

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

VOLUME XXII

Held: November 2, 1987

At: St. Andrew's Church Hall
Bentinck Street
Sydney, Nova Scotia

Before: Chief Justice T. A. Hickman, Chairman
Assoc. Chief Justice L. A. Poitras, Commissioner
Hon. G. T. Evans, Commissioner

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn:
Commission Counsel

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Counsel for Donald Marshall, Jr.

Michael G. Whalley, Q.C.: Counsel for City of Sydney

Ronald N. Pugsley, Q.C., Joel Pink, Q.C.,:
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Donald C. Murray: Counsel for William Urquhart

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Counsel for the Donald MacNeil estate

Jamie W. S. Saunders, & Darrel I. Pink:
Counsel for Attorney General

James D. Bissell: Counsel for the R.C.M.P.

Al Pringle: Counsel for Correctional Services Canada

William L. Ryan: Counsel for Evers, Green and MacAlpine

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse: Counsel for Wheaton & Scott

Guy LaFosse: Counsel for Davies

Bruce H. Wildsmith, & Graydon Nicholas:
Counsel for Union of Nova Scotia Indians

E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale

E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

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INQUIRY RECONVENED AT 9:35 o'clock in the forenoon on Monday, the 2nd day of November, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

1 MR. SPICER:

2 My Lords, Mr. Gould, who was just finishing up his examination,
3 has come down with the flu and is not able to attend this morning;
4 so hopefully he'll be better in the next couple of days, and if
5 there are any questions left of him, he can come back at that time.
6 In the meantime, we're going to move on and have Bernie Francis.

7 BERNARD FRANCIS, being called and duly affirmed, testified as follows

8 BY MR. SPICER:

9 Q. What's your full name, please?

10 A. Bernard Francis.

11 Q. And where do you live, Mr. Francis?

12 A. 117 MacKenzie Drive, Sydney.

13 Q. Sydney? How old are you?

14 A. Thirty-nine.

15 Q. And you're Micmac?

16 A. Yes.

17 Q. Where were you born?

18 A. Sydney.

19 Q. Where did you live for the first few years of your life?

20 A. In Membertou.

21 Q. On the Reserve?

22 A. On the Reserve.

23 Q. Who were you living with at that time?

24 A. My stepfather.

25 Q. Do you have any brothers or sisters?

BERNARD FRANCIS, by Mr. Spicer

- 1 | A. Yes, I have four brothers, but they were adopted into different
2 | families.
- 3 | Q. So is it just yourself then and your stepfather?
- 4 | A. Yes.
- 5 | Q. What language would you be speaking at home?
- 6 | A. Micmac.
- 7 | Q. Did you speak any English at all?
- 8 | A. Very little.
- 9 | Q. Did your stepfather speak any English?
- 10 | A. Yes, he did, yeh, but generally Micmac he spoke.
- 11 | Q. Did you go to the Indian day school on the Reserve?
- 12 | A. Yes, I did.
- 13 | Q. Do you remember what years that would've been?
- 14 | A. '53 or '54 until perhaps about '57 or '58.
- 15 | Q. What grades would you have gone through in the Membertou
16 | Indian day school?
- 17 | A. Grade primary, one, two, and three.
- 18 | Q. And the language that you spoke in the school would've been?
- 19 | A. It was -- We spoke Micmac but the lady who was the instructor
20 | there spoke English.
- 21 | Q. The language of instruction was English?
- 22 | A. Yes.
- 23 | Q. What was your competency in English when you started going to
24 | that school?
- 25 | A. It was incompetency.

- 1 Q. Were you able to get along at all in English?
- 2 A. Very, very little.
- 3 Q. And how did you manage to operate in a classroom then if you
4 were being taught in English?
- 5 A. I guess -- I've often wondered that myself, but I guess it has
6 to do with the adaptability of young people to adapt fairly
7 quickly; so with the language -- Micmac spoken both before
8 school, recess, dinnertime, and after school, somehow we
9 managed to survive the -- in the English language. I mean,
10 Membertou is surrounded by the city; so we did hear some
11 English. But our competency ~~or~~ lack of it was showing on the
12 Reserve that we didn't speak English as a day-to-day language.
- 13 Q. And from Membertou, where did you next go to school?
- 14 A. St. Anthony Daniel School. That's off the Reserve about one
15 mile from the Reserve.
- 16 Q. One mile and towards town or --
- 17 A. Towards the city, yes.
- 18 Q. Towards the city?
- 19 A. Towards the city.
- 20 Q. What grades were you in at St. Anthony Daniel?
- 21 A. Grade four, five, and six.
- 22 Q. And were there White children in your class as well at
23 St. Anthony Daniel?
- 24 A. Yes. There were mostly White children in the class.
- 25 Q. And in those three grades that you were in, can you give us any

BERNARD FRANCIS, by Mr. Spicer

- 1 | idea of how many kids would've been in your class?
- 2 | A. The grade four, five, and six, you mean?
- 3 | Q. Yeh.
- 4 | A. I'd say there were about thirty-seven children in grade four.
- 5 | Q. How many of those would've been Indian?
- 6 | A. I'd say maybe -- Oh, maybe ten of us, I guess, in that class-
- 7 | room.
- 8 | Q. Yes.
- 9 | A. The rest were non-Indians.
- 10 | Q. And did the ten of you used to hang out together?
- 11 | A. Yes, pretty much.
- 12 | Q. Did you?
- 13 | A. Yes.
- 14 | Q. Did you feel -- to take the grade four class if you have much
- 15 | of a recollection of it. Do you -- Did you feel at all as if
- 16 | you were being treated any differently than the White kids in
- 17 | your class?
- 18 | A. Yes, there was no doubt about that.
- 19 | Q. And in what respect and by whom?
- 20 | A. Mainly it was by the principal who was a Catholic nun at the
- 21 | time. For instance, if there was any problems in the class-
- 22 | room or problems outside the classroom, we were treated with
- 23 | such disrespect that she would grab a hold of our ear and shake
- 24 | us like this and say, "You Indians." I remember the phrase
- 25 | really well. So that's one example.

BERNARD FRANCIS, by Mr. Spicer

1 Q. Did you ever see her grab the ear of any White kid?

2 A. Yes, but they didn't say, "You White kid." That was the
3 difference.

4 Q. Right. Anything else?

5 A. I think there were other instances where we weren't as -- It
6 was pointed out to us that we weren't as cleanly and neatly
7 dressed, and then there was other instances where there was a
8 competition in the school -- in our particular classroom as to
9 who can drink more milk at home, and each day the teacher would
10 mark as to how many people -- how many glasses of milk each
11 student drank and we had to lie because the teacher made it
12 known to us that it was extremely important that we drank milk
13 in order to keep our bodies in good shape, and we had to lie
14 so that we weren't sort of set aside from other students by
15 saying that we drank 'quite a bit of milk or that was pretty
16 close to what other people were drinking when, in fact, we
17 didn't have milk in the house because we couldn't afford it.

18 Q. Did you feel you were treated any differently by the White kids
19 themselves?

20 A. Yes, I'd say that generally if there was a problem, or if we --
21 If there was a ball game for instance, and if most Micmac or
22 if there were -- on the team were most Micmac then they would
23 comment on the fact that -- They would make, you know, noises
24 that are -- that you hear from the old Western movies, and
25 they would comment -- make some comments about the fact that

BERNARD FRANCIS, by Mr. Spicer

1 we were Indians and that we did this and we did that. We should
2 be able to run fast. You know, little comments like that.

3 Q. Did this experience last through grades -- three grades that
4 you were at St. Anthony Daniel? Was it more or less the same
5 the whole time?

6 A. Yes.

7 Q. Were there about the same number of Indian kids in your grade
8 five class and your grade six class?

9 A. No, because they started to drop off after the first grade some
10 of them. So each year there was some left behind because of
11 the language problem.

12 Q. And when you say, "because of the language problem," what do you
13 mean by that? What was going on that was causing --

14 A. Well, they were having difficulty in adjusting with the -- to
15 the classroom and to other children who spoke nothing but
16 English. They had difficulty understanding what it is that
17 they were expected to do; so a lot of them for instance couldn't
18 ask for help at home simply because their parents weren't also
19 speakers of English. So they really had no one to turn to
20 around the Reserve.

21 Q. I think we're going to be talking a fair amount about language
22 and so that we can give the Commissioners perhaps a little
23 understanding of your own circumstances. Can you explain to
24 us what it is you currently do? What are you currently employed
25 in?

BERNARD FRANCIS, by Mr. Spicer

- 1 A. I teach Applied Linguistics at the University College of Cape
2 Breton.
- 3 Q. And what is it that you actually do?
- 4 A. Okay.
- 5 Q. When you say you teach Applied Linguistics, what is it you're
6 doing?
- 7 A. Yes. I'll clarify it by saying that there are three -- I
8 teach two courses, two half courses and one full course, all
9 credit courses. The first course as it -- or as it's called
10 a beginner's course. Students would disagree with you with
11 that, but -- the Native students who now don't speak the Micmac
12 language. So I teach them the conversational Micmac with a
13 minimum amount of grammar. The intermediate course are for
14 Native students who speak the language fluently. Now, these
15 students I teach the grammatical aspects of the language and
16 the advanced course is for students who took the intermediate
17 course the previous year and who are also fluent speakers, and
18 I teach what's called the Micmac morphology or the Micmac
19 word formation to these students.
- 20 Q. Would these all -- Are they all Native students?
- 21 A. Yes, they are with the exception of one last year I had who
22 was an English professor.
- 23 Q. Do you teach --
- 24 A. I'm sorry. There were other ladies who were married to Indian
25 men who -- non-Indian ladies who were married to Indian men

BERNARD FRANCIS, by Mr. Spicer

- 1 that took that course.
- 2 Q. As part of this teaching process, do you teach any Micmac as a
3 written language?
- 4 A. Yes, myself and another man by the name of Doug Smith, who was
5 a university professor from Toronto, we devised a writing
6 system for the Micmac language which adequately represents the
7 sound system of Micmac; so that's what I'm promoting.
- 8 Q. What's the current status of the use of Micmac on the Reserve
9 in Sydney? Membertou?
- 10 A. The current status there is that it's in terrible shape. Micmac
11 is hardly used by, let's say, people under the age of thirty-
12 five maybe. Maybe a little younger than that, but it's in
13 very poor shape. It's mainly English that's used there now,
14 and I doubt very much if we could ever revive it to the point
15 where it's used as a house language.
- 16 Q. Do most households then, in your experience, are using English
17 as their language around the house as opposed to Micmac?
- 18 A. Yes.
- 19 Q. Why is that?
- 20 A. Well, I think the beginning of the end of the Micmac language
21 was when they took the school -- the Indian day school as it
22 was known off the Reserve and forced the Native children to
23 attend the non-native school at St. Anthony Daniel right from
24 the time that they were five years of age or perhaps slightly
25 younger and --

BERNARD FRANCIS, by Mr. Spicer

1 Q. Do you know year that was?

2 A. Gee, I'm sorry, I don't. It was over ten years ago, ten, fifteen
3 years ago, I think.

4 Q. Yes.

5 A. Maybe longer. And I think everyone is aware of the fact that
6 the sooner that you take a child out of their mother language,
7 the sooner they forget it, and finally -- I think, as a matter
8 of fact, it was that first year that children were coming home
9 speaking English to their parents and being parents, a lot of
10 the times instead of spending time teaching them how to speak
11 Micmac, it would be more expedient for the parent to speak to
12 them in English. You know, parents are busy all the time, and
13 it was just quicker to get the message across to the children
14 by speaking English. And that was the beginning of the end.

15 Q. What's the current enrollment in your classes at the University
16 College?

17 A. I think I have about twenty-one or twenty-two students.

18 Q. In each of the three classes?

19 A. No, I have five, six or seven, and about seven or eight more.
20 Maybe it's around twenty. I forget exactly.

21 Q. Is that about the -- Are those about the numbers that you
22 expect in a year?

23 A. Yes, that's right because there's still not enough Native
24 students attending university. But those who do attend, with
25 the exception of the ones who are in the technology trades,

BERNARD FRANCIS, by Mr. Spicer

1 | they're taking the Micmac courses.

2 | Q. As part of your training to put yourself in a position to be
3 | able to teach these courses and as part of your experience in
4 | teaching and do you -- Have you come to have some understanding
5 | of language difficulties then that exist between English speakers
6 | and Micmac speakers?

7 | A. Yes.

8 | Q. Is there any part of your training specifically that would've
9 | given you some kind of an understanding of the sorts of problems
10 | that may exist?

11 | A. Just in general, you mean?

12 | Q. Yes.

13 | A. Yes, there's quite a few problems. First of all, the -- you
14 | know, the syntactical structure or the structure of the --
15 | The sentence structure of the Micmac language is so different
16 | that when you're learning the English language, you tend to
17 | carry over your syntax on to the English language.

18 | Q. Okay. If I could just stop you there for a second, --

19 | A. Yeh.

20 | Q. -- Mr. Francis? I want to get to the substance of the dif-
21 | ferences later. I'm just -- For the moment, I'm just trying
22 | to understand from you what -- if there's any part of your
23 | training that's given you the understanding that you now have
24 | as to the problems that may exist between English and Micmac.
25 | Can you say, "Well, I learned to do this or I've learned as

- 1 part of my training the differences that do exist between
2 English and Micmac." At the moment, you've indicated to us
3 that you teach Micmac.
- 4 A. Right.
- 5 Q. I want to understand how it is that you understand the problems
6 between English and Micmac.
- 7 A. I think basically -- I'll answer the question by saying that
8 we study the concepts of the Micmac language as opposed to the
9 concepts of the English language.
- 10 Q. And in understanding the difference between the concepts, would
11 it be fair to say then you come to an understanding of the
12 difficulties that may exist between the two?
- 13 A. Definitely.
- 14 Q. Okay. Sorry we got ahead of ourselves there, but I wanted to
15 get the Commissioners some understanding of your current
16 expertise. Let's go back to grade seven, if we could, now.
- 17 A. Okay.
- 18 Q. Where did you attend grade seven?
- 19 A. Sheriff Junior High.
- 20 Q. And were you there for more than one year?
- 21 A. No, just the one year.
- 22 Q. How old were you when you were in grade seven?
- 23 A. Twelve or thirteen.
- 24 Q. And again, would you -- the language of instruction would've
25 been English?

BERNARD FRANCIS, by Mr. Spicer

- 1 | A. Yes.
- 2 | Q. And would there've been other Indian children in your class?
- 3 | A. Yes.
- 4 | Q. Are you able to tell us how many Indian children there were in
5 | your grade seven class?
- 6 | A. I'd say about six or seven.
- 7 | Q. Out of a class of how many?
- 8 | A. Twenty-five or thirty.
- 9 | Q. Did you experience any difficulties in your grade seven class
10 | that you can attribute to the fact that you were Micmac?
- 11 | A. I'd say generally we still had the same difficulties though
12 | not as great. We still weren't all that familiar with the -- I
13 | mean, we spoke English and we used it as a means to get by, but
14 | Micmac is still, you know, the language that we used amongst
15 | ourselves and at home.
- 16 | Q. Were you able to get any assistance at home with respect to
17 | doing homework that you might have in English?
- 18 | A. No, not really because I think the difficulties lie in areas
19 | such as the English language. We had -- When it comes to say
20 | writing essays, we had great difficulty in writing essays or
21 | writing anything. We didn't seem to have any difficulty with
22 | mathematics or sciences, but when it came to writing essays
23 | or paragraphs or little stories or something, we always had
24 | difficulty there because they came out so funny in some cases
25 | that we were reluctant to -- Perhaps we could do it, but we were

BERNARD FRANCIS, by Mr. Spicer

1 reluctant to do it because of the fact that it might be read
2 in the classroom. There was always that chance, and we didn't
3 feel like being -- I mean, I don't think we were being ridiculed
4 at that point. We were just -- The stories just came out very
5 funny because of our transference factor from Micmac to
6 English.

7 Q. When you say they came out kind of funny, are you able to
8 think of any examples of --

9 A. Well, the sentence structure was always funny in that -- I
10 can't think of a specific example right now. It's just that
11 the way that the Micmac is structured, see. We -- You're able
12 to make a complete statement and a complete sentence which would
13 have your subject, your predicate, and your object in one word.
14 So the English language we always found cumbersome because it
15 have to use a half a dozen words to express a complete thought.
16 And those half a dozen words sometimes would be jumbled, you
17 see, which would make perfect sense to us but would make no
18 sense or would make funny sense, I should say, to a non-Native
19 speaking person.

20 Q. What was the reaction of your teachers to these funny stories?

21 A. They didn't take us seriously. I don't think they fully under-
22 stood just like we didn't fully understand what was going on at
23 the time. They were -- They marked us equally as hard or
24 equally as easy, whatever it was.

25 Q. Yes.

BERNARD FRANCIS, by Mr. Spicer

1 A. But we always suffered when it came to writing the English
2 language.

3 Q. What did you do after grade seven, Mr. Francis?

4 A. I -- At the time, the stepfather had died; so there was no one
5 left at home. So I went to a boarding school in Mabou.

6 MR. CHAIRMAN:

7 Where?

8 THE WITNESS:

9 Mabou, Nova Scotia.

10 MR. SPICER:

11 Mabou.

12 BY MR. SPICER:

13 Q. And where were you living when you were at Mabou? At the school?

14 A. No, I lived with a family of -- It was like a boarding house,
15 a man and woman and their two or three children were boarding
16 maybe six or seven of us.

17 Q. How did you end up there? How was the decision made for you to
18 go to Mabou from Membertou?

19 A. I looked around myself because I wanted to go to a school that
20 I would be ensured three meals a day and an environment which
21 would provide some studying, you know, that I could do and
22 I had heard of Mabou as being a good school through some
23 children that were from Whycomagh. They go to school there regu-
24 lary, I think, and someone had mentioned that it was a good
25 school and that you could find a boarding house there and then

BERNARD FRANCIS, by Mr. Spicer

- 1 finally I made application to the Department of Indian Affairs,
2 and they allowed it.
- 3 Q. How old were you when you were doing this, making this applica-
4 tion and looking around?
- 5 A. I was just I think getting on to fourteen.
- 6 Q. And did you do this on your own?
- 7 A. Yes.
- 8 Q. How many years did you go to school in Mabou?
- 9 A. Two years.
- 10 Q. Grades?
- 11 A. Grade eight and grade nine.
- 12 Q. Grade eight and grade nine. And how did you find the school
13 in Mabou?
- 14 A. It was a very good school, but from the personal perspective,
15 I was having a lot of difficulty at the time because of the
16 family situation, and so on. But the school was very good.
- 17 Q. Were there other children in your class? Indian children?
- 18 A. The first year there were none, and the second year there were
19 maybe three, maybe four.
- 20 Q. Where would they have come from?
- 21 A. One came from Membertou and the others came from Whycocomagh.
- 22 Q. How large were your classes?
- 23 A. I'd say about twenty-five or thirty.
- 24 Q. Taught in English again?
- 25 A. Yes.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. And how were you doing at this stage of the game in terms of
2 your fluency in English and any difficulties you were having
3 in the classroom?
- 4 A. Still pretty much, you know -- The difficulties were still
5 there because I'd never -- Up to that point, I had never been
6 exposed to the English language, let's say, full time; so I
7 could always sort of run back and speak Micmac. So I was
8 never -- never really felt that I was in a situation where I
9 had to speak English and English only; so, you know, I always
10 sort of reverted back to Micmac every opportunity I had.
- 11 Q. When you were in Mabou, were you then -- Were you forced to
12 speak English pretty well all the time?
- 13 A. Yes. You had no choice there.
- 14 Q. The family that you were living with was not Indian?
- 15 A. No.
- 16 Q. So the only Micmac you would've gotten to speak would've been
17 with the other kids that were in your school? The other
18 Indian kids?
- 19 A. Yes.
- 20 Q. What did you do after school in Mabou when you finished there?
- 21 A. That's when I left school and --
- 22 Q. How old were you then?
- 23 A. About fourteen or going on fifteen.
- 24 Q. And what grade were you in when you left?
- 25 A. Grade nine.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. Had you completed grade nine.
- 2 A. No, I didn't. I just left Sydney, and I went to Boston --
- 3 hitch-hiked to Boston at the time, and I stayed away for eight
- 4 years approximately.
- 5 Q. Doing various jobs around the United States?
- 6 A. Yes.
- 7 Q. Ended up in Hawaii at some point?
- 8 A. Yes, I ended up in Hawaii in 1969 and stayed there for about
- 9 a year.
- 10 Q. And you eventually came back to Sydney?
- 11 A. Yes, I came back about '69 or '70.
- 12 Q. And you would've been what, twenty or twenty-one at that point?
- 13 A. About twenty or twenty-one, yeh.
- 14 Q. Yes. When you came back to Sydney, what did you do?
- 15 A. I only stayed in Sydney for a little while. I can't remember
- 16 how much time I spent in Sydney, but I went back to Halifax
- 17 with the hopes of getting back to school because about a year
- 18 or two years prior to that, at the age of nineteen, I think
- 19 I became very interested in getting educated for the first
- 20 time. I guess, basically, I began to understand what the
- 21 term "education" was, and that it didn't mean going to school
- 22 every day but rather getting educated. And -- So I wanted
- 23 to get some formal training in Halifax and -- but I wasn't
- 24 having much luck there either.
- 25 Q. Where were you applying?

BERNARD FRANCIS, by Mr. Spicer

1 | A. Well, there was what's called a Transition Year Program for the
2 | Native people and Blacks.

3 | Q. At Dalhousie?

4 | A. At Dalhousie.

5 | Q. Right.

6 | A. So we were all sort of into -- It was like -- Transition Year
7 | Program was a year prior to first year of university. So I
8 | entered that program, and it was okay, but I still didn't
9 | feel very comfortable sitting in a classroom.

10 | Q. What did you do?

11 | A. Well, I spent a year there, and then I came back to Sydney and
12 | for the summer I applied for the -- I applied rather to the
13 | John Howard Society for a position to work with the parolees.

14 | Q. And what is the John Howard Society?

15 | A. John Howard Society is sort of like an after care agency for
16 | people who have been allowed on parole, and I worked with them
17 | for about three months or so, two or three months.

18 | Q. What sort of experiences did you have working for the John
19 | Howard Society? Were --

20 | A. Well, we had to do, you know -- When a person applied for
21 | parole, we had to do investigations to find out if the -- if
22 | this person applying for parole would be brought back into
23 | a better environment and rather -- to ensure that he wasn't
24 | put into an environment which put him into the institution in
25 | the first place. So I had an opportunity to work with both

BERNARD FRANCIS, by Mr. Spicer

- 1 non-Indians and then later on I got more interested in working
2 with Native people.
- 3 Q. How long were you with the John Howard Society? Just --
- 4 A. About two or three months.
- 5 Q. Two or three months.
- 6 A. Yeh.
- 7 Q. During that period of time, did you have an opportunity to see
8 how Native people were being processed through this John
9 Howard Society?
- 10 A. Yeh. The John Howard Society was -- They were very good. I
11 must admit. They work very hard and -- in attempting to find
12 employment for Native people; although, in many cases, they
13 weren't having very much success. But I was with them very
14 closely, and they worked very hard to see to it that a Native
15 person got back on his feet after being incarcerated.
- 16 Q. And did you have any opportunity to observe the attitude of
17 parole officers during the time you were with the John Howard
18 Society?
- 19 A. Yeh, the parole officers were also very good. The gentleman's
20 name, he has died since, Jim MacLean, he was the district
21 representative for the National Parole Service. He was quite
22 good with Native people, and he began to see the differences
23 between the Native and the non-Native clients that he had.
- 24 Q. Did you have any sense when you were with the John Howard
25 Society that the Native People that were coming through were

BERNARD FRANCIS, by Mr. Spicer

- 1 being treated in a less respectful manner than White people that were
2 coming through?
- 3 A. Do you mean the John Howard Society?
- 4 Q. Yes.
- 5 A. No, they were treated with equal respect.
- 6 Q. As part of your experience in the John Howard Society, were you
7 in and out of the courtrooms at all?
- 8 A. Yes, it was as a result of my being the courtrooms that I
9 began to see how the Native people were processed in the system.
10 It was -- I think it was -- That's where my interest flared.
- 11 Q. After you finished in the John Howard Society, Mr. Francis,
12 what did you do then?
- 13 A. The contract was up. It was sort of like summer employment,
14 I guess. I decided then that I was -- I felt very strongly
15 for establishing a -- some sort of a program which would
16 assist Native people in the system, the court system. And
17 I applied to the Justice Department and to make a long story
18 short, I finally got funding. I applied for eighty thousand.
19 I got fifty-six, I believe, and I began what's called the
20 Court Worker Program for the Union of Nova Scotia Indians
21 and the province of Nova Scotia and the federal government.
- 22 Q. Do you remember what year that would've been?
- 23 A. It was around '70 or '71.
- 24 Q. And when you first started the Court Worker Program, how many
25 court workers were there?

BERNARD FRANCIS, by Mr. Spicer

1 | A. Well, two, I believe. Two or three. One in Cape Breton and
2 | one in the mainland.

3 | Q. And was this full-time employment?

4 | A. Yes.

5 | Q. What were your responsibilities?

6 | A. Well, I guess the major responsibility was to see to it that
7 | no Native person went to court without us hearing about it
8 | first because the reason for that, I guess -- It was my
9 | experience that Native people were just pleading guilty to
10 | things they just didn't understand.

11 | Q. And you gained -- That's experience that you gained during your
12 | summer with the John Howard Society?

13 | A. Yes.

14 | Q. Okay. And as part of those responsibilities to make sure that
15 | the Native people didn't get to court without your knowing
16 | about it, did you then -- Were you then in contact with
17 | officers of the court and --

18 | A. Yes, I was. I -- First of all, I introduced myself to judges,
19 | to prosecutors, to the National Parole Service, and even to
20 | the people that I worked with, the John Howard Society, to
21 | inform them as to what I had started and to ask them if they
22 | would cooperate with me in seeing to it that I saw Native
23 | people before they committed themselves to a plea.

24 | Q. And what kind of a response were you getting to that request?

25 | A. Initially, it was a great response. They were sort of happy

BERNARD FRANCIS, by Mr. Spicer

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about it. They didn't, you know, make a big fuss about it,
but they didn't seem to object to it either. And -- So I'd
say all in all it -- It was okay.

Done

BERNARD FRANCIS, by Mr. Spicer

1 Q. You were with the Native Court Worker Program for four or five
2 years?

3 A. Five years.

4 Q. Five years. In general terms, before we talk about the specifics
5 of what you were doing, did -- did that attitude change over
6 the period of time you were with the Court Worker program?

7 A. Yes, it certainly did.

8 Q. And in what respects did it change?

9 A. Well, I guess when I started to become effective and the
10 dockets started to become full --

11 Q. Why would the dockets become full?

12 A. The dockets were becoming full because Native people were simply
13 not pleading guilty any longer to charges they didn't
14 understand.

15 Q. Yes.

16 A. As a matter of fact, I -- I made the different Bands throughout
17 Nova Scotia aware of my presence and the Court Worker Program
18 and I advised them that from this day forward not to plead
19 guilty any more to anything until we had an opportunity to look
20 at the case and all native people suddenly were pleading not
21 guilty sheepishly at first, but as time went on they pleaded
22 not guilty with a little bit more conviction and so it was --
23 After a year and a half to two years in the program I started
24 to -- I started to have to jump some hurdles. I was having
25 difficulty with prosecutors and judges mainly.

BERNARD FRANCIS, by Mr. Spicer

1 Q. In what respect?

2 A. Well, they didn't like the idea, I suppose, of having to -- to
3 fight each and every case or so they felt, although not each
4 and every case held onto a not guilty plea. There were times
5 when after contact with a lawyer, usually Legal Aid lawyers,
6 it was in the best interest of a Native person to plead guilty
7 and so it wasn't every case that -- that stuck with the not
8 guilty plea, but there were enough so that it caused quite a bit
9 of -- or increased the work load for the prosecutors and the
10 judges by native -- more Native people pleading not guilty and
11 ready to -- to explain the circumstances as to why they were
12 there in Court.

13 Q. And what was the -- What was the result of this increase in
14 people pleading not guilty in terms of the attitude that you
15 were experiencing?

16 A. Well, there was one particular prosecutor that made remarks which
17 to this day I -- I can't believe how he got away with towards
18 Native people, and --

19 Q. Who was that?

20 A. Judge Lou Matheson. For instance --

21 COMMISSIONER EVANS:

22 I thought you said he was a prosecutor.

23 MR. SPICER:

24 He was a prosecutor.

25 THE WITNESS:

He was a prosecutor. He was the Assistant Crown Prosecutor at the

BERNARD FRANCIS, by Mr. Spicer

1 | time. When an Indian would be on, for instance, a witness stand,
2 | he would -- he might say -- make statements to the effect, "What
3 | are you doing coming here in the City causing problems?" "Why can't
4 | you stay on the Reservation where you belong?" "Why are you Indians
5 | coming here and upsetting the peace and quiet in the City of Sydney?"
6 | And remarks like this were happening all the time and surprisingly
7 | enough, I'm a bit ashamed of it now, but I sat there and I took this
8 | until perhaps about the third year into the Court Worker Program
9 | when that same -- same Judge said that a fence should be built
10 | around the Eskasoni Reservation so that Indians couldn't get out
11 | to come to Sydney to cause problems, and it was at that time I could
12 | no longer keep my cool so to speak, so I immediately after -- after
13 | the trial was over I immediately went to the Judge's Chamber's or
14 | Judge's Office and --

15 | BY MR. SPICER:

16 | Q. Who was the Judge, Mr. Francis?

17 | A. John F. MacDonald, and I -- I guess I verbally attacked him at
18 | the time and told him that I was appalled at the way Native
19 | people were being treated and Native people were being
20 | addressed and I was more appalled in the fact that he was
21 | allowing these remarks to -- to go by without saying anything.
22 | He was very nervous because he realized, I think, at the time
23 | that I -- I had no -- no more patience left. I was extremely
24 | angry and --

25 | Q. How many years into the program were you at this point?

BERNARD FRANCIS, by Mr. Spicer

- 1 | A. About two and a half to three years I'd say. And he said that
2 | he didn't think that the remarks were -- meant anything, and
3 | I told him that -- that the remarks did mean an awful lot.
4 | Native people were being so disrespected that -- that I'd
5 | never seen anyone treated quite that way before in a court
6 | room, and that I wasn't going to sit by and take that any more.
7 | Luckily, or call it what you will, I was invited by CHER radio
8 | by a man, Sandy Campbell, who was fifty-one percent owner of
9 | that radio station to go on a talk show which was called
10 | "Pulse", and to talk about the system -- the justice system
11 | and how it treated Native people in -- in this area. I thanked
12 | him, but I said, perhaps -- you know, with what I'd have to
13 | say, it could put you in deep trouble. He told me at the time
14 | that he didn't care because he was leaving anyway. So I --
15 | I got on and people called in and --
- 16 | Q. This is about the time of this incident you've just referred
17 | to?
- 18 | A. That's right, shortly after that time. I brought out names,
19 | such as, John F. MacDonald, and Lou Matheson in particular
20 | and I -- I guess the word is, I blasted them over the air.
21 | They never ever approached me on that at all with the exception
22 | of John F. -- a lawyer from the Legal Aid office approached
23 | me and told me that John F. MacDonald had stated to him that
24 | he didn't feel that he was being discriminatory against
25 | Native people, and that's all. That's the only comment that I

BERNARD FRANCIS, by Mr. Spicer

1 | got after that radio show.

2 | Q. Subsequent to the radio show did -- did you have an opportunity
3 | to observe whether or not Mr. Matheson's attitude changed?

4 | A. He become more vindictive. He was less co-operative with me
5 | after that and, of course, he wasn't very co-operative anyway
6 | to begin with, but even less so. I guess by that I mean that
7 | at least -- even though that he wasn't co-operative before
8 | that, he would at least speak to me in the hallway, but it got
9 | so that he wasn't speaking to me in the hallway and he just
10 | looked at me with distain I guess.

11 | Q. What about his comments in the corridor though, did they continue
12 | or did that change subsequent to this incident?

13 | A. They were -- No, they were -- They were -- I think they were just
14 | a little bit more subtle. Rather than them coming up, for
15 | instance, with the word "Indian", they might say, "Well, what
16 | are you people doing here?", so the word "Indian" changed
17 | to "people".

18 | Q. Did you have contact during the course of your time with the
19 | Court Work Program with the Prosecutor Donald C. MacNeil?

20 | A. Yes, I did.

21 | Q. What was your experience with him?

22 | A. Well, he was -- Donald C. MacNeil was an aggressive fighter
23 | in the courtroom. I regarded him as a man with tenacity.
24 | He was very tenacious in the courtroom and that's all I can
25 | say about him.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. Did you have any sense from your experiences with him as to
2 whether or not he treated Whites any differently from
3 Natives?
- 4 A. No, not really. I didn't with him because --
- 5 Q. You didn't sense that there was any difference. Is that what
6 you're saying?
- 7 A. Not -- Not any, you know, any significant difference that I
8 could notice. He may have felt it, but I never really noticed
9 too much with him. I always felt that Don C. MacNeil was a guy
10 who really wanted to win very badly and he would do anything
11 to win, but I don't -- I didn't feel that he had any particular
12 feelings against Native people.
- 13 Q. Did you have over the course of your time with the Court Worker
14 Program, experience with Junior Marshall's lawyers, Mr. Khattar
15 and Mr. Rosenblum?
- 16 A. Yes, during the time that they were defending him.
- 17 Q. Apart from that?
- 18 A. Yes. I've had occasion to observe Mr. Rosenblum many times in
19 Court.
- 20 Q. And did you form any opinion based on seeing Mr. Rosenblum
21 and speaking with him as to whether or not he -- he treated
22 White people any differently than Natives?
- 23 A. Well, yes, I would say that he was a bit more aggressive
24 when he was defending non-native people. I noticed him to be
25 very lapse when he defended Native people.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. And why is that, sir?
- 2 A. Well, his tone of voice, his aggressiveness, let's say,
3 towards witnesses who were against his client, none of those
4 characteristics appeared when he was defending Native people.
5 He would ask questions as if to say, "I'm doing my job sort
6 of thing".
- 7 Q. What was your experience in terms of the number of times that
8 you would have seen Mr. Rosenblum in the courtroom other than
9 related directly to Junior Marshall?
- 10 A. Oh, gee, I saw him quite often. I can't put a number on it,
11 but I saw him quite often.
- 12 Q. What about Mr. Khattar?
- 13 A. I didn't see Mr. Khattar very much.
- 14 Q. Did you form any opinion at all concerning Mr. Khattar's attitude
15 to -- from what you saw towards Whites or -- and Natives?
- 16 A. No, I didn't.
- 17 Q. Would you tell us what some of the problems were that you
18 experienced with Native people in the courtroom over the period
19 of time that you were working on the Court Worker Program?
20 What kinds of things do you recollect that the Indian
21 defendants were having problems with?
- 22 A. In the courtroom?
- 23 Q. Yes, in the courtrooms specifically.
- 24 A. Actually in many cases it was -- it was sad to see, particularly
25 at the time when I was beginning. I noticed that -- I think the

BERNARD FRANCIS, by Mr. Spicer

1 first thing was that they were very shy in a courtroom and
2 they felt that this was a spotlight and they didn't like to
3 be there. They didn't want to be there. And they wanted to
4 get out of there as quick as they possibly could and I noticed
5 that they would plead guilty to -- to charges they simply
6 didn't understand and I knew they didn't understand them because
7 I knew the -- the people and I've spoken with them.

8 Q. Why were they pleading guilty then?

9 A. They were pleading guilty so that they could get out of there
10 and not fully understanding the consequences of what -- of
11 what being found guilty of the charges were, for instance,
12 they found it difficult to understand that there was a big
13 difference between common assault and assault causing bodily
14 harm and -- but it didn't make a whole lot of difference to
15 them. They always thought that they would get off with their--
16 a small fine or even a short term of imprisonment and they
17 would settle for that just to get away from that -- that whole
18 situation and that's what they were doing.

19 BY COMMISSIONER EVANS:

20 Q. If I could ask some questions for a moment: Did they have
21 Legal Aid at that time in this Province?

22 A. Yes, it was just beginning then.

23 Q. And presumably anybody wanting Legal Aid would get it?

24 A. Yes.

25 Q. When you say these Natives pleaded guilty, was that with the

BERNARD FRANCIS, by Mr. Spicer

- 1 | advice of the lawyer?
- 2 | A. No. Again it's the same old story. Native people just didn't
- 3 | know how to go about seeking Legal Aid.
- 4 | Q. Well, I mean after you came in --
- 5 | A. Yes.
- 6 | Q. --they still didn't know how to go about the Legal Aid --
- 7 | A. No, it was after that -- I came in that they started to -- to
- 8 | see what services were available to them.
- 9 | Q. That's the point I'm getting at.
- 10 | A. Yeh.
- 11 | Q. Did they then continue with their habit of pleading guilty just
- 12 | to get out of it?
- 13 | A. For a while there there did because they didn't like the idea
- 14 | of having to go through a trial. It was a while before -- before
- 15 | I could convince them to -- to look at the charges they were
- 16 | being charged with and let's -- let's decide after we look at
- 17 | it carefully, but initially they were very afraid. They didn't
- 18 | want to go through a trial, so they would just -- they would
- 19 | just simply plead guilty particularly if they -- they understood
- 20 | that the charge wasn't a very serious one.
- 21 | Q. So they wouldn't take advantage of the Legal Aid lawyer in
- 22 | the early stages of your --
- 23 | A. No, they wouldn't.
- 24 | Q. And later on did it improve or not?
- 25 | A. Yes, it did improve because I -- I was, you know, starting to

BERNARD FRANCIS, by Mr. Spicer

1 understand how everything worked myself and then I was pushing
2 them to understand it also.

3 COMMISSIONER EVANS:

4 Thank you.

5 BY MR. SPICER:

6 Q. Were there language difficulties in your experience in the
7 courtroom?

8 A. A tremendous amount of language difficulties.

9 Q. And can you describe to us the nature of those difficulties?

10 A. Well, for instance -- Do you want a specific example or some
11 specific examples to that?

12 Q. Sure.

13 A. One lady (I dealt with this particular case myself.) I think she
14 was charged with being intoxicated in a public place or
15 something -- some minor thing. She was -- This lady was about
16 fifty years old and she was a serious alcoholic from Afton
17 Reserve, and she spent the night in gaol. The following day
18 she went to Court and the Judge said -- the Judge read the
19 charge and asked her her plea, and she pleaded guilty.

20 Q. Had you advised her as to what her plea ought to be?

21 A. At the time? No, not at that time. She had decided herself
22 that she wanted to plead guilty, so when we looked at it
23 carefully enough and saw that this was just a -- in fact, a
24 small fine we decided that that would be the way that we would
25 go and so she pleaded guilty. So the Judge said, "Okay, that's..."

BERNARD FRANCIS, by Mr. Spicer

1 I forget what the fine was now. That was a ten or fifteen
2 dollar fine or in default, ten days in gaol. Well, she didn't
3 understand what that meant. She thought that she was being
4 fined ten or fifteen dollars plus ten days in gaol because she
5 didn't understand what "default" meant and before I could say
6 anything to her she had already jumped up and called the Judge
7 a knuckle-head and she ended up in gaol for ten days.

8 Q. To what to you attribute that, the lack of understanding --

9 A. A lack of understanding. She simply didn't understand, you
10 know, and I -- I couldn't get to her quick enough. That was --
11 That's one example.

12 Q. Can you explain to us what the word "guilty" means in Micmac,
13 I mean if you were to translate that word?

14 COMMISSIONER EVANS:

15 Before you leave the knuckle-head situation --

16 MR. SPICER:

17 Yes.

18 BY COMMISSIONER EVANS:

19 Q. Was she prepared to pay the ten dollars?

20 A. Yes, she was.

21 Q. Then what was she sent to gaol for?

22 A. For -- I think for the comment that she made.

23 Q. For contempt of Court?

24 A. Yes.

25 Q. Were any charges of contempt of Court laid?

BERNARD FRANCIS, by Mr. Spicer

1 A. Yes.

2 Q. And proceeded before the same Judge?

3 A. I think so. Yeh, because nothing changed after that. I mean
4 it all happened so very quickly.

5 Q. So I take it she called him a knuckle-head and he said, "Ten
6 days in gaol", and that was all --

7 A. Yes, that's right. Yeh. I don't know whether any actual --
8 any form of charges were laid but --

9 Q. That's what I curious -- Were you there at the time this
10 took place because you said you couldn't get to her fast enough?

11 A. That's right.

12 Q. I take it you were in the courtroom?

13 A. Yes, I was in the courtroom.

14 Q. And if you were in the courtroom do you remember whether or
15 not any charge of contempt was laid?

16 A. No, I don't remember.

17 BY MR. SPICER:

18 Q. Do you remember how long the whole thing took?

19 A. Gee, just a matter of a couple of minutes, two or three minutes.
20 It happened very quick.

21 COMMISSIONER EVANS:

22 Knuckle-head, five dollars a word then.

23 THE WITNESS:

24 Yes, I guess so. Yeh.

25 BY MR. SPICER:

I was starting to ask you if you could explain to us the -- the

BERNARD FRANCIS, by Mr. Spicer

1 meaning of the word, "guilty" in Micmac?

2 A. There really is no such word as "guilty" in the Micmac
3 language. There is a word for "blame". So an Indian person
4 who's not as knowledgeable let's say in the English language,
5 if he were to be asked if he were guilty or not, he would
6 take that to mean, are you being blamed or not, and that's
7 one of the reasons I found that Native people were pleading
8 guilty is because they suspect that the question was, "Is it
9 true that you're being blamed?", and the Native person, of
10 course, would say, "Yes". In other words -- But the real question
11 being, "Are you guilty or not guilty?", and the question, of
12 course, would be, "Yes, I plead guilty", thinking that that's
13 blame". What they neglected to say was, "Yes, I'm guilty that
14 I'm being blamed but I didn't do it".

15 Q. Did you have direct experience of that yourself in talking
16 to Native defendants about the problem?

17 A. Yes, I did.

18 Q. And are you satisfied that some of the Natives were pleading
19 guilty because of that problem?

20 A. Because they thought that they were being blamed, yes.

21 BY COMMISSIONER EVANS:

22 Q. I'm going to ask you, is there a dictionary, a Mimac Indian/English
23 Dictionary?

24 A. Yes, there was one that was completed in 1888, and --

25 Q. It's a little out of date.

BERNARD FRANCIS, by Mr. Spicer

1 | A. A little out of date. It's very inadequate.

2 | Q. Is there a more recent one or is there any work being done
3 | on one? I'll put it that way.

4 | A. There have been more recent ones. They are called lexicons
5 | or word books, yes. People have done a couple of more but
6 | I don't know -- I haven't --

7 | Q. In the work that you are doing, is that one of the projects?

8 | A. No. My -- My, you know, basic purpose is to teach literacy
9 | in the Micmac language but I don't find that a dictionary
10 | services that purpose, but other people have done pretty good
11 | work on that anyway, so --

12 | BY MR. SPICER:

13 | Q. Can you give us any other examples, Mr. Francis, of communication
14 | problems in the courtroom caused by language differences?

15 | A. Yes. In a couple of instances I -- when a Native person
16 | appeared perhaps the second or third time and would enter a
17 | plea of guilty or sometimes before a plea was entered the
18 | Judge might say something to the effect that, "Well,
19 | Mr. Christmas, you're here again", you know, "What did you
20 | do this time?", or "What are you accused of this time?", or
21 | "What's going on?", and the Native person would explain as
22 | to how -- as to why he was in Court that day. The Judge would
23 | then say, "Okay, Mr. Christmas, I think we're going to have
24 | to do something about it this time", and, of course, the
25 | Indian person would be very happy about that because --

BERNARD FRANCIS, by Mr. Spicer

- 1 | Q. Why is that?
- 2 | A. Because of that statement because the Judge had used the
- 3 | word "we". Now in the Micmac language there are two "we's".
- 4 | There's "we" inclusive where you include the person you're
- 5 | talking to and then there's another pronoun which is -- also
- 6 | means "we" but it's "we" exclusive where you exclude the person
- 7 | you're talking to. So usually when you say "we" in the
- 8 | English language you take it to mean that the "we" inclusive
- 9 | form is being used and the Indian person understood that,
- 10 | Oh, My God, you know, the Judge is going to include me in the
- 11 | decision making here, and therefore I'll have an opportunity
- 12 | to speak a little bit more then. So -- But then the next thing,
- 13 | he realizes that he has already pleaded guilty and he's being
- 14 | carted off to gaol.
- 15 | Q. He's not being included?
- 16 | A. He wasn't even included. He wondered why he wasn't included
- 17 | after the Judge saying that he would be by saying, "We'll
- 18 | have to do something about that".
- 19 | Q. What about the questioning process, the questioning of a
- 20 | witness in the courtroom, of a Micmac witness?
- 21 | A. That was another area in which I -- which I found to be just
- 22 | devastating towards Native people who attempted to defend
- 23 | themselves in that -- in almost all cases a Native person
- 24 | who was not that familiar with the English language would
- 25 | work so hard to try to satisfy the person who was asking the

BERNARD FRANCIS, by Mr. Spicer

1 | questions. If, for instance, either a -- a lawyer or a
2 | prosecuting lawyer was asking the questions to a Native
3 | person on the witness stand and was not satisfied with the
4 | answer that he or she received, would continue to ask the
5 | question by changing a word here and there and asking the
6 | same question and the Native person would change the answer
7 | from, let's say, a "no" to a "yes", or a "yes" to a "no".

8 | Q. Why is that?

9 | A. Well, simply because he felt that whatever he was doing, he
10 | wasn't doing it right and he would attempt to satisfy the person
11 | asking the questions.

12 | Q. Regardless of the truth?

13 | A. Regardless of the truth.

14 | Q. Did you see that happening in the courtrooms?

15 | A. Yes, I did.

16 | Q. And did you discuss that problem with Native defendants or
17 | Native witnesses that were, in fact, doing that?

18 | A. Well, actually there were times when I stood up and I
19 | explained to the Court that this Native person was not
20 | understanding what he or she was being asked, and sometimes
21 | I was told to sit down, that I wasn't an Officer of the
22 | Court or sometimes I was just told to be quiet or the odd
23 | time they might say to me to sit with this person closely
24 | and explain the proceedings.

25 | Q. Did you function then as an interpreter in some situations?

BERNARD FRANCIS, by Mr. Spicer

- 1 | A. Yes, in very few situations whereby I would say that in most
2 | cases Native people needed interpreters and in most cases
3 | they weren't granted interpreters.
- 4 | Q. Were they requesting interpreters and not getting them?
- 5 | A. That's right.
- 6 | Q. And how would that work? What would be the process by which you
7 | would ask for an interpreter? Who would you ask?
- 8 | A. Sometimes I would get the -- Initially I used to do the asking.
9 | I used to do the asking because the relationship between myself
10 | and the Judges was pretty good and I would say -- I would ask
11 | the Judge if he would allow an interpreter for this particular
12 | individual because -- because of his lack of English and
13 | initially it was okay.
- 14 | Q. You mean initially it would be responded to in a positive way?
- 15 | A. Yes, but then later on I began to run into difficulties
16 | because I think that the prosecutors were raising such a fuss
17 | about this that they found the art of cross-examination to
18 | be very difficult when they were doing it through an interpreter.
19 | They -- Prosecutors would say that -- would ask a couple of
20 | questions of this Native person, very simple questions and
21 | the Native person would answer them in English and then they
22 | would surmise from that that the Native person did, in fact,
23 | speak English and that he didn't need an interpreter and the
24 | Judges would agree with it and then away it would go, but I
25 | knew that once he was on that witness stand and things were

BERNARD FRANCIS, by Mr. Spicer

1 different, language was different, it was no longer informal
2 but it became very formal and it was difficult for Native
3 people after that.

4 Q. What's the difference between -- in your mind, between the
5 necessity for an interpreter in the informal situation as
6 opposed to the formal one?

7 A. Well, I think during an informal setting, you know, the
8 Indian people do okay because along with their limited English
9 they could also make gestures and point and so on and, you
10 know, the English language is very -- put very simple to them
11 and there's no ambiguity in a lot of cases, and if there is
12 ambiguity they're not worried about it because they are not
13 in a formal setting, but when they're on the witness stand
14 it was a different story, the questions were more formal
15 and precise answers were -- were requested and so on. It would
16 make it very difficult for them to understand.

17 Q. Were there some situations where precise answers were not
18 really capable of being given in -- in -- in Micmac.

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BERNARD FRANCIS, by Mr. Spicer

- 1 A. Yes, instances for instance to do with the -- how Micmac
2 people perceive time. Now the time is usually divided in
3 the Micmac world according to the positioning of the sun.
4 Now if you have a Micmac person being examined or cross-
5 examined on the witness stand, the lawyer might say "well,
6 did you see this -- this incident happen at -- at seven
7 o'clock in the morning?" And the Native person would answer
8 "well, would answer well," would answer to me, "yes" --
9 no he would say "wejkwapniaq" which means the sun has just
10 risen. And so I would turn around and I would give that
11 statement to whoever was asking the questions. And then
12 the Prosecutor would not being satisfied with this --
13 with this answer, would say, "yeh, but I know that but
14 was it seven o'clock in the morning?" And the Native
15 person would say, "well, you know, the sun -- the sun had
16 risen." And simply because seven o'clock in the morning
17 in the summer and seven o'clock in the morning in the
18 winter are different in the sense that the sun rises at
19 different times. So he would find difficulty in answering --
20 answering that question. And sometimes he would eventually
21 say "yes, it was seven o'clock in the morning". Just to get
22 out of that situation.
- 23 Q. Are you able to tell us what sort of impression that lack
24 of responsiveness, if you could call it that, would convey
25 to the court? What -- what did you -- what did it look like

BERNARD FRANCIS, by Mr. Spicer

1 to you?

2 A. Well, in many cases it looked like as if the Native person
3 wasn't ready to be -- wasn't ready to cooperate in seeing
4 to it that all the facts were brought out. And in many
5 cases they'd -- they became impatient.

6 Q. Who's they?

7 A. The judges, you know, and I -- and I think the idea --
8 sometimes I found that Donald C. MacNeil was quite good at
9 seeing to it that the judges became impatient by asking
10 questions that way, over and over again; and not getting
11 the correct answer. But I guess, in addition to that, I'd
12 like to say that if mannerisms are aloud to be spoken of
13 here. I -- many times I -- if -- if the witness was on the
14 witness stand, let's say to the left of the judge, I --
15 many times I noticed, you know, gestures, like -- like
16 these or you know, as if to say "would you come on"?

17 BY COMMISSIONER EVANS:

18 Q. By whom?

19 A. By the judge. And -- I wasn't watching you there. But
20 these -- these things were indicative of the fact that they
21 were becoming very impatient with the Native person.

22 BY MR. SPICER:

23 Q. Did you have occasion during the course of your time with
24 the Court Worker Program, to advise Native people as to
25 whether or not they ought to go to trial with a judge or

BERNARD FRANCIS, by Mr. Spicer

1 with a judge or jury or --

2 A. Yeh, most cases I found that, you know, that Native people
3 stood a better chance with a Magistrate or a County Court.
4 We were really afraid. I was very afraid for them. If
5 they ever elected trial by judge and jury because I was
6 keenly aware of the fact that -- that no Micmac person
7 has ever served on a jury. And I -- I predicted that there
8 would never be a Micmac person serving on the jury because
9 I was aware of the fact that you have to be a bonified
10 land-owner before you could serve on the jury. And even
11 though Micmac people consider themselves to be landlords
12 of this Province and this Country, they just never suspected
13 that they -- anyone believed it. So as a result we had no
14 Native people serving on the jury.

15 Q. And would you advise Native defendants against opting for
16 judge and jury?

17 A. Yes, unless it was a clear clad case, you know, where it
18 couldn't, you know, could never be even questioned that
19 he was innocent.

20 BY THE CHAIRMAN:

21 Q. Mr. Francis, is it still the requirement in Nova Scotia, that
22 you have to be a land-owner to serve on the jury?

23 A. I don't know, you Honour, any more.

24 MR. SPICER:

25 No.

BERNARD FRANCIS, by Mr. Spicer

1 THE CHAIRMAN:

2 It's not?

3 MR. SPICER:

4 No, my Lord.

5 BY THE CHAIRMAN:

6 Q. Are you aware in the last few years whether any Micmacs
7 have served on juries?

8 A. No, there has never been one that I know of.

9 Q. There has not been one?

10 A. No.

11 Q. Spite the fact that this property required has now been
12 removed?

13 A. That's right. I never knew that but I know that no Micmac's
14 has served -- no Micmac person served on a jury.

15 BY COMMISSIONER EVANS:

16 Q. Have they ever been called to serve on a jury?

17 A. No. And I say this, not to my knowledge.

18 Q. Yes.

19 A. I would have -- I think I would have heard about it. It
20 would have been -- it would have been something but not
21 to my knowledge.

22 BY MR. SPICER:

23 Q. Generally, are you able to give us an impression of the
24 Native defendants attitude towards the courtroom?

25 A. The Native.

BERNARD FRANCIS, by Mr. Spicer

1 Q. The Native -- the Native defendants?

2 A. Well, I think in many cases they have been so -- over the
3 years and I speak not only from their experiences but my
4 own, that they've been ridiculed both in public and in the
5 -- and in the justice systems so much that -- I used to
6 see a Native person walk into a courtroom with his hat sort
7 of under his arm, hair a little bit messy, perhaps lumberjack
8 boots, lumberjack sweater; just want to get out of there so
9 fast, that they would do anything or say anything to do just
10 that. And they felt extremely uncomfortable in the courtroom
11 and they felt very lowly and they didn't really know what
12 to expect. All they wanted was to -- was to get out of
13 there no matter what.

14 Q. Are you able to tell us whether or not from your experience
15 there was -- with the Natives who did not have a great
16 facility in English, whether or not there was any degree
17 of embarrassment at that lack of understanding of the
18 English language?

19 A. Yes, it was embarrassing to them because a lot of people
20 I know again from my observations that they would try to
21 come across as people who spoke the English language well.
22 Now, this -- I've noticed this attitude over the years that
23 Native people who speak English somewhat or speak it well,
24 are very -- and also speak Micmac well, are very proud of
25 the fact that they -- that they speak the English language

BERNARD FRANCIS, by Mr. Spicer

1 | because we've been made to believe over the years that in
2 | order to be educated and intelligent you have to be
3 | facilitated in English language. And so that made them
4 | proud. It's like saying "yes, I speak English well as
5 | a Micmac person, therefore, I must be smart". And people
6 | in the system always attempted to, not always, but some
7 | people attempted to show off their brilliance by answering
8 | questions they didn't fully understand.

9 | Q. To your knowledge is there currently a Court Worker Program
10 | in Nova Scotia?

11 | A. Is there one.

12 | Q. Yes.

13 | A. No, there isn't to my knowledge.

14 | Q. Are you able to offer us any suggestions as to whether or not
15 | in your view such a Court Worker Program would -- was still
16 | required in Nova Scotia?

17 | BY THE CHAIRMAN:

18 | Q. When did it end?

19 | A. I'm not sure, your Honour, it went on after -- I left it
20 | for a reason but it ended, I don't know, maybe '81 - '82,
21 | I'm not sure exactly.

22 | MR. SPICER:

23 | It was before that, I think around -- in the '70's, my Lords,
24 | there will be some evidence of that later but --

25 |

BERNARD FRANCIS, by Mr. Spicer

1 BY THE WITNESS:

2 A. I think -- yeh, to answer your question, I would say yes.
3 There's a definitely a program needed -- Court Worker Program
4 needed for Native people still. Very much so.

5 BY MR. SPICER:

6 Q. And why is that still the case given your earlier comments
7 of for the most part now the operative language on the Reserve
8 is English and not Micmac?

9 A. Well, the operative language is English only in the Membertou
10 Reserve.

11 Q. Right.

12 A. The Eskasoni Reserve -- ninety-eight percent of the people
13 in Eskasoni still -- still speak the Micmac language as their
14 day to day language. That's one reason. The -- that includes
15 other Reserves like Waqmitkuk, the Whycomomagh Band and the
16 Chapel Island Band, they all speak Micmac. It's only
17 Membertou that's a little -- a little odd here. The second
18 thing is that --

19 BY THE CHAIRMAN:

20 Q. That's because Membertou is surrounded?

21 A. That's right. It's surrounded by the City and it's because
22 they took that school out very early and the children lost
23 it.

24 Q. Is that peculiar to Membertou or do you know of any other
25 Reservations that are within the city limits anywhere in

BERNARD FRANCIS, by Mr. Spicer

1 Canada?

2 A. No. Membertou is the only one that I know of that's completely
3 surrounded by the city.

4 BY MR. SPICER:

5 Q. Does Eskasoni still have a school on the Reserve?

6 A. Yes, they have a brand new beautiful school there.

7 Q. Sorry, you were saying that the Program is still required?

8 A. The other reason for -- for why I believe the Court Worker
9 Program should be still in existence is that lately Native --
10 the -- the -- particularly the Royal Proclamation of 1763
11 is still -- has been deemed to be valid as a result of a
12 Supreme Court decision in 1985, and a lot -- many Micmac
13 people still don't fully understand their special rights
14 in this Country. And they're still afraid to go hunting
15 and fishing at times which are deemed correct by the Grand
16 Counsel or the Sante' Mawio'mi, of the Micmacs. And we need
17 a program to -- to not only to serve as in a paralegal sense,
18 I guess, in the court system to assist Native people; but also
19 to educate Native people in the -- in the complexities, let's
20 say, of the Royal Proclamation and to see to it that they're
21 -- they're rights are fully recognized.

22 Q. Other than that, Mr. Francis, the day to day offences, would
23 it -- is it your view that Natives still require a Court
24 Worker Program to deal with -- with the common garden offences?

25 A. Yes, I still think that that's extremely -- extremely important

BERNARD FRANCIS, by Mr. Spicer

1 | because many -- many of my cases were from -- from the
2 | Eskasoni Reserve and the Whycomomagh and Waqmitkuk Reserve
3 | in Baddeck, there's still that language problem. They still
4 | don't understand the proceedings and they still need
5 | interpreters. And getting an interpreter is much more
6 | difficult today simply because at the time -- the reason
7 | why I left the Court Worker Program was because I became
8 | more harmful than good to the Native people because I had creat
9 | such havoc, I guess, within the system. And I knew that I
10 | was -- I was a little bit more damaging to the Native people
11 | than I was good. So I left the Program for that reason; but
12 | a lady that I had trained was sort of working with me and
13 | I handed the reins over to her to continue on and to use
14 | her nice personality to -- to assist Native people and to
15 | perhaps do a much better job than I had done thus far. And
16 | but I knew that this business about interpreters was a
17 | very difficult and a very sensitive issue with judges. And
18 | as recent as one year ago Native people were charged -- a
19 | few of them were charged, most of them were found not-guilty
20 | in the illegal sale of wood or something or other, and there
21 | was a lawyer from Halifax at the time defending the --
22 | defending the Native people and I knew the Native people
23 | involved were not good English speakers. So I advised this
24 | lawyer to see to it that these people have an interpreter
25 | because there's no way that they can get along without one.

BERNARD FRANCIS, by Mr. Spicer

1 And it just so happens that the lawyer is present here in
2 Court today, Mr. Tony Ross. And as soon as Tony Ross mentioned
3 an interpreter for this clients, Judge Charles O'Connell --
4 O'Connell, jumped down his throat is the expression that I
5 would use. It was embarrassing to Mr. Ross, I'm sure and
6 it was -- and it made me angry. It made me believe that
7 not a whole lot has changed and Micmac people asking for
8 interpreters is still going to be a problem as long as
9 this attitude persists.

10 Q. Were interpreters granted in the case to which you refer?

11 A. I don't think so. I don't think that there was an interpreter
12 granted then.

13 Q. Have you had occasion yourself over the years since you left
14 the Court Worker Program, to -- to be asked to work as an
15 interpreter in cases?

16 A. Since I left the Court Worker Program.

17 Q. Yes.

18 A. No.

19 Q. Are you aware of any circumstances in the last ten years to
20 your knowledge where inter -- Micmac interpreters have been
21 used?

22 A. No, I'm not aware of any.

23 Q. Do you think at least in so far as Cape Breton is concerned
24 that you would be aware of -- of that situation if there
25 had been such a request or the use have been made of an
interpreter?

BERNARD FRANCIS, by Mr. Spicer

1 A. Yes, I think so. I mean it's possible I may have missed
2 something but I'd -- I'd say I'd be aware of it.

3 Q. Would there be a small group of people who would be competent
4 to function as interpreters?

5 A. I'd say there are.

6 Q. And how many people do you think that would be, say in Cape
7 Breton, who'd be capable of going into a courtroom and acting
8 as an interpreter and doing a good job?

9 A. I know of, I'm sure there are more than this, but I know
10 of perhaps three or four that would be competent to act as
11 interpreters.

12 BY THE CHAIRMAN:

13 Q. I'm I lead to assume or the reverse bearing in mind the
14 program that you're now embarked upon at the University of
15 Cape Breton?

16 A. Well --

17 Q. And on what you just told us about the language no longer
18 being a household language?

19 A. Yes, I -- right, well, the people that I -- that are taking
20 these courses at the University College of Cape Breton are
21 perhaps most competent in the Micmac language in the sense
22 that they -- that they recognize how the language works and
23 how it differs from the English language. So I would say
24 that they would be extremely well qualified to act as
25 interpreters for people who are not as well facilitated in

BERNARD FRANCIS, by Mr. Spicer

1 the English language.

2 BY COMMISSIONER EVANS:

3 Q. I would like -- not to interrupt you.

4 A. Okay.

5 Q. But during this period of time that you were having all this
6 difficulty and you were funded by the Federal Government,
7 I take it?

8 A. Partially.

9 Q. Partially and partially by the Provincial?

10 A. Yes.

11 Q. Did you made any written complaints to either the Attorney
12 General of Canada or the Attorney General for the Province
13 of Nova Scotia?

14 A. No, but I wrote to a judge, Judge George LeVatte, a Magistrate
15 in Sydney at one time when he refused an interpreter. I was
16 very angry in this particular case because this person had
17 absolutely "zilch" in the way of understanding English. And
18 Judge LeVatte wouldn't grant an interpreter. So I wrote to
19 him and at that time I pointed out a Section in the Canadian
20 Bill of Rights, I think it was Section 2-B, if I remember
21 correctly, where, you know, an interpreter if it was requested
22 by an individual, should be allowed. I forget the exact
23 wording on it now. And I wrote in this letter and he
24 received it and he called me. He wanted to speak to me
25 he said at his office. And I said to him "well, what is it

BERNARD FRANCIS, by Mr. Spicer (by Commissioner Evans)

1 concerning"? He said "it's concerning your letter." I said,
2 "well, I think I made my case. I think -- he was a bit
3 arrogant over the phone and I said to him "look, if --
4 perhaps you should come and see me. I also have an office.
5 And perhaps we should discuss it in my office rather than
6 yours". Then when his tone of voice changed, we discussed
7 -- we came to sort of like a, I guess, a mutual agreement
8 that we would discuss it over the telephone. And he said
9 that he didn't really refuse me an interpreter and that --
10 that he felt that this person was competent enough in
11 English to -- not to need an interpreter. And I told him
12 that that was not the case and that this person did need
13 an interpreter and -- and that I was able to speak a little
14 bit better and with slightly with more knowledge in the
15 fact that I could make a judgement that this person does
16 need an interpreter; because I was -- I was -- you know,
17 I spoke both Micmac and English. Whereas he wasn't
18 knowledgeable in the Micmac language. So I don't
19 remember now whether he actually allowed one. I think he
20 did but I -- I forgot.

21 Q. But I'm interested in knowing why you did not write to either
22 the Attorney General of Canada or Nova Scotia?

23 A. I think because I felt that I could settle it here without
24 having to do that. That was --

25 Q. That was in the early stage maybe but there must have been

BERNARD FRANCIS, by Mr. Spicer (by Commissioner Evans)

1 a time after a couple of years when you were running into
2 theses roadblocks but you did not write -- nothing on
3 writing?

4 A. No, I didn't. I suppose that was -- I suppose you could
5 say that I should have done that. I don't know why I didn't.
6 In a lot of cases I -- I felt there were a lot of things
7 I could've -- I could do differently now but I became more
8 and more angry in that system and I just felt that -- of
9 course, I was familiar with Gord -- Gordon Coles at that
10 time and I didn't have a whole lot of faith in him. He
11 was the only name that I had and I wasn't sure whether --
12 whether anyone would act on it anyway. I felt the -- I
13 always perhaps put a little bit too much faith in the local
14 judges. I always thought that they would give me the
15 benefit of the doubt and I thought that they would be fair;
16 but I -- I found out differently. I didn't think that I
17 would have to -- to seek the Attorney General's advice or
18 the Solicitor General of Canada for that matter, just to
19 get an interpreter and yet -- and when I realized I was
20 having difficulty, I just -- I just became angry. I wasn't
21 -- I wasn't very -- very cool about it any more.

22 Q. Well, I wasn't concerned -- I can appreciate that not only
23 the lack of provision of an interpreter but the comments
24 that were being made that you have described to us,
25 particularly with the lady who got the ten dollar fine and

BERNARD FRANCIS, by Mr. Spicer (by Commissioner Evans)

1 the ten days in jail as well.

2 A. Yes.

3 Q. Was anything ever put in writing to any Attorney General
4 concerning the conduct --

5 A. No, but --

6 Q. -- of the Magistrates or the judges whoever they were?

7 A. No, but what I did there -- I approached Chief Peter
8 Pero at that time with this particular case. And I told
9 him what had happened and how this lady was treated so
10 disrespectfully in that courtroom. And I -- and I suggested
11 to him that perhaps he should do something about that and
12 I would gladly help in any way. But I think basically was
13 I was having such -- the work load was pretty heavy and
14 I couldn't initiate all these other things myself and
15 I sort of left it up to him to -- to do that part of it.
16 And I had hoped that perhaps I would, you know, be an
17 assistant to him rather than the initiator and that's
18 as far as I got with it. Mr. Pero didn't continue on with
19 it.

20 MR. SPICER:

21 Perhaps, it would be a good time for a break, my Lords. There's
22 a couple of documents that I want to get in.

23 INQUIRY ADJOURNED: 10:55 a.m.

24 INQUIRY RECONVENED: 11:17 a.m.

25

BERNARD FRANCIS, by Mr. Spicer

1 BY MR. SPICER:

2 Q. Mr. Francis, before we broke, you've indicated that during
3 the period of time you were with the Court Worker Program
4 you didn't make any written complaints to the Department of
5 the Attorney General or the Fed -- Federal Government?

6 A. Yes.

7 Q. Did you from time to time have meetings with representatives
8 of the Attorney General's office?

9 A. Yes, on three or four different occasions I met with them.

10 Q. Sixty-eight.

11 MR. SPICER:

12 Exhibit 68 is a Department of Social Services' memo which I
13 handed out to counsel during the break.

14 BY THE WITNESS:

15 A. Thank you.

16 BY MR. SPICER:

17 Q. I'll show you a document marked exhibit 68. Do you
18 recognize that Mr. Francis?

19 A. I recognize, you know, some of the names. I don't recognize
20 the paper but the names, yes, that were at -- attending the
21 meeting, yes.

22 Q. Do you remember the meeting?

23 A. Vaguely.

24 Q. You remember meetings of this sort, I suppose --

25 A. Yes, that's more to the point.

BERNARD FRANCIS, by Mr. Spicer

1 | Q. On the -- if you could turn to page two of the minutes, the
2 | first paragraph:

3 | It was decided by the Committee
4 | (etcetera) will draft a letter
5 | for signature of the A. G. which
6 | will be sent to all judges in the
7 | Province outlining briefly the
8 | nature of the Courtworker Program,
9 | the identity of the Courtworkers,
10 | their role and the objectives
11 | inherent in the program.

12 | Do you know whether or not that, in fact, took place?

13 | A. Gee, I really don't remember.

14 | Q. And if you'll look down at the fourth paragraph, I believe
15 | it was at this meeting that you had indicated to the
16 | committee that you were going to be resigning in the near
17 | future?

18 | A. Yes.

19 | Q. And this meeting took place in November or so of '74 --
20 | November 18, 1974?

21 | A. Yes.

22 | Q. Did you resign at about that time?

23 | A. I think shortly after that.

24 | Q. Are you able to tell us over the period of time you were
25 | with the Native Court Worker Program, how frequently you
26 | would have meetings with the Attorney -- with representatives
27 | of the Provincial Government?

28 | A. I think in the length of time that I was coordinating the
29 | Program, perhaps I met with them, maybe, four times.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. Are you able to tell us whether or not at any of those
2 meetings you expressed the concerns that you've expressed
3 today by way of the attitude of the Prosecutors or the
4 judges or what was going on in the courtrooms?
- 5 A. Yes, I expressed concern that -- that particularly the
6 point about interpreters. I told them that we had much
7 difficulty with the judges in getting interpreters for
8 Native people.
- 9 Q. Do you remember anybody specifically that you would have
10 made those comments to?
- 11 A. No, I'm afraid not.
- 12 Q. Would it have been at meetings such as the meeting though
13 that's referred to in exhibit 68, the one you have in front
14 of you?
- 15 A. Yes.
- 16 Q. You mentioned just before the break that you had some
17 experience with Gordon Coles was that in connection with
18 the Court Worker Program?
- 19 A. Yes.
- 20 Q. And in what respect did you deal with Mr. Coles?
- 21 A. I think basically -- I was hoping to get more recognition
22 and more support from the Attorney General's Department for
23 this Court Worker Program. And that we weren't sort of
24 operating, sort of in a, off to -- off to the side somewhere;
25 but that we were, in fact, now part of the justice system.

BERNARD FRANCIS, by Mr. Spicer

1 Q. And were you dealing directly with Mr. Coles?

2 A. I'm not absolutely sure.

3 Q. Did you have any contact yourself with Mr. Coles?

4 A. Yes, I did.

5 Q. And that contact was with respect to what issue?

6 A. I'm not sure if it was any specific issue. It all had do
7 with the Court Worker Program and -- and basically my
8 plea was to get more support.

9 Q. And what was the -- do you remember what the response was
10 from Mr. Coles? Can you characterize it for us?

11 A. Mr. Coles, if I remember correctly, thought that it would
12 be a good idea for us to seek out an area whereby more
13 Native people could be trained as court workers and I did
14 finally attend a meeting to see what Alberta had available.
15 And I forget the name of the gentleman now who was running
16 the program there and had been running for a few years,
17 so that I could bring back some -- some ideas as to how
18 we could go about training these court workers -- Native
19 court workers.

20 Q. Was -- was Mr. Coles, then, supportative of the Program?

21 A. Yes, although whether it was him or someone else in that
22 office made it known to us that we had to be careful that
23 we didn't, you know, over step our boundaries. In other
24 words he wanted us to -- to make sure that we didn't
25 attempt to act as lawyers but just as assistants to the

BERNARD FRANCIS, by Mr. Spicer

1 | court and because I remember a statement saying that with
2 | this training -- this type of training that we would be
3 | quote/unquote "half-assed lawyers" and he didn't want us
4 | to -- to over step our boundaries there.

5 | Q. That's fair enough comment though. Do you have any
6 | recollections of any other contacts with specific people
7 | in the --

BY THE CHAIRMAN:

8 |
9 | Q. Before you leave that -- the meeting of November 18th, 1974,
10 | exhibit 68, those in attendance were they representatives
11 | of various organizations or what?

12 | A. Yes, Mr. E. B. S. Miller was, I think, I believe he was
13 | -- he was with Social Services or something or other. Mr.
14 | Peter Christmas was the Executive Director for the Union
15 | of Nova Scotia Indians. Mr. Joe B. Marshall I believe he
16 | was with the -- somehow connected to the Lands and
17 | Treaty Rights Research Program with the Union of Nova
18 | Scotia Indians. Mr. William Greateorex, I don't remember --
19 | I remember the name only. I don't remember what capacity
20 | he played and I don't know a Mr. James L. Crane.

21 | Q. Crane -- was there -- there was a Crane used to be with the
22 | National Parole Service in Nova Scotia at one time?

23 | A. Yeh, I don't remember, no.

COMMISSIONER EVANS;

24 |
25 | On the second page, it says:

BERNARD FRANCIS, by Mr. Spicer

1 It was decided by the Committee,
2 that Mr. James L. Crane and Mr.
3 R. A. MacDonald, Department of
4 the Attorney General, will draft
a letter for the signatures of
the A. G.

5 THE CHAIRMAN:

6 That's right.

7 COMMISSIONER EVANS:

8 So I figured he must have been from the A. G.'s office.

9 THE CHAIRMAN:

10 He was in a -- the Correctional Division of the A. G. 's
11 office. Yes, could have been.

12 BY COMMISSIONER EVANS:

13 Q. Why would you have on the memorandum sent to Allan --
14 The Honourable Allan Sullivan, MacKinnon, Coles and
15 Gerri Bell? Do you know those people?

16 A. I know Mr. Sullivan. Yes, Mr. Allan Sullivan.

17 Q. He was a judge where?

18 THE CHAIRMAN:

19 He was the Attorney General.

20 BY THE WITNESS:

21 A. He was the Attorney General as some point. But he was also
22 a Supreme Court Judge at one point.

23 MR. SPICER:

24 County court.

25

BERNARD FRANCIS, by Mr. Spicer

1 BY THE WITNESS:

2 A. Was it County Court, yeh, yes I believe. I'm sorry.

3 BY COMMISSIONER EVANS:

4 Q. And MacKinnon was a doctor?

5 A. I don't remember MacKinnon.

6 Q. Coles, was the Deputy Attorney General?

7 A. Yes.

8 MR. D. PINK:

9 My Lord, if it might be of some assistance, I believe that Mr.
10 Sullivan was the Minister of Social Services at the time. Doctor
11 MacKinnon was the Deputy Minister of Social Services at the time.
12 And Mr. Coles was the Deputy Attorney General at the time.

13 COMMISSIONER EVANS:

14 And Gerri Bell?

15 MR. D. PINK:

16 I don't know the name, My Lord. And Mr. Ronald MacDonald would
17 have been -- I would have -- Senior Administrator of the Department
18 of the Attorney General and that's the same R. A. MacDonald that's
19 referred to on page two of the Minutes.

20 COMMISSIONER EVANS:

21 Okay.

22 BY MR. SPICER:

23 Before we leave the Court Worker's --

24 COMMISSIONER EVANS:

25 Was it ever done? It was decided by the Committee but did anything

BERNARD FRANCIS, by Mr. Spicer

1 | ever happen? Was any letter ever sent?

2 | MR. SPICER:

3 | Mr. Francis doesn't know and --

4 | BY MR. SPICER:

5 | Q. I believe that was your response, was it? You don't know
6 | whether or not this letter that's referred to on page two
7 | was ever --

8 | A. No.

9 | Q. Was ever --

10 | A. I don't remember it, no.

11 |

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25 |

BERNARD FRANCIS, by Mr. Spicer

1 Q. If I could just come back for a second to this question of
2 interpreters, is Micmac a language that -- where there --
3 Are there dialects of Micmac? In other words, would there be
4 a difference between Micmac as spoken at Eskasoni as opposed
5 to Membertou?

6 A. Yeh, there would be slight dialectal variations simply
7 because -- not only because Eskasoni is about thirty or so
8 miles away from Membertou but also because of the centralization
9 movement with the Department of Indian Affairs back in 1948.
10 Now that brought Micmac people from all over Nova Scotia to
11 two of the largest Reserves in Nova Scotia today which are
12 Eskasoni and Shubenacadie. Now these people who were brought
13 to these two Reserves with promises of new housing and jobs
14 and so on brought with them their dialectal variations.

15 Q. Where were they coming from?

16 A. From all over Nova Scotia, different -- small little pockets
17 of Reserves throughout Nova Scotia, and to this day, there
18 are variations within Eskasoni itself among the Eskasoni
19 people but there are also variations between let's say the
20 Micmac people in Membertou and the Micmac people in Eskasoni
21 in particular to do with the animisy or the inanimisy of
22 objects.

23 Q. What does that mean?

24 A. Well, the -- An animate object for instance -- let's take for
25 instance a school bus or a motorcycle. Well, both of those

BERNARD FRANCIS, by Mr. Spicer

1 objects in Membertou are inanimate objects because of the
2 importance that they play. In Eskasoni, just thirty
3 miles from the city of Sydney, a bus or a motorcycle are
4 both animate objects because of the importance again that
5 they play there. So, in other words, a bus is extremely
6 important to the life of the people there --

7 Q. There being where Mr. Francis?

8 A. Eskasoni. Because of the transportation -- the important
9 transportation it provides whereas in Membertou it's inanimate
10 -- a bus is inanimate because you could walk to town. So
11 a bus is not of any great importance. So that's one of
12 the major differences between Eskasoni and Membertou.

13 Q. Would those differences in dialect have any effect on a
14 persons ability to act as an interpreter in a court room?

15 A. It could if the person was a marginal speaker of the Micmac
16 language. Of course a marginal speaker should never be
17 asked to be an interpreter but I think if he was a fluent
18 speaker then the dialects in Eskasoni or the variations
19 in Eskasoni and Membertou and all other Reserves in Nova
20 Scotia their all sort of -- their -- the two major groups
21 I'd say they're mutually intelligible so there's no -- there
22 would be no problem.

23 Q. You wouldn't have any difficulty yourself for instance?

24 A. No, it so happens I have to sort of familiarize myself with
25 all of the various -- the variance in the various Reserves.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. But other than a person who's a marginal speaker who as
2 you say shouldn't be an interpreter anyway -- If a person
3 who is fully conversant should be able to --
- 4 A. Should be able to --
- 5 Q. -- handle the differences?
- 6 A. Oh, yes. Yeh, there might be some subtle differences that
7 you know, might be different but I don't think that you'd
8 have to worry about that as far as interpreting goes.
- 9 Q. May I ask you some questions now specifically about Junior
10 Marshall? Did you know Junior when he was a kid?
- 11 A. Yes.
- 12 Q. What did you know of him?
- 13 A. Very little really. I didn't spend much time with him.
14 He was younger than I was.
- 15 Q. Prior to the Seale incident in 1971 did you have any
16 experience with Mr. Marshall in a court room?
- 17 A. No.
- 18 Q. Were you involved with him as a court worker in connection
19 with the Seale case?
- 20 A. Yes.
- 21 Q. And can you tell us what that involvement was?
- 22 A. I was contacted fairly early on that he had been charged
23 so I was asked -- not -- someone informed me that he was
24 charged and I immediately set out to talk to the family to
25 see what they had in mind for a lawyer.

BERNARD FRANCIS, by Mr. Spicer

1 Q. Was that the first thing that you did was go to talk to
2 the family?

3 A. Yes, if I remember correctly. I think Mr. Marshall was the
4 man that I talked to first.

5 Q. Okay. What came of that?

6 A. Well, he said at the time that -- that they were interested
7 in hiring a particular lawyer and I had -- I think I had
8 another lawyer in mind and it ended up that the two lawyers
9 acted on behalf of Mr. Marshall.

10 Q. Did you have any involvement in the hiring of either of those
11 lawyers?

12 A. No. Except to advise that -- you know -- that perhaps --
13 you know, they should get a senior lawyer to handle this
14 case.

15 Q. Right. And the two lawyers that were retained you didn't
16 have any direct connection at all in that process?

17 A. No.

18 Q. Other than the recommendation?

19 A. That's all.

20 Q. Okay. Did you sit in on any interviews with Junior Marshall
21 and his lawyers?

22 A. Yes, I did.

23 Q. And do you know whether or not the interviews that -- interview
24 you sat in on was the first interview that --

25 A. I sat -- Yes, I think the one that I sat with with Mr. Rosenblum

BERNARD FRANCIS, by Mr. Spicer

- 1 | and Mr. Khattar was the first interview that they had with
2 | Mr. Marshall.
- 3 | Q. Did you have an opportunity to speak to Junior Marshall prior
4 | to that meeting?
- 5 | A. Yes, I did but I don't remember the contents of the
6 | conversation.
- 7 | Q. Do you know whether or not he was in gaol at the time?
- 8 | A. No, he wasn't.
- 9 | Q. So this would have been prior to him being charged?
- 10 | A. Yes.
- 11 | Q. Okay. You have no recollection of the discussion?
- 12 | A. No, I just remember being with him but I hardly remember the
13 | discussion.
- 14 | Q. Can you tell us what happened at the interview with Mr.
15 | Rosenblum and Mr. Khattar and yourself and Junior Marshall?
- 16 | A. Well, Mr. Rosenblum and Mr. Khattar were asking him questions
17 | about the incident and he explained as best as he could.
- 18 | Q. What was the explanation that he gave to them?
- 19 | A. Well, the explanation was what has been out for so many years
20 | in that he was -- they were accosted by a couple of men who
21 | made a statement to the effect that they didn't like Indians
22 | and Niggers and proceeded to be attacked by them.
- 23 | Q. And is -- Are those the facts that he related to Mr. Rosenblum
24 | and Mr. Khattar at that meeting?
- 25 | A. Yes, if I remember correctly.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. Did -- Was anything else said at the meeting?
- 2 A. No.
- 3 Q. Are you able to tell us how long that first interview took?
- 4 A. Oh, gee, I'm not sure. About 15 minutes to a half hour maybe.
- 5 Q. Do you remember where the interview took place?
- 6 A. It took place at the old Cape Breton County Gaol.
- 7 Q. So by that time Mr. Marshall was in custody?
- 8 A. Yes.
- 9 Q. Are you able to say whether or not you thought Junior Marshall
- 10 understood the questions that he was being asked by Mr. Rosenblum?
- 11 A. Yeh, they were fairly, -- you know, straight forward and
- 12 fairly simple questions at an informal setting. Yeh, I thought
- 13 that he understood at the time.
- 14 Q. Did you receive any indication from either Mr. Khattar or
- 15 Mr. Rosenblum as to whether or not they believed the story
- 16 they were being told?
- 17 A. The only thing I think that would indicate something is
- 18 that when we left I asked Mr. Rosenblum what he thought of
- 19 the interview and he sort of shook his head. You know that
- 20 could have meant anything. I'm not really sure.
- 21 Q. Nothing was said?
- 22 A. Nothing was said.
- 23 Q. Did you sit in on any further interviews with Mr. Khattar and
- 24 or Mr. Rosenblum and Junior Marshall?
- 25 A. No.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. Did you go to see Junior yourself?
- 2 A. Yes.
- 3 Q. And would that have been after this meeting with Mr. Khattar
4 and Mr. Rosenblum?
- 5 A. Yes.
- 6 Q. Why did you do that?
- 7 A. I wasn't really satisfied with -- there were some things that
8 I wasn't satisfied with in that interview and perhaps I thought
9 that if I went there by myself and I spoke to Mr. Marshall
10 in Micmac maybe he would perhaps relate to me more information
11 because we didn't feel that there was enough said there.
- 12 Q. Do you remember what it was about the first interview with
13 Mr. Khattar and Mr. Rosenblum that you weren't happy with?
- 14 A. Well because -- you know -- it appeared as though he wasn't
15 volunteering any more information and I felt that perhaps
16 -- mainly his answers were restricted to yes and no but I
17 wasn't satisfied with that. I thought that there was more
18 to it at the time and I thought if I could sit with him
19 alone perhaps I could get more information.
- 20 Q. Are you able to us whether in your experience -- of over
21 the years in the court worker program whether or not that
22 type of response is typical or not typical of a Micmac
23 defendant? That is not saying anything more than is absolutely
24 necessary.
- 25 A. I'd say that was typical.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. And would you be satisfied in your mind if -- well, felt
2 it might be a typical response there would in fact be a lot
3 more information that was not being conveyed?
- 4 A. That's right.
- 5 Q. And is that what it was that made you go down and visit Junior?
- 6 A. That's right.
- 7 Q. Okay. What happened at that meeting?
- 8 A. Well, at that time I asked him, you know, a little more about
9 the incident and he basically gave me this -- the -- you
10 know, the same statements that he gave to Mr. Rosenblum and
11 Mr. Khattar.
- 12 Q. And those were?
- 13 A. Were the business about being accosted by a couple of men
14 in the park and one being dressed up as a priest or something
15 or other and that he was -- and that they were attacked.
- 16 Q. Did he give Mr. Khattar or Mr. Rosenblum any further description
17 of the two people other than what you've just mentioned to me?
- 18 A. Not that I can remember.
- 19 Q. Did he give you any better description when you went to see
20 him?
- 21 A. No.
- 22 Q. Did you feel that anything was said to you in the meeting
23 you had with him that hadn't already been conveyed to Mr.
24 Khattar and Mr. Rosenblum?
- 25 A. No.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. Did you express any concern when you were meeting with
2 Mr. Marshall that you -- that he wasn't telling you everything
3 that he knew?
- 4 A. Yes.
- 5 Q. What did he say?
- 6 A. Nothing.
- 7 Q. Did you think --
- 8 A. He stayed quiet.
- 9 Q. Right. Did you think you were getting along with him if
10 I can put it that way in the -- in that meeting you had with
11 him?
- 12 A. I thought I was. Yeh. I was hoping to drag as much information
13 as I could out of this because I -- at that time I was very
14 concerned because to that point I hadn't heard as to -- as
15 to what evidence had come up that would warrant charging him
16 so I -- I wasn't getting any information from anyone and I
17 thought that perhaps he would be the man to give me everything.
- 18 Q. But you didn't learn anything else?
- 19 A. No.
- 20 Q. Do you know how soon after the meeting with Mr. Khattar
21 and Mr. Rosenblum you had gone down to see Marshall? Was
22 it within days?
- 23 A. Within days, yeh.
- 24 Q. Was it prior to the preliminary, for instance?
- 25 A. Yes.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. On how many occasions did you go and speak to Junior Marshall
2 in the cells?
- 3 A. Perhaps two.
- 4 Q. And on the second occasion are you able to tell us whether or
5 not Mr. Marshall was any more forthcoming?
- 6 A. No, not really. See by that time -- I think by the time
7 I visited him the second time I had heard that there had
8 been eyewitnesses and it looked to me at the time that he
9 was really in trouble and -- so I mentioned that to him and--
10 you know there wasn't any -- any emotional response to that.
- 11 Q. Are you able to tell us whether or not this interview took
12 place before the preliminary or after? That is the second one.
- 13 A. I don't really remember.
- 14 Q. Are you able to tell us where you got the information that
15 there were two eyewitnesses?
- 16 A. No. I don't remember.
- 17 Q. Did you know the names of the potential eyewitnesses?
- 18 A. Yes, I had heard the names.
- 19 Q. Did you convey those names to Mr. Marshall in your meeting with
20 him?
- 21 A. I don't remember.
- 22 Q. Do you think it's likely you would have?
- 23 A. I might have, yeh. Yes.
- 24 Q. You don't have any recollection of any response from Mr.
25 Marshall?

BERNARD FRANCIS, by Mr. Spicer

- 1 | A. The only response was that he didn't do it and that was
2 | it.
- 3 | Q. He said that to you?
- 4 | A. Yes.
- 5 | Q. Did he say anything to you at all during either of these
6 | two meetings as to whether or not he'd been in the park to
7 | bum money or to roll somebody or just --
- 8 | A. No, he didn't say anything to me of the sort.
- 9 | Q. Did you ask him at all about the facts that he'd given to
10 | Mr. Khattar and Mr. Rosenblum? That is the story that he
11 | told them. Did you express any disbelief about that story
12 | to him?
- 13 | A. No, I didn't express any disbelief. I just -- I remember asking
14 | him more questions so I could get a little bit more information.
15 | You know, so that we could have something to work with but
16 | there wasn't much more.
- 17 | Q. There wasn't much more information being given to you?
- 18 | A. No.
- 19 | Q. Other than those two meetings with Junior Marshall in the cells
20 | and the one meeting with Mr. Khattar and Rosenblum did you speak
21 | to Junior Marshall at all prior to the trial?
- 22 | A. I don't think so. No.
- 23 | Q. Did you speak to Junior's family?
- 24 | A. Yes, I did.
- 25 | Q. And when would that have been?

BERNARD FRANCIS, by Mr. Spicer

- 1 A. I finally went to Mr. and Mrs. Marshall's home when I saw
2 how the trial was developing.
- 3 Q. Was this when the trial was actually taking place?
- 4 A. That's right. And I said to them at the time, the mother
5 and the father both, that it looked very bad. Those eyewitnesses
6 were very damaging and they were sticking to their guns and
7 I told them to expect the worst. Mr. Marshall Senior
8 simply stated I know and that was all.
- 9 Q. Yes. Would that have been the only occasion that you would
10 have visited the Marshall family?
- 11 A. Yes. Although Mrs. Marshall came to see me a couple of times,
12 you know, expressing, you know, disbelief about what had
13 happened?
- 14 Q. Did you attend Junior's trial?
- 15 A. Yes, some days. Not all -- not every day.
- 16 Q. Were you aware at the time, during the time of your attendance,
17 of this incident involving John Pratico coming out of the
18 court room?
- 19 A. Yes. I was aware of that because I was told about it by
20 Mr. Marshall -- Mr. Marshall Senior.
- 21 Q. On the day that it occurred or do you know?
- 22 A. Yes. On the day that it occurred.
- 23 Q. And what was the substance of what you were told?
- 24 A. Mr. Marshall Senior told me that Pratico had approached him
25 and Pratico had made a statement to the effect that -- that he

BERNARD FRANCIS, by Mr. Spicer

- 1 | was forced into giving a statement and that what he was
2 | saying in the court room was not true.
- 3 | Q. What did you do with that information?
- 4 | A. I told Mr. Marshall to make sure that he related this information
5 | to Mr. Khattar and Mr. Rosenblum right away.
- 6 | Q. Did you do anything with the information yourself?
- 7 | A. No, but I also mentioned it to Rosenblum and Khattar later.
- 8 | Q. Later being when?
- 9 | A. I don't think it was that day but sometime after that. Perhaps
10 | the next day.
- 11 | Q. Prior to Mr. Marshall being convicted?
- 12 | A. Yes.
- 13 | Q. What was their response?
- 14 | A. Geez, I don't remember exactly what their response was. I --
15 | It wasn't any great response anyway. I think that's probably
16 | the thing that sticks out in my mind. They didn't seem overly
17 | you know, excited about the information. Of course by that
18 | time they had already gotten that information.
- 19 | Q. Right. Do you know whether or not you were -- you conveyed
20 | the information to Mr. Khattar and Mr. Rosenblum or Mr. Khattar
21 | or Mr. Rosenblum or --
- 22 | A. I believe it was Mr. Rosenblum.
- 23 | Q. As you know there is a story which is recounted in Michael
24 | Harris' book concerning the knife, can you tell us from
25 | your recollection when that occurred? When were you advised

BERNARD FRANCIS, by Mr. Spicer

1 | about the knife and how did that occur?

2 | A. This was -- Oh, gee, about -- I'm not sure about the time.

3 | Maybe a year after Mr. Marshall was convicted. I was
4 | told about the knife by Mr. Roy Gould. When I was --

5 | Q. If I could just stop you there. Mr. Gould has said here
6 | that he doesn't have any recollection of ever telling you
7 | that.

8 | A. Yes.

9 | Q. You're certain that it was Mr. Gould who told you?

10 | A. Yes, I'm absolutely certain about that fact. He mentioned to
11 | me just briefly that he -- First of all I think he said did
12 | you hear of anything new. I said no. I wasn't really
13 | expecting anything of this magnitude then.

14 | Q. What were you doing at the time? Were you?

15 | A. I was on the street just walking to the office. That's all.
16 | And I just happened to meet him in the office -- on the street.

17 | Q. Do you know whether or not Mr. Marshall was in Dorchester
18 | by this point in time?

19 | A. Yes, I believe he was.

20 | Q. So it would have been subsequent to June or so of the following
21 | year? 1972?

22 | A. I believe so, yes.

23 | Q. Sorry, go ahead.

24 | A. And so then he said to me -- he said did you hear that the
25 | knife had been found? I was really shocked with this statement.

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1 I said no I hadn't and he said that it was found somewhere
2 near the Rexall Drug Store -- on the roof of the Rexall
3 Drug Store which would be the drug store adjacent to the
4 park where the incident took place -- Wentworth Park.

5 Q. Was this the one at Argyle and George?

6 A. Yes. So then after he gave me that information I immediately
7 went to my office wondering, you know, what had happened here.
8 So I called the city police at the time and I asked -- a
9 lady answered the phone and I asked if -- if anything new
10 had developed. No, I asked for Mr. MacIntyre first. Someone
11 came on the phone.

12 Q. Are you able to tell us, today, whether or not it was Mr.
13 MacIntyre?

14 A. I'm afraid not. I'm not absolutely certain about that. But
15 I asked for him anyway and I asked if anything new had
16 developed concerning the Marshall incident.

17 Q. Did you identify yourself?

18 A. Yes. He said no at the time but as I found out later there
19 was a new development but I -- he wouldn't -- I wasn't getting
20 it. And I said well -- by that time I had the -- I had the
21 transcripts of the trial, Mr. Marshall's trial, with me that
22 I had gotten from Mr. Rosenblum and -- because I wasn't
23 satisfied with the outcome of the trial. I was carrying these
24 transcripts and asking a couple of lawyers if they would look
25 at it for me to see if there was anything there that, you know,

BERNARD FRANCIS, by Mr. Spicer

1 from where we could launch an appeal and so I gave the transcript
2 one weekend to Professor Dave Lowry who was working for the
3 Union of Nova Scotia Indians at the time and again I think
4 I talked about the transcripts to Art Mollon who was the
5 -- whatever you call director or whatever of the Nova Scotia
6 Legal Aid here in Sydney.

7 Q. Were you in the -- were you in possession of these transcripts
8 at about the time that you had this conversation with Mr.
9 Gould concerning the knife?

10 A. They were in the office.

11 Q. And was that prior to Junior's appeal from the murder conviction?

12 A. Yes, I think so. When was the appeal? I don't remember.

13 Q. Well, it's very -- That's why I'm asking the questions because
14 the timing is not making sense.

15 A. Oh.

16 Q. That would have been January, 1972 -- early '72? I believe
17 you indicated earlier that you thought that Mr. Marshall was
18 already in Dorchester by the time you'd had this conversation
19 with Mr. Gould which would place that conversation at least
20 in June or July, 1972.

21 A. Yeh. Gee, I don't know exactly what the timing is. I remember
22 at the -- I believe anyway that the transcripts were still with
23 me at the time or maybe I had returned them. I'm not sure.

24 Q. Are you able to -- Is it your recollection that Mr. Marshall's
25 original appeal had or had not taken place at the time you

1 | heard about the knife?

2 | A. Gee, I don't remember. I don't remember that appeal at all.

3 | Q. Are you certain that it was subsequent to his conviction?

4 | A. I'm very certain of that, yes.

5 | Q. All right. Now, what was it that you were told by whoever it
6 | was you were speaking to at the Sydney Police Department?

7 | A. Well, when I said that the -- I said -- When I asked him
8 | if anything new had developed they said no and I said well,
9 | I have the transcripts -- Yes, so I guess I had them. I said
10 | I had the transcripts of the trial and that I was looking
11 | around for a lawyer that would look at them so that possibly
12 | we could launch an appeal and I was told at the time that
13 | it didn't make any difference anyway because the knife had
14 | been found.

15 | Q. Which is information that you in fact already had received from
16 | Mr. Gould?

17 | A. Yes.

18 | Q. I see.

19 | A. And this confirmed in my mind that the knife in fact had
20 | been found.

21 | Q. Now what did you do as a result of that conversation?

22 | A. Well, first of all I sort of went into shock because up to
23 | that point I hadn't heard anything about the knife. So I
24 | -- I thought about it for a while and I sat down and I wrote
25 | a letter to Mr. Marshall -- wherever he was at the time, I

BERNARD FRANCIS, by Mr. Spicer

1 | believe Dorchester -- and I told him everything that I
2 | had been doing thus far and then I mentioned to him that --
3 | that it looks as though that the knife has been found. So
4 | I received a letter from him. He was very angry. He said
5 | that the -- you know -- that that was not true and that there's
6 | no such thing. The letter hasn't -- I mean the knife hasn't
7 | never been found because there was no such knife.

8 | Q. And do I take it from your testimony in the last few minutes
9 | that we're really not certain when this conversation took
10 | place with the Sydney Police Department except you know
11 | it was subsequent to the conviction?

12 | A. Yes, subsequent to the conviction. Yes.

13 | Q. And you're not clear as to whether or not Mr. Marshall's
14 | original murder appeal had been heard or not heard at the
15 | time?

16 | A. That's right.

17 | Q. But you have some recollection of writing to Junior in
18 | Dorchester concerning it?

19 | A. Yes, there's no doubt about that. I remember that very well.

20 | Q. Do you recognize the confusion?

21 | A. Yes. Yes, I do. I'm sorry about that but that's the best
22 | I can do.

23 | Q. Okay.

24 | A. That --

25 |

BERNARD FRANCIS, by Mr. Spicer

1 | MR. CHAIRMAN:

2 | I suspect that, Mr. Spicer, that Mr. Francis would not have
3 | had the transcript until after the appeal.

4 | MR. SPICER:

5 | The transcript I think was prepared fairly quickly. And I'm not
6 | sure whether there was --

7 | MR. CHAIRMAN:

8 | For the purpose of the appeal.

9 | MR. SPICER:

10 | For the purpose of the appeal.

11 | MR. CHAIRMAN:

12 | Yes.

13 | MR. SPICER:

14 | Whether he had it before -- whether he might have physically had
15 | it before the appeal.

16 | MR. CHAIRMAN:

17 | Is it the practise in Nova Scotia that if where an appeal is
18 | pending in a criminal case to keep the accused in Nova Scotia
19 | until after the appeal is heard?

20 | MR. SPICER:

21 | Well, he was in -- Mr. Marshall was in the county gaol through
22 | that whole period of time.

23 | COMMISSIONER EVANS:

24 | Until after the appeal was brought --

25 | MR. SPICER:

And for some long period of time after that. I believe it was

BERNARD FRANCIS, by Mr. Spicer

1 June or the beginning of July of '72 before he in fact went
2 to Dorchester so there was a long period of time when he was
3 in the county gaol after the appeal was heard. The explanation
4 for that I'm not entirely certain of but the fact of it is that
5 he was there for five or six months after the appeal was heard.

6 COMMISSIONER EVANS:

7 It would seem a little unusual --I'm sorry-- the lawyer for the
8 accused pending an appeal handing out the transcript to someone.

9 BY MR. SPICER:

10 Q. Do you know from whom you got the transcript?

11 A. Moe Rosenblum.

12 Q. Do you know whether when you got it from Mr. Rosenblum was
13 it in the wintertime?

14 A. No, it was in the summertime.

15 Q. Summertime?

16 A. Yep.

17 Q. Well, that would place it after the appeal.

18 A. That's right. Thank you.

19 Q. It was after the sun came up.

20 A. Yes, that's right.

21 Q. What was your impression, Mr. Francis, of Junior Marshall's
22 confidence in English at the time in 1971?

23 A. Well, I think in an informal setting I think he was okay. Nothing
24 spectacular but I think he -- he spent -- he had some friends
25 which were off the Reserve so they used English a lot. I think
he was okay.

BERNARD FRANCIS, by Mr. Spicer

- 1 Q. What about in a formal setting? In a courtroom?
- 2 A. Very poor in a formal setting. I think that there would be
3 an awful lot that he wouldn't understand.
- 4 Q. Would he be the sort of person, to your knowledge, that would
5 admit that he didn't understand what was going on?
- 6 A. No, he wouldn't admit to it.
- 7 Q. Did you make any recommendations to Mr. Khattar or
8 Mr. Rosenblum concerning whether or not Junior Marshall ought
9 to have had an interpreter?
- 10 A. I made mention to Rosenblum at the time that -- to keep an eye
11 on him and that, you know, "I suspect that he may need an
12 interpreter, and if he does, you know, let me know right
13 away," and I was never let known.
- 14 Q. Was that suggestion made at the first meeting that you
15 referred to earlier with yourself and Junior and Mr. Rosenblum
16 and Mr. Khattar?
- 17 A. No, it was I think before the actual trial.
- 18 Q. Do you remember what Mr. Rosenblem's response was to your comments
19 concerning the possibility of an interpreter?
- 20 A. He just said, "Okay."
- 21 Q. And that was the last you heard of it?
- 22 A. Yes.
- 23 Q. After you got this letter back from Junior Marshall, did you
24 have any further contact with Mr. Marshall during the time
25 that he was in prison?

BERNARD FRANCIS, by Mr. Spicer

1 A. No, that was it. By that time, I was very discouraged and
2 I felt very defeated and after I received his letter, I let
3 the case go completely. I dropped it.

4 Q. During the course --

5 BY MR. CHAIRMAN:

6 Q. You concluded that the knife that had allegedly been found on
7 the roof of the drugstore was Junior Marshall's knife?

8 A. Yes. Well, not necessarily his knife, but the knife that
9 was used in the incident.

10 Q. It could've been --

11 A. It could've been anyone's knife.

12 Q. -- anyone's knife.

13 A. Yeh.

14 Q. I'm having some difficulty. If -- In interpreting your under-
15 standing why you were given the response that you were when
16 you telephoned the police, when they told you that it didn't
17 much matter because the knife had been found, I had to interpret
18 that initially as meaning that they now were looking for some
19 other suspect, that this -- that exonerating Junior Marshall,
20 but that's not the conclusion you reached.

21 A. I was -- The conclusion that I reached at the time was, you
22 know -- After I had told them that I had the transcripts of
23 the trial, and I was looking for an appeal for Mr. Marshall
24 because of some inconsistencies which I thought were there,
25 I felt that they were telling me to forget it, that --

BERNARD FRANCIS, by Mr. Spicer

1 | Q. I see.

2 | A. -- when you bring it up again, we'll just simply produce the
3 | knife, and that would be the end of it.

4 | COMMISSIONER EVANS:

5 | Q. I'm going to interrupt you again. You said that after you
6 | received the transcript from Mr. Rosenblum, you gave the
7 | transcript to David Lowry?

8 | A. David Lowry.

9 | Q. Lowry.

10 | A. L-o-w-r-y.

11 | Q. Who is a lawyer?

12 | A. Yes, he was a -- I think he was a professor of law at Dalhousie
13 | University at one point and --

14 | Q. And the purpose of that was to have him check it over and see
15 | whether there was any basis for a further appeal or --

16 | A. That's right. Yes.

17 | Q. And what was the result of that?

18 | A. Mr. Lowry -- I don't know how carefully Mr. Lowry reviewed
19 | the transcripts. I was hoping that he would review them care-
20 | fully, but he told me at the time that they -- He saw some
21 | inconsistencies there but not enough to warrant an appeal.

22 | Q. Then you gave it next to the Director of Legal Aid.

23 | A. I didn't give him the transcripts. I discussed the transcripts
24 | with him, and I told him that there were things in there
25 | which -- you know, which weren't satisfactory to me, and he

BERNARD FRANCIS, by Mr. Spicer

1 said that -- You know, we discussed it, you know, at length,
2 he said that -- And I asked him if there was anything that he
3 could do about it and he said -- told me at the time that he
4 couldn't do it because he was, you know, busy and he didn't
5 think he was in any position to do it all.

6 Q. But this obviously was after the appeal had been heard?

7 A. I guess so, yes. Yes.

8 Q. Thank you.

9 A. Yes.

10 BY MR. SPICER:

11 Q. Did you mention to either of Mr. Lowry or Mr. Mollon the
12 incident involving John Pratico when you turned the transcripts
13 over or discussed it with them?

14 A. Yes, I did, and I also believe that Mrs. Marshall did.

15 Q. And do you remember what, to begin with, Mr. Lowry's response
16 was to being advised of that?

17 A. I don't remember any great emotion or any great excitement
18 if that's --

19 Q. What about Mr. Mollon?

20 A. Same thing.

21 Q. No response that you recollect?

22 A. No.

23 Q. Did you take any further steps to see whether or not an appeal
24 was -- a further appeal was sensible or possible other than
25 what you've described to us already?

BERNARD FRANCIS, by Mr. Spicer

- 1 | A. No, that was the -- As I mentioned, you know -- You know, I --
2 | By that point, I was convinced because of the eyewitnesses,
3 | because of the knife, and so on, there was a sort of a case
4 | building in my mind that he was guilty, and I decided to let
5 | it go at that. I felt -- I guess the thing was I was hoping
6 | for more cooperation, but I wasn't getting any; so I just let it
7 | go. The only one that worked very hard on the case, I'd say,
8 | was Mrs. Marshall.
- 9 | Q. What was she doing?
- 10 | A. Well, she was very, very concerned and very hurt, and she was
11 | the only one that, at the time that I knew her, who was abso-
12 | lutely certain that her son was innocent.
- 13 | Q. During the time that Junior Marshall was in prison, were you
14 | contacted on occasion by representatives of the Parole Service?
- 15 | A. I don't think so, no.
- 16 | Q. Do you remember a Kevin Lynk?
- 17 | A. Oh, yes. I remember Kevin Lynk, yes. That was quite a while
18 | after.
- 19 | Q. 1978.
- 20 | A. Yes.
- 21 | Q. Exhibit 69 is the Parole Service material that I handed out
22 | before the break or at the break. I'll show you a document
23 | that's been marked Exhibit 69, Mr. Francis, and in it there
24 | is a report, which would seem to have been submitted by Kevin
25 | Lynk and Bernard MacNeil.

BERNARD FRANCIS, by Mr. Spicer

1 A. Yes.

2 Q. And on the second page of that report, about halfway down,
3 there's an indication that you were contacted in connection
4 with the assessment.

5 A. Yes.

6 Q. Perhaps if you could just take a moment, if you haven't had
7 an opportunity earlier, just to review -- starts here,
8 Mr. Bernie Francis. I just want you to have a look at it and
9 then tell us whether or not, to your recollection, if what is
10 said there is a fair representation of what you would've been
11 feeling at the time in 1978.

12 A. Yes.

13 Q. And was your -- Was your view at the time in 1978 that it
14 would've been okay for Mr. Marshall to visit the Reserve?
15 You say in the paragraph:

16 From a security point of view,
17 however, Mr. Francis does not
18 foresee any problems with
Marshall's coming to the Reserve.

19 A. Yes. He wasn't a security risk at all.

20 Q. And why do you say that?

21 A. He was -- You know, because he -- He wasn't a threat to anyone
22 on the Reserve.

23 Q. Would you have made any recommendation to Mr. Lynk or Mr. MacNeil
24 as to whether or not you thought it was feasible for for Junior
25 to come to the Reserve for a while?

BERNARD FRANCIS, by Mr. Spicer

1 Q. On what did you base that comment?

2 A. Well, I suppose that I started to believe by that point that
3 he was guilty and that he was -- and I guess the thing that
4 was in the back of my mind then was the visit that was made
5 to him by Doctor McDonough who was a psychiatrist, and I
6 talked to Doctor McDonough after her visitation with
7 Mr. Marshall, and she said if -- I asked her what she thought
8 and she said that, "He's either telling the whole truth or
9 whole lie," and at that time I was still very, very unsure
10 as to whether he was, you know, telling the truth or what he
11 was telling, and I think probably after the incident of --
12 with the knife where I was told on two different occasions
13 that the knife had been found and the two eyewitnesses who
14 actually witnessed the incident, I thought that he was guilty,
15 and I thought that he wasn't owning up to it.

16 Q. And that was the -- That's the basis of the statement that
17 recalls Marshall being an excellent liar?

18 A. I don't remember saying that.

19 Q. Never said that?

20 A. Not "an excellent liar," but I thought that in this particular
21 case, he wasn't telling the whole truth. I felt that way, in
22 all honesty, --

23 Q. Right.

24 A. -- that he wasn't telling the whole truth.

25 Q. Is it fair to say that from the letter that you got back from

BERNARD FRANCIS, by Mr. Spicer

- 1 Junior Marshall when you wrote to him concerning the knife,
2 wasn't a particularly friendly letter?
- 3 A. Well, yeh. I think it's fair to say that, although I under-
4 stand why it wouldn't be friendly.
- 5 Q. Why wouldn't it be?
- 6 A. Well, simply because he -- You know, it did look as though that,
7 you know, that there may have been a concerted effort to keep
8 him in jail, and this was another indication of it in that
9 I mentioned in the letter that the knife had been found, and
10 I could see why he would react, you know, in a very angry about that.
- 11 Q. I just want to ask you a couple of questions now. We could
12 move on from Mr. Marshall and ask you a few questions about
13 Tom Christmas.
- 14 A. Yes.
- 15 Q. Do you know Tom?
- 16 A. Yes.
- 17 Q. And did you know him in your capacity as a court worker in
18 1970, '71?
- 19 A. Yes.
- 20 Q. If you could turn to page 42 of Exhibit 48, which is Volume 22.
21 Page 42. Do you recognize that document, Mr. Francis? If you
22 look to the bottom of it, perhaps you'll see your signature
23 there?
- 24 A. Yes, that's my signature.
- 25 Q. Do you have any recollection of getting Mr. Christmas out on

BERNARD FRANCIS, by Mr. Spicer

- 1 | bail at any point in time?
- 2 | A. Yes, I do.
- 3 | Q. And was it in connection with the obstruction of justice
4 | charge, the threatening John Pratico incident?
- 5 | A. I believe it was, yes.
- 6 | Q. Okay. And would this document at page 42 represent the
7 | document that you signed in order to get Mr. Christmas out
8 | on that occasion?
- 9 | A. Yes.
- 10 | Q. Were you a landowner at the time?
- 11 | A. No, I wasn't or at least not in the sense that the non-Indian people
12 | view landowners to be.
- 13 | Q. And did you have to tell somebody that you were in order to --
- 14 | A. In order to get him out of jail, I had to tell them that we
15 | owned some land.
- 16 | Q. You own Nova Scotia?
- 17 | A. Yes. I didn't get into specifics, but yes.
- 18 | Q. And were you in fact successful in getting Mr. Christmas out?
- 19 | A. Yes.
- 20 | Q. Are you able to tell us from your experience with Mr. Christmas
21 | whether or not he is the sort of individual who would've
22 | benefited from an interpreter in a courtroom?
- 23 | A. I'd say that he would've definitely benefited from an
24 | interpreter, yes.
- 25 | Q. And why would that be?

BERNARD FRANCIS, by Mr. Spicer

1 | A. Well, simply because, you know, he's certainly not as -- at
2 | that time particularly was not as proficient in the English
3 | language as he is in the Micmac language.

4 | Q. Did you work with him as a court worker on the obstruction
5 | charge?

6 | A. I'm not sure exactly what charge it was, but it was around
7 | the time that he was charged with obstruction that I worked
8 | with Mr. Elman, Mr. Frank Elman.

9 | Q. How would it have been that Mr. Christmas would've been able
10 | to retain the services of Mr. Elman in connection with that
11 | charge?

12 | A. I don't remember that at all. I don't remember how that
13 | happened. I know that Mr. Elman and I talked about it, and
14 | Mr. Elman was ready to defend him for whatever -- I don't
15 | know he contacted Mr. Elman at the time.

16 | Q. Did you have any involvement yourself in the retention of
17 | Mr. Elman?

18 | A. I believe so, but I don't remeber how that came about. I
19 | just remember that I knew Mr. Elman at the time, and I trusted
20 | him to be a good lawyer, and I think I used Mr. Elman in other
21 | occasions. I recommended Mr. Elman to Native people in other
22 | occasions; so I think I used him again.

23 | Q. At that point in time, Mr. Francis, did Mr. Christmas indicate
24 | to you that John Pratico had said anything to him about whether
25 | or not Mr. Pratico had told the truth to the police?

BERNARD FRANCIS, by Mr. Spicer

1 | A. Yes, I believe Mr. Christmas mentioned to me that Pratico
2 | was lying.

3 | Q. Did he indicate to you that Pratico had told him that?

4 | A. No. I don't remember.

5 | Q. So would it have been -- Would it be fair to say that at time
6 | in June, July, you would've been advised by Tom Christmas
7 | that Pratico had told him that he was lying?

8 | A. Or -- Either that or Mr. Christmas knew from other sources that
9 | he was lying. I'm not sure whether Mr. Pratico advised
10 | Mr. Christmas that he was lying, you know, but I suspect that
11 | he may have -- That may have been the case, or it may have
12 | been that Tom Christmas knew from other sources that Mr. Pratico
13 | was lying.

14 | Q. Had you been asked by Mr. Khattar or Mr. Rosenblum to give --
15 | provide to them any information that came to your attention
16 | concerning the Donald Marshall case?

17 | A. No.

18 | Q. Do you know whether or not from your own knowledge whether or
19 | not any of the other members of the Native community had
20 | been asked by Khattar and Roseblum to give them whatever they
21 | got -- whatever information they got?

22 | A. No.

23 | Q. And I take it -- Is it fair to say that prior to the trial of
24 | Junior Marshall, you didn't convey any information to Mr. Khattar
25 | or Mr. Rosenblum to the effect that there was some question

BERNARD FRANCIS, by Mr. Spicer

- 1 | about whether or not Pratico was telling the truth?
- 2 | A. No, I don't think so.
- 3 | Q. Why would you not have done that?
- 4 | A. I don't know whether I did or whether I didn't really. I think
- 5 | if something as powerful as that came to my attention, I
- 6 | believe I would've approached him on it, and I did approach him
- 7 | at some time, but I don't know exactly what the timing was on
- 8 | it.
- 9 | Q. You don't know whether it was after the incident of Pratico
- 10 | coming out of the courtroom then do you?
- 11 | A. I thought it was some time after that incident.
- 12 | Q. Do you know whether or not you were present in the courtroom
- 13 | when Tom Christmas was -- when the obstruction charge was
- 14 | withdrawn and he was sentenced on an unlawful entering of a
- 15 | dwelling house?
- 16 | A. No, I wasn't there in the courtroom when that was discussed,
- 17 | but I was in the prosecutor's office when it was discussed.
- 18 | Q. And who was in the prosecutor's office at the time it was
- 19 | discussed?
- 20 | A. Don C. MacNeil who was the Crown Prosecutor, Mr. Frank Elman,
- 21 | and I.
- 22 | Q. And what was the nature of the discussion?
- 23 | A. Well, at that time, I remember that there was some plea
- 24 | bargaining going on and that Mr. Elman stated to Mr. MacNeil
- 25 | that, "Justice will be served if Mr. Christmas pleads guilty

BERNARD FRANCIS, by Mr. Spicer

1 | to this particular charge."

2 | Q. Which particular charge? Is that --

3 | A. I think it was --

4 | Q. The B&E or the --

5 | A. I'm not sure which one it was. I forget, you know, what the
6 | sequence is there, but he had two charges against him, and
7 | Mr. Elman was meaning at the time that if -- "Okay, there's
8 | two charges against him. We'll drop one if Mr. Christmas
9 | pleads guilty to the other, and that way justice will be
10 | served."

11 | Q. Was any -- To your recollection, was any representation made
12 | as to the sort of sentence that the Crown would recommend in
13 | the event that Mr. Christmas pleaded guilty to one of those
14 | charges?

15 | A. No. I don't remember that at all.

16 | Q. Do you know whether or not this discussion took place sub-
17 | sequent to Mr. Christmas's Preliminary hearing on the
18 | obstruction charge?

19 | A. Gee, no, I don't remember.

20 | Q. It makes sense that it would take place after the --

21 | A. It makes sense, yes.

22 | Q. But you don't remember?

23 | A. I don't remember, no.

24 | Q. Do you recollect Mr. Elman still representing Tom Christmas
25 | at the time that the obstruction charge was withdrawn and

BERNARD FRANCIS, by Mr. Spicer

1 he -- and Mr. Christmas pleaded guilty to the other charge?

2 A. I believe he was still representing Mr. Christmas, yes.

3 Q. Could you be wrong on that?

4 A. Yes, I could be wrong. Yes.

5 Q. The reason I mentioned it is because I think Mr. Elman's
6 recollection is that at that time he probably wasn't repre-
7 senting Mr. Christmas.

8 A. Yeh, it's possible.

9 Q. In any event, you remember the discussion?

10 A. Yes.

11 Q. Plea bargaining.

12 A. Yes.

13 Q. Okay. Were you surprised when Mr. Christmas got two years for
14 that offence?

15 A. Yes.

16 Q. Why were you surprised?

17 A. I thought it was exorbitant.

18 Q. Why?

19 A. I just didn't think it warranted that sort of a sentence. Tom
20 Christmas indicated to me at the time that he was innocent of
21 the B&E, that he had been there looking for something or some-
22 one and that he wasn't there to do anything wrong except -- He
23 was looking for liquor or something or other.

24 Q. And that's the offence that he pleaded guilty to?

25 A. Yes.

BERNARD FRANCIS, by Mr. Spicer

1 MR. CHAIRMAN:

2 And that allegedly took place on the Reserve, did it?

3 MR. SPICER:

4 Yes. The information for that offence is at page 46 of that volume
5 of Volume 22.

6 BY MR. SPICER:

7 Q. Did you speak to Mr. Christmas after he was sentenced for that
8 offence, Mr. Francis?

9 A. Gee, I don't remember.

10 Q. Did you speak to him in the days preceding the time that he --
11 the date that he was sentenced -- the date that he pleaded
12 guilty?

13 A. Yes.

14 Q. And did he express any views to you about whether he wanted to
15 be present at the time Junior Marshall was tried?

16 A. No, he didn't express that that I can remember.

17 Q. Was there any practice at the time in 1971 of Pre-Sentence
18 Reports being prepared for more serious offences?

19 A. Yes, there was.

20 Q. And would you think it would be unusual if a Pre-Sentence Report
21 was not prepared in a case such as the one that Mr. Christmas
22 pleaded guilty to?

23 A. I'd say it was -- would be unusual not to prepare a Pre-Sentence
24 Report there.

25 Q. And why would that be the case?

BERNARD FRANCIS, by Mr. Spicer

1 | COMMISSIONER EVANS:

2 | Crime of indecent assault contrary to Section 307.

3 | MR. SPICER:

4 | Yes.

5 | MR. CHAIRMAN:

6 | That's right. It was not break and enter.

7 | COMMISSIONER EVANS:

8 | But then the conviction says:

9 | . . . entered . . .

10 | Well I guess that's the same one.

11 | . . . entered dwelling house . . .

12 | . . . indecent assault . . .

13 | BY MR. SPICER:

14 | Q. Are you aware of whether or not any representations were made -
15 | or what representations were made by the Crown Prosecutor at
16 | the time of sentencing?

17 | A. I don't remember any, no.

18 | Q. No. What would be the practice normally, in your experience,
19 | in order for a Pre-Sentence Report to be prepared? Would it
20 | be up to you or defence counsel to stand up and say, "I think
21 | there ought to be a Pre-Sentence Report in this case."?

22 | A. Sometimes it was by the prosecuting lawyer. Sometimes it was
23 | the defending lawyer. Sometimes it was the judge or sometimes
24 | myself.

25 | Q. And would there have been the cases involving Native defendants

BERNARD FRANCIS, by Mr. Spicer

1 | A. Because I'm not really sure just to how familiar they were with
2 | Mr. Christmas, and I think they'll -- You know, usually the
3 | way to familiarize yourself with someone is by way of Pre-
4 | Sentence Report.

5 | BY MR. CHAIRMAN:

6 | Q. Mr. Francis?

7 | A. Yes.

8 | Q. After Mr. Christmas had pleaded to the break and entry charge,
9 | before sentence was imposed --

10 | A. Yes.

11 | Q. -- was there any evidence led?

12 | A. I don't remember, sir.

13 | Q. You were in the courtroom that --

14 | A. I don't remember that either. I just remember the prosecutor's
15 | office very well, but after that -- I can't seem to recall
16 | that.

17 | COMMISSIONER EVANS:

18 | Well, it was more than a break and enter, was it not?

19 | MR. SPICER:

20 | Page 46.

21 | COMMISSIONER EVANS:

22 | Yes.

23 | MR. SPICER:

24 | Yes.

25 |

BERNARD FRANCIS, by Mr. Spicer, by Ms. Derrick

1 | that -- where Pre-Sentence Reports would be prepared?

2 | A. Yes.

3 | Q. Are you aware of whether or not up until this time when
4 | Mr. Christmas pleaded guilty -- I believe it was October, 1971 --
5 | whether or not the court had any previous experience with
6 | Pre-Sentence Reports in any other cases with Mr. Christmas?

7 | A. Yes, there were some Pre-Sentence Reports prior to Mr. Christmas
8 | but I just can't remember them.

9 | Q. In -- Related to Mr. Christmas though?

10 | A. No, I don't remember --

11 | Q. Yeh.

12 | A. -- any.

13 | Q. Thank you.

14 | BY MS. DERRICK:

15 | Q. Mr. Francis, in the early '70's, is it correct to say that in
16 | your experience the use of English by Indian kids was mostly
17 | confined to the classroom?

18 | A. Yes.

19 | Q. Is that right?

20 | A. Yes.

21 | Q. In the early '70's, can you recollect whether or not the
22 | Indian school was still located at Membertou?

23 | A. I don't think it was.

24 | Q. You think by the time you became a court worker, it had already
25 | been --

BERNARD FRANCIS, by Ms. Derrick

- 1 | A. That's right.
- 2 | Q. -- moved off the Reserve?
- 3 | A. That's right. Yeh.
- 4 | Q. Is that right?
- 5 | A. Yes.
- 6 | Q. In your work as a court worker, you spoke Micmac to Indian
7 | youths -- Indian teenagers, did you?
- 8 | A. Yes.
- 9 | Q. And also to their parents in the course of any discussions you
10 | may have had with them?
- 11 | A. It would be in Micmac, yes.
- 12 | Q. And it was your experience that the kids were speaking Micmac
13 | with their parents in their homes as well?
- 14 | A. Yes.
- 15 | Q. Is that right?
- 16 | A. Yes.
- 17 | Q. So would it be fair to say that children who had left school
18 | and therefore weren't speaking English in school would even
19 | have less occasion to be using English than Indian kids that
20 | were still enrolled in school?
- 21 | A. I'm sorry. I didn't catch that.
- 22 | Q. Sorry. Would it be fair to say (given your experience) that
23 | Indian kids or teenagers who had already left school would have
24 | even less occasion to use English?
- 25 | A. Yes.

BERNARD FRANCIS, by Ms. Derrick

- 1 Q. They would be conversing almost exclusively in Micmac, would
2 that be correct?
- 3 A. Unless they spent off the Reserve.
- 4 Q. With English-speaking friends?
- 5 A. That's right.
- 6 Q. With respect to Indian youth that testified in court without
7 interpreters, was it your experience that they would be trans-
8 lating from the English spoken to them to Micmac in their heads
9 and then speaking -- responding in English?
- 10 A. That's true.
- 11 Q. Is that the process that they would undergo?
- 12 A. That's the process they would go through, yes.
- 13 Q. And I believe you've described this experience of testifying
14 in court as a very stressful one --
- 15 A. Very stressful.
- 16 Q. -- for the Indians that were testifying.
- 17 A. Yes.
- 18 Q. And in your experience as a linguist, would this stress impede
19 the comprehension process even further?
- 20 A. Yes.
- 21 Q. Did the Indians who testified in court understand who all the
22 players were? Did they know what the prosecutor was and what
23 the judge was and what their defence counsel was ?
- 24 A. I don't think they had a full understanding of that.
- 25 Q. Would it be -- Was it -- Is it correct to say that their only

BERNARD FRANCIS, by Ms. Derrick

1 experience in that sort of setting would be in the White
2 man's court, as it were. Is that --

3 A. That -- Exactly.

4 Q. There were no parallel disciplinary processes on the Reserve
5 that --

6 A. No, that's right.

7 Q. Okay. Thank you.

8 BY COMMISSIONER EVANS:

9 Q. Mr. Francis, do you mean that they wouldn't know who the
10 players were when they came in the courtroom? That they wouldn't
11 know the man sitting up in front was the judge?

12 A. Yes.

13 Q. And they wouldn't know that the man who is representing them
14 was the defence lawyer?

15 A. They would -- As she asked me, you know -- Would they know who --
16 for instance, who a prosecutor was.

17 Q. Yes.

18 A. A prosecutor and a lawyer are two different things in the mind
19 of a native person, for instance. They wouldn't know -- I
20 suspect they wouldn't know what a judge did, and I would sus-
21 spect that they would know that the person that was defending
22 him or her was a lawyer.

23 Q. Was his lawyer.

24 A. His lawyer.

25 Q. And he would know that MacNeil, whom you described as rather

BERNARD FRANCIS, by Ms. Derrick

1 aggressive, was not his lawyer.

2 A. Not of -- That's right.

3 BY MS. DERRICK:

4 Q. So they would understand then that the prosecutor was not
5 necessarily friendly to their interest?

6 A. Yes. they would. No, I shouldn't say that because that's not
7 true. It all depends on the type of questioning that the
8 prosecutor was doing because sometimes the prosecutor was so
9 absolutely friendly that the Micmac person would see that,
10 "My God, you know, this a nice individual and, you know, he
11 must be just interested in my welfare or he's interested in
12 my side of the story," not knowing or not being aware that
13 pretty soon he's going to have a hammer over his head, you
14 know, and --

15 Q. So the Indian understanding of that would depend on the tone
16 of questioning that was used?

17 A. That's right.

18 Q. They would kind of pick it up as it went along. Is that --

19 A. Exactly. And then they would get very confused when the
20 prosecutor got extremely aggressive and changed his tone of
21 voice after -- If you pardon the expression, after he had
22 "sucked him in." Micmac person generally became very confused
23 after that because all of a sudden this guy's not friendly
24 anymore. Now what did I do wrong. And it's on those occa-
25 sions, as I described to Mr. Spicer, that they would attempt

BERNARD FRANCIS, by Ms. Derrick

1 | to please the person who was asking the questions in order to
2 | get out of his uncomfortable situation.

3 | Q. Because they felt that it was their fault that there had been
4 | this change in the --

5 | A. That's right.

6 | Q. -- questioning.

7 | A. That's right.

8 | Q. They weren't satisfying the process somehow?

9 | A. Absolutely. Yeh.

10 | Q. In your experience as a court worker, did these language
11 | problems and these problems with the process extend to dealings
12 | with the police or even with lawyers that Indians had to deal
13 | with?

14 | A. Yes.

15 | Q. So that there would be problems with comprehension if Indians
16 | were stopped in the street, potentially, and --

17 | A. Yes.

18 | Q. -- asked questions by the police?

19 | A. Yes.

20 | Q. Were you involved in meetings between defence counsel and
21 | Indian clients?

22 | A. Yes.

23 | Q. And on those occasions, would you be in a position of making
24 | recommendations to the defence counsel to assist in their
25 | representing their own clients?

BERNARD FRANCIS, by Ms. Derrick

1 | Explaining things that maybe -- that you felt that the Indian
2 | wouldn't understand?

3 | A. Yes, I would do that, yes.

4 | Q. You've said that -- that Junior Marshall would have had a
5 | very poor understanding and very poor ability in the formal
6 | Court experience?

7 | A. Yes.

8 | Q. And when Mr. Spicer asked you, you said it was not likely that
9 | he would have admitted that he didn't understand everything
10 | that was going on or everything that was being said to him?

11 | A. That's right.

12 | Q. From your knowledge would this have been a matter of pride?

13 | A. Yes.

14 | Q. So this would be similar to what you described before, that
15 | Indians associated having a facility with English as being an
16 | indication that you were educated or knowledgeable, that you
17 | weren't a stupid person. Is -- Could that be where that came
18 | from?

19 | A. Yes, that's -- that's true. That's very true because I know
20 | this from my own experiences but I also know it when I was
21 | interviewed on T.V. one time on something to do with fitness
22 | and I went to Eskasoni on some occasion and someone said to
23 | me how bright and intelligent I was because I was on T.V.
24 | speaking English, so if that's any indication --

25 | Q. And this would be true as well of Indian teenagers that you dealt

BERNARD FRANCIS, by Ms. Derrick

1 with like Junior Marshall, those same kinds of feelings?

2 A. Yes. My father was -- My step-father was another one of those --
3 that type that took extreme pride in the fact that -- that he
4 could converse in the English language.

5 Q. Or at least could appear to converse in the English language?

6 A. Appear to converse, that's right.

7 Q. You have mentioned as well that in your opinion there are --
8 I believe you said now there are three or four people who are
9 competent to act as interpreters in the formal Court setting?

10 A. Yeh.

11 Q. Where would these people be from? Are they from various
12 Reserves in Cape Breton?

13 A. From -- From Eskasoni.

14 Q. Is there -- Would there -- Is there anybody on Membertou that --

15 A. Yes, I think there is maybe a couple in Membertou.

16 Q. And would there be anybody on the mainland of Nova Scotia?

17 A. Yes.

18 Q. And back in 1971 were there people -- or in the early '70's
19 perhaps I should say, were there people acting as interpreters
20 in the Courts in Cape Breton?

21 A. No, I was about the only one at the time who -- who sort of --
22 I made myself available to the Court system to assist the
23 Court.

24 Q. And your awareness that an Indian would need an interpreter
25 came from the fact that you were involved as a Court Worker?

BERNARD FRANCIS, by Ms. Derrick

- 1 | A. That's right.
- 2 | Q. Is that correct?
- 3 | A. Yeh, and also when I was with the John Howard Society I saw the
4 | problems that they were running up against.
- 5 | Q. So before you came on the scene and potentially after you left
6 | the scene was any effort made to get interpreters for --
- 7 | A. No, not really. No. I -- What I did at one point, I -- the
8 | President of the Union of Nova Scotia Indians, Mr. Alexander
9 | Denny at the time wrote a letter to the Attorney General's
10 | office and explained (I think I may have the letter somewhere.)
11 | to the Attorney General that -- that I was, you know,
12 | available for interpreting and that I was equally competent
13 | in both languages and I would -- you know, I should be used
14 | in assisting the Court in times when Native people were being
15 | tried and that's it.
- 16 | Q. So it was largely you then that occupied this function?
- 17 | A. Yes. Yes.
- 18 | Q. Now you -- I just want to ask you some questions about the
19 | various meetings you may have had with Junior Marshall during
20 | the course of -- of his trial?
- 21 | A. Yes.
- 22 | Q. You say on the second occasion of seeing him, by that time you
23 | knew that there was evidence against him or you had heard that
24 | there was, I think you said, eyewitness testimony?
- 25 | A. That's right.

BERNARD FRANCIS, by Ms. Derrick

- 1 Q. Have you made any inquiries about the evidence against
2 Mr. Marshall or who had you learned about these eyewitnesses?
- 3 A. I think I was told about the eyewitnesses from other boys around
4 Junior Marshall's age at the time.
- 5 Q. Had you made any formal inquiries of the police or the
6 prosecution as to the -- their case?
- 7 A. No, because at that time I worked strictly with Moe Rosenblum
8 and I thought at the time that -- that he would be getting all
9 this information in time.
- 10 Q. So that was a matter you left in his hands. There was no other
11 reason why you decided not to approach the police or
12 prosecution on your own?
- 13 A. Yes, that's right. I wouldn't have approached the prosecutor
14 but I would have relayed that information to Mr. Rosenblum.
- 15 Q. And those visits with Mr. Marshall, were these on your own
16 initiative or did Mr. Rosenblum or Mr. Khattar suggest that you
17 go back and see Mr. Marshall again?
- 18 A. They were my own initiative.
- 19 Q. You say that during this time Mrs. Marshall came to see you as
20 well?
- 21 A. Yes.
- 22 Q. And that she was expressing disbelief. Is it fair to say that
23 her reaction was one of not being able to believe that this was
24 happening to her son?
- 25 A. Yeh. Yes.

BERNARD FRANCIS, by Ms. Derrick

- 1 Q. And in your dealings with -- with Mr. Khattar and Mr. Rosenblum
2 did you actually recommend to them that Mr. Marshall should
3 have an interpreter or was it a matter that was left --
- 4 A. No, I told -- I told Mr. Rosenblum that -- to keep an eye on
5 him I think is what I said and -- because I believe, you know,
6 he might need an interpreter and if you run up against any
7 difficulties, to let me know right away.
- 8 Q. And was this an interpreter with respect to dealing with them
9 or an interpreter once he was testifying in Court?
- 10 A. All the way around. It was -- It was to do with everything.
- 11 Q. So would it be fair to say then that your own understanding of
12 Mr. Marshall's inability to cope within the English Language
13 was not complete?
- 14 A. Oh --
- 15 Q. Perhaps you overestimated his ability to cope in the English
16 language?
- 17 A. Yes, I think I overestimated it at the time. There should have
18 been an interpreter there right from day one.
- 19 Q. Now when this matter of the finding of the knife came to your
20 attention you were still working as a Court Worker at that time?
- 21 A. Yes.
- 22 Q. So these tasks that you undertook, getting the transcript and
23 trying -- trying to get people to review them, that was all
24 part of your capacity as a Court Worker. Is that fair to
25 say?

BERNARD FRANCIS, by Ms. Derrick

- 1 | A. Oh --
- 2 | Q. Or was it a bit beyond that?
- 3 | A. It was a little bit beyond that I would say.
- 4 | Q. Did you have any knowledge about when Mr. Gould got this
5 | information from that he passed along to you?
- 6 | A. No.
- 7 | Q. Did you assume that he'd got it from the police?
- 8 | A. No, I didn't assume that.
- 9 | Q. Is that why you called the police?
- 10 | A. I called the police because I -- I just thought that they might
11 | have heard something also.
- 12 | Q. And did you make any inquiries when you spoke to the police as
13 | to how they knew that it was Junior's knife because you were
14 | making the assumption that that's what they were telling you.
15 | Is that right?
- 16 | A. Yes. No, I didn't ask.
- 17 | Q. And is it fair to say that this information started to make you
18 | think that Mr. Marshall was, in fact, guilty?
- 19 | A. Yes.
- 20 | Q. When before that you had felt that he hadn't done it. Is that
21 | correct?
- 22 | A. That's right.
- 23 | Q. So based on that it became your conclusion that Mr. Marshall
24 | must be an excellent liar?
- 25 | A. Yes.

BERNARD FRANCIS, by Ms. Derrick

- 1 | Q. Did you -- Is this the reason why you were feeling defeated
2 | and discouraged because you had previously felt that Mr. Marshall
3 | hadn't done it and then with the appearance of this new
4 | information had started to change your -- your thoughts on that?
- 5 | A. Yes, I -- I think when the knife incident came out I -- I was
6 | really -- I really felt defeated at that point and that is --
7 | but I felt further defeated I guess when I wrote to -- when I
8 | wrote to Mr. Marshall and told him about the -- what I was
9 | doing and in the latter stages of the letter I mentioned to
10 | him about the knife having been found and he replied, you know,
11 | very angrily in the letter that this was not true and so on,
12 | and I felt really bad then because I -- mainly, I guess, I needed
13 | his support too at the time and I just think that I wasn't
14 | getting it, you know.
- 15 | Q. Did you view your letter to Mr. Marshall as an opportunity for
16 | him to come clean with you as it were?
- 17 | A. Exactly.
- 18 | Q. And he didn't do that because he continued to maintain his
19 | innocence?
- 20 | A. That's right. I was hoping to, you know, to draw more out
21 | of him than he had given so far so that I could -- you know,
22 | I would have another piece of ammunition, but --
- 23 | Q. So in some either subtle or not so subtle way, your letter to
24 | Mr. Marshall conveyed your impression now that he was, in fact,
25 | the guilty party?

BERNARD FRANCIS, by Ms. Derrick, by Mr. Murray

1 A. I still was unsure at the time.

2 Q. But it -- Would it be fair to say that -- that the nature of
3 the letter was not such that you were writing to Mr. Marshall
4 saying I have heard this information but, of course, we all
5 know it's not true?

6 A. Oh, yes.

7 Q. You were leaving an opening there for --

8 A. I was leaving an opening there. That's right.

9 MS. DERRICK:

10 Thank you, Mr. Francis. Those are my questions.

11 MR. CHAIRMAN:

12 Mr. Murray. How long do you estimate that you'll be, Mr. Murray?

13 MR. MURRAY:

14 I anticipate that I'll be about five minutes, My Lord, and perhaps
15 less.

16 MR. CHAIRMAN:

17 Well, in that case we'll carry on.

18 BY MR. MURRAY:

19 Q. Mr. Francis, were you aware of concerns in early June, 1971,
20 about trouble on the Reserve coming from outside the Reserve
21 over this incident?

22 A. No, I wasn't aware of any -- any trouble.

23 Q. Were --

24 A. If I may just interrupt the proceedings for a minute. Who is
25 this gentleman? Sorry.

BERNARD FRANCIS, by Mr. Murray

- 1 | Q. Oh, sorry. My name is Donald Murray and I'm asking questions
2 | on behalf of John MacIntyre.
- 3 | A. Okay. Sorry.
- 4 | Q. Were you aware that the Marshall family or some members of
5 | the Marshall family had left the Reserve just prior to
6 | Donald Marshall being arrested?
- 7 | A. Yes, I was aware of that.
- 8 | Q. And that was because of a security -- a perceived security
9 | problem?
- 10 | A. Yes, I guess you could say that.
- 11 | Q. So, in fact, you were aware of some security concerns coming
12 | from -- without the Reserve -- outside the Reserve at that
13 | time?
- 14 | A. I didn't -- I didn't -- I feel very differently about that.
15 | I didn't think there was any -- any concerns for security at
16 | all. I guess --
- 17 | Q. Other people had those concerns?
- 18 | A. I beg your pardon?
- 19 | Q. Other people had those concerns?
- 20 | A. Other people say that they did, yeh.
- 21 | Q. Yeh, and I suggest that when in 1978 you said that there were
22 | no security problems with Donald Marshall returning to the
23 | Reserve that you were restricting your remarks to the Reserve?
- 24 | A. No, not necessarily.
- 25 | Q. Do you feel qualified to talk about the security problems that

BERNARD FRANCIS, by Mr. Murray

1 | may have existed in the rest of the City with Mr. Marshall's
2 | return?

3 | A. No, I don't say I'm qualified. I just don't think that there
4 | would have been any problems with security there at all.

5 | Q. How long were you in the Court systems, sir, watching the
6 | progress of cases?

7 | A. You mean, for a particular case or --

8 | Q. No.

9 | A. -- the duration of the program?

10 | Q. The duration of the program.

11 | A. About five years.

12 | Q. I see, and on that occasion I take it you would have had many
13 | opportunities to hear John MacIntyre?

14 | A. Yes, there was one particular occasion that I remember him
15 | but there were other occasions, yes.

16 | Q. So you would have had an opportunity to become familiar with
17 | his voice?

18 | A. Yes.

19 | Q. And I take it that despite that familiarity you're still not
20 | able to say that it was John MacIntyre you spoke to at the
21 | police station about the knife?

22 | A. No.

23 | Q. In a comment directed to my friend a moment ago you mentioned
24 | that it wasn't until you heard about the knife that you became
25 | concerned about Mr. Marshall -- Donald Marshall, Jr.'s guilt?

BERNARD FRANCIS, by Mr. Murray

1 | A. Yes.

2 | Q. But, in fact, did you not go to Mr. Marshall, Sr., shortly
3 | after the eyewitnesses had testified during the trial that,
4 | in fact, you were concerned at that time about Donald
5 | Marshall, Jr.'s guilt?

6 | A. No, I was concerned about the way things were going at the
7 | time.

8 | Q. You were concerned about the evidence that was coming out?

9 | A. Yes, and the talk, I suppose, that -- because I didn't spend
10 | a whole lot of time in the courtroom I was concerned about
11 | the way people were talking about the case and the eyewitnesses
12 | and so on.

13 | Q. And the likelihood of a conviction?

14 | A. Yeh, I was concerned about that I must admit.

15 | MR. MURRAY:

16 | I have no further questions and I apologize for not identifying
17 | myself.

18 | MR. CHAIRMAN:

19 | We will rise until two.

20 |

21 | INQUIRY ADJOURNED AT: 12:37 p.m.

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