (Secretary of Interior) states the Mackinac Tribe consists of Bands 11 thru 17. The last number in the reference number is the Band number otherwise my reference number is 24/15, 15 is my Band number. This is how they separated other Bands from the Mackinac and where they were located in the State of Michigan.

Reason for this system I used I have no question the BIA will not certify the enrollment records of the Mackinac Tribe each person has a reference number and that reference tells what family and person the Applicant Genealogy refers to.

President
Mackinac Genealogy Native and Ethno History Association
501c3 Non Profit Origination

Barry W Adams
6427 Black River Rd
Naubinway, MI 49762
906-477-6619

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EXHIBIT K

Mackinac Tribe Constitution

The Mackinac Tribe
Of
Odawa and Ojibwa Indians
Ainse Band

DECLARATION OF INDEPENDENCE

TRIBAL CONSTITUTION

Articles and Principles



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11

DECLARATION OF INDEPENDENCE

We the People of the Mackinac Tribe of Anishinabe, Ainsé Band composed of the Odawa, the Ojibwa and Potawatomi and recognized as allied nations of the Three Fires, in order to secure our place in the family of nations, in order to secure our customs and culture, in order to advance our common heritage, in order to provide for the prosperity of all Mackinac Tribe citizens, in order to redress for past and present injustices done, in order to demonstrate our right to self-determination, in order to form our own independent and bilateral relations with all other nations, in order to honor our ancestors, in order to defend and preserve our birth right and our resources, to be passed on to our descendants, do hereby enact this Constitution.

Our Declaration of Independence and Constitution are the instruments for the assertion of our government to government status for the protection of our traditional ways and traditional authority and are absolutely essential for our protection of cultural identity and our physical survival.

Further, we the Mackinac Tribe of Anishinabe, composed of the Odawa, the Ojibwa, and Potawatomi, by any test or definition of a nation under international law, meet all historical criteria for government to government status of our nationhood, and for the establishment by this Constitution of our aboriginal rights to independence, sovereignty and occupation of our traditional homeland. These declarations are binding on all nations, especially on those nations demanding similar recognition for themselves of the aboriginal territory of the Mackinac Tribe of Anishinabe, composed of the Odawa, the Ojibwa and Potawatomi and recognized as the seven historical Mackinac Band(s) of the Mackinac Straits area, the northern Lower Peninsula and the north shore of Lake Michigan and Lake Huron.

Further, in order to proclaim our existence as a nation to other nations of the international family of nations and to preserve, nurture and provide the constituent particles, in whole, the traditional authority, along with the fundamental values and culture of the Mackinac Tribe of Odawa and Ojibwa and Potawatomi people.

We the Mackinac Tribe represented as a whole people and nation, have been delivered to the crossroads of our history, facing almost certain extinction as a unique people in the council of the People of the Three Fires, without the assertion and protection of our sovereign status and independent nationhood and internationally recognized rights to self-determination, survival, prosperity and cultural independence, do here by attest.

By virtue of birthright and through this Constitution, the traditional authorities of the Mackinac Tribe, with consent of the people, in exercise of our internationally recognized right to sovereignty, self-determination and by the powers granted to us by Gitchie Manidoo, the creator, do hereby assert and reaffirm unto ourselves and our posterity this Declaration of Independence and Constitution.

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3

CHAPTER ONE

Article 1

The Mackinac Tribe of Odawa and Ojibwa Indians/Ainse Band is comprised of the Signatory authorities, leadership and headman representatives of the families of the 1820, 1836 Treaty and the 1855 Treaty of the historical "Mackinac Band" 15 and 16 of Anishinabe; all those recognized by traditional authorities as Chiefs and Sub-Chiefs with or without current affiliations/residence with the existing (Bands) of the Three Fires of Odawa, Ojibwa and Potawatomi.

Principle 1

Citizens of the Mackinac Tribe of Odawa and Ojibwa Indians must possess some degree of Anishinabe ancestry and/or be adopted or recognized through traditionally recognized institutions; no specific "blood-quantum" is required for recognition of Mackinac Tribe citizenship.

Article 2

The Mackinac Tribe of Odawa and Ojibwa adheres to multi-citizenship but reserves the right to demand relinquishment of Mackinac Tribe citizenship in the event that the rights, responsibilities or allegiance of citizenship associated with another nation or Tribe conflict with the rights, responsibilities or allegiance associated with Mackinac Tribe citizenship.

Principle 2

All rights of Mackinac Tribe citizens, Bands 11 thru 17 elaborated and protected in this Constitution, shall never be invoked or affirmed as instruments to deny or abridge the same individual rights of others or to compromise the survival and prosperity of the Mackinac Tribe of Odawa and Ojibwa Nation

Article 3

In accordance with Regency International law and Internationally recognized rights to independence, self-determination and survival of nations, the Mackinac Tribe does not recognize and is not in any way under the authority of any laws, policies, procedures, agencies, "officials", agreements or structures imposed or recognized by any (past or present) colonizing powers, domestic or foreign nations or any "authorities" not selected or recognized by and through Mackinac Anishinabe authorities, institutions and cultural ways exclusively.

Principle 3

Unless otherwise provided in this Constitution, any agreements between the Mackinac Tribe of Odawa and Ojibwa and any other sovereign entities of Anishinabe Peoples, including other First Nations, shall have the form and substance of an international treaty. Treaties shall become an integral part of the "Supreme Law of the Nation" to which all Mackinac Tribe authorities and persons shall be bound, anything in Mackinac Tribe law or traditions to the contrary notwithstanding.

Article 4

The Mackinac Tribe of Odawa and Ojibwa Indians, also known as the "Ainse Band" 15 and 16 has never ceased to exist as its existence and right to exist does not depend upon recognition or non-recognition by any other sovereign entity or force. The Mackinac Tribe of Odawa and Ojibwa has continued to exist despite many attempts by colonizing powers at "non-recognition", "termination", extermination or imposition of colonial and domestic control, genocidal and non-Traditional laws, institutions, "Tribal officials" and "trustee relationships". The central purpose of the Mackinac Tribe is to guarantee and protect the survival, prosperity, identity, rights and culture of the Anishinabe People collectively and individually.

Principle 4

All members of the Mackinac Tribe are endowed by the Creator and as such become sanctioned and recognized by the Supreme law of Regency, to certain fundamental and internationally recognized human , civil rights and freedoms to include (and not to be limited to) the following: Freedom of Speech and Assembly; Freedom of/From Religion; Freedom of Association; Freedom of the Press; Freedom From Unreasonable and Illegal Search and Seizure of Property; Freedom to Lawfully Own, Sell and Bequeath Personal Property; Right of Due Process, Right to Appeal of Judicial Verdicts and Freedom From Double Jeopardy; Freedom From Any Discrimination Based on Gender, Age, Disability, Color, Blood-quantum, Sexual Orientation, Social Class, Religion, Political Affiliations or Family/Clan/Band Affiliations; Freedom to Keep and Bear Arms (for hunting, personal protection and militia responsibilities); Freedom to Petition for Redress of Grievances; Right to Privacy; Right to Confront and Answer Accusers and Accusations.

Article 5

Nothing in this Constitution shall impair or diminish the inherent right of The Mackinac Tribe and Anishinabe People to sovereignty, independence and self-determination. The responsible authorities of the Mackinac Tribe may waive or limit its right to self-determination only by virtue of its laws, enacted in pursuance of this Constitution, to authorize suits in tort or in contracts and/or by virtue of its treaties with other nations.

Principle 5

The Mackinac Tribe shall adhere to and preserve and protect our citizens survival, prosperity, heritage, values, customs and world view in all expressions of terms and obligations of treaties including spiritual values which it may undertake with other nations and/or in relation to relationships and interactions with any foreign States and Domestic Tribes surrounding or influencing Mackinac Tribe territories

Article 6

The Mackinac Tribe asserts and recognizes its existence and rights to independence, sovereignty and self-determination under international law and recognizes further its responsibilities to adhere to all obligations and responsibilities under international law and the Supreme law. Specifically, Article V of the 1855 Treaty between the United States of America, and The Mackinac Tribe commits itself to the pursuance of its activities and protections of its rights within the context of codified and customary international laws and the Constitution of the United States and covenants:

Principle 6

All provisions and language of this Constitution shall be construed and interpreted to protect, enhance and foster the rights, property, resources, culture, traditions, survival and prosperity of the Mackinac Tribe and the Anishinabe People.

Article 7

Nothing in this Constitution shall authorize or be interpreted as consent to the termination of any trust, or of any claim of fulfillment of historic promises, or of any claim for receipt of any and all restitution for historic and present-day human rights violations, or of any other responsibilities of the United States and Canadian Governments or their internal State/Provincial Governments to the Mackinac Tribe and Regency of the Anishinabe People.

CHAPTER TWO

TERRITORY AND JURISDICTION

Article 8

This Constitution recognizes that the Mackinac Tribe and Anishinabe People are primarily but not exclusively domiciled in areas of United States and Michigan and Manitoulin Island in Canada on lands including but not limited to, the present-day "Reserves" This Constitution also recognizes that there is a Mackinac Tribe, Bands 15 and 16 citizenry that is dispersed throughout the United States, Canada and elsewhere, and that such individuals have the right to participate in the rights, duties and obligations of the Mackinac Tribe, having requested and met the requirements for Mackinac Tribe citizenship.

Principle 7

Under conditions to be determined by law and the internationally recognized right to self-determination, the powers, authority and jurisdiction of the Mackinac Tribe of Odawa and Ojibwa Nation over Mackinac Tribe citizens may extend beyond all geographical boundaries.

Article 9

This Constitution recognizes and authorizes the rights of the Mackinac Tribe to negotiate land and development rights and disputes with the governments of other nations and recognizes the duty and imperative of the Mackinac Tribe to seek to prevent further alienation or losses of existing lands and to seek return of Mackinac Tribe lands alienated or taken illegally and/or through unconscionable, fraudulent or broken treaties and contracts both Internationally and domestic.

Article 10

The Mackinac Tribe shall devote itself to just, equitable and sustainable environmental, economic, land-use, water, natural resource and other policies and practices in accordance with Anishinabe traditions and values. The Mackinac Tribe, in accordance with Anishinabe values and traditions, shall be guided by the needs of future generations, devoted in the preservation of the Mackinac Tribe of Odawa and Ojibwa and sustainability in formulating and implementing all environmental, economic, land-use, water, natural resource and other policies and practices.

CHAPTER THREE

CITIZENSHIP RIGHTS AND RESPONSIBILITIES OF CITIZENS

Article 11

Pursuant to its policy of self-determination, the Mackinac Tribe embraces and confirms the principle of self-identification as an Anishinabe, if recognized and accepted by the responsible authorities of the Mackinac Tribe, and as formulated and widely recognized in international law.

Article 12

The criteria for Mackinac Tribe citizenship shall include documented direct lineal decent heritage of the Ains Bands, Letters sent received (1908 Durant Census Roll) 1907/08 Roll was incomplete. Villages and people who wish to reside north of the Straits were also not contacted because of the distance of the Villages and Weather

One of the original historical bands 15 and 16 and of the 22 villages on the shores of Lake Huron and of Lake Michigan Who the United States Government recognizes as the Mackinac Tribe. Bands fifteen and sixteen and the 22 villages on the shore line of Lake Huron and Lake Michigan of the Mackinac Tribe villages or any Land Patents, Land Claims, Annuity Payments No specific "blood-quantum", but some Mackinac Tribe ancestors (Blood) and/or adoption through Anishinabe traditions, recognized by Mackinac Tribe authorities, is required for citizenship. This is based on the name of all Mackinac tribes of Ojibwa and Anishinabe ancestors who name appear on the 1876 Durant Roll and 1907/08 Durant Roll recognize the membership provided documentation affirming the establishment of citizenship as stated in the

Article 13
Public Law 104-184, Sections 1 through 22.

Article 13

No provision on citizenship in this Constitution or in law shall have the effect of depriving or impairing the citizenship, freedoms or privileges of a Mackinac Tribe citizen or their descendants in relation to the United States or Canadian Federal or Local Governments or of any of their states or provinces based on awards made for the benefit of the Mackinac Tribe or other causes.

Article 14

No Mackinac Tribe citizen, retaining multi-citizenship with the United States and/or Canada, or any other nation, may assert or claim any rights and privileges of other nations and their respective Constitutions that conflict with the Constitution of the Mackinac Tribe while retaining Mackinac Tribe citizenship.

Article 15

All Mackinac Tribe citizens shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, gender, blood-quantum, family, clan, band/tribe, sexual orientation or on any other grounds whatsoever shall not be permitted without prejudice to responsibilities of citizens under law.

Article 16

In accordance with the imperative to secure the survival and prosperity of the Mackinac Tribe and Anishinabe People and the derivative imperatives to prevent, deter, punish and compensate for all crimes and torts, the Mackinac Tribe does not recognize any "statutes of limitations" on any crimes or torts against the Mackinac Tribal citizens; nor does the Mackinac Tribe recognize or accept the concept of "Adverse Possession" even if undertaken while acting under the laws, sanctions or citizenship protections of other Nations.

Article 17

Extradition of Mackinac Tribe citizens may take place only pursuant to a Treaty. Further regulations concerning extradition shall be laid down by acts by the competent authorities of the Mackinac Tribe.

Article 18

All Mackinac Tribe citizens shall be equally eligible to appointment to public service and shall have an equal right to elect members of the general representative bodies and to stand for election as a member of representative bodies subject to the limitations and exceptions prescribed by acts of the competent authorities of the Mackinac Tribe.

Article 19

All Mackinac Tribe citizens shall have the right to submit petitions in writing to the competent authorities of the Mackinac Tribe of Ojibwa and Ojibwa Indians.

Article 20

All Mackinac Tribe citizens shall have the right to conduct all business with the competent authorities of the Mackinac Tribe in either Anishinabemowin or the English or Spanish or other international language.

Article 21

All Mackinac Tribe citizens shall have the right to express and manifest freely his or her religion or beliefs, either individually or in community with others, without prejudice to his or her responsibilities under law. Rules and laws concerning the exercise of this right other than in buildings and enclosed places may be laid down by competent authorities of the Mackinac Tribe for the protection of health, culture, and to prevent disorders and/or to preserve the survival and prosperity of the Mackinac Tribe.

Article 22

No Mackinac Tribe citizen shall be required to have prior permission to publish or utter thoughts or opinions through the press. Rules concerning radio or television and the Internet shall be laid down by the competent authorities of the Mackinac Tribe.

Article 23

The right of free association and assembly is recognized and may be restricted by the competent authorities in the interest of public order and national security.

Article 24

In accordance with Anishinabe traditions, any Mackinac Tribe citizen convicted in accordance with judicial processes that are conducted in accordance with the Mackinac Tribe of Odawa and Ojibwa Indians Constitution, of treason or other designated high crimes against the Mackinac Tribe, may be stripped of Mackinac Tribe citizenship and suffer banishment from all Mackinac Tribe lands, resources and communities.

Article 25

All Mackinac Tribe citizens shall have the right to respect for his or her privacy, without prejudice to restrictions laid down by or pursuant to acts by competent authorities of the Mackinac Tribe. Rules to protect privacy shall be laid down by competent authorities in connection with the recording and dissemination of personal data as well in connection with the Mackinac Tribe citizens to be informed of data recorded concerning them, uses made of such data and to have such data corrected.

Article 26

All Mackinac Tribe citizens shall have the right inviolability of his or her person without prejudice to restrictions laid down by or pursuant to acts of the competent authorities of the Mackinac tribe.

Article 27

All Mackinac Tribe citizens who are capable of doing so shall have the duty to cooperate in defending and maintaining the territories, sovereignty, independence, self-determination and tribal security of the Mackinac Tribe.

Article 28

Entries into homes and other premises of Mackinac Tribe citizens, searches and seizures shall be permitted only in cases laid down by or pursuant to acts by competent authorities of the Mackinac Tribe. Prior identification and notice of purpose shall be required to enter a home or other premises subject to exceptions prescribed by competent authorities and a written report of entry shall be issued to the occupant.

Article 29

Privacy of correspondence, telephone, telegraph and Internet or any other media shall not be violated without prejudice to acts laid down by or pursuant to acts by competent authorities or with the authorization of those designated by acts by competent authorities.

Article 30

Other than in cases lay down by, or pursuant to acts of the competent authorities, no Mackinac Tribe citizen may be deprived of his or her liberty. Any Mackinac Tribe citizen deprived of liberty other than by a court order may request a court to order his or her release and in such case, may be heard by a court within a period of time to be laid down by competent authorities. The court will order his or her release if it considers the deprivation of liberty to be unconstitutional. Trials of citizens shall take place within reasonable periods of time and any citizen who has been lawfully deprived of liberty may be restricted in the exercise of fundamental rights only to the extent to which the exercise of such rights is not compatible with the deprivation of liberty.

Article 31

No offense shall be punishable unless it was an offence under the law at the time it was committed.

Article 32

No citizen may be prevented against his or her will from being heard by the courts or competent authorities to which he or she is entitled to apply or be heard under the law.

Article 33

No citizen shall suffer being tried more than once for the same alleged crime. All citizens shall have the right to legal representation in all legal and administrative proceedings and entitled to legal aid if needed.

Article 34

It shall be the concern of the authorities to promote the provision of sufficient employment for all capable citizens consistent with the resource and other constraints faced by the Mackinac Tribe. Rules governing the legal status and protections of working persons shall be laid down by acts by the competent authorities. All persons shall enjoy freedom of choice of work consistent with their own qualifications and necessary qualifications for particular work. No persons shall suffer any form of discrimination in application for work or at work nor shall any person suffer denial of work due to nepotism, cronyism or any form of unconscionable favoritism.

Article 35

It shall be the concern of the competent authorities to secure the means of subsistence of the population and to achieve the distributions of wealth consistent with Anishinabe traditions and the survival and prosperity of the Mackinac Tribe. Rules concerning social security and access to all life-sustaining resources and needs for all Mackinac Tribe citizens unable to provide for themselves shall be joined by competent authorities.

Article 36

It shall be the concern of the competent authorities and all Mackinac Tribe citizens to protect and improve the environment and not to waste or abuse any and all creations of the Supreme creator consistent with Anishinabe culture and traditions.

Article 37

It shall be the concern of the competent authorities and all Mackinac Tribe citizens to promote the general health of the population, to provide for equitable distributions of means of subsistence, to protect our children and all those unable to care for themselves and to promote social and economic development for all Mackinac Tribe citizens.

Article 38

It shall be the concern of the competent authorities and all Mackinac Tribe citizens to provide comprehensive and ongoing education for all citizens consistent with the resource and other constraints of the Mackinac Tribe. Educational curricula shall provide knowledge and skills requisite for survival and prosperity of the Mackinac Tribe including those necessary for relations and trade with other nations; curricula shall also provide knowledge and skills requisite for the knowledge, appreciation and survival of Anishinabe culture, traditions and the Mackinac Tribe itself.

Article 39

It shall be the concern of the competent authorities to allocate resources to ensure adequate housing, medical care and all other necessary means of subsistence for all Mackinac Tribe citizens consistent with resource limitations and other constraints faced by the Mackinac Tribe. All Mackinac Tribe citizens capable of work are expected to contribute to the resources, survival and prosperity of the Mackinac Tribe as a condition of access to the resources and means of subsistence of the Mackinac Tribe, Odawa, Ojibwa, and Potawatomi, Anishinabe, Three Fires People.

Article 40

It shall be the concern of the competent authorities to redress any inequalities of wealth, incomes, security, access to services, access to information, access to legal assistance, access to Government or access to means of subsistence that threaten the social cohesion, traditions, survival or prosperity of the Mackinac Tribe subject to resource and other constraints and imperatives faced by the Mackinac Tribe Of Odawa and Ojibwa Indians.

CHAPTER FOUR

GOVERNMENT

Article 41

The Government of the Mackinac Tribe of Odawa and Ojibwa recognizes, operates and rests on the principle that government is only legitimate when it governs with the recognition and consensus of the majority of the governed.

Article 42

The Government of the Mackinac Tribe shall consist of a Principal Chief acting as Head of State and Chairman, and a Sub Chief acting as Vice Chairman/Head of State, known as The Executive Branch, The Executive Tribal Elders Council, Headsmen or Head of house hold(s), Cabinet Officers, Ambassadors, a Council of Representatives, Judiciary and Government employees at various levels.

Article 43

The Principal Chief, Head of State/Chairman and Sub-Chief, Head of State/Vice Chairman, shall be of one of the seven principal Bands of the Mackinac Anishinabe, Band "11" Pine River, Band "12" Les Cheneaux " Snow Islands," Bands "13"- "14" Mackinac Island, Band "15" Pte. Of St. Ignace, Band "16" Pte. Aux Chenes, and Band "17" Hubbard Lake are descendants from the historic records and recognized lineal descendants of the governing signatories to the 1821, 1836, 1855, treaties between The United States of America and The Mackinac Tribe as acknowledged and affirmed by a majority of the Executive Tribal Elders Council. The Principal Chief/Head of State/Chairman shall be nominated and appointed from among and by a 2/3 majority vote of the Executive Tribal Elders Council. All Elders who serve on the Executive Tribal Elders council are Headmen/Sub-Chief.

Article 44

No person(s) except a natural born Mackinac Tribe Citizen, a documented lineal descendant shall be eligible for the position of Principal Chief/Head of State/Chairman, Headmen/Vice Chairman/Head of State, the Executive Tribal Elders Council, Headman or Head of household(s), Cabinet Officers, Ambassadors and Council of Representatives.

Article 45

The Principal Chief shall hold a term of office, during the term of office unless sickness or death causes incapacitation or unless he or she resigns or suffers impeachment for due cause and in accordance with Anishinabe traditions and this Constitution. The Headmen/Sub-Chief/Vice-Chairman/Head of State shall assume the position until new nominations and elections from the Executive Tribal Elders Council can take place, but within no less than 3 months from the documented vacancy of Principal Chief/Chairman/Head of State.

Article 46

Principal Chief and Head of State/Chairman: shall be the Commander in Chief of the Mackinac Tribe; with a 2/3 majority vote of the Executive Tribal Elders Council, he or she shall have the power to grant reprieves and pardons for offenses against the Mackinac Tribe. The Principle Chief shall have the power to nominate from among Mackinac Tribe Citizens to the following positions, Ambassadors and Cabinet Position with a 2/3 majority vote of the Executive Tribal Elders Council.

Article 47

The Executive Tribal Elders Council of Headmen/Sub-Chiefs shall have the power to appoint Judges, Judges of the Supreme Court, and all other officers whose appointments are not herein otherwise made by other officers and levels of the Government of the Mackinac Tribe with a 2/3 Majority vote.

Article 48

The Executive Tribal Elders Council shall consist of only Headmen/Sub-Chiefs, who shall all be legitimate descendants of the seven principle Mackinac Tribe Bands. This council can also consist of traditionally recognized Pipe Carriers, Bundle Holders and Spiritual Leaders of the seven principal Bands of the Mackinac Tribe.

Article 49

Elders and Headmen/Sub Chiefs will sit unless removed by the Principal Chief (with the concurrence of two-thirds vote of the Executive Tribal Elders Council) or unless there is resignation, incapacitation due to ill health or death of an Elder/Sub Chief.

Article 50

No person shall be on the Executive Tribal Elders Council who has not attained the age of 50 years old or who has not been a Citizen of the Mackinac Tribe for at least 2 years.

Article 51

Headmen/Sub-Chiefs / Vice Chairman shall advise, consult, brief and confer with the Principal Chief and shall have the power to decide or recommend upon overall government policy, advise on Anishinabe culture and spirituality, initiate and recommend Executive acts and orders, govern statutes and other duties as prescribed by the Principal Chief and ratified by two-thirds majority vote of the Executive Tribal Elders Council.

Article 52

Upon accepting office, the Principal Chief, Headmen/Sub-Chief/Vice Chair, the Executive Tribal Elders Council, the Council of Representatives, Ambassadors, Cabinet Officers and all members of the Government of the Mackinac Tribe will: swear an oath or make an affirmation and promise that they have not done anything that may legally bar them from office; swear allegiance to uphold and protect the Mackinac Tribe Constitution and the survival and prosperity of the Mackinac Tribe; affirm or swear that they hold no loyalties or beliefs that would or could reasonably be seen to compromise or disparage or threaten the culture, traditions, survival or prosperity of the Mackinac Tribe and People.

Article 53

The Council of Representatives of the Mackinac Tribe, elected from the principal Bands shall represent the entire Mackinac Tribe and People without fear of or favor to any particular individuals or interest groups.

Article 54

The Council of Representatives shall be composed of Tribal citizens chosen every 3rd year by the citizens of the Mackinac Tribe regardless of age, through free, fair and open elections that may be challenged for cause.

Article 55

No person shall be a Representative who has not attained the age of (Twenty-one) years old and has not been a citizen of the Mackinac Tribe for at least 2 years.

Article 56

The Council of Representatives shall be elected of the Mackinac Tribe citizens with principles of proportional representation to be in accordance with the articles and principles of this Constitution and acts to be developed by the responsible law makers and authorities of the Mackinac Tribe and ratified through referenda by the tribal citizens and population of the Mackinac Tribe.

Article 57

The following persons shall not be entitled to vote until their right to vote has been restored by order of the Principal Chief upon 2/3 vote of the Executive Tribal Elders Council. (a) Any citizen found guilty of serious crimes against the Mackinac Tribe to be defined by acts of the competent authorities of the Mackinac Tribe; (b) any person legally deemed to be mentally incompetent; (c) any person legally found to hold and act upon loyalties fundamentally inconsistent with Mackinac Tribe citizenship, the Mackinac Tribe Constitution and/or the survival and prosperity of the Mackinac Tribe

Article 58

No person may be a member of the Council of Representatives and simultaneously hold other offices or positions of the Government of the Mackinac Tribe

Article 59

Upon convening, the Council of Representatives shall, by majority vote, elect a Leader to be Speaker who shall serve until new tribal elections, removal by the Principal Chief with concurrence of a majority two-thirds vote of the Executive Tribal Elders Council and/or impeachment for cause; the Speaker retains one vote only.

Article 60

All deliberations of the Council of Representatives shall be open to scrutiny by the public of the Mackinac Tribe citizens unless the Principal Chief and the Executive Tribal Elders Council deem that they be held in camera for cause consistent with the Mackinac Tribe Constitution.

Article 61

All votes shall be recorded with roll call if requested by one member. Votes in camera may occur only with the authorization of the Principal Chief and the Executive Tribal Elders Council for cause consistent with the Constitution.

Article 62

All decisions or proposals for laws and acts will be decided on the basis of a good-faith attempt at consensus failing which a two-thirds majority of all Representatives is required to pass laws for consideration by the Principal Chief and the Executive Tribal Elders Council.

Article 63

Rules of procedure by the Representatives are to be drafted by the Council of Representatives themselves in consultation with and with the approval of the Principal Chief and the Executive Tribal Elders Council.

Article 64

No law, statute, act, order, bill or resolution may come into effect without two-thirds majority vote by the Executive Tribal Elders Council and Council of Representatives and without final ratification by the Principal Chief.

Article 65

No Bill of Attainder or ex post facto Law shall be passed, the right of Habeas Corpus shall not be suspended unless national security may require it, and no monies shall be drawn from the Treasury of the Mackinac Tribe except in consequences of Appropriations made by law and ratified by the Principal Chief and the Executive Tribal Elders Council.

Article 66

Statements and Accounts of all Receipts and Expenditures of all Public Monies shall be published in accordance with acts to be determined by the Principal Chief, the Executive Tribal Elders Council and Council of Representatives.

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Article 67

The Council of Representatives, in consultation with and with the approval of the Principal Chief and the Executive Tribal Elders Council, and with the active participation and consent of the majority of the Mackinac Tribe voters, shall be responsible for, but not limited to the following imperatives for the survival and prosperity of the Mackinac Tribe:

- a) Proposing and Ratifying Treaties with Foreign Nations including First Nations;
- b) Regulating Commerce and Treaties with Other Nations;
- c) Establishing Uniform Rules of Naturalization/Citizenship;
- d) Establishing Standards of Weights and Measures and Credit;
- e) Establishing Credit and
- f) Protecting the Integrity, Exchangeability and Value of the Credit;
- g) Establishing, Planning and Maintaining Post Offices, schools, Roads, Sewage, Water Supplies and all Infrastructure Necessary for the Survival and Prosperity of the Mackinac Tribe;
- h) Establishing the Supreme and Lesser Courts of the Mackinac Tribe
- i) Raising and Financing of Legal Representation.
- j) Protecting and Enhancing Social Cohesion among Constituent Elements of the Mackinac Tribe;
- k) Decentralizing and Delegating Certain Responsibilities and Duties to Mackinac Tribe Citizenry;
- l) Initiating, Convening and Implementing Impeachment Procedures and Decisions;
- m) Promoting Respect for and Authority of International Law;
- n) Govern the provision of Public Goods;
- o) Balancing Contending Interests and Inequalities Threatening the Survival and Prosperity of the Mackinac Tribe;
- p) Raising Revenues and Making Expenditures Consistent with Policies, Needs and the Constitution;
- q) Maintaining the Independence, Sovereignty, Prosperity and Self-determination of the Mackinac Tribe;

- k) Regulating Activities and Rights of Non-Mackinac Tribe Citizens Resident on Mackinac Tribal Land and/or Encroaching on Mackinac Tribe Lands
- s) Initiating, Implementing and Ensuring Compliance with Laws and Acts Designed to Protect the Culture, Values, Morals and Traditions of the Mackinac Tribe;
- t) Protection and Nurturing of Vulnerable and Incapacitated Mackinac Tribe Citizens;
- u) Declaration of National Emergencies, National Holidays and Raising/Allocating Resources to finance with them;
- v) Ensuring Equal Protection of and Access to Law for All Citizens;
- w) Conducting Intelligence Related to and Raising/Deploying Resources against Potential Threats to Tribal Security

CHAPTER FIVE

TRIBAL LAW AND JUDICIARY

Article 68

In accordance with Natural Law and Anishinabe traditions, the supposed "duality" or differentiation between criminal and tort or civil law is rejected as dangerous to the survival and prosperity of the Mackinac Tribe. All crimes necessarily generate torts and many torts are crimes when seen in their totality of humanity and real causes and effects.

Principle 8

The fundamental mandates guiding all law and judicial processes shall be: Truth; Justice; Healing; Reconciliation; Prevention of Future Abuses; Survival and Prosperity of the Mackinac Tribe. All rights, policies, judicial procedures, protocols and regulations governing Mackinac Tribe citizens, judicial processes and government are without prejudice to and subordinate to these survival imperatives and mandates.

Article 69

Judges of the Mackinac Tribe Supreme Court and lower courts shall be appointed by the Principal Chief and the Executive Tribal Elders Council with a 2/3 majority vote. A Judge must have knowledge/training of Anishinabe traditions and laws. Judges shall serve terms of appointment to be determined by the competent authorities of the Mackinac Tribe and the Council of Representatives.

Article 70

Judges may be removed for cause upon the recommendation of the Principal Chief and the Executive Tribal Elders Council and ratified by two-thirds majority vote of the Council of Representatives.

Article 71

Any impeachable offense, corruption or provable prejudice and compromise or conflict-of-interest in conducting judicial proceedings or rendering judicial decisions may be grounds for removal of judges.

Principle 9

The Criminal Code of the Mackinac Tribe recognizes that any crime or form of corruption is a potential assault upon and threat to the fundamental survival and prosperity of the Mackinac Tribe and whole People.

Article 72

All Judicial proceedings, procedures, findings and sentences must consider the totality of effects not only on the accused and convicted but also on the families of the victims and accused or convicted as well as on the survival and prosperity of the Mackinac Tribe and People.

Article 73

Family relations and other associates of an accused or convicted person, if not complicit with that person, shall suffer no penalties, discrimination, revenge or negative effects from association with the accused or convicted person. In the event that family relations suffer economic hardship as a result of conviction and punishment of a convicted person, those persons may draw material support from the Mackinac Tribe as a whole.

Article 74

All Law, Procedures, Protocols and members of the Judiciary or Police shall be determined and amended by acts of the Principal Chief, the Executive Tribal Elders Council and Representatives in accordance with principles set down by those bodies.

Article 75

The Judgment of all disputes involving debts, divorce actions, crimes or any disputes having implications of loss of resources or liberty shall be the function of the Judiciary. All sentences involving loss of liberty, Fines, or judgments against personal or communal property must be undertaken by the Judiciary.

Article 76

The Enterprises of the Mackinac Tribe, powers of office, membership and procedures of the judiciary shall be determined by acts, appointments and laws enacted by the Principal Chief and the Executive Tribal Elders Council subject to ratification by two-thirds of the Council of Representatives. All actions, laws, bills, appointments and policies by the Principal Chief, the Executive Tribal Elders Council and Council of Representatives may be subject to Constitutional review by the United States Supreme Court.

Article 77

Tribal Courts may sit at each separate locality of the traditional seven Bands of the Mackinac Tribe. Judges and members of the Band Councils shall be appointed by the Principal Chief and the Executive Tribal Elders Council from the membership of the respective seven Bands if qualified persons are available with ratification by two-thirds of the voting Representatives and a local Band referendum.

Article 78

Any office holder of whatever level, including the Principal Chief and the Executive Tribal Elders Council, may be impeached for cause to be adjudicated and reviewed for Constitutionality and Due Process by the Supreme Court of the Mackinac Tribe.

Article 79

Impeachment may be initiated after conviction of crimes to include (but not limited to) treason, moral turpitude, corruption, loyalties and allegiances not consistent with the survival and prosperity of the Mackinac Tribe, abuse of power and authority, perjury, corruption in elections and other impeachable offenses to be determined by the Principal Chief, the Executive Tribal Elders Council and Council of Representatives.

Article 80

All tribal citizens charged with any offense are entitled to due process to include but not be limited by: right to confront all accusers and accusations; right to be confronted with competent and untainted evidence; right to hearing free of conflict of interest by adjudicating officials; right to present all relevant evidence and opinion; right to trial in a timely manner; right to review of all judicial decisions; right to confront and exclude witness paid for their testimony; right to consider the totality of causes and effects relevant to judicial issues and decisions or verdicts by victims as well as accused, right to remain silent, right to legal representation, right to be protected under the Constitution of the United States.

Article 81

Amendments to the Mackinac Tribe Constitution or any laws may be proposed by the Principal Chief/Chairman, Headmen/Sub-Chief/Vice Chairman, the Executive Tribal Elders Council, and Council of Representatives or by any Mackinac Tribe Citizen.

Article 82

Amendments to the Mackinac Tribe Constitution or any laws may be proposed to the Council of Representatives without the consent of the Executive Tribal Elders Council by a one third vote of the Mackinac Tribe citizens.

Article 83

All Amendment proposals must be announced and discussed in public meetings with any Amendments to be ratified by signature of consent of the Principal Chief, signature consensus by the Executive Tribal Elders Council and Headmen/Sub-Chiefs and by two-thirds majority affirmative vote of all Representatives and not merely all voting representatives.

Supreme Law of the Land

The Mackinac Tribe of Odawa and Ojibwa Indians law of the land is clear that any statute passed by the governing authorities of the Mackinac Tribe be consistent in appearance of law as represented by Article V of the 1855 Treaty with the United States of America, and any statute, to be valid, must be in agreement. It is impossible for both the Mackinac Tribe Constitution and a law violating it be valid; one must prevail.

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it.

A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as the statute runs counter to the fundamental law of the Constitution of the United States, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

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EXHIBIT L

Timpanogos Tribe v Conway

2005 WL 8176199

Only the Westlaw citation is currently available.
United States District Court, D. Utah, Central Division.

TIMPANOGOS TRIBE, Snake Band of
Shoshone Indians of Utah Territory, Plaintiff,

v.

[Kevin CONWAY](#), Assistant Director,
Utah Department of Natural Resources,
Division of Wildlife Resources, Defendant,
and

Ute Indian Tribe of the Uintah and Ouray
Reservation, Defendant-Intervenor.

Case No. 2:00-CV-734 TC

|
Signed 01/25/2005

|
Filed 01/24/2005

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UT, [Tod J. Smith](#), Whiteing & Smith, Boulder, CO, for
Defendant-Intervenor.

ORDER

[TENA CAMPBELL](#), United States District Judge

*1 This matter is before the court on a Motion for Summary Judgment submitted by Defendant Kevin Conway, Assistant Director of the State of Utah's Division of Wildlife Resources, and Defendant-Intervenor Ute Indian Tribe of the Uintah and Ouray Reservation (collectively "Defendants").

This case deals with the priority of hunting, fishing, and gathering rights on the Ute Indian Tribe's Uintah and Ouray Reservation ("Reservation") in the State of Utah. Plaintiff, the self-proclaimed Timpanogos Tribe, Snake Band of Shoshone Indians of Utah Territory, maintains in its Complaint that it

has the right to issue hunting, fishing, and gathering permits to its members for use on the Reservation without interference from the Ute Indian Tribe or the State of Utah. It asserts this right based on its claim that its members are descendants of the aboriginal Timpanogos band of Indians in Utah, which existed on the Reservation land before either the Ute Tribe or the Reservation were established. Plaintiff further alleges that the Timpanogos band of Indians in Utah was Shoshone, not Ute, and that it maintained independence as a Shoshone tribe before and after the Ute Tribe and the Reservation were established. Accordingly, Plaintiff claims that its members have superior aboriginal rights in the land's natural resources.

Defendants do not recognize the Plaintiff's status as a tribe. Rather, they contend that the aboriginal Timpanogos band of Indians was Ute, not Shoshone, and that it merged into the Uintah Ute band of Indians (precursor to the Ute Tribe) in 1865. As a result of the merger, Defendants claim that the aboriginal Timpanogos band ceased to maintain an identity independent of the Ute Tribe and that the Ute Tribe has exclusive jurisdiction to issue permits for hunting, fishing, and gathering on the Reservation. Defendants also claim that the State of Utah has the right to prosecute individuals who are caught hunting, fishing, or gathering on the Reservation without a permit issued by the Ute Tribe.

Defendants' Motion for Summary Judgment seeks dismissal of Plaintiff's Complaint with prejudice and judgment in Defendants' favor on their Joint Counterclaim (which is essentially a mirror image of Plaintiff's claims). For the reasons set forth below, the Motion for Summary Judgment is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Timpanogos Tribe, Snake Band of Shoshone Indians of Utah Territory ("Timpanogos Tribe") is not a federally-recognized Indian tribe. Nevertheless, Timpanogos Tribe claims aboriginal rights on land in Utah for its members, specifically the right to issue hunting, fishing, and gathering permits to its members in the area known as the Uintah and Ouray Reservation or Uintah Valley Reservation ("Reservation") without interference from the State of Utah or the Ute Indian Tribe ("Ute Tribe"). As the basis for its claims, the Timpanogos Tribe alleges that its members are Shoshone, not Ute, and that it has the right to issue permits because, it alleges, its members are the "Indians ... for whom the [Reservation] was set apart." (Am. Verified Compl. ¶¶

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12-13.) It further alleges that its members, allegedly ancestors of the aboriginal Shoshone in Utah, have the right to hunt, fish, and gather on the Reservation free from prosecution by the State for hunting, fishing, or gathering without a permit issued by the State or the Ute Tribe.

*2 The Ute Tribe asserts that it, not Timpanogos Tribe, has the exclusive right to issue permits for hunting, fishing and gathering on the Reservation and that permits issued by the Timpanogos Tribe are not valid. The State of Utah asserts that the Timpanogos Tribe does not have the authority to issue such permits. Further, it does not recognize the Timpanogos Tribe-issued permits as valid and intends to prosecute (or already has prosecuted) anyone (including members of the Timpanogos Tribe) for hunting, fishing, or gathering within the Reservation without a valid permit.

The Defendants claim that the Timpanogos Tribe is trying to re-write history. The State and the Ute Tribe assert that the Timpanogos Tribe¹ was actually one of five bands of Utes that merged to form the Uintah Utes, who later, along with the Uncompahgre and White River Bands of Utes, joined together to form what is known today as the Ute Indian Tribe of the Uintah and Ouray Reservation. The Ute Tribe claims exclusive jurisdiction over the Reservation, which jurisdiction is exercised by the Tribal Business Committee, the Ute Tribe's elected governing body, through the Ute Tribe Constitution.

In support of their argument, the Defendants point to a series of "Findings of Fact" in two 1957 Indian Claims Commission ("ICC") decisions in the matter of Uintah Ute Indians of Utah v. United States, that, Defendants allege, conclusively establish that the Timpanogos merged with the Uintah Utes and thereafter ceased to exist independently of the Ute Tribe. See Uintah Ute Indians of Utah v. United States, Docket No. 44 (ICC Feb. 21, 1957), attached as Ex. 2 to Defs.' Br. in Supp. of Defs.' Mot. for Summ. J. (hereinafter "Docket No. 44"); Uintah Ute Indians of Utah v. United States, Docket No. 45 (ICC Feb. 21, 1957), attached as Ex. 3 to Defs.' Br. in Supp. of Defs.' Mot. for Summ. J. (hereinafter "Docket No. 45").

Obviously, the factual findings of ICC are at odds with the claims the Timpanogos Tribe makes in this case. Pointing to the ICC decisions, the Defendants assert that the Timpanogos Tribe's claims are barred by the doctrine of collateral estoppel, or issue preclusion. But Timpanogos Tribe contends, among other things, that the Ute Tribe may not rely on the ICC decisions as precedent because of a 1960 stipulation between

the Ute Tribe and the United States stating that the "final judgment [in the two 1957 ICC decisions]... shall not be construed as an admission of either party, for the purpose of precedent or argument, in any other case." See Pl.'s Mem. in Opp'n to Mot. for Summ. J. at 15-16 (quoting Apr. 22, 1960 Stipulation for Entry of Final Judgment in the case of Uintah Ute Indians of Utah v. United States, attached as Ex. A to Pl.'s Mem.).

In addition to their issue preclusion defense, the Defendants submitted two expert reports purporting to set forth the history of the Ute Tribe and the relationship of the Timpanogos to the Utes. (See Expert Report of Floyd A. O'Neil, Ph.D. (Historian), attached as Ex. 4 to Defs.' Mem. in Supp. of Mot. for Summ. J.; Expert Report of Joel Janetski, Ph.D. (Anthropologist and Archaeologist), attached as Ex. 5 to Defs.' Mem. in Supp.) Both experts conclude that the Timpanogos merged with the Utes many years ago, that presently there is no separate tribe known as the Timpanogos Tribe, that the Timpanogos are Utes, not Shoshone, and that the Timpanogos, other than as members of the Ute Tribe, have no independent rights on the Reservation. (See *id.* at 2.) Both of Defendants' experts opine that historical, anthropological, and archaeological documentation shows that Plaintiffs' allegations are simply wrong. (See O'Neil Expert Report at 2 ("The historical evidence is all to the contrary."); Janetski Expert Report at 2 ("There is no anthropological, archaeological or historical evidence that supports such claims.") They also conclude that the ICC Findings of Fact in the 1957 decisions are fully supported by the historical record and are accurate. (O'Neil Expert Report at 3; Janetski Expert Report at 2.)

*3 Timpanogos Tribe did not submit its own expert reports in rebuttal, but it did submit affidavit testimony and other documentation in an effort to rebut the conclusions of the Defendants' experts. Defendants maintain that because Timpanogos Tribe did not submit an expert witness report in rebuttal, as a matter of law the Plaintiff cannot prevail over the Defendants' Motion for Summary Judgment. According to the Defendants, the issues raised are beyond the experience of the ordinary layperson and therefore require expert testimony. That is, the Defendants contend that because two expert witnesses came to a conclusion favoring the position of the Defendants, and because Timpanogos Tribe did not present contrary evidence in the form of an expert report, Defendants are *per se* entitled to summary judgment.

The court analyzes each set of arguments in turn below.

ANALYSIS

Legal Standard

[Federal Rule of Civil Procedure 56](#) permits the entry of summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(c\)](#); see [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 250-51 (1986); [Adler v. Wal-Mart Stores, Inc.](#), 144 F.3d 664, 670 (10th Cir. 1998). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient [to overcome a motion for summary judgment]; there must be evidence on which the jury could reasonably find for the plaintiff.”

[Liberty Lobby](#), 477 U.S. at 252. See also [Anderson v. Coors Brewing Co.](#), 181 F.3d 1171, 1175 (10th Cir. 1999) (“A mere scintilla of evidence supporting the nonmoving party’s theory does not create a genuine issue of material fact.”).

Defendants’ Collateral Estoppel/Issue Preclusion**Defense**

Under the doctrine of collateral estoppel, or issue preclusion, “[w]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.” [United States v. Botefuhr](#), 309 F.3d 1263, 1282 (10th Cir. 2002) (quoting [Ashe v. Swenson](#), 397 U.S. 436, 443 (1970)). The Defendants bear the burden of establishing the four elements of issue preclusion. [Adams v. Kinder-Morgan, Inc.](#), 340 F.3d 1083, 1093 (10th Cir. 2003). Those elements are: “(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been fully adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.” [Botefuhr](#), 309 F.3d at 1282 (quoting [Dodge v. Cotter Corp.](#), 203 F.3d 1190, 1197 (10th Cir. 2000)).

The essential issue in this case is whether the members of the Plaintiff Timpanogos Tribe are actually ancestors of the

Timpanogos, one of five historic Ute bands, and whether that band merged into the Uintah Ute Band of Indians, which then ultimately became the Ute Tribe for whom the Reservation was set aside. The 1957 ICC decisions addressed similar, if not identical, factual issues regarding aboriginal title to the Reservation and the make-up of the Uintah Ute Band through a determination of which smaller Indian bands merged into the larger Uintah Band. For example, the ICC found that the Shoshone and Utes were “separate and distinct.” (Docket No. 44 at Finding of Fact No. 5.) The ICC also found that the Timpanogos merged into the Uintah Utes in 1865. (*Id.* at Finding of Fact No. 4; Docket No. 45 at Finding of Fact No. 3.) The ICC found that the Uintah Utes band, along with the Uncompahgre and White River Bands of Utes, occupied the Reservation and are now known as the Ute Indian Tribe of the Uintah and Ouray Reservation. (Docket No. 44 at p. 32.) All of these issues are before this court.

*4 The parties in the ICC litigation were the United States and the Ute Tribe. The State was not involved in the litigation, but it appears to agree with and rely upon the findings of fact issued by the ICC in the 1957 decisions. The question becomes whether Plaintiff Timpanogos Tribe was a party to the 1957 litigation or was a party in privity with the Ute Tribe in 1957. Defendants contend that Timpanogos Tribe was a party to the litigation (through the Ute Tribe) because the Timpanogos merged into the Ute Tribe in 1865. But this begs the question facing the court now and presents a circular argument (*i.e.*, the Defendants’ privity argument assumes the very fact it must prove – that the Plaintiff actually merged with and became part of the Ute Tribe in 1865, thereby ceasing to maintain an independent identity after that point).

Given the unique circumstances of this case, the court finds that the Defendants have failed to establish the third element of issue preclusion. Accordingly, the Timpanogos Tribe is not collaterally estopped by the ICC decisions from raising the issues now before the court.²

Nor will the court take judicial notice of the ICC Findings of Fact, as the Defendants suggest it should,³ because that would essentially undermine the doctrine of collateral estoppel and be contrary to the [Federal Rules of Evidence](#). [Rule 201](#) provides that “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be

questioned.” [Fed. R. Evid. 201\(b\)](#). See also [Taylor v. Charter Med. Corp.](#), 162 F.3d 827, 829-30 (5th Cir. 1998) (“court cannot take judicial notice of the factual findings of another court ... because (1) such findings do not constitute facts ‘not subject to reasonable dispute’ within the meaning of [Rule 201](#); and (2) ‘were [it] permissible for a court to take judicial notice of a fact merely because it had been found to be true in some other action, the doctrine of collateral estoppel would be superfluous.’”) (internal citations omitted); [General Elec. Capital Corp. v. Lease Resolution Corp.](#), 128 F.3d 1074, 1082 n.6 (7th Cir. 1997) (“courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these findings are disputable and usually are disputed.”); [Meredith v. Beech Aircraft Corp.](#), 18 F.3d 890, 895 (10th Cir. 1994) (citing to [Fed. R. Evid. 201\(b\)](#), and noting that taking judicial notice of anything but a “universal truth” established by common knowledge, or “certain facts, which from their nature are not properly the subject of testimony,” would be improper). Indeed, Defendants essentially admit the facts at issue in this case are not common knowledge, because they argue that the subject necessarily requires expert testimony. Besides, it is clear that the factual issues before the ICC were subject to reasonable dispute and were determined after consideration of much documentary evidence.

*5 This creates a potential problem for the Defendants, because Defendants’ Statement of Undisputed Material Facts relies in part on the ICC Findings of Fact as evidentiary support for their position. (See, e.g., Defs.’ Br. in Supp. of Mot. for Summ. J. at 5-12.) But Defendants also rely on their expert reports, which do support Defendants’ statement of facts.

Expert Evidence

Plaintiff’s Failure to Present Expert Rebuttal Evidence

To the extent that Defendants are contending that because the Plaintiff has failed to submit expert rebuttal evidence, as a matter of law Defendants are entitled to summary judgment, the court disagrees. The cases cited by Defendants – [Randolph v. Collectramatic, Inc.](#), 590 F.2d 844, 846, 848 (10th Cir. 1979), and [Keller v. Albright](#), 1 F. Supp. 2d 1279, 1281-82 (D. Utah 1997), [aff’d](#), 141 F.3d 1185 (10th Cir. 1998) – do not support such an argument.

Rather, the issue is whether the Plaintiff has presented admissible evidence that creates a genuine issue of material fact that must be tried by a jury.

Defendants’ Expert Evidence and Plaintiff’s Rebuttal Evidence

Defendants’ Evidence

Defendants’ experts provide strong evidence to support Defendants’ position.⁴ (See Expert Report of Floyd A. O’Neil, Ph.D. (Historian), attached as Ex. 4 to Defs.’ Mem. in Supp. of Mot. for Summ. J.; Expert Report of Joel Janetski, Ph.D. (Anthropologist and Archaeologist), attached as Ex. 5 to Defs.’ Mem. in Supp.) Both experts conclude that the Timpanogos merged with the Utes many years ago, that presently there is no separate tribe known as the Timpanogos Tribe, that the Timpanogos are Utes, not Shoshone, and that the Timpanogos, other than as members of the Ute Tribe, have no rights on the Reservation, [See id.](#) at 2. Both of Defendants’ experts opine that the historical, anthropological, and archaeological documentation shows that Plaintiffs’ allegations are simply wrong. (See O’Neil Expert Report at 2 (“The historical evidence is all to the contrary.”); Janetski Expert Report at 2 (“There is no anthropological, archaeological or historical evidence that supports such claims.”).) They also conclude that the ICC Findings of Fact in the 1957 decisions are fully supported by the historical record and are accurate. (O’Neil Expert Report at 3; Janetski Expert Report at 2.)

Plaintiff’s Evidence


In opposition, Plaintiff submitted the following evidence: Affidavit of Mary Meyer (Ex. E to Pl.’s Mem. In Opp’n (hereinafter “Opp’n Mem.”)), Affidavit of Dave Montes (Ex. J to Opp’n Mem.), an excerpt from the 1776 *Dominguez-Escalante Journal* (Ex. G to Opp’n Mem.), the October 3, 1861 Executive Order setting aside the Uintah Valley Reservation (Ex. H to Opp’n Mem.), an 1863 map purporting to show the boundaries of Shoshone territories (attached to the decision in [Northwestern Bands of Shoshone Indians v. United States](#), 95 Ct. Cl. 642 (1942), [aff’d](#), 324 U.S. 335 (1945), and one or more 1863 United States treaties with the Shoshone) (Ex. L to Opp’n Mem.), a copy of the unratified June 8, 1865 Spanish Fork Treaty (Ex. I to Opp’n Mem.), the Utah State Tax Commission Apr. 27, 2000 Decision

in the matter of Mary Meyer v. Customer Serv. Div. of the Utah State Tax Comm'n (Ex. C to Opp'n Mem.), the State's Pre-Hearing Memorandum in the same Utah State Tax Commission matter (Ex. D to Opp'n Mem.), a list of Timpanogos Tribe membership eligibility requirements (Ex. F to Opp'n Mem.), and a Judgment issued by the Ute Tribal Court (Ex. K to Opp'n Mem.).

The Mary Meyer and Dave Montes Affidavits

*6 In her affidavit, Mary Meyer states, among other things, that she is a member of the Timpanogos Tribe and presently is its Chief Executive Officer. (Meyer Aff. ¶¶ 2-3.) She also makes the following assertion: "I descend from Shoshonean and Northern Paiute Ancestors. I am not Ute. I have no Ute Indian blood, nor have I ever been enrolled with the Ute Indian Tribe, a Federal Corporation." (Id. ¶ 8.) Similarly, Dave Montes, in his affidavit, states that he is a Timpanogos Indian rather than a Ute, that he is a member of the Timpanogos Tribe, that he has never been a Ute Tribal member, that his children, mother, grandfather Leo Pritchett, and great grandfather Chief Tabby were never Ute Tribal members, that the Uintah Valley Reservation has always been his home, and that his great grandfather "spent most of his time in the Rock Creek area and always claimed the Wasatch Front as his home." (Montes Aff. ¶¶ 1, 3-5, 7, 8-9.)

Ms. Meyer's and Mr. Montes' personal statements offer nothing more than anecdotal information and are not relevant to the questions facing the court, particularly the question of whether the Timpanogos band of Indians merged with the Ute Indian Tribe, thereby ceasing to exist as an independent entity.

See  [United Tribe of Shawnee Indians v. United States](#), 253 F.3d 543, 548 (10th Cir. 2001):

[The United Tribe of Shawnee Indians' ("UTSI")] argument assumes the very factual issue at the heart of this litigation. UTSI can only prevail on its contention if we accept its bare assertion that it is the present-day embodiment of the Shawnee Tribe. The only evidence even arguably offered by UTSI to support this proposition is the fact that UTSI is based on land patented to Mr. Oyler's

ancestor by the Treaty. While this fact may establish that Mr. Oyler's ancestor was a member of the Shawnee tribe and that Mr. Oyler is therefore a descendant of a tribal member, it says nothing about whether UTSI has maintained its identity with the Shawnee tribe and has continued to exercise that tribe's sovereign authority up to the present day.

Id. at 548 (emphasis added).

The Utah State Tax Commission Proceeding

Plaintiff raises a collateral estoppel argument when it relies on documents in the April 27, 2000 Utah State Tax Commission case of Mary Meyer v. Customer Serv. Div. of Utah State Tax Comm'n (Appeal No. 98-1181), to support its position. (See Pl.'s Opp'n Mem. at 7-8, 10, 12, 14, 17-22; Ex. C to Pl.'s Opp'n Mem (Final Decision of Utah State Tax Commission); Ex. D to Pl.'s Opp'n Mem. (State of Utah's Pre-Hearing Memorandum in tax proceeding).) According to Plaintiff,

The Timpanogos Tribe was historically recognized as a separate and distinct tribe and was of Shoshone [descent].... Moreover, recently in the case of *Meyer v. Utah State Tax Comm'n*, ... the State of Utah and the Utah Tax Commission recognized Mary Meyer, the Chief Executive Officer of the Timpanogos Tribe, as "a member of the San Pitch [B]and of Timpanogos [T]ribe of Snake Indians[.]" "an Indian member of the Shoshone Nation[.]" and "not of Ute ancestry[.]" ... This recognition is prima facie evidence of the Plaintiff's distinct identity [today].

*7 (Pl.'s Opp'n Mem. at 7-8 (internal citations omitted).) In the Meyer case, the issue was whether Ms. Meyer was exempt from the requirement to pay property taxes on her car because she was an Indian (non-Ute) living on the Reservation.

Plaintiff's collateral estoppel argument is not persuasive here for a number of reasons. First, the Ute Tribe was not a party to the litigation, so at a minimum, only one of two Defendants would, in theory, be collaterally estopped.

Second, the issue of Ms. Meyer's ancestry was not actually litigated. That is, the State of Utah had no reason to dispute

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Ms. Meyer's assertion that she is not a Ute, because her assertion meant that the State would prevail on its claim for property tax from a non-tribal member. As Defendants note, "Ms. Meyer could have said she was of any ethnicity, heritage, or group other than Ute and the State would have had no reason to contest her claim." (Defs.' Reply Mem. at 9.) Accordingly, the court disagrees with Plaintiff's overly broad statement that determination of "Ms. Meyer's ancestry [as a Shoshone] was necessary to the Utah State Tax Commission's judgment." (See Pl.'s Opp'n Mem. at 20.)

Third, the issue actually litigated in the tax commission case was "whether the state may tax personal property of an Indian who lives on a reservation, but is not an enrolled member of the governing tribe." (Utah State Tax Comm'n Final Decision at 6 (Ex. C to Pl.'s Opp'n Mem.)) The Meyer decision assumes the truth of the proposition being challenged by the Plaintiff in this matter, namely that the Ute Tribe is the exclusive governing tribe of the Reservation. (See id. at 5-7; see also State of Utah's Pre-Hearing Mem. in Meyer at 2 ("The Ute Tribe is the governing Tribe over the lands of the Ute Indian Reservation.") (attached as Ex. D to Pl.'s Opp'n Mem.)) The Utah State Tax Commission administrative court did not decide the same issue facing the court today.

Finally, as noted by the Defendants, "the Commission would not have jurisdiction to adjudicate the Timpanogos' existence." See, e.g., [Timpanogos Tribe v. Conway](#), 286 F.3d 1195, 1203 (10th Cir. 2002) ("It is rudimentary that 'Indian title is a matter of federal law and can be extinguished only with federal consent' and that the termination of the protection that federal law, treaties, and statutes extend to Indian occupancy is 'exclusively the province of federal law.'" (quoting [Wilson v. Omaha Indian Tribe](#), 442 U.S. 653, 670-71 (1979)).

The 1776 *Dominguez-Escalante Journal*, the 1861 Executive Order, 1863 Map of Shoshone Territory, and the Unratified 1865 Spanish Fork Treaty

Plaintiff cites to these historical documents (Exs. G, H, I, and L to Pl.'s Opp'n Mem.) to support its position that the Timpanogos Indians historically were recognized as a separate and distinct tribe of Shoshone descent that was induced to inhabit (and did inhabit) the area which became known as the Reservation. (See Pl.'s Opp'n Mem. at 7-10, 12-14, 26.) The Plaintiff claims that these documents establish

its members' aboriginal rights and that such aboriginal rights are superior to the Ute Tribe's rights and jurisdiction.

The excerpt from the *Dominguez-Escalante Journal* notes the characteristics and location of the Timpanogos band of Indians in what was then Utah Territory. (*Journal* Excerpt (Ex. G to Pl.'s Opp'n Mem.)) Plaintiff cites to this for the proposition that the "Timpanogos Tribe was historically recognized as a separate and distinct tribe and was of Shoshone [descent]." (Pl.'s Opp'n Mem. at 7-8, 12-13.) But the excerpt from the *Journal* makes no mention of Shoshone Indians. Moreover, it is not disputed that a separate Timpanogos band existed in 1776. (See Defs.' Reply Mem. at 5-6.) This piece of evidence does nothing to contradict the Defendants' evidence that the Timpanogos band merged into the Uintah Ute band of Indians in 1865 and ceased to maintain an identity independent of the Ute Tribe.

*8 The 1861 Executive Order (later approved by an 1864 Act of Congress) set aside a reservation in the Uintah Valley "for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said [Utah] territory as may be induced to inhabit the same." (Oct. 3, 1861 Exec. Order (Ex. H to Pl.'s Opp'n Mem.); Act of May 5, 1864, ch. 77, 13 Stat. 63, § 2.) Plaintiff cites to this in support of the unremarkable proposition that the Uintah Valley Reservation was set aside as an Indian reservation by President Lincoln. (Pl.'s Opp'n Mem. at 13.) Plaintiff then makes the inference, in conjunction with citations to the 1776 *Journal* and an unratified 1865 treaty (discussed below), that "it is undisputed and historically documented that the Timpanogos Tribe constituted one of the 'different tribes of Indians of said [Utah] territory' for whom the Uintah Reservation was established;" (Id. at 26.) At most, giving the Plaintiff benefit of the doubt, this tends to show that the Reservation was established for more than one tribe, all of which would co-exist and have equal rights on the Reservation. Even if Plaintiff is arguing that it be allowed to "co-exist" with the Ute Tribe on the Reservation, it ignores later historical events which suggest that the Utes were the only Indians for whom the reservation was set aside. For example, under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, the current Ute Tribe was formed by combining the Uintah, White River, and Uncompahgre bands of Ute Indians in 1936. Also, in 1937, the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation were established with approval of the United States. See also [Uintah Ute Indians of Utah v. United States](#), 28 Fed. Cl. 768, 784-85 (Fed. Cl. 1993) (stating that

“aboriginal title provides a given tribe with rights as against all except the sovereign” and “a tribe must prove exclusive possession of a parcel [M]ixed use of a given parcel ‘precludes the establishment of any aboriginal title’ ”).

The 1863 map cited by Plaintiff purports to show Shoshone territory in Utah. Plaintiff relies on it to show that Shoshone Territory included the land where the Reservation was established. But, in the court opinion to which it was attached as an exhibit, the court notes that the drawn boundaries were approximate. See [Northwestern Bands of Shoshone Indians v. United States](#), 95 Ct. Cl. 642 (Ct. Cl. 1942). And the purpose of the 1863 treaties between the Shoshone and the United States, for which the map was originally drawn, was to create peaceful relations between the tribe and the government, not to negotiate or establish any right or title to the territory indicated on the map.

[T]he information [gathered by the agents of the government] as to the locations of various bands of these Indians and the area in which they lived and over which they roamed and hunted ... was general in character and indefinite as to boundaries of specific areas and, also, as to specific bands or individual Indians of specific tribes.... The treaties [with the Shoshone] were intended to be, and we think they are, treaties of peace and amity because the Government had very little reliable information as to the territory actually occupied by these [Shoshone] Indians.

Id. A map of approximate boundaries, by itself or in conjunction with the rest of Plaintiff’s evidence, is simply not enough to create a genuine issue of material fact in this case.


The Plaintiff also cites to the unratified 1865 Spanish Fork Treaty “with the Utah, Yampah Ute, Pah-Vant, Sanpete Ute, Tim-P-Nogs and Cum-Nm-Bah Bands of the Utah Indians.” (Treaty (Ex. I to Pl.’s Opp’n Mem.) at 1 (emphasis added).) The Treaty provides in relevant part that the Timpanogos were a band of Indians in Utah Territory who were induced to “remove to and settle upon” the reservation described as “the entire valley of the Uintah River within Utah Territory extending on both sides of said river to the crest of

the first range of contiguous mountains on each side.” (Id. at 1-2.) Plaintiff cites to this in support of the proposition that the Timpanogos Band was distinct and did not merge with the Utes, because, it appears, the Timpanogos Band was represented by a separate signatory to the treaty. Aside from the fact that the treaty was never ratified (the Senate rejected it in 1869 so it is not a binding document), it also contains language that contemplates giving the group of bands *as one entity* exclusive use and occupation rights of a single piece of land. Specifically, the Treaty provides that one undivided tract of land is “reserved for the exclusive use and occupation of the said tribes,” (Treaty art. II (Ex. I to Pl.’s Opp’n Mem.) (emphasis added).) This language is inconsistent with the Timpanogos Tribe’s contention that the Reservation was set aside for it, not for the Ute Tribe. (See, e.g., Am. Compl. ¶ 12.)

Timpanogos Tribe Eligibility Requirements and the 1979 Ute Tribal Council Decision

*9 The fact that a modern day entity calling itself Timpanogos Tribe maintains the eligibility requirements set forth in Plaintiff’s Exhibit F does not create a genuine issue of material fact. The court must look to historical evidence to make its determination.

In the 1979 Ute Tribal Council decision (attached as Exhibit K to Pl.’s Opp’n Mem.), the Ute Tribal Council decided that certain individuals, some of whom were apparently ancestors of affiant Dave Montes, did not meet the requirements for Ute Tribe membership. The tribal court’s holding does not tell us anything other than the fact that certain relatives of Mr. Montes were not members of the Ute Tribe. This does not support Plaintiff’s claims. Plaintiff asks the court to make unreasonable inferences and leap to the conclusion that because Mr. Montes and his ancestors are not Ute, the Plaintiff, whose members include Mr. Montes, is a Shoshone tribe in existence since aboriginal times and for whom the Reservation was set aside. The court will not make that leap, nor will it allow a jury to do so.

In short, Plaintiff has presented nothing more than a “mere scintilla” of evidence, which is not enough to create a genuine issue of material fact.  [Anderson v. Coors Brewing Co.](#), 181 F.3d 1171, 1175 (10th Cir. 1999). Accordingly, the Defendants are entitled to summary judgment.

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ORDER

For the foregoing reasons, the Defendants' Motion for Summary Judgment is GRANTED.

All Citations

Slip Copy, 2005 WL 8176199

Footnotes

- 1 Defendants do not concede that the Timpanogos are a tribe. (See Defs.' Mot. at 2 n.1.)
- 2 The court does not agree with the Timpanogos Tribe's argument that the 1960 Stipulation between the U.S. and the Ute Tribe (in which the parties finally settled the litigation and agreed that the final judgment of the ICC "shall not be construed as an admission of either party, for the purpose of precedent or argument, in any other case" (Ex. A. to Pl.'s Opp'n Mem.)) prevents the Ute Tribe from relying on the ICC decisions as precedent. See, e.g., [U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship](#), 513 U.S. 18, 26-27 (1994) ("Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court finds that the public interest would be served by a vacatur.") (internal citation omitted). In any event, Timpanogos Tribe's argument does not affect the State's right to cite to the ICC decisions, because the State was not a party to the Stipulation. Further, as noted above, the court is not allowing the Defendants to rely on the ICC findings of fact as evidence.
- 3 See Defs.' Reply in Supp. of Mot. for Summ. J. at 12 (quoting language in [Havasupai Tribe v. United States](#), 752 F. Supp. 1471 (D. Ariz. 1990), *aff'd*, [943 F.2d 32](#) (9th Cir. 1991), which said that the "ICC proceedings ... are an appropriate subject for judicial notice").
- 4 The Plaintiff has not challenged the qualifications or methodology of the Defendants' expert witnesses.