

JOHN F. McDONALD, by Mr. Spicer

1 JOHN F. McDONALD, being called and duly sworn, testified as
2 follows:

3 BY MR. SPICER:

4 Q. Your name is John Ferguson McDonald?

5 A. Correct.

6 Q. M-C as opposed to M-A-C?

7 A. M-C.

8 Q. And you currently reside, sir, at 130 High Street, in Sydney?

9 A. Correct.

10 Q. And I believe you were appointed to the Nova Scotia Bar or you were
11 appointed to the Nova Scotia Bar in 1938 --

12 A. That's right.

13 Q. -- when you came a member of the Bar? And became a
14 Provincial Magistrate in 1953?

15 A. Correct.

16 Q. And retired from that position in 1978?

17 A. I was called out to work after that though to fill in as a
18 -- when at different times for vacations or illness on the
19 part of the other Provincial Judges.

20 Q. But other than that you haven't sat as a Magistrate since
21 1978, is that correct?

22 A. That's right.

23 Q. Could you speak up a little bit, Judge?

24 A. Yes.

25 Q. And can you tell us during the period of time that you were

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1 a Provincial Magistrate from '53 to '78, for the most part
2 where you would have sat as a Judge?

3 A. In Sydney and other parts. All parts of Cape Breton. All
4 the -- and at St. Peter's.

5 Q. And where's St. Peter's?

6 A. That's in the County of Richmond.

7 Q. Okay, and was there another Judge MacDonald at or about the
8 same time as yourself?

9 A. Yes, Ronald J. MacDonald in North Sydney.

10 Q. And he was a -- he was a M-A-CDonald? Am I correct M-A-C?

11 A. I think -- yes, he was.

12 Q. Okay, during the course of your tenure as a Judge then when
13 you have heard various cases involving Natives from
14 Membertou and Eskasoni?

15 A. Right.

16 Q. Okay. I'd like to ask you some general questions if I could,
17 just concerning your observations as a Judge of long standing
18 in Cape Breton. Did you have any experience with defendants
19 that were not represented by counsel at the time they appeared
20 in your courtroom?

21 A. Oh, yes, I don't remember the number but I certainly did.

22 Q. And if somebody came into your courtroom unrepresented by
23 counsel, what steps would you -- would you take with
24 respect to that?

25 A. I'd ask him if he wanted to -- to time to get counsel if he

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1 | wasn't represented by then. And if the case was a serious
2 | one that might call for a penitentiary, I would point that
3 | out to -- to him that he would be very dangerous to go in
4 | court under this charge without -- without legal representation.

5 | Q. And did you take steps then to satisfy yourself that a person
6 | either became represented by counsel or had made a decision
7 | not to be represented by counsel?

8 | A. Well, I'd give him time -- I'd asked him if he wanted time
9 | to consider the question and to consult counsel if he so
10 | desired. Of course, I couldn't push him into the thing.
11 | There was some of them that steadfastly refused to have any-
12 | thing to do with counsel. They wanted to be tried right
13 | away.

14 | Q. Are you able -- are you able to tell us whether or not you
15 | would have ended up with more Native defendants unrepresented
16 | by counsel than White defendants?

17 | A. I have no idea on figures on that; but I'd say it would be
18 | about even because the -- the Native people were in the
19 | minority coming into court, quite a large minority. They
20 | were mostly people of the White race.

21 | Q. Can you tell us what the practice was in your court with
22 | respect to the ordering of pre-sentence reports? Were there
23 | some circumstances in which you would be more likely to order
24 | one?

25 | A. Oh, I think that mostly the ones that were found guilty, we

1 | did request reports on them. Either the counsel or myself.
2 | Since then -- they have such a good -- more Probate or members
3 | of Probate. But, of course, when I first started out, we
4 | didn't have them.

5 | Q. When did they come in, sir?

6 | A. Oh, I couldn't give you an exact date; but quite a few years
7 | ago. I'd say twenty anyway. Twenty-five.

8 | Q. Would it make any difference whether or not you would order
9 | a pre-sentence report depending on how serious the nature
10 | of the offense was first of all?

11 | A. Oh, yes, yes. Yes, certainly. If it was a serious offense
12 | we'd called without question for a probation report.

13 | Q. And if there was circumstances in which counsel did not ask
14 | for pre-sentence report, would there be situations where you
15 | yourself would ask that a pre-sentence report be supplied?

16 | A. Yes, I would ask for. Sometimes the Crown Counsel would
17 | recommend it that a probation report be brought in.

18 | Q. If a person, a defendant, who was appearing before you had
19 | a fairly current record; that is, he committed an offense
20 | sometime in the recent past, would that affect your decision as
21 | to whether or not order a pre-sentence report?

22 | A. Yes, I would quite often ask that I'd be brought up-to-date.

23 | Q. And would it -- would it have been your practice, Judge, then
24 | that if a -- if a defendant was a likely to get a
25 | penitentiary term, that it would be normal to expect that a

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1 pre-sentence report would be ordered?

2 A. In most cases, yes.

3 Q. In most cases. Would there be circumstances in which there
4 was a -- the possibility of a penitentiary term where a
5 pre-sentence report might not be ordered?

6 A. I can't think of any off-hand.

7 Q. Would it be unusual then if somebody appeared before you and
8 was found guilty on a offense and was sentenced to a
9 penitentiary term without the benefit of a pre-sentence
10 report?

11 A. Well, if he had a consistent record of criminal -- criminal
12 activity, I might not bother if it was, say; let us say
13 it was seven or eight or four or five charges and it showed
14 a trend that he wasn't benefiting from any probation or any
15 suspended sentence or anything of that kind.

16 Q. But other than those circumstances, one would expect there to
17 be one?

18 A. Yes.

19 Q. Did you have any experience, Judge, with requests from counsel
20 for disclosure of statements by the Crown as a Judge?

21 A. No, I never ran into that. I was listening to it here -- the
22 evidence here. I don't -- I couldn't recall any thing that --
23 or where the Crown refused to -- to give the statements unless
24 they give some explanation that it would harm the Crown's
25 case or that witnesses might be interfered with or something

1 | like that. It would have to be a rather extraordinary --

2 | Q. Do you have a recollection, Judge, of circumstances where the
3 | Crown might have indicated that the disclosure of the
4 | statement would, to use your words, "harm the Crown's case"?

5 | A. I like I have, yes. I would say that I had, although I
6 | can't -- I don't remember any particular case.

7 | Q. Are you able to tell us who the Prosecutor would have been
8 | in such a case?

9 | A. There was so many of them. Donald Finlayson -- down in
10 | 1953 -- I couldn't say who -- that ahead of it, you
11 | know, to pick out -- to pick out one particular one with
12 | any accuracy.

13 | Q. If it was indicated to you that the disclosure of a
14 | statement would harm the Crown's case, can you give us some
15 | idea of what point it was that Crown counsel was attempting
16 | to make by indicating that to you? What were they getting
17 | at?

18 | A. Well, I suppose they -- that it might be that the witnesses
19 | would be interfered with -- with their name mentioned and
20 | -- and the publicity that they might hurt -- hurt some
21 | people. I know now that the younger people, of course, under
22 | the new Acts they -- they are prohibited from publishing the
23 | names and so forth today. It's quite different from what it
24 | was one time.

25 | Q. Other than those circumstances, Judge, did you regard those

1 reasons that you've just given us, as legitimate reasons for
2 not disclosing a statement -- for not ordering the statements
3 to be disclosed?

4 A. Yes.

5 Q. Did you have any experience in your courtroom with requests
6 being made by counsel for the use of interpreters?

7 A. One time -- just one -- on -- in one case.

8 Q. And was that a case involving a Native?

9 A. Oh, no, it was a case involving two -- two Europeans. I think
10 they were Austrians. They had a -- had adjoining land out at
11 East Bay or in that vicinity or Big Pond, somewhere out there,
12 and they couldn't speak very much English and there was a
13 request made, I think, it was by the Crown counsel for
14 interpreter. But the interpreter came in and we didn't find
15 him entirely satisfactory. Mr. Malcolm Patterson was the
16 defense counsel in that case and he asked a question -- one
17 of the questions he asked to be interpreted could -- the
18 answer could be 'yes or no'. Well, the interpreter went
19 on arguing on with one of the people until he was -- we had
20 to stop him. And after that I didn't -- there was no
21 request made after that.

22 Q. And there were no requests made to your recollection with
23 respect to interpreters for any Micmac defendants or
24 witnesses?

25 A. No, no.

1 Q. Was it our experience, Judge, that the press was fairly
2 frequently sitting in your courtroom?

3 A. Oh, they -- they were there most of the time. They used
4 to come in in the morning and -- the late Sandy MacDonald
5 and Angus MacDonald now the editor or the city editor of
6 the Post and Bobby Duchemin and Clayton Campbell for the
7 Halifax Herald. They were in. It was all -- I can't say
8 that there was too many days that they weren't counsel in
9 the court.

10 Q. And would they tend to write up short reports on what was
11 going on in your courtroom from day to day?

12 A. Oh, yes, they were -- they would. Not all -- not all the
13 time because sometimes in court there wasn't any cases
14 worth putting up -- the dockets -- there'd be adjournments
15 or something -- there wouldn't be anything on all day --
16 all morning at least.

17 Q. I want to ask you some questions now, Judge, about the
18 Native court worker program. When -- you were familiar with
19 the Native court worker program in your courtroom?

20 A. Yes, I knew that Bernie Francis was the only one that I had
21 any contact with.

22 Q. Did you know Eva Bernard?

23 A. No.

24 Q. Did not know her to see her at all?

25 A. I don't recall her. I might have though. When was she a

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1 -- or I better not ask questions.

2 Q. It would have been in the 1970's, Judge?

3 A. '70's.

4 Q. About the same time as Bernie Francis was around?

5 A. I believe I have some faint recollection of her being there
6 or hearing her being there; but I never had any contact with
7 her as far as I know.

8 Q. What was your understanding, Judge, of what the Native court
9 workers, Mr. Francis, was to do in your courtroom? What was
10 his job?

11 A. Well, I was never briefed on what his job was.

12 Q. What was your perception of what it was from what you saw?

13 A. Well, I would say generally speaking he'd look after the
14 interests of the Natives under his control or I don't know
15 if that's the right word or not -- jurisdiction perhaps
16 would be a better word.

17 Q. Did you ever receive any communication from the Department of
18 the Attorney General explaining the court workers responsibilities

19 A. No.

20 Q. Did you ever inquire?

21 A. No.

22 Q. Perhaps you can help me a little bit, what happened, did the
23 Native court worker just show up in your courtroom one day
24 and explain to you what it was that he was going to be doing?

25 A. No, I don't recollect that he did or any of them.

1 Q. Did Mr. Francis at any time when he first commenced employment
2 explain to you what it was that he thought he was supposed to
3 be doing there?

4 A. Well, he might have but I couldn't say for sure. I couldn't
5 deny that he did.

6 Q. But you accepted his presence in your courtroom?

7 A. Yes, I found out what he was supposed to do. That why he was
8 there, outside of that --

9 Q. And you found that out from -- from whom Judge?

10 A. I didn't find out from anybody. I just found out from myself
11 I think --

12 Q. Just from watching him?

13 A. From watching him that he was --

14 Q. Mr. Francis during the course of giving his testimony has
15 described comments that, according to Mr. Francis, were made
16 in your courtroom. I just want to refer you to the specific
17 references in the testimony. I want to start at page 3921
18 and he's referring to comments that he says were made by
19 Judge Matheson, at the time a Prosecutor:

20 He was a prosecutor. He was the
21 Assistant Crown Prosecutor at the
22 time. When an Indian would be on,
23 for instance, a witness stand, he
24 would -- he might say -- make
25 statements to the effect, "What
are you doing coming here in the
City causing problems?" "Why can't
you stay on the Reservation where
you belong?" "Why are you Indians
coming here and upsetting the peace

1 and quiet in the City of
2 Sydney?" And remarks like this
3 were happening all the time and
4 surprisingly enough, I'm a bit
5 ashamed of it now, but I sat there
6 and I took this...

7 Judge, do you have any recollection of statements like that
8 being made by Judge Matheson when he was a Prosecutor in
9 your courtroom?

10 A. I certainly don't remember hearing anything of that nature.

11 Q. Are you able to tell us today, sir, whether or not if such
12 statements had been made, you would remember?

13 A. Oh, I think I certainly would. And I think the press present
14 too would -- would remember it and it would be broadcast from
15 the Atlantic to the Pacific a thing -- those statements like
16 that.

17 Q. Are you able then to say to us today, sir, that to your
18 recollection a statement such as:

19 "What are you doing coming here
20 in the City causing problems?"

21 was to your recollection not made by Judge Matheson in your
22 courtroom?

23 A. Well, as far as I remember the statement was never made.

24 Q. And I take it that your answer would be similar with respect
25 to these other two statements:

"Why can't you stay on the
Reservation where you belong?"

A. Yes.

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1 Q. "Why are you Indians coming here
2 and upsetting the peace and quiet
3 in the City of Sydney?"

4 A. I don't know if it's relative but the Micmacs used to live
5 in Sydney on King's Road. I don't know if the Commission
6 is familiar with that. They were there for years and years
7 (before they were given the land at Membertou) right on the
8 main part of King's Road and we intermingled with them and
9 met them and they used to sell their wicker baskets and
10 so forth and clothes props at one time when they were used.
11 And we were back and forth. We never had any trouble with
12 the Micmac either in court or out of court.

13 Q. I just want to continue now with the comments that Mr. Francis
14 made giving his testimony. I left off where I was saying --
15 Mr. Francis saying:

16 ...I'm a bit ashamed of it now,
17 but I sat there and I took this
18 until perhaps about the third
19 year into the Court Worker
20 Program when that same -- same
21 Judge

22 Now again, he's referring now to Mr. Matheson:

23 said that a fence should be built
24 around the Eskasoni Reservation so
25 that Indians couldn't get out to
come to Sydney to cause problems,
and it was at that time I could no
longer keep my cool so to speak, so
I immediately after...the trial was
over I immediately went to the Judge's
Chamber's or Judge's Office...

I want to ask you two questions about that. First of all
do you remember any comment being made -- made by Mr.

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1 Matheson to the effect that "a fence should be built around
2 the Eskasoni Reservation"?

3 A. No, certainly not. I had never --

4 Q. Are you able to tell us today that it didn't happen or that you
5 don't remember it happening?

6 A. I don't remember it happening. It might have happened outside
7 the courtroom or somewhere else. But not in my courtroom.

8 Q. All right, Judge, so your answer would be that, insofar as
9 the situation in the courtroom was concerned, that that
10 statement was not made to your recollection?

11 A. That's right.

12 Q. Did you ever hear anything later about it having been made
13 outside the courtroom?

14 A. No. I never -- I didn't hear anything about it until it was
15 at this Commission. That's the first that I heard of that
16 kind of talk.

17 Q. Now my second question arising out of that answer was that
18 Mr. Francis said that "immediately went to the Judge's
19 Chambers" and he goes on, I ask him:

20 Who was the Judge..

21 and he indicates it was yourself, sir, and it says:

22 John F. MacDonald, and
23 ...and I guess I verbally attacked
24 him at the time and told him...I was
25 appalled at the way Native people
were being treated and Native people
were being addressed and I was more
appalled in the fact that he was
allowing these remarks to...go by
without saying anything.

1 Do you recollect a meeting with Mr. Francis in which he
2 made those suggestions to you?

3 A. I had two or three meetings with him; but I don't think
4 it was -- it was under those circumstances or under
5 any angry -- anything angry or any statements repeated.

6 Q. Are you able to tell us today, Judge, then that your recollection
7 is that the meeting which I've just described through Mr.
8 Francis' testimony, to your recollection did not occur?

9 A. No.

10 Q. Did not occur to your recollection?

11 A. Did not occur.

12 Q. I'll just continue with his answer:

13 He (being yourself, sir) was very
14 nervous because he realized, I
15 think, at the time that I...had no
16 more patience left. I was
17 extremely angry...

18 Then I asked him:

19 How many years into the program
20 were you at this point?

21 A. About two and a half to three
22 years I'd say. And he (being
23 yourself, Judge) said that he
24 didn't think that the remarks
25 were -- meant anything, and I
told him that...the remarks did
mean an awful lot.

I take it that --

24 A. I don't remember that.

25 Q. You don't remember any of that.

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1 I told him that...the remarks did
2 mean an awful lot. Native people were
3 being so disrespected that...I'd
4 never seen anyone treated quite that
5 way before in a court room, and I
6 wasn't going to sit by and take (it)
7 that any more.

8 Any recollection of that?

9 A. No, I don't. I would have told -- if he had said that, I
10 would have said; "You go to the Attorney General's Office
11 and make a complaints".

12 Q. If he said such a thing?

13 A. I would -- yeh.

14 Q. Did Mr. Francis ever criticise Mr. Matheson to you?

15 A. No, not to my recollection.

16 Q. Is it possible that he might have done so and you don't
17 remember?

18 A. Well, I would hardly -- I would tell him to go to the
19 Attorney General's Office that was the place to make -- file
20 his complaints there if he was against any statements by
21 attorneys that were on either side. I had nothing really to
22 do with that.

23 Q. And you never did give Mr. Francis such a direction, I take
24 it, to go to the Attorney General about it?

25 A. I don't know if I did or not. But as far as I recollect --
recollect, I don't think I did.

Q. Did Mr. Francis ever indicate to you, Judge, that the
Natives were having problems understanding the procedures

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1 in the courtroom?

2 A. No, I don't recollect that either.

3 Q. I just want to refer you to another portion of Mr. Francis'
4 testimony. Actually the question was:

5 And did you discuss that problem with
6 Native defendants or Native witnesses
that were, in fact, doing that?

7 And that was giving incorrect answers and having problems.

8 And the answer was:

9 Well, actually there were times
10 when I stood up and I explained
11 to the Court that this Native person
12 was not understanding what he or
13 she was being asked, and sometimes
14 I was told to sit down, that I wasn't
an Officer of the Court or sometimes I
was just told to be quiet or the odd
time they might say to me to sit with
this person closely and explain the
proceedings.

15 Do you have any recollection of Mr. Francis ever standing up
16 in your courtroom and indicating that Natives were not
17 understanding what was going on?

18 A. No, I don't. I don't recollect that either. But if it he
19 had asked for an interpreter, certainly we could have got
20 one for him. If there was anybody that -- that was
21 unrepresented by counsel, we certainly would have helped
22 them out. We had Legal Aid then -- during those periods,
23 I presume.

24 Q. Yes.

25 A. Well, did they go to the Legal Aid and look for -- for counsel?

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1 Did he say -- did he ever say that he was --

2 Q. I think he indicated during his testimony that Legal Aid was
3 used fairly extensively, but he certainly, Mr. Francis, also
4 did indicate that he -- that he did stand up in the courtroom.
5 And I think, in fairness at this point, he doesn't specify
6 whether it was yourself or whether it might have been R. J.
7 MacDonald?

8 A. Yeh.

9 Q. And he goes on to say, apropos I think of an answer -- a
10 comment you made a second ago:

11 Were they requesting interpreters
12 and not getting them?

13 That's on page 3935. The answer was:

14 That's right.

15 Q. And how would that work? What would
16 be the process by which you would
17 ask for an interpreter? Who would
18 you ask?

19 A. Sometimes I would get the -- Initially
20 I used to do the asking. I used to do
21 the asking because the relationship
22 between myself and the Judges was
23 pretty good and I would...ask the
24 Judge if he would allow an interpreter
25 for this particular individual because
...of his lack of English and initially
it was okay.

Q. You mean initially it would be
responded to in a positive way?

A. Yes, but then later on I began to
run into difficulties...

I take it that your recollection though, Judge, is that no

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1 request was ever made at all, at least, in your courtroom?

2 A. No, not for any of the Micmacs.

3 Q. Did you notice after the initiation of the Court Worker
4 Program, Judge, that there was an increase in the number
5 of not guilty pleas being given by Natives?

6 A. No, I didn't notice it particularly. I heard it from the
7 evidence given here. But I -- I didn't notice anything.
8 Of course, I -- we didn't have too many -- too many Micmacs
9 in court, you know. The vast majority were the people of
10 Sydney and surrounding districts. But there was an occasional
11 Micmac brought in for or picked up for drunkenness or something
12 like that; but there was very few serious cases, except there
13 was some assaults on the Reservation. Somebody used to get
14 beaten up and they'd be in court but outside of that there
15 wasn't a torrent at all.

16 Q. For the most part were the Natives that were being brought
17 before you in your courtroom, being brought in on liquor
18 offenses?

19 A. I would say yes. There would be liquor connected with it.

20 Q. And for the most part were those disposed of by way of guilty
21 pleas, Judge?

22 A. Most of the time, yes.

23 Q. And do I understand you to say that you didn't really notice
24 an increase in the number of "not guilty" pleas at least in
25 your courtroom?

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- 1 | A. No, not noticeably. There might have been some small portion.
- 2 | Q. As a Judge could you indicate to us how you would satisfy
- 3 | yourself that the Micmac defendants or witnesses were
- 4 | understanding the proceedings that were going on in your
- 5 | courtroom?
- 6 | A. By the answers they'd give.
- 7 | Q. And you were satisfied that they were understanding the
- 8 | questions and giving appropriate answers?
- 9 | A. Yeh, I understood that they seemed to be able to understand --
- 10 | deal with English quite -- quite easily.
- 11 | Q. Would you notice any difference between the -- generally,
- 12 | between the demeanour of White defendants or witnesses and
- 13 | Native defendants or witnesses?
- 14 | A. No, no, I wouldn't notice any -- any difference. They were
- 15 | witnesses that was all.
- 16 | Q. And were you satisfied that other than the fact that one was
- 17 | Native and the other one was White, that apart from that
- 18 | obvious distinction, there was no difference in the way
- 19 | they handled themselves in the courtroom?
- 20 | A. No, that's right.
- 21 | Q. Is that correct?
- 22 | A. They handled themselves quite easy.
- 23 | Q. And to your observation at least similiarly to a White
- 24 | defendant or a White witness?
- 25 | A. Right, yeh.

1 Q. I'm going to refer you again to a couple of comments that
2 were made by Mr. Francis and this is at page 3925 and 3926
3 describing what he understood to be the demeanor to some
4 extent of the Indian witnesses.

5 What kinds of things do you recollect...

6 This is my question.

7 ...that the Indian defendants were having
8 problems with?

9 A. In the courtroom?

10 Q. Yes, in the courtrooms specifically.

11 A. Actually in many cases it was sad to see, particularly
12 at the time when I was beginning.

13 That would have been 1970, Judge, 1971.

14 I noticed that -- I think the first thing
15 was that they were very shy in a courtroom
16 and they felt that this was a spotlight and
17 they didn't like to be there.

18 Did you notice any Natives being shyer then or more
19 shy than White witnesses or defendants?

20 A. No, I didn't. I think that everybody that comes into
21 court is under some kind of pressure and they're not --
22 It's pretty hard to act natural. No, I didn't notice
23 any difference in them.

24 Q. Did you find the Native witnesses or the Native defendants
25 to be any less co-operative than White defendants?

A. No. The answer is no. I don't -- there was no great
difference that I ever found.

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1 Q. What about with respect to -- I take it, Judge, from time
2 to time you would have Black defendants in your courtroom?

3 A. Right.

4 Q. And are you able to tell us whether or not the Black defendants
5 handled themselves in the courtroom any differently than
6 White defendants?

7 A. No. No, I didn't notice any difference. They usually had
8 lawyers with them and of course there might be better -- that
9 they are perfectly fluent in the English language, of course.
10 I don't think there was -- I don't think they were -- they
11 spoke any two languages or at least I didn't hear them
12 speak anything other than English.

13 Q. And was it your perception, Judge, with respect to the Indian
14 defendants that they were fluent in English as well?

15 A. Well, of course I don't -- Perhaps they wouldn't be one
16 hundred percent fluent but they were understandable without
17 much trouble. The ones that -- The majority of them anyway.

18 Q. Were there some circumstances, Judge, (You said the
19 majority of them.) where there would have been some Native
20 defendants who didn't appear to be understanding what was
21 going on?

22 A. No.

23 Q. Well, what would the minority be doing then, Judge?
24 You indicated that the majority understood and that would
25 suggest to me that the minority didn't --

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1 A. Well they might be more hesitant than the others, not
2 quite as fluent.

3 Q. I see. Would you or crown counsel or defense counsel in that
4 sort of circumstance take any steps to make sure that that
5 type of person, the minority, the Native witnesses, was
6 assisted?

7 A. Oh, yes. We'd just -- If we saw--at least I speak for
8 myself. If I saw that there weren't any under misunderstanding
9 on their part, I'd repeat it. Repeat and reading the
10 charges or anything, I'd repeat it over and ask them, did
11 they understand it.

12 Q. Until you were satisfied that they did?

13 A. That they were.

14 Q. Over the years, Judge, I take it you would have had the
15 opportunity to observe certain of the counsel that have
16 been involved over the years in the Marshall matter. I
17 just want to ask you a few questions, if I could, about
18 certain of those gentlemen. Mr. Francis had indicated in
19 his testimony at page 3924 with respect to Mr. Rosenblum.
20 Now, Mr. Rosenblum appeared before you from time to time?

21 A. Oh, yes, quite often.

22 Q. Mr. Francis indicated at 3924 -- The question was:

23 And did you form any opinion based on seeing
24 Mr. Rosenblum and speaking with him as to whether
25 or not he treated White people any differently
than Natives?

1 And Mr. Francis' answer to that question was:

2 Well, yes, I would say that he was a bit
3 more aggressive when he was defending
4 non-native people. I noticed him to
5 very lapse...

6 I think it's meant to be lax.

7 ...when he defended Native people.

8 Q. And why is that, sir?

9 And Mr. Francis' answer was:

10 Well, his tone of voice, his aggressiveness,
11 let's say, towards witnesses who were against
12 his client, none of those characteristics
13 appeared when he was defending Native people.
14 He would ask questions as if to say, "I'm doing
15 my job sort of thing".

16 Can you comment from your experience of observing Mr.
17 Rosenblum as to whether or not you would agree with those
18 comments made by Mr. Francis?

19 A. Well, I think he treated all -- the ones on the other side
20 with the same zeal that he put into all his cases. He was
21 a first-class lawyer and he fought all out for his case.

22 Q. And would that have been the case, Judge, --- that observation
23 that you've just given us, throughout Mr. Rosenblum's
24 career?

25 A. Right.

Q. From beginning to end?

A. From beginning to end. First-class attorney.

Q. Then perhaps you can give us the benefit of your observations
of Mr. Khattar, Judge. How did you find him in your courtroom?

- 1 A. I found him very good. A very good lawyer, Mr. Khattar.
- 2 Q. Did you --
- 3 A. Oh, you mean Senior, do you?
- 4 Q. Yes.
- 5 A. Yeh.
- 6 Q. Did you notice any distinction between the way Mr. Khattar
- 7 treated White defendants and Native defendants?
- 8 A. No.
- 9 Q. And I take it, with respect to Mr. Rosenblum, you didn't
- 10 either?
- 11 A. No.
- 12 Q. Donald C. MacNeil?
- 13 A. Yes.
- 14 Q. He appeared before you from time to time?
- 15 A. Yes.
- 16 Q. Can you give us the benefit of your observations of Mr.
- 17 MacNeil's performances in your courtroom?
- 18 A. I thought he did very well when he was defense counsel and
- 19 when he was -- after he was appointed crown counsel. He
- 20 was a good lawyer.
- 21 Q. Mr. Francis had indicated in his testimony, Judge, at 3924
- 22 and halfway through an answer:
- 23 I always felt that Don C. MacNeil was
- 24 a guy who really wanted to win very
- 25 badly and he would do anything to win,
- but I don't -- I didn't feel that he
- had any particular feelings against
- Native people.

JOHN F. McDONALD, by Mr. Spicer

1 There's two questions arising out of that. Would you
2 agree with Mr. Francis' observation that Donald C. MacNeil
3 was "a guy who really wanted to win very badly" as
4 a prosecutor?

5 A. Oh, yes. I suppose he -- Generally speaking every lawyer
6 wants to win his case whether he's defense or prosecution.
7 I didn't notice any difference. They all try hard to win
8 and I don't see that the part there were you said that
9 if you go to any means. Was it any means? It --

10 Q. I'll read it back to you, Judge.

11 ...who really wanted to win very badly
12 and he would do anything to win...

13 A. No, I don't agree with that.

14 Q. And in what sense do you not agree with it, Judge?

15 A. Well, anything to win, that means dirty tricks or performance
16 the legal profession isn't supposed to do. That -- bring in things
17 like that. No, Donny wouldn't do that, I'm sure. He'd
18 try hard to win but he'd win on -- under the rules.

19 Q. And the second question I was going to ask you rising out of
20 Mr. Francis' answer. Where he'd indicated:

21 I didn't feel that he...

22 That's Donald C. MacNeil.

23 ...had any particular feelings against
24 Native people.

25 Would you agree with that comment?

JOHN F. McDONALD, by Mr. Spicer

1 A. Oh, yeh sure. I agree with that. I don't think any of
2 the lawyers did, that I encountered.

3 Q. And you've already given us benefit of your comments
4 concerning Mr. Matheson.

5 A. Yeh.

6 Q. Judge, is there a Provincial Judges Association or group
7 that would meet from time to time?

8 A. A very strong group.

9 Q. And how often would you meet?

10 A. Well, they meet at the annual meeting and during the year and
11 they have an educational meeting also but any --

12 Q. Would that association have been in place at the time
13 that you were appointed to the bench in 1953?

14 A. Oh, not very much. There was just a skeleton -- sort of
15 skeleton crew. There was only about six or seven of us
16 in Nova Scotia. That was to cover all of Nova Scotia.

17 Q. Would that small group though at that time, Judge, meet
18 from time to time?

19 A. Oh, yes. They had to have an annual meeting.

20 Q. And over the years would -- the group got bigger I take it and
21 you would still meet annually?

22 A. That's right. And --

23 Q. Would -- sorry.

24 A. -- for the educational.

25 Q. And would the education function take place at the annual

JOHN F. McDONALD, by Mr. Spicer

1 meetings or at other meetings?

2 A. Oh, no. That was separate.

3 Q. Okay. How frequently would you have these educational
4 meetings?

5 A. Every year.

6 Q. And would -- How would they be run? Would speakers be
7 brought in?

8 A. Speakers would be brought in and other judges, perhaps a
9 Supreme Court Judge or two, and the experts in other
10 branches of the law, of the legal process, anybody that
11 could give us a -- penitentiary wardens or anybody that could
12 -- was connected with the administration of criminal justice.

13 Q. And would the educational programs, Judge, for those meetings,
14 would there be input from the judges themselves as to what
15 topics were to be discussed?

16 A. Yes. Any problems they had or any difficulties. They'd
17 bring it up and the Attorney General had -- always had
18 representation there. Usually the Deputy Attorney General
19 would be there. Although the Attorney General would be
20 sometimes also.

21 Q. And would the judges themselves have input into what you
22 wanted to talk about at any particular educational meeting?

23 A. Oh, yes. Yes. Anybody brought up a subject and they'd go
24 into it and want an interpretation from the members there to
25 find out if they were right or what they were doing was right

JOHN F. McDONALD, by Mr. Spicer

1 or any problems that had arisen in the meantime --

2 Q. And do you have any -- Sorry.

3 A. -- during the year. Any -- sorry.

4 Q. And do you have any recollection of any discussion at these
5 meetings of the treatment of Natives or the situation of
6 Natives in courtrooms in the Province of Nova Scotia?

7 A. I don't recall any, no.

8 Q. Judge, I believe that the record will indicate that you were
9 the judge who heard a case in 1970 involving Roy Ebsary
10 on possession of a concealed weapon charge. Do you have
11 any recollection at all of that?

12 A. No, I don't. I don't have any recollection of Mr. Ebsary
13 at all. I had many -- a lot of charges for people carrying
14 knives and that stuff but I don't recall his name.

15 Q. Yeh. You don't remember Mr. Ebsary?

16 A. No.

17 Q. Thank you, Judge.

18 BY COMMISSIONER EVANS:

19 Q. Judge McDonald, before -- In 1971, if a person were convicted
20 and sentenced to two years or more, I take it he would go
21 to Dorchester?

22 A. That's right.

23 Q. If he got one year were would he go?

24 A. County gaol.

25 Q. They were all county gaols then. Up to two years?

JOHN F. McDONALD, by Mr. Ruby

1 A. Yes, up -- It was two years less a day. That's the way

2 I think they --

3 Q. All the other -- You had no
4 reformatories in Nova Scotia, did you? It was either
5 county gaol or Dorchester?

6 A. That's right. But they have correctional centers now.

7 Q. Yes, '71.

8 A. They're different -- Yeh, that's right.

9 Q. Thank you.

10 BY MR. RUBY:

11 Q. Judge McDonald, I want to know how you felt about the
12 Native Worker Program? That court program.

13 A. Well, I thought-- When I learned about it, I thought it was
14 a good idea.

15 Q. Why?

16 A. Because, to help out the Native people. I think sometimes
17 they needed help then on the court matters.

18 Q. Why did they need help?

19 A. Pardon?

20 Q. Why did they need help?

21 A. Well, they perhaps weren't as well educated as the others
22 that come before me.

23 Q. Any other reason?

24 A. I can't think of anything right now.

25 Q. And what were the results of the program, as far as you're

1 concerned? Helpful, neutral, not helpful?

2 A. Oh, I think it was helpful. I think during the years that
3 I was on the bench the Native people progressed. Their
4 financial position was improved by the government and they
5 had better housing and they were -- they'd gone up quite
6 a few degrees in the process.

7 Q. I understand that things are not as bad as they were in the
8 beginning but in court, as a result of this program, did
9 you see any results from it?

10 A. Oh, I'll say yes. I think that it wasn't perfect to make a
11 big difference but it made some difference.

12 Q. And what results? What difference?

13 A. Well, they'd come in better prepared and they knew the
14 way the court was run and the way that the trials were carried
15 on. Just general education regarding the process of law.

16 Q. All right. The conversation that my friend put to you about
17 Bernie Francis, I want to put to you a little bit different
18 version. You remember Eva Bernard? You said, somewhat.
19 And you are familiar with who she is?

20 A. Yes, she might have been in court now but I don't think
21 I ever spoke to her or had any conversation with her.

22 Q. She tells me a slightly different version of these events and
23 I would like to put them to you and see if you recall?

24 A. Sure, go ahead.

25 Q. On the day in question, for the fourth case of the day when

JOHN F. McDONALD, by Mr. Ruby

1 you said, presiding on the bench, "Oh, another one from
2 Eskasoni." Mr. Matheson said, "Yes, apparently." and
3 you said, "Well, we should build a fence around the
4 Reservation and keep them in." and then court proceeded
5 and you, in the course of that hearing, said, "Why can't
6 you learn to stay in Eskasoni and stay out of Sydney instead
7 of coming in and making trouble." Words to that effect.
8 And it was Mr. Matheson who agreed to the comment rather
9 than the other way around. Does that refresh your memory at
10 all?

11 A. No, I -- Did she say that I said it?

12 Q. Yes.

13 A. Well, that's certainly not true.

14 Q. And she recalls the meeting in your office between yourself
15 and Mr. Francis when she was there too. And the conversation
16 went as follows, they asked to see you and they got a
17 message back that you were busy and couldn't see them. They
18 said they'd wait and they did and eventually they went in.
19 Mr. Francis expressed himself as being not pleased with what
20 had said -- been said in court, that he didn't appreciate
21 these remarks and didn't expect them from a person of your
22 caliber and from a person who should have hold respect for
23 the court, to which, I'm advised, you responded, "It's my
24 court and I can do what I want in it." Mr. Francis got
25 angry and actually hit your desk and said that he was going

JOHN F. McDONALD, by Mr. Ruby

1 to tell the Union of Nova Scotia Indians about what had
2 happened and you replied, "I don't care about the Union
3 of Nova Scotia Indians". Do you recall that or anything
4 like that?

5 A. No, I don't.

6 Q. I take it that that, if it happened, would be an event quite
7 unprecedented in your career, correct?

8 A. It sure would.

9 Q. And you would not likely forget that?

10 A. I don't -- certainly would not.

11 Q. One of the things you said, in response to my friends question,
12 interested me. You said when he put the Eskasoni comment
13 to you that, and I think I've marked down in your words,
14 "It may have happened outside the courtroom or somewhere
15 else but it didn't happen in court."

16 A. I never heard that remark at all. In court, out of court,
17 in the hall or anywhere else.

18 Q. So when you said, under oath just a few moments ago, "It
19 may have happened outside the courtroom or somewhere else",
20 that was not true?

21 A. Well, if I -- how would I know if I wasn't there? You mean that
22 they --it was said somewhere and not in my presence?

23 Q. Well, my friend asked you if you'd heard that remark from
24 Mr. Matheson at all and you said, "Not in court but it may
25 have happened outside the courtroom or somewhere else." I

JOHN F. McDONALD, by Mr. Ruby

1 take it you're saying that --

2 A. That still means that I didn't hear it at all.

3 Q. So those words were intended by you to convey not that
4 it may have happened but that it did not happen, is that
5 fair?

6 A. That's right.

7 Q. You said that Mr. -- the late Donald C. MacNeil would never
8 play any dirty tricks?

9 A. Right, as far as I know.

10 Q. What would you think about crown counsel who kept silent
11 about statements, previously inconsistent statements, made
12 by witnesses, that tended to show an accused was innocent.
13 Is that a dirty trick?

14 A. Is that what?

15 Q. Is that a dirty trick?

16 A. Well, it -- if it was done, I would say it really shouldn't
17 have been done, I mean, he should have produced the documents.

18 Q. Dirty?

19 A. Well, incorrect.

20 Q. Merely incorrect?

21 A. Well, it's incorrect for a crown prosecutor to do something
22 like that I think, yes.

23 Q. That wouldn't be playing by the rules?

24 A. As far as I know the rules it wouldn't be, no.

25 Q. And be inconsistent with a man, who you say, you knew as

1 someone who always played by the rules.

2 A. Yes, that's right as far as I know.

3 Q. Another thing that troubled me about your answers to my
4 friend and perhaps once again it's a case of your not
5 expressing yourself properly but you said that if someone
6 came and complained to you about conduct by a counsel, and
7 I think you meant in the context crown counsel, "I'd tell
8 him to complain to the Attorney General about the statement
9 by the attorneys. I had nothing to do with that."

10 A. Right.

11 Q. I suggest to you that's not true. If it happened in your
12 courtroom you had everything on earth to do with that?

13 A. Pardon?

14 Q. I suggest to you that that's not true. That if it happened
15 in your courtroom --

16 A. Oh, --

17 Q. -- you had everything on earth to do with that.

18 A. It's -- for my first -- My first thing would be tell him
19 to complain to the Attorney General. I wasn't going to get
20 arguing with counsel over what they say in court unless it's
21 something that's outrageous altogether.

22 Q. Well, the comment put to you about Eskasoni, is that outrageous?

23 A. About Eskasoni, yes. I didn't hear that. I wasn't talking
24 about that.

25 Q. No, but that's where the context in which you made the statement

JOHN F. McDONALD, by Mr. Ruby, by Mr. Murray

1 "I'd tell him to complain to the Attorney General. I
2 had nothing to do with that."

3 A. Well, as far as complaining to the Attorney General I think
4 it's up to them. If they have a grievance that the lawyers
5 did something to them in court, that the place and then
6 I'd talk to the Attorney General. I wasn't going to get in
7 an argument. It wouldn't -- I don't get in arguments with
8 counsel.

9 Q. But wouldn't you control a counsel who, in your court, made
10 a statement like that? Wouldn't you say --

11 A. If he --

12 Q. I'll have none of it.

13 A. If he had a statement like that, I'd put him out of the court.

14 Q. But you said, "I had nothing to do with that." I take it
15 that's not true. You would have taken responsibility for that.

16 A. Oh, if he said it in court I'd have put him out, yes.

17 Q. Thank you, sir.

18 A. Okay. Thank you.

19 BY MR. MURRAY:

20 Q. Your Honour, my name is Donald Murray. I represent
21 William Urguhart. Do you recall doing a preliminary inquiry
22 in this matter? The Donald Marshall preliminary inquiry?

23 A. Yes.

24 Q. Perhaps the witness could have volume one. Is it your
25 recollection, sir, that there were a number of young persons

JOHN F. McDONALD, by Mr. Murray

1 who were testifying at that preliminary inquiry?

2 A. My mind is kind of dim on that but I don't know if they
3 were young or not. Were they? They -- What were their
4 names?

5 Q. Perhaps if you would look at page 19 to start. At approximately
6 line 11 there is the name Patricia Ann Harriss underlined?

7 A. Yes.

8 Q. And a reference to "By the Court." And that would be questioning
9 by yourself, would it not?

10 A. How old are you?

11 Is that what you mean?

12 Q. That's correct.

13 A. Yes.

14 Q. This series of questions that goes down to the bottom
15 of the page and continues on page 20 down to approximately line
16 eight?

17 A. Yeh.

18 Q. Would that passage assist you, sir, in giving the Commission
19 an indication of your impression of Patricia Harriss at that
20 time? Do you recall -- Does that assist your recollection, sir?

21 A. Yes, I think that's -- sounds usual for the questioning of
22 the youngsters, yeh.

23 Q. Was that a practise that you followed in your court, sir?

24 A. Yes.

25 Q. And I take it from the transcript it appears that you started

1 this questioning on your own initiative?

2 A. Yes.

3 Q. Now, on page 20 there's an indication after your questions are
4 finished that the witness is sworn. I take it you would
5 have been satisfied then that this witness understood the
6 nature of an oath?

7 A. Right.

8 Q. And the consequences of telling a falsehood?

9 A. Pardon?

10 Q. And the consequences of telling a falsehood? She would have
11 understood that as well?

12 A. Yes.

13 Q. I would ask you to turn to page 31. Down at the bottom
14 of the page, there is a reference to Terrance Gushue and
15 again it appears you've taken the initiative to ask him
16 a question.

17 A. Yeh, after 20.

18 Q. That's right.

19 A. Yes.

20 Q. And that would have been the end of your inquiry, for what
21 reason sir?

22 A. Because he's -- the age, 20.

23 Q. I would ask you to now turn to page 34. At approximately line
24 23 there's a reference to a Maynard Vincent Chant.

25 A. Yes.

JOHN F. McDONALD, by Mr. Murray

1 Q. And again questioning by the Court. That questioning continues
2 for almost the full length of page 35 as well?

3 A. Right.

4 Q. Do you recall asking questions of a Maynard Vincent Chant?

5 A. Well, not directly. I don't remember the name but it's here
6 and I admit it.

7 MR. CHAIRMAN:

8 What's the purpose of this line of questioning, Mr. Murray?

9 MR. MURRAY:

10 Once I deal with Mr. Chant, there's a question with respect to
11 Mr. Pratico with whom -- about whom -- with respect to whom no
12 questions were asked.

13 BY MR. MURRAY:

14 Q. Was there any -- Do you recall any particular reason why
15 you would have asked Mr. Chant, sir?

16 A. No, I don't know of -- recall now why the questions were
17 asked. There must have been something though that -- He
18 was -- Yeh, he was under -- He was 14 and he was only in
19 grade six.

20 Q. And was it an assessment of age and educational achievement
21 that would have lead you to commence questioning, sir?

22 A. I would say so.

23 Q. Now, I'll refer you to page 42. And it appears from the
24 transcript at line 26 that John Pratico was sworn without
25 any questions?

A. Yes, it appears that way.

1 Q. Would it be fair to conclude from that, sir, given the questions
2 you asked of others and indeed an individual who was twenty years
3 old, that your impression of Mr. Pratico when he got on the
4 stand was someone who was old enough to understand the nature
5 of an oath?

6 A. Right. Yeh, he was sixteen, yeh. I notice here. Yeh.

7 Q. Could we -- Is that correct, sir?

8 A. Yes.

9 Q. Do you recall the progress of the Preliminary Inquiry -- the
10 evidence that came out, sir?

11 A. Not very much.

12 Q. Do you recall how the witnesses impressed you?

13 A. Well, they impressed -- I don't have any thoughts that they
14 weren't telling the truth or anything like that. They impressed
15 me as good witnesses.

16 Q. Yes. Did you have any indication that there was any mental
17 difficulty --

18 A. No.

19 Q. -- on the part of Mr. Pratico?

20 A. No, I didn't. I never heard that for years and years after.

21 Q. And you certainly did not get an impression of that from
22 watching him testify?

23 A. Not from the testimony, but I certainly would've inquired into
24 it if I'd know that there was anything of that nature and how
25 deep it went and how much treatment it had so forth. It was

JOHN F. McDONALD, by Mr. Murray

1 something that I would have noticed certainly but --

2 Q. On several occasions during your career as a provincial magis-
3 trate, I take it John MacIntyre and William Urquhart appeared
4 before you?

5 A. Yeh. Pardon? Appeared in court?

6 Q. Appeared --

7 A. Yes.

8 Q. -- before you?

9 A. Often.

10 Q. Were you a police magistrate prior to becoming a provincial
11 magistrate?

12 A. Oh, yes, we all were.

13 Q. I see. And when did -- Is it 1953 when you commenced to be a
14 police magistrate?

15 A. Yes.

16 BY MR. CHAIRMAN:

17 Q. Is there a difference, Judge, between a police magistrate and
18 a magistrate?

19 A. Well, I don't think there is. Well, I mean our jurisdiction was
20 the same, and I don't know where the police magistrate comes
21 in. I don't think we were ever known as that. Stipendiary
22 magistrates.

23 BY MR. MURRAY:

24 Q. Perhaps -- A police magistrate operated under the City Charter,
25 did it not, and provincial magistrate under provincial

JOHN F. McDONALD, by Mr. Murray

1 | legislation?

2 | A. Oh, I don't know anything about that. But we had the same
3 | jurisdiction.

4 | Q. Yes.

5 | A. From the time that I got on -- I mean the Code. Under the Code,
6 | we had the same jurisdiction.

7 | Q. I see.

8 | A. Except that, of course, the value of it -- I think it was twenty-
9 | five dollars that was the dividing line for the money one time
10 | that -- on the charge, and then it went up to, I think, two
11 | hundred, and I think it's there around two hundred yet.

12 | BY MR. CHAIRMAN:

13 | Q. That's in civil cases?

14 | A. No. Theft cases only.

15 | BY MR. MURRAY:

16 | Q. Would you do civil cases?

17 | BY COMMISSIONER EVANS:

18 | Q. Was that the difference? You were stipendiary magistrate at one
19 | time?

20 | A. We were stipendiary magistrates, yes.

21 | Q. Yeh, and then after that, the change.

22 | A. Nova Scotia provincial.

23 | BY MR. MURRAY:

24 | Q. On the occasions when John MacIntyre and William Urquhart testi-
25 | fied before you, did they ever give you any reason to suspect

JOHN F. McDONALD, by Mr. Murray

1 the honesty of their testimony?

2 MR. RUBY:

3 Excuse me. This is all wonderful, and I know my friend's searching
4 for scraps, but though a lot of nasty things have been said about
5 MacIntyre and Urquhart, and I suspect more will be said, nobody's
6 ever suggested they were bad witnesses, and I'm wondering why my
7 friend wants to list it as evidence.

8 MR. MURRAY:

9 Well, my friend is very quick to bring out evidence and other counsel
10 are very quick to bring out evidence about the reliability of people,
11 such as John Pratico, and in other situations outside of testifying
12 in court. I think particularly the witnesses, Barbara Floyd and
13 Sandra Cotie, and I suggest that if the Commission is going to hear
14 that evidence, that it should also hear this evidence as well.

15 MR. CHAIRMAN:

16 Just my question. No problem with that question. I think I can
17 guess the answer. I have no objection to that question.

18 BY MR. MURRAY:

19 Q. Do you recall the question, sir?

20 A. That would -- kindly repeat it, please?

21 Q. On the several occasions when John MacIntyre and William Urquhart
22 gave evidence, did you have any occasion to doubt their
23 reliability?

24 A. No, I never had any criticism to make. I had no criticism on
25 anything.

JOHN F. McDONALD, by Mr. Murray, by Mr. Elman

1 Q. Did you ever have any occasion to suspect that either one of
2 them might be shading the truth?

3 A. Who's the other one?

4 MR. CHAIRMAN:

5 That's an unusual, silly -- That's -- I'd better be careful of the
6 words I use. I presume that if any presiding judge had any doubt
7 about the truthfulness of a witness that he or she would deal with
8 it forthwith from the bench.

9 MR. MURRAY:

10 And my question was to go to whether he had ever had any occasion
11 to deal with that.

12 COMMISSIONER EVANS:

13 He never had any criticism to make. Perhaps he doesn't have any
14 reason to be.

15 MR. MURRAY:

16 Fine. Thank you. I have no further questions, Your Honour.

17 THE WITNESS:

18 Thank you.

19 BY MR. ELMAN:

20 Q. Judge McDonald, I'm Frank Elman, of course, and you know me well,
21 and I represent Mr. Donald C. MacNeil. Just a couple of questions
22 Judge McDonald. The system as we knew it then and probably as it
23 continues today is that summary conviction offences were handled
24 probably not by the Crown Prosecutor but by the individuals them-
25 selves who made the complaints or the police officers. Is that

1 | not correct?

2 | A. Yeh. Yes, I would say that was correct in many cases.

3 | Q. And so that you will all understand what summary conviction
4 | offences are relative to indictable offences, those are minor
5 | offences, such as assault, liquor charges and that sort of thing.

6 | A. Common assault.

7 | Q. Yes, and the common assault grouping. So then if there were
8 | common assault cases that appeared before you, the Crown
9 | Prosecutors at that time would not have handled those cases?

10 | Would that --

11 | A. Well, he might've, but as a general rule, he didn't have to.

12 | Q. Okay.

13 | A. He didn't have to if he --

14 | Q. As well as the minor liquor offences?

15 | A. Yes.

16 | Q. Other than --

17 | A. Well, they had their own attorneys under the Liquor Act.

18 | Q. Right. All right. Now, Judge McDonald, at any time do you ever
19 | recall defence counsel in your court ever making comment that
20 | the Crown Prosecutors, whoever they may have been, failed to
21 | give and produce statements to them at any time?

22 | A. No. No, I've never run across that in my court. Of course, I --
23 | The cases that I handled usually wasn't very many statements
24 | you know, produced by either side.

25 | Q. Well, either on a trial or even a Preliminary. Was that comment

JOHN F. McDONALD, by Mr. Elman, by Mr. Ross

1 ever made to you at any time?

2 A. No, I -- I can't recall it.

3 Q. All right.

4 MR. ELMAN:

5 That's all the questions I have, My Lords. Thank you, Judge.

6 MR. D. PINK:

7 We have no questions, My Lords.

8 MR. BISSELL:

9 No questions from the R.C.M.P.

10 BY MR. ROSS:

11 Q. Judge McDonald, my name is Anthony Ross and there are one or
12 two questions I'd like to ask you.

13 A. Go ahead, Sir.

14 Q. You indicated that on the question of disclosure that there were
15 instances where non-disclosure would be tolerated if it would
16 tend to harm the Crown's case. Am I correct?

17 A. What's that again? I didn't get the gist of it.

18 Q. That you indicated on direct examination and speaking that there
19 were circumstances when failure to disclose certain documents
20 could be tolerated when that would harm the Crown's case. Do
21 you recall making that statement?

22 A. Making a statement that would harm the Crown's case?

23 Q. Yes.

24 A. Well, yes, probably I did.

25 Q. Wouldn't it also be correct that non-disclosure is basically

1 | unfair to the accused?

2 | A. Well, it would -- Do you mean at Preliminary hearing or at a --
3 | in a --

4 | Q. In any court proceeding.

5 | A. Might be.

6 | Q. I see. And in those circumstances, how do you as a judge balance
7 | the interests to be protected? On the one hand, the hand to the
8 | Crown's case and to the other side, full disclosure to the
9 | accused. How would address those interests?

10 | A. Well, they'd have to -- The Crown'd have to give some reason for
11 | not giving a statement. I would ask that. I'd say, "Do you
12 | agree to give the statment?" If they say, "No, he can't do it,"
13 | I'd demand an explantion.

14 | Q. I see. And you'd just be happy with whatever explanation the
15 | Crown gives you?

16 | A. I might be, and I might not be.

17 | Q. I see.

18 | A. I'm not bound by them.

19 | Q. You also, in direct, made reference to the fact that you hadn't
20 | noticed any difference between Black people -- Black and White
21 | defendants.

22 | A. Yes.

23 | Q. Am I correct that that was your understanding -- that was the
24 | evidence?

25 | A. Yeh, you're correct.

JOHN F. McDONALD, by Mr. Ross

- 1 Q. I take it that as a judge, you would have read Doctor Renner's
2 study of 1971?
- 3 A. Who?
- 4 Q. Dr. Ed Renner from Dalhousie University.
- 5 A. What is he a professor up there?
- 6 Q. Yes, he is. I take it you haven't read anything that he wrote?
- 7 A. No, I haven't.
- 8 Q. I see. Well, I will suggest to you that he did a study, and one
9 of the things that he found was that on first offences that
10 whereas there were twenty-three percent of White people who got
11 discharges of some kind, that there was a zero percentage of
12 Black people who got discharges of any kind. Is that sort of
13 finding consistent with what happens in your courts in Sydney?
- 14 A. I don't think it is, no.
- 15 Q. Would you then suggest that if those findings were so made that
16 these might be appropriate for the Halifax area but not of the
17 Sydney area?
- 18 A. Might be. I don't -- I have no knowledge of the Halifax area at
19 all. I've never sat up there.
- 20 Q. Well, I agree that you haven't sat up there, but I understand
21 that you have judge's conferences. You attend these conferences,
22 and there is really an exchange of what happens in courts, isn't
23 there?
- 24 A. Oh, yes, we have discussions at our meetings of all kinds.
- 25 Q. I see. And as a matter of fact, discussions of all kinds, do

1 | these involve matters of race of the accused?

2 | A. What was the --

3 | Q. You said you have discussion of all kinds, and I was following
4 | that up to find out whether or not it also covered matters of
5 | the racial makeup of the accused populous.

6 | A. I don't know what you're -- I don't quite understand yet what
7 | you're getting at.

8 | Q. Okay. I'll try to make it as basic as I can then. In your
9 | discussions of all kinds that you have at these judge's con-
10 | ferences --

11 | A. Yes.

12 | Q. Are the judges sensitive to the racial problems of different
13 | groups which come before the court?

14 | A. Oh, I'd say very -- We discuss that, yes. Anybody has anything
15 | to say on it, they bring it up.

16 | Q. Well, perhaps you can give us some idea of what kind of discus-
17 | sion would you have?

18 | A. Oh, it -- We'd have the usual discussion. If there's any out-
19 | standing cases, we'd deal with them as we do with all cases, not
20 | necessarily cases where there's Black people or any other people
21 | involved.

22 | Q. But, you see, I'm having a difficulty. When you say that you
23 | have the usual discussions, please understand that I've never
24 | been at a judge's conference. I would like to know, from the
25 | point of view of my clients at Black United Front, whether or

JOHN F. McDONALD, by Mr. Ross, by Mr. Nicholas

1 not at these conferences any special attention is given to any
2 particular group based on racial orientation.

3 A. No, I've never heard at the ones I've attended. I've never
4 heard any discussion on that -- those points.

5 MR. ROSS:

6 Okay. Thank you very much. Those are my questions, Judge McDonald.

7 THE WITNESS:

8 Thank you.

9 MR. CHAIRMAN:

10 Mr. Nicholas.

11 BY MR. NICHOLAS:

12 Q. Yes, Your Honour, my name is Graydon Nicholas. I'm representing
13 the Union of Nova Scotia Indians at these hearings, and I just
14 have a few questions to ask you. First, with respect to some
15 of your original statements here this morning, you said in fact
16 Native people were in the minority in terms of the population
17 that appeared in front of you in the courts.

18 A. Yeh.

19 Q. And how often would these Indians or the Micmacs come there with
20 a lawyer to represent them?

21 A. I don't know, but they've come a lot oftener with lawyers since
22 the Legal Aid Program went into force some years ago.

23 Q. But they wouldn't come there with independent counsel as opposed
24 to Legal Aid then?

25 A. Well, they might and they might not; but they're always asked
if they want to

JOHN F. McDONALD, by Mr. Nicholas

1 | be represented by counsel, the ones that don't have counsel.

2 | Q. No, but in general, would it be fair to say that it was an
3 | exception rather than to rule that Indians would come there
4 | with independent counsel before you?

5 | A. It would depend also on the seriousness of the case.

6 | Q. And did many of these Indians who appeared in front of you, were
7 | they for -- just for pleas or for trial?

8 | BY MR. CHAIRMAN:

9 | Q. Before you leave that, would you have any way of knowing if a
10 | lawyer stands up and says, " I represent an accused person,"
11 | whether he is -- Well, I won't use the word, "independent,"
12 | but I assume all lawyers are independent, but whether he was
13 | a Legal Aid lawyer or had been retained by the accused outside
14 | of Legal Aid?

15 | A. I knew all the Legal Aid lawyers. If they came in, I'd know
16 | them, but if they weren't on the staff of the Legal Aid Office
17 | then I'd know that they -- he made his own arrangements.

18 | Q. I see.

19 | BY COMMISSIONER EVANS:

20 | Q. Do I understand from that that Legal Aid has a certain number
21 | of lawyers who are on staff and that you couldn't go outside
22 | that group if you wanted legal aid?

23 | A. Oh, as far as I know, they'd have to stick to the office crowd.
24 | I think it's four -- five or six of them down there in Sydney
25 | that -- Legal Aid lawyers on the staff.

JOHN F. McDONALD, by Mr. Nicholas

1 | MR. NICHOLAS:

2 | Perhaps, My Lordships -- I didn't mean to question the independence.
3 | I just meant, did they obtain counsel say at their own expense as
4 | opposed to the one provided by the state.

5 | BY MR. NICHOLAS:

6 | Q. And most of the appearances then of Indians in front of your
7 | court, Your Honour, were they just for pleas or for trials?

8 | A. For pleas or trials? For pleas first. They'd come in and
9 | the first thing they would ask was; "Are you represented by
10 | counsel?" If he says, "no," we'd -- I would anyway, say, "Do you
11 | want time to get counsel?" And as I've said before, if it was
12 | a very serious case, I'd press the point for them to go to
13 | Legal Aid and try to get counsel anyway, and I'd -- If it was
14 | a serious case -- I'm sure I've never Legal Aid refusing to act
15 | for -- There's usually a Legal Aid lawyer in court on cases,
16 | and I'd refer them to them.

17 | Q. And in respect to many of these cases then where Indians were
18 | represented, were there -- Were they represented often by either
19 | Mr. Rosenblum or Mr. Khattar before your court?

20 | A. Oh, gosh, I couldn't -- I think Mr. Rosenblum anyway. I don't
21 | if Mr. Khattar -- Mr. Khattar didn't practice very much criminal
22 | law before me, but Mr. Rosenblum did, but I say -- think
23 | Mr. Rosenblum -- made no difference as long as they had the
24 | money to pay. That -- I mean -- If they didn't have the money,
25 | of course, they were sent to Legal Aid.

JOHN F. McDONALD, by Mr. Nicholas

- 1 Q. Now, when this -- You were asked by counsel about -- Counsel
2 for the Commission with respect to the fact that no one from
3 the Attorney General's office explained this Native Court Worker
4 Program to you. My question to you is: Was it your under-
5 standing that in fact the Attorney General's office had any role
6 in the actual program itself?
- 7 A. I don't know. I thought that the -- Mr. Francis was representing
8 the local Band at Membertou and Eskasoni -- that he was acting
9 through them. I didn't know that the Attorney General's
10 Department had anything to do with it.
- 11 Q. I see. Now, with respect to these judge's conferences that you
12 have discussed in your testimony -- As a result of the -- of
13 your experience in the Marshall decision -- I'm sorry -- in
14 the actual court process, I'm sorry. Has any of your brother
15 judges or any of your judges -- fellow judges indicated an
16 interest in having cross-cultural courses for judges about
17 Indians in this province?
- 18 A. I didn't get the last part of it. Would you please speak up.
- 19 Q. Has any one of your -- the different judges in this province --
20 in the provincial court level, has any one indicated an interest
21 or tried to promote the idea of a cross-cultural course about
22 Indians in the court system.
- 23 A. No, I don't think so. I've never heard much discussion on it or
24 any indications that --
- 25 Q. And have you ever been contacted about again putting into place

JOHN F. McDONALD, by Mr. Nicholas

1 a court worker system for Indians in this province?

2 A. A court --

3 Q. Worker system. Native court worker system?

4 A. No, I've never been -- I've been -- I haven't been attending the
5 meetings, you know, since '78. It was an occasional meeting
6 when I was working and filling in, but I have never been up on
7 the latest scene because I don't go to the meetings very often.
8 We have the right to go, but I'm now -- When you're not working,
9 you're not very interested in it in retirement.

10 Q. I see. Yeh.

11 MR. NICHOLAS:

12 I have no further questions for His Honour, My Lords.

13 MR. CHAIRMAN:

14 That's all. Thank you very much, Judge McDonald.

15 THE WITNESS:

16 Oh, thank you, sir.

17 MR. CHAIRMAN:

18 All right. It's my understanding that -- my recollection that
19 Mr. Gould had just about completed his testimony, and that Counsel
20 for the Union of Indians had cross-examined for a period but said
21 there was some more questions. So I assume when that line of --
22 that cross-examination is finished by Mr. Nicholas, that will be
23 the end of Mr. Gould other than re-examination.

24 MR. SPICER:

25 That's correct.

DISCUSSION BETWEEN COMMISSION AND COUNSEL

1 MR. CHAIRMAN:

2 All right. And then you have two more witnesses besides that?

3 MR. SPICER:

4 Yes.

5 MR CHAIRMAN:

6 Do you have some questions to put to Mr. Gould?

7 MR. NICHOLAS:

8 Well, My Lords, I can't say right now. I've just had the opportunity
9 to begin to review Mr. Roy Gould's testimony, and I did receive a
10 note from my fellow counsel, and he had indicated to me that perhaps
11 Mr. Gould would not be called until tomorrow, but --

12 MR. CHAIRMAN:

13 Well, you know, we got to keep on schedule somehow. We're getting a
14 thousand years behind.

14 MR. NICHOLAS:

15 Yes, I realize that, My Lord, but I'd be prepared this afternoon
16 to ask --

17 MR. CHARIMAN:

18 So -- All right. So you'll be -- You will know this afternoon --

19 MR. NICHOLAS:

20 Yes.

21 MR. CHAIRMAN:

22 -- whether or not you wish to put any further questions to him, and
23 by all means, do so.

24 MR. NICHOLAS:

25 Yes.

DISCUSSION BETWEEN COMMISSION AND COUNSEL

1 MR. CHAIRMAN:

2 But we must get -- start getting witnesses cleaned up. So the
3 next witness this afternoon will be Roy Gould and the other two
4 witnesses --

5 MR. SPICER:

6 David MacNeil and Mr. Wright.

7 MR. CHAIRMAN:

8 And they will be available this afternoon?

9 MR. SPICER:

10 Yes.

11 MR. CHAIRMAN:

12 All right. We will adjourn until 1:45.

13

14 INQUIRY ADJOURNED: 12:04 p.m., AND RECONVENED AT: 1:47 p.m.

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