

BERNARD FRANCIS, by Mr. D. PINK

1 INQUIRY RECONVENED: 2:04 p.m.

2 THE CHAIRMAN:

3 Yes.

4 MR. ELMAN:

5 No questions, my Lord.

6 BY MR. D. PINK:

7 Q. Mr. Francis, my name is Darrell Pink and along with my partner
8 Jamie Saunders, I represent the Attorney General?

9 A. Okay.

10 Q. Last week Mr. Saunders and I made an effort to meet with
11 you. Do you recall the request was made for us to meet with
12 you?

13 A. Yes, I do.

14 Q. And you denied that request?

15 A. Yes, I was told by, I believe it was Mr. Williston, that you
16 had already met with the -- someone from the Commission and
17 that they had given you all the information that I had given
18 to them.

19 Q. And in any event though you did deny a request that Mr.
20 Saunders and I made to met with you?

21 A. I denied it for that reason, yes.

22 Q. The -- this morning, Mr. Francis, you spoke about the tendency
23 of some Native witnesses to try to please the person that was
24 answering questions, is --

25 A. Yes.

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1 Q. -- is that correct? Did I understand your evidence correctly?

2 A. Yes.

3 Q. Do you feel that you subcome to that same tendency?

4 A. No, sir, not at all.

5 Q. Is it the evidence that you've given here today completely
6 unbiased?

7 A. As unbiased as I could give it, yes. And I --

8 Q. And completely factual?

9 A. Whatever I said was factual, yes.

10 Q. I want to start, Mr. Francis, by reading an excerpt from
11 Justice Denied because we didn't -- which is Michael Harris'
12 book. Have you read the book Justice Denied?

13 A. Yes, I have.

14 Q. And I'm referring to page 127, at the bottom of the page
15 the following appears and I quote

16 On Sunday, November 1, the night
17 before his trial, Junior Marshall
18 received a visit from Membertou's
19 court worker of the day, Bernie
20 Francis. As Junior remembered it,
21 "Bernie mentioned a knife, saying
22 that they got my knife with my
23 fingerprints, right. I told him
24 he was crazy, right. There was
25 no knife. I tell him I'll see
him in court tomorrow because I
was going to court next morning.
Bernie Francis, he wanted me to
plead guilty to manslaughter; he
said, "I'll get you ten years",
right. I told him no."

That's a closed quote.

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1 Years later, Francis denied
2 he had ever tried to induce
3 Marshall to enter a guilty plea
 on a reduced charge.

4 Do you deny that that meeting ever took place?

5 A. No, sir. I denied that the conversation of that type took
6 place.

7 Q. Did you meet with Mr. Marshall on the evening before his
8 trial?

9 A. I'm not sure exactly, sir, if it was in the evening before
10 but I met -- I met with him twice. I'm not sure exactly
11 how close it was to the trial.

12 Q. Did you have any discussions with Mr. Marshall about a possible
13 plea to a lessor charge?

14 A. Yes, I believe we -- we discussed it. I said that at the
15 time because of what it was looking like there might be,
16 you know, it might be advantageous to plea guilty to a
17 lessor charge.

18 Q. And you understood that that manslaughter was a lessor
19 charge to second-degree murder?

20 A. Yes.

21 Q. So the part of the excerpt that you deny is the reference
22 to the "knife"?

23 A. Yes.

24 Q. And the fact "that there was a knife with his fingerprints
25 on it"?

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- 1 | A. That's right.
- 2 | Q. And nobody ever told you that there was a knife with Mr.
- 3 | Marshall's fingerprints on it, did they?
- 4 | A. No.
- 5 | Q. In 1971, you knew Donald MacNeil?
- 6 | A. Yes.
- 7 | Q. Mr. MacNeil was the Prosecuting Officer for the County of
- 8 | Cape Breton?
- 9 | A. Yes.
- 10 | Q. And you worked with him for a number of years while you were
- 11 | the Native Court Worker?
- 12 | A. Yes, I suppose you could say "worked with him."
- 13 | Q. Yes, and you -- he was involved in a number of the courts?
- 14 | A. Mr. MacNeil, you mean.
- 15 | Q. Yes, he did trials in the Magistrate's Court?
- 16 | A. Yes.
- 17 | Q. And did trials in the County Court and in the Supreme Court?
- 18 | A. Yes.
- 19 | Q. And he did trials in Courts in which Native person were
- 20 | accused?
- 21 | A. Yes.
- 22 | Q. And Courts in which you were working with those individuals
- 23 | accused?
- 24 | A. Yes.
- 25 | Q. And you knew that Mr. MacNeil was the senior Prosecutor

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- 1 Officer in Cape Breton County, didn't you?
- 2 A. I'm not -- I wasn't sure if it was Cape Breton County but
3 it -- he was senior around here. I guess, it was Cape Breton
4 County.
- 5 Q. Sure, and you knew that he was -- he had several other
6 assistants?
- 7 A. Yes.
- 8 Q. A Mr. Matheson was one of those assistants?
- 9 A. That was the only one that I -- that I seem to remember.
- 10 Q. And when you had occasion to work with Native accused
11 persons, you had occasion to meet with Mr. MacNeil?
- 12 A. Yeh, there were times, yes.
- 13 Q. You referred to an incident this morning in which you were
14 present when Mr. MacNeil and Mr. Elman were talking about
15 Tom Christmas?
- 16 A. Yes.
- 17 Q. I -- I suggest to you that you had that kind of meeting
18 regarding dozens if not hundreds of other accused persons?
19 Not necessarily with -- not necessarily with defence counsel
20 present but in the course of talking to the Crown --
- 21 A. Yeh.
- 22 Q. -- you met with him on dozens of occasions?
- 23 A. Yes, it's possible. Yeh, I'm not sure how many times. It
24 certainly wasn't in the hundreds.
- 25 Q. Sure, and just so I'm clear, I don't mean a formal meeting

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- 1 in his office but whether it was in the five or ten minutes
2 before Court or after Court you had dozens of opportunities
3 to talk to him?
- 4 A. Yes.
- 5 Q. You also had dozens of opportunities to speak with Mr.
6 Matheson, the assistant Prosecuting Officer?
- 7 A. I didn't spend too much time with Mr. Matheson.
- 8 Q. Okay, you made reference this morning to some comments that
9 you attributed to Mr. Matheson in -- in court?
- 10 A. Yes.
- 11 Q. Now Mr. Matheson, as I understand it, prosecuted primarily in
12 Magistrates Court, is that your recollection?
- 13 A. Yes.
- 14 Q. He also did some work in the higher courts but it was
15 primarily in the Magistrates Court?
- 16 A. Yeh, I would say that that was true.
- 17 Q. And the Magistrate that he would have appeared before
18 primarily was John F. MacDonald?
- 19 A. I'm not sure about primarily but there were -- there were
20 other judges. I just don't know to what degree.
- 21 Q. Sure, they changed over the years, but there was another
22 Judge MacDonald in Sydney at the time wasn't there?
- 23 A. There was R. J. MacDonald.
- 24 Q. Yes.
- 25 A. Yes.

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- 1 Q. And do you recall if he appeared before John F. MacDonald
2 more than R. J. MacDonald or --
- 3 A. Yes, I believe he appeared before John F. more.
- 4 Q. And there was also -- was Judge Gunn still here at that time
5 or had he already gone?
- 6 A. No, he had already gone, I believe.
- 7 Q. So, Mr. Matheson appeared primarily in front of John F.
8 MacDonald but also in front of R. J. MacDonald, that's what
9 your testimony is?
- 10 A. No, it wasn't so much with R. J.. He appeared a few times
11 before R. J. MacDonald but he appeared many times before Judge
12 Charles O'Connell.
- 13 Q. Okay, and that was the Judge O'Connell that you referred to
14 this morning?
- 15 A. Yes.
- 16 Q. Judge O'Connell at that point was a relatively new member of
17 the Bench?
- 18 A. Yes, I guess so.
- 19 Q. And certainly junior to the two Judges MacDonald's?
- 20 A. Yes.
- 21 Q. And the conduct that you're referred to about Mr. Matheson
22 you never spoke to Donald C. MacNeil about Mr. Matheson's
23 conduct, did you?
- 24 A. No.
- 25 Q. You never took the opportunity to complain to Mr. MacNeil?

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1 | A. No.

2 | Q. And you never took the opportunity to complain to any of the
3 | judges?

4 | A. Yes.

5 | Q. Other than Judge MacDonald which I'll come to in a moment?

6 | A. No.

7 | Q. So in spite of your concern about Mr. Matheson, you never
8 | spoke to his superior, Donald MacNeil, about the matters that
9 | gave rise to your concern?

10 | A. I never regarded Mr. MacNeil to be the -- Mr. Matheson's
11 | superior. I just saw them as working together.

12 | Q. Well, did you regard anybody to be his superior?

13 | A. No, not really.

14 | Q. You certainly knew that Mr. MacNeil was senior to Mr.
15 | Matheson, you already said that?

16 | A. Well, I knew he was senior in age but I'm not sure whether --
17 | whether I felt that at the time that he was senior in rank.

18 | Q. You had -- you had respect for Mr. MacNeil?

19 | A. Yeh, I had respect for both of them.

20 | Q. You indicated this morning that Mr. MacNeil did his job well
21 | and you respected the way that he did his job?

22 | A. Did I say that, that I respected him

23 | COMMISSIONER EVANS:

24 | He didn't say that.

25 |

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1 BY MR. D. PINK:

2 Q. That's -- those are my words, not yours.

3 A. Oh, I don't know. I don't know whether I respected him but
4 I'll agree with you when you say that he -- he did his job
5 as to the best of his ability.

6 Q. And in spite of whatever your particular feelings were about
7 Mr. MacNeil, knowing that he was the senior man in age, you
8 did not take the opportunity to ever speak to him about these
9 matters that gave you concern regarding Mr. Matheson?

10 A. No.

11 Q. And you never spoke to Mr. Matheson directly about the matters
12 that gave you concern, did you?

13 A. No.

14 Q. You indicated this morning that you had a telephone conference
15 with, I believe, it was with Judge LeVatte?

16 A. Yes.

17 Q. About a matter that you had corresponded to him about?

18 A. Yes.

19 Q. And you never corresponded with Mr. Matheson about the matters
20 that were of concern to you?

21 A. No.

22 Q. You didn't pick up the phone and call him?

23 A. No, I didn't.

24 Q. You didn't do anything?

25 A. Yes, I did.

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- 1 | Q. Except speak to Judge MacDonald?
- 2 | A. That's right.
- 3 | Q. And that --
- 4 | A. I decided that instead of wasting time -- I decided to go to
- 5 | the top.
- 6 | Q. You considered that Mr. -- that Judge MacDonald was the top?
- 7 | A. Yes.
- 8 | Q. So you spoke to nobody in the Attorney General's Department
- 9 | or anybody else except Judge MacDonald?
- 10 | A. Yeh, because I felt that it was MacDonald's Court.
- 11 | Q. And there's certainly was nothing to stop you from dealing
- 12 | with Mr. Matheson directly, was there?
- 13 | A. I felt that -- yeh, there was something there that was to
- 14 | stop me and it was my own personal angered feelings.
- 15 | Q. Your own anger was all that stopped you?
- 16 | A. That's right.
- 17 | Q. So you were the person who was responsible for -- you were
- 18 | the Native Court Worker?
- 19 | A. Yes.
- 20 | Q. You were responsible for liaising with Native peoples in the
- 21 | courts and it was your anger that stopped you from dealing with
- 22 | Mr. Matheson?
- 23 | A. Yes, sir.
- 24 | Q. Nothing else?
- 25 | A. Not that I can think of.

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- 1 Q. Now, I'd like just ask you a few questions about the incidents
2 that gave rise to your concern. Over what period of time
3 do you say that these comments were made by Mr. Matheson and
4 just so that you understand me, prior to your speaking with
5 Judge MacDonald?
- 6 A. Gee, I don't know.
- 7 Q. Well, are we talking about a period of two or three weeks?
8 Two or three months?
- 9 A. Gee, I'm not really sure exactly. It happened on several
10 occasions.
- 11 Q. Several occasions?
- 12 A. Yes.
- 13 Q. I'm going to try and ask you to help the Commission understand
14 exactly what the nature of your comments are, Mr. Francis,
15 what do you mean by several occasions?
- 16 A. By that I mean that it wasn't every time that Mr. Matheson
17 was prosecuting a Native person that he made these comments.
- 18 Q. I suggest to you, if it occurred at all, it was a very rare
19 occurrence?
- 20 A. No, sir, that's not true.
- 21 Q. Well, was it a daily occurrence?
- 22 A. Well, he didn't appear before John F. on a daily basis.
- 23 Q. Okay, was it every time that he dealt with a Native accused?
- 24 A. I've answered that question.
- 25 Q. And what is your answer?

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- 1 | A. The answer is that it wasn't everytime that he was prosecuting
2 | a Native person.
- 3 | Q. And with what frequency was it on a percentage basis, help
4 | us there?
- 5 | A. I -- I find that very difficult to answer. I don't know --
- 6 | Q. Right.
- 7 | A. -- what it was on the percentage basis.
- 8 | Q. I appreciate that but you also appreciate the significance of
9 | the comments that you attribute to Mr. Matheson, don't you?
- 10 | A. Yes, I do. But on the other hand they're very true.
- 11 | Q. Well, in order for me to understand and in order for Mr.
12 | Matheson to be able to deal with them, it's important that
13 | you try and articulate as clearly as you can exactly what
14 | supposedly occurred?
- 15 | A. Yes, I understand.
- 16 | Q. And so is the best that you can do is to say that it happened
17 | on several occasions?
- 18 | A. That's about the best I can do. Let's say it happened on
19 | more than five or six occasions.
- 20 | Q. When you say more than five or six, can you help us by saying
21 | how many more than five or six?
- 22 | A. No. Sometimes, you see, sometimes the statements that he
23 | made stood out in my mind. Other times statements that he
24 | made were a little bit more subtle and they don't stand
25 | out in my mind.

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- 1 Q. And the important thing that -- I take it is that the
2 statements stood out in your mind because they were with
3 reference to particular individuals that you were working
4 with?
- 5 A. I'm not sure I understand that questions, sir.
- 6 Q. Okay, the statements that you referred to, as I understood
7 your evidence this morning, was with relation to individuals
8 that lived at the Membertou Reserve primarily?
- 9 A. No, sir.
- 10 Q. Okay, what was it with relation to?
- 11 A. With -- mainly from people from Eskasoni.
- 12 Q. I'm sorry -- primarily from people from Eskasoni?
- 13 A. Yes.
- 14 Q. I apologize. That was my misunderstanding. So he was
15 referring to people from Eskasoni and was it -- were his
16 comments limited to people from Eskasoni the ones that
17 stood out in your mind?
- 18 A. No, because I think he used the word "Indians"; I guess that
19 would refer to -- to all Indians in this area.
- 20 Q. Yes, and was he relating to particular problems that were
21 recurring in areas that Indians resided?
- 22 A. I believe he was referring to the -- to the idea that Native
23 people were -- came to the City of Sydney to cause problems.
- 24 Q. Were the incidents that gave rise to these comments only
25 incidents that occurred when Native persons came into Sydney

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- 1 | per se or were they also incidents that occurred on the
2 | Reserve?
- 3 | A. It generally had to do with people who came to this area.
4 | Q. I'm sorry, came to this area?
5 | A. To Sydney, yes.
6 | Q. Came to Sydney?
7 | A. Yes.
8 | Q. And you used the number more than five or six incidents?
9 | A. Yes.
10 | Q. Are you able to tell me over what period of time these five
11 | or six incidents or these more than five or six incidents
12 | occurred?
13 | A. No, I'm not.
14 | Q. The meeting with Judge MacDonald was a pinnacle or a turning
15 | point, as I understood from your evidence, in these kind of
16 | -- these comments that you attributed to Mr. Matheson, is
17 | that correct?
18 | A. Again, I'm not sure. What do you mean exactly when you
19 | said "pinnacle".
20 | Q. Well, let me rephrase it. You had a meeting with Judge
21 | MacDonald and after your meeting with Judge MacDonald, the
22 | incidents stopped or at least in the way that they had
23 | been taking place before?
24 | A. I'd say that -- oh, no, I really can't remember. I don't
25 | know whether they stopped or whether they were down to a,

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1 | you know, down to a minimum or something that was a little
2 | bit more acceptable to me.

3 | Q. When the incidents themselves occurred, are you able to
4 | tell us if the individuals were represented by counsel?

5 | A. Yes, sometimes.

6 | Q. And did their lawyers object to any of these comments?

7 | A. No, they didn't.

8 | Q. Did you raise the matter with these lawyers?

9 | A. Yes, I did.

10 | Q. And who were those lawyers?

11 | A. They were from the Nova Scotia Legal Aid and Art Mollon was
12 | one of them.

13 | Q. Mr. Mollon was one of them?

14 | A. Yes.

15 | Q. Anybody beside Mr. Mollon?

16 | A. He was the only one that I was working with for a while.

17 | Q. Yes.

18 | A. Because I think he was the only lawyer there for a while
19 | in Sydney.

20 | Q. And you raised the matters with Mr. Mollon, in what way did
21 | you raise them?

22 | A. I just mentioned to him that I was a little bit, you know,
23 | perturbed about the fact that he -- that he was allowed to
24 | get away with remarks like these. And that -- that John
25 | F. MacDonald was listening to them and not making a move

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- 1 to do anything about them.
- 2 Q. And did -- did you request that Mr. Mollon object or raise
3 an issue with the Court regarding these kinds of comments?
- 4 A. No, I didn't because I thought that perhaps he would be --
5 I didn't want to tell him how to do his job. I felt that
6 once I made my objection to -- to him known I suspected
7 that perhaps he would do something about it.
- 8 Q. So -- and I take it that Mr. Mollon never did object?
- 9 A. He didn't like it but he didn't object.
- 10 Q. Now you indicated that you had a meeting with Judge MacDonald,
11 can you help us by telling me when that meeting occurred?
- 12 A. It was after one of the incidents. After a comment, a very
13 derogatory comment was made against Native people by Judge
14 Lew Matheson.
- 15 Q. Can you put any kind of time frame on it, a year even?
- 16 A. No, I'm afraid not.
- 17 Q. Let me see if I can -- if I can help you this way. How
18 long have you been a Court Worker by the time you had the
19 meeting with Judge MacDonald?
- 20 A. Geez, I'm not really sure.
- 21 Q. Well, was it at the beginning of your time --
- 22 A. No.
- 23 Q. -- at the middle of your time, towards the end of your time?
- 24 A. It was -- I'd say it may have been two years after or maybe
25 three years after I was coordinating that Program.

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1 Q. And you started when?

2 A. Well, two or three years prior to that.

3 Q. I appreciate that but what year did you start?

4 A. Oh, sorry, '70 or '71 something like that.

5 Q. Okay, well, Donald Marshall was tried in November of 1971,
6 by that point, how long had you been a Court Worker?

7 A. Oh, I'm not certain. It could have been a year but it could
8 have been a few months.

9 Q. So the incident is best as we can pin it down is probably
10 the end of 1972 or into 1973?

11 A. Yes.

12 Q. Would that be fair?

13 A. Yeh, that would be fair.

14 Q. And where did the meeting take place?

15 A. The meeting between myself and Judge MacDonald.

16 Q. Yes.

17 A. I went to his office.

18 Q. Yes, and can you describe the meeting to me please?

19 A. Yes, I -- there was another lady with me at the time and --

20 Q. Who was that?

21 A. Eva Bernard.

22 Q. She was also a Court Worker wasn't she?

23 A. Yes. I went to the Judge's office, Judge MacDonald's office,
24 because he had just left the courtroom into this little door
25 that leads into the Judge's Chambers.

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1 Q. Yes.

2 A. And I walk into his office and I think the first thing I
3 said to him was, "how could you allow, you know, remarks
4 like that to go by without doing anything about them?" And
5 initially my tone of voice was fairly calm. I wanted to get
6 some sort of reaction or some sort of a sympathetic reaction.
7 And he said that he didn't hear it, you know, anything quite
8 like that or something to the effect that he didn't think it
9 was, you know, such a big remark, you know. Something like
10 that. I forget exactly his exact words. By that time I had
11 jumped up from the chair that I was sitting in and I put my
12 two hands on his desk and leaned over to him very closely, sort
13 of face to face, almost nose to nose, and told him that I felt
14 that he had a responsibility in that courtroom to stop remarks
15 like that being made against Native people. And that I was,
16 I guess the expression that I used at the time was, "God damn
17 angry that they were -- that they were allowing stuff like
18 that to go by".

19 Q. And Judge MacDonald's response was what?

20 A. Well, he was -- he was very afraid. He had a pipe in his
21 mouth at the time and it was vibrating. And he -- he kept
22 saying things like "oh well, I don't know. I don't think
23 so. I don't think it's a big remark". You know, things
24 like that. He didn't give me any, you know, concrete
25 remark or anything of the sort.

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- 1 Q. Judge MacDonald was still in his robes?
- 2 A. I beg your pardon.
- 3 Q. Judge MacDonald was still in his -- his gowns?
- 4 A. Yes.
- 5 Q. And you say that he was smoking a pipe?
- 6 A. Yes.
- 7 Q. Do you remember the name of the accused person that gave rise
- 8 to that incident?
- 9 A. No, sir.
- 10 Q. Eva Bernard, where is she today?
- 11 A. I believe she's working in Sydney somewhere.
- 12 Q. Yes. Do you recall if the court -- if the press were present
- 13 in court on the day that this arose?
- 14 A. I don't believe they were.
- 15 Q. From my review, Mr. Francis, it appears that the local
- 16 newspaper had a fairly regular coverage of events in the
- 17 courts, is that true?
- 18 A. I don't know, sir.
- 19 Q. Did you know who the reporters were for the Cape Breton Post
- 20 at that time?
- 21 A. No.
- 22 Q. So you can't -- you're not able to say from your own
- 23 recollection if they were present in court?
- 24 A. No.
- 25 Q. And it was sometime shortly after this, as I understand your

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- 1 evidence from this morning, that you appeared on this radio
2 broadcast?
- 3 A. Yes.
- 4 Q. When in relation to the meeting with Judge MacDonald was the
5 radio broadcast?
- 6 A. I don't remember.
- 7 Q. Do you recall how it was that you were asked to get involved
8 in the radio?
- 9 A. Yes, because I -- several -- on several occasions I voiced
10 my -- my dissatisfaction with what was going in that system
11 to a man by the name of Sandy Campbell, who was the -- the
12 major owner of CHER Radio. And so he called me one day.
13 I guess he already knew that he was leaving and asked me
14 if I was interested in going on this program to talk about
15 the, you know, the problems that Native people -- Native
16 people were having in that courtroom. And I mentioned to
17 him at the time that it was sort of suicide for him. He
18 said he didn't care because he was leaving. And so I took
19 him on it and ended up on the program.
- 20 Q. Regarding this particular program which I believe you -- you
21 said was called Pulse?
- 22 A. Yes.
- 23 Q. Did you make the overture to the radio station or did they
24 call you?
- 25 A. Well, I believe Sandy Campbell and I had a discussion first

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1 of all about why I was there. And then people called.

2 Q. And again my question to you which you didn't answer, was
3 when in relation to the in -- the meeting with Judge
4 MacDonald, did the radio broadcast appear?

5 A. I don't remember.

6 Q. Can you put it in terms of days, weeks, or months after the
7 incident?

8 A. No, I can't. I don't remember at all.

9 Q. And the conclusion I take from your evidence this morning,
10 is that because you were never sued for defamation, for
11 slander or libel, you believed that what you said must have
12 been true?

13 A. No, I don't feel that way.

14 Q. That wasn't the conclusion that you intended to leave with --
15 from your evidence this morning?

16 A. I just didn't really care, you know, at the time. I just
17 I did what I had do because I really felt at a loss for what
18 else to do. Some of the things that I've heard this morning
19 as to what I should have done, I should have done.

20 Q. What you did -- what you felt you had to do was because you
21 were the Court Worker, the Native Court Worker, and this
22 was part of your responsibility?

23 A. No, sir. That wasn't part of the job description. I -- it
24 just so happened that I got -- I got sick of what was going
25 on. I couldn't believe that some of these comments would be

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- 1 | allowed to go on in the courtroom.
- 2 | Q. Just a couple of final questions on the meeting with Judge
- 3 | MacDonald. Eva Bernard, did she stay for the entire meeting?
- 4 | A. She stood outside the door.
- 5 | Q. So she wasn't present with you?
- 6 | A. No, but I'm sure she heard me.
- 7 | Q. Was she present when you came out of the room?
- 8 | A. Yes, --
- 9 | Q. Present outside the door?
- 10 | A. -- I believe so, yes.
- 11 | Q. And did you keep any notes or anything regarding the meeting?
- 12 | A. No, sir.
- 13 | Q. You never attempted to communicate the contents of your
- 14 | meeting with anybody else?
- 15 | A. Yes, I did. I took my concerns to the Union of Nova Scotia
- 16 | Indians Executive.
- 17 | Q. Yes, when did you do that?
- 18 | A. Sometime very shortly after that -- that incident.
- 19 | Q. And that was at a regular Executive meeting or something like
- 20 | that?
- 21 | A. No, it wasn't a regular Executive meeting. Oh, gee, I don't
- 22 | know exactly. I think I simply approached them and told them
- 23 | that I was -- I was angry. I felt I was losing ground and
- 24 | I felt I was having all sorts of difficulty in that area.
- 25 | Q. Who did you approach?

BERNARD FRANCIS, by Mr. D. Pink

1 A. I believe it was Alexander Denny.

2 Q. And what was Mr. Denny's position with the Union of Nova Scotia
3 Indians?

4 A. I believe at the time he was President of the Union of Nova
5 Scotia Indians.

6 Q. Did U. N. S. I. do anything regarding your comments?

7 A. I don't know. They might have, you know, written letters.
8 I'm not sure.

9 Q. You're not aware of anything that occurred?

10 A. No, I'm not.

11 Q. Now you told us this morning about this -- what I'll call the
12 contempt of court incident?

13 A. Yes.

14 Q. To see if I understood your testimony correctly. You indicated
15 that there was a woman who was charged with an offence of
16 being drunken -- drunk and disorderly something like that?

17 A. Something or other.

18 Q. And the woman had an alcoholic problem and she was called
19 to court and intended to plead guilty?

20 A. Yes.

21

22

23

24

25

BERNARD FRANCIS, by Mr. D. Pink

1 Q. You had spoken to her prior to her making up her mind
2 or enter that plea?

3 A. I believe so, yes.

4 Q. And it was your understanding that there would be a minimal
5 in the ten or 15 dollar range?

6 A. Yes.

7 Q. And you also understood that a normal provision of that
8 kind of sentence was a default provision in -- if they
9 failed to pay the fine they would do a certain amount of time?

10 A. Yes.

11 Q. And was it your practise, Mr. Francis, when talking to
12 accused persons to explain how the sentencing process worked
13 and what they would likely receive?

14 A. Yes.

15 Q. And you explained to them what the default -- what being
16 in default meant?

17 A. No, I didn't. I failed there.

18 Q. You failed there?

19 A. Yes. I told her at the time that -- that -- I think we can
20 get away with just a small fine. I neglected to explain to
21 her the term default. I just never -- I just never questioned
22 it.

23 Q. And in any event when she heard the normal provision, the
24 one which you expected I presume --

25 A. Yes.

BERNARD FRANCIS, by Mr. D. Pink

- 1 | Q. She was confused and blurted out a comment about the judge?
- 2 | A. Yes.
- 3 | Q. Now, here's where I fail to come to grips with what you were
- 4 | saying and then immediately she was told she was going to
- 5 | go to gaol for ten days, is that what you said?
- 6 | A. Yeh, something to that effect. I know that she was taken
- 7 | from that point to gaol.
- 8 | Q. Did she have a defense lawyer present?
- 9 | A. No.
- 10 | Q. Was there a crown prosecutor present?
- 11 | A. I'm not sure.
- 12 | Q. Did you -- But you were present throughout the whole thing?
- 13 | A. Yes.
- 14 | Q. Did you make any attempt to intercede on her behalf?
- 15 | A. Gee, I don't remember. I know that I was very upset about
- 16 | it but I don't know if I actually saw anyone.
- 17 | Q. Oh, so I take it that you didn't stand up and say to the
- 18 | judge even in court that there was some misunderstanding?
- 19 | A. No, because I was beginning to be afraid at that time. Mainly
- 20 | I was conditioned here because I'd been told many times
- 21 | to sit down and that I wasn't an officer of the court.
- 22 | Q. You didn't go to the crown prosecutor?
- 23 | A. No, I don't remember if he was there or not.
- 24 | Q. You didn't go to anybody?
- 25 | A. That's right.

BERNARD FRANCIS, by Mr. D. Pink

- 1 Q. You didn't go to your friend Mr. Mollon of Nova Scotia
2 Legal Aid and ask about this?
- 3 A. Well, Mr. Mollon was here in Sydney. This was happening
4 in Antigonish.
- 5 Q. Okay. You didn't even go to the Legal Aid office in
6 Antigonish?
- 7 A. At that time I didn't know there was one that existed.
8 I don't think it did.
- 9 Q. You didn't make any efforts -- further efforts on this
10 womans' behalf?
- 11 A. No, I don't think so.
- 12 Q. So as a Native worker --
- 13 A. Yeh.
- 14 Q. -- who was responsible for liasing with the courts and
15 liasing with the crown, you didn't do anything further about
16 it?
- 17 A. No. Except to see the family and I talked to the family and
18 told them to try to pay the fine to see if they would release
19 her.
- 20 Q. And did they do that?
- 21 A. Yes. I believe they did.
- 22 Q. And was she released?
- 23 A. I believe she was.
- 24 Q. After how many days?
- 25 A. I don't know.

BERNARD FRANCIS, by Mr. D. Pink

- 1 Q. Is it fair to suggest to you -- I do suggest to you, Mr.
2 Francis, that the import of what the woman said to the judge
3 was that she wasn't going to pay the fine and therefore
4 he sentenced her to time immediately.
- 5 A. Well, sir --
- 6 Q. It had nothing to do with contempt of court.
- 7 A. I don't know what one would call it sir but I -- but I
8 know that that's not what she thought.
- 9 Q. You spoke about Legal Aid this morning and you indicated
10 this afternoon that Mr. Mollon was the key person at Legal
11 Aid that you worked with?
- 12 A. Yes.
- 13 Q. I'll ask again, do you recall any other Legal Aid lawyers
14 that you worked with at that time?
- 15 A. I think there -- another lawyer arrived on the scene sometime
16 after. I believe his name was Keith. It could have been Keith
17 Shears. I'm not absolutely certain.
- 18 Q. Sure. You -- What about Mr. Williston?
- 19 A. Yes, I believe Mr. Williston was with Legal Aid for a while.
- 20 Q. Yes, he was with Legal Aid before he went to the prosecutors
21 office, wasn't he?
- 22 A. Yes, I think perhaps he was. Yeh.
- 23 Q. And that was in the early '70s?
- 24 A. I believe so, yes.
- 25 Q. While you were the Native court worker?

BERNARD FRANCIS, by MR. D. Pink

- 1 A. I believe so.
- 2 Q. And I suggest to you that you did have occasion to work with
3 Mr. Williston while he was Legal Aid counsel?
- 4 A. I may have although I don't remember working with Mr.
5 Williston very much. I remember that every time that
6 we had some cases to be discussed about Native people I
7 always went to Art Mollon.
- 8 Q. In any event, you worked closely with Nova Scotia Legal
9 Aid but it was only with Mr. Mollon or whoever the lawyers
10 were?
- 11 A. Yes.
- 12 Q. And is it fair that they were the primary representatives
13 of Native persons in the courts?
- 14 A. Yes, I would say.
- 15 Q. And they were -- have involvement on behalf of Native
16 persons far more than the private bar?
- 17 A. I'm sorry.
- 18 Q. They were more involved with Native persons than private
19 lawyers?
- 20 A. Yes.
- 21 Q. Did you do anything, Mr. Francis, to attempt to educate Legal
22 Aid about the concerns that you had regarding comprehension,
23 understanding, language, those kinds of things?
- 24 A. Yes.
- 25 Q. And how did you go about doing that?

BERNARD FRANCIS, by Mr. D. Pink

- 1 | A. I sat -- Mr. Mollon and I sat down on several occasions and
2 | I attempted to explain the -- the complexities of the differences
3 | between the Micmac language and the English language and some
4 | of the problem areas that were emerging as a result of my
5 | observing the procedures and sometimes they -- he was
6 | sympathetic and sometimes he was -- he felt them to be extremely
7 | funny.
- 8 | Q. So in addition to the court having some difficulties in
9 | appreciating the -- I'll use the word -- subtleties
10 | or the differences with Micmac accused persons --
- 11 | A. Yes.
- 12 | Q. -- Legal Aid also had that same problem?
- 13 | A. Well, he had no difficulty understanding them once I explained
14 | them although he still thought that they were funny. Some
15 | of them.
- 16 | Q. Did you request that Mr. Mollon do things that would improve
17 | the position of Micmac accused individuals in the courts?
- 18 | A. No, I didn't. I wanted him to be aware so that if there
19 | was ever a misunderstanding he would be the one to say
20 | excuse me, Your Honour, but I don't think my client here
21 | understands what's going on here.
- 22 | Q. And did he do that?
- 23 | A. Yes, I believe he did do that on occasion.
- 24 | Q. So do I take it that as a result of your working with Mr. Mollon,
25 | as a result of Nova Scotia Legal Aid becoming more aware of

BERNARD FRANCIS, by Mr. D. Pink

- 1 | the difficulties of Micmac accused persons in the courts
2 | that it was easier for those individuals because of the
3 | knowledge of defense counsel? Is that a fair conclusion?
- 4 | A. Yeh but there was a lot that I didn't know at the time, you
5 | see. I couldn't adequately explain to Mr. Mollon just
6 | exactly what was happening between the conceptual differences
7 | between the two languages because I didn't have any
8 | linguistic sophistication at the time except to say that
9 | I was a Micmac -- fluent Micmac speaker and I guess you
10 | could say a fluent English speaker. But I couldn't adequately
11 | describe to him just exactly what was going on in the mind
12 | of the Native person when certain questions were asked of him.
- 13 | Q. So as a result even of the court worker program in the early
14 | 1970's the knowledge didn't exist to truly benefit the Native
15 | persons who came before the courts in this area?
- 16 | A. Well, except to the extent that I knew when they misunderstood
17 | and I knew when they were answering questions they didn't
18 | understand. I couldn't give you, for instance, a -- you
19 | know -- I couldn't do a paper on it at that time.
- 20 | Q. You knew they had a problem. You just didn't know what the
21 | solution was?
- 22 | A. I had an idea as to what a solution was. The solution was
23 | to have an interpreter but that's it.
- 24 | Q. And was that the only solution?
- 25 | A. At that time that's all I thought about, yes.

BERNARD FRANCIS, by Mr. D. Pink

- 1 Q. You spoke this morning, Mr. Francis, about Gordon Coles.
- 2 A. Yes.
- 3 Q. Gordon Coles was the Deputy Attorney General of this
4 province in the early 1970's. Correct?
- 5 A. I don't know sir. I knew he was involved with the department.
6 I don't remember exactly --
- 7 Q. You knew that he was a senior person in the department?
- 8 A. No, sir.
- 9 Q. You didn't know that?
- 10 A. No.
- 11 Q. In any event, you indicated that you believed that Mr. Coles
12 was a supporter of the court worker program?
- 13 A. In principle he was a supporter although he didn't want
14 to fund it.
- 15 Q. Sure. I guess that's a constant problem with government, isn't
16 it.
- 17 A. It could be.
- 18 Q. Never enough bucks to go around.
- 19 A. That may be.
- 20 Q. The concern that you expressed this morning is that he didn't
21 want the court workers to be trespassing into the lawyer's work.
- 22 A. Yes.
- 23 Q. Is that a fair summary of what you said?
- 24 A. Yes.
- 25 Q. And as a result of whatever took place over your time in the

BERNARD FRANCIS, by Mr. D. Pink

1 Court Worker Program as a result of whatever concerns you have
2 you never took them directly to Mr. Coles did you?

3 A. No, I didn't.

4 Q. The Advisory Committee, one set of minutes of which we
5 saw this morning, was a Provincial Advisory Committee for
6 the Court Worker Program.

7 A. Yes.

8 Q. Do you have exhibit 68 in front of you?

9 That's the minute on Department of Social Services letterhead.

10 A. Yes, okay.

11 Q. Now, the Advisory -- These minutes are dated November, 1974.

12 A. Yes.

13 Q. Had there been meetings with regard to the program with the
14 province prior to this meeting?

15 A. Yes, although I'm not -- I'm not really sure but I believe
16 that there were meetings prior to this one, yes.

17 Q. And the meeting of November, '74 was to be followed by a
18 meeting in January of 1975. Six weeks, perhaps two months
19 later. Was that the frequency at which the Advisory Committee
20 met?

21 A. No. It wasn't.

22 Q. What was the regularity of there meetings?

23 A. Gee, I don't remember. I think it -- Usually when we met we
24 wanted to discuss funding and how the program would run.

25 Q. And from the time that the program was set up in 1970, '71 --

BERNARD FRANCIS, by Mr. D. Pink

- 1 A. Yes.
- 2 Q. -- was there a Provincial Advisory Committee that you were
3 liasing with?
- 4 A. I'm not absolutely certain. I think there was.
- 5 Q. In any event the province was providing some of the money,
6 wasn't it?
- 7 A. I believe so. Yeh, that was on the recommendation of the
8 Federal government at the time.
- 9 Q. Sure. And the Advisory Committee was another avenue that
10 you had available to you for complaints about problems you
11 were having?
- 12 A. Yes.
- 13 Q. Did you take advantage of that avenue?
- 14 A. I took advantage of that avenue by meeting with one person.
- 15 Q. That person being whom?
- 16 A. Joe B. Marshall.
- 17 Q. And that's the Mr. J. B. Marshall who's referred to in the
18 minutes?
- 19 A. Yes.
- 20 Q. And Mr. Marshall was affiliated with the Union of Nova
21 Scotia Indians?
- 22 A. Yes.
- 23 Q. As I understood you to say he was working on treaties or in
24 that field -- in that area?
- 25 A. I believe -- Yes, I believe he was with the Lands and Treaty

BERNARD FRANCIS, by Mr. D. Pink

- 1 Rights Research Program. I'm not certain about that. I think
2 he was.
- 3 Q. And besides Mr. Marshall did you speak to anybody else?
- 4 A. Yes, I spoke to the Director of the Lands and Treaty Rights
5 Research Program, Stuart Killen.
- 6 Q. The last name again is?
- 7 A. Killen. K-i-l-l-e-n.
- 8 Q. Now, you attended Advisory Committee meetings as the co-ordinator
9 of the program?
- 10 A. I believe so.
- 11 Q. So if we were to look at the minutes of those meetings we
12 should be able to determine what kind of concerns you were
13 raising at least at the Advisory Committee itself?
- 14 A. Yes. You should be able to although I didn't see any there.
- 15 Q. And at the time of this meeting -- this was just prior to
16 your leaving the program?
- 17 A. I suppose.
- 18 Q. Well, if you look at page two of the minutes, the second
19 to the last paragraph it reads:
- 20 The Committee members were informed during the
21 closing stages of the meeting that Mr. Bernard
22 Francis, Co-ordinator of the Native Court Worker
Program would resign his position in the near
future.
- 23 A. Yes.
- 24 Q. Members expressed their regret and were informed
25 by Mr. Francis that a replacement would be made
in the near future. Mr. Francis has a candidate in mind
that upon finalizing the name will be forwarded to
Committee members.

BERNARD FRANCIS, by Mr. D. Pink

- 1 A. Yes.
- 2 Q. Do those minutes fairly reflect what took place at the
3 meeting?
- 4 A. I don't remember the meeting at all.
- 5 Q. You don't remember the meeting at all?
- 6 A. No.
- 7 Q. But at least we can -- from reading them we can conclude
8 that there's no reference there to serious complaints or
9 problems about the program at that stage?
- 10 A. That's right.
- 11 Q. And in fact if you look at the second paragraph on that
12 page the minutes reflect that the Committee made it known
13 that it was quite prepared to assist the co-ordinator of the
14 program in every way possible.
- 15 A. Where is that?
- 16 Q. The second paragraph on page two, the last sentence.
- 17 A. Last sentence.
- 18 Q. Take your time in --
- 19 A. Yes. Yeh.
- 20 Q. I suggest to you, Mr. Francis, that within the financial constrain
21 that existed you got good support from the province and from
22 the Attorney General's department and from the Department
23 of Social Services for that program?
- 24 A. Initially I'd say yes.
- 25

BERNARD FRANCIS, by Mr. D. Pink

1 BY MR. CHAIRMAN:

2 Q. Am I entitled to conclude that it may not have continued?

3 A. That's right. I started to get flack afterwards because
4 I think that some of the members might have thought that
5 we may have been overstepping our boundaries.

6 BY MR. D. PINK:

7 Q. Well, just to be clear, Mr. Francis, this minute is probably
8 if not the last -- at least the second of the last minute
9 in which you were involved with Advisory Committee?

10 A. It could be. Yes.

11 Q. And at that time you were getting good co-operation from the
12 province?

13 A. Yes.

14 Q. So any comments that you made to the chairman relates
15 to a period after which you were no longer involved in the
16 program itself?

17 A. I felt very strongly about some of the things that were
18 going on at the time and one of the things that I was hoping
19 to get was the money and many a times I wouldn't raise
20 any real serious issues with them with regards to how Native
21 people were treated because I was afraid that we wouldn't get
22 the funding for it. So I expressed my concerns to Mr. Joe
23 B. Marshall. I told him about my -- my concerns about what
24 was happening in that court room and didn't know exactly
25 what to do and I needed a lot of support. I felt afraid, you

BERNARD FRANCIS, by Mr. D. Pink

- 1 know, for myself and for the Native people.
- 2 Q. You're surely not saying, Mr. Francis, that in spite of your
3 strong feelings which you've already expressed to us today
4 that a concern about money was the restraining factor that
5 kept you from raising these issues?
- 6 A. I raised the issues but not in the Committee.
- 7 Q. Exhibit 69 which Mr. Spicer showed you this morning which
8 contains the report by Mr. Lynk.
- 9 A. Yes.
- 10 Q. You indicated that having read from page two of Mr. Lynk's
11 report that you -- that that fairly reflected what you said
12 to Mr. Lynk?
- 13 A. Yes, I suppose. There are words in there that I didn't use
14 but that's neither here or there I guess.
- 15 Q. Okay. And the reference there to the fact that Mr. Marshall
16 was -- you had took some pains to say that the word
17 excellent wasn't your word with regards to a liar.
- 18 A. Yes.
- 19 Q. But is that a fair comment that you believe Mr. Marshall to
20 be capable of not telling the truth?
- 21 A. I suppose just like all of us.
- 22 Q. Is it fair to say that a lie is a lie whether it's in English
23 or in Micmac?
- 24 A. I don't know, sir. I really don't know. I mean sometimes
25 Micmac people preceive the truth as being different than what

BERNARD FRANCIS, by Mr. D. Pink

- 1 a non-Indian speaking person preceives it to be.
- 2 Q. I won't get in to that but the --
- 3 A. That's an interesting one sir. I've --
- 4 Q. The comment that's referred to in Mr. Lynk's report --
- 5 A. Yes.
- 6 Q. -- is another incident in which you knew that Mr. Marshall --
- 7 Donald Marshall Junior hadn't told the truth. Correct?
- 8 A. Let's put it this way. I suppected that there were things
- 9 that he didn't tell me. I'd be more inclined to say that
- 10 he was withholding something.
- 11 Q. Well, let's look at the incident only for purpose of illustration
- 12 A. Yes.
- 13 Q. -- that Mr. Lynk refers to in his report and I'll quote.
- 14 He ...
- 15 referring to you
- 16 recalls one instance when our subject was about
- 17 12 years old. He damaged a pop machine at the
- 18 community centre on the Reserve in front of about
- 19 12 adults. When Mrs. Marshall was advised of
- 20 subjects' actions, she denied that he did this as
- 21 did our subject. And incidents such as this continued
- 22 and became more serious as time went on.
- 23 A. Yes.
- 24 Q. That's an accurate statement of what you said to Mr. Lynk?
- 25 A. I'm not really sure. I can only say that that particular
- incident I remember and it was a complaint by one of the elders
- that there was a pop machine broken in to and Mr. Marshall was

BERNARD FRANCIS, by Mr. D. Pink

1 around at the time and I remember that particular incident
2 but the rest of it I don't know.

3 Q. Do you recall that Mr. Marshall wasn't truthful about that
4 particular incident?

5 A. I don't know.

6 Q. You don't recall today?

7 A. I don't -- I don't recall then. I mean I don't know
8 what he said to his mother. He didn't -- I -- He didn't
9 discuss the incident with me.

10 MR. RUBY:

11 My Lord, as I understand it. He didn't see the incident itself.

12 BY MR. D. PINK:

13 Q. But you did tell Mr. Lynk about this incident?

14 A. Yes.

15 Q. And the reference was to the truthfulness of Mr. Marshall?

16 A. Yes.

17 Q. And you were aware that Donald Marshall Junior had further
18 troubles with the law subsequent to the incident with the
19 pop machine and prior to his being charged with the murder
20 of Mr. Seale?

21 A. Yes. I was aware of it.

22 Q. And made -- Some more serious than others?

23 A. I don't know exactly what -- what brushes he had with the law.
24 I knew that he had something. I didn't know to what degree of
25 seriousness.

BERNARD FRANCIS, by Mr. D. Pink

- 1 Q. You referred to Mr. Marshall as "bold kid." What did you
2 mean by that?
- 3 A. Well, I think --
- 4 Q. I think I should ask, is that your word?
- 5 A. No, it isn't but I think that perhaps at that time I just
6 thought him to be a bit bold to have -- to have taken something
7 out of that pop machine in front of elders. It was just
8 that one incident that I was basing that comment if I made
9 that -- If I used that particular word "bold".
- 10 Q. Was it your testimony, Mr. Lynk, that you had had no previous
11 involvement with Mr. -- Mr. Francis, pardon me. -- that you
12 had had no previous involvement with Mr. Marshall prior to
13 the murder charge in terms of his being in front of the courts?
- 14 A. That's right.
- 15 Q. We've had some evidence by way of documents that have shown
16 that several charges in which Mr. Marshall was before the
17 courts, you had no direct connection with him on any of those?
- 18 A. That's right.
- 19 Q. So I take it from that you didn't have involvement with all
20 Native persons who came before the courts?
- 21 A. No, that's right.
- 22 Q. You referred to the incident with Mr. Christmas?
- 23 A. Yes.
- 24 Q. And the guilty plea to the charge that appears-- You no longer
25 have exhibit 48 in front of you so I'll just read it.

BERNARD FRANCIS, by Mr. D. Pink

1 A. Yes, I have it here.

2 Q. Oh, you have it there still at page 46?

3 A. Yes.

4 Q. I understand that Mr. Christmas plead guilty to
5 the charge that he did without lawful excuse enter
6 a dwelling house situated at 142 Membertou Street,
7 Sydney with intent to commit an indictable offense
8 therein to whitt the crime of indecent assault
9 contrary to section 3071 of the Criminal code.

8 A. Yes.

9 Q. And you believed that the two year sentence that he received
10 for that was exorbitant?

11 A. Yes.

12 Q. Were you aware at the time that the maximum penalty for
13 break and enter in to a dwelling house was life imprisonment?

14 A. No, I wasn't aware of that. I was -- I was paying more
15 attention to the fact that Mr. Christmas told me that he
16 was completely innocent of that.

17 COMMISSIONER EVANS:

18 It would be amazing if anyone was ever sentenced to the
19 maximum for that offense.

20 MR. D. PINK:

21 I appreciate that, My Lord.

22 BY MR. D. PINK:

23 Q. Were you aware, Mr. Francis, that that was not his first
24 involvement with the law?

25 A. I'm not sure about that.

BERNARD FRANCIS, by Mr. D. Pink

1 Q. And there was a suggestion that you were somewhat surprised
2 that there hadn't been a pre-sentence report. Was that the
3 import of your testimony this morning?

4 A. Yes.

5 Q. And is it fair to say that pre-sentence reports were generally
6 used for offenders coming before the courts for the first
7 time?

8 A. I suppose. You know that's why, you know, I'm not absolutely
9 sure to what extent he was involved with the law before.

10 Q. Just a couple of final things, Mr. Francis. Just so that
11 I understand. You've given us testimony today some 13 or 14
12 years after you left the program regarding some of the concerns
13 that you had back in the early 1970's. You never raised
14 those concerns with anybody in the Attorney General's Department
15 directly, did you?

16 A. That's right. I didn't raise them. I regret not have raised
17 them at the time and I wish I was just a little bit sharper
18 with some of those things but I'm afraid I wasn't. I was --
19 I just felt that I wasn't in any position to at the time except
20 to go to the Union Of Nova Scotia Indians which is a political
21 representative body for the Native people.

22 Q. And that was the only avenue that you followed? Except the
23 meeting with Judge MacDonald?

24 A. Yes, that meeting to me was a very crucial one. I had hoped that
25 -- that he would really appreciate my concerns at the time.

BERNARD FRANCIS, by Mr. Ross

1 also a critical look at the general administration of the
2 criminal justice?

3 A. My thinking wasn't that sophisticated at the time but I
4 guess that's what I was doing, yes. I observed what was
5 going on in the court system. Yes.

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BERNARD FRANCIS, by Mr. D. Pink, by Mr. Ross

1 Although I got along well with John F. MacDonald but that
2 was very disturbing to me.

3 Q. And when nothing further happened as a result of your meeting
4 with Judge MacDonald you didn't take it any further?

5 A. Yes, I mentioned that I did take it further. I went to the
6 Union of Nova Scotia Indians and I raised the issue with them.

7 Q. Other than taking it to the Union of Nova Scotia Indians you
8 took it no further?

9 A. That's right.

10 Q. And again you never took it to anybody in the Attorney
11 General's department.

12 A. No, sir.

13 MR. CHAIRMAN:

14 This is the sixth time that we've heard that question.

15 MR. D. PINK:

16 That's all. Thank you.

17 MR. PRINGLE:

18 No questions.

19 MR. CHAIRMAN:

20 Mr. Ross?

21 BY MR. ROSS:

22 Q. Mr. Francis, my name is Anthony Ross in spite of the fact
23 that you referred to me as Tony Ross; however, I take it
24 that as a Court Worker when you attended court you were
25 really taking a critical look at the court system and

BERNARD FRANCIS, by Mr. Ross

1 | Q. From a critical point of view?

2 | A. Yes.

3 | Q. And I take it that you would not have just sat through cases
4 | where Indians were the accused. You'd sit through the Court
5 | sessions and see Indians as well as other people being
6 | processed?

7 | A. Yes, if an Indian person wasn't called initially, I would
8 | sit and wait until an Indian person was called.

9 | Q. Sure. Now did you find that there was any general difference
10 | between the treatment of White people and others who appeared
11 | before the Court?

12 | A. Yes.

13 | Q. Did you find that there were different attitudes when dealing
14 | with White people and when dealing with others?

15 | A. Yes, I'd have to say yes.

16 | Q. And did this difference in attitude also relate to Black
17 | people?

18 | A. Yes.

19 | Q. And I would take it that the difference would be a negative
20 | difference rather than a positive difference when dealing
21 | with Black people. Am I correct with that?

22 | A. Yes.

23 | Q. And what about Counsel? What about Counsel representing
24 | members of minority groups? Did you find as a general rule
25 | that Judges tended to be impatient with Counsel representing

BERNARD FRANCIS, by Mr. Ross

- 1 | members of minority groups?
- 2 | A. I paid more attention in this particular case with the Counsel
3 | that was -- that were representing Native people, yes, and I
4 | found them to be impatient.
- 5 | Q. I see. So I take it you didn't observe for the Brothers then?
- 6 | A. Yes, I did, but I don't remember exactly what my feelings were
7 | at the time.
- 8 | Q. I see. Well, we'll move on. What about the attitude of -- of
9 | the -- the members of minority groups having to rely on the Legal
10 | Aid system? Did they appear to be full of confidence in that
11 | system, that it worked to their best interests?
- 12 | A. No.
- 13 | Q. And was this a concern that was expressed from time to time?
- 14 | A. By the Black community you mean?
- 15 | Q. By the Black or the Indian community?
- 16 | A. Yes.
- 17 | Q. Now do you recall that back down around 1973 there was something
18 | called choice of Counsel where according to certain crimes, the
19 | accused can either proceed with their member of the Legal Aid
20 | staff or he can go out and find his own Counsel and practice
21 | pursuant to -- and be represented pursuant to a Legal Aid
22 | Certificate. Do you recall those days?
- 23 | A. Somewhat, yeh.
- 24 | Q. Did you find at that time -- Is it your recollection that at
25 | that time members of minority groups given an opportunity to

BERNARD FRANCIS, by Mr. Ross

1 | select their own Counsel would select other than the Legal
2 | Aid staff?

3 | A. Yes.

4 | Q. Am I to understand from your answers that although you had gone
5 | to Court and although you had spent a substantial amount of time
6 | sitting through cases, your emphasis and if you had took notes
7 | or paid any particular attention, it would be when Indians were
8 | the accused rather than anybody else?

9 | A. No, I -- I must admit I paid attention to the Black people that
10 | were charged and how they would be treated in Court.

11 | Q. And perhaps you can tell the Court -- tell this Commission, how
12 | did you find that Black people were treated?

13 | A. It depended on how they walked in many cases.

14 | Q. The walk?

15 | A. Yes.

16 | Q. Yes.

17 | A. And stood. I'm not familiar with your -- with some of the terms
18 | that are used. We have our own terms in Micmac, but what do they
19 | call it, jive walking where they -- they're sort of -- I don't
20 | know. I don't know how to do it, but I'd gladly demonstrate it,
21 | but it all depended on how they walked in front of the courtroom
22 | because they would be asked to stand up and walk close behind
23 | the prosecutors, in front of the Judge and it really depended on
24 | how they walked and how they stood. If one shoulder was down
25 | like this, for instance, with a hand on the hip they would be

BERNARD FRANCIS, by Mr. Ross

1 | told to stand up straight with a very harsh voice so they would
2 | stand up straight. If they happened to be holding this little
3 | hat in their hand somewhere they would be told to put that down,
4 | you know, little things like that that I noticed.

5 | Q. Prejudgement based on attitude?

6 | A. Is that a comment or a question?

7 | Q. Is that a fair -- a fair way that I'm putting it?

8 | A. Yeh, I'd say that that certainly had an influence.

9 | Q. I see.

10 | A. Micmacs were different that way. They were more reserved. If--
11 | If, for instance, a Judge at the end of the summations we'll
12 | say, asked the Native person to --"What do you have to say on
13 | your behalf?", and the Native person would reply -- oh, would
14 | just shake his head as if to say nothing. On many cases I took
15 | that to mean that they were unco-operative and they didn't
16 | want to have anything to do with the system whereby I knew that
17 | they didn't like this business about being in the spotlight
18 | and they weren't articulate enough anyhow to perhaps explain the
19 | circumstances of what happened and why they were in that
20 | position. The Blacks were different in the way that they
21 | articulated instances about -- about -- as to why they were
22 | there, except when they talked, they didn't talk standing at
23 | full attention. They'd talk with moving their body and head
24 | and you know, this kind of thing.

25 | Q. We call that rhythm.

BERNARD FRANCIS, by Mr. Ross

- 1 | A. What? Rhythm. Well, I'm glad you said that. But that --
2 | that wasn't -- That wasn't pleasing to particularly--particularly
3 | one Judge.
- 4 | Q. I see, and who was he?
- 5 | A. R. J. MacDonald.
- 6 | Q. Moving on to another area. Now were you living in the Membertou
7 | area?
- 8 | A. Yes.
- 9 | Q. You were living on the Reserve?
- 10 | A. Yes.
- 11 | Q. Were you living on the Reserve in 1971?
- 12 | A. Yes.
- 13 | Q. Now my understanding is that shortly after the death of Sandy
14 | Seale there was a rumour on the Reserve that there might be
15 | reprisors. Did you hear of that rumour?
- 16 | A. I heard that rumour but I'm very surprised at that because I --
17 | I have -- It just so happened that I had quite a few friends
18 | from the Pier district who were Black and I -- I didn't have
19 | any feelings like that. As a matter of fact, they were
20 | sympathetic, you know, to what happened, you know.
- 21 | Q. Well, the thing that I find a little troublesome is that we heard
22 | evidence from Roy Gould and as I recall his evidence there was
23 | some indication that the Reserve should be made ready for
24 | trouble, ready to meet trouble, and to that extent they had
25 |

BERNARD FRANCIS, by Mr. Ross

1 put up roadblocks. The police from Sydney was co-operating with
2 members of the Reserve and the members of the Reserve were
3 equipped with two walkie-talkies. This is my understanding
4 of Roy Gould's evidence?

5 A. Yes.

6 Q. However, when I read Exhibit 69, the fourth page in, and the
7 paragraph that begins "Chief John MacIntyre...", it goes down
8 and the last sentence -- it says:

9 During my visit...

10 Sorry.

11 During my house visit at the Marshall
12 home, Pius recalled that he had to
sit upstairs...

13 ...sit in the upstairs window alone
14 with a shotgun while his family resided
in Whycomomagh...

15 Now the thing that I'm finding difficulty with is if there was
16 this apprehension of reprisal and it appeared to be fairly
17 common knowlege -- Roy Gould definitely knew of this, and as
18 far as somebody sitting with a shotgun, it is contrary to the
19 evidence that was given by Roy Gould and I would like to know
20 from you, were you aware of any other armed persons on the
21 Reserve that night?

22 A. Any other armed persons?

23 Q. Armed persons, yes.

24 A. Gee, no, I wasn't.

25 BY COMMISSIONER EVANS:

Q. Were you aware that anyone was armed?

BERNARD FRANCIS, by Mr. Ross

- 1 | A. No, I wasn't aware that anyone was armed.
- 2 | BY MR. ROSS:
- 3 | Q. I'll take you to the interviews with Donnie Marshall and his
4 | lawyer. You sat in on the first interview I understand it
5 | with Donnie Marshall, Simon Khattar, and Moe Rosenblum?
- 6 | A. Yes.
- 7 | Q. Yes. During that interview was there any suggestion by Donald
8 | Marshall, Jr., that he and Sandy Seale were friends?
- 9 | A. I'm not sure. I don't remember.
- 10 | Q. Was there any suggestion at that meeting that Sandy Seale and
11 | Donald Marshall were involved in any attempted robbery?
- 12 | A. No.
- 13 | Q. Isn't it true that the first time this robbery theory came up
14 | was after Donald Marshall had been convicted?
- 15 | A. I didn't hear about it until in the '80's.
- 16 | Q. Precisely, and you were fairly close to Donald Marshall. You
17 | spoke with him from time to time about the matters of the night
18 | of May the 28th?
- 19 | A. Well, on one occasion where I met with him on the Reserve and
20 | on two other occasions when I met with him at the County Gaol.
- 21 | Q. Sure, and on all of these occasions I take it that Donald
22 | Marshall never said anything which would suggest to you that
23 | he and Sandy Seale were quite close friends, number one?
- 24 | A. I never -- No.
- 25 | Q. And further that they were involved in any robbery whatsoever?

BERNARD FRANCIS, by Mr. Ross

- 1 | A. That's right.
- 2 | Q. And further that they even had plans to meet at any time during
3 | the night of the 28th of May?
- 4 | A. No.
- 5 | Q. Did Donald Marshall ever account for his being in the company
6 | of Sandy Seale or Sandy Seale being in his company on the night
7 | of the 28th of May, 1971?
- 8 | A. Definitely not.
- 9 | Q. And when you expressed concerns to Donald Marshall that he might
10 | have been holding back information from you, did you press the
11 | point that it was important that he come clean and tell his
12 | whole story?
- 13 | A. Yes.
- 14 | Q. And was there any response to this?
- 15 | A. No.
- 16 | Q. I take it this was a private meeting between yourself and Donald
17 | Marshall, Jr.?
- 18 | A. The second one was a private meeting.
- 19 | Q. And you were speaking Micmac?
- 20 | A. Yes.
- 21 | Q. And did he understand Micmac?
- 22 | A. Yes.
- 23 | Q. So it added -- it gave a further degree of privacy as far
24 | as the discussion was concerned?
- 25 | A. Yes.

BERNARD FRANCIS, by Mr. Ross

- 1 Q. And even under these circumstances there was never any utterance
2 of any friendly relationship between himself and Sandy Seale?
- 3 A. No.
- 4 Q. And no -- no information -- no discussion whatsoever with
5 respect to any robbery?
- 6 A. That's right.
- 7 Q. And to even take it a little further, no discussions with
8 respect to rolling anybody for money or even bumming money?
- 9 A. No, I remember that very clearly, there was none.
- 10 Q. You spoke about receiving a letter -- sorry, about writing to
11 Marshall in Dorchester after you had spoken with the police about
12 something about a knife?
- 13 A. Yes.
- 14 Q. And Marshall wrote back to you?
- 15 A. Yes.
- 16 Q. And this would have been shortly after he was sentenced?
- 17 A. Yes.
- 18 Q. Probably in 19 -- late 1971 or sometime in 1972?
- 19 A. Yes, I'm not certain of the dates.
- 20 Q. And do you have the letter still?
- 21 A. No, I don't.
- 22 Q. But you recall receiving the letter?
- 23 A. Yes.
- 24 Q. I take it he expressed himself quite well? In the letter you
25 could understand him quite well?

BERNARD FRANCIS, by Mr. Ross, by Mr. Wildsmith

- 1 A. Yes, he expressed himself well. I mean I got the message as
2 to what he was saying, let's put it that way.
- 3 Q. Sure. What I'm getting at is he wrote English sufficiently
4 well that you could understand him?
- 5 A. Yes, although I'm not sure whether it was he that wrote the
6 letter. I believe it was he but I don't know.
- 7 Q. Oh, yes. That's the other problem. But for the ease of
8 communication you would say that his language was Micmac?
- 9 A. Yes.
- 10 Q. And I take it you didn't know of Sandy Seale or any other Black
11 speaking Micmac?
- 12 A. A few words.
- 13 Q. A few words. I wouldn't ask what those are. I think I know
14 them.
- 15 A. No. Thank you.
- 16 MR. ROSS:
- 17 Thank you very much, Mr. Francis, no more questions. Thank you.
- 18 BY MR. WILDSMITH:
- 19 Q. Mr. Francis, perhaps we could start with a few points of
20 detail first. With respect to the operation of the Court Worker
21 Program it's the case that your actual employer was the Union
22 of Nova Scotia Indians?
- 23 A. Yes.
- 24 Q. And so when you brought the complaints to the Union of Nova
25 Scotia Indians you were bringing it to them at least in part because

BERNARD FRANCIS, by Mr. Wildsmith

1 | they were your employer?

2 | A. Yes, that was in part as to why --

3 | Q. Okay. Another small matter, you made reference to the fact
4 | that outside of Sydney the other Reserves in the Province of
5 | Nova Scotia were in rural settings?

6 | A. Yes.

7 | Q. It is the case, is it not, that the Mill Brook Reserve is
8 | within the limits of the town of Truro?

9 | A. Yes, although I always viewed it as being different than
10 | Membertou in that it doesn't seem to be surrounded by the
11 | City.

12 | Q. It's not as -- in close proximity with the downtown area of
13 | Truro, for example?

14 | A. That's right.

15 | Q. In Exhibit number 69, the report by Mr. Lynk --

16 | A. Yes.

17 | Q. --there's a reference to Junior and this pop machine.

18 | A. Yes.

19 | Q. It is the case, isn't it, that you didn't observe that
20 | particular incident yourself?

21 | A. That's right.

22 | Q. And so you were just going by hearsay or rumour?

23 | A. Yes.

24 | Q. Now in Exhibit 68 which reports the Minutes of the Advisory
25 | Committee on the Court Worker Program, can you help us out

BERNARD FRANCIS, by Mr. Wildsmith

1 at all as to why it may have been that a reference is made
2 to the Attorney General sending a letter to the Judges to
3 explain the program? This is on page two, the paragraph that
4 has been referred to you already.

5 A. Page two. I think at the time I -- I made personal representation
6 to various organizations that were involved in some way or
7 another in the justice system, for instance, I introduced
8 myself to the National Parole Service and in particular a man
9 by the name of Jim MacLean who was the District Representative
10 for the National Parole Service at the time. I introduced
11 myself to the prosecutors in Sydney, and when I say introduced
12 myself, please understand that I was introducing the program
13 too and what it was done -- what it was doing.

14 Q. Yes.

15 A. I introduced myself to the Judges. I re-introduced myself to
16 the John Howard Society because I was no longer working with
17 them. I introduced myself to the Family Court services and
18 Probation people. So I guess at the time -- by that -- by 1974
19 I was a little bit concerned in that I always -- I began to
20 feel that I didn't have a backup and I started to lose respect
21 from the Judges.

22 Q. When you said backup, what did you mean by that?

23 A. I felt that I didn't have anyone behind me to -- to endorse
24 what I was doing.

25 Q. Fair enough.

BERNARD FRANCIS, by Mr. Wildsmith

- 1 | A. I -- And I remember at the time asking to -- asking the
2 | Committee if they would assist me in that way and it was
3 | decided that they -- that they would send a formal introduction
4 | to all these Departments.
- 5 | Q. And so the theory was that this would go under the signature
6 | of the Attorney General of the Province and that this ought
7 | to carry a lot of weight?
- 8 | A. That's right, and that would have made me feel much more
9 | secure.
- 10 | Q. And if I understood your previous evidence, you don't know
11 | whether or not such a letter was ever sent?
- 12 | A. I don't know.
- 13 | Q. If it was sent do you think you would remember it, I mean if
14 | you received a copy of it?
- 15 | A. Not necessarily, no.
- 16 | Q. Can you recall any letters that emanated from people like the
17 | Attorney General to Judges or prosecutors explaining the role
18 | of the Court Worker?
- 19 | A. I don't remember, no.
- 20 | Q. Now with respect to the operation of the Court Worker Program,
21 | it is the case that the Province of Nova Scotia assisted in the
22 | financing of it. Is that correct?
- 23 | A. Yes.
- 24 | Q. It's my understanding, and you can correct me if you have a
25 | different understanding, that the Federal Government required

BERNARD FRANCIS, by Mr. Wildsmith

1 a fifty-fifty splitting in the financing of the Court Worker
2 Program?

3 A. Yes.

4 Q. And that at least the -- the theory of -- at least part of
5 the theory as to why the Province ought to contribute is
6 because in Nova Scotia there are Indians -- there are Micmacs
7 who are not status registered Indians under the Indian Act?

8 A. That's true.

9 Q. And while we haven't yet received any evidence of this, it's
10 your understanding that the Union of Nova Scotia Indians
11 represents only the status registered Indians?

12 A. Yes.

13 Q. And that--it would be my understanding, and again correct me
14 if it's not yours, that the non-status Indians in the Province
15 are about equal in terms of numbers to the status Indians?

16 A. Yes.

17 Q. And that the Federal Government does not assume responsibility
18 for the non-status Indians?

19 A. That's true.

20 Q. And indeed politically they are represented by the Native
21 Council of Nova Scotia?

22 A. Yes.

23 Q. The Court Worker Program, I take it, was intended to cover
24 the non-status Indian as well as status Indians?

25 A. Yes, it was.

BERNARD FRANCIS, by Mr. Wildsmith

- 1 | Q. So that would be one reason why the Federal Government insisted
2 | on the Province paying fifty percent of the cost?
- 3 | A. I would guess, yes.
- 4 | Q. During the five years you were with the program was there any
5 | discontinuity in the program?
- 6 | A. Yes, I -- I believe there was because I think I remember going --
7 | a time when I wasn't getting any money at all.
- 8 | Q. You mean you weren't being paid a salary?
- 9 | A. That's right.
- 10 | Q. And is it fair to say that financing was always a problem with
11 | the program?
- 12 | A. It was always a program, yes.
- 13 | Q. And that's part of the reason you've indicated as to why you
14 | didn't raise your concerns about some bias or prejudice on the
15 | operation of the justice system with the Advisory Committee?
- 16 | A. Well, yes, I was hoping to sort of ingratiate myself to them
17 | and not to turn them off.
- 18 | Q. Fair enough. And the problem with financing, is it fair to
19 | say, that that was usually or always with the Provincial
20 | Government?
- 21 | A. It was -- It was with the Provincial Government most of the
22 | time, if not all the time because the Federal Government,
23 | I think, made a statement to the effect that they would
24 | match whatever the Province was putting up.
- 25 | Q. I'd like to direct your attention to the time at which the

BERNARD FRANCIS, by Mr. Wildsmith

- 1 | plea bargaining was taking place over Tom Christmas and the
2 | two charges that were outstanding at this time in respect
3 | of him?
- 4 | A. Yes.
- 5 | Q. And this would have been in 1971, prior to Mr. Marshall's
6 | trial. If I understood --
- 7 | A. Yes.
- 8 | Q. -- your evidence correctly you indicated that you were
9 | present in Mr. MacNeil's office, the Prosecutor Mr. MacNeil's
10 | office --
- 11 | A. Yes.
- 12 | Q. --when a discussion took place over this issue?
- 13 | A. Yes.
- 14 | Q. And in addition to yourself and Mr. MacNeil, the third person
15 | present was Mr. Elman who was Mr. Christmas's lawyer?
- 16 | A. Yes.
- 17 | Q. Now I take it that there was no discussion as to what sentence
18 | he might receive in relation to the offense that he pleaded
19 | guilty to?
- 20 | A. I don't remember.
- 21 | Q. And were you consulted or were you -- did you participate in
22 | any way in this discussion?
- 23 | A. Not really, no.
- 24 | Q. Were you there in the office for this particular reason,
25 | because of this matter over Tom Christmas being discussed --

BERNARD FRANCIS, by Mr. Wildsmith

- 1 | A. No.
- 2 | Q. -- or was there some other reason?
- 3 | A. No, I saw Frank go -- or Mr. Elman go in, I'm sorry, and I
4 | floated in afterwards because I -- I knew that we were there
5 | for that reason.
- 6 | Q. Okay. So you're suggesting the meeting wasn't called just for
7 | this purpose?
- 8 | A. No.
- 9 | Q. Okay, and were you -- Again I take it from your evidence that
10 | you were not present at the time when the sentence was imposed
11 | on Mr. Christmas?
- 12 | A. No, I wasn't there.
- 13 | Q. So you don't know what representations were made by Mr. MacNeil,
14 | Mr. Elman, or anyone else on the question of sentencing?
- 15 | A. No.
- 16 | Q. I'd like to direct your attention, and this is more for
17 | clarification on the record, to page 44 in Exhibit 48, and this
18 | with respect to the obstruction of justice charge --
- 19 | A. Yes, I have it.
- 20 | Q. In Mr. Spicer's examination of you, I believe, twice he used
21 | the word in relation to the obstruction charge that it was
22 | withdrawn, and I'd like to direct your attention and the
23 | Commission's attention to the bottom of page 44 where it
24 | says: "Not having offered any evidence, the charge is
25 | dismissed". Would that be consistent with your understanding

BERNARD FRANCIS, by Mr. Wildsmith

1 of what happened to the first charge?

2 A. I'm sorry. Would you please clarify that for me again?

3 Q. Yes. At the bottom of page 44 --

4 A. Okay.

5 Q. --in the handwriting --

6 A. Yes.

7 Q. --oh, about the fourth line from the bottom it says: "Not
8 having offered any evidence, the charge is dismissed". Then
9 it appears as though John F. MacDonald has signed, but --

10 COMMISSIONER EVANS:

11 What charge?

12 MR. WILDSMITH:

13 I believe from the context of the previous pages that this is the
14 obstruction of justice charge.

15 THE WITNESS:

16 Oh, yes.

17 COMMISSIONER EVANS:

18 I don't know how you can be sure of it.

19 MR. SPICER:

20 There are other documents, My Lord -- (inaudible, microphone not
21 transmitting).

22 COMMISSIONER EVANS:

23 Yes.

24 BY MR. SPICER:

25 Q. But I think there's a difference between withdrawing charges

BERNARD FRANCIS, by Mr. Wildsmith

1 | and having charges dismissed?

2 | A. Yes, the charge was withdrawn in this case if I remember
3 | correctly.

4 | COMMISSIONER EVANS:

5 | Okay, when it's withdrawn if it can be laid again or it's
6 | dismissed. Usually Defence Counsel is quite happy to get out with
7 | a withdrawal.

8 | BY MR. WILDSMITH:

9 | Q. Now going back to the questions that you were asked about your
10 | own education and here I'm really referring to your education
11 | outside of the Membertou day school?

12 | A. Yes.

13 | Q. You were asked questions related to the Micmac language being
14 | spoken around the school, and my question to you now is,
15 | can you help us out at all as to whether there was any content
16 | in the curriculum that you study from the time you went to the
17 | non-Indian schools about Micmacs and about Indians?

18 | A. Yes.

19 | Q. And can you help us out as to your impression of that kind of
20 | material?

21 | A. Well, we weren't described as being the most noble of savages.
22 | Everything that was said about Native people in the history
23 | books was negative and that it appeared as though that we had
24 | no contributions to make in human life. It had appeared as
25 | though that we were all superstitious in the way that we believed

BERNARD FRANCIS, by Mr. Wildsmith

1 the Creator -- in the way that we understood nature and the
2 way that we could sort of zip in and out of the spirit world.
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BERNARD FRANCIS, by Mr. Wildsmith

- 1 Q. I see. Was there any reference to Kluskap?
- 2 A. Yes.
- 3 Q. Kluskap.
- 4 A. Kluskap was always deemed to be a -- you know, by non-Native
5 people, and even now because of the education system, as
6 being an Indian god and many, many people, even Natives,
7 didn't take time to consider what Kluskap means. It comes
8 from the word "Kluskap" which means a trickster and certainly
9 not, not one you would consider god.
- 10 Q. Okay. Coming from the Membertou Reservation, was there any
11 reference to Membertou and who he was?
- 12 A. Not many people were familiar as to who Membertou was for
13 awhile. It's -- I think the information is emerging now as
14 to who he was in that he was the first to have been baptized
15 into the Christian faith in 1610.
- 16 Q. And in relation to the traditional structure of the Grand
17 Council in Nova Scotia?
- 18 A. Yes, he was the Grand Chief or the Niganows of the Grand Council
19 or Sante' Mawio'mi of the Micmac Indians.
- 20 Q. Can you indicate to us then based on what you've said so far
21 and anything else as to whether in your time in the non-Indian
22 schools whether there was any occasion or event whether it was
23 in the formal learning process or not in which you felt a
24 sense of pride in being a Micmac because of the way that the
25 school system operated or the authorities or the comments of

BERNARD FRANCIS, by Mr. Wildsmith

1 | the teachers?

2 | A. I honestly can't remember an instance.

3 | Q. Okay. There's been considerable evidence and emphasis placed
4 | so far on lack of understanding, particularly of a cross-cultural
5 | nature and in particular evidence about language problems and
6 | the value of an interpreter. I'd like to ask you a few questions
7 | centered around that now.

8 | A. Yes.

9 | Q. First of all, with respect to the role of an interpreter and
10 | the value of the interpreter, could you take us back to the
11 | incident that you described involving Mr. Ross -- Mr. Anthony
12 | Ross and Judge O'Connell, and indicate to us what it was that
13 | the Judge said to be best of your recollection and understanding
14 | as to why no interpreter would be permitted.

15 | A. Okay. I -- I knew the people that were being charged. They
16 | were from Eskasoni and I knew that Mr. Anthony Ross was
17 | defending several of them. So I approached him and told him
18 | that -- my feelings about the case and that these people are
19 | going to require an interpreter simply because they're not
20 | that well versed in the English language, and asked him if he
21 | would make the request. So Mr. Ross appeared before Judge
22 | Charles O'Connell and he made a request for an interpreter.
23 | Mr. or Charles O'Connell was extremely agitated by that. He
24 | said that these people -- he knew these people and that they
25 | spoke English and he's been dealing with Micmac's for a long

BERNARD FRANCIS, by Mr. Wildsmith

- 1 | time and they don't --
- 2 | Q. Excuse me, when he said "these people", was he referring to
3 | these accused as individuals or was he -- was this more of
4 | a remark about Micmac's or Indians?
- 5 | A. I think he was referring to a remark as Native people.
- 6 | Q. Okay.
- 7 | A. That these -- He said that these people do not need an interpreter
8 | and that he's had occasion to deal with Native people before
9 | and that they do well in the English language so he wasn't
10 | going to permit -- I forget what he called it. I think he
11 | called it -- he wasn't going to permit this charade, I believe
12 | is the word he used. And my feelings at the -- I was not
13 | totally surprised but I was embarrassed and I felt bad for
14 | having suggested to Mr. Ross to request an interpreter because
15 | he -- he got the bad end of the stick.
- 16 | Q. I see. Did Mr. Ross say anything to the Judge about him not
17 | understanding the accused himself and not understanding --
18 | them not understanding his questions or him their responses?
- 19 | A. No, Mr. Ross was very polite about the incident and he told
20 | me later that he felt that the Judge was wrong and that he
21 | was going to write a letter to someone to see to it that
22 | these people have an interpreter at their disposal.
- 23 | Q. Would it be fair to say Judge O'Connell's response was not
24 | tempered? A tempered response?
- 25 | A. He was angry.

BERNARD FRANCIS, by Mr. Wildsmith

1 | Q. Now we've had some other discussions about language problems
2 | and problems with understanding. Can you also help us out as
3 | to whether in the Micmac language there is a difference in
4 | the inflexion or emphasis in terms of the style of speaking,
5 | that is, whether -- when you seek to emphasis a point you
6 | speak in a flat or monotone tone in the Micmac language and add
7 | extra words or syllables in to express emphasis as contrasted
8 | with non-Indians?

9 | A. Yes, we have instances like that where sometimes the -- for
10 | instance, the Micmac language is a highly inflexional language
11 | in that for those of you who may have studied some of the
12 | Latin terminology you'll notice that you could take one verb
13 | in the Latin and have about two to three hundred different
14 | ending put on that one verb. Well, Micmac essentially works
15 | the same way, it's a highly inflexional language and it's
16 | very precise and very specific, and I would say that it has
17 | probably about five or six times more words than the English
18 | language does. So when you talk about emphasis, the Micmac
19 | verb is -- has everything in it including the person, such as,
20 | French does. The ending -- How a word ends, for instance, in
21 | a typical intransitive verb, will tell you what person that --
22 | that you're referring to, whether it's the first person, second
23 | person, or third person singular. And if you want to emphasize,
24 | for instance, that it was--for instance, some of the expressions in
25 | English might say -- you might say, "It was I and not you that

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1 was there". You know that expression that the English language
2 has. Well, Micmac would -- would do the same but without raising
3 the voice. They would simply add the pronoun, although the
4 pronoun is not necessary because it's included in the verb, but
5 they would add it for emphasis.

6 Q. So can you help us out as to what kind of impression the Micmac
7 might create in speaking English in the same way that he would
8 normally speak Micmac?

9 A. Well, he would speak more of in a monotone in rather than, you
10 know, an emotional style, for instance, if he was -- if he was
11 attempting to make a case for himself, you know, he wouldn't be
12 very emotional about it. He'd simply speak as a matter of
13 factly or straight forwardly rather than adding emotion to it,
14 you know.

15 Q. Yes, and could this also lead to some misunderstanding on the
16 part of the person who is listening to the Micmac speak
17 English?

18 A. Yes, you know, because I've heard statements made that --where
19 people would say, "By God, you know, if I was innocent, I really
20 would have told that Judge how I felt", and I would have said
21 this and I would have said that, whereas a Micmac person did
22 all those things without the raising of voice or becoming
23 extremely emotional. So I think the misunderstanding sometimes
24 would be that, gee, this person is not very strong in his
25 exertion about his innocence, therefore, there must be something

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- 1 | there.
- 2 | Q. Thank you. What about concepts like "please" and "excuse me"?
- 3 | A. Well, there are no concepts in the Micmac language for "please"
- 4 | and "excuse" simply because there's -- within the culture itself
- 5 | there's a code of conduct which is generally followed by -- by
- 6 | Micmacs, for instance, you don't have to say excuse me,
- 7 | for instance, because you wouldn't pass in front of an elderly
- 8 | person, whether that person be a man or a woman. You -- or you
- 9 | wouldn't do anything that would -- that would necessitate
- 10 | you having to say "excuse me". The same thing with "please".
- 11 | The word for "please", we have a word which is, you know,
- 12 | usually added to the sentence or the verb which would come
- 13 | across as being a polite way of asking without actually having
- 14 | to say "please". So I think there is a code of conduct which
- 15 | is followed, you know, but it's one of those things again that's--
- 16 | that's beginning to die, but it's still around where Micmac
- 17 | people act according to the code, and those expressions aren't
- 18 | necessarily --(Oh, what would you say?) they are not necessarily
- 19 | inherent in the way the Micmac people would address themselves,
- 20 | so therefore, they would carry that over into the English
- 21 | language and would neglect to say in the English language
- 22 | "please" and "excuse me" because they don't exist.
- 23 | Q. And an observer might take this as a sign of disrespect?
- 24 | A. That's right.
- 25 | Q. I'll come back to the code of conduct in a moment, but let me

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- 1 ask you a few more questions about language. What about if
2 a police officer is reading a Micmac person his rights--
- 3 A. Yeh.
- 4 Q. --do you think that there would be any problem involved in the
5 Micmac understanding that?
- 6 A. No question about it. That has happened on several occasions
7 where Micmac people because out of fear would say, "Yes, I
8 understand." because they're talking with a uniformed officer
9 when, in fact, they weren't fully aware of their rights.
- 10 Q. So even though the rights were read to a Micmac in English --
- 11 A. Right.
- 12 Q. --what you're saying is that it would not be understood and
13 what reasons can we give to -- for the Micmac not understanding?
14 Is it simply a matter of a lack of facility with English or
15 is it something more deep?
- 16 A. I would say that it's basically that. I would say that if the
17 rights were read to them in the Micmac language, they'd have
18 no difficulty understanding that.
- 19 Q. Okay.
- 20 A. Yeh, because even -- even the way that the rights are worded or
21 that particular piece that the R.C.M.P. or the City Police
22 read to an individual that's -- you know, that's a pretty
23 formal -- formal way of speaking and it's -- it's not -- a
24 Micmac person would find that difficult to grasp.
- 25 Q. Can you help us out with any other examples of lack of

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1 | understanding on the part of Micmac's by activities involving
2 | the police or the Court, for example, I think you were telling
3 | me one time about a charge of arson against some lady?

4 | A. Yes, at that time a lady from Membertou was charged and she
5 | was charged with arson, and I interviewed the lady. Of course,
6 | I knew the husband and the -- and the wife very well. They
7 | were an elderly couple and they had -- they had been drinking
8 | and so on and, you know, a garbage can caught fire which set
9 | fire to the kitchen area and she was charged for this, and I
10 | approached -- I went to the police station then and I went to
11 | see Detective John MacIntyre and I told him about my -- my
12 | concern about the serious nature of that particular charge and
13 | that -- that I didn't feel that this Mrs. so and so (I won't
14 | mention her name unless I have to.) was -- was guilty of this
15 | particular charge, and that -- that, in fact, it was an
16 | accident. They were drinking and so on. And I guess the most
17 | I can say at that time was Mr. MacIntyre was a bit rude. He was
18 | not interested in listening to me and he thought that there was
19 | enough evidence there to warrant this lady being charged and
20 | that he had no more to say about it. So I left and I went to
21 | the Prosecutor's office to sit with Don C. MacNeil, and I sat
22 | with Mr. MacNeil. I expressed my concerns to him as I expressed
23 | to Mr. MacIntyre about this lady and then he asked me if I knew
24 | what arson was, and I said, "Yeh, I do". So I explained to
25 | him, you know, and he said -- he mentioned something about

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1 insurance. I said-- you know, sort of intimating that there
2 might have been some insurance on the house. I said, "Gee,
3 I don't think you'll find a house in Membertou that's insured".

4 Q. Why is that?

5 A. Generally people don't have any money to insure. You know,
6 it's extra money to insure houses, and particularly this
7 couple, and so anyway I couldn't -- I couldn't get him
8 to -- to reduce the charge to something else. I didn't know
9 what he could have reduced it to but I just didn't want this
10 lady to be charged with something that serious because I knew
11 that she was innocent of that particular charge, so --

12 Q. Just excuse me for a moment. What was your understanding of
13 how the fire took place?

14 A. I beg your pardon?

15 Q. How did the fire take place?

16 A. Well, they were drinking and someone threw a cigarette butt
17 in the garbage can.

18 Q. Yes, and it was their own home on the Reserve?

19 A. It was their own home on the Reserve, yeh.

20 Q. Okay.

21 A. So we were scheduled to appear, that is, this lady and I were
22 scheduled to appear on a particular morning and she was -- she
23 went down. I think the agreement that we made was that we meet
24 at the court house. So I walked in at nine-thirty and I believe
25 that's when the Court was due to begin or scheduled to begin, and

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1 | when I arrived everything was over and this lady was walking
2 | out and she had, you know, tears in her eyes and I asked her
3 | what -- what was wrong, and she said, "I'm going to gaol". So
4 | I said, "Why?", and this -- this may sound funny to you, but
5 | it's a fact. It's the way she understood it. She said, "For
6 | arsing around". And -- So anyway, "Well, what did they say?"
7 | So she explained and I said, "Well, what did..." -- "How long
8 | did you get?" I believe she said a year at the time. And --
9 | Gees, I was really -- really disappointed with this -- this
10 | case and I didn't know what to do. I got there late -- I got
11 | there on time. I got there at nine-thirty but they had started
12 | perhaps a few minutes before and I missed it completely.

13 | Q. So she pleaded guilty to the arson charge thinking it meant
14 | something completely different?

15 | A. That's right, so -- because as I explained it to her she was
16 | being charged -- I explained to her in Micmac that she was
17 | being charged for -- she was being accused for having set her
18 | own house on fire. She understood that okay, but the word
19 | "arson" -- I don't know. There's no way to interpret that in
20 | Micmac except in a vulgar way.

21 | Q. Fair enough. Coming back now to the comments you made,
22 | particularly with respect to Lou Matheson --

23 | A. Yeh.

24 | Q. --and putting the fence around Eskasoni, and I take it from your
25 | evidence that that isn't the only comment that he made, there

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- 1 | were others?
- 2 | A. Yes.
- 3 | Q. Oh, but that was the one that finally triggered you to say
4 | something to Judge MacDonald?
- 5 | A. Yes.
- 6 | Q. And am I correct in understanding that all of these comments
7 | were made in open Court on the record as part of his submissions
8 | to the Court?
- 9 | A. Yes.
- 10 | Q. Was another common thing for some Judges to do, to call Indians
11 | by their last names?
- 12 | A. Yes, that was one of the -- That was one of the instances I
13 | noticed in a courtroom where Micmac's would be addressed by
14 | their last name in a very sort of disrespectful way. There's
15 | no such thing as, for instance, to say, "Would you stand up
16 | please, Mr. Christmas". It would be something like, "Christmas,
17 | get up", something like that.
- 18 | Q. I see.
- 19 | A. That was common.
- 20 | Q. Was that different than with other accused?
- 21 | A. Yes.
- 22 | Q. In other words, the other accused were not commonly called by
23 | their last name?
- 24 | A. They were -- They were but there was a Mister in front of
25 | that.

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1 Q. Now you mentioned John MacIntyre a few moments ago. Now we've
2 heard some evidence that -- to the effect that the Indian
3 youth on the Reserve did not want to talk to John MacIntyre?

4 A. That's right.

5 Q. And a statement has been made and I want to know if you have
6 heard this statement made by one of the Indian youths: MacIntyre
7 didn't want the truth, is the reason why the youth didn't want
8 to talk to John MacIntyre. He wanted Indians.

9 MR. MURRAY:

10 With respect, can I have the reference for -- for what witness
11 said John MacIntyre? Does he know which --

12 MR. WILDSMITH:

13 I was about to ask this.

14 MR. MURRAY:

15 What witness are you -- What evidence are you referring him to?

16 MR. WILDSMITH:

17 I believe it was one of the police officers, Ambrose MacDonald --

18 MR. MURRAY:

19 Well, perhaps you could find the reference before you put it to --

20 MR. WILDSMITH:

21 Well, the question I'm going to put to this witness is from his
22 own knowledge and I could bring it to his attention in a different
23 way by simply asking him --

24 MR. CHAIRMAN:

25 Probably the best way to put it to the witness would be, if he had

BERNARD FRANCIS, by Mr. Wildsmith

1 | heard any statements attributable to Indians with respect to
2 | John MacIntyre.

3 | BY MR. WILDSMITH:

4 | Q. Would you answer His Lordship's question?

5 | A. Yes, I've heard it said by people around the Reserve, young
6 | people who would spend time off the Reserve, statements to
7 | the effect that MacIntyre was not interested in the truth, but
8 | he was interested in Indians and that was it.

9 | Q. And those -- That's a statement that you've heard yourself?

10 | A. Yes.

11 | Q. Made by Indian youth?

12 | A. Yes.

13 | Q. Anyone in particular?

14 | A. I'm not absolutely certainly but I thought perhaps maybe
15 | Tom Christmas made that statement at one point. I'm not sure.

16 | Q. Thank you. Now have you, yourself, heard disparaging remarks
17 | or disrespectful remarks to yourself as an Indian or that other
18 | people have made about Indians?

19 | A. Do you mean in Court?

20 | Q. Yes, or generally in your time spent around Sydney?

21 | A. Yes, there were some. There were remarks. I was in situations
22 | where Micmac's were being talked about and I was sitting there
23 | amongst non-Indian people that were talking about Micmac's and--

24 | Q. Did they know you were a Micmac?

25 | A. No, they didn't, nor did I volunteer the information until they

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1 | got both feet in, but I was in the situation once where the
2 | Minister of Finance for the Province of Nova Scotia, Greg Kerr
3 | and another gentleman who is the assistant to him, his name
4 | is Bill Whyte, I believe. I was asked by --

5 | MR. D. PINK:

6 | My Lord, before he completes this -- I'd like to raise on the
7 | issue of relevance. We're dealing with the -- the Court system
8 | with the administration of justice, and I don't know what the
9 | reference is to the Minister of Finance, how it's relevant or
10 | applies to the Commission.

11 | MR. CHAIRMAN:

12 | What's beginning to cause me some concern is that references are
13 | being made to people who -- I'm quite certain who will not be
14 | called before this Commission to defend themselves because they
15 | couldn't conceivably be involved in the criminal justice system.

16 | I have to ask Counsel to -- and remind Counsel that the terms
17 | of reference of this Inquiry is primarily and almost specifically
18 | to look at the Donald Marshall, Jr., conviction and to make
19 | recommendations in the hope that that there will not occur again
20 | in the criminal justice system.

21 | We as a Commission took it upon ourselves or maybe there are
22 | many who will argue that we went way beyond our terms of
23 | reference, but we've done it to examine the criminal justice
24 | system with a view to ascertaining whether or not racism played a
25 | role in the events that led to the conviction of Donald Marshall, Jr.,

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1 | of a crime that he had not committed. And if Counsel go too --
2 | start wondering beyond our very generous interpretation they may
3 | be doing a great disservice to the Commission and an even greater
4 | disservice to their -- to their -- to their clients because it will
5 | then provide people with the right to say that the Commission
6 | allowed evidence and extended its terms of reference way beyond those
7 | that can conceivably be read there, so I have to ask Counsel to --
8 | and we have been extremely flexible. The Rules of Relevancy have
9 | been so stretched from this Commission that the elasticity surprises
10 | me that it hasn't broken, but I will ask you Mr. Wildsmith in
11 | questions of this nature that by bringing in other people does not
12 | help the Commission at all and I don't think it helps the witness.
13 | I'm more concerned -- What I would ask is that the witness give
14 | us any examples at all and based upon his experience in the criminal
15 | justice system, and I have found your evidence, Mr. Francis, was
16 | based on your experience as a Court Worker to be of a great
17 | benefit to this Commission today and I'm sure like me you don't
18 | want the strength of that to be destroyed by extraneous comments.

19 | MR. WILDSMITH:

20 | Could I respond with just two points, My Lord. One is that I don't
21 | believe that Mr. Christmas's comments were going to relate to the
22 | Minister of Finance.

23 | MR. CHAIRMAN:

24 | It seemed to me like it was, but anyway --

25 | MR. WILDSMITH:

Well, I know he mentioned the Minister of Finance just to identify

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1 | the meeting I think, but I don't think the comments were going from
2 | Mr. -- or from the Minister of Finance, Mr. Kerr. The second
3 | point and which is a point that I do find somewhat troubling, is
4 | that Mr. Marshall was convicted by a jury and Mr. Francis has
5 | already indicated that in his counselling as a Court Worker he
6 | steered Indians away from juries and I was going to come around
7 | to ask him more particularly why, but one reason might have been
8 | because of more widespread concerns about bias or prejudice on the
9 | part of jury members, and it's hard to --

10 | MR. CHAIRMAN:

11 | I know it is, and we're having the same difficulty, Mr. Wildsmith,
12 | as you're having --

13 | MR. WILDSMITH:

14 | Yes.

15 | MR. CHAIRMAN:

16 | --in trying to preserve the integrity of the Inquiry and also the
17 | integrity and the strength of -- of certain evidence that we are
18 | getting and, you know, I don't want to waste this opportunity
19 | to hear from Mr. Francis who I'm sure will be discussing with
20 | some very knowledgeable people who are doing some great work -- some
21 | good work for us on this issue, but I have a -- I have a -- Well,
22 | it's not proper to implicate people in any walk of life or of any
23 | race who haven't an opportunity to defend themselves. That's --
24 | Yes, Mr. Ruby.

25 | MR. RUBY:

I wonder if I might -- from the point of making it clearer, if I might

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1 suggest that it might be helpful to us to have the content of the
2 conversation that will shed a light on this very issue without
3 identifying by name anyone who's not part of the criminal justice
4 system itself and who would not otherwise be called. That might
5 not suit our purpose.

6 COMMISSIONER EVANS:

7 I'm just having some difficulty hearing you when you're addressing
8 somebody other than the Commission.

9 MR. RUBY:

10 I'm sorry. I was saying, My Lord, that it might suit our purposes
11 if we got the content of the conversation so that it will help us
12 get at the very issue which is of importance to us but at the same
13 time not identifying anyone by name unless they're already part of
14 the criminal justice system and are --

15 MR. CHAIRMAN:

16 Yeh, well, that's -- that's what I think was the purpose of Mr.
17 Pink's intervention, as I understood it.

18 MR. D. PINK:

19 That's correct, My Lord, but I -- Your Lordship, has covered the
20 general concern that I have. The reference is to two individuals
21 which is what prompted my interjection, and I didn't know what
22 he was going to say but it seems to me that when you start to impute
23 individuals who aren't going to be here, with the kinds of evidence
24 that we've heard today, it just gets us way off base and I
25 appreciate Your Lordship's comment and hopefully this witness

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1 | won't enter -- won't name names until the reference and the relevance
2 | to the Commission Inquiry is -- is put on the record.

3 | MR. CHAIRMAN:

4 | Has been established.

5 | MR. MURRAY:

6 | My Lord, I also have a further concern that if indeed remarks
7 | are going to be made about someone who is going to be called but
8 | the witness is not going to go into the detail about the meeting
9 | where a particular reference is made we're still faced with the
10 | difficulty. It's that a aspersion having been cast about someone who
11 | is going to be called, it's difficult to challenge that without
12 | going into the meeting where it took place and I see a difficulty
13 | with (inaudible; there is coughing.)

14 | MR. CHAIRMAN:

15 | Well, so far the evidence that we've received from Mr. Francis
16 | has been dealing with -- I have no difficulty with his evidence as
17 | it related to people who occupied positions at that time in the
18 | criminal justice system. What I don't want is to start wondering
19 | into other areas and we won't -- and it would not be relevant,
20 | areas that are not -- that are outside the criminal justice system
21 | and whilst we all, I'm sure could develop an argument that Finance
22 | Ministers are essential to the justice system. Yes, they control
23 | the public purse strings, but I think that that was way beyond the
24 | Rules of Relevancy, so, Mr. Francis, if you can avoid that pitfall--

25 | THE WITNESS:

Yes.

BERNARD FRANCIS, (DISCUSSION BETWEEN COMMISSION AND COUNSEL)

1 MR. CHAIRMAN:

2 --and I'm sure you can because you've done very well so far in avoidi
3 pitfalls, please do so.

4 THE WITNESS:

5 Thank you. I'll --

6 THE CHAIRMAN:

7 In the meantime I've forgotten all about the question, so --

8 MR. WILDSMITH:

9 I'm sorry?

10 MR. CHAIRMAN:

11 I can't recall what the question was but the Minister of Finance
12 seemed to be hovering in the background.

13 MR. WILDSMITH:

14 Yes, and again as I've indicated, I don't believe that Mr. Francis
15 was about to talk about the Minister of Finance and what the Minister
16 of Finance said and it certainly isn't proper or isn't appropriate
17 to cast any aspersions on him as an individual.

18 MR. CHAIRMAN:

19 All right.

20

21

22

23

24

25

JNR

BERNARD FRANCIS, by Mr. Wildsmith

1 BY MR. WILDSMITH:

2 Q. And perhaps what I'll do, Mr. Francis, is withdraw that question
3 and move you into a slightly different area.

4 MR. CHAIRMAN:

5 Yeh. Before you leave that though, Mr. -- I want -- I'd like to
6 leave with Mr. Francis, because I'm sure he's going to spend
7 some time -- I know -- I hope you do with our researchers. That's
8 the kind of information that is far more appropriately discussed
9 on one-to-one with people who are doing some studies for us, and
10 you know them. They are very experienced in that area. Yes.

11 MR. WILDSMITH:

12 Yes.

13 BY MR. WILDSMITH:

14 Q. With respect to your time, Mr. Francis, as a court worker, you
15 indicated that there was a change of attitude that seemed to
16 happen after a period of time after you were involved in the
17 system, and if I understood you correctly, you indicated that
18 before developing the Court Worker Program, you were concerned
19 about the way that Native people were treated in the criminal
20 justice system. I think this is based on your observations
21 at the John Howard Society.

22 A. Yes.

23 Q. Could you describe how it was you thought Native people were
24 being processed or taken through the criminal justice system
25 prior to you becoming involved as a court worker?

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1 | A. Native people simply were -- It didn't seem as though that
2 | anyone was particularly interested as to whether Native people
3 | understood what was expected of them in the courtroom. It
4 | didn't seem as though that anyone was interested as to whether
5 | they understood the proceedings, and it didn't appear-- It
6 | didn't appear as though anyone was interested in even doing
7 | Pre-Sentence Reports on Native people, and it seemed to me
8 | that they were dealt with very quickly. Most of them pleaded
9 | guilty and then that would be the end of it, and usually, it was
10 | a quick way of, as I called it, processing Native people, and
11 | you know -- It just seems as though that they had no one. They
12 | had no lawyers or lawyers that they were aware of. They had
13 | no money to hire lawyers, and there weren't any Native people
14 | who were really concerned about their welfare.

15 | Q. And you've indicated that a change of attitude then took place,
16 | and would you elaborate again as to why the change of attitude
17 | took place on the part of the court system?

18 | A. Well, in the initial stages of the Court Worker Program, I was
19 | well accepted, and the judges were happy that I was there, you
20 | know, to assist Native person who became involved with the law.
21 | It wasn't until, oh, about a year a year or so later that I
22 | started to run into problems because they began to notice that
23 | all Native people were now pleading not guilty instead of the
24 | other way around and -- because I would advise Native people
25 | generally to -- If I'm not there, I would advise them to plead

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1 | not guilty until such time as I have an opportunity to review
2 | the case and then we would make a decision as to how we will
3 | proceed from there, and in the meantime, I would see to it
4 | that he had an interview with the Nova Scotia Legal Aid or
5 | another lawyer, and then we -- Sometimes we decided to change
6 | the plea to guilty, sometimes not. But at least they were --
7 | They were made aware of, you know, what was available and
8 | could possibly happen, and so on.

9 | Q. And is it fair to think that this change of conduct on the
10 | part Micmac people in general caused a slowdown in the operation
11 | of the justice system?

12 | A. Yes. It definitely caused a slowdown.

13 | Q. And that was with respect to the time in court, with respect
14 | to the services of Legal Aid lawyers?

15 | A. That's right. And probation people.

16 | Q. Would you say that the majority of offences with which Native
17 | people were charged were alcohol related?

18 | A. Yes.

19 | Q. And can you suggest why alcohol might be a problem.

20 | A. Well, I -- You know, it's the age old story, I guess, this --
21 | Micmac people have been set aside by society for so long that
22 | there's not a whole lot of dignity anymore in the Reserve
23 | system because generally most Micmacs are on welfare and
24 | unemployed, and they're not any more happy about being on
25 | welfare than anyone else. They would rather be working, but

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1 | there are difficulties in finding employment, either through --
2 | either lack of education or because of other reasons, perhaps
3 | of not being able to dress up when the time came to be inter-
4 | viewed for a job or because of the fact that their English
5 | wasn't exactly up to scratch that would be considered by a
6 | Cape Bretoner. So there's not a whole heck of a lot on the
7 | Reserve in the way of anything that was conducive to raising
8 | that level of dignity, and it was a way of drowning some of
9 | that by way of alcohol.

10 | Q. I switch your focus to a different area now. Is it true that
11 | the principles of adversarial conflict -- adversarial conflict
12 | I'm saying are somewhat foreign or mysterious to Micmac people?

13 | A. I'm not sure whether I understand the question.

14 | Q. Well, our justice system is based on adversarial conflict, and
15 | I'm asking you whether you would agree or not that this con-
16 | cept of being adversaries is somewhat mysterious and foreign
17 | to Micmac people?

18 | A. Yes.

19 | Q. And can you elaborate on that?

20 | A. Well, at one point, the Grand Council of the Micmac, the Sante'
21 | Mawio'mi of the Micmac people, would deal with perhaps breaks
22 | in the Codes or breaks in the Codes of Behavior. They would
23 | simply meet with this person, and they would put it to him or
24 | her that you have such-and-such a time to make amends with
25 | perhaps another family that he was involved in a scuffle with.

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1 | And this person would be observed in these occasions called
2 | wi'kulpaltimk, or occasions where Micmac people "ate together,"
3 | and the Reseve in general would observe to see if this person
4 | had in fact made amends with this other family. Now, if he
5 | hadn't, then the -- it would seem as though that the Reserve
6 | would ostracize this individual, which is sometimes a tough
7 | punishment because no one would have anything to do with some-
8 | one wasn't ready to forgive, and Sante' Mawio'mi in its wisdom
9 | would allow for time for this person to deal with this business
10 | of forgiveness so that -- He's not request -- No, the request
11 | isn't there to do it right away because they know that he's
12 | not in a position to do it if he's particularly angry; so I
13 | guess in that respect, it's not adversary.

14 | Q. Okay, and if understand what you're saying, in part it's that
15 | the the -- In the traditional structure, there was much less
16 | of a tendancy for a person in authority to dictate how some-
17 | body else was to act and much more a tendancy for those who
18 | were invovled int he incident to adjust or sort it out amongst
19 | themselves.

20 | A. Yes, well, you see, instead of the courts taking the responsi-
21 | bility for your actions, you would be responsible. You would
22 | be given the responsiblity to do something about your actions.
23 | In other words, you made the mistake; you correct it.

24 | Q. And I think you mentioned the community in general. Would it
25 | be the case that the community in general felt that they had a

BERNARD FRANCIS, by Mr. Wildsmith

1 responsibility to watch over this course of conduct and to
2 express social disapproval in one way or another if the parties
3 could not bring themselves together?

4 A. That's true, and in many cases, Native people -- For instance,
5 if one person had a -- or perhaps there was a disagreement
6 between he or she and the -- another family. When he was ready
7 to ask for forgiveness, he wouldn't directly ask for forgive-
8 ness. He would just simply go to the home, and he would appear
9 as though nothing has ever happened. He would just enter the
10 home and be nice and be cordial, and after he would leave that
11 home, then the family would say, " Peji-mselsit," or "He was
12 here to seek forgiveness" without actually ever having asked
13 for it. So --

14 Q. How do -- I'm sorry. On a couple of occasions now, you 've
15 referred to a Code of Behavior or a Code of Conduct. Can you
16 help us out as to what you mean by that?

17 A. Well, I think that, you know, for the most part, Micmac people
18 pay a tremendous amount of attention to their elders and also
19 to husbands -- husbands with children. Even a wife, for
20 instance, who has been regarded by the non-Native public as
21 playing a subserviant role to the man, they didn't see it
22 that way. It was just a matter of respect -- to be respect-
23 ful to your husband and not to -- This business of walking
24 in front of someone is one way. Business about not airing
25 your grievances in front of, let's say, another couple were

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1 | no-no's in the Micmac world.

2 | Q. So taking a complaint in the public way not consistent with
3 | that mode of conduct?

4 | A. That's right.

5 | Q. And if you went into court and argued your case and presented
6 | a defense, is that inconsistent with that Code of Conduct?

7 | A. No, it isn't consistent. I've noticed cases in the Family
8 | Court, for instance, where the -- When it came to the crunch,
9 | no matter what this man had done to the -- to his wife, she
10 | would express right there and then, much to my dismay in many
11 | in many instances, that she loved her husband and that she
12 | didn't want him to go to jail.

13 | Q. Okay.

14 | BY MR. CHAIRMAN:

15 | Q. What is your suggestion as to what should be done in a case like
16 | that where it's clear from the evidence that, say, there has
17 | been a serious assault upon a wife by a husband?

18 | A. In many cases, the judge would ask the wife, "How do you think
19 | he's going to act now when you go back home?" and if she gives
20 | a favorable response to that, she -- The judge again would
21 | in turn ask the husband, "What do you think you're going to
22 | do once you get back home with your wife?" and if he in fact
23 | gives a favorable response, that he's going to attempt to patch
24 | things up and to attempt to live a peaceful life, then he would
25 | say to them, "Okay, let's see what you can do, but I want you

BERNARD FRANCIS, BY Mr. Wildsmith

1 to report back to so and so," perhaps a probation officer and
2 so on "at such and such a time to how you -- to see if you're
3 making any progress there." But if the judge felt that there
4 was no point in sending this person back, perhaps he was a
5 very serious alcoholic or perhaps maybe he was cruel to the
6 children, then he would be sent to goal.

7 Q. Well, would you agree -- Is it your view that that's an
8 appropriate disposition of that kind of case?

9 A. No, I suspect that probably the -- Usually, as Mr. -- when
10 Mr. Wildsmith asked the question to me, "Do you think that
11 these were alcohol related, most of the offences?" --

12 Q. Yes.

13 A. -- and that is the case, and the judges were becoming sensitive
14 to that, and they were more ready to enroll these offenders in
15 an A.A. Program, and that really is the answer, and as a
16 result of the interest by the courts, and by the Native people
17 themselves, we now have A.A. Programs operating on Reserves,
18 and we even have a Rehabilitation Centre -- a new building
19 built in Eskasoni for people who are having problems with
20 alcohol who are affecting their families in a negative way.
21 So I think if you can curb the alcohol problem, then you
22 will be getting the root of the problem.

23 Q. Fine. Thank you.

24 BY MR. WILDSMITH:

25 Q. Stretching the focus to a different area, Mr. Francis, can you

BERNARD FRANCIS, by Mr. Wildsmith

1 help us out with attitude of Micmac people towards period of
2 time in detention, particularly a place like the Cape Breton
3 Correctional Centre?

4 A. The attitude of the Native people?

5 Q. Yes, towards spending time in the Correctional Centre.

6 A. In many cases, it didn't make any difference to a Native person
7 simply because while he was incarcerated here in Sydney, he
8 would be getting three squares a day and there's not a whole
9 lot has changed in his life with the exception of the pos-
10 sibility that there would be no liquor brought to him.

11 Q. Okay. And in your experience, what kind of prisoners would
12 Micmacs make?

13 A. I base my opinion -- judged on what I -- the conversations
14 I've had with guards, and Micmacs were described as being
15 "model prisoners."

16 Q. Thank you. And do you know why that might be? Why they might
17 be "model prisoners?"

18 A. Well, I guess for the non-Indian public, a lot of them would
19 not be necessarily "model prisoners", not to say anything against
20 them, but simply, they might have a job and they want to get
21 out, and they want to go on about with their lives, whereas
22 Micmac people didn't have a whole heck of a lot to come home
23 to and -- in the way of recreation or anything else. So it
24 wasn't as big a deal for Native people as it was for the non-
25 Native public.

BERNARD FRANCIS, by Mr. Wildsmith

- 1 Q. And can you help us out with the attitude of Micmac people
2 toward people in authority, such as police, prosecutors, judges?
- 3 A. Fear. They experienced a lot of fear with people who were
4 uniformed or people who -- or judges, for instance -- extremely
5 afraid.
- 6 Q. And if a judge or a policeman suggested to a Micmac that some-
7 thing would happen, would you think that the Micmac person
8 would trust the person in authority to carry through on that
9 promise?
- 10 A. Reluctantly.
- 11 Q. Yes? Could you help us out with what you mean by that?
- 12 A. Well, I guess it's no secret that Micmac people have been
13 lied to. They've been lied to in all areas of life -- in
14 social life and in the judicial system, and they're reluctant
15 to place a whole lot of trust on people who are in authority.
- 16 Q. What do you think might happen if a police officer said to
17 a Micmac, "You plead guilty to this and your sentence will
18 be such and such."? Do you think they would place a lot of
19 faith or trust in that representation?
- 20 A. They would place some trust, and I've seen instances where
21 they did plead guilty because they were told or promised that
22 they would get a small fine or just a short time in an institu-
23 tion, and they were told this when they were -- when the
24 police -- when some police officers had difficulty in extracting
25 statements from them. Micmacs actually approached me and told

BERNARD FRANCIS, by Mr. Wildsmith

1 me, "Well, he said, 'Look, you know if you give me a statement --
2 just give me a statement, and the worst that could happen is
3 maybe a few days in goal and they might fine you, you know, a
4 small fine.'" And they would, you know -- Because of fear, they
5 would take that as a gamble, and in many instances, it didn't
6 turn out that way.

7 Q. With respect to your role as a court worker, you've indicated
8 some of the activities that you engage in by way of counselling
9 people prior to entering pleas and arranging legal assistance,
10 would it also be the case that you would work with an accused
11 person's family?

12 A. Yes, at times.

13 Q. And would that be important?

14 A. Yes, that would be important.

15 Q. Why?

16 A. Well, I think, for instance, if there was any particular problems
17 in the family that might have caused him to be in that situation
18 in the first place, it was nice to be able to sit down with
19 a family and discuss the possibilities of his return and to
20 see if the environment for this individual had changed in
21 any way, and if it had -- If it changed for the better, then,
22 of course, you promoted the idea of having him back in the
23 family.

24 Q. And I take it from the report from the probation service that
25 part of the role that you played was in assisting in decisions

BERNARD FRANCIS, by Mr. Wildsmith

1 of release from incarceration?

2 A. Yes.

3 Q. And would you be involved in the questions of employment of
4 an offender when they were going to be released or a person
5 who was placed on probation?

6 A. Yes, I knew that that was one major factor that the parole
7 people considered, and I approached the Grand Council many
8 times in the past and asked them if there was something that
9 this person who was about to be released -- I asked them if
10 there was something that he could do in the way of some
11 employment and would they hire him, and usually the Band
12 Council were quite receptive to that idea. And sometimes
13 Micmacs would be put on day parole and then weekend parole,
14 and so on.

15 Q. You've described going to the Grand Band Council.

16 A. Band Council.

17 Q. These are Indian structures and organizations.

18 A. That's right.

19 Q. Would you go outside of Indian structures and organizations to
20 seek employment?

21 A. No.

22 Q. Why would that be?

23 A. I think it was -- I would find it difficult to approach, let's
24 say, businesses in the city to see if they would hire an Indian
25 person simply because -- Maybe it's because I've never seen

BERNARD FRANCIS, by Mr. Wildsmith, by Commissioner Poitras

1 an Indian person ever work up front, let's say, in stores
2 in the Sydney area perhaps as a retail salesman or car sales-
3 man or hotel clerks. I've never seen one.

4 Q. So you weren't too optimistic about seeking -- about finding
5 employment outside of the Indian community?

6 A. That's right.

7 Q. Thank you. Would another one of your functions be as a court
8 worker to carry out activities directed towards prevention of
9 crime in the future?

10 A. Yes, I think there were a couple of occasions when we set up
11 meetings in the Eskasoni Reserve and in Membertou Reserve to --
12 and invited the R.C.M.P. to speak about themselves and about
13 the role that they were playing and also we invited people
14 from the Parole Service, and I believe we invited judges, though
15 I can't think offhand who the judge was at one point.

16 Q. Thank you, then. Those are all my questions.

17 COMMISSIONER POITRAS:

18 I just have one, if I may.

19 BY COMMISSIONER POITRAS:

20 Q. You appeared to have lost interest a bit in Mr. Marshall after
21 a knife was found on top of a drugstore at the corner of
22 Argyle and George Street. Why would that have been?

23 A. I'm sorry. What was the question again?

24 Q. I say that you seemed to have lost interest in Mr. Marshall
25 after a knife was found on top of a drugstore at the corner of

1 Argyle and George Street. Why would that have been?

2 A. Simply because at that time I thought we had -- I started to
3 feel that there was a possibility that these -- because of
4 some of the statements that were coming out in the public,
5 that it was possible that these two witnesses were not telling
6 the truth, but I wasn't really sure. I must admit that I
7 didn't know. They sounded convincing to me and -- But when
8 I was told that the knife had been found for the second time,
9 I just assumed at that time that the knife was the knife in
10 question and that if I were to be fortunate enough to get
11 to find grounds for an appeal for Mr. Marshall, that they would
12 simply bring this knife, and that would -- That's what
13 shattered things further.

14 Q. But did you feel that it had its fingerprints on it?

15 A. No. No. No, I never made that statement at all.

16 Q. What link is there between the finding of a knife and
17 Mr. Marshall himself?

18 A. Well, I just assumed, you see, at that time -- I began to
19 suspect that the witnesses may have been telling the truth.
20 I didn't know.

21 BY COMMISSIONER EVANS:

22 Q. You had to assume that the knife belonged to Mr. Marshall?

23 A. Yes.

24 Q. On thing that bothers -- It doesn't bother -- It does bother
25 me is why you made no effort to get jobs outside the Reserve

BERNARD FRANCIS, by Commissioner Evans

1 because apparently there are few, if any, jobs on the Reserve
2 for people coming out of a prison.

3 A. I think it was easier for me to deal with the Band Council.
4 When I would approach the Band Council, they would have odd
5 jobs, for instance, that's in carpentry or perhaps some labor
6 work, and I guess it's because I was never turned away very
7 much by the Band Councils -- that I was more inclined to
8 visit them and ask them for their assistance.

9 Q. But that would be for a limited time.

10 A. That would be for a limited time, yes, but it would enough
11 to have this gentleman released and back in society again.

BERNARD FRANCIS, by Commissioner Evans

1 | Q. But that would be temporary but you were never turned down by
2 | the White population or the Black population because you
3 | never asked?

4 | A. Absolutely, that's right.

5 | Q. I wonder how did you form the conclusion that you couldn't
6 | get help if you didn't ask?

7 | A. Well, basically because I recognized some of the attitudes that
8 | were -- that were here and because I just wasn't used to seeing
9 | a Native person up in front. I may see him as doing something
10 | in the back but I never saw any Native person actually sell
11 | clothes in a retail outlet or, you know, to be involved where
12 | food was being sold. At the nearest thing that I've ever
13 | experienced as Native were out in front was at the Bill Lynch
14 | Shows at the circus here. And that was very temporary and
15 | that was usually cold and dirty work, you know. But I never
16 | actually saw a Native person out in front where he sold --

17 | Q. Was that because they did not have the education to do the
18 | work?

19 | A. Well, there's -- there's not a whole lot of education needed to
20 | sell, let's say, clothing.

21 | Q. I know what you mean.

22 | A. But Micmac people have applied for jobs here in the Sydney area
23 | and in many cases, for instance, if a Native person applied
24 | and perhaps he wasn't dressed to -- to standard and the language
25 | perhaps wasn't up to scratch, the employer would usually say to

BERNARD FRANCIS, by Commissioner Evans, by Mr.Chairman

1 himself, "Gee, there's no way I'm hiring an Indian, not like
2 this." And he would not go through the trouble of interviewing
3 another Indian. He would then interview a White person. Now
4 if a White person came in perhaps he wasn't dressed properly
5 and perhaps his language wasn't -- wasn't up to scratch,
6 perhaps he had poor English or something, the employer would
7 then in turn turn him down but would interview another White
8 person.

9 Q. Whether he could speak English or not?

10 A. No, I'm not saying that --

11 Q. Whether he was competent in English or not?

12 A. -- he was just -- He would interview another White person and
13 interview another White person after that. But you see, he
14 gets discouraged by having interviewed only one Indian person
15 and that Indian person didn't meet his particular standards.
16 He wouldn't take the trouble of interviewing another one.

17 Q. That's from your own personal observation?

18 A. Yes.

19 BY MR. CHAIRMAN:

20 Q. Just apropos that and I know it's been a long day for you,
21 Mr. Francis, in the -- particularly in Federal Institutions,
22 there's some fairly sophisticated or I hope meaningful on-going
23 training programs, everything from heavy equipment operators
24 to working in -- with Scott Paper, I believe, in the Springhill
25 area. Do the Indian inmates take advantage of these programs?

BERNARD FRANCIS, by Mr. Chairman

1 | A. Yes, some of them do. Yeh, we've had some people come out
2 | of there with -- that are -- that were trained in plumbing
3 | for instance.

4 | Q. All right, now when they come out, what has been their employ-
5 | ment history?

6 | A. Not so good. Again no matter how good their credentials are
7 | of Native people, as long as the employer, let's say in a union,
8 | realizes why should I hire this Indian when I could hire a
9 | White person because this Indian is not paying taxes whereas
10 | this other person does. That was, you know, a well-known
11 | feeling by employers as long -- you see, the Native people
12 | were always accused of getting everything that they want, a
13 | free house, a free everything and no taxes, so why should he
14 | hire him?

15 | BY COMMISSIONER EVANS:

16 | Q. Don't they pay income tax?

17 | A. Not when they're employed on the Reserve.

18 | BY MR. CHAIRMAN:

19 | Q. On the Reserve, no?

20 | A. That's right.

21 | Q. But I was thinking their opportunity outside the Reserve.

22 | The person comes out of -- an Indian comes out of Springhill
23 | fully certified as a plumber.

24 | A. Right.

25 | Q. What's been your experience of his obtaining employment within

BERNARD FRANCIS, by Mr. Chairman, by Commissioner Evans

1 the White community?

2 A. Not -- Still not very good. I don't know of any. There's
3 maybe an electrician in the area who's, you know, employed off
4 the Reserve. And just recently a young man of about twenty-
5 two or twenty-three years old had gotten his papers in the
6 plumbing trade and he left for Toronto to work. Now I don't
7 know what -- I don't think that had anything to do with the
8 fact that he was Indian. I just didn't think that there was
9 any employment around for him here. So -- But most Native
10 people would end up working on the Reserve on their trade or
11 with their trade in these L.I.P. projects and most of the trade
12 requirements for plumbing, electrical and carpentry and that's
13 -- That's what they were trained in.

14 MR. CHAIRMAN:

15 Thank you.

16 BY COMMISSIONER EVANS:

17 Q. Is it a fact that most do not wish to leave the Reserve?

18 A. Well, that depends on what you mean. I mean they would gladly
19 leave the Reserve to work off the Reserve. And then gladly
20 go home with their families at night.

21 Q. But they don't take their families and go off the Reserve?

22 A. No, because the -- You know, they would feel alienated there
23 in living in another culture. I mean this is an area where
24 the language is still spoken and they're familiar with these
25 surroundings, familiar with the culture. That's where they

BERNARD FRANCIS, by Commissioner Evans

1 | want to be. That's their home.

2 | Q. So that it's different for a White family to move from the
3 | Maritimes up to Toronto or some place else and --

4 | A. That's right.

5 | Q. -- as you say for the Indian because of the absence of the
6 | culture in that area to which they might be forced to move
7 | for employment?

8 | A. That's right.

9 | Q. So it's to maintain the culture and the contact that they
10 | don't really move --

11 | A. Yeh. It's not so much the -- It's not so much to maintain the
12 | culture but to be with the culture, you see, that they feel
13 | most comfortable in.

14 | MR. CHAIRMAN:

15 | Thank you very much, Mr. Francis.

16 |

17 | (WITNESS WITHDREW)

18 |

19 | MR. CHAIRMAN:

20 | Well' adjourn until tomorrow at nine-thirty.

21 |

22 | INQUIRY ADJOURNED at 4:28 p'clock in the afternoon, on the 2nd
23 | day of November, A.D., 1987.

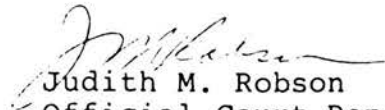
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COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 2nd day of November, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.


Judith M. Robson
Official Court Reporter
Registered Professional Reporter