

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ALBANY

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In the Matter of the Application of  
PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

Index No.  
2137-13

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION and ADIRONDACK PARK AGENCY,

Defendants-Respondents.

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BEFORE: HON. GERALD W. CONNOLLY  
Acting Supreme Court Justice

APPEARANCES:

For the Plaintiff:

JOHN W. CAFFRY, ESQUIRE  
CLAUDIA K. BRAYMER, ESQUIRE  
WILLIAM F. DEMAREST, III, ESQUIRE

For the Defendants:

LORETTA SIMON, ESQUIRE  
MEREDITH G. LEE-CLARK, ESQUIRE  
Assistant Attorneys General

Transcript of NON-JURY TRIAL taken in the  
above matter held at the Albany County Courthouse,  
Albany, New York, on March 1, 2017.

VOLUME I

March 1, 2017 - Pages 1 - 130

1 (On February 28, 2017, Plaintiff's  
2 Exhibits 1 through 25 and Defendants' Exhibits A  
3 through CP were marked for identification.)

4 (Proceedings commenced on March 1, 2017,  
5 at 10:45 a.m. as follows.)

6 THE COURT: Okay. This is the matter of  
7 Protect the Adirondacks!, Incorporated against New  
8 York State Department of Environmental  
9 Conservation and Adirondack Park Agency, index  
10 number 2137 of 2013. The matter is before the  
11 Court this morning for a nonjury trial. Counsel,  
12 all set to proceed?

13 MR. CAFFRY: Yes, your Honor.

14 THE COURT: Place your appearances on  
15 the record, please.

16 MR. CAFFRY: Yes. John Caffry, Caffry &  
17 Flower for the plaintiff. With me today are  
18 Claudia Braymer of Caffry & Flower, LLC of Glens  
19 Falls, and William Demarest of Tooher & Barone and  
20 also at counsel table is Peter Bauer, executive  
21 director of the plaintiff.

22 THE COURT: Go ahead.

23 MS. SIMON: Good morning, your Honor.  
24 Loretta Simon, assistant attorney general, and

1 Meredith Lee-Clark, assistant attorney general,  
2 and with us we have Jim Townsend with the  
3 Adirondack Park Agency, Mike Naughton with the  
4 Department of Environmental Conservation, and  
5 Linda Friedman with the attorney general's office.

6 THE COURT: All right. And you're all  
7 set to proceed?

8 MS. SIMON: Yes, your Honor.

9 THE COURT: Thank you. And welcome.

10 Counsel, it's my understanding from my  
11 court clerk that you have switched tables from  
12 those normally assigned because of some  
13 difficulties with hearing at times for all of you  
14 and this would be more convenient for counsel. I  
15 bring that up solely to state that I have some of  
16 the same difficulties myself, and so while I  
17 appreciate you standing to address the Court, I'm  
18 actually more comfortable if you address the Court  
19 from a seated position because you can pull those  
20 mics over in front of you and I can hear you  
21 better as well. Okay?

22 MS. SIMON: That would be great.

23 THE COURT: So speak slowly and clearly  
24 into the microphone and then both our court

1 reporter and I will be able to catch everything  
2 that is stated. It's my understanding that there  
3 are some stipulations to be placed on the record,  
4 is that correct?

5 MS. SIMON: Yes. We have two  
6 stipulations. I've brought copies and one is a  
7 stipulation regarding factual assertions for trial  
8 on the first cause of action signed by John Caffry  
9 on 2/27/17 and signed by me, Loretta Simon, on  
10 June 27, '17. Shall I continue?

11 THE COURT: Let's do them one at a time.

12 MS. SIMON: Okay.

13 THE COURT: So Mr. Caffry, is that  
14 correct?

15 MR. CAFFRY: Also I've now been taught  
16 how to turn on the microphone.

17 THE COURT: Turning it off is more  
18 important.

19 MR. CAFFRY: Yes. There are two  
20 stipulations which I have signed.

21 THE COURT: Okay. Let's start with the  
22 first one that Miss Simon just referenced on the  
23 record. Are you requesting that that be marked as  
24 Court's Exhibit 1 and received into evidence?

1 MS. SIMON: Yes, please.

2 THE COURT: The Court will accept the  
3 stipulation. We'll have that stipulation that was  
4 just referenced marked as Court's Exhibit 1 and we  
5 will receive that stipulation into evidence as  
6 Court's 1.

7 MS. SIMON: May I approach?

8 THE COURT: You may.

9 MS. SIMON: May I continue?

10 THE COURT: Yes.

11 MS. SIMON: We have a separate  
12 stipulation regarding documents for trial on the  
13 first cause of action and that is signed by John  
14 Caffry also on 2/27/17 and myself on 2/27/17 and  
15 it has an attachment A with a list of documents.  
16 It also has a CD, two CDs, and I would like to add  
17 this to the Court's record.

18 THE COURT: Mr. Caffry, do you join in  
19 that stipulation and request?

20 MR. CAFFRY: Yes, we do. It's our  
21 understanding that there may actually be four  
22 disks. Yeah. Some of the folders, your Honor,  
23 have multiple disks in them.

24 MS. SIMON: I stand corrected.

1 THE COURT: All right.

2 MS. SIMON: I sit corrected.

3 MR. CAFFRY: A total of four disks, yes.

4 THE COURT: Okay. As stated, that  
5 second stipulation which the Court will have  
6 marked as Court's Exhibit 2 if accepted by the  
7 Court and the terms of the stipulation are  
8 received into evidence with the references to it  
9 being received into evidence.

10 MS. SIMON: May I approach.

11 THE COURT: You may.

12 (Court's Exhibits 1 and 2 marked for  
13 identification.)

14 THE COURT: Counsel, and I appreciate  
15 your request for permission to approach, just for  
16 ease and economy going forward, you both -- all  
17 counsel have my standing permission to approach  
18 and to approach witnesses unless and until that  
19 permission is withdrawn which it could be upon any  
20 abuse of the privilege. Okay?

21 MS. SIMON: Thank you.

22 THE COURT: Go ahead.

23 MR. CAFFRY: Thank you, your Honor.

24 THE COURT: You're welcome. Anything

1 further, Miss Simon, with regard to stipulations?

2 MS. SIMON: The one thing -- I'm glad  
3 you raised the hearing issue and I am hoping I'll  
4 be able to hear everyone well enough, but you are  
5 aware of that because I've raised it in other  
6 arguments. So thank you.

7 THE COURT: We're in a nonjury trial.  
8 There's much less chance of disruption of the  
9 proceedings. If you're concerned about something,  
10 please, for you and Mr. Caffry, follow my lead.  
11 If there is anything you're not sure at all you  
12 heard, that's what our court reporter is here for,  
13 to have it read back, okay?

14 MS. SIMON: Thank you.

15 MR. CAFFRY: Thank you.

16 THE COURT: Anything else before we get  
17 started?

18 MR. CAFFRY: No, your Honor.

19 THE COURT: All right. Mr. Caffry, you  
20 have requested in our discussions off the record  
21 that both parties give an opening statement in  
22 which they give an overview of what they intend to  
23 prove and how they intend to prove it. So please  
24 go ahead.

1 MR. CAFFRY: Thank you, your Honor.

2 New York Constitution Article XIV,  
3 Section 1 provides in pertinent part that the  
4 lands of the state now owned or hereafter acquired  
5 constituting the Forest Preserve as now fixed by  
6 law shall be forever kept as wild forest lands.  
7 They should not be leased, sold or exchanged or be  
8 taken by any corporation, public or private, nor  
9 shall the timber thereon be sold, removed or  
10 destroyed.

11 The proof will show that the defendants  
12 by adopting a plan to build a system of the  
13 so-called Class II Community Connector Trail  
14 snowmobile trails, which are nine feet wide and  
15 wider in some spots with the extensive removal of  
16 trees vegetation, bedrock, building of substantial  
17 bridges and the like, and by building the first 25  
18 plus miles of the trails and planning to build  
19 more miles of them have violated Article XIV. The  
20 plaintiff believes nothing less than the future of  
21 the Forest Preserve as wild forest lands is at  
22 stake here.

23 Your Honor, your decision of  
24 January 25th of this year set forth the legal



1 standards by which you will judge this issue and I  
2 will just paraphrase. One is whether the cutting  
3 has and will continue to result in the cutting or  
4 removal of trees through an unconstitutional  
5 extent which is a substantial extent or any  
6 material degree. These trails also constitute an  
7 improper use of the Forest Preserve and paring  
8 such wild forest lands to an unconstitutional  
9 extent. At pages 21 to 22 of your decision you  
10 set out several issues of fact that you believe  
11 needed to be resolved through the proof introduced  
12 at trial, one of them being what constitutes  
13 timber for purposes of the Constitution and  
14 whether only trees greater than or equal to three  
15 inches diameter at breast height or DBH should be  
16 counted. We will show that timber includes trees  
17 of all sizes. We will present testimony to  
18 establish that. This will include the testimony  
19 of Dr. Philip Terrie who is an eminent  
20 Adirondack historian, and he will address the  
21 topic, among others, of the contrary usage of the  
22 term timber at the time of the Constitutional  
23 Convention of 1894 when Article XIV was adopted.  
24 This will show that timber does not include just

1 large merchantable trees. Our forest ecology  
2 expert, Steven Signell, will address the nature of  
3 trees less than three inches in diameter and the  
4 role in the ecology of the forest and show that  
5 there is no ecological basis to exclude trees  
6 under three inches in diameter from the ambit of  
7 the Constitution.

8 Other questions identified in your  
9 decision included exactly which trails are at  
10 issue, the length, and the exact number of trees  
11 three inches DBH or more that were cut or will be  
12 cut. We have stipulated to those facts. They're  
13 in the stipulation number one that was Court's  
14 Number 1 that was just admitted. That shows that  
15 approximately 28 miles of trails have been cut or  
16 identified to be cut soon and almost 6200 trees  
17 of three inches DBH or greater have been cut or  
18 are about to be cut. We will show by -- you also  
19 identified an issue, again, of whether trees less  
20 than three inches DBH should be counted. We will  
21 show, if you find that they should be counted, we  
22 intend to show by the testimony of our expert,  
23 Steven Signell, based on his extensive field work  
24 on the trails counted an additional 18,000 or more

1 trees under three inches DBH that have been cut or  
2 are planned to be cut, which brings the total of  
3 large and small trees to almost 25,000. We  
4 believe this shows that under both of the relevant  
5 court decisions, that this cutting of trees is a  
6 substantial or material amount and is  
7 unconstitutional.

8 The last question that you identified at  
9 pages 21 and 22 of your decision was, again  
10 paraphrasing, whether closing of trails in remote  
11 interior areas has occurred and to what extent.  
12 Again, Mr. Signell will testify based upon his  
13 field work where he went out and fact checked all  
14 or field verified each of the trails which the  
15 defendants allege or we believe will allege were  
16 closed when the Seventh Lake Mountain Trail was  
17 constructed. His testimony would show that the  
18 snowmobile trails that they've designated as  
19 closed either continue to remain open and be used  
20 for other purposes so that closing them to  
21 snowmobile use in the winter does not mean that  
22 they are going to revegetate in any way because  
23 they will be continue to be used by other types of  
24 vehicles, hikers, and other perhaps bicycles

1           during the other months of the year and so they  
2           will not revert to their natural wild forest  
3           state, or there are others that he observed and  
4           will testify to that were abandoned many years ago  
5           as evidenced by the fact that they're completely  
6           overgrown and there is trees growing up in them  
7           and are not being used so that the administrative  
8           closure on paper of these trails achieves nothing.  
9           They were already on their way to growing back and  
10          there is -- it's, in effect, only a paper closure.

11                        In addition, your decision raised a  
12          question of the impairment of the wild forest  
13          lands. Mr. Signell will testify that because of  
14          the cutting of trees for the construction of these  
15          trails, the forest canopy of branches of trees on  
16          both the trees that were removed in particular,  
17          the forest canopy has opened up significantly on a  
18          very significant portion of the trail where he did  
19          a great amount of field work, that being the  
20          Seventh Lake Mountain Trail, and that as a result  
21          of that and the fact that the defendants planted  
22          grass on much of this trail perhaps as ground  
23          cover for areas that had been disturbed during  
24          construction, the forest floor within the trail

1 corridor in many places has been taken over by  
2 grass which is not a natural forest condition  
3 anymore than a lawn is a natural forest condition.  
4 Therefore, we believe that impairs the wild forest  
5 nature of the land to an unconstitutional extent.

6 I believe your decision also raised a  
7 question of whether these trails are  
8 distinguishable from the trails that were at issue  
9 in the Balsam Lake case in the '90s where the  
10 trail in question, there was a cross country ski  
11 trail similar to a hiking trail, and perhaps it's  
12 even going to be used as a hiking trail, but we  
13 will have, among others, our expert on trail  
14 construction and maintenance, William Amadon, will  
15 testify that these snowmobile trails, which much  
16 more resemble road than a trail, are not  
17 comparable to a foot trail such as was found to be  
18 acceptable in the Balsam Lake case. These  
19 trails are so much wider, so much more grading  
20 occurs, and so much other alteration of the  
21 terrains, they do not resemble a foot trail that's  
22 been designed to modern standards. There are some  
23 foot trails that are built on old roads that have  
24 been abandoned or closed and they may be wider,

1 but a current properly-designed foot trail is much  
2 different from these Class II snowmobile trails.

3 We will also have Dr. Ronald Sutherland,  
4 a forest ecologist, who will testify to the  
5 adverse impacts on the environment of the forest  
6 from the construction of these trails. This will  
7 include such things, but not limited to, erosion,  
8 noise, and the general forest ecology and related  
9 impacts.

10 We will also show by the defendants' own  
11 admissions in their pleadings and deposition  
12 testimony that this is a unified system of trails  
13 and should be considered by the Court as a whole  
14 and not be considered in segments based upon trail  
15 segments or multiple trails. We believe if it's  
16 treated as a whole, that a cumulative total of all  
17 the trees and all the other damage should be  
18 considered together.

19 We had intended to show that the  
20 defendants' approved administrative plans,  
21 policies and procedures do not determine the  
22 constitutionality of the Class II snowmobile  
23 trails but the defendants have argued at times and  
24 we believe have represented to the Court that that

1 is not their position, so we do not intend to  
2 present that testimony at this time.

3 And I'd also like to point out that  
4 during discovery we attempted to obtain discovery  
5 of documents on that issue and Justice Ceresia  
6 barred us from obtaining them on the grounds that  
7 they basically were not relevant. In your recent  
8 decision this issue was argued. I don't believe  
9 it was expressly addressed but we take that to  
10 mean that perhaps you didn't see it as  
11 significant. So we do not intend at this time to  
12 call the witness that we had planned to call,  
13 Robert Glennon, to testify on that issue.

14 Likewise, at this time we will not read  
15 into the record from the deposition transcripts of  
16 the defendants' employees on issues related to  
17 that topic. As I said, I do intend to do that on  
18 a different topic, but on two of the three topics  
19 we intend to do that related to these  
20 administrative plans, guidances, manuals. At this  
21 time we do not intend to do that. We reserve the  
22 right to do so later in the course of the  
23 testimony that perhaps requires rebuttal, but at  
24 this time we don't intend to do so. I know we had

1           talked about that being today but we're at this  
2           point not doing it.

3                         In conclusion, we believe that the proof  
4           will show that the defendants' actions violate  
5           Article XIV both because of the number of trees  
6           cut and because of the impairment of the wild  
7           forest nature of the Forest Preserve resulting  
8           from the construction of the trails.

9                         THE COURT: Thank you. All set,  
10          Miss Simon?

11                        MS. SIMON: Yes.

12                        THE COURT: Please go ahead.

13                        MS. SIMON: Thank you, your Honor.  
14          Plaintiff bears the burden here to show the  
15          construction of these Class II trails that are  
16          nine feet wide and twelve feet on curves as deep  
17          slopes violate Article XIV, Section 1 of the  
18          Constitution. The Constitution not only protects  
19          these lands as forever wild but prohibits the  
20          removal of timber in that it can't be sold,  
21          removed or destroyed. However, the Forest  
22          Preserve is also for the use and enjoyment of the  
23          public and these trails, like all other trails,  
24          provide public access while protecting the Forest



1 Preserve, and the standard that you have set forth  
2 for us to address is the cutting or removal to a  
3 substantial extent or material degree the trees  
4 that are in our opinion timber size, but we will  
5 address that and whether these trails impair the  
6 wild forest lands. These trails, like all other  
7 trails in the Forest Preserve, do not impair the  
8 forest to a substantial extent. We will show that  
9 timber by forestry standards does not include  
10 seedlings or saplings, does not include trees  
11 smaller than three inches diameter at breast  
12 height which I will refer to as DBH. That timber  
13 by forestry standards is generally greater than  
14 three inches diameter at breast height and that  
15 this three-inch standard which dates to the Court  
16 of Appeals decision in the Association for the  
17 Protection of the Adirondacks versus McDonald in  
18 the record at page 12, they counted trees, timber  
19 size trees, are referred to in the decision of  
20 three inches or greater. This standard is also  
21 DEC policy. We will show that foresters have not  
22 removed any timber from the Forest Preserve nor  
23 have they removed any trees. All the timber that  
24 has been cut remains on the forest floor and

1 becomes habitat, rocks, remains. It becomes part  
2 of the forest, remains part of the Forest  
3 Preserve.

4 We will show that the three-inch DBH  
5 standard is smaller than most forest industry  
6 standards for timber size trees. The state will  
7 show that foresters avoided cutting timber size  
8 trees where possible, that foresters counted every  
9 timber size tree by species and by size to be cut.  
10 They adjusted routes to protect sensitive areas,  
11 and the foresters did not cut higher than 12 feet  
12 to preserve the forest canopy. We will show  
13 through testimony that there is no clearcutting  
14 here. The petition in this case repeatedly refers  
15 to trail construction here as clearcutting. This  
16 is not clearcutting, we will demonstrate, by  
17 ecological standards nor is it clearcutting by  
18 forestry standards.

19 We will show that the canopy has been  
20 substantially preserved here; that there are  
21 natural openings and openings -- small openings  
22 that will close as a result of the trail work but  
23 they are not substantial. We will show that these  
24 trail construction features that foresters use are

1 improvements over old wood roads and poorly  
2 constructed trails from the last century, and that  
3 the foresters took great care to construct  
4 sustainable trails and all of the features that  
5 are complained of in the complaint, features that  
6 are used to construct these trails like water  
7 bars, like bench cuts. These are techniques to  
8 preserve the forest. They use these techniques to  
9 stabilize trails so that when there is a  
10 tremendous storm, the trail doesn't get washed  
11 into a water body or into a wetland and for the  
12 safety of people using the trails and for the  
13 trails to be able to withstand public use. These  
14 are features and techniques that are for  
15 sustainable, sound trail construction. We'll show  
16 that the trail tread is an important part of the  
17 sustainability.

18 THE COURT: Say that again.

19 MS. SIMON: Trail tread. And we'll show  
20 that DEC constructs bridges to protect streams and  
21 rivers and wetlands. They complain of the number  
22 of bridges constructed. Bridges keep people out  
23 of the wetlands and out of the streams but they  
24 also provide a safety element and protect the

1 waterway. We'll show that foresters developed a  
2 trail tread to shed water off the trail and to  
3 withstand use.

4 We will show that closing remote  
5 interior trails defragments the forest, closing  
6 them to snowmobile use defragments the forest and  
7 provides a benefit to the Forest Preserve. We'll  
8 show that the foresters select routes to avoid  
9 deer wintering areas, to avoid wetlands, to avoid  
10 significant habitats, and we'll show that the  
11 9-foot trail tread and, again, 12 feet on curve in  
12 steep slopes doesn't destroy the canopy. We will  
13 provide photographic evidence for each trail which  
14 will show that the surrounding forest is intact,  
15 it is a wild forest, and that these trails are a  
16 narrow strip through the forest, through the  
17 woods, that don't substantially impair that wild  
18 forest. We will show through aerial photographs,  
19 both leaf-on and leaf-off, that there is not a  
20 substantial disturbance of the canopy on these  
21 trails so timber is not being destroyed to a  
22 substantial extent. These lands are still wild  
23 forest but for the 9-foot path going through them,  
24 and this is consistent with the Appellate

1 Division's decision in the Balsam Lake case that  
2 trails are an acceptable use in the Forest  
3 Preserve. That these Class II trails are one foot  
4 wider, we will show, does not have a substantial  
5 impact. They are very much like hiking trails.  
6 We'll show that hiking trails are constructed in  
7 the same -- with the same erosion control features  
8 and that photographic evidence of these trails and  
9 foresters' testimony will show, particularly with  
10 the High Peaks area which gets intensive public  
11 use, these trails as a result are much wider and  
12 we'll demonstrate the need for sound construction.

13 For construction of classed trails which  
14 commenced between January 2012 and October 2014,  
15 we will provide testimony of the number of miles  
16 and acres opened and closed. We will show through  
17 testimony that this acreage is de minimis whether  
18 you look at it from the entire Forest Preserve,  
19 nearly 3 million acres, or whether you look at it  
20 within the forest unit, and we will show that  
21 through mapping the context for each trail, the  
22 location, the length and where it's located. We  
23 will show through work plans the species of each  
24 tree three-inch DBH cut, the bridges that were

1 built, the erosion control that was used and even  
2 the rocks that were removed or trimmed for each  
3 trail. Plaintiffs' expert, Dr. Howard, will  
4 testify that even if you take all of  
5 plaintiffs' -- did I say plaintiffs'? I meant  
6 defendants' experts. Defendants' expert, our  
7 expert, Dr. Howard, will testify that even if you  
8 accept plaintiff expert Mr. Signell's assertions  
9 on fragmentation, that there is still a benefit to  
10 the Forest Preserve of closing those interior  
11 trails to motor vehicle use and we will show that  
12 these trails are not roads in the Forest Preserve.

13 Because the Court of Appeals in McDonald  
14 said that the Forest Preserve is for the  
15 reasonable use and benefit of the public and a  
16 very considerable use may be made by campers and  
17 others without in any way interfering with this  
18 purpose of preserving them as wild forest lands,  
19 we assert that these trails, like all trails in  
20 the Forest Preserve, are a reasonable public use  
21 without interfering with the wild forest nature of  
22 the preserve. Thank you.

23 THE COURT: Thank you, Miss Simon.

24 Mr. Caffry, are you all set?

1 MR. CAFFRY: Yes, your Honor.

2 THE COURT: Please call your first  
3 witness.

4 MR. CAFFRY: The plaintiff would call  
5 Dr. Phillip Terrie.

6 THEREUPON,

7 PHILIP TERRIE,

8 Called as a witness, having been first duly sworn, was  
9 examined and testified as follows:

10 THE COURT: All right. Good morning,  
11 Doctor. I'm Judge Connolly.

12 THE WITNESS: How are you doing.

13 THE COURT: I am well, thank you. I  
14 hope you are, too.

15 Just a couple things before you begin.

16 As you can see, we've got our court reporter

17 taking down verbatim everything that's said.

18 Because of that, I need you to make sure when

19 you're answering questions, answer them nice and

20 clearly and in a verbal way. Stay away from head

21 nods yes or no and uh-huhs and huh-uhs as, as I

22 understand it, they come out looking the same on

23 the transcript, does us no good.

24 THE WITNESS: Yes, sir.

1 THE COURT: If you hear an objection at  
2 any point from Miss Simon and, for that matter,  
3 from Mr. Caffry when you're being asked a question  
4 by the other counsel, don't answer the question  
5 unless I've had a chance to rule on the objection.  
6 I'll tell you whether you can answer or not, okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: And if you're already  
9 speaking and they object, just stop immediately  
10 and I will step in and tell you whether you can  
11 complete your answer. Understood?

12 THE WITNESS: Thank you.

13 THE COURT: Finally, if Miss Simon says  
14 to you in the context of a question: I want a  
15 yes-or-no answer to this question, you have three  
16 possible answers at that point. Yes, no, and I  
17 can't do it. I can't give you a yes-or-no answer  
18 to that question. No explanation for any one of  
19 the three. Understood?

20 THE WITNESS: Yes, sir.

21 THE COURT: Excellent. Thank you. All  
22 set, Mr. Caffry?

23 MR. CAFFRY: Yes, your Honor.

24 THE COURT: Please go ahead.



DIRECT EXAMINATION

BY MR. CAFFRY:

Q Dr. Terrie, will you state your full name, please?

A My name is Philip Terrie.

Q And where do you currently reside?

A I live in Ithaca, New York.

Q Are you affiliated with the plaintiff, Protect the Adirondacks!, in any way?

A Yes. I'm on the board of directors.

Q Could you please describe your educational credentials?

A I have an AB degree in English from Princeton University and a Ph.D. in American Civilization from George Washington University.

Q And what year did you obtain your Ph.D.?

A 1979.

Q And did you write a dissertation as part of obtaining your Ph.D.?

A I did.

Q And what was the subject?

A The subject is the attitudes toward wilderness in the Adirondacks from the beginning of white contact to the establishment and constitutional

1 protection of the Forest Preserve.

2 Q And did that dissertation address the  
3 Constitutional Convention of 1894 and the adoption of  
4 what's often known as the Forever Wild Clause?

5 A Yes, sir, it did.

6 Q And did you go right from college to graduate  
7 school or did you work in between?

8 A I worked at the Adirondack Museum for two  
9 years, 1971 to '73, as a research assistant and  
10 assistant curator of history.

11 Q Where is that museum located?

12 A That's in Blue Mountain Lake, New York.

13 Q And is that within the Adirondack Park?

14 A Right in the middle.

15 Q And what were your duties there at the  
16 museum? What did they include?

17 A I was conducting research for a major exhibit  
18 on outdoor recreation and sports in the Adirondacks,  
19 the exhibit that was subsequently known as Woods and  
20 Waters, and I researched a lot of primary documents on  
21 the history of forestry and how the state was dealing  
22 with forestry and abuses thereof leading up to the end  
23 of the 19th century and beyond.

24 Q Did your duties include any work related to

1 Article XIV of the Constitution at that time?

2 A Yes. I was aware of the Constitution and the  
3 creation of the Forest Preserve and I was always  
4 observing the relationships between forestry,  
5 commercial forestry, and the Forest Preserve and the  
6 constitutional protection.

7 Q Dr. Terrie, are you aware that when that  
8 provision was first adopted, it was actually part of  
9 Article VII of the Constitution?

10 A Yes.

11 Q And was it subsequently renumbered in the  
12 Constitution?

13 A Yes, it was.

14 Q For ease of reference and to avoid  
15 confusion -- or what was it renumbered to?

16 A It was originally Article VII, Section 7 in  
17 the Constitution written in 1894 and it was renumbered  
18 Article XIV, Section 1 in the Constitutional Convention  
19 of 1938.

20 Q And does it remain with that number to this  
21 date?

22 MS. SIMON: Objection, your Honor. He  
23 hasn't been entered as an expert yet.

24 MR. CAFFRY: I'm asking --

1 THE COURT: Let her finish.

2 MS. SIMON: I am waiting to hear if he's  
3 going to be admitted as an expert before he starts  
4 testifying as to facts.

5 THE COURT: Okay. So the Court's'  
6 normal process with regard to expert testimony is  
7 that the question may be asked, opinion questions  
8 may be asked by the propounding party, and if you  
9 object to the qualifications, you may make the  
10 objection stating that they may not -- objection,  
11 they may not answer this question because they do  
12 not have sufficient qualifications to do so. The  
13 courts have mostly gotten away from proffer --  
14 from the propounding party saying, Judge, please  
15 recognize this person as an expert. So if you're  
16 objecting at this time to Dr. Terrie's  
17 qualifications, I will rule on your objection or I  
18 can rule on any objections on individual questions  
19 based upon his qualifications.

20 MS. SIMON: Thank you for that  
21 clarification. I'm okay with going forward. I  
22 thought we were going to have him entered as an  
23 expert.

24 MR. CAFFRY: Your Honor, if I may

1 continue.

2 THE COURT: Okay.

3 BY MR. CAFFRY:

4 Q Dr. Terrie, before the objection I believe  
5 you said that in 1938 it was renumbered as Article XIV  
6 Section 1, is that correct?

7 A I did.

8 Q And does it retain that number to this date  
9 to your knowledge?

10 A It does.

11 Q For ease of reference and to avoid confusion  
12 for everybody, would it be okay with you if during your  
13 testimony we referred to it as Article XIV even if  
14 we're referring to 1894 when it was Article VII?

15 A Sure. Although I may slip and say Article  
16 VII, Section 7 in which case remind me.

17 Q What was your first job after you earned your  
18 Ph.D.?

19 A The very first job I had was working at the  
20 Alexandria Archeology Research Center in Alexandria,  
21 Virginia conducting a social history project.

22 Q Did you subsequently obtain any positions in  
23 academia?

24 A Yes.

1 Q Could you tell me where that was?

2 A I applied for and was offered a job as an  
3 assistant professor of English and American studies at  
4 Bowling Green State University in Bowling Green, Ohio.

5 Q And how long did you teach there?

6 A I began in the fall of 1980 and retired in  
7 2007, in May of 2007.

8 Q And what was -- by the time of your  
9 retirement, what was your official position with the  
10 university?

11 A I was a full professor of English, American  
12 studies and environmental studies.

13 Q And what types of courses did you teach  
14 there?

15 A I taught a wide variety of courses. At the  
16 early part of my career, I emphasized courses in  
17 American literature and about halfway through, because  
18 of my publication record and because of staffing needs,  
19 I was increasingly teaching American cultural history  
20 and environmental studies -- environmental history I  
21 mean.

22 Q Did that involve any time teaching about the  
23 Adirondacks or Article XIV and its history?

24 A Well, I tried to work it in wherever I could

1 but sometimes the students from Ohio were not terribly  
2 interested.

3 Q And when you did do that, did you place it in  
4 any larger context?

5 A I did. I often used it as an illustration of  
6 the move toward conservation of natural resources that  
7 was occurring throughout the country beginning in the  
8 years after the Civil War.

9 Q Have you taught anywhere else?

10 A Yes. After I retired, I had a visiting  
11 professorship at the State University of New York in  
12 Plattsburgh and then another one as the NEH  
13 distinguished professor of environmental studies and  
14 history at the State University of New York at Potsdam.

15 Q How long did you teach at Plattsburgh?

16 A That was a brief course. I was there for two  
17 weeks and it was on -- I don't remember the exact  
18 title. I think it was something like Wilderness in the  
19 Adirondacks.

20 Q And what did you teach at Potsdam?

21 A At Potsdam I had a full regular three-credit  
22 course and it was titled roughly the History of the  
23 Adirondacks in the Context of American Environmental  
24 History.

1 Q And did either one of them involve  
2 Article XIV and its adoption?

3 A Both of them did.

4 Q Could you please tell the Court about any  
5 books that you have written, may have written,  
6 regarding the Adirondacks and in particular  
7 Article XIV, that included Article XIV?

8 A In 1985 I published a book titled Forever  
9 Wild: Environmental Aesthetics and the Adirondack  
10 Forest Preserve. That was an elaboration and an  
11 expansion of my dissertation. It covered attitudes  
12 toward wilderness both in establishing the policy and  
13 how these attitudes permeated the larger culture from  
14 the beginnings of any written evidence about northern  
15 New York up until what was then the present which would  
16 have been around 1980 or so. And I discussed the  
17 constitutional provision in that book.

18 Q When you say the constitutional provision,  
19 you mean Article VII, ultimately Article XIV?

20 A Yes.

21 Q And did you address the Constitutional  
22 Convention which was adopted?

23 A I did.

24 Q And the lead-up to that?



1 A I did.

2 Q And did you write any other books that  
3 addressed these subjects?

4 A Well, I wrote a book called Wildlife and  
5 Wilderness: A History of Adirondack Mammals which  
6 touched on the Forest Preserve and how management  
7 thereof impacted wildlife habitat and policies. That's  
8 not a major part of that book but it's included in one  
9 chapter. And then in 1997 I published Contested  
10 Terrain: A New History of Nature and People in the  
11 Adirondacks which was a reassessment of everything I  
12 had said in Forever Wild and including broadening the  
13 story and giving a more nuanced approach to materials  
14 that I discussed earlier.

15 Q What do you mean by more nuanced approach?

16 A Well, the Forever Wild is largely a book  
17 based on out of the area -- out of the Adirondacks  
18 opinions and responses to wilderness and in Contested  
19 Terrain I wanted to include the local voice.

20 Q What do you mean by the local voice?

21 A Year-round inhabitants of the Adirondacks, of  
22 the park.

23 Q Have you written book chapters and articles  
24 about this subject?

1           A       I have. I've published an -- I'll start with  
2 refereed articles which means peer-reviewed. In the  
3 humanities we would say refereed -- an article in New  
4 York History on the Convention of 1894 and an article  
5 in New York History on the Convention of 1915, and I  
6 dealt with the Constitution a bit and the establishment  
7 of the park in an article entitled -- it's in the  
8 Hudson River Review -- One Broken -- One Grand Unbroken  
9 Domain and a magazine -- a journal published at Bard  
10 College. I think that's it.

11           Q       Overall approximately how many papers, book  
12 chapters, articles and books have you written  
13 addressing the subject of Article XIV, its adoption and  
14 the process that led up to it?

15           A       Including chapters and articles and  
16 non-refereed publications, off the top of my head, I  
17 would say 15 to 20.

18           Q       Have you as part of your professional work  
19 made public presentations to explain the history of the  
20 Adirondacks and/or Article XIV to the general public?

21           A       I have. Mostly on college campuses.

22           Q       Have you been involved in any media  
23 productions, television productions, or the like?

24           A       Yes. I was a talking head in a production by

1 Plattsburgh public TV station known as Sentinel, The  
2 Forest Preserve in 1985 talking about the evolution of  
3 the Forest Preserve and its constitutional protection;  
4 and subsequent to that there was a documentary I think  
5 produced by the same station on the Sentinel of the  
6 Park in 1892. And subsequent to that, in the early  
7 20th century, a Buffalo public TV station did a  
8 two-hour documentary on the Adirondacks including a lot  
9 of different topics but also the constitutional  
10 protection and I was a talking head in that.

11 Q And I believe you said one of your areas of  
12 teaching was American Cultural Studies, is that  
13 correct?

14 A That's right.

15 Q That term may not be familiar to many people.  
16 Could you explain to the judge what that involves and  
17 how that may relate to your studies of Article XIV?

18 A American Culture Studies is the  
19 interdisciplinary study of American civilization. It  
20 is very broad, and different people emphasize different  
21 aspects of it. In my case it was cultural values,  
22 languages, literature, the way values and attitudes are  
23 formed over time, and how they are reflected in  
24 expressive forms, in my case almost always written

1 expressive forms but occasionally in visual graphic and  
2 paintings, things like that.

3 Q And during the course of your scholarship and  
4 writing on the subject of Article XIV, did you apply  
5 that type of process to your work?

6 A I did.

7 Q And have you ever served as an expert witness  
8 in any type of legal proceeding?

9 A I was called an expert witness by the State  
10 in the case of Thayer Lake versus Phil Brown. I think  
11 that's the exact title.

12 Q It's close.

13 A Okay. It had to do with paddling rights on a  
14 remote brook in the central Adirondacks and I was asked  
15 by the State to provide an affidavit in that case.

16 Q And when you say the State, was that any  
17 particular agency of the State?

18 A That was the Department of Environmental  
19 Conservation.

20 Q And was that affidavit related to history?

21 A It was.

22 Q Did it specifically address Article XIV in  
23 any way?

24 A No, it didn't, as a matter of fact.

1 Q Could you please tell the judge about your  
2 personal experiences and association with the  
3 Adirondack Park and the Forest Preserve outside of your  
4 work in scholarship briefly?

5 A Well, I first visited the Adirondacks in 1966  
6 at the age of 18 -- 17, actually, and completely fell  
7 in love with the place and have been spending as much  
8 time as possible there ever since. I worked at the  
9 Adirondack Museum, as I said, for two years. I go back  
10 as often as I can. I have a camp on Long Lake, boat  
11 access only, since 1981. I'm a 46er.

12 Q Could you explain what a 46er is?

13 A That is a club of those people who have  
14 climbed all the High Peaks with an elevation over  
15 4,000 feet according to the maps available around 1920.

16 Q And how many of them are there on that list?

17 A There are 46.

18 Q And I'm going to hand you what's been marked  
19 for identification as Plaintiff's Exhibit 1 and would  
20 you look that over while I return to my seat.

21 MS. SIMON: Your Honor, I don't have a  
22 copy of what that is. Could I see that?

23 THE COURT: Do you have a copy for  
24 Miss Simon?

1 MS. SIMON: Thank you.

2 MR. CAFFRY: I think I'll wait and make  
3 sure Miss Simon has a chance to look at it. We  
4 thought we had previously given her a copy of this  
5 exhibit so I want to give her a chance.

6 THE COURT: Good enough.

7 MS. SIMON: Thank you.

8 THE COURT: All set?

9 MS. SIMON: Yes.

10 THE COURT: Go ahead.

11 BY MR. CAFFRY:

12 Q Dr. Terrie, do you recognize that document?

13 A I do.

14 Q And can you tell the Court what it is?

15 A This is my curriculum vitae.

16 Q And did you prepare that?

17 A I did.

18 Q And is it current or reasonably current?

19 A Reasonably current.

20 Q Do you recall when you prepared it, when it  
21 was last updated?

22 A I would guess last August or September.

23 Q And does it accurately describe your  
24 professional career, writings, and scholarship and such

1 things?

2 A It does.

3 MR. CAFFRY: Your Honor, I would move  
4 admission of Exhibit Number 1.

5 THE COURT: Miss Simon.

6 MS. SIMON: No objection.

7 THE COURT: Plaintiff's 1 is received  
8 into evidence.

9 (Plaintiff's Exhibit 1 received into  
10 evidence.)

11 MR. CAFFRY: Your Honor, at this point I  
12 would request that Dr. Terrie be permitted to  
13 testify as an expert on subjects such as the  
14 history of the Adirondacks, the history of the  
15 Adirondack Forest Preserve and the Adirondack  
16 Park, and the cultural and political history of  
17 the Adirondacks and related subjects.

18 THE COURT: Okay. As I stated to  
19 Ms. Simon a few moments ago, the Court does not  
20 take a position with regard to such an application  
21 and does not entertain such applications even  
22 though typically that's an application that is  
23 more of a concern in a jury trial because the  
24 Court by taking that -- by responding to that

1 question will typically -- they seem to be  
2 bolstering or supporting the expert's  
3 qualifications in front of the jury.

4 Nevertheless, as a typical process I will only  
5 entertain objections to opinion questions and you  
6 can be heard on it at that point. So I'm not  
7 going to recognize him as an expert at this time  
8 but you can ask your opinion questions. If  
9 Miss Simon objects to any of them as him being  
10 unqualified, I'll rule on it at that point.

11 MR. CAFFRY: Thank you for clarifying  
12 that.

13 THE COURT: Please continue.

14 BY MR. CAFFRY:

15 Q Dr. Terrie, in preparation for your testimony  
16 here today, can you tell us some of the major resources  
17 that you consulted before doing so? Again, shall we  
18 say the larger ones or the more significant ones.

19 A Okay. I looked into, in no particular order,  
20 I'm not sure I'm going to get these exactly in  
21 chronological order, but among the things I looked at  
22 were the Literature of Sport and Travel in the  
23 Adirondacks in the 19th Century. I looked at the  
24 Revised Record of the Constitutional Convention of 1894



1 and the documents produced thereat. I looked at the  
2 Revised Record of the Constitutional Convention of 1915  
3 and the documents thereat. Because I hadn't done it  
4 before, I went to the archives, I went through all the  
5 records of the 1938 Convention.

6 Q Excuse me. Which archives is that?

7 A The New York State Archives.

8 Q Located here in Albany?

9 A Right around the corner.

10 Q Please continue.

11 A And I looked -- that's about it. I looked at  
12 the McDonald decision and I think that's pretty much  
13 what I looked at.

14 Q Did you look at -- yes?

15 A Thought of something else. I looked at a  
16 dictionary published in 1890 which was the standard  
17 dictionary in American usage at that time.

18 Q And what was the -- who published that  
19 dictionary?

20 A Merriam's International Dictionaries. That's  
21 not exactly the title but that's close.

22 Q And did you review --

23 A Excuse me. Beg your pardon. I said that  
24 wrong. It's Webster's, not Merriam. I have a copy.

1 Can I look at the copy of my title page to make sure  
2 I've got that right?

3 Q Yes, you may, if there is no objection to  
4 that.

5 THE COURT: No objection, Miss Simon?

6 MS. SIMON: No objection. To his book?

7 A I sometimes say it wrong. It was Webster's  
8 International Dictionary of the English Language.

9 Q And I believe you said that was the standard  
10 dictionary at the time?

11 A That was the dictionary of record for  
12 American usage.

13 Q And did you consult any popular -- excuse me.  
14 I believe you already said that. You said you  
15 consulted some popular literature. Anything in  
16 particular?

17 A Well, it's hard to look for exactly what  
18 you're trying to find in things like this but I looked  
19 through some of the major works of travel and  
20 exploration like Joel T. Headley's The Adirondack or  
21 Life in the Woods which was probably the most popular  
22 book about the Adirondacks; if not the most popular,  
23 the second most popular book of the 19th century. I  
24 looked at Murray which was probably the most popular

1 books. I looked in the Colvin Reports and a couple of  
2 books published after the turn of century.

3 Q Did you look at any popular publications or  
4 newspapers?

5 A Yes, I did.

6 Q And with the exception perhaps of the 1938  
7 Constitutional Convention record, are these all  
8 documents that you had previously read and previously  
9 consulted in the course of your scholarship on this  
10 subject?

11 A They were.

12 Q Do you know when the New York State Forest  
13 Preserve was first created?

14 A I do.

15 Q And when was that?

16 A 1885.

17 Q And how was it created?

18 A By an act of the New York Legislature.

19 Q And do you know who proposed that law?

20 A I do. New York state was concerned about the  
21 quality of the forests and it asked a botanist from  
22 Harvard University named Charles Sprague Sargent to  
23 investigate the forest and submit a report to the  
24 Legislature, which he did, and that is known as the

1 Sargent Report.

2 Q And it's your understanding or belief based  
3 on your scholarship that this is what led the  
4 Legislature to adopt the statute creating the Forest  
5 Preserve?

6 A Yes. The language in the 1885 statute is  
7 remarkably similar to some of the key sentences and  
8 recommendations in the Sargent Report.

9 Q Well, could you tell us, for example, one of  
10 those key sentences?

11 A The first suggests that the lands of the  
12 state be forever kept as wild forest lands appears in  
13 the Sargent Report.

14 Q And based upon your studies and what you have  
15 read, did you see any indication or evidence of the  
16 political or popular concerns that led to this action?

17 MS. SIMON: Objection, relevance, your  
18 Honor. This is not about --

19 THE COURT: Do you want to be heard  
20 fully on it?

21 MS. SIMON: I'm sorry?

22 THE COURT: Do you want to be heard  
23 fully on your objection? Go ahead.

24 MS. SIMON: This is all very

1 interesting. I think the question is how much of  
2 it is relevant to what happened on the ground  
3 here, how many trees were removed, and how that  
4 conflicts the Constitution. This is history.  
5 This is not facts on the ground. We are at a  
6 trial to determine facts and so I object to  
7 continued discussion of statutes prior to 1894  
8 before the Constitution implemented the Forever  
9 Wild Clause.

10 THE COURT: Mr. Caffry, do you wish to  
11 be heard? Do you want to make an offer of proof  
12 with regard to Dr. Terrie's testimony?

13 MR. CAFFRY: I think I would like to --  
14 I can do that.

15 THE COURT: Please do.

16 MR. CAFFRY: Through voir dire of the  
17 witness or myself?

18 THE COURT: Through yourself.

19 MR. CAFFRY: Okay. Your Honor, in your  
20 decision on the motion for summary judgment, one  
21 of the issues you laid out as a factual issue that  
22 you thought needed to be developed at trial was,  
23 quote, what constitutes timber for purposes of the  
24 Constitution. That was on the list on pages 21

1           and 22 as a factual issue, and it relates quite  
2           closely in our opinion to the question of whether  
3           trees of only three inches DBH or greater should  
4           be included within the definition of timber. That  
5           was also another issue you had listed. We believe  
6           that the background of the Constitutional  
7           Convention of 1894, what led up to it, the  
8           concerns, are all part of the milieu that led the  
9           convention to propose and adopt the Article VII,  
10          now Article XIV. We also believe that as a  
11          general matter, it is appropriate for historians  
12          to testify as expert witnesses at trial on matters  
13          such as this where the events occurred a long time  
14          ago. In the case of Oneida Indian Nation of  
15          Wisconsin v. State of New York, 732 F2d 261,  
16          Second Circuit 1984, the Court reversed the trial  
17          court -- and this was an Indian land claim but  
18          involved treaties and many other complicated  
19          issues -- but the Court reversed the lower court  
20          decision in part on the basis that the trial court  
21          was going to have to continue issues of law or  
22          consider, I'm sorry, issues of law and statutory  
23          construction against the historical background of  
24          the events surrounding the trees and the adoption

1 of the applicable portions of the Articles of  
2 Confederation relied upon by the plaintiffs. And,  
3 of course, the Articles of Confederation were the  
4 predecessor to the current United States  
5 Constitution. And the Court went on to say, this  
6 factual background in turn would probably be  
7 derived from expert testimony of historians and  
8 others and consideration by the Court of  
9 contemporaneous documents and oral transmissions  
10 because, of course, when dealing with Indian  
11 nations of the time, they didn't have too many  
12 documents of their own but the oral transmissions  
13 were very important.

14 This case was cited, for instance, in  
15 4 American Law Reports 7th, Article 4, Section 4,  
16 in 2015 in an article entitled Propriety of  
17 Expert Historian Testimony. Likewise, we also  
18 would offer or I would also refer to a article  
19 entitled Qualifying Historians as Expert  
20 Witnesses in 130 Am Jur Proof of Facts 3d 89,  
21 Section 22, which stated, "Historians may provide  
22 valuable assistance to attorneys and triers of  
23 fact," and then skipping ahead, "as expert  
24 witnesses with respect to investigating and

1 analyzing the meanings of the federal and state  
2 constitutions and statutes and local ordinances  
3 when originally adopted."

4 In the present case we think this is  
5 properly appropriate given the antiquity, if you  
6 will, of Article XIV. Again, there's no doubt  
7 that the ultimate decision on the law is yours,  
8 but as you identify in your decision, there is a  
9 factual component to that that needs to be  
10 resolved through testimony at trial. And, again,  
11 particularly with relation to older laws, these  
12 things can't be decided in a vacuum. There may be  
13 some legislative history, but the general  
14 knowledge that a court may have is not going to  
15 stretch back to 1894. So Dr. Terrie will provide  
16 the background that will inform the Court's  
17 decision on the meaning of timber for purposes of  
18 the Constitution at the time of the adoption and  
19 ratification of Article XIV. That will include  
20 its meaning and contemporary sources such as the  
21 dictionary that he mentioned, such as authors that  
22 he mentioned, the history leading to the adoption,  
23 statements in the debates at the time of the  
24 adoption, and the history of logging in the



1 Adirondacks which was a topic referred to by the  
2 defendants in their opening, all of which we think  
3 will help the Court understand what the delegates  
4 at the time meant by the word timber.

5 So we think that Dr. Terrie through his  
6 background, both his paper credentials in terms of  
7 teaching history, American culture and English, is  
8 uniquely qualified to do that. And then he has  
9 been studying and researching and writing on these  
10 issues for 40 years.

11 THE COURT: Okay.

12 MR. CAFFRY: I don't think there's  
13 anybody else that's been doing that. So we can  
14 brief it in our post-trial brief but we think  
15 that's why he should be allowed to testify to  
16 these issues.

17 THE COURT: All right. The Court will  
18 reserve decision on the objection and allow for  
19 further briefing on the issue in your post-trial  
20 briefs thereby allowing the testimony at this time  
21 in order to complete the record conditioned, of  
22 course, upon the Court's eventual acceptance or  
23 denial of some of that testimony. I do not,  
24 generally speaking, disagree with Miss Simon's

1 statement that the focused issue here is the facts  
2 on the ground, so while I will allow you to  
3 develop the issue, I will ask that you curtail it  
4 to some degree. All right? But it's your case  
5 and I am allowing you to get into it.

6 MR. CAFFRY: Thank you, your Honor.

7 THE COURT: Please go ahead.

8 MR. CAFFRY: Could I ask the  
9 stenographer to read back the last question before  
10 the objection.

11 THE COURT: You may.

12 (Last question read by the reporter.)

13 A And this action was the creation of the  
14 Forest Preserve in '85.

15 Q In 1885, yes?

16 A Widespread belief that commercial logging was  
17 destroying the Adirondacks and all its values.

18 Q And this is a subject -- this is a subject  
19 you've researched or written upon before?

20 A It is.

21 Q Pursuant to that statute, prior to 1894, who  
22 was responsible for managing the Forest Preserve?

23 A A forest commission.

24 Q And what was the forest commission?

1           A       Men appointed throughout the state to  
2 determine policies with respect to the Forest Preserve.

3           Q       And who appointed them?

4           A       The governor.

5           Q       And did that commission have any relationship  
6 to the current defendant, the Department of  
7 Environmental Conservation?

8           A       It was one of the predecessors of DEC.

9           Q       And did that statute contain any legal  
10 limitations on whether the Forest Preserve land could  
11 be leased or sold?

12                   MS. SIMON:  Objection.  This calls for a  
13 legal conclusion.

14                   THE COURT:  Overruled.  If you know, you  
15 may answer.

16           A       The question again, please?

17           Q       Did that Statute of 1885 contain any legal  
18 limits on whether the Forest Preserve land could be  
19 leased or sold?

20           A       It could not be leased or sold.

21           Q       Did it contain any limits on logging or  
22 otherwise clearing it?

23           A       Logging was permitted.

24           Q       And who would determine where logging would

1 be permitted?

2 A The Forest Commission.

3 Q And during the time when the Forest  
4 Commission controlled the Forest Preserve, did any  
5 public or political concerns arise about its management  
6 of the Forest Preserve?

7 A Yes. The press almost universally condemned  
8 the management of the Forest Commission in managing the  
9 Forest Preserve, accused the Forest Preserve of  
10 colluding with corrupt loggers, of presiding over  
11 destruction of state lands. There was an article in  
12 the -- a series of articles in the New York Times in  
13 I'm pretty sure 1889 accusing state officials of  
14 colluding with loggers to conduct irresponsible,  
15 inappropriate logging on state lands. There was an  
16 article in Harper's with graphic illustrations making  
17 the same point.

18 Q And as part of your historical research on  
19 the Adirondacks that you previously referred to, have  
20 you studied the ways in which logging occurred in the  
21 Adirondacks in the late 19th century?

22 A I have.

23 Q And could you tell the judge what you found?

24 A Well, back in -- today's standards it would

1 be considered just incredibly irresponsible and  
2 ruthless. There was logging for lumber which included  
3 timbers used in construction, and so forth, and that  
4 was certain soft woods. The trees were cut down, the  
5 tops were left on the ground, the bark was also left on  
6 the ground, and fires often followed. More important,  
7 I think, beginning in the years roughly around 1870,  
8 the process by which paper could be made from wood pulp  
9 came to dominate the logging industry in the  
10 Adirondacks, and in the course of this much smaller  
11 trees were cut and run down the rivers to pulp mills in  
12 places like Glens Falls or Lyons Falls, Potsdam, and  
13 the degree of devastation increased enormously once the  
14 pulp industry became a part of the Adirondack logging  
15 picture, and that is a serious part of the picture by  
16 the 1880s and it gets worse thereafter. It's important  
17 to note, I think, that pulp loggers often took very  
18 small trees to be used in their operations.

19 Q When you say very small, can you tell us how  
20 small, or don't you have any idea?

21 A If I may look at a document that describes  
22 pulp operations going on in 1893, I can give a good  
23 sense of the kinds of trees they were cutting.

24 Q Do you have that document with you here?

1 A I do.

2 MR. CAFFRY: Your Honor, may the witness  
3 use the document subject to Miss Simon reviewing  
4 the document? May the witness use it to refresh  
5 his recollection?

6 THE COURT: Miss Simon?

7 MS. SIMON: Yes. Do I have it in this  
8 pile you gave me?

9 MR. CAFFRY: I don't know. It's not  
10 something we intend to offer. He's just  
11 attempting to refresh his recollection.  
12 Dr. Terrie, please don't look at it until we  
13 resolve the question with Miss Simon.

14 MS. SIMON: As long as I can see it.

15 MR. CAFFRY: Would you like to look at  
16 it first?

17 MS. SIMON: Sure.

18 THE COURT: Go ahead. Why don't you  
19 grab it from the witness and provide it to  
20 Miss Simon.

21 (Document handed to Ms. Simon.)

22 THE COURT: Miss Simon.

23 MS. SIMON: Yes. I have a copy of it  
24 and I have no objection.

1 THE COURT: All right. Go ahead,  
2 Doctor.

3 MR. CAFFRY: Your Honor, could I just  
4 clarify one thing. I did not realize what  
5 document he was pulling out. It is one we may  
6 attempt to enter later but right now he's just  
7 using it to refresh in response to a particular  
8 question.

9 THE COURT: Understood.

10 THE WITNESS: Where was I?

11 MR. CAFFRY: Could you read back the  
12 last question, please.

13 (Last question read by the reporter.)

14 A All right. I remember. The document I'm  
15 referring to here is a report written by Verplanck  
16 Colvin who was a surveyor active in the Adirondacks  
17 working for the State from roughly 1870 until around  
18 1905. He surveyed state lines, he surveyed the High  
19 Peaks, he found lakes in the remote country. He's a  
20 monumental figure in Adirondack history and his reports  
21 are major parts of the documentary record of the  
22 Adirondacks.

23 Q And just specifically to the question about  
24 how small trees may have been cut when they were cut

1 for pulp -- first can I ask you to clarify, is what  
2 you're holding there a piece of that actual report  
3 you're referring to or is it something else?

4 A No. I'm sorry. This is a copy of a page  
5 from my book Forever Wild with a long indented verbatim  
6 quotation from a Colvin report.

7 Q And what page is that?

8 A It's page 89 of Forever Wild: Environmental  
9 Aesthetics and the Adirondack Forest Preserve which was  
10 published in 1985.

11 Q Please proceed.

12 A Verplanck Colvin was surveying a state line  
13 in the area of Ampersand Lake which is in the western  
14 part of the High Peaks, I would guess Franklin County.  
15 He was looking for an old state line and he ran into  
16 the manager of a forest company which I'm pretty sure  
17 was the Santa Clara Lumber Company who was active in  
18 that area. He was told by the agent, this is Colvin,  
19 quote, they proposed to strip the forest from the  
20 slopes and ridges of Mount Seward, end quote. He went  
21 on to say the following: The agent informed me that  
22 not only was the timber in the valley to be cut and  
23 removed but shoots were to be constructed far up toward  
24 the summit of the High Peaks so that not only logs fit



1 for lumber could be sent down to the skidways but even  
2 the small soft wood spruce timber would be thoroughly  
3 cut for pulpwood as the company did not consider it  
4 desirable to keep and pay taxes upon these high upland  
5 where the trees are very slow growth.

6 Q To your knowledge, if it's within your realm  
7 of your scholarship, do you know typically on the  
8 slopes of Mount Seward how small the trees may have  
9 been that they were referring to?

10 A Yes. I've camped up there and bushwhacked  
11 all over the Swards. The kinds of trees near the tops  
12 of the shoots that you can still see signs of the Santa  
13 Clara Lumber Company when they logged up there at this  
14 time, up until the '20s, reach way above the point at  
15 which trees become stunted. There are trees that at  
16 breast height would be an inch through.

17 Q And moving on beyond that document, were  
18 there any other industries of the time that may have  
19 raised concerns about the type of logging that was  
20 occurring?

21 A I can't think of anything like that, no.

22 Q Dr. Terrie, do you know when the Adirondack  
23 Park was created?

24 A 1892.

1 Q And who did that?

2 A By act of the New York State Legislature.

3 Q In your opinion, based upon your scholarship  
4 and research, did that have any measurable effect on  
5 the protection of the Forest Preserve?

6 A No, it did not.

7 Q Can you tell the Court why?

8 A The creation of the park was to establish  
9 that part of northern New York in which the state had a  
10 particular interest in which it was worried about the  
11 destruction of the forest. It was to indicate, for one  
12 thing, that area that it hoped to acquire for the  
13 Forest Preserve but did not have yet.

14 Q But it placed no restrictions on the Forest  
15 Preserve?

16 A Did not change the actual policies with  
17 respect to the Forest Preserve.

18 Q Did there come a time when the legal status  
19 or the -- withdrawn. Did there come a time when the  
20 state took further action to protect the Forest  
21 Preserve?

22 A The following year, in 1893, the Legislature  
23 specifically stipulated a procedure for the state to  
24 let contracts for logging on the Forest Preserve.

1 Q And who would be -- did the Legislature  
2 actually pass a law?

3 A It did. And the Forest Commission would be  
4 executing that law.

5 Q And was there to your knowledge any public  
6 reaction to that?

7 A There was vociferous objection to that law.

8 Q By who that you're aware of?

9 A By a lot of people. By sporting interests  
10 and others. For our purposes I think one of the main  
11 objectors was the New York Board of Trade and  
12 Transportation.

13 Q What was that? Or who?

14 A Sort of a semi-official group based in New  
15 York City that was very concerned with the viability of  
16 New York state waterways for commerce.

17 Q And do you know the nature of their  
18 objection?

19 A Yes. It played on objections that had been  
20 in the public discussion for a couple of decades at  
21 that point which feared lest Adirondack slopes be  
22 denuded, which was a word they commonly used at the  
23 time, the watershed essential to the viability of  
24 commercial arteries like the Hudson River and Erie

1 Canal would not be reliable.

2 Q And subsequent to that 1893 law, are you  
3 aware of any further action taken with regard to the  
4 Forest Preserve?

5 A Yes. The Board of Transportation, like  
6 everyone else in New York, knew that the Constitutional  
7 Convention was convening in Albany in the summer of  
8 1894. One of the elected delegates to that convention  
9 was David McClure, a prominent attorney from Manhattan.  
10 The Board of Transportation approached McClure and  
11 asked him to represent their position to the  
12 Constitutional Convention.

13 Q And can you just tell me very briefly what  
14 action if any the Constitutional Convention took with  
15 regard to the Forest Preserve?

16 A The Board of Transportation believed that the  
17 Forest Preserve Law of '85 and subsequent iterations  
18 thereof, for example, the Law of 1893, were inadequate.  
19 That the Forest Preserve was not properly protected and  
20 was not doing the job that it was set out to do.  
21 McClure went to the chair of the Constitutional  
22 Convention and asked that a committee on conservation  
23 be appointed and the chair agreed and appointed David  
24 McClure as the chair of that committee to look into

1 what proper steps might be taken to further protect the  
2 Forest Preserve.

3 MR. CAFFRY: Pardon us, your Honor.

4 We're looking through the exhibits. Hopefully the  
5 pile will become smaller as the day goes on.

6 Q Dr. Terrie, I've just handed you what's been  
7 previously marked as Exhibit 10 for identification. Do  
8 you have that before you?

9 A I do.

10 MS. SIMON: Objection, your Honor.

11 Could I please see what the document is.

12 THE COURT: Yes.

13 MS. SIMON: I have no idea what you're  
14 talking about.

15 THE COURT: You don't have a list?

16 MR. CAFFRY: It's on the list.

17 MS. SIMON: Thank you. I have it.

18 Q Have you previously -- have you seen this  
19 document previously?

20 A I have.

21 Q And can you tell the Court what it is?

22 A This is a report from the committee on the  
23 Forest Preserve submitted to the Constitutional  
24 Convention.

1 Q And when you say this is a report, is it a  
2 copy of the report?

3 A Yes.

4 Q And were you previously familiar with this  
5 document?

6 A Yes, sir.

7 Q And how are you familiar with it?

8 A Through my research in the steps leading up  
9 to the establishment of the constitutional protection  
10 of the Forest Preserve.

11 Q Was this an official publication of the state  
12 of New York?

13 A It is.

14 MS. SIMON: Objection, your Honor. I'm  
15 sorry.

16 THE COURT: That's okay. You can make  
17 your objection now.

18 MS. SIMON: We don't have a  
19 certification that this is an official document  
20 from the state of New York. I have no objection  
21 if he just wants to refresh his recollection about  
22 this, but this is not a certified copy and we did,  
23 if I might point out, have a list of items that we  
24 agreed to in our stipulation that if the Court

1           wanted to take judicial notice of them, I don't  
2           believe this document is on that list either.

3                   THE COURT:   So to the extent this is  
4           being proffered as an exhibit, you're objecting?

5                   MS. SIMON:   Yes, your Honor.

6                   MR. CAFFRY:   If I may continue to  
7           question the witness about it, we may be able to  
8           address that concern.

9                   THE COURT:   You may.

10 BY MR. CAFFRY:

11           Q       Dr. Terrie, I believe you previously  
12           mentioned the Revised Record of the Constitutional  
13           Convention of 1894?

14           A       That's right.

15           Q       Was this document published at some point as  
16           part of that official Revised Record?

17           A       I'm not sure if it was in those volumes  
18           called Revised Record.  There was another volume  
19           published called Documents of the Convention published  
20           simultaneously with the Revised Record and I can't  
21           remember where in those volumes this document appears.

22           Q       And was it published by the same publishers  
23           or issued at the same time?

24           A       Yes.

1 Q And do you know where you have observed this  
2 document previously?

3 A Either at the Adirondack Museum or in the  
4 Library of Congress or the State Archives. And the  
5 first time I ever saw it might have been the Library of  
6 Congress.

7 MR. CAFFRY: Your Honor, I would move  
8 the admission of this document based upon  
9 Dr. Terrie's recognition of it and his testimony  
10 as to the sourcing. And the fact that it's  
11 certified, whether or not it's certified, is not  
12 the only way to introduce a public document into  
13 the record. Based upon his review and his  
14 research, I would assert that he's qualified to  
15 authenticate it for these purposes.

16 THE COURT: All right. I'm going to  
17 deny your proffer at this point. We will be  
18 breaking for lunch in about 10 minutes or so.  
19 I'll give you permission to have some discussions  
20 with Dr. Terrie, permission to take a look at and  
21 see if it's included within one of your other  
22 areas that you've already stipulated to and you  
23 can come back to it. But for the time being  
24 there's not a sufficient foundation laid and,



1           accordingly, your proffer is denied.

2 BY MR. CAFFRY:

3           Q       Dr. Terrie --

4           A       What do I do with this? Hold it?

5           Q       You may continue to --

6                       MR. CAFFRY: I believe he could also use  
7 it to refresh, your Honor.

8                       THE COURT: He can use it to refresh,  
9 you are correct. Go ahead.

10          Q       Did the report that you've referred to make  
11 any recommendations to the full convention regarding  
12 the Forest Preserve?

13          A       It did.

14          Q       What did it recommend?

15          A       Can I read the recommendation?

16                       MS. SIMON: Objection.

17                       THE COURT: The objection is sustained.

18          Q       In general do you know, based on your  
19 knowledge and perhaps your research from other sources  
20 or this document, do you know what the report  
21 recommended?

22          A       It said roughly the lands of the state now  
23 constituting the Forest Preserve shall be forever kept  
24 as wild forest lands. Can I look real quick to refresh

1 my memory?

2 Q You may refresh your recollection.

3 MS. SIMON: Your Honor --

4 A Nor shall the timber thereon be --

5 THE COURT: Hang on.

6 MS. SIMON: We object to him reading  
7 from a document that has not gotten the proper  
8 foundation.

9 THE COURT: Miss Simon's objection is  
10 sustained for two reasons. One, because he can't  
11 read from a document that is not in evidence and,  
12 two, because his testimony as you're eliciting it,  
13 Mr. Caffry, seems to be solely, well, refresh your  
14 recollection by looking at that, now tell me  
15 what's in there. So in effect you're violating  
16 the best evidence rule also by asking that  
17 question. He can use it to refresh his  
18 recollection on more general issues but he can't  
19 use it to simply say this is what's in there.

20 Understood?

21 MR. CAFFRY: Understood.

22 THE COURT: That's my ruling. You may  
23 continue.

24

1 BY MR. CAFFRY:

2 Q Dr. Terrie, to your knowledge did the report  
3 of the committee to the full convention recommend  
4 anything with regard to the timber on the Forest  
5 Preserve lands?

6 A This recommendation? Yes.

7 Q This report. To your knowledge was that  
8 recommendation made?

9 A Yes, it was.

10 Q And what did it recommend to your knowledge?

11 A That the timber could not be sold or removed.

12 Q Was this report ultimately presented to the  
13 delegates of the full convention?

14 A It was.

15 Q And do you know who did that?

16 A David McClure.

17 Q And I believe you previously testified he was  
18 a delegate to the convention?

19 A He was.

20 Q I believe you previously testified you  
21 reviewed the Revised Record of the Constitutional  
22 Convention of 1894, is that correct?

23 A I have.

24 Q And when did you first review this document?

1 MS. SIMON: I'm sorry. I didn't hear  
2 the question. When did what?

3 Q When did you first review the Revised Record?

4 A It would have been 1978.

5 Q And have you reviewed it again since then?

6 A I have.

7 Q How recently?

8 A Several times in the last few days.

9 Q And over the last 40 years have you had other  
10 occasions to review this document as part of your  
11 scholarship?

12 A Yes. When I was revising my dissertation for  
13 publication as a book in the early to mid 1980s.

14 MR. CAFFRY: Your Honor, this particular  
15 document -- I'm sorry. Withdrawn.

16 Q Dr. Terrie, I've handed you what's been  
17 marked for identification as Exhibit 9. Do you have  
18 that before you?

19 A I do.

20 Q Have you had a chance to look at it?

21 A Yes, I have.

22 Q And do you recognize it?

23 A I do.

24 Q And can you just briefly tell me what it is?

1           A       This is a selection from volume 4 of the  
2 Revised Record of the New York State Constitutional  
3 Convention of 1894 when the Forever Wild provision was  
4 introduced and discussed on the floor of the  
5 convention.

6                   MR. CAFFRY: Your Honor, I would like to  
7 point out that this document, Exhibit 9, is also  
8 on the list of documents that the parties have  
9 stipulated as being suitable for judicial notice  
10 and self-authenticating, and at this point we  
11 would request that it be admitted into evidence.

12                   MS. SIMON: I do object, your Honor.  
13 This is not the complete document and our  
14 stipulation was that the Court could take judicial  
15 notice of all the constitutional conventions.  
16 This is not the complete copy. There's no -- I  
17 object. It's not a certified copy.

18                   THE COURT: Well, the certification  
19 would appear to be covered under the stipulation.  
20 Correct?

21                   MS. SIMON: Of the complete record.  
22 This is not a complete record.

23                   THE COURT: Go ahead.

24                   MR. CAFFRY: May I just ask a question

1 to clarify it.

2 BY MR. CAFFRY:

3 Q Dr. Terrie, have you reviewed the volume that  
4 I believe you said was volume 4?

5 A Yes.

6 Q How thick is volume 4?

7 A Three or four inches. It's a doorstep.

8 MR. CAFFRY: Your Honor, we would  
9 request that the pages which Dr. Terrie is  
10 currently holding from this volume be admitted  
11 into evidence in lieu of admitting the doorstep.

12 THE COURT: All right. I'm not going to  
13 adopt that language but Plaintiff's 9 is received  
14 into evidence over objection. Miss Simon, if at  
15 any time you wish to further supplement by adding  
16 any further portion of that record that you choose  
17 to, I think that would fall within both the terms  
18 of your stipulation as well as an appropriate act  
19 by you. Okay?

20 MS. SIMON: Okay.

21 THE COURT: So Plaintiff's 9 is received  
22 into evidence over objection.

23 (Plaintiff's Exhibit 9 received into  
24 evidence.)

1 THE COURT: Go ahead, Mr. Caffry.

2 MR. CAFFRY: Actually can we go off the  
3 record briefly?

4 THE COURT: You can. Go ahead.

5 (Discussion off the record.)

6 THE COURT: We'll return at  
7 approximately 1:15.

8 (Lunch recess taken at 12:15 p.m.)

9 (Proceedings continued in open court at  
10 1:32 p.m.)

11 THE COURT: So we're back on the record  
12 in the matter of the Application of Protect the  
13 Adirondacks against New York State DEC and the  
14 Adirondack Park Agency. The Court has received a  
15 handwritten note from Mr. Karlin of the Times  
16 Union and Mr. Brown of the Adirondack Explorer  
17 asking if they can take cell phone pictures  
18 silently of the proceedings. I've had a  
19 discussion at the bench with counsel to ask if  
20 there was any objection to that request and I have  
21 been told by all counsel that there is no  
22 objection to that request. Is that correct,  
23 Counsel?

24 MS. SIMON: Yes.

1 MR. CAFFRY: Yes, your Honor.

2 THE COURT: All right. Accordingly,  
3 Mr. Karlin and Mr. Brown, if you are here, you are  
4 granted permission. Thank you for the courtesy of  
5 asking before. All set to continue?

6 MR. CAFFRY: Yes, your Honor.

7 THE COURT: Please go ahead. You can  
8 call Dr. Terrie back out. Doctor, you remain  
9 under oath, sir.

10 (The witness resumed the witness stand.)

11 THE COURT: Go right ahead, Mr. Caffry.

12 MR. CAFFRY: Thank you, your Honor.

13 BY MR. CAFFRY:

14 Q Dr. Terrie, before the lunch break I believe  
15 the judge had just received into evidence Exhibit 9,  
16 the Revised Record of the Constitutional Convention of  
17 1894. Do you recall that?

18 A Yes.

19 THE WITNESS: Can I have that in my  
20 hand?

21 THE COURT: Yes, you may. It's in  
22 evidence.

23 Q And does that record discuss the proposal  
24 that was put forth by the committee on the Forest



1 Preserve to the delegates?

2 A Yes, it does.

3 Q And what was that proposal? What were its  
4 key provisions?

5 A The proposal was to continue the language of  
6 the Forest Preserve Law of 1885 that the lands of the  
7 state could never be alienated from the state with the  
8 addition that the timber could not be sold or removed  
9 in its initial form.

10 Q And when you say alienated, was that the  
11 wording?

12 A No, that was not the word. It was the lands  
13 could not be sold or exchanged nor taken by any  
14 corporation, public or private.

15 Q Thank you. And I believe you testified that  
16 Delegate McClure had presented this to the convention?

17 A He did.

18 Q What were the reasons he gave in support of  
19 passage of this proposal?

20 A David McClure in a fairly lengthy statement  
21 to the convention argued that this was probably the  
22 most important issue before the convention that year.  
23 He began with a fairly lengthy discussion of the  
24 Adirondacks as a recreational and spiritual retreat for

1 the health and sanity of the state of New York, and  
2 then he read from several documents that he didn't  
3 write himself about the value of the forests for that  
4 reason and also he added the rationale that the New  
5 York State Forest Preserve was essential to protecting  
6 the watershed feeding commercial arteries in the  
7 valleys below.

8 Q And you said that he referenced some  
9 documents. Can you tell us, tell the Court, what they  
10 are?

11 A Let's see. He referenced a speech given by  
12 an assemblyman. I'm just drawing a blank on the name.  
13 Can I look? It's in here.

14 THE COURT: You may.

15 A Here it is. An Honorable George W. Smith of  
16 Herkimer who had spoken to the Assembly and quoted  
17 Smith on the importance of the intactness of the forest  
18 of the northern wilderness.

19 Q What page is that on?

20 A That's on page 129 of volume four of the  
21 Revised Record of the Constitutional Convention of the  
22 state of New York, May 8th, 1894 to September 29th,  
23 1894.

24 Q Did he reference any other outside speakers?

1           A       Yes.  He mentioned Verplanck Colvin, the same  
2 surveyor that I mentioned in his account of the logging  
3 on the Swards.

4           Q       And what page of the record was that?

5           A       Page 131.

6           Q       And what did he say with regard to Colvin?

7           A       How important the Adirondacks were to the  
8 watershed.

9           Q       Was that Colvin's opinion or McClure's?

10          A       It was the opinion of a lot of people and  
11 Colvin was one of the first people to promote it with  
12 respect to the Adirondacks but McClure clearly  
13 subscribed to that apprehension.

14                   MS. SIMON:  Pardon me, your Honor.  I  
15 can't hear a thing he's saying.

16                   THE COURT:  Do you need a readback?

17                   MS. SIMON:  Just didn't catch that last  
18 bit when you turn your head away.

19                   THE WITNESS:  How is this?

20                   THE COURT:  We'll do a readback.  That's  
21 fine like that.

22                               (Last answer read by the reporter.)

23          Q       And in your opinion, based upon your review  
24 of the record, did McClure emphasize any one of these

1 various reasons more than any others or...

2 A Well, he led with the recreational and  
3 spiritual value of the Adirondacks and I think he said  
4 that first at that point, and then he spoke at length  
5 on it and then he spoke at great length on the  
6 watershed argument. Is that better?

7 MS. SIMON: No.

8 THE COURT: Miss Simon, all I can say is  
9 do the best that you can. If there is anything  
10 that you're not sure that you heard properly, I'll  
11 be more than generous in giving any readbacks you  
12 need. Just let me know and you will get them.  
13 Please go ahead, Mr. Caffry.

14 BY MR. CAFFRY:

15 Q Did any of the other delegates state their  
16 support or disagreement with McClure about the reasons  
17 for supporting passage of the proposal?

18 A Everyone who spoke that day was generally in  
19 support of the McClure -- the form of the provision  
20 that came out of the McClure committee. Some were  
21 waxed eloquent and at length in their support. Others  
22 less so. And some of them requested changes, most of  
23 which were voted down, a few of which were accepted by  
24 McClure and became part of the final provision.

1 Q And were any of those changes particularly  
2 significant with regard to the timber on the Forest  
3 Preserve?

4 A The key one is that a Delegate Goodale, I  
5 think, asked that the words *or destroyed* be added after  
6 *sold or removed*.

7 Q And that was with regard to the timber?

8 A Yes. Nor shall the timber thereon be sold,  
9 removed or destroyed.

10 Q And how did that change the effect of that  
11 provision?

12 A Significantly.

13 MS. SIMON: Objection.

14 THE COURT: Sustained.

15 Q Is there anything in the record of the  
16 Constitutional Convention that describes the  
17 significance of that change?

18 A Yes. The delegate who offered it argued that  
19 it was significantly common in those days for logging  
20 companies to build dams at the outlets of lakes  
21 throughout the Adirondacks which often flooded land  
22 that they didn't own. It flooded state land or other  
23 people's land. And these dams would have flooded lands  
24 that occasionally would have been in the Forest

1 Preserve and it would have drowned and destroyed the  
2 timber.

3 Q In your earlier testimony you discussed  
4 concerns that had arisen in public prior to the  
5 convention about mismanagement and timber theft, I  
6 believe, on the Forest Preserve. Do you recall that?

7 A Yes, sir.

8 MS. SIMON: Objection. Characterizing  
9 his testimony. I don't know that that was exactly  
10 your testimony.

11 THE COURT: Understood. I'll keep an  
12 eye on it but I'll rely solely on the answers in  
13 making my determination in any event. So the  
14 objection is overruled. Please continue,  
15 Mr. Caffry.

16 Q Did you answer the question, Dr. Terrie? I'm  
17 sorry.

18 A I think I did.

19 THE COURT: He did but we can have it  
20 read back. Go ahead.

21 (Last question and answer read by the  
22 reporter.)

23 Q Were there any statements by the delegates  
24 regarding that concern?

1           A       Well, there was one particular articulate  
2 statement made by a Delegate Brown.

3           Q       Can you tell us where in the record in  
4 Exhibit 9 that is found?

5           A       I think it begins on 155 and goes on into  
6 156.

7           Q       And can you give us the gist of that?

8           A       We can't trust the state. Don't let them  
9 touch the Adirondacks. Don't let them take an ax in  
10 there. Don't let them do anything. It must be locked  
11 up and the door shut.

12          Q       And in your four decades of study and  
13 research on this Forever Wild provision, did you ever  
14 find anything, materials in this Revised Record,  
15 Exhibit 9 or anywhere else, that showed that the  
16 delegates intended to only protect trees, large trees  
17 of merchantable size?

18          A       I have not.

19          Q       And were there any statements regarding that  
20 specifically during the convention?

21          A       Not that I know of.

22          Q       Were there any statements by Mr. McClure or  
23 any other delegate regarding what they did seek to  
24 protect?

1           A       Yes.  There were several and they appear --  
2 they're punctuated throughout the discussions that day.  
3 Quite often McClure and others talked about the timber,  
4 the trees, the forest, the intact forest, the woods.  
5 All of those words appear in the discussions of the  
6 importance to pass this provision.

7           Q       And do you know what pages those appear at?  
8 Or are there too many to list?

9           A       They're scattered.  I could if you want to go  
10 through this.

11          Q       That's okay.  Did the convention ultimately  
12 take a vote on the proposed amendment with its various  
13 provisions?

14          A       It did.

15          Q       And what was that vote?

16          A       The convention voted unanimously to adopt  
17 what became Article VII, Section 7 and now Article XIV  
18 of the Constitution.  It was the only provision  
19 unanimously adopted at that convention.

20          Q       Did the convention ultimately produce a  
21 comprehensive new Constitution?

22          A       It did.

23          Q       And that included Article VII, Section 7?

24          A       It did.



1 Q And was that then submitted to the voters?

2 A It was.

3 Q And when it was submitted to the voters, what  
4 action did the voters take?

5 A The voters approved the new Constitution in  
6 the first week of November of 1894.

7 Q And when did that take effect?

8 A January 1st, 1895.

9 Q As a result of that approval in 1894 by the  
10 convention and the voters, who would have had the power  
11 after that to approve any significant alterations of  
12 the Forest Preserve?

13 A The people of the State of New York.

14 Q Could the Legislature change that without  
15 them?

16 A No.

17 Q And could the Executive branch do so?

18 A No.

19 MS. SIMON: Objection, your Honor.

20 These are legal questions he's being asked.

21 THE COURT: Objection is sustained.

22 Q Was this power that was granted to the  
23 people, do you have a professional opinion based upon  
24 your years of study of this issue why that was done,

1 why it was felt to be necessary?

2 A The convention led by David McClure and  
3 others believed that the state could not be given  
4 responsibility for care of the Forest Preserve.

5 Q And was that type of provision common at the  
6 time to your knowledge?

7 A I don't think there was anything like that in  
8 the United States at that time.

9 Q To your knowledge to this day is there  
10 anything like it in the United States?

11 A I think not.

12 Q Did the delegates provide a definition of the  
13 word timber in Article VII, Section 7?

14 A No.

15 Q I believe you testified earlier about various  
16 sources that you consulted during your research. Did  
17 those include contemporary resources of the late 19th  
18 century?

19 A Yes.

20 Q And I believe you testified to a dictionary,  
21 is that correct?

22 A I did.

23 Q And could you again tell us what that  
24 dictionary was?



1 exhibit number. That's the excerpt from the  
2 dictionary that the witness is holding and has  
3 been talking about.

4 THE COURT: Miss Simon.

5 MS. SIMON: I am just identifying it  
6 now. Hold on one second. Has this entered for  
7 identification?

8 THE COURT: It's marked as 7,  
9 apparently.

10 MR. CAFFRY: I'm sorry, your Honor. I  
11 still have the marked one. I believe he's --

12 THE COURT: But it is 7 on your list,  
13 correct?

14 MR. CAFFRY: Yes.

15 MS. SIMON: And it's four pages?

16 MR. CAFFRY: Yes.

17 THE COURT: Any objection, Miss Simon?

18 MS. SIMON: No.

19 THE COURT: Seven is received into  
20 evidence without objection.

21 (Plaintiff's Exhibit 7 received into  
22 evidence.)

23 BY MR. CAFFRY:

24 Q Dr. Terrie, I believe I made a minor

1 procedural slip-up. When you were talking about that  
2 document, you had a copy of it from your file perhaps  
3 and have I just now handed you the one that was  
4 officially marked by the stenographer?

5 A Yes. It's right there.

6 Q Thank you. And that's the one that the judge  
7 just received in evidence?

8 A Yes.

9 Q Does that dictionary contain any definitions  
10 of the word timber?

11 A It does.

12 Q And how many?

13 A Six or seven.

14 Q Do you have that in front of you?

15 A I do.

16 Q Could you tell us what some of them are?

17 A Timber has a long section on etymology.

18 MR. CAFFRY: Excuse me, Dr. Terrie.

19 Your Honor, would you like a copy or do you need a  
20 copy?

21 THE COURT: I actually have it. He's  
22 using his own copy but I have 7. Thank you.

23 A And among the definitions it provides are  
24 that sort of wood which is proper for buildings or for

1 tools, utensils, furniture, carriages, fences, ships  
2 and the like; the body stem or trunk of a tree;  
3 material for any structure; a single piece of squared  
4 stick of wood intended for building or already framed.  
5 Do you want me to read the entire definition for each  
6 one?

7 THE COURT: You're asking me? It is in  
8 evidence. You may ask the question as you wish.

9 Q Are those the --

10 A I'm not finished.

11 Q -- some of the major ones or do you have --

12 A More major ones to read.

13 Q Thank you.

14 A Woods or forest; a wooded land.

15 Q Anymore major ones you would like to read?

16 A They're repetitive.

17 Q Are the definitions in Exhibit 7 limited to  
18 the large trees of merchantable size?

19 A No, they are not.

20 Q Is there any kind of size cutoff in terms of  
21 the diameter of the trees contained in the document?

22 A There is not.

23 Q And I'm sorry if I missed this. Does it make  
24 any differentiation between living or dead trees or

1 other types of vegetation included?

2 A No.

3 Q Does it specifically refer to that, dead or  
4 living?

5 A No.

6 Q I believe you mentioned the word stem, is  
7 that correct?

8 A I did.

9 Q That was one of the definitions?

10 A It's part of the second definition.

11 Q Does Webster's, Exhibit 7, also define the  
12 word stem?

13 A It does.

14 Q And is that definition contained in Exhibit  
15 7?

16 A It is.

17 Q And could you read that, please?

18 MS. SIMON: Objection. Could we just  
19 read what's relevant here?

20 THE COURT: It is in evidence,  
21 Mr. Caffry. If you wish to make your point, you  
22 can briefly, but as it's in evidence, you can  
23 certainly draw my attention to it at the time that  
24 you write your findings of fact and conclusions of

1 law. But if there is anything you wish to draw my  
2 attention to particularly briefly with the doctor,  
3 I am going to request that you focus him on that.  
4 You can direct him to focus on that.

5 MR. CAFFRY: There is one specific  
6 relationship between these two words that I would  
7 like him to give his opinion on.

8 THE COURT: That's fine. You can do  
9 some leading examination in order to direct him  
10 specifically to that area.

11 MR. CAFFRY: Okay.

12 Q With regard to the -- could you just read us  
13 the definition of the word stem, please?

14 A The one that is relevant here is a little  
15 branch which connects a fruit, flower or leaf with a  
16 main branch.

17 Q Does it also have any definitions related to  
18 standing trees as opposed to a branch?

19 A Yes. It says the principal body of a tree,  
20 shrub or plant of any kind.

21 Q And does it refer to size at all?

22 A No.

23 Q And how then does that definition interact  
24 with the definition of timber if at all?



1           A       It expands on it. It further explains it,  
2 that the word stem is in the definition of timber and  
3 here stem is defined.

4           Q       I believe you testified also earlier that you  
5 reviewed some literature and other writings from the  
6 era surrounding the Constitutional Convention, is that  
7 correct?

8           A       I did.

9           Q       In that literature how was the word timber  
10 used by writers in that era of the late 19th century?

11          A       In general it reflects the multiple kinds of  
12 meanings that we saw in the definition of timber in  
13 Webster's. It sometimes is meant to mean individual  
14 trees. It sometimes means the forest. It can mean the  
15 forest as it covers the slope of a hillside. It could  
16 mean down trees. It is used in quite a number of ways.

17          Q       And was it limited to large or merchantable  
18 trees?

19          A       I don't think so.

20          Q       And in your opinion, based on your years of  
21 research and your expertise in fields of English and  
22 otherwise, was it common for writers at the time to use  
23 the words tree and timber or forest interchangeably?

24                   MS. SIMON: Objection.

1 THE COURT: Overruled. You may answer.

2 A In my experience that overlap is common, or  
3 was. I always use the present tense in describing the  
4 literature whenever it was written. I'm talking about  
5 the literature of the 19th century so I should say it  
6 was common.

7 Q Thank you for clarifying that. I believe you  
8 earlier mentioned a Mr. Headley, is that correct?

9 A Did I?

10 MS. SIMON: Could I hear that name  
11 again?

12 THE COURT: I would like it, too.

13 MR. CAFFRY: Okay. Withdrawn.

14 BY MR. CAFFRY:

15 Q When you discussed how the these terms were  
16 used in the 19th century, did you have any particular  
17 examples in mind?

18 A I did have one in particular because it was  
19 such a popular book. Joel T. Headley was a protestant  
20 minister who became a travel writer and popular  
21 historian. He is one of the most prolific American  
22 writers of the 19th century and he, because of a  
23 nervous breakdown or something, went camping in the  
24 Adirondacks in the 1840s and submitted accounts of his

1 trips in letters to newspapers in New York City.  
2 Subsequently these were gathered into a book and  
3 published in 1849 and the book was expanded, reprinted,  
4 and plagiarized and remained a popular book throughout  
5 the 19th century.

6 Q And besides being a writer, did Mr. Headley  
7 ever hold any public office?

8 A Yes. He was secretary of the state of New  
9 York for a term in the '50s.

10 Q The 1850s?

11 A Yes.

12 Q And I'm sorry if you already answered this,  
13 but was this book still in print at the time of the  
14 Constitutional Convention of 1894?

15 A It was.

16 Q And to your knowledge was it still popular at  
17 that time?

18 A Yes. It was referred to -- I once read  
19 through all the accounts of Adirondack camping trips in  
20 Forest & Stream, which was the most popular sporting  
21 journal of the day, and it was a common opening to an  
22 article: When I read Headley as a child, I knew that I  
23 wanted to go to the Adirondacks, or the like.

24 Q And this was even in the 1890s?

1 A Yes.

2 Q And did you have any personal involvement in  
3 the publication of Mr. Headley's writings?

4 A There was a reprint of his 1875 edition  
5 issued by New York Press in 1984, I believe, and I was  
6 the editor of that volume.

7 Q Dr. Terrie, I've just handed you what's been  
8 marked for identification as Exhibit 6. Do you have  
9 that?

10 A I do.

11 Q Have you had a chance to review it?

12 A Yes, I have.

13 Q And can you identify it?

14 A This is the cover page and one page from  
15 Headley's The Adirondack.

16 Q What year is that edition from?

17 A This is 1849.

18 Q And does that contain the passage that you  
19 previously referred to? Withdrawn.

20 A Yes, it does.

21 Q Does that contain a passage of significance  
22 to the definition of timber?

23 A It does.

24 MR. CAFFRY: Your Honor, I would at this

1           time move admission of Exhibit 6. It is item 3E  
2           on the list of stipulated documents.

3                   MS. SIMON: I would just renew my  
4           objection to the relevance of all this, but  
5           otherwise...

6                   THE COURT: It's noted. The Court will  
7           reserve on that objection. What is that, 3E did  
8           you say?

9                   MR. CAFFRY: On the list of stipulated  
10          documents as to its authenticity, it's Exhibit  
11          Number 6.

12                  THE COURT: Thank you. Exhibit 6. So  
13          Plaintiff's Exhibit 6 is received into evidence  
14          with the reservation as noted and we need to get  
15          it marked before we do anything further unless  
16          you're commenting on -- let's mark it.

17                               (Plaintiff's Exhibit 6 received into  
18          evidence.)

19 BY MR. CAFFRY:

20           Q        Could you read to us the passage that you  
21          just referred to, at least the most important part?

22           A        He is describing the adventures of John  
23          Cheney, a famous hunter guide of the mid 19th century,  
24          and says this about Cheney's adventures: Finding in

1 his long stretches through the wood, where the timber  
2 is so thick you cannot see an animal more than 15 rods,  
3 that a heavy rifle was a useless burden, he had a  
4 pistol made about 11 inches in length.

5 Q How far is a rod?

6 MS. SIMON: I didn't hear that question.

7 Sorry.

8 THE COURT: You can repeat it.

9 Q How far is a rod?

10 A Sixteen feet, I believe.

11 Q And what does that passage tell you about  
12 Headley's use of the word timber?

13 A It means a lot of little trees, because if  
14 these were mature, marketable logs in a forest with a  
15 closed canopy, there would be nothing growing on the  
16 forest floor other than big trunks and you could see a  
17 long way.

18 Q When you referred to literature or documents  
19 you reviewed, did you have another example in mind?

20 A No.

21 Q You previously discussed a report, I believe,  
22 by Verplanck Colvin. Do you recall that?

23 A Oh, yes. Yes.

24 Q And that was I believe quoted -- you said it

1 was quoted in a part of your book?

2 A Yes.

3 Q And, again, I believe you gave some  
4 discussion of Verplanck Colvin and his significance but  
5 was he a public official at the time he wrote that  
6 document?

7 A Yes. He was working for the State of New  
8 York as a surveyor.

9 Q And before we proceed further with this,  
10 Dr. Terrie, I would like to hand you the marked  
11 exhibit.

12 MS. SIMON: This number doesn't match  
13 up, I don't think, to your list. It's 27?

14 (Discussion off the record)

15 MS. SIMON: My list doesn't -- sorry.  
16 Their exhibit list doesn't match the exhibit list  
17 they gave me. Okay. So I have the resumé of  
18 Steve Signell as number 27 so can I get an updated  
19 list, please.

20 THE COURT: I don't see why not. Why  
21 don't we take a moment and walk down with your  
22 list and make a copy down in my chambers if you  
23 don't mind and you can give it right to her. That  
24 might move things along. I think I actually have

1           one more conference on an unrelated matter that I  
2           need to attend to. I believe they're out in the  
3           hall right now so I'll take care of that while you  
4           make that copy for Ms. Simon. Okay? We'll be  
5           about five minutes or so, folks.

6                               (Recess taken after which the  
7           proceedings continued as follows.)

8                               THE COURT: All set, Mr. Caffry?

9                               MR. CAFFRY: Thank you, your Honor.

10 BY MR. CAFFRY:

11           Q       Dr. Terrie, I believe before the break  
12 Exhibit 6 had just been admitted into evidence and I'll  
13 try to speed things up. I'll try to paraphrase what  
14 you previously testified about. Do you have an Exhibit  
15 6 there?

16           A       I've got an Exhibit 27.

17           Q       I'm sorry. I don't know where I got six.  
18 Thank you for correcting me.

19                               THE COURT: I have six in evidence.

20                               MR. CAFFRY: I'm sorry. I didn't make a  
21 note. I apologize, your Honor.

22           Q       I believe you said that this is pages from  
23 your book, correct?

24           A       Yes, it is.



1 Q And the title of that book was?

2 A Forever Wild: Environmental Aesthetics and  
3 the Adirondack Forest Preserve published in 1985 and it  
4 was subsequently published with a slightly different  
5 subtitle, republished by Syracuse in 1994.

6 MS. SIMON: Pardon me, your Honor. We  
7 don't have that exhibit. I'm sorry.

8 MR. CAFFRY: I just gave it to you this  
9 morning. That's the one pager.

10 MS. SIMON: Okay. Just to clarify from  
11 the break, we broke to clarify what was Exhibit  
12 Number 26 and 7. I did get the one-page list with  
13 a handwritten change on it so I just wanted to  
14 make sure I have the right thing.

15 THE COURT: Of course.

16 BY MR. CAFFRY:

17 Q Regarding Exhibit 27, now that we've  
18 clarified this, you said that is a certain page or  
19 pages from your book Forever Wild?

20 A Yes.

21 Q And on Exhibit 27 are there some notations on  
22 the bottom of the page?

23 A Yes, there are.

24 Q And is that your handwriting?

1 A It is.

2 Q And did you put those notations there?

3 A Yes.

4 Q Could you just tell us briefly what those  
5 are?

6 A That is the exact source of the Colvin quote  
7 that is at the bottom of my page 89.

8 Q And is there any notes on the bottom of page  
9 88?

10 A Just the title of the book.

11 Q And I believe you testified earlier that the  
12 block index or the block indented type on the lower  
13 right is a direct quote from the Colvin book?

14 A It is.

15 Q And did you personally review the Colvin  
16 book?

17 A I did.

18 Q And you saw fit to quote it at length in your  
19 own book?

20 A I did.

21 Q And that's a true and accurate copy of pages  
22 88 and 89 in your book except for the notations you put  
23 at the bottom?

24 A Absolutely. Yes, it is.

1 Q And regarding the block quote, what was that  
2 quoted from?

3 A It was quoted from a document by Verplanck  
4 Colvin called Report on the Progress of the State Land  
5 Survey, and all of his survey reports were Senate  
6 documents and were sent to all the members of the  
7 Assembly and the Senate.

8 Q Of the New York State Assembly?

9 A Yes.

10 Q And do you have that actual book present, the  
11 Colvin Report?

12 A I do not.

13 Q And why is that?

14 A They're very hard to find. They're in law  
15 libraries, state libraries, Adirondack Museum, a few  
16 personal collections.

17 Q When you wrote the book, did you verify that  
18 that was an accurate quote?

19 A I looked at all of the originals of the  
20 Colvin Reports. The Adirondack Museum has a complete  
21 run.

22 MR. CAFFRY: Your Honor, at this time I  
23 would move admission of Exhibit 27 which is part  
24 of the book that was stipulated as Exhibit 3B on

1 the stipulation of documents as to their  
2 authenticity.

3 THE COURT: Miss Simon.

4 MS. SIMON: Objection. This is the best  
5 evidence rule. The thing speaks for itself. If  
6 this -- this has already been discussed earlier,  
7 you know. I mean I object.

8 THE COURT: Your objection is noted.  
9 With the exception of the reservation previously  
10 noted by the Court, 27 is received into evidence.

11 (Plaintiff's Exhibit 27 received into  
12 evidence.)

13 Q Just briefly, for purposes of continuity,  
14 would you read the phrase or part of the sentence that  
15 includes the use of the word timber?

16 A The agent informed me that not only was the  
17 timber in the valley to be cut and removed but shoots  
18 were to be constructed far up towards the summit of the  
19 High Peaks so that not only logs fit for lumber could  
20 be sent down to the skidways but even a small softwood  
21 spruce timber would be thoroughly cut for pulpwood.

22 Q And is this a document that would potentially  
23 have been available to the delegates of the 1894  
24 Convention?

1           A       I think it would have been easily available.  
2 And since many of those delegates were member of the  
3 Assembly or Senate, it would have passed across their  
4 desks.

5                   THE COURT: Counsel, I'm sorry, I'm  
6 going to need to take another moment. I've just  
7 got an emergency note on an unrelated case here  
8 that I need to go take care of. We're going to  
9 call this our afternoon recess so you've got 10  
10 minutes or so, folks, and then we're going to work  
11 with luck straight through until 4:30. Okay?  
12 Thank you. I apologize.

13                   (Recess taken after which the  
14 proceedings continued as follows.)

15                   THE COURT: Thank you, folks. Please be  
16 seated, Dr. Terrie. Go ahead, Mr. Caffry.

17 BY MR. CAFFRY:

18           Q       Dr. Terrie, who is Louis Marshall?

19           A       I always say Louie Marshall. He was a  
20 prominent civil rights lawyer from Syracuse, then  
21 practicing in Manhattan. He was from Syracuse and he  
22 moved to New York and he owned property on the Lower  
23 Saranac Lake and was a delegate to both the 1894 and  
24 1915 Constitutional Conventions.

1 Q And aside from owning property on Lower  
2 Saranac Lake --

3 MS. SIMON: Objection. Not in evidence.  
4 And can I renew an objection, your Honor, with  
5 your permission --

6 THE COURT: Go ahead.

7 MS. SIMON: -- from this morning  
8 because, okay, here's my objection: Much of this  
9 testimony, my objection is beyond the scope. It's  
10 beyond what the Court set forth in its  
11 January 25th, 2017 decision. Much of it is not  
12 relevant as to what happened on the ground here in  
13 this case and construction of these trails. The  
14 Constitutional Convention matters that have been  
15 raised, we agree in our stipulation with the Court  
16 if you would take judicial notice of them. I  
17 oppose these being entered into the record in  
18 evidence when they're uncertified and I oppose  
19 readings and books and other matters which are not  
20 evidence in this trial and other matters that are  
21 speculation with regard to the history and with  
22 regard to what the delegates to the convention  
23 thought. I wanted to renew it. I don't want to  
24 interrupt the Court and the proceeding

1 continuously. I may still object when I feel I  
2 need to but this is well beyond the scope of what  
3 I understood your order to be today. Thank you.

4 THE COURT: All right. The Court will  
5 reserve on your objection. You may proceed.

6 MR. CAFFRY: Yes, your Honor. And I  
7 believe this is the exhibit I'm intending to ask  
8 the witness about soon is going to be the last one  
9 I offer through this witness.

10 THE COURT: Okay.

11 MR. CAFFRY: There were many others on  
12 our list. We do not intend to get into them or  
13 offer them at this time.

14 THE COURT: Good enough. Please go  
15 ahead.

16 BY MR. CAFFRY:

17 Q You mentioned a Constitutional Convention in  
18 1915. Briefly why was one held in 1915?

19 A Because the earlier Constitution called for a  
20 vote after 20 years on -- called for a plebiscite, a  
21 referendum of New York voters without calling another  
22 Constitution, and it passed. That was in 1914 and a  
23 convention met in the summer of 1915.

24 Q And was article -- yes or no: Was

1 Article XIV as it's now known, the Forever Wild Clause,  
2 was it debated at that Constitution?

3 A It was.

4 Q I'm sorry. Before the objection I was asking  
5 you and I will have to go back. Did Marshall have any  
6 other connections to the Adirondacks or the High Peaks?

7 A He owned property on Lower Saranac Lake with  
8 his family and his children were the first 46ers.

9 Q And is there a Mount Marshall in the High  
10 Peaks?

11 A There is.

12 Q Who is that named after?

13 A Robert Marshall, Louis's son.

14 Q During 1915 did Marshall make any public  
15 statements or produce any documents that addressed his  
16 beliefs as to the meaning of Article XIV as adopted in  
17 1894 when he was a delegate?

18 MS. SIMON: Objection. Hearsay.

19 THE COURT: Sustained.

20 Q Have you seen any such documents, Dr. Terrie?

21 A I have.

22 Q Dr. Terrie, I've handed you what's been  
23 marked as Exhibit 26 for identification. Do you have  
24 that in front of you?



1 A I do.

2 Q Do you recognize that document?

3 A I do.

4 Q Can you briefly describe what it is?

5 A This is an article written by Louis Marshall  
6 for the New York Times on October 24th, 1915 shortly  
7 before the vote on the amendment submitted to the  
8 people for vote in November.

9 Q And did you locate this article somewhere?

10 A I did.

11 Q Where did you locate it?

12 A I found it in the online archives of the New  
13 York Times.

14 Q And is that a way that historians or others  
15 would typically locate old articles from the New York  
16 Times?

17 A Very commonly done that way, yes.

18 Q As part of the professional practice that you  
19 have been engaged in, that's how these things are done?

20 A Yes.

21 Q And is it the type of document that a  
22 historian would typically rely on in doing their  
23 research and analysis?

24 A I do all the time.

1 Q Are there any handwritten notations on this  
2 document?

3 A The pages are numbered and I think that's it  
4 on this one.

5 Q How many pages are there?

6 A There are 14 but the document is not that  
7 long. There are a lot of duplications because of the  
8 way it was laid out on the screen.

9 Q And did you put those numbers on there?

10 A I did.

11 Q Other than those labels, do you believe it's  
12 an accurate copy of what you observed on the screen on  
13 the New York Times archive?

14 A I absolutely do.

15 MR. CAFFRY: Your Honor, I would move  
16 this document, Exhibit 26, be admitted into  
17 evidence.

18 THE COURT: Miss Simon.

19 MS. SIMON: Objection.

20 THE COURT: What's the objection?

21 MS. SIMON: It's hearsay, it's not  
22 relevant, and it's a popular publication. And my  
23 blanket objection is I would --

24 MR. CAFFRY: May I be heard, your Honor?

1 THE COURT: You may.

2 MR. CAFFRY: Under CPLR 4532, newspapers  
3 are self-authenticating. Obviously it's not  
4 possible in this day and age to go get a copy of  
5 the 1915 New York Times and bring it in here.  
6 It's no longer on the newsstand. But Dr. Terrie  
7 has testified as to how he secured this document  
8 and that it comes from a reliable source and how  
9 he obtained it from the source.

10 THE COURT: Plaintiff's 26 is received  
11 into evidence with the sole reservation, as  
12 previously stated by the Court, that the Court  
13 will consider the positions and arguments and the  
14 statements -- excuse me -- findings of fact and  
15 conclusions of law with regard to the relevance  
16 issue. Your objection is noted.

17 (Plaintiff's Exhibit 26 received into  
18 evidence.)

19 THE COURT: Go ahead, Mr. Caffry.

20 BY MR. CAFFRY:

21 Q Dr. Terrie, does this document, Exhibit 26,  
22 contain anything that to you as a historian indicates  
23 the views of Louis Marshall as to the intention of the  
24 Constitutional Convention of 1894 or at least for

1 himself with regard to what was protected under  
2 Article XIV?

3 MS. SIMON: Objection. Calls for  
4 speculation as to Mr. Marshall's intention.

5 THE COURT: Well, I don't know if it  
6 calls for speculation is the correct objection but  
7 I think an objection is appropriate in that,  
8 again, you're simply referring, sounds like,  
9 Mr. Caffry, you're proffering this article, which  
10 is self-authenticating, but simply for Mr.  
11 Marshall's statement as to what was meant in 1894.  
12 To that extent, I believe it is inappropriate  
13 hearsay even though it's a foundation for the  
14 article itself to overcome a baseline hearsay  
15 exception. So it's hearsay within hearsay. So on  
16 that ground I am inclined to grant the  
17 objection -- excuse me -- to deny the proffer of  
18 26 unless there's another reason you're offering  
19 it.

20 MR. CAFFRY: Your Honor, the witness has  
21 testified that Mr. Marshall was a delegate in  
22 1894.

23 THE COURT: He has.

24 MR. CAFFRY: And in effect if he wrote

1 something in this article or column or whatever it  
2 was that indicated his belief as to that meaning,  
3 we would believe that would be relevant as part of  
4 in effect the legislative history as if a  
5 congressman made a statement as to why he voted on  
6 a particular record or bill.

7 THE COURT: There is legislative  
8 histories. They are typically contained within  
9 the bill jackets or the formal proceedings which  
10 you've already referenced and from the  
11 Constitutional Convention. On the grounds that  
12 I've stated, your proffer is denied. Plaintiff's  
13 26 is stricken from evidence in this case.

14 BY MR. CAFFRY:

15 Q Dr. Terrie, you've already testified that  
16 there was a convention in 1915.

17 A Yes.

18 Q Did that convention propose to the voters a  
19 new convention?

20 A A new --

21 Q I'm sorry. A new Constitution.

22 A Yes.

23 Q And did that new Constitution include within  
24 it a Forest Preserve provision?

1 A Yes, it did.

2 Q And what was the fate of that Constitution  
3 when it was sent to the voters?

4 A It was rejected.

5 Q And I believe you've testified you in fact  
6 have written about the Convention of 1915, is that  
7 correct?

8 A I have.

9 Q And to your knowledge was the rejection of  
10 that Constitution in any way related to the Forest  
11 Preserve provision?

12 A My understanding --

13 MS. SIMON: Objection. Leading  
14 question. He could ask him what it relates to.

15 THE COURT: I'm going to overrule your  
16 objection as leading. It's not clear to me how  
17 that answer could possibly be given but I'll  
18 overrule the objection and we'll see what answer  
19 Dr. Terrie gives.

20 MR. CAFFRY: I'll rephrase, your Honor.  
21 Maybe that will help.

22 THE COURT: That will be fine.

23 Q Dr. Terrie, as a result of your research and  
24 study and writing about the Constitutional Convention

1 of 1915 and the proposed Constitution that resulted  
2 from it, have you come across any writings or other  
3 documents or anything that would indicate that it was  
4 denied for any reason related to the Forest Preserve  
5 provision?

6 A I have not.

7 Q And after that was there a subsequent  
8 Constitutional Convention?

9 A 1938.

10 Q And have you studied the record of that  
11 convention?

12 A I have.

13 Q And did that convention propose a new  
14 Constitution to the voters?

15 A Yes, it did.

16 Q And did that convention include a Forest  
17 Preserve provision?

18 A Yes.

19 Q Was the wording of that provision any  
20 different from the wording of the 1894 Constitution?

21 A It was exactly the same.

22 Q With regard to the Forest Preserve?

23 A Yes.

24 Q And that was then submitted to the voters.

1 What did the voters do with it?

2 A It was submitted to the voters in nine  
3 packages. Several of them passed, several of them went  
4 down. The one including the Forest Preserve passed.

5 Q And is that the convention at which the  
6 numbering of the provision was changed?

7 A Yes, it was.

8 Q And that change in number was approved by the  
9 voters?

10 A Yes.

11 Q To your knowledge has -- since 1938 -- you  
12 say it was readopted exactly the same as 1894?

13 A That's right.

14 Q Since 1938 has Article XIV, Section 1 been  
15 amended?

16 A Yes.

17 Q Approximately how many times?

18 A Ten? I don't -- I wasn't ready for that one.

19 Q Many?

20 A Several.

21 Q Several. Thank you. And in your opinion  
22 have any of those changes to Article XIV since 1938  
23 changed the meaning of timber as it was originally  
24 intended in the Constitution of 1894?



1 MS. SIMON: Objection.

2 THE COURT: Sustained.

3 Q Did any of those amendments directly provide  
4 a definition of timber?

5 A No.

6 Q Did any of those amendments change the phrase  
7 of the Constitution regarding timber?

8 A No.

9 Q To your knowledge does that language today in  
10 Article XIV, Section 1, is that identical to the  
11 language that was adopted in 1894?

12 A Yes, it is.

13 MR. CAFFRY: Your Honor, I have no  
14 further questions for this witness at this time.  
15 The one thing we would like to do with your leave  
16 is, if possible, find out if we can get a properly  
17 certified copy of Exhibit 10 which was the report  
18 of the Forest Preserve Committee of 1894 and  
19 introduce it into the record from a certified  
20 copy. The witness has already testified about it.  
21 All we're lacking is a copy for the record. We  
22 assume we can track it down and provide it in a  
23 timely manner.

24 THE COURT: So your question to me is

1           whether I will allow that in the doctor's absence  
2           or after his testimony?

3                   MR. CAFFRY:   Correct.

4                   THE COURT:   Miss Simon.

5                   MS. SIMON:   If he has a proper  
6           certification from the state of New York of the  
7           Constitutional Convention record, the full record,  
8           then that's what it is.  Is that -- maybe I  
9           misunderstand the statement but, yes, that would  
10          be okay if it's a certified record from the state.

11                   MR. CAFFRY:   Your Honor, I think the  
12          problem we had with it earlier today and why it  
13          wasn't admitted is because the witness wasn't  
14          positive if it was bound into a volume with the  
15          label printed on the cover that said Revised  
16          Record or if it was in a separate but related  
17          volume with a different title on it.

18                   THE COURT:   It was not clear whether it  
19          was part of the actual Revised Record to my  
20          recollection.

21                   MR. CAFFRY:   Correct.  And I believe if  
22          it had been, then it would have come in pursuant  
23          to the stipulation.  If it wasn't, I would suggest  
24          that if we can get a properly certified copy from

1 the state archives or wherever it may reside, that  
2 it be allowed in at that time.

3 THE COURT: Well, just speaking out loud  
4 for a moment, if there is a properly certified  
5 copy from the state archives and it is a state  
6 record and an ancient record, perhaps ancient  
7 record, perhaps, that may well be sufficient  
8 foundation for it to be admitted assuming  
9 relevance. I will say that the doctor's testimony  
10 at this point has not been completely clear as to  
11 his knowledge or understanding of that foundation  
12 itself. So certainly I'm going to consider it  
13 under all of the reservations that I've already  
14 expressed. Beyond that, I don't know what --  
15 we'll have to wait and see what you have when you  
16 bring it and see where it goes. If there is any  
17 other questions you would like to ask Dr. Terrie  
18 to attempt to lay whatever foundation you may need  
19 for it, if there is anything further to ask him  
20 about it now that you would like to ask in order  
21 to save your time and then proffer it if you get  
22 it, that's fine by me if you ask him some more  
23 questions on the record now.

24 MR. CAFFRY: If we were to obtain a

1 certified record, would that be something you  
2 could take judicial notice of?

3 MS. SIMON: May I be heard? We agreed  
4 in our stipulation that if the Court would take  
5 judicial notice, that all of these Constitutional  
6 Convention records the Court could take judicial  
7 notice of. It is not necessary to put them in the  
8 record. This is legal research. This could be  
9 put in our memos of law. This has been done  
10 already. These are all legal issues. These are  
11 all legal arguments.

12 THE COURT: You have been clear on that  
13 point.

14 MS. SIMON: I'm sorry.

15 THE COURT: I would be willing to take  
16 judicial notice, Mr. Caffry.

17 MR. CAFFRY: So if we can obtain that  
18 and perhaps as assistance to you, we could provide  
19 that to you for your ability to take judicial  
20 notice of it.

21 THE COURT: I would be willing to do so  
22 assuming that I agree with you and not Ms. Simon  
23 as to whether that is relevant at all in this  
24 proceeding.

1 MR. CAFFRY: As her ongoing objection to  
2 a lot of these issues.

3 THE COURT: Exactly. Yes. Okay?

4 MR. CAFFRY: That's satisfactory. Then  
5 we have no further questions of Dr. Terrie at this  
6 time.

7 THE COURT: Good enough. Now, do you  
8 have a file of Dr. Terrie that is available for  
9 Miss Simon to review?

10 MR. CAFFRY: He has a file up there with  
11 him.

12 MS. SIMON: Could I get a copy of  
13 everything?

14 THE COURT: Well, typically what's done  
15 is that the expert provides you the file itself  
16 and you're able to take some time to go through  
17 it. I'll give you as much time as you need.  
18 Hopefully we can move things along. But we don't  
19 typically make copies of the file.

20 MS. SIMON: Okay. So are you saying  
21 that that should be done right now or we would do  
22 it when his testimony is done?

23 THE COURT: I would assume -- it's up to  
24 you, Miss Simon. Typically it is done at the

1 conclusion of the direct so that you can have it,  
2 have the file, and you are able to refer to any  
3 questions that you have from looking at the file  
4 and going through it before you do your cross  
5 examination.

6 MS. SIMON: Okay. So we could take five  
7 minutes?

8 THE COURT: We can. Let me know when  
9 you're done, okay? All right. Doctor, you may  
10 step down. Please provide the file to Ms. Simon  
11 for her review. Ms. Simon, hopefully around ten  
12 minutes, but if you need more time -- hopefully  
13 around five but if you need ten or more time, let  
14 me know.

15 Folks, we're going to take at least a  
16 five-minute recess.

17 (Recess taken after which the  
18 proceedings continued as follows.)

19 THE COURT: All set, folks?

20 MS. SIMON: Yes.

21 THE COURT: All right. Doctor.

22 (The witness resumed the witness stand.)

23 THE COURT: Miss Simon, go ahead.  
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CROSS EXAMINATION

BY MS. SIMON:

Q I just have a few yes-or-no questions. The first is, isn't it true that there was no discussion in the 1894 Constitutional Convention indicating that cutting of trees to facilitate recreational use of the Forest Preserve was prohibited?

A That is true.

Q Next question. Wasn't the concern expressed at the convention related to commercial exploitation of timber?

MR. CAFFRY: Objection.

THE COURT: Let me hear that question again. I couldn't tell if it was -- just read it again, please.

(Last question read by the reporter.)

THE COURT: What's your objection?

MR. CAFFRY: She said the concern. As I recall, the witness testified to multiple concerns and therefore I object to the form of the question.

THE COURT: Sustained.

Q Wasn't a concern expressed at the convention related to commercial exploitation of timber?

1 A Yes.

2 Q Third question. Did the 1915 convention  
3 propose adding the words "and trees," and trees being  
4 in quote --

5 MR. CAFFRY: Objection. Beyond the  
6 scope of direct. He did not testify as to the  
7 content of the 1915 proposal.

8 THE COURT: Overruled. You may answer.

9 MS. SIMON: I didn't finish the question  
10 actually. Should I finish it?

11 THE COURT: Finish it. Go ahead.

12 MS. SIMON: I'll say it again.

13 Q Did the 1915 convention propose adding the  
14 words "and trees" after the word "timber" in  
15 Article XIV?

16 A No, it didn't. That wasn't the order in  
17 which those words were inserted.

18 Q Did the 1915 convention have any proposal  
19 with regard to adding trees to Article XIV?

20 A Yes.

21 Q And did it pass?

22 A Did it pass the convention?

23 Q Did it become part of the Constitution?

24 A It became part of the Constitution submitted



1 to the people in November of 1915.

2 Q But did it become part of the Constitution?

3 A No. The whole Constitution was voted down.

4 MS. SIMON: Thank you. No further  
5 questions.

6 THE COURT: Any redirect, Mr. Caffry?

7 MR. CAFFRY: No, your Honor.

8 THE COURT: Thank you, Doctor.

9 (Witness excused.)

10 THE COURT: Mr. Caffry.

11 MR. CAFFRY: Yes, your Honor. As  
12 indicated in my opening statement, we would like  
13 to read into evidence excerpts from the deposition  
14 transcripts of certain employees of the defendants  
15 on one particular issue, that being the question  
16 of this being a system of trails, what I would  
17 refer to as a unified system. We have provided to  
18 Ms. Simon copies of the pages that I intend to  
19 read from and also a list of the pages that I  
20 intend to read from. That was provided today but  
21 I did previously send her a letter a week ago, two  
22 weeks ago, saying that this was my intent and  
23 telling her it was the same pages that were  
24 attached to our motion for summary judgment which

1 papers she did have to narrow it down for her, and  
2 then today we presented her with copies of that.  
3 I will also say that these pages that we presented  
4 her with include the other topics that I am not  
5 going to read about today but just by way of  
6 introduction of what I am going to read.

7 THE COURT: Miss Simon.

8 MS. SIMON: Your Honor, I sent an e-mail  
9 to Mr. Caffry about 8:00 last night asking him to  
10 produce the information he intends to read and to  
11 identify in which transcripts what he intends to  
12 enter. Today in court I was handed a handwritten  
13 list of those items. I have not had a chance to  
14 review them. I have numerous objections to  
15 entering these transcripts. I don't know if you  
16 want to entertain them now or you want to do them  
17 one at a time as we go along, but my first  
18 question would be for what purpose is he offering  
19 them?

20 THE COURT: Mr. Caffry.

21 MR. CAFFRY: I am offering them as part  
22 of my case in chief or my direct case as  
23 evidence -- as testimony by employees of the  
24 defendants under 3211(a)(2), I believe it is, and

1           under that section of the CPLR I have the right to  
2           use the deposition transcripts of the defendants'  
3           employees for any purpose whatsoever.

4           THE COURT: Well, they still have to be  
5           relevant.

6           MR. CAFFRY: They must be relevant.

7           THE COURT: That's why Miss Simon is  
8           asking and I was asking for you to respond to. Go  
9           ahead, Mr. Caffry.

10          MR. CAFFRY: The question of whether or  
11          not this is a system of trails, and I would also  
12          plan to read from the complaint and the answer on  
13          that same subject, admissions by the defendants.  
14          There was an allegation in the complaint where  
15          what it relates to really is an issue that  
16          Ms. Simon touched on in her opening statement and  
17          has been an issue throughout this case as  
18          different trail segments have been noticed in the  
19          environmental notice bullet with proposed tree  
20          counts, and we have applied for preliminary  
21          injunctions or TROs that the State responds as if  
22          each individual trail or each individual segment  
23          of a trail should somehow be considered in  
24          isolation from the whole. We believe that it is

1 more appropriate to consider it as a full system  
2 and, for instance, they talked about in her  
3 opening statement, Miss Simon talked about it  
4 being a de minimus portion of the Forest Preserve,  
5 whether you look at the Forest Preserve as a whole  
6 or as the individual section. So in her opening  
7 statement she recognized that this could be looked  
8 at two different ways. They have for their own  
9 purposes accumulated these numbers in certain  
10 filings to date. We assume they will do so in  
11 their proof and so what I want to offer these for  
12 is the fact that they have made admissions that  
13 this is a system, it's not merely random  
14 unconnected trails or little segments of trails.

15 THE COURT: Miss Simon.

16 MS. SIMON: Your Honor, this isn't about  
17 all trails ever to be built called Class II. This  
18 is only about this case. It's limited to Class II  
19 trails for which construction began on January  
20 1st, 2012 or commenced by 10/15/2014 as per Judge  
21 Ceresia's 10/15/2014 decision and as per your  
22 subsequent decisions. Future trails are not  
23 within the scope of this case, only the trails for  
24 which construction commenced in that period of

1 time are at issue.

2 THE COURT: That is correct, to make it  
3 clear. Please continue.

4 MS. SIMON: DEC employee opinions on a  
5 larger system are not relevant here and I object  
6 on the basis also of not just relevance but the  
7 fairness doctrine. I need an opportunity to look  
8 at what he's trying to put in and decide if there  
9 is anything I would have then read into the  
10 record. I was not provided with these well enough  
11 in advance. I got the list of citations by  
12 handwritten document handed to me today.

13 THE COURT: Okay.

14 MS. SIMON: I object on a number of  
15 bases. Thank you.

16 THE COURT: I'll give you the time to  
17 review those to voice your specific objections as  
18 you wish. So I'm not denying you your opportunity  
19 to attempt to proffer those but I'm going to give  
20 Miss Simon time to review those particular areas  
21 that you have now identified for her in detail  
22 because it's a nonjury trial and she's got to have  
23 time to voice her objections. Do you have  
24 anything else ready to go today, Mr. Caffry?

1 MR. CAFFRY: No, I don't, your Honor.

2 This was intended to be the last item today.

3 THE COURT: I appreciate that. If we  
4 were in front of a jury, frankly, I would try and  
5 move it along more and my ruling might be  
6 different. I would say she needs to look at them  
7 quickly and we need to make some decisions, but  
8 because we're nonjury, I want to give her a chance  
9 to look at those more carefully.

10 MR. CAFFRY: Overnight?

11 THE COURT: Overnight is correct.

12 MR. CAFFRY: Okay. So just to be clear,  
13 please, depending upon her having had time to  
14 review them, I would anticipate, given a favorable  
15 ruling from you, being able to read them at the  
16 beginning of business tomorrow.

17 THE COURT: Correct.

18 MR. CAFFRY: Thank you.

19 THE COURT: Yes.

20 MS. SIMON: Your Honor, I wanted to just  
21 raise one other issue before we break today and  
22 bring it to the Court's attention. I don't have  
23 the list of exhibits that may be presented  
24 tomorrow. I don't have the copies of those

1 exhibits and everything I got today was not  
2 numbered. I don't say this to criticize. I  
3 understand it's a difficult process but it makes  
4 it difficult for me to properly respond to these  
5 matters. So I would appreciate if the Court could  
6 direct the plaintiffs to please give me a list of  
7 documents. We did talk briefly during the break  
8 that are also marked by exhibit numbers so I know  
9 what they are and can identify and get an updated  
10 exhibit list from them that's not handwritten.

11 THE COURT: Okay.

12 MR. CAFFRY: Your Honor, may I respond,  
13 please. I guess I would attribute this, your  
14 Honor, to a lack of communication between the  
15 parties. We're not aware of any rule in the CPLR  
16 or anywhere else, the local rules, that requires a  
17 witness list, that requires us to provide exhibits  
18 prior to attempting to introduce them so long as  
19 they have been produced in discovery overall in  
20 general with limited exceptions, nor was there any  
21 order regarding that. Having said that, we are  
22 doing our very best to remedy that going forward.  
23 We intend to today give Miss Simon a list and  
24 copies and label them for her so that she has them

1 in the fashion that she feels would be useful.

2 What I cannot tell you is that this is going to be  
3 the whole list going forward. As we prepare our  
4 witnesses, etcetera, the lists are going to vary.  
5 Some of these witnesses have thousands of photos,  
6 for instance. So we will try to get it to her as  
7 soon in advance as we can but we can't say we're  
8 going to give a definite list from now until the  
9 end. But we're going to do our best.

10 THE COURT: I'm going to deny your  
11 application for a direction of the Court for the  
12 same reason already stated by Mr. Caffry which is  
13 that there is not a requirement in the CPLR that  
14 that occur or in case law that I am aware of but  
15 it may fall within the Court's ability to control  
16 the course and conduct of trial. He is correct in  
17 implying that the exigencies of trial, witness  
18 preparation, sometimes make that impossible and I  
19 am not going to issue an order that can then be  
20 used against him. I was going to request what  
21 Mr. Caffry has already stated he will give and I  
22 will request the same of you and I appreciate that  
23 you have made that offer, that courtesy. I know  
24 the first day of a long trial like this can often



1 be difficult until we get the momentum going.  
2 But, please, we've got some time now, you will  
3 have some time tomorrow morning, do the best you  
4 can for all of our sakes so that both sides -- I  
5 know you both know each other's cases very well in  
6 any event. I don't believe for a moment that  
7 either side is trying to spring any new  
8 information on the other side at this trial but  
9 rather just trying to develop their entire cases.  
10 But it will move along better for all of us,  
11 separate and apart from my need to occasionally  
12 leave the courtroom, it will move better for all  
13 of us if you try to share as best you can and work  
14 together. So I appreciate your offer, Mr. Caffry.  
15 I'm sure Miss Simon does as well and we'll see you  
16 tomorrow morning -- what time did I say? 10:00?  
17 Try to be here early to work together with each  
18 other on what we've discussed but I will not -- I  
19 have an oral argument that may take some time  
20 that's starting at 9:15. I'd be surprised if I'm  
21 done before 10:15. Okay?

22 MR. CAFFRY: Excuse me, your Honor.

23 10:15 you said?

24 THE COURT: Yes. Try to be here earlier

1           than that but I'd be surprised if I'm able --  
2           we'll say 10:15 for safety. Okay?

3           MS. SIMON: Thank you, your Honor.

4           MR. CAFFRY: Thank you.

5           THE COURT: Thank you, folks.

6           (Plaintiffs' Exhibits 28 through 77  
7           marked for identification.)

8           (Proceedings adjourned at 3:41 p.m.)

9  
10  
11           C E R T I F I C A T I O N

12  
13           I, Cindy Affinati, Official Court Reporter for  
14 the Unified Court System, Third Judicial District of  
15 the State of New York, do hereby certify that I  
16 attended and reported the foregoing proceedings; that  
17 it is a true and accurate transcript of the proceedings  
18 had therein to the best of my knowledge and ability.

19  
20           

21           Cindy Affinati  
22           Official Court Reporter

23  
24           March 28, 2017

I N D E X

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Opening by Mr. Caffry - 8

Opening by Ms. Simon - 16

W I T N E S S E S

PLAINTIFF'S WITNESSES                      Direct   Cross   Redirect   Recross

PHILIP TERRIE    23